



INVESTMENT GUIDE

VIETNAM | 2020

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Chapter 1

Welcome to Vietnam



The Socialist Republic of Vietnam (“Vietnam”) is situated in eastern Indochina, bordering the People’s Republic of China, the Lao People’s Democratic Republic, and the Kingdom of Cambodia. Vietnam also has maritime borders with China, Cambodia, Thailand, the Philippines, Malaysia, and Indonesia.

The population of Vietnam is currently around 97 million. The majority of the population (85.7%) is of Kinh (Viet) ethnic descent and the Vietnamese Government recognizes 54 ethnic groups in total. Other major ethnic groups include Tay (1.9%), Thai (1.8%), Muong (1.5%), and Khmer (1.5%).

Vietnam was ruled by China from roughly 111 BC to 938 AD, and again briefly from 1407 to 1428. The French arrived in 1858 and completed their conquest of Vietnam by 1884. After the fall of the French garrison at Dien Bien Phu in 1954 and the signing of the Geneva Accords in the same year, the country was divided into North Vietnam and South Vietnam. Reunification occurred on 30 April 1975, after several decades of devastating conflict.

Economic growth increased after 1986, with the implementation of “Đổi Mới” or “renovation” policies geared at modernizing the economy and fostering industrial exports. Vietnam further opened up to the global economy thereafter, entering into the US-Vietnam Bilateral Trade Agreement in 2000 and acceding to the World Trade Organization (“WTO”) in 2007. GDP growth has been consistently high over the past decade and foreign direct investment has progressively increased. Today, Vietnam is considered as a socialist-oriented market economy and has experienced some of the highest development rates in the world over the past decade.

Hanoi is the capital and political center of Vietnam, whilst Ho Chi Minh City is the largest city and the commercial heart of the nation.

1.1 Basic Country Data

1.1.1 Government Working Hours

Working hours are determined by the President of the People’s Committee of each province. Government offices in Hanoi are usually open from 8:00am to 12:00pm and from 1:00pm to 5:00pm daily, Monday to Friday. In Ho Chi Minh City, Government offices are usually open from 7:30am to 11:30am and from 1:00pm to 5:00pm.

Government offices are generally closed on Saturdays and Sundays except for some departments which open on Saturday mornings.

1.1.2 Geography

| | |
|------------------------|---|
| Geographic Coordinates | 16 00 N, 106 00 E. |
| Area | Total: 331,236 square kilometers. |
| Land Boundaries | Total: 4,639 kilometers. |
| Border Countries | Cambodia: 1,228 kilometers. China: 1,281 kilometers. Lao PDR: 2,130 kilometers. |
| Coastline | 3,444 kilometers (excluding islands). |
| Time Zone | GMT + 7. |
| Maritime Borders | Strategic location bordering the Gulf of Thailand, Gulf of Tonkin and the South China Sea. |
| Maritime Claims | Contiguous Zone: 24 nautical miles. Continental shelf: 200 nautical miles or to the edge of the continental margin. Exclusive Economic Zone: 200 nautical miles. Territorial sea: 12 nautical miles. |

| | |
|---------------------------|--|
| Climate | Tropical in the South; monsoonal in the North; with hot and rainy season (mid-May to mid-September), and warm and dry season (mid-October to mid-March). |
| Elevation Extremes | Lowest Point: South China Sea, 0 meters. Highest Point: Fansipan, 3,143 meters. |
| Terrain | Delta in the South and North; highlands in the center; hilly and mountainous in the far North and Northwest. |
| Natural Resources | Phosphates, coal, manganese, bauxite, chromate, offshore oil and gas deposits, forests. |
| Land Use (2018) | Arable land: 12.44% Permanent crops: 13.73% Other: 73.83% Agriculture Land (2018): 27,895 square kilometers. |

1.1.3 Language

The official language in Vietnam is Vietnamese. All laws, decrees, rules, regulations and decisions are published in Vietnamese. There are unofficial translations of the laws, decrees, rules, regulations, and decisions into English, published by the Vietnam Official Gazette but such translations are for reference purposes only. English is commonly used in the business community.

1.1.4 Currency and Exchange Rate

The currency of Vietnam is the “Vietnamese dong” (“**VND**”), which is denominated in notes of 200, 500, 1,000, 2,000, 5,000, 10,000, 20,000, 50,000, 100,000, 200,000, and 500,000 units.

In 2015, the VND was subject to three rounds of devaluation by the State Bank of Vietnam (“**SBV**”), each one estimated at one percent. In addition, the SBV intervened by way of an adjustment regarding two trading bands for VND-USD transactions in August 2015. This led to the widening of the devaluation from one percent to three percent. The VND devalued against the USD at 3.16% in 2015, 2.23% in 2016 and 1.4% in 2017.

The Director General of the Monetary Policy Department introduced a new method of exchange rate management with Decision No. 2730/QD-NHNN, dated 31 December 2015 (“**Decision No. 2730**”). Following this decision, the SBV announces the VND/USD exchange rate daily, rather than maintaining a fixed rate for a longer period of time. The rate is calculated based on three benchmarks: supply and demand of VND, the exchange rates for a basket of eight strong foreign currencies; and for any change to balance the macroeconomic needs. According to the SBV’s statements, this new policy provides more flexibility to the managed floating exchange rate regime of VND and is more aligned with commercial needs and the international investment environment.

Decision No. 2730 also impacts the exchange rate of foreign currencies transacted in Vietnam. According to the SBV, the daily-adjusted rate constitutes a basis for local credit institutions and foreign bank branches to more effectively provide their foreign exchange services.

The SBV also controls the exchange rate by purchasing and selling foreign currencies at the inter-bank foreign currency market or by requesting companies to sell their foreign currencies to the SBV. The SBV has reported that the foreign currency reserves of the Vietnamese government reached a record high of US\$68 billion in the first half of 2019.

1.2 Political Structure

1.1.5 The State and the Current Constitution

The current constitution of Vietnam, enacted on 28 November 2013, has established the National Assembly (legislature), the State President (head of state) and the Government (executive branch), led by the Prime Minister.

The table below provides basic facts about the political structure of Vietnam:

| | |
|---------------------------------|--|
| Country Name | Conventional Long Form: Socialist Republic of Vietnam Conventional Short Form: Vietnam Local long form: Cộng hòa Xã hội Chủ nghĩa Việt Nam Local short form: Vietnam. Abbreviation: SRV |
| Government | Communist state |
| Capital | Hanoi |
| Administrative Divisions | 58 provinces and 5 municipalities: Can Tho, Da Nang, Hai Phong, Hanoi, and Ho Chi Minh |
| Independence | 2 September 1945 (from France) |
| National Holiday | Independence Day: 2 of September |
| Constitution | 28 November 2013 |
| Legal System | Based on communist legal theory and the French civil law system |
| Suffrage | 18 years of age, universal |
| State President | Nguyen Phu Trong |
| Prime Minister | Nguyễn Xuân Phúc |

1.1.6 The Vietnamese Communist Party

The Vietnamese Communist Party (the “**Party**”) is the only political party recognized by the Constitution. The National Congress of the Communist Party of Vietnam takes place every five years and appoints the Central Committee of the Party to hold office until the next appointment. The General Secretary of the Central Committee is elected to lead the party and can hold office for a maximum of two consecutive terms. The most recent congress was held in June 2019.

1.1.7 The National Assembly and Standing Committee

The National Assembly is the legislative body of Vietnam, whose members are elected by universal direct vote. The next election of members of the National Assembly will be in 2021. The National Assembly is responsible for monitoring the activities of the executive and judicial bodies. The National Assembly holds both constitutional and legislative powers by establishing and revising the constitution, adopting and amending bills, ratifying and withdrawing from treaties at the initiative of the State President.

The National Assembly elects a Standing Committee from among its members, which comprises its President and Vice-Presidents. The principal functions of the Standing Committee consist of planning the legislative program; interpretation of the constitution, laws, and ordinances; and control of the activity of the Supreme People’s Court, Supreme People’s Prosecutors, and of the People’s Councils.

1.1.8 The State President

The State President is elected by the National Assembly from among its members for a five-year term and represents Vietnam in both foreign and domestic affairs.

The State President signs orders to promulgate the constitution, laws, and ordinances which are approved by the National Assembly. The State President also appoints and dismisses the Prime Minister, subject to the approval of the National Assembly.

1.1.9 The Government

The Government is elected by the National Assembly on the proposal of the Prime Minister and is the executive body of the country, managing execution of the State's tasks. The Government is composed of the Prime Minister, the Vice-Prime Ministers, the Ministers, and other members. The Prime Minister is the only government member who must be a National Assembly member. The term of the Government is for five years.

1.1.10 Administrative Management

The national territory of Vietnam is divided into provinces, towns and special zones. Provinces and special zones are subject to central administration. Provinces are further divided into districts and then subdivided into wards and communes. Towns are subject to direct provincial administration.

The People's Councils, elected by the general population, are the local state representatives at the provincial level. The executive bodies of the People's Councils are the People's Committees.

1.1.11 Judicial Bodies

The People's Courts include the Supreme People's Court, Superior People's Courts, Provincial People's Courts, District People's Courts, and Military Courts. The Supreme Court is the highest court, which supervises the judgments of the lower courts. The Supreme Court is also empowered to rule on important cases and may intervene in the judicial proceedings of lower courts. These courts have jurisdiction over commercial, labor and administrative matters.

The judiciary system in Vietnam includes levels of jurisdiction including the courts of first instance and the courts of appeal. An award by the court of first instance may be overruled by a court of appeal where an appeal is lodged by the applicant, the defendant or a competent body such as a higher court, the Supreme People's Procuracy or certain social organizations.

An award by a court of appeal is, in principle, final and binding. However, the Supreme Court may intervene and rule that a case be re-litigated by the lower court, if an error was made at any stage of the proceedings or if an appeal has been lodged by a competent party. Following intervention of the Supreme Court, a second binding verdict will be issued on the same case. The Supreme Court is entitled to oversee the validity of such subsequent ruling. Civil cases may take up to ten years of proceedings, including appeal.

In practice, court proceedings and subsequent enforcement proceedings in Vietnam are lengthy and difficult to predict.

1.3 The Legal System

The Vietnamese legal system is based on the civil law system, from French civil law. The framework has also been influenced by other legal systems, notably the Chinese one. However, Vietnamese lawmakers do take into consideration laws from both civil law and common law legal systems.

Under the legal system of Vietnam, legal instruments are organized in the following hierarchy:

- The constitution and laws and resolutions of the National Assembly;
- Ordinances and resolutions of the Standing Committee of the National Assembly;
- Orders and decisions of the State President;
- Decrees of the Government;
- Decisions of the Prime Minister;
- Resolutions of the judges in the Council of the Supreme People's Court;
- Circulars of the President of the Supreme People's Court;
- Circulars of the Director of the Supreme People's Procuracy;
- Circulars of Ministers and heads of ministerial-level agencies;
- Decisions of the State Auditor-General;
- Joint resolutions of the Standing Committee of the National Assembly or the Government and a central agency of a socio-political organization;
- Joint circulars of the President of the Supreme People's Court and the Director of the Supreme People's Procuracy;
- Joint circulars of a Minister or the head of a ministerial-level agency and the President of the Supreme People's Court or the Director of the Supreme People's Procuracy;
- Joint circulars of Ministers and heads of ministerial-level agencies; and
- Legal documents of the People's Councils and People's Committees.

Chapter 2

Investing in the Country



The Law on Investment of 2014 (“Law on Investment”) and the Law on Enterprises of 2014 (“Law on Enterprises”) came into force on 1 July 2015 and replaced the previous Law on Enterprises of 2005 and Law on Investment of 2005. A draft law on amendments and supplementations to the Law on Investment and the Law on Enterprises is currently available and expected to be passed by the National Assembly of Vietnam at the 9th Session-Session XIV, which will be held on May 2020.

Under Vietnamese law, a foreign investor, meaning a foreign individual or a corporate entity established under foreign law, may conduct business investment activities in Vietnam. Investment activities include the expenditure of capital to conduct business activities by:

- establishing an economic organization;
- contributing capital to an existing economic organization;
- entering into a contractual relationship; or
- implementing an investment project.

Permitted Foreign Investment Forms

The Law on Investment and the Law on Enterprises allow foreign investors (legal entities or individuals) to participate in economic activities in Vietnam in the following main forms of investment, excluding particular sectors such as banking and insurance which are subject to specialized laws and regulations.

2.1.1 Establishment of a New Economic Organization

Foreign investors may establish a wholly or partly owned economic organization. The economic organization may be a limited liability company or a joint-stock company. A limited liability company can be established as a single-member limited liability company if it is owned by one investor or a multi-member limited liability company if it is owned by more than one investor. A joint stock company can be established only when there are at least three shareholders.

Before the establishment of an economic organization, foreign investors must have an investment project and must apply for an investment registration certificate (“IRC”) from the relevant Vietnamese licensing authority of the location where the investment project will be based. Certain conditions will apply in regard to charter capital ownership, investment form, the scope of activities and Vietnamese participation, depending on the sector of investment.

Generally, foreign investors can fully own the charter capital in an economic organization but there are limitations on foreign ownership, such as:

- a. Listed companies, public companies, securities trading organizations and securities investment funds which are subject to the Law on Securities;
- b. State enterprises which conduct equitization or convert their ownership into another form are subject to the Law on Equitization and Conversion of State Enterprises; and
- c. Other specific laws and international treaty obligations.

Thirteen years after accession to the WTO, most of the sectors mentioned in Vietnam’s WTO accession agreement are open to foreign investment without limitation on foreign participation, except for some conditional sectors, such as veterinary, advertising and telecommunications services, services incidental to agriculture, hunting and forestry.

A wholly foreign-owned enterprise (“WFOE”) is a legal entity established by one or more foreign investors either in the form of a limited liability company (“LLC”) or a joint-stock company (“JSC”).

Except for particular business sectors, i.e. banking, insurance, real estate, WFOEs do not require a minimum charter capital.

2.1.2 Capital Contributions into Economic Organizations

A foreign investor may make capital contributions to an economic organization in the following forms:

- a. Purchase of shares in an initial public offering or of additional shares issued by JSCs;
- b. Capital contribution to LLCs or partnerships; and
- c. Capital contribution to economic organizations other than those named in (a) and (b) above.

A foreign investor may purchase shares or portions of capital contributions of an economic organization in the following forms:

- a. Purchase of shares in a JSC from such company or its shareholders;
- b. Purchase of a portion of a capital contribution from members of an LLC to become a member of that LLC;
- c. Purchase of a portion of a capital contribution from a member of a partnership to become a member of that partnership; and
- d. Purchase of a portion of a capital contribution of members of other economic organizations not covered in (a), (b) and (c) above.

The capital contribution or purchase of shares or portion of capital contributions by foreign investors must satisfy the conditions mentioned in section 2.1.1 above.

2.1.3 Business Cooperation Contracts

A business cooperation contract (“BCC”) is not a legal entity, but rather a contractual arrangement between one or more foreign investors and one or more domestic investors. The BCC must stipulate the rights and obligations of the parties to such BCC.

The BCC is permitted to establish an operating office in Vietnam to act as its representative during the performance of the business cooperation contract.

During the course of business, the cooperating parties may agree to establish a coordination board to perform the BCC. Functions, duties, and powers of the coordination board are as agreed by the cooperating parties to the BCC.

2.1.4 Investment in the Form of Public Private Partnership (PPP) Contracts

The Law on Investment and the Law on Enterprises provide for an additional type of investment: The Public Private Partnership (“PPP”). PPPs are not legal entities but contractual agreements between investor(s) and the competent State agency for the purposes of implementing construction, renovation, upgrades, expansions, management and operations of infrastructure facilities or for the provision of public services.

Build-Operate-Transfer (“BOT”), Build-Transfer (“BT”), Build-Transfer-Operate (“BTO”), and Build Operate (“BO”) are typical PPP arrangements used for infrastructure projects in fields such as transportation, electricity generation, and water supply, treatment, and drainage sectors. There is no restriction on the infrastructure sectors open to a foreign investor. Under the Law on Public Investment and the Government’s Decree 63/2018/ND-CP, of 2018 (“Decree 63”), the Government expressly encourages investment in infrastructure facilities including roads, railways, medical, education, science and technology, water and waste plants, power plants, and transmission plants.

Decree 63 provides that the government will, from time to time, issue a list of approved projects for BOT investment. The government has identified a large number of construction projects that it wishes to complete in the coming years and lists of projects seeking foreign investment are regularly published. However, projects not on the published list can be approved on a case-by-case basis based on the unsolicited proposals of investors.

2.1.5 Branch Offices

A branch office is a dependent unit of a foreign entity and may conduct commercial activities for direct profit-making purposes in line with international treaties to which Vietnam is a signatory. In practice, it is difficult to obtain a branch office license in Vietnam. Such licenses have only been issued to foreign investors in the banking, legal and insurance service sectors to date.

2.1.6 Representative Offices

Besides foreign investment licenses, Vietnam also allows foreign investors to establish a legal presence in Vietnam through a representative office (“RO”). An RO is the simplest form of establishing a legal presence in Vietnam. It is governed by separate regulations and licensed by the relevant provincial Service of Industry and Trade (“SoIT”).

The RO is generally established to seek and promote opportunities for commercial activities and is not allowed to engage directly in profit-making activities. The activities of an RO are restricted to marketing, liaising with the authorities, and facilitating business opportunities on behalf of the trader which the RO represents. An RO is allowed to hire local Vietnamese staff and conduct various administrative functions on behalf of its company.

In theory, government review of an application to set up an RO takes a maximum of thirteen (13) days, and an RO establishment license is generally easier to acquire than an IRC and ERC.

2.1.7 Foreign Contractors

A foreign organization or individual may carry on business activities in Vietnam as a foreign contractor, although this is not one of the licensed investment forms provided for under the Law on Investment. A foreign contractor does not have a legal presence in Vietnam, and therefore its activities are usually limited to the provision of services to other entities (with establishments) in Vietnam on a contractual basis.

This form of doing business is popular amongst foreign organizations and individuals who do business in Vietnam on a relatively short-term basis and do not intend to establish a long-term presence in the country. Nevertheless, some foreign contractors choose to establish a legal presence in Vietnam through an RO to support the foreign contractor’s activities in Vietnam.

2.1.8 Regulations for Economic Organizations with Foreign Owned Capital

The Law on Investment provides new regulations on the investment activities of economic organizations with foreign owned capital. Once established, foreign owned organizations need to act in compliance with additional rules when compared to domestic investors. An economic organization is classified as foreign owned if it meets one of the below criteria:

- a. 51% or more of its charter capital is held by a foreign investor(s), or a partnership has a majority of partners being foreign individuals in respect of economic organizations being a partnership;
- b. 51% or more of its charter capital is held by an economic organization(s) prescribed in the item (a) above; or
- c. 51% or more of its charter capital is held by a foreign investor(s) and an economic organization(s) prescribed in item (a) above.

Key Investment Phases, Procedures and Considerations

Foreign investors investing in Vietnam by way of establishing an economic organization are required firstly to obtain an IRC from the relevant Vietnamese licensing authority of the location where the investment project will be based (“Investment Licensing Authority”). The Investment Licensing Authority is either the responsible provincial Department of Planning and Investment (“DPI”) or management board of the relevant industrial zone, export processing zone, high-tech zone or economic zone (“Management Boards”).

Depending on the type of investment project, the National Assembly, the Prime Minister or a provincial Peoples' Committee may review and approve the investment application before the provincial DPI or Management Board grant the IRC. Foreign investors are also required to obtain an enterprise registration certificate ("ERC") in order to establish a company.

Foreign investors investing in Vietnam in the form of capital contributions will have to follow a different investment procedure depending on the level of equity acquisition and the registered business activities of the relevant economic organization.

However, generally a foreign investor is first required to obtain the approval of the provincial DPI on the contemplated equity acquisition. Secondly, the relevant economic organization having received a contribution from a foreign investor may be required to apply for the issuance of an amended ERC or undertake certain formalities to record the foreign investor as a new member or shareholder. Finally, such an economic organization may be required to apply for the issuance of an IRC.

The Law on Investment sets forth a general rule that investors may invest in all sectors not prohibited by law. Under the Law on Investment, foreign participation in business activities in Vietnam is generally allowed, subject to conditions in certain sectors such as telecommunications and electricity generation and supply. The Law on Investment also provides sectors in which business investment is conditional, such as insurance, securities and transportation services. In early 2016, the Ministry of Planning and Investment ("MPI") published a list of investment conditions applicable to foreign investors in Vietnam on the national information portal on foreign investment. This list is updated by the MPI from time to time.

2.1.9 Investment Procedures

2.1.9.1 Pre-Approval Procedures for Specific Investment Projects

Under the Law on Investment, depending on the sector or the scale of the relevant investment project reviewed and approved by the National Assembly, the Prime Minister or the responsible provincial People's Committee may be required before an investment application is lodged. A typical pre-application dossier would include details on:

- The nature of the investment;
- Expected investment volumes;
- Land usage, including any clearance plans;
- Environmental impact assessment; and
- Technologies to be used.

This section gives a brief overview of the types of projects that are subject to pre-approval from one of the three authorities named above and also lists some of the documents that need to be included in a pre-application dossier.

a. Provincial People's Committee Pre-Approvals:

- i. The following projects are subject to the authority of the provincial People's Committees:
 - Projects to which the State allocates or leases out land without auction, tendering or transfer; and projects requiring conversion of land use purpose; and
 - Projects where one of the technologies to be used is restricted in terms of technology transfer laws.
- ii. The application dossier generally includes the following:
 - Written application for implementation of the investment project;
 - Description of the proposed investment project;
 - Financial statements for the last two years of the investor or other documents proving the financial capability of the investor;

- Commitment of the parent company to provide financial support and a description of the investor's financial capacity;
- Commitments of financial institutions to provide financial support, including guarantees of an investor's financial capacity;
- Land usage plans and/or a copy of the target site's lease agreement;
- Explanation of technologies to be used, including an identification of any technologies which may be subject to transfer restrictions; and
- The BCC if applicable.

iii. Regulatory Timeframe:

- A provincial People's Committee must notify an applicant of the result within 35 days from the date of receipt of the investment project pre-approval application.

b. Prime Ministerial Pre-Approval Process

i. The following projects are subject to pre-approval by the Prime Minister:

- Projects involving the relocation and settlement of 10,000 people or more in mountainous areas and 20,000 people in other areas;
- Construction and commercial operation of airports and air transportation;
- Construction and commercial operation of national seaports;
- Exploration, production and processing of petroleum;
- Businesses involving betting and casinos;
- Production of cigarettes;
- Development of infrastructure in industrial zones, export processing zones and functional areas in economic zones;
- Construction and commercial operation of golf courses;
- Projects having a scale of investment capital from VND 5,000 billion or more; and
- Projects of foreign investors in the following sectors: maritime transportation, telecommunications services involving network infrastructure, forestation, publications, press, and establishment of a scientific and technological organization with 100 percent foreign owned capital.

ii. The application dossier generally includes the following:

- Documents as per item 2.2.1.1.a(ii) above;
- Plans for site clearance, relocation and settlement (if any);
- Preliminary evaluation of the environmental impact and solutions for environmental protection; and

iii. Evaluation of the impact and socio-economic efficiency of the investment project.

iv. Regulatory Timeframe:

- Generally, the Investment Licensing Authority must prepare an appraisal report and submit this to the Prime Minister for his decision on the investment, within a time limit of 60 days from the receipt of the investment project application.

c. National Assembly Pre-Approval Process

- i. The following projects are subject to pre-approval by the National Assembly:
 - Nuclear power plants;
 - Projects involving the conversion of land use purpose of a national park, natural conservation zone, landscape protection zone, forest of 50 hectares or more for scientific research or experiments, upstream protective forests of 50 hectares or more, protective forests as windbreakers, shelters from flying sand or breakwaters, land reclamation from the sea or for environmental protection with an area of 500 hectares or more, and forests for production with an area of 1,000 hectares or more;
 - Projects involving land use of an area of 500 hectares or more, with a requirement for land use conversion to wet rice cultivation on a two-harvest crop rotation;
 - Projects involving the relocation and resettlement of 20,000 people or more in mountainous areas or 50,000 people or more in other areas; and
 - Other projects which require application of a special mechanism or policy which should be decided by the National Assembly.
- i. The application dossier generally includes the following:
 - Documents set out in item 2.2.1.1.b(ii) above; and
 - The Proposal on the special mechanism or policy (if applicable)
- ii. Regulatory Timeframe:
 - In order for the National Assembly to make a decision on the investment project, the Prime Minister must first establish a State Appraisal Council. This council will, within a time limit of 90 days from the date of its establishment, appraise the investment project and prepare an appraisal report to be submitted to the National Assembly for consideration no later than 60 days before the opening date of a session of the National Assembly.

2.1.9.2 Investment Registration Procedures

When an investment project requires an IRC, the investor must submit an application dossier for issuance of an IRC to the Investment Licensing Authority that includes the following:

- The written application for implementation of the investment project;
- The proposal for the investment project;
- Investor financial statements, or other documents proving the financial capability of the investor, covering the last two years; and
- A proposal laying out land usage requirements, along with a copy of the target site's lease agreement (if applicable).

The Investment Licensing Authorities must issue an IRC within a time limit of 15 days from the date of receipt of a complete and valid investment project application.

2.1.9.3 Enterprise Registration Procedure

After obtaining an IRC, an investor will generally need to apply for the issuance of an ERC by submitting an application dossier to the enterprise registration authority which includes the following documents:

- Enterprise registration application; and

- Corporate documents, including the company charter, list of members, list of authorized representatives, and relevant letters of appointment and authorization.

The registration of the enterprise's tax information is a part of the enterprise registration procedure. The enterprise registration authority must issue an ERC within a time limit of three working days from the date of receipt of the valid and complete application dossier. The enterprise registration number is also the tax registration number of the entity.

2.1.10 Investment Procedures for Capital Contributions

Depending on the level of equity acquisition and the types of registered business activities of a Vietnamese target economic organization, a foreign investor will usually have to undertake the following three-step procedure:

- **Step 1 – Seek approval of the equity acquisition:**

The foreign investor and the target economic organization first need to submit an application to the provincial DPI for approval of the intended capital acquisition, purchase of shares, or purchase of a portion of an original capital contribution to an economic organization. The DPI will issue its approval within a regulatory timeframe of 15 working days from the receipt date of a valid application dossier. Timeframes may be longer in practice.

- **Step 2 – Change of enterprise registration information:**

Once a capital contribution has been approved, the enterprise registration information must be amended. The amending application dossier generally includes the following:

- An enterprise registration application;
- The corporate documents, including the company charter, list of members, list of authorized representatives, and letters of appointment and authorization; and
- A certified copy of the DPI's approval of the equity acquisition obtained in step 1.

The relevant licensing authority must amend the ERC within a regulatory timeframe of three working days from the date of receipt of the application. Timeframes may be longer in practice.

- **Step 3 – Apply for an IRC**

Finally, the economic organization may need to apply for an IRC.

2.1.11 Project Duration

The duration of the license granted to a foreign-invested company generally corresponds with the underlying project's operational requirements but does not normally exceed 50 years. In exceptional cases, the Government may grant a longer duration for specific projects, but the maximum duration may not exceed 70 years.

2.1.12 Post-Licensing Procedures

After obtaining an IRC and ERC, a foreign-invested enterprise must carry out several statutory procedures, generally including the following:

- Announcement of the establishment of the entity or amendment to the ERC of the entity;
- Announcement of the seal to be used by the entity;
- Opening a bank account or accounts at an authorized local bank or banks; and
- Registration of the accounting system of the entity with the Ministry of Finance (the "MOF"), if it deviates from the Vietnamese Accounting System.

2.1.13 Restricted, Prohibited and Conditional Investments

Foreign investors may not conduct business in regard to the following in Vietnam:

- Drugs found in Appendix 1 of the Law on Investment;
- Chemicals or minerals found in Appendix 2 of the Law on Investment;
- Specimens of wild fauna or flora included in Schedule 1 of the Convention on International Trade in Endangered Species and Specimens of Species of Endangered and Rare Wild Fauna or Flora in Category 1 with natural origin, as prescribed in Appendix 3 of the Law on Investment;
- Prostitution;
- Purchase or sale of humans, tissues or parts of the human body; or
- Activities relating to human cloning.

Production or use of products mentioned in the foregoing first three bullet points may be conducted, in accordance with Government regulations, for the purposes of analysis, testing, scientific research, medical care, production of pharmaceutical products, investigation of crimes, or the protection of national defense and security.

There are currently 243 conditional business activities which are provided for in certain amendments to the Law on Investment which took effect in early 2017. This means the investor (regardless of whether it is a foreign investor or a domestic investor) must satisfy conditions pursuant to the laws, ordinances, decrees and international treaties to which Vietnam is a member when investing in such conditional business activity(ies). The conditional sectors/activities include:

- Business activities of banks, non-banking credit institutions;
- Advertising services;
- Tax agent services;
- Real estate businesses;
- Trading in genetically modified food;
- Medicine trading; and
- Other sectors as stipulated by law.

2.1.14 Foreign Investor Protection (Bilateral Investment Treaties)

There is no separate law for the protection of foreign investments. However, foreign investment protections can be found in international investment agreements to which Vietnam is a signatory.

In addition, the Law on Investment includes various provisions regarding guarantees on foreign investors' assets in Vietnam. Pursuant to these provisions, lawful assets and invested capital of investors may not be nationalized or confiscated by administrative procedures. The state may only expropriate assets belonging to a foreign investor in the case of actual necessity for the purpose of national defense and security, or the national interest. In such cases, the investor should be compensated at prevailing market prices. Compensation should be made on a non-discriminatory basis and in a freely convertible currency that can be remitted abroad.

In addition, foreign investors are also protected with respect to their intellectual property, market access, and the right to remit their capital and assets out of Vietnam. The Law on Investment, however, states clearly that remittance of profit and other gains by foreign investors may only occur after satisfaction of all financial obligations (including applicable taxes).

In many cases, foreign investors also benefit from certain protections and guarantees under bilateral investment protection treaties between Vietnam and their home countries. Below is a list of countries/territories with which Vietnam has signed bilateral agreements on the promotion and protection of investments and that are currently enforced:

| Partners | Date of Signature | Date of Entry into Force |
|------------------------|-------------------|--------------------------|
| Argentina | 03/06/1996 | 01/06/1997 |
| Armenia | 13/12/1992 | 28/04/1993 |
| Australia | 05/03/1991 | 11/09/1991 |
| Austria | 27/03/1995 | 01/10/1996 |
| Bangladesh | 18/05/2005 | 23/03/2006 |
| Belarus | 08/07/1992 | 24/11/1994 |
| Belgium and Luxembourg | 24/01/1992 | 11/06/1999 |
| Bulgaria | 19/09/1996 | 15/05/1998 |
| Cambodia | 24/06/2012 | 01/04/2015 |
| China | 02/12/1992 | 01/09/1993 |
| Cuba | 12/10/1995 | 01/10/1996 |
| Czech Republic | 25/11/1997 | 09/07/1998 |
| Denmark | 25/08/1993 | 07/08/1994 |
| Egypt | 06/09/1997 | 04/03/2002 |
| Estonia | 24/09/2009 | 11/02/2012 |
| Finland | 13/12/1992 | 04/06/2009 |
| France | 26/05/1992 | 10/08/1994 |
| Germany | 03/04/1992 | 19/09/1998 |
| Hungary | 26/08/1994 | 16/06/1995 |
| Iceland | 20/09/2002 | 10/07/2003 |
| India | 08/03/1997 | 01/12/1999 |
| Indonesia | 25/10/1991 | 03/04/1994 |

| Partners | Date of Signature | Date of Entry into Force |
|---------------------|-------------------|--------------------------|
| Italy | 18/05/1990 | 06/05/1994 |
| Iran | 23/12/2009 | 19/03/2011 |
| Japan | 14/11/2003 | 19/12/2004 |
| Kazakhstan | 15/09/2009 | 07/04/2014 |
| Korea (Republic of) | 15/09/2003 | 05/06/2004 |
| Kuwait | 23/05/2007 | 16/03/2011 |
| Laos | 14/01/1996 | 23/06/1996 |
| Latvia | 27/09/1995 | 20/02/1996 |
| Lithuania | 06/11/1995 | 24/04/2003 |
| Macedonia | 15/10/2014 | 11/01/2016 |
| Malaysia | 24/01/1992 | 09/10/1992 |
| Mongolia | 17/04/2000 | 13/12/2001 |
| Mozambique | 16/01/2007 | 29/05/2007 |
| Myanmar | 12/05/2000 | 26/12/2001 |
| North Korea | 03/05/2002 | 11/11/2007 |
| Netherlands | 10/03/1994 | 01/02/1995 |
| Oman | 10/01/2011 | 23/06/2011 |
| Philippines | 27/02/1992 | 29/01/1993 |
| Poland | 31/08/1994 | 24/11/1994 |
| Romania | 01/09/1994 | 16/08/1995 |
| Russia | 16/06/1994 | 03/07/1996 |
| Singapore | 29/10/1992 | 25/12/1992 |
| Slovakia | 17/12/2009 | 29/07/2011 |
| Spain | 20/02/2006 | 18/08/2011 |

| Partners | Date of Signature | Date of Entry into Force |
|----------------|-------------------|--------------------------|
| Sri Lanka | 22/10/2009 | 06/02/2016 |
| Sweden | 08/09/1993 | 02/08/1994 |
| Switzerland | 03/07/1992 | 03/12/1992 |
| Taiwan | 21/04/1993 | 23/04/1993 |
| Thailand | 30/10/1991 | 07/02/1992 |
| Ukraine | 08/06/1994 | 08/12/1994 |
| United Kingdom | 01/08/2002 | 1/08/2002 |
| United States | 21/06/2007 | 21/06/2007 |
| Uruguay | 12/05/2009 | 09/09/2009 |
| Uzbekistan | 28/03/1996 | 06/03/1998 |
| Venezuela | 21/11/2008 | 17/06/2009 |

2.1.15 Vietnam’s Foreign Investment Commitments following WTO Accession

Vietnam’s commitments as a part of its WTO accession provide for the following key rules regarding the access of foreign investors to certain goods and services.

a. Goods

The following specific goods are not permitted to be imported by foreign invested enterprises:

- Cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substitutes;
- Other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences;
- Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; and waste oils;
- Newspapers, magazines, and periodicals, irrespective of whether they are illustrated or contain advertisements;
- Disks, videos, and other information-containing audio or similar objects including models and original materials for production of disks or videos;
- Other aircraft (for example, helicopters, airplanes), spacecraft (including satellites) and suborbital and spacecraft launch vehicles and their components; and
- A number of aircraft components.

The following specific goods may not be distributed by foreign invested enterprises:

- Rice;
- Sugar cane and sugar beet;
- Tobacco and cigars;
- Crude oil and processed oil;
- Pharmaceutical drugs (excluding nourishing products);
- Explosives;
- Books, newspapers and magazines;
- Precious metals and stones; and
- Image-recorded objects on any material.

Foreign invested enterprises have been permitted to export rice since 1 January 2011 but are still not allowed to export crude petroleum and petroleum/oil obtained from bitumen minerals.

b. Services

Foreign investors may establish WFOEs in sectors found on this non-exhaustive list:

- Distribution services (including franchising and commissions agencies);
- Accounting, auditing, and book-keeping services;
- Taxation services;
- Architectural services;
- Engineering services and integrated engineering services;
- Urban planning and urban landscape architectural services;
- Computer and related services;
- R&D services on natural sciences;
- Aircraft leasing services;
- Services incidental to mining;
- Services incidental to manufacturing;
- Maintenance and repair of equipment (not including maritime vessels, aircraft, or other transport equipment);
- Market research services; and
- Management consulting services and services related to management consulting (including arbitration and conciliation services for commercial disputes between businesses advertising).

Advertising activities are open to foreign investors but only in the form of a joint venture or BCC with a Vietnamese partner authorized to provide advertising services.

c. Services Incidental to Agriculture, Hunting, and Forestry

Agriculture, hunting, and forestry services are accessible to foreign investors in the form of joint ventures or BCCs. However, foreign capital contributions may not exceed 51% of the legal capital of the joint venture.

d. Motion Picture Production and Distribution

Motion picture production and distribution is only permitted in the form of joint ventures or BCCs with Vietnamese partners who are authorized to provide these services in Vietnam. Foreign capital contributions may not exceed 51% of the legal capital of the joint venture.

e. Motion Picture Projection Service

Motion picture projection services are only permitted in the form of joint ventures or BCCs with Vietnamese partners who are authorized to provide these services in Vietnam. Foreign capital contributions may not exceed 51% of the legal capital.

Vietnam's houses of culture, film projection places, public cinema clubs and societies, and mobile projection teams are not allowed to engage in joint ventures or BCCs with foreign service providers.

f. Technical Testing and Analysis

Vietnam now grants private suppliers' access to the technical testing and analysis sector, which was previously closed to the private sector on the grounds that the service was supplied in the exercise of governmental authority. Now a joint venture format with a local partner is required (without the specification of a local ownership minimum requirement). WFOEs are permitted, once private sector service access has been permitted for five years.

However, access to certain geographical areas may be restricted for national security reasons.

g. Health and Related Social Services

Foreign health service providers are permitted to establish 100% foreign-invested hospitals, joint ventures with Vietnamese partners, or BCCs. The minimum investment capital for a commercial presence in hospital services is at least USD 20 million for a hospital, USD two million for a polyclinic unit and USD 200,000 for a specialty unit.

Chapter 3

Company Law



The Law on Enterprises, which came into force on 1 July 2015, sets out the corporate structures available to investors undertaking business activities in Vietnam. Certain specific sectors such as banking, insurance, and security are subject to specialized laws, in addition to the Law on Enterprises. Furthermore, the Commercial Law of Vietnam of 2005 (the “**Commercial Law**”) provides other structures available for operating within Vietnam, depending on the level of investment that an investor wishes to make and the activities they intend to carry out in Vietnam.

3.1 Form of Commercial Presence

The structure and governance of legal entities is governed by the Law on Enterprises, which provides for four general legal entity forms, namely:

- Limited liability company (“LLC”);
- Joint-stock company (“JSC”);
- Partnership; and
- Private enterprise.

Companies under LLC and JSC forms are limited in terms of liability, while partnerships or private enterprises are exposed to unlimited liability.

3.1.1 LLC

An LLC may be classified as either a multi-member LLC or a single-member LLC. The members of an LLC may be organizations or individuals, with the total number of members not exceeding 50. Each member’s liability for the debts and liabilities of the LLC is limited to the capital contribution of each such member to the LLC. An LLC is granted legal entity status from the date its ERC is issued.

Under the Law on Enterprises, the members of an LLC are required to pay in full their capital contributions to the charter capital within 90 days from the issue date of the ERC. This requirement is a significant change in comparison with the capital contribution period under the previous Law on Enterprises of 2005, which required that members contribute to the charter capital within 36 months of the issuance date of the ERC.

Members of an LLC may only assign their capital contributions under certain conditions. An LLC is not entitled to issue shares.

a. Multi-Member LLC

A multi-member LLC is an enterprise that has between two and 50 members.

Management structure

The management structure of a multi-member LLC is comprised of a Members’ Council, a chairman of the Members’ Council, and a (General) Director. Establishment of an inspection committee is compulsory where the number of members is 11 or more and voluntary where the number of members is fewer than 11.

Members’ Council and Members’ Council’s meeting

The Members’ Council consists of all the members or authorized representative(s) of the members, who are given several votes pro rata to the capital contribution he/she owns or represents. The Law on Enterprises provides that a member being an entity who owns at least 35% of the charter capital is entitled to appoint up to three authorized representatives in the Members’ Council, if the charter does not provide otherwise.

Unless otherwise stated in the charter of the LLC, a meeting of the Members’ Council will be validly conducted if a quorum of members representing at least 65% of such LLC’s charter capital are present. The company charter may provide for a higher quorum. Where the quorum is not satisfied, a second meeting shall be conducted within 15 days from the intended date of the first meeting, when the necessary quorum is reduced to 50%. If the quorum is still not satisfied, a third meeting is conducted within ten working days from the intended date of the second meeting regardless of the number of attending members.

A resolution may be passed if it is approved by a member or members, representing at least 65% of the aggregate capital of the members present or represented. This majority shall be at least 75% in respect of certain major company decisions (such as the sale of 50% or more of the total assets of the company, the amendment of and addition to the charter or reorganization or dissolution of the LLC). The company charter may provide for higher percentages.

Legal Representative

The legal representative (such as a Director or a General Director) represents the LLC in all of the LLC's transactions with third parties. The legal representative also represents the LLC in court and arbitration.

The Law on Enterprises allows for an LLC to have more than one legal representative. The company's charter should specify the number, position, power and duties of each legal representative. The legal representatives are not required to be Vietnamese, but at least one legal representative must reside in Vietnam.

b. Single-Member LLC

A single-member LLC is an enterprise that has a sole owner who can be either an organization or an individual. A corporate owner of a single-member LLC shall appoint authorized representative(s) (who are natural persons) to exercise rights and duties on the owner's behalf.

Management structure

The management structure of a single-member LLC, where the owner appoints more than one authorized representative, is comprised of a Members' Council, a (General) Director, and an inspector or inspection committee. The Members' Council will consist of three to seven-member representatives who may each have a term of office not exceeding five years.

If the owner appoints only one authorized representative, the management structure is comprised of a Chairman of the company, a (General) Director, and an inspector or inspection committee.

Members' Council and Members' Council meetings

The authority and methods to convene meetings of the Members' Council of a single-member LLC are like those applicable to multi-member LLCs. A meeting of the Members' Council will be conducted where at least two-thirds of the total members attend.

Each member of the Members' Council has an equal vote, unless the charter stipulates otherwise. A resolution of the Members' Council shall be passed when it is approved by more than half of the attending members. Any amendment of or addition to the charter of the company, any reorganization of the company, or any assignment of a part or all of the charter capital of the company must be approved by at least three-quarters of the attending members.

Legal Representative

A single-member LLC is permitted to have more than one legal representative (such as a Director or a General Director). The company's charter should specify the number, position, power and duties of each legal representative. The legal representatives are not required to be Vietnamese, but at least one legal representative must reside in Vietnam.

3.1.2 Joint-Stock Company

A JSC is an enterprise with its charter capital divided into equal portions known as shares. Shareholders of a JSC may be organizations or individuals. A JSC must have at least three shareholders. The liability of each shareholder for the debts and liabilities of the JSC is limited to the capital contribution of each such shareholder to the JSC. Shareholders may freely assign their shares, subject to certain restrictions applicable to founding shareholders within the first three years.

a. **Classes of Shares**

Apart from ordinary shares, a JSC may have preference shares categorized into:

- Voting preference shares;
- Dividend preference shares;
- Redeemable preference shares; or
- Other preference shares prescribed in the company charter.

b. **Charter capital**

Charter capital of a JSC is the total aggregate par value of shares of all classes which have been fully paid up by the shareholders. The charter capital of a JSC, at the time of registration of establishment of an enterprise, is the total aggregate par value of shares of all classes which have been registered for subscription and are stated in the charter of the company.

Shareholders will have a 90-day period from the issuance date of the ERC to fully pay for the subscribed shares (the “**Shares Payment Period**”). If any shareholder fails to fully pay his/her shares after the expiration of the Shares Payment Period, the Board of Management (the “**Board**”) is entitled to offer the shares to existing shareholders or to other persons/entities. The JSC would need to register the new charter capital equal to the actual paid up shares within 30 days from the expiration date of the Shares Payment Period.

A JSC may increase its charter capital by one of the following methods:

- Offering shares to existing shareholders whereby the Board offers the new shares to existing shareholders;
- Private placement whereby new shares will be issued to specific persons and/or entities; and
- Public offering whereby new shares will be offered to more than 100 investors (excluding professional investors) or to an unspecified number of investors or the offering is conducted via public media, including the internet. Public offerings will be in accordance with the applicable securities regulations.

c. **Management Structure of a JSC**

A JSC may choose either of the following management structures:

- A General Meeting of Shareholders (“GMS”), a Board, an inspection committee and a Director or General Director. If a JSC has less than 11 shareholders and shareholders being organizations own less than 50% of the total shares of the company, it is not required to have an inspection committee; and
- A GMS, a Board, and a Director or General Director. In this case, at least twenty 20% of the number of members of the Board must be independent members and there must be an internal auditing committee under the Board. Independent members shall perform the function of supervision and organize implementation of control of the management and operation of the company.

GMS

The GMS is the highest authority of a JSC and includes all shareholders having voting rights. The GMS has the authority to make decisions such as the general direction of the JSC’s business, amendments to the charter or significant disposals over company assets.

A GMS is conducted if shareholders holding at least 51% of the voting rights are present. Where this quorum is not satisfied, a second meeting will be convened within 30 days from the intended date of the first GMS, with the quorum being reduced to 33% of the voting rights. If the quorum for the second meeting is still not met, a third meeting will be convened within 20 days from the intended date of the second GMS, regardless of the number of voting rights represented by the attending shareholders. The company’s charter may provide higher quorums than those mentioned above.

GMS resolutions regarding types of shares and number of shares, changes in business activities, restructuring or dissolution of the company, investment project or selling assets valued more than 35% of the total assets recorded in the latest financial statements, where the company charter does not provide a lower percentage, and other matters stipulated in the company charter will be passed if they are approved by shareholders representing at least 65% of the voting rights of the shareholders present. The company's charter may require a higher voting percentage.

Resolutions regarding other matters may be passed by the shareholders representing at least 51% of the voting rights of the shareholders present. Again, the company's charter may require a higher percentage.

Board of Management

Board members are elected by the GMS using the cumulative voting method, which promotes proportional representation of Board members amongst the shareholders.

The Board has the authority to manage the JSC, except for matters within the authority of the GMS. The Board is composed of between three and 11 members.

At least three-quarters of the Board members must be present to achieve a quorum. Resolutions are passed by simple majority, with the chairperson holding the casting vote.

Legal Representative

A JSC is permitted to have more than one legal representative. The company's charter should specify the number, position, power and duties of each legal representative. Legal representatives are not required to be Vietnamese, but at least one legal representative must reside in Vietnam.

Where there is only one legal representative, either the chairman of the Board or (General) Director of the JSC serves as the legal representative of the JSC. Unless otherwise stipulated in the charter, the chairman of the Board is the legal representative of the JSC. Where there is more than one legal representative, the chairman of the Board and (General) Director are automatically the legal representatives of the JSC.

3.1.3 Partnership

A partnership enterprise must have at least two individual partners who are joint owners of the partnership and carry out business under a common name. In addition to unlimited-liability partners, a partnership may have limited liability partners.

Unlimited liability partners are individuals who are liable for the obligations of the partnership to the extent of all of their assets. Conversely, limited liability partners are only liable for the debts of the partnership to the extent of their capital contribution to the partnership.

The unlimited liability partners are entitled to be legal representatives of the partnership enterprise. Also, while the limited liability partner may not conduct business activities in the name of the partnership, the unlimited-liability partners are entitled to do so.

A partnership enjoys legal entity status from the date of issuance of its enterprise registration certificate. Partnerships may not issue any type of securities.

All partners are members of the partners' council. The partners' council elects a partner with unlimited liability to be the chairman of the partners' council. The chairman of the partners' council may act concurrently as the (General) Director of the partnership.

The partners' council has the right to adopt resolutions in respect of all of the business affairs of the partnership. Unless otherwise regulated by the charter, at least three-quarters of the total number of unlimited liability partners are required to approve resolutions on the most important issues of the partnership such as development policies, amendment of the charter,

admission of a new unlimited-liability partner, withdrawal of an unlimited liability partner or exclusion of a partner, investment projects, borrowing and raising of capital or providing loans valued at 50% or more of the charter capital of the partnership, sale and purchase of assets valued equal to or more than the charter capital of the partnership, approval of annual financial statements, distribution of profits, and dissolution of the partnership.

Resolutions on other issues must be approved by at least two-thirds of the total number of unlimited-liability partners.

3.1.4 Private Enterprise

A private enterprise is owned by one individual who is liable for all activities of the enterprise to the extent of all his or her assets, and each individual may only establish one private enterprise. Private enterprises may not issue any type of securities.

3.1.5 Other Structures

The Commercial Law defines a foreign business entity (“**FBE**”) as a business entity established and registered in accordance with foreign law, or which is recognized by foreign law. Under the Commercial Law, FBEs are permitted to establish ROs and/or branches. Decree No. 07/2016/ND-CP, of 2016, provides guidance on the implementation of provisions of the Commercial Law relating to ROs and branches of FBEs.

a. Representative Office

Under the Commercial Law, an RO is a dependent unit of an FBE, which is established in accordance with the laws of Vietnam in order to act as a liaison office, conduct market research and promote business investment opportunities for the business entity which it represents. The establishment and scope of operation of an RO carrying out services which are regulated by a special branch of the law must be in accordance with such branch of the law.

An FBE is permitted to establish an RO in Vietnam in accordance with Vietnam's undertakings in international treaties of which Vietnam is a member. An FBE is not permitted to establish more than one RO with the same name within one province.

Conditions for Establishment

To be granted an RO license, the FBE must satisfy the following conditions:

- The FBE must be a lawfully recognized foreign business entity in accordance with the law of a country or territory participating in an international treaty of which Vietnam is a member;
- The FBE must have been operating for at least one year as from the date on which it was established or registered for business;
- If the business registration certificate or equivalent document of the FBE stipulates an operational term, then the residual term must be at least one year as from the date of lodging the application file;
- The operational contents of the RO must be consistent with Vietnam's undertakings in international treaties of which Vietnam is a member; and
- If the operational contents of the RO does not comply with Vietnam's undertakings or if the FBE’s country of origin is not a country or territory participating in an international treaty of which Vietnam is a member, the Minister or Deputy Minister of the line ministry managing the specialized branch or industry must consent to establishment of the RO.

Issuance of RO License

Where it is proposed to locate an RO outside economic zones, export processing zones, economic zones and high-tech zones, the provincial Department of Industry and Trade (“**DOIT**”) will issue the license for establishment of the RO unless its establishment is regulated differently in specialized laws.

The RO license is valid for a fixed term of five years from the date of issuance but shall not exceed the residual term of the business registration certificate or equivalent document of the FBE. The RO license can be extended for the same operation term as the first issuance.

The regulatory timeline for the issuance of an RO license is 10 working days from the date of receipt of a complete and valid application dossier by the licensing authority. In cases where the consent of the relevant minister is required (i.e., where the operational contents of the RO do not fall under Vietnam's WTO undertakings or if the FBE does not belong to a country or territory participating in an international treaty of which Vietnam is a member), the regulatory timeline for the issuance of an RO license is 13 working days from the date of receipt of a complete and valid application dossier by the licensing authority. In practice it may take longer.

Rights and Obligations

Under the Commercial Law, an RO may rent offices and lease or purchase the equipment and facilities necessary for its operation. The RO may recruit Vietnamese and foreign employees in accordance with Vietnam's laws. It may also open accounts in foreign currency and in Vietnamese Dong sourced from foreign currency at banks licensed to operate in Vietnam but may use such accounts only for its operations. The RO must have a seal bearing its name.

An RO is required to operate in strict accordance with its RO license, and is not allowed to conduct direct profit-making activities in Vietnam. The RO may conduct commercial enhancement activities as permitted by Vietnamese law, but may not enter into commercial contracts either in its own name or on the FBE's behalf (except where the FBE has given the RO a valid power of attorney, or except for those purchase contracts necessary for the RO's operations).

An RO must send a yearly report (not later than 30 January) on its activities to the licensing authority. The licensing authority may at any time demand a supplementary report.

b. Branches

Under the Commercial Law, a branch of an FBE (branch) means a subsidiary unit of an FBE, which is established and conducts commercial activities in Vietnam in accordance with the laws of Vietnam or an international treaty to which Vietnam is a member.

The Ministry of Industry and Trade ("**MOIT**") has authority to issue the license for establishment of the branch (branch license) if its establishment is not yet regulated in specialized branch law. In practice, very few branch licenses are granted to FBEs.

Conditions for Establishment

In order to be granted a branch license, an FBE must satisfy the following conditions:

- The FBE must be a recognized FBE in accordance with the law of a country or territory participating in an international treaty of which Vietnam is a member;
- The FBE has been operating for at least five years as from the date on which it was established or registered for business;
- If the business registration certificate or equivalent document of the foreign business entity stipulates an operational term, then the residual term must be at least one year as from the date of lodging the application file;
- The operational contents of the branch must be consistent with Vietnam's undertakings to open the market in international treaties of which Vietnam is a member, and must be consistent with the business activities of the FBE; and

- If the operational contents of the branch do not fall under Vietnam's undertakings or if the FBE's country of origin is not a country or territory participating in an international treaty of which Vietnam is a member, then the relevant minister must consent to the establishment of the branch.

Issuance of Branch License

The MOIT will issue a branch license within ten working days from the receipt of a valid application dossier. In cases where the relevant minister's consent is required (i.e. where the operational contents of the branch do not comply with Vietnam's undertakings or if the FBE's country of origin is not a country or territory participating in an international treaty of which Vietnam is a member), the MOIT will issue or will refuse the issuance of a branch license within 13 working days.

The branch license is valid for a fixed term of five years from the date of issuance but shall not exceed the residual term of the business registration certificate or equivalent document of the FBE. The branch license can be extended for the same operation term as the first issuance.

In practice the Vietnamese authorities do not issue licenses to branches, except in a limited number of specific business sectors such as banking and legal services.

Rights and Obligations

Under the Commercial Law, a branch may conduct activities such as the purchase and sale of goods and other commercial activities consistent with its branch license, which is granted in accordance with the laws of Vietnam and any international treaty to which Vietnam is a member.

The branch may enter into commercial contracts, rent offices, and lease or purchase the equipment and facilities necessary for its operation. The branch may also recruit Vietnamese and foreign employees in accordance with Vietnamese laws. It may open accounts in foreign currency and in Vietnamese Dong at banks licensed to operate in Vietnam and is entitled to remit its profits abroad.

The branch must have a seal bearing its name and must adopt the accounting system stipulated by the laws of Vietnam or, if necessary, a different commonly used accounting system subject to approval by the MOF. The branch must report on its operations and perform other obligations in accordance with the laws of Vietnam.

3.2 Winding Up

Pursuant to the Law on Enterprises, winding up may consist of one of three main measures:

- Reorganization;
- Dissolution; and
- Bankruptcy.

3.2.1 Reorganization

Reorganization is categorized into:

- Division;
- Separation;
- Consolidation;
- Merger; and
- Conversion.

A reorganization must be registered with the local DPI within 10 days from the date of completion of reorganization, except the conversion from a JSC to a single-member LLC in which the regulatory timeline is 15 days from the date of completion of assignment of shares.

a. Division of an Enterprise

An LLC and a JSC may split apart its shareholders/members and its assets to establish two or more new companies. Company division requires a resolution of the Members' Council/ company owner in respect of an LLC or the GMS in respect of a JSC. The resolution must cover key details such as:

- The name and address of the head office of the company to be divided;
- Names of new companies to be established;
- The principles, methods and procedure for the division of assets of the company;
- The future employment plan;
- Methods of distribution, the time-limit and procedures for transfer of shares, capital contribution, and bonds of the divided company to the new companies;
- The principles for dealing with the obligations of the company being divided; and
- The time-limit for implementing the division of the company.

The resolution on the division of a divided company must be sent to all creditors and be notified to employees within 15 days of the date of its adoption.

Members, owners, or shareholders of new companies must approve the charter, elect or appoint the chairman of the Members' Council, or the chairman of the new companies (for an LLC) or the Board of Directors (for a JSC) and the (General) Director of new companies.

A divided company shall cease to exist upon registration of the business of the new companies. The new companies are jointly liable for unpaid debts, labor contracts, and other property obligations of the divided company.

b. Separation of an Enterprise

Both an LLC and a JSC may be separated by way of transfer of part of the assets, rights and obligations of the existing company (separated company) to establish one or more new LLCs or JSCs (new companies), or to transfer a portion of the rights and obligations of the separated company to the new company or companies without terminating the existence of the separated company.

A resolution on separation of the separated company must be approved by the Members' Council or the company owner in respect of an LLC, or the GMS in respect of a JSC. The resolution shall cover the most important issues such as:

- The name and address of the head office of the separated company;
- Names of companies to be established;
- The plan for employment of employees;
- Method of separation;
- Value of assets;
- Rights and obligations to be transferred; and
- The time limit for the separation.

The resolution must be sent to all creditors and be notified to employees within 15 days of the date of its approval.

The members, the owners, or shareholders of the new companies shall approve a charter and appoint the chairman of the Members' Council or the chairman of the new company or the Board of Directors and (General) Director.

After business registration, the original company and the new companies are jointly liable for unpaid debts, labor contracts, and other property obligations of the original company.

c. Consolidation of Enterprises

Two or more companies of the same type may be consolidated into a new company which terminates the existence of the other company.

The companies to be consolidated must prepare a consolidation contract that covers the key details of the consolidation, such as:

- Name of the new company;
- Procedures and conditions for consolidation;
- Employment plan;
- Time limits;
- Conversion of assets and share capital;
- Shares and bonds;
- Time-limit for consolidation; and
- The draft charter of the new company.

Members, owners, or shareholders of the consolidated companies shall approve the consolidation contract and the charter of the consolidated company and elect or appoint the chairman of the Members' Council, the chairman of the company or the Board of Directors, and the (General) Director.

The consolidation contract must be sent to all creditors and must be notified to employees within 15 days from the date of its approval. Consolidation of enterprises is also subject to the competition law, according to which a consolidation may need to be notified to the National Competition Committee – MOIT, and subject to such notification, the consolidation would be prohibited or eligible for an exemption to the prohibition.

In the case of consolidation whereby the new company holds a market share of between 30% and 50% of the relevant market, the legal representatives of the companies to be consolidated must notify the administrative agency for competition before carrying out the consolidation, unless the companies will still be classified as small or medium enterprises after the consolidation. Consolidation whereby the new company holds more than 50% of the relevant market is prohibited, unless (i) after the consolidation the companies are still classified as small or medium enterprises, (ii) one or more of the companies participating in the economic concentration is or are at risk of being dissolved or of becoming bankrupt, or (iii) the consolidation has the effect of extension of export or contribution to socio-economic development and/or to technical and technological progress.

Upon business registration of the new company, the consolidated companies cease to exist. The new company assumes the lawful rights and interests, and is liable for unpaid debts, labor contracts, and other property obligations of the consolidated companies.

d. Merger of Enterprises

One or more companies of the same type may be merged into another company (merged company) by way of transfer of all lawful assets, rights, obligations, and interests to the merged company, and, at the same time, with the termination of the existence of the merging companies.

The procedure for the merger of enterprises is similar to the procedure for consolidation. Mergers are also subject to the provisions of the Competition Law.

e. Conversion of Companies

An LLC may be converted into a JSC and vice versa. A resolution on conversion of the converting company generally must be approved by the Members' Council or the company owner in respect of an LLC, or the GMS in respect of a JSC.

In addition, privately held, unincorporated businesses may be converted into LLCs. The following is an example of the type of steps that would be required to convert a privately held enterprise into an LLC:

- The owner of the private enterprise must be the business owner (in the case of conversion into a single-member LLC owned by an individual) or a member (in the case of conversion into a multi-member LLC);
- The owner of the private enterprise undertakes in writing to be personally responsible for all unpaid debts of the private enterprise secured by all of his/her assets and undertakes to pay all debts when due;
- The owner of the private enterprise agrees in writing with parties to contracts which have not yet been discharged that the converted limited liability company shall take over and perform such contracts; and
- The owner of the private enterprise provides written undertakings or enters into a written agreement with other capital contributing members on receipt and employment of existing employees of the private enterprise.

3.2.2 Dissolution

A company may be dissolved in the following instances:

- Expiry of the pre-determined duration of operation where there was no renewal request;
- Pursuant to a decision of the enterprise owners;
- The statutory minimum number of members is not satisfied within a period of six consecutive months and the company does not conduct procedures for conversion of the company's form; or
- Revocation of the business registration certificate.

A resolution on the dissolution of an enterprise must be adopted. The resolution must cover key details of the dissolution such as:

- The reasons for dissolution;
- Time limit and procedures for performance of contracts and payment of debts;
- Time limit for payment of debts and performance of contracts (which must not exceed six months from the date on which the resolution on dissolution is passed); and
- The plan for dealing with obligations arising from labor contracts and other details.

The resolution on dissolution must be sent, within seven working days after the resolution is passed, to the relevant licensing authority, tax authority, employees, and creditors. The company must announce the dissolution at the National Business Registration Portal and the resolution on dissolution must be publicly displayed at the company's head office, branch(es) and RO(s).

The liquidation of assets of the enterprise must be carried out by the owners of the company or a separate liquidation body. Within seven working days after being approved, the resolution on dissolution must be sent to the business registration body, all creditors, and other stakeholders, and must be displayed publicly at the head office/branches of the company, and in some cases published in a Vietnamese newspaper.

The debts of the company are required to be repaid in the following order:

- Unpaid wages, retrenchment allowances, and social insurance;
- Tax liabilities; and
- Other debts.

After payment of all debts and costs, the remainder shall belong to the owner(s) of the company.

Within five working days after all debts of the enterprise are fully paid, the legal representative of the company must submit documents relating to the dissolution of the enterprise to the business registration body. The business registration office shall update the legal status of the enterprise on the national business registration database, within five working days from the date of receipt of an application filing for dissolution. Without such an application, the business registration office will update the legal status of the enterprise ex officio, if upon expiry of the period of 180 days from the date of receipt of the resolution on dissolution, the business registration office does not receive any contrary opinion on the dissolution from the enterprise itself or from other stakeholders.

3.2.3 Bankruptcy

Procedures for dealing with a bankrupt company must comply with the Law on Bankruptcy of 2014 (the “**Law on Bankruptcy**”). An enterprise shall be deemed to have become insolvent when it is unable to pay its debts within three months of their becoming due.

The Law on Bankruptcy applies to all enterprises, including state-owned enterprises and cooperatives, that operate in Vietnam, except as otherwise provided in international conventions signed by Vietnam.

Under the Law on Bankruptcy, the assets of an entity declared as bankrupt by the court will be distributed in the following order:

- Bankruptcy fees;
- Unpaid salaries, severance allowances, social insurance and other benefits of the employees;
- Debts arising after the commencement of bankruptcy proceedings; and
- Financial obligations owed to the Government and unsecured debts.

If the value of the assets of the insolvent entity is not enough to achieve the payment of all liabilities, creditors ranking equally shall be paid proportionally.

Chapter 4

Land and Real Estate



4.1 Land Ownership

There is no private ownership of land in Vietnam; all land belongs to the State, which either allocates or leases land through the grant of long-term land use rights (“LUR”) in accordance with the Law on Land of 2013 (the “Land Law”). Under such LUR, the land user generally has the right to use an area of land for a specific purpose and for a specified length of time, and to inherit, transfer, exchange, lease, and mortgage such LUR. Vietnamese individuals and companies may receive a “land allocation” from the local People’s Committee, which is essentially equivalent to freehold property ownership. Overseas Vietnamese and foreign invested enterprises may also receive land through allocation upon payment of land use fees, but only to implement investment projects for construction of residential housing for purposes of sale or for sale in association with leasing out.

Organizations deemed foreign and foreign individuals are not entitled to acquire LUR through land allocation and may only acquire such rights through a land lease with the State, under which they can pay land rental fees on an annual or lump-sum basis. Except for certain cases, the term of the LUR must not exceed 50 years. For some major projects it is possible for the term to be longer, but not exceeding 70 years.

LURs are evidenced in a land use right certificate (“LURC”) which identifies the registered holder of the certificate, the term of land use, the purpose of land use, and all registered mortgages and other encumbrances over land. The LURC also includes a map of the subject land plot.

4.2 Land Use Rights

The lease or assignment of land depends on how the land was granted and the permitted use of the land. LURs are granted by the State to a land user in the following forms:

- An allocation of LUR with or without a land use fee (“LUF”); or
- A land lease with land rental payments made on an annual or on a lump-sum basis.

The land user may choose to pay the land rental on an annual or on a lump-sum basis for the land lease.

4.3 Land Use Fees

The LUF for allocated land is generally based on the market value of the land, as determined by the People’s Committee of the relevant province or municipality.

Every year, the People’s Committee of each province or municipality determines and publishes its own price list of land in its locality. These lists are meant to reflect the market value of the land and provide the basis upon which the relevant authorities calculate tax, LUF, land rental, and land compensation.

Generally, the official land price must not be 20% higher than the maximum price or 20% lower than the minimum price of the land provided in the price list. The land price list is amended:

- When the Government amends land price brackets resulting in an increase in the land price by 20% or more compared with the maximum price or a decrease in the land price by 20% or more compared with the minimum price specified in the land price list of the same land type; or
- When the common market land price increases by 20% or more compared with the maximum price or decreases by 20% or more compared with the minimum price specified in a land price list within a period of 180 days or more.

The provincial Department of Natural Resources and Environment (“DONRE”) is responsible for formulating amended land price lists and submitting them to the provincial Peoples’ Committee for promulgation.

LUR can be allocated to Vietnamese individuals, economic organizations, and overseas Vietnamese for specified purposes, upon payment of a LUF. If such recipients pay the LUF with their own funds, they can lease the land, give the land away, provide the land as security to a bank in Vietnam, and contribute the land as equity.

On the other hand, an allocation of LUR without payment of LUF can only be made to Vietnamese individuals and organizations for specific purposes. There is a distinction between LUR owned by Vietnamese individuals and LUR owned by Vietnamese organizations. Vietnamese organizations cannot mortgage, assign, exchange, give away, lease, sub-lease, provide as guarantee, or contribute their LUR as equity. In contrast, Vietnamese individuals can lease or contribute as equity their LUR to Vietnamese organizations, individuals, or overseas Vietnamese to carry out projects, assign, give as gifts, or provide as security to banks. Importantly, both Vietnamese individuals and Vietnamese organizations cannot contribute the LUR as equity to joint ventures with foreign investors unless they have made payment of the LUF.

In order to obtain LUR from the State, an application must be made with the DONRE. An investor can only proceed with this application after it has been granted an IRC.

4.4 Land Rental

Land rental is paid annually or in one lump-sum payment when the land is leased from the State pursuant to a land lease agreement.

A land lease can be made from the State to Vietnamese individuals and households, Vietnamese organizations, overseas Vietnamese, foreign invested enterprises and foreign organizations with diplomatic functions.

Where land is leased by an economic organization, overseas Vietnamese, or foreign invested enterprise with rental payments made on an annual basis, the rental rate applicable to each project is fixed for a period of five years from the date of the State's decision on the land lease.

Upon expiration of each said period, the provincial Department of Taxation shall specify the rent for organizations, overseas Vietnamese or foreign-invested enterprises. The Sub-Department of Taxation shall specify the rent for households and individuals based on the land price list, land price adjustment coefficients, and the percentage rate defined by the provincial People's Committee.

If land is leased by the State based on lump-sum land rental fee payments rather than through an auction, the land price is determined by the land use term corresponding to land rent time, as stipulated in the Government's most current decree on land prices.

4.5 Terms of Land Use Rights

LUR are granted on a "long-term use" basis or for a defined term. In general, long-term LUR are only granted for very limited purposes such as for residential or personal use to households and individuals that have been granted long-term LUR for use in a family business, for commercial purposes, or for national security purposes. Whereas LUR granted to economic organizations for business purposes are for a term of 50 years, in special cases, land use can be granted for 70 years, but not in perpetuity, subject to the approval of the State.

Specifically, in the case of LUR granted by the State to organizations in the form of a lease, the relevant lease term must be consistent with the duration of the approved project, provided that it does not exceed 50 years or, in some special circumstances, 70 years.

Extension of the lease term may be permitted by the State upon expiry if the lessee wishes to continue to use the land.

Foreign investors wishing to extend their lease term must obtain approval to do so. Specifically, they must apply for an extension, six months prior to the expiration of their LUR, and include in their application an amended business plan as approved by the relevant authorities.

Importantly, although an IRC for a particular project may be extended, there is no guarantee that the LUR being used for a project will be extended, as this is subject to the discretion of the State. Vietnamese regulations are unclear as to how the assets on such land would be disposed of in the event that the lease term is not extended.

When a foreign investor sells housing as part of a residential housing development to a Vietnamese purchaser, the Vietnamese purchaser will be entitled to own such housing on a long-term and stable basis under its LURC. However, the long-term use of an apartment depends on the safety of the building. If an apartment building is considered to be heavily

damaged or in danger of collapse and does not ensure safety for users, that building will be ordered demolished. Although alternative residences will be arranged for the apartment owners, it is uncertain whether such owners can retain their LURC long term.

4.6 Land Use

The LURC for each parcel of land sets out, among other information, the purpose of land use. Failure to comply with such land use purpose may lead to withdrawal of the LURC.

If the land use purpose is not appropriate for the land in question, it may be changed upon payment of an LUF or land rental, as the case may be.

Approval from the State is required for the following changes of land use purpose:

- From land for growing rice to land for growing perennial crops, planting forests, aquaculture or salt production;
- From land for other annual crops to land for saltwater aquaculture, salt production or aquaculture in the form of ponds, lakes or marshlands;
- From specialized use forest land and protective forest land or forest land for production to other purposes in the agricultural land category;
- From agricultural land to non-agricultural land;
- From non-agricultural land allocated without a payment of LUF to non-agricultural land granted with a payment of LUR or land rental;
- From non-agricultural land to residential land (other cases only require registration);
- From land for construction of professional works or public purposes and for business purposes or non-agricultural production or business which is not land for commerce and services to land for commerce and services;
- From non-agricultural land which is non-residential to land for residential use; and
- From land for commerce and services or construction of professional institutions to land for non-agricultural production establishments.

It is important for a foreign land user to know the specific use of land when entering into a joint venture or cooperation agreement with a local land user who intends to contribute the LUR as equity. If the purpose of the land use does not comply with the purpose of the proposed project, the local land user will have to apply to the relevant authorities to convert the purpose of land use and pay the LUF before such contribution can be made.

4.7 Ways to Obtain Land Use Rights

Under the Land Law, foreign-invested enterprises (“FIEs”) may obtain LURs in one of the following ways:

- Receiving an allocation of land from the State in order to implement investment projects for construction of residential housing for sale or for sale in association with leasing out.
- Leasing the land for implementing investment projects in agricultural production, forestry, aquaculture or salt production, for non-agricultural business and production, for construction of community buildings for business purposes and for the leasing of residential housing.
- Taking over the land that the State has allocated or leased to Vietnamese partners as capital contribution of such Vietnamese partners to form a joint venture company.

4.8 Land Lease from the State

Provincial People’s Committees are the competent authorities to approve land leases to FIEs. The DONRE represents the provincial People’s Committee as the Vietnamese party to the land lease agreement, which must conform to the standard land lease promulgated by the Ministry of Natural Resources and Environment (“**MONRE**”).

4.9 Land Sub-Lease from Industrial Zones, Export Processing Zones, and High Technology Zones

A developer of an industrial zone (“**IZ**”), export processing zone (“**EPZ**”), or high technology zone (“**HTZ**”) is considered the lessee of the land that it leases to develop such zones.

The developer may sub-lease the land to FIEs as tenants to build their structures. Rental amounts and conditions shall be discussed between the developer and the tenants. If the land in an IZ or an EPZ is leased to the developer with payment of annual rent, the developer may sub-lease the land with annual payment of rent. If the land in an IZ or an EPZ is leased to the developer with one-time payment of rent for the entire lease term, the developer may sub-lease the land either in the form of one-time payment of rent for the entire lease term or in the form of annual payment of rent. The law is silent on payment method of land sub-leased in an HTZ.

4.10 Withdrawal of Land Use Rights

The Land Law allows the State to withdraw land leased or allocated to any party, including foreign investors. LURs may be withdrawn from foreign investors by the State for purposes of national defense, security, socio-economic development in the national interest or for public interest purposes. A land user may also be evicted as a result of a breach of the Land Law, particularly in the following circumstances:

- The land was used in an inefficient way or for an incorrect purpose;
- The land was allocated or leased to an ineligible entity or by an incompetent authority;
- The land was ineligible for assignment or donation pursuant to the Land Law, but the land user accepted an assignment or donation;
- The land was allocated by the State for management and was illegally appropriated;
- The land user intentionally destroyed the land;
- The land user was subject to an administrative penalty for failure to discharge its obligations to the State and failed to comply with the penalty decision;
- The land allocated or leased for implementation of an investment project was not used for 12 consecutive months from the date of handover; or
- The land use schedule of the project was delayed for more than 24 months from the date of handover, without permission from the relevant authority for such delay.

In the last two cases, the investor may request an extension for another 24 months provided that the investor pays the applicable LUF or land rental for the extension period. If upon expiry of the extended period, the investor has not put the land into use, the State shall resume control of the land without compensating for land and assets on the land, except for a delay caused by force majeure.

However, it should be noted that, under the Law on Investment, the eviction of a land user from a plot of land or for a delay in operation for more than 12 months may also result in investment project termination and revocation of the IRC.

4.11 Permitted Real Estate Business Activities

Under the Law on Real Estate Business of 2014 (the “**Law on Real Estate Business**”), FIEs may conduct real estate business and real estate business services within the following scope:

- Leasing houses and commercial buildings for sub-lease;
- On land leased from the State, investing in the construction of residential houses for lease, or construction of houses and buildings other than those for sale, lease, or lease purchase;
- Receiving all or part of a real estate project from investors in order to construct houses and buildings for sale, lease, or lease purchase;
- Investing in the construction of residential houses on land allocated by the State for the purposes of sale or lease purchase;
- Investing in the construction of houses and buildings on leased land in industrial zones, industrial complexes, export processing zones, high tech zones or economic zones for trading, in strict accordance with the land use purposes; and
- Providing real estate business services, namely real estate brokerage services, real estate trading floor services, real estate consultancy services, and real estate management services.

In addition to the scope of business above, overseas Vietnamese may also invest in the construction of houses and buildings on land leased from organizations, family households or individuals for leasing out in strict accordance with the land use purpose.

There is no foreign ownership restriction in a real estate development company. However, real estate is a conditional line of business. In order to conduct such business, investors must satisfy various conditions, including paying a minimum legal capital of at least VND 20 billion (approx. USD 900,000). In addition, a real estate project must comply with various regulations on construction, master planning, and the environment.

Foreign organizations and individuals investing in the construction of residential houses for sale are entitled to sell such residential houses after completion of a construction project. The purchaser of such residential house will be issued with a LURC (evidencing residential housing ownership) by the competent State body. In principle, the duration of the LUR is granted to the purchaser on a stable and long-term basis and is recorded in the LURC, subject to the fulfillment of the financial obligations of the project investors vis-à-vis the State.

Licensing procedures applicable to all foreign-invested real estate projects must follow the procedures set out in Section 4.12 below.

4.12 Approval in Principle

While not explicitly required under applicable decrees and circulars, foreign investors are well advised to secure “approval in principle” from the local People’s Committee prior to establishing a project company. “Approval in principle” is a letter issued by the local People’s Committee following the submission of a project feasibility study by the developer (or a foreign investor).

Through the “approval in principle”, the local People’s Committee expresses its preliminary agreement with the proposed project development, including the conformity of the proposed project with the applicable master plan governing development rights and restrictions in the specific area of the proposed project. The applicable master plan may impose height restrictions on buildings constructed in a certain neighborhood, approve certain neighborhoods (or roads) for high-rise construction, or limit development of other neighborhoods to specified building uses.

The “approval in principle” represents preliminary agreement of the local People’s Committee that a particular developer (or foreign investor) may develop the proposed project on the land identified in the developer’s feasibility study. Until it becomes definitive, amendment to the master plan may be proposed by the developer to the provincial People’s

Committee for approval at any time, and the amendment process is not transparent. The procedures to amend a master plan are usually behind closed doors, with no public hearings or opportunity for public comment. Moreover, the People's Committees are known to occasionally change their views with respect to project design, particularly when public space is involved. The foreign investor can fully rely only upon approval of the specific project in the company's project license.

Project Company and Investment Registration Certificate

According to the Law on Investment, foreign investors investing in Vietnam for the first time must have an investment project and carry out the procedures for investment project registration. In order to invest, construct and operate a project, the foreign investor must apply for the issuance of an ERC and IRC authorizing real estate business activities. A decision on investment policy from the provincial People's Committee is additionally required in cases that (i) the land for such project is allocated or leased by the State without auction, tendering or acquisition and (ii) the land use purpose needs changing, save for land in an IZ, EPZ, HTZ or economic zone.

Please note that an FIE must expressly be authorized in its IRC to construct, sell, assign, or lease the construction works. Such activities are subject to various conditions and restrictions, related notably to land zoning and real estate business activities authorized in its IRC. As real estate is a conditional investment sector, a foreign investor must satisfy all of the requirements applicable to the sector in order to be issued with an IRC from the competent authorities. The timeline for issuance of the decision on investment policy of the provincial People's Committee is 35 working days from receipt of a valid and accurate application dossier by the competent authorities. The relevant timeframes for issuance of an IRC and ERC are 15 working days and three working days respectively from the date of receipt of a valid accurate application dossier by the relevant licensing authority although timeframes typically take longer in practice.

Land Clearance Procedures

Although compensation for existing landowners at a project site is, theoretically, the duty of the State, the developer may negotiate directly with existing land users in order to expedite the land clearance process. The compensation paid by the developer to the existing landowners, subject to the approval of the State, is later deducted from the land lease fee charged by the local People's Committee. The local People's Committee will assist the developer with "land clearance" by compensating any hold-out landowners at the project site.

Land Lease

After securing the "approval in principle" and establishing a project company with a valid IRC and ERC for development of the project land, the project company must execute a land lease agreement with the local People's Committee (except in the case of a contribution of an LUR by a Vietnamese partner or where the land is allocated by the State).

The land lease agreement identifies the project land, fixes the duration of the LUR (in parallel with the IRC), and specifies the leasing fee to be paid by the developer to the People's Committee.

Land Use Right Certificate

After completing the compensation procedures and executing the land lease agreement, the project company is required to submit an application dossier to the local DONRE which will issue the LURC (registered in the name of the project company). This LURC corresponds to the project land and specifies the use rights in line with the IRC and ERC for the development of the project land.

Construction Permit

Prior to commencement of construction on the project land, project companies are required to secure a construction permit, or equivalent approval on construction, by submitting a detailed project plan to various governmental authorities.

4.13 Residential Development Projects

Investment Approval

Developers of residential development projects (including mixed-use development projects), are required to procure an “investment policy approval” from the Prime Minister or the provincial People’s Committee if the project has a value from VND 5,000 billion (approx. USD 220 million) or is using land allocated directly by the State.

Residential development projects involving 2,500 or more housing units or more than 100 hectares of land or projects located in more than one province, require the Prime Minister’s approval (irrespective of the source of funding and land use scale for such residential development projects). For other projects not funded by the State, the investment policy approval will be issued by the relevant provincial People’s Committee.

Financing of Residential Development Projects

The Law on Housing of 2014 (the “**Law on Housing**”) provides permitted sources of funds for development projects. Specifically, developers of a commercial residential housing project are able to mobilize capital as follows:

- Capital owned by the developer;
- Capital raised in the form of capital contribution, cooperation in investment, business cooperation, joint venture and affiliation of organizations, family households and individuals;
- Advance payments for purchase, lease or hire purchase of residential housing to be formed in the future; and
- Loans granted by credit institutions and financial institutions currently operating in Vietnam.

Mobilized capital must be invested in the residential housing project. Mobilized capital from home-buyers must not exceed certain caps established by regulation.

Pre-Sale Contracts with Buyers

Developers may enter into a pre-sale contract and receive advance payment only after the home-buyers have received the following documents from the developer:

- Documents evidencing the LUR;
- Project dossier;
- Designs/drawings for work previously approved by the competent authority;
- Construction permit (if required);
- Documents on the inspection and acceptance of the completion of construction of technical infrastructure facilities corresponding to the schedule; and in the case of an apartment building or mixed-use building complex with residential purposes to be built, the minutes of the inspection and acceptance of completion of the foundations of such building;
- Notice on the eligibility of the residence to be sold; and.
- A bank guarantee issued by a commercial bank, for the benefit of home-buyers to secure repayment and compensation to the home-buyer if the developer fails to hand over the residence according to the timeline agreed in the pre-sale contract.

Assignment of Projects Using Land

An economic organization not classified as an FIE (“**DEO**”) may assign LURs allocated by the State and FIEs and DEOs that receive LUR not sourced from the State budget may assign such LURs in connection with an assignment of its investment project. The project assignment contract should indicate clearly the value of the LUR and will also be considered as a land assignment contract.

In the event that payment of the LUF or assignment was funded by the State budget, or if the land was leased by the State or allocated by the State without collection of a LUF for the purpose of capital contribution in the form of the LUR, then the value of the LUR will not be included in the total value of the project assignment. The parties must then submit the project transfer contract and the relevant LURC to the competent authorities for re-issuance to the project assignee.

When a land plot used for a project is granted for a definite term, the FIE or DEO taking over the project will only be entitled to the remaining use term unless otherwise extended in accordance with Vietnamese law.

4.14 Real Estate Transaction Structures

Three common investment structures for foreign-invested real estate development projects include:

Establishment of a Wholly Foreign-Owned Enterprise (a “WFOE”)

Foreign investors are entitled, under the Law on Investment, to establish a WFOE to engage in the real estate business pursuant to a validly issued IRC upon the formation of a company. In such cases, the project company will secure a LUR from the local People’s Committee through the LURC issued by the local DONRE.

The term of the LUR is usually limited to 50 years. For large investment projects with slow recovery of capital, projects in areas with difficult socio-economic conditions or with extremely difficult socio-economic conditions (as defined under Vietnamese law), may be granted LURs with a term of up to 70 years. Pursuant to the Land Law, duly licensed FIEs may be authorized to engage in the transfer, lease, mortgage, and use of the project.

Payment for LUR may be made directly to registered LURC holders and/or to the local People’s Committee. Any payments made directly to existing LURC holders are credited against the leasing fee paid (in lump sum) to the local People’s Committee.

Tax-wise, the foreign-owned project company may be wholly owned by an offshore special purpose vehicle. However, the application dossier submitted to the DPI during the incorporation process must provide detailed information concerning the ultimate parent corporation(s) (i.e., the major shareholders of the offshore special purpose vehicle).

Joint Venture

A foreign investor (either directly or through an offshore special purpose vehicle) may enter into a joint venture to establish a project company to engage in real estate development. Typically, the local Vietnamese partner contributes the land as an in-kind capital contribution to the project company, while the foreign partner contributes equity to finance the project construction. Ownership percentages may vary among joint ventures depending on the outcome of negotiations between the parties.

Share/Capital Sale and Purchase

The third common investment structure involves the establishment of a “domestic company” wholly owned by Vietnamese persons (including Vietnamese citizens, Viet Kieu (overseas Vietnamese), and Vietnamese juristic persons). The procedures for establishing a domestic company are less burdensome and less time-consuming than the procedures required for the establishment of an FIE. Following the establishment of the domestic project company with a duly issued IRC, the shareholders (or capital holders, in the case of a limited liability company) may sell shares (or capital) to the foreign investors.

While the transfer of such shares (or capital) is theoretically unlimited, procedures and formalities for share (or capital) transfer are unclear in practice, which may prevent or delay acquisition of a domestic company by a foreign investor. From a risk-management perspective, it is often preferable for a foreign investor to place investment capital (or advance deposits) in escrow with an internationally recognized escrow agent. The release of escrow funds would be conditional upon the DPI’s issuance of an IRC to the company to develop the project land.

Note that a foreign person (individual or juristic person) cannot receive a mortgage over land in Vietnam. Therefore, it is difficult to protect investment capital and deposits under any of the above three investment scenarios. Escrow accounts, share/capital pledge agreements, and personal guarantees are often used as alternative security arrangements.

4.15 Ownership of Residential Housing

Vietnamese residing overseas who are allowed to freely enter and depart from Vietnam are entitled to own a house in the country.

The Law on Housing allows foreign organizations and individuals to own residential houses in Vietnam provided that relevant requirements are satisfied. Foreign organizations and foreign individuals eligible to own houses in Vietnam are as follows:

- Foreign organizations and foreign individuals investing in residential housing projects who are granted IRCs and have residential houses constructed under a project in accordance with Vietnamese laws;
- FIEs, branches and representative offices of foreign organizations, foreign investment funds and foreign bank branches currently operating in Vietnam who are granted IRCs or other licenses to operate in Vietnam;
- Foreign individuals who are permitted to enter Vietnam and not entitled to preferential treatment rights, or diplomatic or consular immunities.

These eligible entities may own residential houses in Vietnam, where applicable, by way of (i) investing in residential housing projects in accordance with Vietnamese law or (ii) purchasing, hire purchasing, receiving donation or inheriting commercial apartments and commercial houses in housing projects. For the latter case, certain areas are restricted due to reasons of national security. The relevant provincial Department of Construction is responsible for providing details on restricted locations.

Except foreign organizations and foreign individuals investing in their own residential housing projects, other eligible entities may own apartments not exceeding 30% of total number of apartments in an apartment building and 30% of the total number of apartments in a ward and commercial houses not exceeding 10% of the total number of houses in a commercial residential housing project with less than 2,500 houses, or 250 houses in a project of more than 2,500 houses.

Except foreign organizations and foreign individuals investing in their own residential housing projects, other eligible entities and individuals may own houses in Vietnam with a definite term which can be renewed. Specifically, eligible foreign individuals may own houses in Vietnam for a maximum duration of 50 years. Foreign individuals who are married to Vietnamese citizens or Vietnamese overseas have rights and obligations similar to Vietnamese citizens. FIEs, branches and representative offices of foreign organizations, foreign investment funds and foreign bank branches currently operating in Vietnam may own houses for the duration indicated in their IRCs or other licenses to operate in Vietnam.

In order to purchase a house or apartment in Vietnam, a foreign individual must be able to produce the proper documentation evidencing the right to enter and reside in Vietnam.

Expatriates also have the right to mortgage, transform, inherit, and transfer these apartments.

Secured Transactions Involving Real Property

The following types of collateral are allowed to be provided as security under Vietnamese law: objects, money, valuables, papers, and property rights. As for project finance transactions, typical security packages include immovable property (LUR, properties attached to the land), movable assets, contractual rights (including rights under an insurance policy), onshore and offshore bank accounts, and conditional assignment of equity.

Collateral can also be property that arises in the future – for example, a construction or agreement to be signed. However, note that property that arises in the future may not include the LUR.

A (foreign or domestic) shareholder may pledge any shares in favor of a foreign lender (in lieu of LURs). However, as there are practical (although not legal) limits on foreign ownership of Vietnamese real estate companies, foreign lenders can only receive a transfer of shares up to the applicable practical maximum foreign ownership cap and would need to sell the remainder to Vietnamese purchasers.

LURs may only be mortgaged to credit institutions that are licensed to operate in Vietnam, and not to offshore lenders including shareholders. Due to these specificities, it is difficult for foreign lenders to securitize mortgages involving real property. Thus, it is common practice to use Vietnamese credit institutions as an intermediary, or to rely on pledges of shares or capital or personal guarantees as security.

4.16 Assignment of Land Use Rights to Foreign Invested Enterprises

Under the Land Law, FIEs may not take any assignment of LUR. Non-FIEs and Vietnamese citizens may obtain LUR assigned from other land users.

4.17 Land in Industrial Zones

Under the Land Law, developers must lease land from the State for development of an industrial zone by making annual payments or one-time payment of land rent.

The subtenant in an industrial zone will be granted with a certificate of land use rights and have the same right as the tenant leasing the land directly from the State on the same rental payment terms (which are either annual or a one-time payment of land rent).

4.18 Rights of Foreign Invested Enterprises with regard to Land Use Rights and Assets on Land

Pursuant to the Land Law, FIEs that lease land from the State with a one-time land rent payment or take over land allocated by the State with a LUF to implement an investment project will be entitled to (i) be issued with a LURC and ownership of residential house and other assets on land; and (ii) assign, lease or sub-lease, mortgage, and make capital contribution using the LUR and assets owned by the FIEs on land for project development.

FIEs that have leased land from the State with collection of annual payment of land rent would be entitled to (i) be issued with a LURC and ownership of residential house and other assets attached to land; (ii) mortgage, contribute capital, or sell assets on land owned by the FIE; and (iii) lease residential housing if licensed to invest in, construct and commercially operate residential housing, among other rights.

Chapter 5

Labor and Employment



The Labor Code of 2012 (the “**Labor Code**”) addresses most labor-related issues such as recruitment, employment contracts, working hours, rest periods, discipline and dispute resolution. The Labor Code applies to both local and foreign employees and employers, including foreign organizations.

The Ministry of Labor, Invalids and Social Affairs (“**MOLISA**”) has primary regulatory responsibility for the labor sector. The MOLISA has amended and supplemented several provisions across all chapters of the Labor Code (the “**Amended Labor Code**”). This amendment is a part of Vietnam’s efforts to conform to labor standards laid out in various new-generation free trade agreements that it has signed. These include: the EU-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Some other basic and significant changes are made in this Amended Labor Code, particularly regarding working hours, public holidays and retirement age. These changes are as follows:

- Regarding working hours, normal and overtime working hour limits remain unchanged. However, the Amended Labor Code imposes a new obligation on employers to notify their employees in advance, when deciding whether employees are to work on a daily or weekly basis.
- The Amended Labor Code entitles workers, from the year 2021 onward, to an additional national holiday, with full salary payment, on the day preceding or following the Independence Day (2 September) holiday, bringing the total to 11 public holidays per year.
- The retirement age for men and women will be adjusted annually to reach 62 and 60 years of age, by 2028 and 2035, respectively (currently, the compulsory retirement age is 60 years old for men and 55 years old for women). The retirement age will be raised each year by three months for men and four months for women. Beginning in 2021, the retirement age will be 60 years and 3 months for men, and 55 years and 4 months for women.
- The Amended Labor Code also allows employees to join or form a representative organization of their choosing (i.e. organization representing the employees) that is independent from the confederation of labor.

The Amended Labor Code was adopted by the National Assembly on 20 November 2019 and will take effect from 1 January 2021. Nevertheless, the paragraphs below do not take into account its provisions.

5.1 Employment

5.1.1 Employment Contracts

The rights and obligations of employer and employee, as required to be specified in an employment contract, are set out in the Labor Code.

A labor contract can be:

- An “indefinite-term labor contract” where the parties have not specified the duration of the labor contract;
- A “definite-term labor contract” where the parties have specified the duration of the labor contract, which can be for a period of between 12 to 36 months; and
- A seasonal labor contract, limited to a duration of less than 12 months.

A labor contract must contain the following mandatory provisions:

- Identity of the employer and the employee (such as name, age, address, etc.);
- Job description and workplace location;
- Term of the labor contract;
- Wages, method and time of payment of wages, allowances, and any other additional payments;
- Health and safety requirements (if any); and

- Training and capacity development.

Decree No. 148/2018/ND-CP dated 24 October 2018 (effective as of 15 December 2018) removed certain mandatory provisions from employment contracts, namely provisions relating to salary review and increase, working time and resting time, labor protection equipment and social, health and unemployment insurances rates. Such topics may now be provided in the company's internal labor rules (provided that these rules are duly registered with the Department of Labor, Invalids and Social Affairs (“DOLISA”)) or internal policies instead.

A labor contract must be in writing and made in duplicate, with each party retaining one original copy. A labor contract can be entered into orally in the case of temporary employment, which is less than three months.

A labor contract must provide an employee with the minimum rights and entitlements stipulated under the Labor Code and its implementing regulations, any applicable collective labor agreement, and the existing internal labor regulations of the enterprise. The whole or a specific part of a labor contract may be held invalid for non-compliance with these minimum standards.

5.1.2 Employment Conditions

a. Probationary Period:

Any probationary period agreed to between the employer and the employee must not exceed 60 days in respect of work requiring specialized or technical expertise of at least college level equivalency, or 30 days for work requiring specialized or technical expertise of at least vocational level equivalency. A wage of not less than 85% of the full-time wage for the relevant working position must be paid during the probationary period. Either party can terminate the probationary period without giving advance notice and without any compensation.

b. Working Hours:

The maximum number of working hours is eight hours per day and 48 hours per week. Employers have the right to require an employee to work overtime but only when: (i) the employee agrees; (ii) the overtime hours do not exceed 50% of the normal working hours in one day; and (iii) where the total of normal working hours plus overtime hours does not exceed 12 hours per day, 30 hours per month, 200 hours per year, 300 hours per year, or in special cases regulated by the Government and subject to written notification to the labor authorities.

c. Leave Entitlements:

If an employee has been employed by an employer for at least 12 months, he/she is entitled to at least 12 working days of fully paid annual leave, exclusive of official public holidays. Employees working in heavy, dangerous, or toxic jobs, or in places with harsh living conditions, employees under the age of 18, and disabled persons are entitled to a minimum of between 14 to 16 working days fully paid annual leave. Annual leave days must be increased by an additional day for every five consecutive years of employment with the same employer.

Employees are also entitled to ten fully paid public holidays annually. Where a public holiday coincides with a weekly day off, employees are entitled to take the following day off. Foreign employees are entitled to one day of public holiday for the traditional New Year and another day for the national day of their country.

The maternity leave period in normal circumstances is six months.

d. Minimum wage:

The Labor Code requires that an employee's wage must not be lower than the minimum wage provided by the Government. The current minimum wage ranges from between VND 2,920,000 (approximately USD 126) to VND 4,180,000 (approximately USD 180) per month, depending on the location of employment. Districts in Hanoi and Ho Chi Minh City fall into Region I, with an applicable minimum wage rate of VND 4,180,000 (approximately USD 180).

5.1.3 Social Security

Compulsory social insurance for Vietnamese employees includes social insurance, medical insurance and unemployment insurance. Payment of the corresponding contributions entitles Vietnamese employees to various benefits such as retirement, maternity, healthcare, etc., funded by the statutory social insurance and healthcare systems.

Since 1 January 2018, foreign employees working in Vietnam under a valid work permit, practice certificate, or practice license, are required to contribute to the Vietnamese compulsory social insurance scheme for expatriate employees. The Official Letter No. 1064 issued by the MOLISA on 18 March 2019 has clarified the scope of application of compulsory social insurance schemes for foreign employees working in Vietnam. Provided that they satisfy all of the below requirements, foreign employees will be subject to the payment of social insurance contributions:

- Foreign employees who have indefinite or definite-term employment contracts of at least 1(full) year with employers based in Vietnam;
- Foreign employees who hold either a work permit, practicing certificate, or practicing license, granted by the competent state authority of Vietnam;
- Foreign employees who have not yet reached 60 years of age for males and 55 years of age for females; and
- In the event of internal transfer, foreign employees who transfer from the parent company to a Vietnamese-based subsidiary or branch for a long or an indefinite period of time¹.

From 1 December 2018, the rates of the contributions are as follows:

| | Vietnamese employee | | Foreign employee | |
|------------------------|---------------------|--------------|------------------|-------------|
| | Employer | Employee | Employer | Employee |
| Social insurance | 17.5% | 8% | 3.5% | 0% |
| Health insurance | 3% | 1.5% | 3% | 1.5% |
| Unemployment insurance | 1% | 1% | 0% | 0% |
| Total | 21.5% | 10.5% | 6.5% | 1.5% |

Contributions to the fund for work-related accidents and occupational diseases by the employer are set out in the Law on Occupational Safety and Hygiene of 2015. Employer contribution rates are currently set at 0.5% and are included in the social insurance premium, subject to adjustment from time to time by the Government.

The basis for social insurance contributions by an employee is the contractually agreed salary/remuneration, salary allowances and other additional contractual payments which are paid regularly to the employee with his/her monthly salary payments. Other benefits, such as bonuses, meal, fuel, telephone, travel accommodation and child care allowances, and assistance paid to an employee in the event of a death in the family or occupational accident or disease, are excluded from social insurance calculations. However, mandatory social insurance contributions are capped at twenty times the general minimum salary, as stipulated by the Government of Vietnam from time to time. The compulsory retirement age is 60 years for men and 55 years for women. The age of retirement may be increased by up to five years for employees with high technical expertise, for those in managerial level positions, or in a number of other special cases.

¹ The Official Letter No. 1064 is silent regarding the duration of the transfer to the Vietnamese entity. Accordingly, it is recommended to seek the opinion of the labor authority prior to deciding not to pay the social insurance contributions.

A retiree is entitled to a monthly pension financed by the social insurance fund if that person has reached retirement age and has been paying into the fund for at least 20 years. Men and women are entitled to the same maximum pension rates. Lower pension rates may be applied for those who only partially satisfy the above requirements. A lump-sum payment may also be applied where an employee fails to meet the above requirements.

5.2 Termination of Labor Contracts

5.2.1 Cases of Termination

A labor contract can be terminated in the following circumstances:

- Expiration of the labor contract, except in the event of an employee who is concurrently a trade union officer and is still within the term of that office, in which case the labor contract must be extended until expiry of the period of such office;
- Mutual agreement on termination;
- Retirement;
- Sentencing of the employee to a jail term or is legally prohibited from performing the job prescribed in the labor contract;
- Death or loss of capacity of the employee;
- Death, loss of capacity or termination of the operations of the employer;
- The employee is dismissed for disciplinary reasons in accordance with the law;
- Unilateral termination of labor contract in accordance with the law by employee or employer; or
- Retirement due to restructuring, a change of technology, economic reasons, or merger, consolidation, or separation of the enterprise.

Unilateral Termination by an Employee

An employee who is a party to an indefinite-term labor contract has the right to unilaterally terminate the contract provided that he/she provides the employer with at least 45 days' written notice, except for particular cases of pregnant employees as specified by the law, where the notice period may vary pursuant to a doctor's determination.

An employee working under a definite-term labor contract, or a labor contract for a seasonal or a specific job with a duration of less than 12 months, has the right to unilaterally terminate the contract by giving three to 30 days' notice depending on the cause of termination, which may include the following circumstances:

- The employee is not assigned to the correct job or workplace, or is not ensured working conditions as agreed in the contract;
- The employee does not receive his/her wages in full or on time, as agreed in the labor contract;
- The employee is mistreated, sexually harassed or forced into doing certain work that he/she has not agreed to;
- The employee cannot continue to perform the labor contract due to personal or family difficulties;
- The employee is elected to full-time duties in a public office or is appointed to a position in a state body; and
- The employee is pregnant and must cease working on the advice of a doctor, or the employee suffers illness or injury and remains unable to work after having received treatment for a period of 90 consecutive days in the case of a definite-term labor contract or for a quarter of the duration of a contract for a specific or seasonal job of less than 12 months.

Unilateral Termination by an Employer

An employer has the right to unilaterally terminate a labor contract in the following circumstances:

- The employee repeatedly fails to perform the work in accordance with the terms of the labor contract;
- The employee is sick or has an accident and remains unable to work after having received treatment for 12 consecutive months in the case of an indefinite-term labor contract, six consecutive months in the case of a definite-term contract, or more than half the duration of the contract in the case of a contract for a specific period or for seasonal employment of less than 12 months;
- The employer is forced to reduce production and employment, after trying all measures, to recover from a natural disaster, a fire, or another event of force majeure, as stipulated by the Government;
- The employee fails to attend the workplace on expiry of the period prescribed by the law in relation to a suspension of performance of the labor contract; or
- Due to organizational restructuring or technological changes, or for economic reasons.

An employer is not permitted to unilaterally terminate a labor contract in any of the following circumstances:

- The employee is suffering from an illness or injury caused by a work-related accident or occupational disease, and is undergoing treatment by a doctor, other than in the circumstances specified above;
- The employee is on annual leave or any other type of leave permitted by the employer; or
- A female employee is pregnant, on maternity leave, or raising a child under the age of 12 months, except for specific cases prescribed by the law.

When unilaterally terminating a labor contract, the employer must give the following prior notice to the employee:

- At least 45 days in the case of an indefinite-term labor contract;
- At least 30 days in the case of a definite-term contract; or
- At least 3 working days in the case of a contract for specific or seasonal employment of less than 12 months, or in case of termination of the contract due to illness or injury of the employee, as prescribed by the law.

Severance Allowances – Retrenchment

In most cases where a labor contract is terminated, employees working for 12 months or more will be entitled to a termination severance allowance equal to the aggregate amount of half of one month’s salary for each year of employment. In the event of restructuring, change of technology, or change for economic reasons, or upon the merger, consolidation, division, or separation of an enterprise, the retrenchment allowance is one month’s salary for each year of employment, but a minimum of at least two months’ salary.

“Salary” for the purposes of calculating severance allowance is the average salary set out in the labor contract earned in the six months immediately preceding termination.

In cases where an employee has worked more than six months in any one year, the number of years of service must be rounded up. Probationary periods, annual leave, public holidays, and training courses are included in determining the period of employment.

5.3 Labor Outsourcing

Labor outsourcing is an arrangement where an employee is recruited by an enterprise licensed to conduct labor outsourcing and maintains a labor relationship with the labor outsourcing enterprise but thereafter works for another employer and is subject to the management of such other employer.

Labor outsourcing is a conditional investment activity that is subject to certain conditions. In addition, only the following specified jobs can be outsourced:

| NO. | JOB |
|-----|---|
| 1. | Translators/interpreters/stenographers shorthand writers |
| 2. | Secretaries/administrative assistants |
| 3. | Receptionists |
| 4. | Tour guides |
| 5. | Sales assistants |
| 6. | Project assistants |
| 7. | Programmers for a manufacturing machinery system |
| 8. | Technicians for manufacture or installation of television or telecom equipment |
| 9. | Technicians for operating, testing or repairing construction machinery or manufacturing electrical systems |
| 10. | Sanitation/hygiene workers for buildings and factories |
| 11. | Data editors |
| 12. | Security guards/bodyguards |
| 13. | Telemarketers/customer service workers via telephone |
| 14. | Processors of financial and tax issues |
| 15. | Technicians for repairing or testing operation of automobiles |
| 16. | Industrial technical scanners or drawers/interior designers |
| 17. | Drivers |
| 18. | Managers, operators, maintenance staff and service staff on ships |
| 19. | Managers, supervisors, operators, repairers, maintenance workers and service staff on oil rigs |
| 20. | Aircraft pilots and service staff on aircraft, aircraft and aircraft equipment maintenance and repair personnel; flight controllers and flight dispatchers/surveillance personnel |

5.4 Internal Labor Regulations

Enterprises with 10 or more employees must have written internal labor regulations which must be registered with the provincial Department of Labor, Invalids and Social Affairs (the “DOLISA”) where the company is located. Prior to adopting the internal labor regulations, the employer must consult with the trade union at the company level (if any) or the labor federation at the district level.

The internal labor regulations must include the following information:

- Working hours and rest breaks;
- Rules and codes of conduct for the enterprise;
- Occupational health and safety requirements;
- Protection of assets and confidentiality; and
- Disciplinary procedures and penalties.

Employees must be made aware of the internal labor regulations, which must be posted publicly within the enterprise. A person who breaches the internal labor regulations may, depending on the seriousness of the breach, be subject to the following disciplinary measures:

- Reprimand;
- Extension of the period for the next wage increase of not more than six months;
- Demotion; or

- Dismissal.

5.5 Trade Unions

Trade unions are representatives of employees in Vietnam. The employer is responsible for encouraging and providing favorable conditions for the establishment of a trade union within the workplace. Trade unions participate in the improvement of social legislation and represent workers in the negotiation and execution of collective agreements, as well as assisting in labor disputes. An employer is prohibited from prejudicing employees against participating in a trade union.

Employees who are trade union officers are entitled to conduct trade union activities during working hours.

All employers and enterprises, including foreign-invested enterprises, are required to pay into the trade union fund at a rate of two percent of their payroll. This trade union funding paid by the employer is a permissible deduction when assessing corporate income tax.

5.6 Collective Bargaining

Collective bargaining is permitted under the Labor Code and may be carried out periodically or on specific occasions.

Collective bargaining consists of negotiation between the labor collective representative and the employer.

Matters that can be the subject of collective bargaining include:

- Wages, bonuses, allowances, and pay raises;
- Working hours, rest breaks, and overtime;
- Job security;
- Occupational health and safety;
- Implementation of internal labor rules; and
- Other issues of concern to the parties.

A collective labor agreement is a written agreement between the labor collective and the employer on working conditions that were reached via collective bargaining. A collective labor agreement may be an individual enterprise's collective labor agreement, an industry's labor agreement, or another form of labor agreement to be stipulated by the Government.

A collective labor agreement can only be signed after the parties reach an agreement at a collective bargaining session. After a collective labor agreement is signed, the employer must announce to its employees that an agreement has been signed, make the agreement available to all employees and send a copy of the agreement to the relevant labor authorities.

By law, a company must also arrange a workplace dialogue with its employees (or trade unions representatives) every three months or on one-off occasions at the request of one party. Such a workplace dialogue must discuss the status of production and business of the employer, the implementation of collective agreements or internal rules, the working conditions and, more generally, any request from the employees, employer and the trade unions.

Finally, a company which employs 10 or more employees must organize an employee conference every year. For this purpose, the company must normally establish regulations for the organization of the conference, to arrange the location, time and other materials.

Both workplace dialogue and employee's conference concern the following matters:

- Status of production and business of the employer;
- Performance of labor contracts, of the collective labor agreement, of internal rules and other regimes regulations, and of other undertakings and agreements at the workplace;

- Working conditions;
- Requests from the employees and labor collective to the employer and vice versa;
- Other matters in which the parties are interested.

5.7 Resolution of Labor Disputes

An employee and employer must first attempt to resolve a labor dispute through discussion and conciliation prior to submitting a petition for court resolution of the dispute, except for a number of specific cases stipulated by the law where conciliation procedures are not mandatory, such as conflicts over unilateral termination or conflicts between domestic employees and employers.

Where a labor dispute stems from a collective bargaining agreement, without exception, the parties to the dispute must first attempt to resolve their differences via conciliation. If such conciliation fails, the dispute may be resolved by a labor arbitration council, the chairman of the People's Committee at the district level, or a people's court.

Labor conciliators are appointed by the State administrative authority for labor at the district level. Labor arbitration councils are established by the chairman of the People's Committee at the Provincial level. The number of members of a labor arbitration council must be an odd number and the maximum number of arbitrators to be appointed to hear a dispute is seven.

If, after five days of the establishment of the conciliation minutes by the Arbitrator's Council, a party fails to execute the conciliation agreement as set out in the minutes, employees may lawfully strike. A strike must be organized and led by the relevant trade union.

Chapter 6

Immigration and Work Permits



6.1 Visas

The Law on Entry, Exit, Transit and Residence of Foreigner of 2014 (the “Immigration Law”) governs immigration matters in Vietnam.

A foreigner who holds more than one passport is required to consistently use only one passport for all entries, exits, transits and for residency in Vietnam. Foreigners who enter Vietnam to work are able to obtain a visa for up to a maximum of two years, while foreigners who enter Vietnam for investment purposes are able to obtain a visa for up to five years.

There are specific instances where a visa is not required, such as where a foreigner enters Vietnam at a checkpoint of a special economic zone or administrative economic unit. Foreigners may be restricted from exiting Vietnam when their tax obligations have not been fulfilled or where they are subject to a judgment or decision of a court or a decision on penalties for an administrative violation.

A stateless person who had temporary residence in Vietnam prior to the year 2000 will be considered eligible for permanent residency.

Tourists entering Vietnam need a tourist visa which is valid for either 15 or 30 days. Tourist visas are not required for citizens of certain countries with which Vietnam has bilateral or unilateral visa exemptions agreements, including Belarus, Brunei, Cambodia, Chile, Denmark, Finland, France, Germany, Indonesia, Italy, Japan, Kyrgyzstan, Laos, Malaysia, Myanmar, Norway, Philippines, Russia, Singapore, South Korea, Spain, Sweden, Thailand, and the United Kingdom. Foreigners visiting Phu Quoc Island are exempt from visa requirements applicable to the rest of Vietnam for stays of up to 30 days.

Foreign employees entering Vietnam to work are first required to obtain an employment visa (in general, a so-called “LD Visa”) before obtaining a temporary residency card. After entry with the LD visa, the foreign employee can apply for a temporary residence card.

6.2 Citizenship

Foreigners and stateless persons permanently residing in Vietnam who wish to apply for Vietnamese citizenship must satisfy the following conditions:

- a. Have full capacity for civil acts;
- b. Obey the Constitution and laws of Vietnam and respect the traditions, customs and practices of the Vietnamese nation;
- c. Understand Vietnamese language sufficiently to integrate themselves into the Vietnamese community;
- d. Have resided in Vietnam for at least five years at the time of the application for citizenship; and
- e. Be capable of making their livelihood in Vietnam.

In some special cases, a person may be exempted from conditions c), d) or e) listed above if they:

- Are the spouses, natural parents or offspring of a Vietnamese citizen;
- Have made meritorious contributions to Vietnam’s national construction and defense; or
- Have been helpful to the State of the Socialist Republic of Vietnam.

6.3 Work Permits

Foreign nationals working in Vietnam must obtain a work permit from the relevant Department of Labor, Invalids, and Social Affairs (“DOLISA”). Various exceptions apply to this general requirement, including where a person is:

- An equity member or owner of an LLC;
- A member of the board of management of a JSC;
- A chief of an RO, a project of an international organization or a non-governmental organization in Vietnam;
- Entering Vietnam for a period of less than three months to offer services;
- Entering Vietnam for a period of less than three months to handle a technical or technological situation arising and affecting or threatening to affect production and businesses in Vietnam and that Vietnamese and foreign experts currently in Vietnam cannot handle;
- A foreign lawyer who has been licensed to practice law in Vietnam; and
- Under the provisions of other international agreements.

Foreign nationals as listed above who are exempt from the requirement to obtain a work permit must, nevertheless, obtain prior approval on the need of using foreigners and confirmation of work permit exemption from the relevant provincial DOLISA.

By way of exception a foreign national who: (i) enters Vietnam for a period of less than 3 months to offer services; or (ii) enters Vietnam for a period of less than 3 months to handle a technical or technological situation arising and affecting or threatening to affect production and businesses in Vietnam and that Vietnamese and foreign experts currently in Vietnam cannot handle; or (iii) enters Vietnam to work as an expert, manager, executive director or technician for a period of less than 30 days and/or for a total cumulative period not exceeding 90 days in one year is exempted from obtaining prior approval on the need of using foreigners from authorities and confirmation of work permit exemption.

A work permit (or work permit exemption) is for a maximum period of two years and must coincide with the period of:

- Employment;
- Transfer, in the case of an intra-company transfer;
- The performance of the contract, in case of the provision of services;
- The license of the foreign non-governmental organization or international organization operating in Vietnam; or
- Appointment if the expatriate is establishing a commercial presence in Vietnam.

Chapter 7

Intellectual Property



The Law on Intellectual Property (the “**Law on IP**”) came into effect on 1 June 2006. To comply with Vietnam's commitments under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and European Union Vietnam Free Trade Agreement (EVFTA), the National Assembly enacted Law No. 42/2019/QH14 (“**Law No. 42**”), which amends and supplements the Law on Intellectual Property. The Law No. 42 takes effect from 1 November 2019 and introduces protections for inventions, geographical indications, trademarks, and IP enforcement rights.

Under the Law on IP, intellectual property in Vietnam comprises:

- Industrial property rights;
- Copyrights and related rights; and
- Rights to plant varieties.

Intellectual property rights (“**IPR**”) are territorial in nature and exist for set periods of time. Vietnam became a party to the Geneva Universal Copyright Convention (1952) in 2005, and to the Berne Convention (1886) in 2004. Both of these treaties provide for international protection of copyrights. Furthermore, Vietnam committed to full implementation of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement upon WTO accession in January 2007.

With respect to industrial property rights, Vietnam is a party to the Paris Convention (since 8 March 1949), the Madrid Agreement (since 25 June 1989), the WIPO Convention (since 14 July 1967), and the Patent Cooperation Treaty (since 10 March 1993).

7.1 Industrial Property Rights

Industrial property rights include the following main categories:

- Patents and inventions;
- Trademarks;
- Industrial designs;
- Layout designs of semi-conductor integrated circuits;
- Trade secrets;
- Trade names; and
- Geographical indications.

Except for rights in relation to trade secrets and trade names for which the owner is not required to fulfill any formalities or filing procedures, other industrial property rights are protected for a definite duration and the owner is required to carry out registration for protection of such rights. The owners of industrial property rights are generally required to obtain patents or registration certificates, in order to benefit from legal protection.

Industrial property rights are administered by the National Office of Intellectual Property (“**NOIP**”).

The general procedure for industrial property protection comprises:

- Preparation and submission of application files;
- Formal examination (within one month from the date of filing);
- Publication of valid application files;
- Substantive examination; and
- Grant of protection.

The length of the substantive examination for industrial property right registration is as follows:

- For patents, within 18 months from the date of publication if the request for substantive examination is filed before the publication date, or from the date of receipt of the request for substantive examination if the request is filed after the publication date;
- For trademarks, the examination will occur within nine months from the date of publication;
- For industrial designs, the examination will occur within seven months from the date of publication; and
- For geographical indications, the examination will occur within six months from the date of publication.

In some cases, the registration timeline for industrial property rights may be longer due to re-examination and third-party opposition.

7.1.1 Patents and Inventions

A patent is a right granted to an inventor in respect of product or process inventions that are new, involve an inventive step, and are capable of industrial application.

A patent grants the owner, for a certain period of time, the exclusive right to the invention and at the same time prevents others from making commercial use of the invention. In addition to patents, “utility solution patents” are also eligible for protection but are subject to less stringent patentability requirements.

The following are not patentable in Vietnam:

- Scientific discoveries or theories, and mathematical methods;
- Schemes, plans, rules, and methods for performing mental acts, training domestic animals, playing games, and doing business;
- Computer programs;
- Methods for the presentation of information;
- Solutions of aesthetical characteristics only;
- Plant varieties and animal breeds;
- Processes of plant or animal production that are principally of a biological nature, other than microbiological ones; and
- Human and animal disease prevention, and diagnostics and treatment methods.

An application for patent registration has to be filed with NOIP. Patents are protected for 20 years from the filing date. Utility solution patent registrations last for 10 years from the filing date.

7.1.2 Confidential Inventions

The government has issued regulations to govern the protections and rights of confidential inventions, which are classified by competent state agencies as state secrets in the field of national defense and security under the Ordinance on Protection of State Secrets.

The Ministry of National Defense and the Ministry of Public Security are authorized to determine which inventions are confidential inventions. Confidential invention registration applications, confidential patents, and confidential utility solution patents may not be disclosed and must be kept confidential.

The use and licensing of confidential inventions and the assignment of the right to file applications and the right to own confidential inventions must be permitted by competent state agencies under the Ordinance on Protection of State Secrets.

7.1.3 Trademarks

A trademark is a sign in the form of an image, a name, a word, letters, figures, or a combination of these elements to distinguish the goods or services of one company from those of others. Trademarks are registered in relation to particular goods or services.

Vietnam has adopted the International Classification of Goods and Services, which sets out 45 classes of goods and services. Multi-class applications are accepted in Vietnam. Trademarks can be researched online on the homepage of NOIP. An English database search function is available but does not work as well as the Vietnamese version.

Trademarks are protected for 10 years from the date of receipt of the application, and may be renewed indefinitely. Well-known marks (trademarks that are used continuously for prestigious products or services so that they are widely known) are protected indefinitely.

Trademarks are excluded from registration where they are:

- Indistinctive;
- Comprised of simple shapes and geometric figures, numerals, letters, or scripts of uncommon languages, unless widely used and recognized as a trademark;
- Signs or symbols, pictures, or common names in any language that have been widely and regularly used to designate the goods or services in question;
- Identical or confusingly similar to a registered mark, a famous mark, or a mark that is the subject of a prior application;
- Likely to mislead, cause confusion, or deceive consumers as to their origin or properties;
- Utilities, quality, value, or other characteristics of the goods or services;
- Identical to, or not substantially different from, a registered industrial design;
- Identical to, or confusingly similar to, a state flag or emblem;
- Identical to, or confusingly similar to, real names, aliases, pseudonyms, or images of leaders, national heroes, or famous personalities of Vietnam or foreign countries;
- Indicating time, quantity, quality, and characteristic of goods or services;
- Describing the legal status and business field of business entities; or
- Indications of the geographical origin of the goods or services.

A trademark registration has to be filed with NOIP. Foreigners are entitled (and encouraged) to register their trademarks in Vietnam, even if they have already registered them internationally. Entities or individuals that are not established in Vietnam or residing in Vietnam, must file applications for trademark registration through a local IP agent.

7.1.4 Industrial Designs

A registered industrial design is a registered monopoly right protecting the appearance of a product, expressed in dimensional configurations, lines, colors, or a combination thereof. To qualify for protection, an industrial design must be new (worldwide), creative, and capable of being commercially used. Criteria are applied in much the same way as they are for invention patents, although much less strictly.

The following will not be protected as industrial designs:

- Appearance dictated by technical (functional) features of the product;
- Appearance of “civil or industrial construction works”; and
- The shape of a part of a product that is invisible during the normal use of the product.

Industrial designs must be registered with the NOIP and are protected for five years from the date of earliest priority, i.e. the date of filing the application for the registration of the industrial design. The protection can be renewed for up to two subsequent five-year terms and the owner must pay a validity extension fee.

7.1.5 Layout Designs of Semi-Conductor Integrated Circuits

A semi-conductor integrated circuit (or micro-electronic circuit/ chip) is a product (in final or intermediate form - in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in, or on, a piece of semi-conductor material) that is intended to perform an electronic function. A layout design of a semi-conductor integrated circuit means a three-dimensional disposition of circuit elements and their interconnections in a semi-conductor integrated circuit.

An integrated circuit is capable of protection if it is original and commercially novel. Its commercial novelty will not be lost by commercial exploitation undertaken by the owner during the two-year period immediately prior to the date of filing.

A registered layout design of a semi-conductor integrated circuit is protected from the date of the registration certificate to the earliest of the following:

- Expiry of the period of 10 years from the date of filing;
- Expiry of the period of 10 years from the first commercial exploitation (worldwide) accepted by the person having the registration right; or
- Expiry of the period of 15 years from the date of creation of the layout design.

7.1.6 Geographical Indications

A “geographical indication” is information indicating the territorial origin of a product, with characteristics or qualities pertaining to the territory. With respect to any geographical name and other signs indicating the geographical origin of various local specialties of Vietnam, the registration must be approved by the authorized state body. A geographical indication protection title shall have indefinite validity from the date of granting.

7.1.7 First to File Principle

NOIP applies a “first to file” principle to identify individuals or organizations that are to be granted protection titles. In the case of having two or more applications jointly satisfying all conditions for grant of a protection title and which jointly have the earliest priority or filing date, a protection title may only be granted for the object stated in a single application amongst such applications, provided that the applicants can come to an agreement. In the absence of such agreement, the grant of a protection title shall be refused for the relevant objects stated in such applications.

However, the protection of well-known trademarks would be an exception of the “first to file” principle, as long as the trademark owner can successfully prove the well-known status of the trademark based on the criteria of customers’ awareness, distribution territory, turnover, duration of continuous use, reputation, protection status in other countries, and value of the trademark.

7.2 Copyrights and Related Rights

7.2.1 Copyrights

Unlike patents or trademarks, copyright arises automatically upon creation of an original work of authorship. Original works of authorship include:

- Written works;
- Textbooks and teaching materials;
- Motion pictures;
- Compositions;
- Photographs;
- Architectural works;
- Sketches, drawings, diagrams, and maps related to topography or scientific works;
- Computer programs and compilations of data; and
- Translated, adapted, rewritten, transformed, edited, annotated, selected, and anthological works.

A copyright owner enjoys various moral and economic (property) rights in relation to the work. Moral rights include the right to be acknowledged as the author of the work and the right to prevent amendment to, or distortion of, the work. Economic rights include the right to commercially use the work (i.e. to exclusively reproduce, publish, and broadcast the copyrighted work).

As copyrights arise automatically upon creation, they need not be registered to exist. However, registration of an existing copyright with the Copyright Office of Vietnam may be helpful in evidencing ownership/authorship in the event of a dispute.

Vietnam is a member of the Berne Convention for the Protection of Literary and Artistic Works. Therefore, the work of a foreign national will be automatically protected in Vietnam if he/she is a national of a country that is a member of the Berne Convention, or his/her work has been first published in a Berne member country.

Despite this, additional registration in Vietnam is recommended in practice. In order to register a work, an author or copyright owner must file an application for registration with the National Copyright Office in Hanoi. The applicant must submit the form required by the Ministry of Culture, Sports, and Tourism, and provide documentation proving the authorship/ownership of the work, and pay a registration fee.

Generally, the moral rights of authors, except for the right to publish or allow others to publish the work, will be protected for an indefinite term. The right to publish or allow others to publish cinematographic works, photographic works, stage works, applied art works, and anonymous works, will have a term of protection of 75 years from the date of first publication. If such works have not been published within 25 years from the date of formulation, the term of protection will be 100 years calculated from the date of formulation. For other works, this right will be protected for the whole life of the author and for 50 years after his/her death.

The rate of royalties, remuneration, and other material benefits, and their method of payment, should be as agreed by the relevant parties, but if agreement cannot be reached, these matters will be implemented in accordance with government regulations, or court proceedings may be instituted in accordance with the law.

7.2.2 Related Rights

Organizations and individuals eligible for protection of related rights include:

- Actors and actresses, singers, instrumentalists, dancers, and other persons who perform literary and artistic works;
- Organizations and individuals that use their time and make a financial investment in, or use their material and technical facilities to give a performance. These will be the owners of such performance unless otherwise agreed with the parties concerned;
- Organizations and individuals that use their time and make a financial investment in, or use their material and technical facilities to produce audio and visual fixation. These will be the owners of such audio and visual fixation unless otherwise agreed by the parties concerned;
- Broadcasting organizations shall be the owners of their broadcasts unless otherwise agreed with the parties concerned;
- Organizations and individuals that fix, for the first time, the sounds and images of performances or other sounds and images; and
- Organizations that initiate and carry out broadcasting.

The related rights protection in Vietnam is granted in respect of live performances, audio recordings, visual recordings, radio programs and broadcasts, and satellite signals carrying coded programs.

The related rights to be protected also include moral rights and property rights with respect to the work. In general, the duration of protection of related rights is 50 years.

Any individual or organization that directly or indirectly uses a published audio and visual fixation during business or commercial activities shall not be required to seek permission, but must pay royalties or remuneration to the author, copyright holder, performer, or producer of the audio and visual fixation, and to the broadcast organization as from the date of use provided that they must neither affect the normal use of performances, audio and visual fixation or broadcasts nor cause prejudice to the rights of performers, producers of audio and visual fixation or broadcasting organizations.

There are also cases where organizations and individuals may exercise the related rights without any permissions or payments to performers, producers of audio and visual fixation or to broadcasting organizations subject to certain conditions including:

- Making one copy of a work for personal scientific research purposes;
- Making one copy of a work for teaching purposes, except for performances, audio and visual fixation or broadcasts which have been published for teaching purposes;
- Reasonable quoting from a work in order to provide information;
- Making of provisional copies of a work by a broadcasting organization for broadcasting purposes when such organization has the broadcasting right; and
- Both copyright and related rights are administered by the Copyright Office of Vietnam.

7.3 Rights to Plant Varieties

A plant variety is a plant grouping within a botanical rank, which is morphologically uniform and stable during propagation cycles, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes and distinguished from any other plant grouping by the expression of at least one inheritable phenotype.

“Plant varieties eligible for protection” refers to those plant varieties that have been selected and bred, or discovered and developed, are on the list of state-protected plant species promulgated by the Ministry of Agriculture and Rural Development, and are new, distinct, uniform, stable, and designated by proper denominations.

Plant variety protection title shall be valid for a period of 25 years for timber trees and vines, and for a period of 20 years for other plant varieties.

7.4 IPR Enforcement

7.4.1 Administrative Enforcement

Administrative action is generally the most promising way of enforcement. The main competent authorities to conduct administrative enforcement are the Economic Police, the Investigating Police Agency, the Market Surveillance Agency, the Inspectorate of Science and Technology, the Inspectorate of Culture, Sports, and Tourism, and the People’s Committees at provincial and district levels.

Any individual or organization committing an act of infringement of IPR can be compelled to terminate such act and be subject to one of the principal penalties:

- A caution; or
- A monetary fine.

In addition, depending on the nature and the seriousness of the infringement, the individual or organization may also be subject to additional penalties of:

- Confiscation and/or destruction of counterfeit goods, raw materials, and materials and facilities used mainly for production or trading of such counterfeit goods; and
- Suspension of business activities for a fixed period in the sector in which the infringement was committed.

7.4.2 Customs Intervention

Customs intervention at Vietnam’s borders can include provisional suspension of customs procedures for imported or exported goods suspected of infringing IPR. The duration of a suspension is 10 working days from the date the applicant for such suspension receives a notice from the customs authority about the suspension decision. The duration of suspension may be extended, but shall not exceed 20 working days in total, where legitimate reasons and another security are provided by the rights holder.

In order to move the competent Customs Office to apply border measures, the applicant needs to:

- Prove that the applicant is the IPR holder;
- Provide full information to determine/discover the import-export articles allegedly infringing IPR;
- Submit an application for requesting the application of border measures and pay official fees prescribed by law; and
- Compensate for damages caused by applying border measures. To secure the payment, IPR holders need to (i) pay a deposit amounting to 20 percent of the value of the articles being subject of the request or at least VND 20 million (equivalent to USD 1,000) if it is impossible to determine the value of the articles being subject of the request; or (ii) provide a bank guarantee.

In case of detecting IPR infringement, the following remedies may be applied:

- Administrative remedies are generally applicable to the counterfeiting goods detected at the borders; and
- Compulsory re-exportation is applicable to the counterfeiting goods where such goods are eliminated from the infringement.

7.4.3 Civil Enforcement

There are two distinctive limitation periods in cases related to IPR. With respect to civil disputes regarding IPR, the limitation period is two years from the date when the disputes or infringement took place, without prior administrative action. With respect to disputes in order to identify the owner of IPR, there is no limitation period (i.e., the plaintiff may submit a petition to the relevant civil court at any time to commence a civil court proceeding). It is important to note that under the current Civil Proceedings Code, the limitation periods are only applied by the competent court upon the request of either party. The court must notify all parties of the filing and contents of a petition. The parties then have 15 days to file their written opinions in respect of the petition and enclose supporting documents.

The burden of proof is on the plaintiff, while the court may carry out investigations to collect evidence. The first hearing will be scheduled within four months (or six months in complicated cases). However, in practice, scheduling may be delayed, and it can take up to one year before the first hearing takes place. In such first hearing, conciliation is a compulsory process.

In the context of a civil action, a preliminary injunction can be a useful instrument of enforcement of IPR, in particular when there is a risk that the infringer will destroy evidence, or irreparable damage is being caused by the infringement.

A request for a preliminary injunction can only be made upon, or after, the filing of a petition to initiate a civil court case. If the request for a preliminary injunction is made in due form (with evidence, justifiable reasons for grant of a preliminary injunction and, if required, a bond) the judge must issue a decision within 48 hours of submission of the request. If he decides not to grant the preliminary injunction, he must notify the plaintiff in writing within the above timeframe, giving reasons for his decision. The party seeking the injunction is liable for any damage caused by a wrongfully granted injunction.

Additionally, the plaintiff may request the court to apply injunction/provisional measures that include:

- Enumerating;
- Sealing; forbidding of changing the status quo; ban of moving; and
- Forbidding the transfer of the ownership of rights.

On the other hand, other injunction measures stipulated by the Code on Civil Procedure also may be applied by the court at request of the plaintiff when necessary and for the purpose of avoiding the dispersal of the infringing products by the defendant/infringer. In particular, one or a combination of the following forms of injunction measures may be taken:

- Blockading of accounts or assets; and
- Forbidding the defendant/infringer from conducting a certain action or forcing the defendant/infringer to conduct a certain action.

To request the application of the provisional measures, an IPR holder shall be requested to pay a deposit to the bank where the Court is located or provide a bank guarantee with an amount equivalent to the damages caused by the provisional measures.

7.4.4 Criminal Enforcement

The Criminal Code of 2015 as amended in 2017 (“**Criminal Code**”) provides for the imposition of criminal sanctions for the infringement of IPR. Any individual or organization who commits an act of infringement of IPR involving a criminal element shall be criminally prosecuted in accordance with the Criminal Code.

One of the following criminal penalties may be imposed on an individual IPR infringer:

- Monetary fine (the maximum is of VND 1 billion; equivalent to USD 50,000);
- Non-detained re-education for up to three years; or

- Imprisonment for a period of six months to three years.

Besides the above, the individual IPR infringer may be subject to the following additional sanctions:

- Monetary fine (the maximum is of VND 200 million; equivalent to USD 10,000); and
- Prohibition from holding an official position or conducting a business within a certain period of one to five years.

One of the following criminal penalties may be imposed on an organization that infringes IPR:

- Monetary fine (the maximum is of VND 5 billion; equivalent to USD 250,000); and
- Suspension of operation for a period of six months to two years.

An organization may also be subject to the following additional sanctions:

- Monetary fine (the maximum is of VND 500 million; equivalent to USD 25,000); and
- Prohibition from operating in a number of specific businesses or capital mobilization within a certain period of one to three years.

7.4.5 Unfair Competition Prevention

Aside from initiating procedures with Vietnam's enforcement authorities, individuals and organizations whose legitimate IPRs have been violated may file claims with the National Competition Commission ("**NCC**") in the case of unfair competition. Limitation period for filing claims shall be three years since the acts that signs of violation of competition law (the "**Limitation Period**"). Unfair competition cases shall go through the following main steps:

- **Investigation:**

The Head of the Competition Investigation Agency (under the NCC) will issue a decision on official investigation when the claim has been duly received by the NCC or when the NCC detects that signs of competition law violation exist in the Limitation Period. The new 2018 Law on Competition extends the review timelines. Under the new regime, the preliminary review would be completed within 30 days from notification. If a more detailed official appraisal is required, the NCC is given a further 90 days to conduct the review. This can be further extended by 60 days in complex cases. The purpose of the investigation is to determine the factual unfair competition case:

- During the process of investigation, the alleged person/organization is given an opportunity, within a certain period of time, to present his/her view and to submit evidence in support thereof; and
- All the facts found from the investigation will be recorded by the investigator in an Investigation Report. The Report must be read to the alleged infringer and signed by them as an acknowledgement. The report, together with the investigation documents and the investigator's recommendation of the application of law to the case, are transferred to Chairman of the NCC.

- **Decision on unfair competition case:** The Chairman of the NCC shall issue a decision on the settlement of unfair competition. The decision becomes effective from the expiry date of time limit for appeal against the decision on unfair competition (i.e. within 30 days from the receipt date of the decision);
- **Appeal against the decision on unfair competition:** In case of disagreement with the decision of the Chairman of the NCC on unfair competition, parties may file an appeal against the decision to the Chairman of the NCC within 30 days from the date of receipt of such decision. Within 10 days from the appeal, the Chairman will issue a decision to revoke, modify, or uphold the issued decision; and
- **Filing a suit to quash a decision:** In case of disagreement with the decision of the Chairman of the NCC on settlement of the appeal against the decision on unfair competition, parties may file a suit at the competent court under the administrative proceedings within 30 days from the receipt date of the decision on handling the appeal of the NCC.

Remedies: The following remedies may be imposed on an infringer of the new 2018 Law on Competition:

- Warning; and
- Monetary fine (the maximum is VND 2 billion; equivalent to USD 100,000).

Depending on the seriousness of the offence, the following additional sanctions may be imposed on an IPR infringer:

- Withdrawal of business license, certificate or professional practicing certificate;
- Confiscation of the facilities used to commit the offence; and
- Confiscation of the profit earned from the violations.

Administrative preventive measures: During the investigation stage as mentioned above, the Chairman of the NCC may impose the following administrative preventive measures either on his/her own initiative, on the recommendation of the investigator, or at the request of the complainant:

- Temporary detention of the goods, means and implementations used for infringement, business license and certificates, or professional practicing certificate;
- Individual searches;
- Site searches; and
- Other administrative preventive measures.

Chapter 8

Construction and Foreign Contractors



Construction activities in Vietnam are governed by the Law on Construction of 2014 (the “**Law on Construction**”) and its regulations.

The activities of foreign contractors participating in bidding procedures are primarily governed by the Law on Tendering of 2013 (the “**Law on Tendering**”) and its regulations, notably Decree No. 63 of the Government of 2014, providing guidelines on the implementation of the Law on Tendering and on the selection of construction contractors (“**Decree 63**”).

8.1 Foreign Construction Contractors

The management of foreign contractors in the sector of construction in Vietnam is governed by Decree No. 59 of the Government of 2015, governing construction project management (“**Decree 59**”).

In order to operate in Vietnam, foreign construction contractors must apply for and obtain a construction operation permit from either the Ministry of Construction or the provincial Department of Construction (contractor permit issuing body), depending upon the value of the tender package.

The latest procedures for issuing foreign construction contractor permits and the management of foreign contractors operating in Vietnam are established by Circular No. 14 of the Ministry of Construction of 2016, guiding the issuance of construction licenses and the management of foreign construction contractors in Vietnam (“**Circular 14**”).

8.1.1 Conditions for Issuance of a Construction Operation Permit

A foreign construction contractor is eligible to apply for a construction operation permit, if the foreign construction contractor has won a tender or have been selected for construction of a construction project in Vietnam. Moreover, the foreign construction contractor must be able to produce a contract appointing the contract work to the foreign construction contractor. Where there is no requirement for mandatory application of Vietnamese tendering, a foreign construction contractor must prove that it is capable of completing the contract work.

In addition to the above, a foreign construction contractor must have a partnership with a Vietnamese contractor or must engage a Vietnamese subcontractor. Decree 59 does not stipulate whether a foreign contractor or its local partner must hold any minimum share in the partnership. Decree 59 also does not provide for any conditions on the minimum amount of the subcontracted works. However, in cases where a Vietnamese contractor is incapable of participating in any part of the contracted work, the foreign contractor may be exempted from this requirement.

8.1.2 Application Dossier

Foreign construction contractors must submit an application dossier to the construction operation permit issuing body. The dossier must include the following documents in the Vietnamese language:

- An application is prepared in Vietnamese (as per the form issued by the Ministry of Construction);
- A certified copy of the report on tender results, a decision on selection of the contractor, or a legal contract assigning the contract work to the contractor;
- A certified copy of the license for establishment and charter of the contractor (business registration certificate in the case of an organization, or license to operate as a consultant in the case of an individual), and practicing certificate issued in the country of nationality of the contractor;
- A report on the operational experience relevant to the contract work assigned (as per the form issued by the Ministry of Construction), and audited financial statements of the contractor for the last three years (where Vietnamese tendering is not required to be applied);
- The contract of partnership with a Vietnamese contractor, or undertaking to engage a Vietnamese subcontractor to perform the contract work assigned; and

- Legal power of attorney to any person who is not the legal representative of the contractor (as per the form issued by the Ministry of Construction).
- A certified copy of the decision on project investment, the IRC, or the in-principal approval of the investment project.

Subject to the nature and scale of the relevant project, a construction operation permit will be issued by the Ministry of Construction or relevant city-/provincial-level Department of Construction (the “**Contractor Permit Issuing Bodies**”).

After obtaining the construction operation permit, foreign construction contractors must open an operating office where the project is located. In addition, foreign construction contractors must register addresses, contact numbers, the seal specimens, transaction bank accounts and the tax code opened by their operating offices along with details regarding the equipment they will import for project construction. If the contract of construction, supervision of construction works is implemented in more than one province, the foreign contractor may establish its operating office in a location where a part of contracted work is performed. Foreign contractors are responsible for reporting the above information to the Department of Construction where the operating office is established, the office of Ministry of Construction and relating competent authorities (i.e., Ministry of Construction, Ministry of Police, MOF, SBV, and the provincial People’s Committee of the province or city where the construction work is located).

Upon completion of work, foreign construction contractors are required to notify the Contractor Permit Issuing Body of the completion of the contract, and the termination of operations.

8.2 Construction Contracts

Construction agreements are governed by the Civil Code, the Law on Construction, and the Law on Tendering. Construction contracts for the following types of projects must contain certain mandatory provisions:

- a. Investment projects for construction of State agencies, political organizations, socio- political organizations, political-social-occupational organizations, socio-occupational organizations, social organizations and units under the people's armed forces and public service providers;
- b. Investment projects for construction of State-owned enterprises; and
- c. Investment projects for construction not covered in clauses a) and b) above using 30% or more of State capital or of State-owned enterprises or less than 30% but more than VND 500 billion (approximately USD 22.5 million) out of the total investment of the project.

Construction agreements for projects which involve 30% or more of State-owned investment capital are governed by their own specific set of regulations.

8.2.1 Construction Permit

Matters relating to construction permits in Vietnam are governed by the Law on Construction and Decree 59. Except for the construction of some special works, investors must obtain a construction permit before starting construction. The time limit for starting the construction work is 12 months from the date of issue of a construction permit.

In Vietnam, there are, generally, three types of construction permits:

- New construction;
- Repair and renovation; and
- Relocation of construction.

In order to be granted a construction permit, investors must satisfy both general conditions and specific conditions, which are subject to the nature and type of construction work, as provided under Decree 59. It could take up to 30 working days from the receipt of a valid application dossier for investors to receive the Construction Permit.

8.2.2 Acceptance and Completion of Construction Work

Upon completion of a construction project, and before commencing operations, construction firms and investors must conduct the procedures for acceptance and completion of the construction work, in accordance with the regulations of the Law on Construction.

Construction firms are responsible for preparing documentation for the acceptance of the construction project, including, but not limited to, a drawing of the completed construction project comprising technical information and other items required by the law.

Investors are responsible for organizing and arranging the acceptance of completed work. Acceptance record of completed work shall only be valid upon being confirmed and signed off by investor(s), design consultancy contractor(s), construction contractor(s) (including all consortium members if there are any consortium contractors), and construction supervisor contractor (if any).

Subject to the nature and type of construction work, investors must submit to the provincial department of construction or the People's Committee at the district level where the construction work is located, an application dossier for the completion of construction work. Upon receipt of a valid dossier, the competent authorities shall issue a certificate of completion of construction work within 10 to 20 working days of the receipt of a valid application, depending on the type of construction.

The acceptance and completion of construction work are also mandatory procedures for obtaining the ownership certificate over the construction work.

8.3 Licensing Requirements for Construction Practicing Certificate

Under Vietnamese law, in order to engage in certain construction activities in Vietnam, an individual must obtain a construction practicing certificate ("**Construction Practicing Certificate**") and an organization must obtain a construction capacity certificate ("**Construction Capacity Certificate**") to carry out construction activity in Vietnam. A foreign organization acting as a foreign contractor is not required to obtain a Construction Capacity Certificate.

A Construction Practicing Certificate is issued to both Vietnamese and foreign individuals who independently practice construction activities in Vietnam, specifically the persons in charge of labor safety, directors managing projects, individuals directly participating in project management, persons in charge of design of a construction master plan, persons in charge of construction surveys, persons in charge of design or verification of design for construction, heads of construction sites, supervisors of execution of building works, construction inspectors, and construction valuers. Construction Practicing Certificates are classified into class I, class II and class III based on education and level of experience of the practitioner.

Construction practicing certificates issued to foreigners in their countries of origin are recognized in Vietnam to allow those foreigners to practice for less than six months in Vietnam *provided that* the construction practicing certificate issued by foreign agencies or organizations are legalized in Vietnam and translated into Vietnamese according to the law. If the foreigner practices for more than six months in Vietnam, he/she is required to obtain a Vietnamese-issued Construction Practicing Certificate from a competent supervisory authority, such as the Ministry of Construction, relevant provincial Department of Construction, or competent socio-professional organizations. The application dossier for obtaining a Construction Practicing Certificate must include:

- A written request;
- Copy of professional training certificate;
- Documents evidencing construction assignments or completion of previous construction assignments;
- Copy of residence-related papers or work permit issued by a Vietnamese competent authority.

The Construction Practicing Certificate of a foreign individual is valid for a certain period as determined from the work permit issued by the authority but shall not exceed five years. The Construction Capacity Certificate of a foreign organization is valid for up to ten years. Upon expiration, procedures for its re-issuance must be carried out.

There are several types of Construction Practicing Certificates, specifically:

- Practice certificate for construction survey;
- Practice certificate for construction plan;
- Practice certificate for construction design; practice certificate for assessment of construction design;
- Practice certificate for construction supervision;
- Practice certificate for construction inspection;
- Practice certificate for safety labor in construction;
- Practice certificate for valuation of construction.

Chapter 9

Banking, Foreign Exchange and Finance



9.1 Banking Sector

The banking sector in Vietnam is primarily governed by the Law on Credit Institutions of 2010 as amended in 2017 (the “**Law on Credit Institutions**”).

The SBV is a ministerial-level agency of the Government, the central bank of the Socialist Republic of Vietnam and the regulatory authority that directly supervises and regulates this sector. The SBV determines and implements monetary policy and supervises credit and banking activities throughout the country. The SBV is the only state agency empowered to issue Vietnamese currency. The SBV aims to stabilize monetary value in order to secure banking activities.²

9.1.1 Credit Institutions³

The credit institution system in Vietnam includes banking and non- banking credit institutions. Organizational forms of credit institutions in Vietnam include:

- State-owned credit institutions in the form of a single-member limited liability company;
- Domestic commercial banks in the form of a joint-stock company;
- Domestic non-banking credit institutions in the form of a joint-stock or limited liability company;
- Joint venture credit institutions jointly set up by foreign and Vietnamese credit institutions in the form of a limited liability company;
- 100 percent foreign-owned credit institutions in the form of a limited liability company;
- Branches of foreign banks; and
- Representative offices of foreign banks.

9.1.2 Establishment of Foreign-Owned Credit Institutions in Vietnam

Foreign banks are permitted to operate in Vietnam in the following forms:

Branch of a Foreign Bank

This is a dependent unit of a foreign bank, which does not have status as a legal entity pursuant to the laws of Vietnam, and which is guaranteed by a foreign bank for all obligations and undertakings of the branch in Vietnam. The required minimum legal capital of a branch of a foreign bank is VND 300 billion (approximately USD 15 million).

Joint Venture Bank

This is a commercial bank established in Vietnam via capital contributed by a Vietnamese party (comprising one or more Vietnamese banks) and a foreign party (comprising one or more foreign banks), on the basis of a joint venture contract. A joint venture bank is a Vietnamese legal entity and takes the form of a multiple-member limited liability company with a maximum of five members, of which one member and any related person must not own more than 50 percent of the charter capital. The required minimum legal capital of a joint venture bank is VND 3,000 billion (approximately USD 150 million).

Bank with 100% Foreign-Owned Capital

This is a commercial bank established in Vietnam with 100% of its charter capital being foreign owned, and with over 50% of such charter capital being owned by a foreign bank (the parent bank). A bank with 100% foreign-owned capital must be established in the form of a limited liability company, be a Vietnamese legal entity, and have its head office in Vietnam. The required minimum legal capital for this type of entity is VND 3,000 billion (approximately USD 150 million).

² Article 1 of Decree No. 16/2017/ND-CP guiding the functions, tasks, powers and organizational structure of the SBV

³ Article 6 of Law on Credit Institutions No. 47/2010/QH12

Representative Office of a Foreign Bank

This is a dependent unit of a foreign credit institution or other foreign organization with banking operations, established in Vietnam and operating under an RO license. An RO of a foreign bank has a special status without a separate legal entity status and is limited in its activities to market surveys and similar activities. An RO of a foreign bank is not permitted to conduct business activities in Vietnam.

9.1.3 Permitted Ratio of Foreign Ownership in a Domestic Credit Institution

Under the Law on Credit Institutions, the government has the power to regulate the conditions, procedures, the total aggregate level of share ownership by foreign investors, the maximum ratio of share ownership by a single foreign investor in any one Vietnamese credit institution, as well as any assignment or issuance of shares to a foreign investor.

The permitted ratio of foreign ownership in a domestic institution is subject to the following conditions:

- The total foreign ownership level of a Vietnamese commercial bank's charter capital must not exceed 30%;
- The limit for a single foreign “strategic” investor is 20% of the charter capital;
- The limit for a foreign investor and the related persons of such foreign investor is 20% of the charter capital;
- The limit for a single foreign organization is 15% of the charter capital; and
- The limit for a foreign individual is 5% of the charter capital.

The shareholding ratios prescribed above include any capital portion which a foreign investor entrusts to another organization or individual to purchase shareholding for it

The limits may be extended with the Prime Minister’s approval to perform restructure of credit institution which is weak and faces to difficulties or to ensure credit safety of credit institution system.

9.2 Exchange Control

The Vietnamese legal currency (i.e., the dong, or VND) is still not a convertible currency. Transactions in foreign currency are regulated by the SBV.

The main legal document governing foreign exchange control is the SBV Ordinance No. 28 of 2005 as amended in 2013 on Foreign Exchange Control (the “**Ordinance 28**”). In general, Ordinance 28 enshrines the principle of freedom of transactions between residents and non-residents in Vietnam.

All transactions related to payments and remittance of money connected to exports, imports, short-term loans from banks, net income from direct and indirect (portfolio) investment, interest and repayments on foreign loans, and import or export of goods or services, may be conducted freely.

9.3 Conversion

Remittance abroad of direct invested capital and profits is freely permitted. All profits in VND resulting from a direct investment activity are permitted to be converted into foreign currency.

Foreign indirect (portfolio) investment capital in Vietnam must be executed in VND. Profits earned from such activities are permitted to be converted into foreign currency.

The ability to convert VND into foreign currency is subject to the foreign currency being available from banks licensed to operate in Vietnam.

9.4 Accounts

Direct Investment Capital Account

Circular 06 defines specifically the following entities with direct investment who shall open DICA during foreign investment in Vietnam, particularly:

- (i) the enterprises being established in the investment form for organizations, in which foreign investors are members or shareholders, must carry out the procedures to obtain investment registration certificates in accordance with legal regulations on investment;
- (ii) enterprises with 51% or more of the charter capital owned by foreign investors due to the restructuring of the organizations or M&A;
- (iii) PPP project enterprises established by a foreign investor; and
- (iv) Foreign investor in BCC or PPP project without sets up an entity in Vietnam.

Only FIEs classified above are required to open a direct investment capital account (“**DICA**”) with a bank licensed in Vietnam to implement transactions relating to foreign direct investment. Under the Ordinance 28, direct investment refers to the contribution of capital for the establishment of or participation in the management of an enterprise in Vietnam by a foreign investor.

The FIEs may open a DICA in VND and a DICA in foreign currency provided that they are maintained with the same bank. In addition, for the purpose of obtaining offshore loans, an FIE may open a foreign loan account in different currencies for the purpose of disbursement and withdrawal of such foreign loan (please find details in the Section “**Foreign Loan Account**” below). The DICA is for the purpose of implementing receipt and expenditure transactions relating to direct investment activities in accordance with Vietnamese law. For example, the foreign currency DICA may be used to receive direct invested capital in foreign currency from foreign and Vietnamese investors contributed into FIEs and to pay principals, interests and charges for FIEs’ loans in foreign currency. The VND DICA may be used to receive direct invested capital in VND from foreign and Vietnamese investors contributed into FIEs and to distribute VND profits to foreign and Vietnamese investors of FIEs.

Indirect Investment Capital Account

Other than foreign investors investing into FIEs classified above, foreign investors are required to open an indirect investment capital account (“**IICA**”) in VND in a bank licensed in Vietnam for carrying out transactions relating to indirect investment in Vietnam. A foreign investor must maintain one single IICA for all indirect investment activities as follows:

- Capital contribution to, and purchase and sale of shareholding and capital contribution portions in Vietnamese enterprises which are unlisted on the Vietnamese securities market and not classified as one of the type of FIEs mentioned in Section “**Direct Investment Capital Account**” above.
- Capital contribution to, and purchase and sale of shareholding in Vietnamese enterprises which have been listed on the Vietnamese securities market or registered for transactions on stock exchanges of Vietnam.
- Purchase and sale of bonds and other types of securities on the Vietnamese securities market.
- Purchase and sale of other valuable papers denominated in VND issued by a resident being an organization licensed to issue such valuable papers within the territory of Vietnam.
- Entrustment of investment in VND via a fund management company, securities company or other institution licensed to conduct the professional activity of investment entrustment by the law on securities; or entrustment of investment in VND via a credit institution or foreign bank branch licensed to conduct the professional activity of investment entrustment by State Bank regulations.
- Capital contribution or transfer of capital contribution portion by a foreign investor via a securities investment fund or fund management company in accordance with the law on securities.
- Other forms of indirect investment stipulated by law.

A foreign investor must open an IICA at an authorized bank in order to conduct revenue and disbursement transactions. If a foreign investor has opened and is using an IICA at an authorized bank but wishes to open a similar account at another authorized bank, the investor must first close the original account and transfer all of the balance from the original account to

the new account. The foreign investor is only permitted to conduct revenue transactions for receipt of payments and disbursement transactions via the new IICA as prescribed above, after the foreign investor has already closed and finalized the original IICA.

In addition, funds in the IICA cannot be transferred to term deposits or saving deposits in Vietnam.

Foreign Loan Account

Foreign loan and foreign loan repayment account (“**Foreign Loan Account**”) is the payment account a borrower in Vietnam opened at a commercial bank in order to drawdown capital, repay loans and remit money to foreign lenders.

With respect to an enterprise with foreign direct investment capital:

- In the case of the currency of foreign loans is same with the one of existing DICA, a borrower being an enterprise with foreign direct investment capital shall use the DICA which is concurrently the foreign loan account for other payments into and payments out of as relevant to its FDI activities in Vietnam in accordance with current regulations on forex control and FDI activities in Vietnam.
- In case of the currency of foreign loans is different from the one of existing DICA, the borrower is allowed to open a banking account as a Foreign Loan Account for purpose of borrowing and repayment of such loans

A borrower which is not an enterprise with foreign direct investment capital must open a foreign loan account at a commercial bank in Vietnam in order to conduct remittances (drawdown capital, repayment of loan principal and interest) relevant to the foreign loan. A single foreign loan account can be used for several foreign loans.

Offshore Accounts of Vietnamese Residents

The opening and use of offshore accounts of residents of Vietnam is strictly controlled by and must be approved by the SBV.

9.5 Remittance of Capital and Profits

Foreign investors in Vietnam are not able to remit their paid-in capital out of Vietnam prior to the termination of their investment project in Vietnam. Upon termination or dissolution of a company, foreign investors are entitled to repatriate their share of the charter capital of the FIEs. Foreign investors are required to submit certain supporting documents to the remitting bank in order to verify any such remittance.

Foreign investors are entitled to annually repatriate their profits earned in Vietnam at the end of the financial year, and after the FIE has discharged all of its financial obligations to the state. Upon remittance, foreign investors are required to submit certain supporting documents to the remitting bank for verification purposes.

9.6 Local Transactions in Foreign Currencies

As a matter of principle, every transaction in Vietnam must be carried out in VND. Only certain companies are authorized to receive payments in foreign currency (e.g. duty-free shops for foreign customers in airports or sea ports, registered exchange offices, and other enterprises that the SBV has duly authorized). Residents and non-residents are permitted to open a foreign currency bank account in an authorized credit institution in accordance with the SBV’s regulations.

9.7 Offshore Loans

Residents are entitled to contract short, medium, and long-term loans from foreign lenders and are responsible for repaying these loans. Loans are subject to supervision and monitoring by the SBV.

The IRC of an FIE sets the entity’s investment capital and charter capital. The difference between the investment capital and the charter capital is the maximum permitted loan capital of the FIE. All medium or long-term loans obtained by an FIE from onshore and offshore lenders (including loans from shareholders) must not exceed the amount of the loan capital. Interest paid to offshore lenders under the relevant loans is subject to a five percent withholding tax.

Registration of Offshore Loans

Medium and long-term foreign loans (over one year) must be registered with, and certified by, the SBV within 30 days of signing of the loan contract and prior to the first disbursement. A short-term foreign loan must also be registered with and certified by the SBV, (i) if such loan is extended and the total loan term, including both original term and extended term, is over one year or, (ii) if such loan is not extended but which is not repaid in full within one year and ten days after the first drawdown. Repayment of interest and principal to the offshore lender is not possible if the loan is not registered with the SBV.

For registration of the offshore loan with the SBV, the borrower is required to submit a standard application form to the SBV, and the loan agreement and any related security, must be translated into Vietnamese. Any amendment to the details of the SBV registration certificate (including loan assignment/novation) must also be registered with the SBV within 30 days from the date of the amendment agreement. However, the borrower is not required to register the amendment of the SBV registration certificate in cases where there is a change of the drawdown schedule, repayment schedule or fee payment schedule that is no more than ten days different from the original schedules recorded in the registration certificate. The borrower is only required to inform notify the account service provider where it opened its account to implement the capital drawdown or loan repayment in accordance with the changed plan.

9.8 Bank Guarantees

Bank guarantees are regulated by Circular No. 07 of the SBV of 2015 (“**Circular 07**”). Bank guarantees are considered to be a form of credit provided by credit institutions that must meet certain requirements.

9.8.1 Scope of Guarantee

The guarantor can give a partial or full guarantee to fulfill the financial obligation to the obligee in favor of the obligor.

9.8.2 Conditions of Clients Being Non-Residents

Credit institutions may only provide bank guarantees to non-resident entities. A bank guarantee to non-resident entities must meet the following conditions:

- The guaranteed party is an enterprise established and operating in a foreign country with charter capital contributed by Vietnamese enterprises in the form of outbound direct investment in accordance with the Law on Investment;
- The guaranteed party has deposited 100% of the guarantee value to the guarantor; and
- The beneficiary must be a Vietnamese resident.

Foreign bank branches must not provide bank guarantee in foreign currencies to non-resident clients, except for the following cases:

- Guarantees are provided to the obligor in Vietnam on the basis of counter guarantees issued by foreign credit institutions; and
- Providing guarantee confirmation to secure the foreign guarantor’s obligation to the guaranteed party in Vietnam.

9.8.3 Guarantees for Sale and Hire-Purchase of Future Houses

Commercial banks providing bank guarantees to the developer of a real estate project must comply with the following requirements:

- Future houses must meet sufficient conditions in accordance with the Law on Real Estate Business for sale or hire-purchase;
- In the contract for sale, purchase or hire-purchase of houses signed between the developer and purchaser/hire-purchaser, it is agreed that the developer would indemnify the purchaser/hire-purchaser if the developer fails to hand over houses in accordance with the agreed timeline;

- Commercial banks must assess the developer's capability of completing the project on the agreed-upon schedule;
- Commercial banks are permitted by the SBV to carry out bank guarantee services in the license for establishment and operation, or the document stating any amendment or modification to this license;
- The bank guarantee must remain valid at least 30 days after the date the houses are handed over to the purchaser or the hire-purchaser.

9.8.4 Language, Governing Law and Jurisdiction

All guarantees must be executed in Vietnamese. Additional languages can be agreed by the parties but the Vietnamese version will be the only legally valid version.

To the extent that there is a foreign element to the guarantee, the parties may elect for a foreign law to govern the contract and dispute resolution to be offshore.

9.9 Intermediary Payment Services

Intermediary payment services are regulated by Circular No. 39 of the SBV of 2014 as amended by Circular No. 20 of the SBV dated 30 June 2016 and Circular No. 30 of the SBV dated 14 October 2016 (“**Circular 39**”). Intermediary payment services include the following services:

- Service of provision of electronic payment infrastructure, namely:
 - Financial switch service;
 - Electronic clearing service; and
 - Electronic payment gateway service.
- Support service for payment services includes:
 - Cash collection and cash payment services;
 - Support service for wire transfer; and
 - Digital wallet service.

Any entities providing intermediary payment services must be licensed by the SBV. In addition, during the operation, providers of intermediary payment services must comply with certain requirements on risk management, safety guarantees, security, and solvency guarantees.

Chapter 10

Taxation



Each legal entity in Vietnam is responsible for filing its own tax returns and settling the tax liabilities based on the applicable tax regulations. There is no tax consolidation in Vietnam.

In practice, “grey areas” often exist and to obtain certainty on the tax treatment, taxpayers may apply for private tax rulings from the local tax authorities or from the General Department of Taxation on a specific tax treatment.

Vietnam applies a self-assessment regime under which taxpayers are responsible for determining and declaring their tax liabilities based on Vietnamese tax laws and regulations. Corporate taxpayers are may be subject to periodic tax audits by the tax authorities.

The following are the major taxes that are generally applicable to foreign invested companies and foreign contractors in Vietnam:

10.1 Corporate Income Tax (“CIT”)

Tax Rate

Corporate Income Tax (“CIT”) is levied on income generated by companies incorporated under Vietnamese laws or incorporated under foreign laws and carrying out business in Vietnam or have income that is sourced from Vietnam, including Foreign Invested Enterprises (“FIEs”), foreign contractors and foreign parties to Business Cooperation Contracts (“BCCs”).

The general statutory CIT rate is 20% based on the net profits of enterprises or parties to BCCs. The rates of CIT applicable to the activities of prospecting, exploration and mining of petroleum, gas, and other rare and precious natural resources are 32% to 50%, depending on the specific project. The income tax rates for foreign contractors are outlined in the “Foreign Contractor Tax” Section.

Enterprises that meet certain conditions may be entitled to lower (i.e. preferential) CIT rates. Please refer to our discussion on Tax Incentives.

Assessable Income and Taxable Income

The assessable income of an enterprise is the difference between taxable income and tax-exempt income and allowable loss carry-forward:

$$\text{Assessable income} = \text{Taxable income} - (\text{exempt income} + \text{loss carry-forward})$$

The taxable income of an enterprise in a tax year is determined as follows:

$$\text{Taxable income} = (\text{Revenue} - \text{Deductible expenses}) + \text{other income}.$$

Revenue consists of income derived from sales, provision of services, and any subsidies, charges, and surpluses earned by an enterprise. Revenue is generally recognized on an accruals basis. Taxable income for the CIT declaration is the net revenue excluding the VAT charged to customers (by taxpayers adopting VAT deduction method).

Deductible Expenses

Generally, an expense is deductible for CIT purposes if it satisfies the following conditions:

- The expense was actually incurred;
- It is related to the business activities of the taxpayer;
- It is evidenced by valid tax invoices, supporting documents and payment vouchers; and

- For the purchase of goods or services of VND 20 million or more, the payment is made via the banking system (i.e. a non-cash payment method).

The CIT regulations contain a list of non-deductible expenses. Certain expenses, including specific employment related benefits are non-deductible. Generally, if an item of expense is not specifically included in the list of non-deductible expenses, or those expenses with limited deductibility, the expense should be deductible for CIT purposes, provided that the expense meets the above conditions. In practice, the onus to prove the deductibility rests with the taxpayer.

Tax Losses

Tax losses may be carried forward to the following year and offset against the profits of subsequent years for a maximum period of five years. The carrying back of tax losses is not allowed.

In a tax year, losses from the transfer of real estate or transfer of an investment project can be offset against profits derived from operating activities. Operating losses cannot, however, be offset against profits from the transfer of real estate, except in a limited number of cases, such as a liquidation.

Capital Gains

In Vietnam there is no separate capital gains tax regime. Capital gains are taxed within income tax.

The transfer of securities (including: bonds, and shares issued by public joint stock companies) by a non-resident corporate shareholder are subject to a deemed withholding tax of 0.1% on the sales proceeds.

The transfer of capital or shares in other cases by a non-resident corporate shareholder are considered as “capital transfers” and subject to a 20% capital gains tax.

Generally, capital gains are computed as follows:

$$\text{Capital gain} = \text{Transfer price} - \text{Cost of purchase} - \text{Transfer expenses}$$

A “Transfer price” is defined as the proceeds received by the transferor pursuant to a relevant contract. Where the contract does not specify the transfer price; or where the tax authorities have a basis to conclude that the transaction was not set at market rates, the tax authorities may deem a different transfer price for taxation purposes.

The “Cost of purchase” is calculated based on the accounting books and documents relating to the total capital contribution at the time of the transfer. If the assigned capital was previously repurchased by the transferor, the acquisition cost is the contractual purchase price that the transferor paid for the capital.

“Transfer expenses” include legal expenses and other expenses incidental to the transfer which must be accompanied by supporting documents acceptable to the tax office.

Where a Double Tax Agreement (“DTA”) is applicable, an exemption from the tax on capital gains may apply if certain conditions are met.

Capital gains from an indirect sale or transfer of shares in a Vietnamese company may be taxable in Vietnam.

There is a currently a new draft law which is proposing a flat tax rate of 2% on sale proceeds from transfers of capital or securities which are non-listed or not yet registered on the Stock Exchange by non-tax residents of Vietnam. The draft version of the law is proposing to retain the 0.1% tax rate for transfers of shares that are listed or registered on the Stock Exchange in Vietnam. It is not yet clear if or when this law will be finalized and enacted and if there are any further changes to the draft.

Tax Incentives

CIT incentives may be granted to a new project that:

- Is engaging in promoted sectors; or
- Has a large scale of business; or
- Is located in areas that are promoted for investment, including special economic zones and remote areas deemed to be underdeveloped or facing particularly difficult economic conditions.

In general, CIT incentives can include:

- A preferential tax rate of 10%, 15% or 17%;
- Tax exemptions;
- Tax reduction.

Preferential tax rates will normally apply for a certain number of years from the date of operation (i.e. 10% for the first 15 years). In exceptional cases, certain projects may be entitled to preferential tax rates for the entire life of the project. After expiry of the term during which preferential rates are enjoyed, a standard rate of 20% will apply for the remaining life of the project.

Tax exemptions may be available for qualified projects/enterprises for a period of two to four years, starting from the first profitable year. However the tax exemption period will be deemed to automatically start from the fourth year if the enterprises has been making a a loss for the first three years of operation.

A 50% reduction of the tax payable can be provided for four to nine years, following the tax exempted period.

The CIT incentives and the conditions required for obtaining the incentives are summarized in the table below. Please note that special administrative and economic areas/units may be entitled to additional tax incentives than listed below:

| Conditions | Preferential tax rate | Tax exemption | 50% reduction of CIT payable |
|---|---|--|---|
| <ul style="list-style-type: none"> ▪ Income from new investment projects that are situated in areas that are deemed to face extreme difficulties in socio-economic conditions and those located in economic zones and high-technology zones; ▪ Income from new investment projects engaged in the following sectors: <ul style="list-style-type: none"> - Scientific research and technological development; - High technology that is included in the list of technology as prioritized for development according to the Law on High Technology; - Creation of high technology or high-tech enterprises; ventures in the development of high technology included in the list of high-technology prioritized for development according to the Law on High Technology; | <p>10% for 15 years from the year operating income is earned. Preferential tax rate may be extended to a maximum period of 30 years for certain projects described in this section if required conditions are met</p> | <p>Four years from the first profitable year</p> | <p>Nine subsequent years following the tax exemption period</p> |

| Conditions | Preferential tax rate | Tax exemption | 50% reduction of CIT payable |
|---|-----------------------|---------------|------------------------------|
| <ul style="list-style-type: none"> - Investments in and the development of water plants, power plants, water drainage and supply system, bridges, roadways, railways, airports, seaports, river ports, air terminals, railway stations and extremely significant infrastructural projects that will be decided by the Prime Minister; - The production of software products; production of composite materials, light building materials, rare and valuable materials, production of renewable energy, clean energy, energy from waste destruction and development of biotechnology. <ul style="list-style-type: none"> ▪ Income of enterprises from the implementation of new environmental protection projects, including: manufacturing devices for the reduction of environmental pollution and protecting the environment, environment observation and analysis; picking up and treatment of wastewater, exhaust, solid waste; recycling or reusing of waste. ▪ Income generated by high-tech enterprises and by agricultural enterprises applying high-technology; ▪ Income generated by enterprises from implementing new manufacturing investment projects (except projects engaged in manufacturing products subject to Special Sale Tax and mineral exploitation projects) that satisfy one of the following conditions: (i) the minimum investment capital of the project is VND 6 trillion which is disbursed within three years from the date of licensing and the annual revenues generated from the fourth year are at least VND 10 trillion; or (ii) the minimum investment capital of the project is at least VND 6 trillion which is disbursed within three years from the date of licensing and hiring more than 3,000 full time employees from the fourth year of revenue generation. ▪ Income from new manufacturing investment projects (except projects manufacturing products subject to a special sales tax and mineral exploitation projects) that satisfy the following conditions: (i) the minimum investment capital of the project is VND 12 trillion which is disbursed within five years from the date of licensing; and (ii) uses high-technology. | | | |

| Conditions | Preferential tax rate | Tax exemption | 50% reduction of CIT payable |
|--|--|---|--|
| <ul style="list-style-type: none"> ▪ Income of enterprises from implementing new investment projects that engage in the following sectors: <ul style="list-style-type: none"> – Manufacturing of high-technology industrial supporting products in accordance with the Law on High Technology; and – Manufacturing of industrial supporting products for production in the sectors of textiles, garment, footwear, electronic/information technology, automobile assembly, and mechanics provided that such products are not produced domestically by 1 January 2015, or if produced domestically, the products’ quality must meet the EU standards or equivalent standards. | | | |
| Income from new investment projects that are located in areas deemed to face extreme difficulties or adverse socio-economic conditions and is engaged in public sectors that call for private investment (i.e. education and training, vocational training, health care, culture, sport, environment) | 10% for the entire life of the project | Four years from the first profitable year | Nine subsequent years following the tax exemption period |
| Income of enterprises engaged in public sectors that call for private investment (“socialization sectors”) including: education and training, vocational training, health care, culture, sport, environment and judicial expertise. | 10% for the entire life of the project | Four years from the first profitable year | Five subsequent years following the tax exemption period |
| Income from publishing activities of the publisher in accordance with the Law on Publishing. | 10% for entire life of the project | NA | NA |
| Income from the printing of newspapers in accordance with the Law on Press | | | |
| Income from projects relating to housing/accommodation for sale/lease to low-income people | | | |
| Incomes of enterprises from the planting, cultivating, and protecting of forests; agriculture, forestry, and aquaculture in localities facing socio-economic difficulties; from the production, propagation, and cross-breeding of plants | | | |

| Conditions | Preferential tax rate | Tax exemption | 50% reduction of CIT payable |
|--|--|--|--|
| varieties and livestock; from the production, extraction, and refinement of salt; from post-harvest preservation of agricultural products, aquaculture products, and food Incomes of cooperatives engaged in agriculture, forestry, fisheries, and salt production. | | | |
| Income of enterprises engaged in cultivating, breeding animals, processing agricultural and aquaculture products | 15% | NA | NA |
| <ul style="list-style-type: none"> ▪ Income of enterprises from implementing new investment projects located in areas that are deemed to face difficult socio-economic conditions; ▪ Income of enterprises from the implementing of new investment projects engaged in the manufacturing of high-quality steel, power-saving products, machinery and equipment for utilization in agriculture, forestry, aquaculture, production of irrigation equipment; production and refinement of feed for livestock, poultry, and aquatic organisms; development of traditional crafts trades, (including establishment and development of traditional handicraft production, farm produce and food processing and production of cultural products); | 17% for ten years from the first year of operating income generation | two years from the first profitable year | four subsequent years following the tax exemption period |
| Income of credit funds and microfinance institutions. | 17% for the entire life of the project | NA | NA |
| Income from activities of prospecting and exploration of rare and precious natural resources (except petroleum) having 70% of the mine fields in localities deemed to face extreme difficulties. | 40% for the entire operations of the business | NA | NA |
| Income from new investment projects located in industrial parks, except for industrial parks in localities deemed to have advanced socio-economic conditions. | N/A | two years from the first profitable year | four subsequent years following the tax exemption period |

10.2 Transfer Pricing

Vietnam has implemented transfer pricing rules that are based on the OECD Transfer Pricing Guidelines. Where there are transactions between related parties, taxpayers will be required to assess from a Vietnamese transfer pricing perspective.

Transfer Pricing rules apply to both domestic and cross-border transactions. A related party relationship exists where:

- One party is involved directly or indirectly in the administration, control, capital contribution or investment in any form in the other party; or
- Both parties are directly or indirectly managed or controlled by a third party or both parties make capital contribution or invest in any form in a third party.

Corporate taxpayers are required to assess their transfer prices and determine if their inter-company transactions are at arm's length from a Vietnamese transfer pricing standpoint. The tax authority has the power to make adjustments with respect to non-arm's length related party transactions or where a taxpayer fails to comply with the transfer pricing compliance requirements.

Transfer Pricing Methods

Vietnamese Transfer Pricing regulations adopt the five OECD recommended transfer pricing methods used for determining an arm's length price. It does not mandate a hierarchy for use of the methods, but requires the use of the "most appropriate method" based on the conditions surrounding the transaction, and the most reliable data available. The five OECD recommended methods are:

- Comparable Uncontrolled Price ("CUP") method;
- Resale price method ("RPM");
- Cost plus ("CP") method;
- Comparable profit method ("CPM") (or the Transactional Net Margin Method ("TNMM") as it is called in the OECD TP Guidelines); and
- Profit split method ("PSM").

Transfer Pricing Compliance

The two main transfer pricing compliance requirements are:

- Annual disclosure on transactions with related parties; and
- Contemporaneous transfer pricing documentation, which includes (i) Local File, (ii) Master File; and (iii) where applicable, a copy of the Country by Country Report.

Interest Deductibility Cap

Vietnam has no thin capitalization rules with respect to the permitted amounts of debt to equity for tax purposes. Vietnamese transfer pricing rules, however, provide that the tax deductibility of interest on loans is capped at 20% of EBITDA (Earnings Before Interest, Tax, Depreciation and Amortization) and applies to both related and third party loans. As a result, interest will be non-deductible when EBITDA is in negative.

'Substance Over Form' Principle

Under the new Law on Tax Administration that is effective from 1 July 2020, the tax authorities can apply a 'substance over form' principle to determine the tax obligations with respect to entities and transactions in Vietnam and can review the economic' substance of transactions rather than just the legal form.

10.3 Value Added Tax

VAT is generally applicable to goods and services that are used for production, trading and consumption in Vietnam. VAT is also imposed on imported goods at the import stage. Certain goods, services and transactions are exempted from VAT or not subject to VAT.

VAT Rate

There are three VAT rates in Vietnam: 0%, 5% and 10%. The standard VAT rate of 10% is applicable to most goods and services. The rate of 0% mainly applies to the export of goods and services. The rate of 5% generally applies to a prescribed list of goods and services.

Method for VAT Calculation

There are two methods for calculating VAT:

- Tax deduction method (credit method); and
- Direct calculation method.

Tax Deduction Method

Under this method, the VAT payable is the difference between the output VAT charged to customers and the input VAT charged by suppliers of goods and services.

Chargeable output VAT is calculated by multiplying the selling price exclusive of VAT (taxable price) and the applicable VAT rate. For imported goods, VAT is calculated on the import dutiable price plus import duty, plus special sales tax (if applicable), plus environmental protection tax (if applicable).

In adopting this method, VAT payers can claim input VAT credit and VAT refunds in certain cases where the conditions in accordance with the VAT Law are met. The tax deduction method is commonly used by most enterprises in Vietnam.

Taxpayers that supply goods or services which are VAT exempt (or not subject to VAT) cannot claim input VAT credits.

The Direct Method

Under this method, VAT payable is calculated as follows:

1. In respect to activities of trading gold, silver and precious stones, VAT is calculated on the value added multiplied by VAT at 10% to arrive at the VAT liability for the period. Value added of gold, silver, and precious stones is determined by the selling price less the purchase cost.
2. For cases other than the above, VAT payable is calculated on a deemed percentage of sale revenues (deemed VAT rate on the sale revenues) which varies for particular activities as follows:

| Business activities | Deemed VAT rate (%) |
|---|---------------------|
| Goods supply/trading | 1 |
| Services or construction without covering construction materials | 5 |
| Production, transportation, services supplies associated with goods, and construction services which cover the supply of construction materials | 3 |
| Other business activities | 2 |

VAT direct filing method in this case is normally applicable to the following VAT taxpayers:

- Existing enterprises or cooperatives that have annual revenues less than VND 1 billion (approximately USD 42,000), except for those that voluntarily apply the credit-method;
- The newly established enterprise and cooperatives, except for those that voluntarily apply the credit method;
- Business households (sole proprietor) or business persons;
- Foreign entities doing business in Vietnam which have not established a legal entity in Vietnam and do not maintain adequate accounting books to enable VAT filing under the deduction method; and
- Economic organizations other than companies and cooperatives, except for those that voluntarily apply the credit method.

Unlike the deduction or credit method, taxpayers filing VAT under this Direct Method are not permitted to issue VAT invoices for their sales. VAT payers filing VAT under the direct method are also unable to claim relevant input VAT costs.

Input VAT Credit

Input VAT credits are available to taxpayers that register for VAT under the deduction method.

An input VAT credit is claimable if it satisfies the following conditions:

- The input VAT is relevant to the goods or services acquired to produce taxable goods or services;
- The purchase of goods or services is supported by valid VAT invoices; and
- Payments were made via bank transfer or by non-cash settlement method, where the total value of a purchase (including VAT) is at least VND 20 million.

Taxpayers are required to segregate VAT exempt purchases from VAT-able purchases which can be used as creditable input VAT. Where segregation is not possible, the creditable input VAT amount will be determined by way of computing the proportion of taxable and tax-exempt inputs.

The input VAT credit may be claimed within the month when such input VAT is incurred or any time prior to a tax audit notified by the tax authorities.

VAT Refunds

VAT refunds are available to corporate VAT payers that file VAT under the deduction method and maintain accounting system and accounting books properly as required under relevant regulations. A corporate VAT payer can claim a VAT refund in limited circumstances, including:

- A taxpayer has export sales and has accumulated input VAT of at least VND 300 million attributable to export transactions in a month or a quarter (depending on whether the taxpayer files VAT on a monthly or a quarterly basis).
- A newly established enterprise at the construction stage (i.e. the enterprise has not come into operation and has no output VAT) has input VAT for a period of one year or accumulated input VAT of at least VND 300 million incurred at the investment stage.
- An existing enterprise has a new project and has accumulated input VAT incurred on the new project exceeding VND 300 million and the new project has not come into operation yet.

Input VAT will not be refunded for a newly established enterprise/new investment project of an existing enterprise, if:

- The registered charter capital of the new investment project has not been fully contributed; or
- The projects are engaged in conditional sectors without satisfying the required conditions; and
- Natural resources exploration projects licensed from 1 July 2016 or manufacturers for which the cost of natural resources and energy accounted for at least 51% of their cost of goods sold.

10.4 Foreign Contractor Tax

Foreign Contractor Tax (“**FCT**”) is a mechanism to collect tax on Vietnam-sourced income of foreign entities that have no legal presence in Vietnam or non-resident individuals from the sale of goods or supply of services to Vietnamese parties on a contractual basis. FCT consists of an Income Tax component (i.e. CIT for companies and Personal Income Tax for individuals) and a VAT component.

The foreign entities or individuals subject to FCT are referred to as foreign contractors.

FCT Filing Methods

There are three methods of FCT filing including (i) the deduction method, (ii) the withholding method; and (iii) the hybrid method.

Deduction Method

Under the deduction method, the foreign contractor needs to register to fully adopt the Vietnamese Accounting System and Standards (“**VAS**”) for the filing of the VAT and CIT returns. From a tax compliance perspective, there is no difference between a foreign contractor applying VAS and a corporate tax resident of Vietnam.

The FCT under this method is assessed as:

- VAT payable equals output VAT less input VAT. The foreign contractor is able to claim input VAT credits; and
- CIT payable currently equals 20% of net profit (i.e. revenue less deductible expenditure).

Certain conditions are required for adoption of this method.

Withholding Method

Under the withholding method, foreign contractors are not required to directly pay FCT to the tax authorities as the Vietnamese customer will withhold and file FCT (VAT and CIT or PIT components) from payment(s) made to the foreign contractor at the deemed percentage of taxable turn-over.

The deemed VAT and income tax rates vary depending on the kind of the goods and the nature of services provided. Below are the deemed FTC-VAT and FCT-CIT rates applicable to corporate foreign contractors under current regulations:

| Business activities/ transactions | Effective VAT rate (%) | Deemed CIT rate (%) |
|--|------------------------|---------------------|
| Trading: distributing, providing goods, raw materials, machinery and equipment attached to services in Vietnam (including supply of on-spot export and import, | n/a ⁴ | 1 |

⁴ No FCT-VAT imposed in this case as the goods are already subject to import VAT.

| Business activities/ transactions | Effective VAT rate (%) | Deemed CIT rate (%) |
|--|------------------------|---------------------|
| except for processing goods for foreign organizations, individuals); supply of goods under Incoterms conditions in certain cases | | |
| Supplies of goods in association with services where the value of services and goods are not separated | 3 | 2 |
| Services, leasing equipment (including oil rigs), insurance | 5 | 5 |
| Restaurant, hotel, casino management services | 5 | 10 |
| Construction, installation (not including the value of construction materials or equipment) | 5 | 2 |
| Construction, installation (including the value of construction materials or equipment) | 3 | 2 |
| Transportation (including sea and air transportation) | 3 | 2 |
| Leasing aircraft, aircraft engines, and spare parts of aircraft and vessels. | Exempt | 2 |
| Transfer of securities and re-insurance | Exempt | 0.1 |
| Interest | Exempt | 5 |
| Financial derivatives | Exempt | 2 |
| Royalties | Exempt / 5% | 10 |
| Other business activities | 2 | 2 |

Hybrid Method

The hybrid method is a combination of the withholding method and the deduction method. Under this method, the foreign contractor can declare and pay VAT as per the deduction method. Whereas, the CIT payable will be the gross revenue multiplied by the applicable deemed rate which is similar to FCT-CIT computation under the withholding method.

The foreign contractor has to directly file the FCT with the tax authorities. The foreign contractor needs to register for a VAT code in order to issue VAT invoices and to file the tax.

Not Subject to FCT

FCT will not apply to the following transactions between a foreign supplier and a Vietnamese customer:

- (i) Pure trading of goods, with warranty terms or not, if all conditions below are met:
 - Goods are delivered at an offshore port or Vietnamese port; and
 - All obligations of the seller are cleared at either port destination; and
 - Seller bears no inland cost/responsibilities/risks in relation to the goods (for instance if the goods are delivered at the Vietnamese customers' premises or the foreign sellers responsible for inland transportation, FCT will apply).
- (ii) Services performed AND consumed outside of Vietnam.
- (iii) Services performed outside of Vietnam, including:
 - Repair of means of transportation, machinery and equipment;
 - Advertising and promotion;
 - Commercial promotion;
 - Sales brokerage; and
 - Training.

10.5 Dividends Withholding Tax

Currently there is no withholding tax on dividends distributed to non-tax resident shareholders that are corporates/organizations (as opposed to individuals). Individuals other than owners of a sole-member limited liability company or of a private enterprise owned by one individual are subject to 5% Personal Income Tax on their dividend income.

10.6 Personal Income Tax

Expatriate and Vietnamese individuals working in Vietnam or having Vietnam-sourced income are subject to Vietnamese Personal Income Tax ("PIT"). The taxation of individuals depends on their residency status.

Residence

- Residents can fall within the following categories:
 - Individuals who are physically present in Vietnam for at least 183 days within a calendar year or within the first 12 consecutive months from the date of arrival; or
 - Individuals who have a permanent residence in Vietnam (including having a registered residence recorded on the permanent or temporary residence card issued by the Vietnamese immigration authorities); or
 - Individuals who have leased a residence in Vietnam where the total number of leased days according to the lease contract is at least 183 days in a calendar year. Leased residences can include hotels, boarding houses, rest houses, lodgings and working offices, irrespective of whether the individual concerned leases the residence or the employer leases it on their behalf.

- Non-residents are individuals who do not meet the above conditions. An individual will also be treated as a non-resident of Vietnam if:
 - The individual physically stays in Vietnam for less than 183 days in a calendar year but has a permanent residence or leased residence of 183 days or more; and
 - The individual proves that he or she is a tax resident of another country.

Taxable Income

Taxable income captures various kinds/sources of employment and non-employment incomes.

Employment income comprises income in both monetary and non-monetary forms received by employees from employers and includes the following:

- Salary, wages, bonuses, and other items in the nature of salary and wages;
- Allowances and subsidies;
- Bonuses, commissions, and income from stock options or stock awards; and
- Other income items in cash or in kind.

Allowable Deductions

Residents are entitled to certain deductions from their assessable income before the calculation of PIT. The tax deductions include:

- Personal deduction (for the taxpayer himself/herself) of VND 9 million per month;
- Dependent deduction of VND 3.6 million per month for each qualified dependent;
- Donations to charitable organizations or funds which are licensed by authorities;
- Contributions to statutory compulsory social insurance, health insurance, unemployment insurance (for expatriates, these include social insurance premium that is compulsory under the laws of their home country); and
- Contribution to the Voluntary Pension scheme up to VND 1 million a month (i.e. the maximum allowable deduction amount is VND 12 million a year).

PIT Rates

For residents, the progressive tax rates applicable to worldwide employment income are as follows:

| Average monthly income in VND (after allowable deductions) | Tax rate (%) | Tax liabilities |
|--|--------------|--------------------------|
| Up to 5,000,000 | 5 | Income * 5% |
| Over 5,000,000 up to 10,000,000 | 10 | Income * 10% - 250,000 |
| Over 10,000,000 up to 18,000,000 | 15 | Income * 15% - 750,000 |
| Over 18,000,000 up to 32,000,000 | 20 | Income * 20% - 1,650,000 |
| Over 32,000,000 up to 52,000,000 | 25 | Income * 25% - 3,250,000 |
| Over 52,000,000 up to 80,000,000 | 30 | Income * 30% - 5,850,000 |
| Over 80,000,000 | 35 | Income * 35% - 9,850,000 |

For non-residents - A flat tax rate of 20% is applicable to Vietnam-sourced employment income. Vietnam-sourced business income is taxed at 1%, 2% or 5% depending on business activities.

Tax rates for resident’s income V.S non-resident’s income are as follows:

| Taxable income | Tax rates | |
|---|---|---|
| | Resident | Non-resident |
| Employment income | Progressive tax rates (5-35%) | 20% |
| Business income | Flat rate from 0.5% to 5% depending on particular business activities, if the annual business income is in excess of VND 100 million. | 1% for trading; 2% manufacturing, construction, transportation and other business activities; 5% for services |
| Income from capital investment | 5% | |
| Transfer of securities | 0.1% on gross sale proceeds | |
| Income from capital assignment | 20% on net gains | 0.1% on gross sale proceeds |
| Income from transfer of property | 2% on gross sale proceeds | |
| Income from royalty and franchising exceeding VND ten million per contract | 5% on excess amount | |
| Income from winnings or inheritance gifts (in certain form/type of assets) exceeding VND 10 million per receipt | 10% on excess amount | |

10.7 Special Sales Tax

The special sales tax (“SST”) is an indirect tax and similar to an excise tax (in other jurisdictions) that applies to the production, import (and trading of imported goods) of certain goods and the provision of certain services. SST applies to goods/services that are considered luxurious in comparison with the economic conditions of the country, or those which are discouraged for consumption in Vietnam. The following goods and services are subject to SST:

Goods

Cigarettes, cigars, spirits/wine, beers, automobiles of less than 24 seats, high-capacity motorcycles, airplanes, yachts, gasoline, air-conditioners up to 90,000 BTU, playing cards, and votive papers.

Services

Discotheques, massage parlors, karaoke clubs, casinos, jackpots, slots, betting entertainment, the golf course business, and the lottery business.

The SST rates vary from 5% to 150% depending on the category of goods and services. In addition, the above goods and services are also subject to VAT at 10%. If they are imported, applicable import duty rates will also be imposed at the import stage.

10.8 Export Duties

Vietnam encourages exports, so most exported goods are exempt from tax. Export duties are imposed on only a few items which consist mainly of natural resource products such as minerals, forestry products and scrap metal. Export duty rates range from 0% to 40%.

An export processing enterprise is entitled to exemption from export duty.

10.9 Import Duties

Import duty is generally assessed on an ad valorem (on value) basis. Import duties fall into three categories: ordinary rates, preferential rates and special preferential rates.

Preferential rates are applicable to imported goods from countries that have the "Most Favored Nation" ("MFN") status with Vietnam. As Vietnam is a member of the WTO, the MFN rates are in accordance with WTO rules and are applicable to goods imported from other WTO members. The preferential rates, generally ranging from 0% to 135% (there are various types of imported goods entitled to 0% import duty).

Special preferential tariffs apply to goods imported from countries that have a special preferential agreement with Vietnam, such as the ASEAN Trade in Goods Agreement ("ATIGA") which set up the free trade area ("FTA") among the State Members of the Association of the Southeast Asian Nations ("AFTA") or the agreements between AFTA and South Korea, Japan, Australia, New Zealand and China, or the Comprehensive and Progressive Agreement for Trans-Pacific Partnership that Vietnam is a state member and the Free Trade Agreement between the European Union and Vietnam. The special preferential tariff is generally lower than other rates.

10.10 Environmental Protection Tax

An Environmental Protection Tax ("EPT") is imposed on goods where the consumption or utilization of those goods is considered to negatively impact the environment. The goods that are subject to Environmental Protection Tax and the tax rates are summarized below:

| Goods | Taxable unit | Tax range amount/taxable unit (VND) |
|---|--------------|-------------------------------------|
| Petrol, oil, grease | Litter | 1,000 – 4,000 |
| Coal | Ton | 15,000 – 30,000 |
| HCFCs | Kilogram | 5,000 |
| Plastic bags | Kilogram | 50,000 |
| Restricted-use herbicides | Kilogram | 500 |
| Restricted use termiticides, forest product preservatives, and storehouse disinfectants | Kilogram | 1,000 |

Taxpayers are organizations, sole proprietors or individuals producing or importing goods subject to EPT.

Tax Exemption

EPT exemption will be applied to goods in the following scenarios:

- Goods in transit which are transported through borders of Vietnam;
- Goods temporarily imported for being re-exported in accordance with relevant regulations; and
- Exported goods.

10.11 Non-Agricultural Land Use Tax

Non-agricultural land use tax was introduced and became effective from 1 January 2012. This tax is a replacement for the previous similar one being a “tax on housing and land”. The tax is imposed on urban and rural residential land and land areas that are used for non- agricultural business, such as land areas used for:

- Industrial park development;
- Manufacturing premises;
- Business offices;
- Exploitation of minerals; or
- Housing development.

The tax will, however, not be imposed on land areas used for infrastructure development to serve the public interest (i.e. ports, roads, etc.). Certain investment projects in the public sectors (education, training, healthcare, sport) that meet the required conditions, or projects located in remote localities or localities with socio-economic difficulties or promoted projects, may be exempt from the tax.

The tax will be calculated on the basis of the land area used by taxpayers (who use the land for the purposes mentioned above) and the taxable price on each square meter of land which are determined by the local provincial People’s Committee where the land area is located.

Chapter 11

Securities



11.1 Regulation of Securities

The primary legislation governing securities activities by public companies and securities markets in Vietnam is the Law on Securities of 2007, as amended in 2010 (the “**Law on Securities**”). In addition to the Law on Securities, Government Decree No. 58 of 2012 (“**Decree 58**”) and Government Decree No. 60 of 2015 (“**Decree 60**”) guide the implementation of the Law on Securities.

The Law on Securities defines securities to mean evidence from an issuing organization certifying the lawful rights and interests of an owner with respect to an asset or capital portion. Securities shall take the form of share certificates, book-entries, or electronic data and consist of the following:

- Share certificates, bonds, and investment fund certificates;
- Share purchase rights, warrants, call options, put options, futures contracts, groups of securities, or securities indices;
- Investment capital contribution contracts (i.e., a contract for profit-making purposes between one or more investors and an issuer under which the investors invest cash or assets and may convert their investment into an issuer’s securities); and
- Other types of securities as prescribed by the MOF.

The MOF is the principal agency responsible for setting securities market policies and regulations, and the overall monitoring and supervision of the securities market.

The State Securities Commission (“**SSC**”), under the MOF, is responsible for the day-to-day monitoring and supervision of the securities market and securities businesses. It is also responsible for the licensing of securities businesses (such as fund management and securities companies), approving public offers of securities, public takeovers, the establishment of investment funds, and enforcing the securities regulations.

The SSC also oversees the operations of the Ho Chi Minh City Stock Exchange (“**HOSE**”) and the Hanoi Stock Exchange (“**HNX**”).

For public offerings made by credit institutions, the approval of the SBV is also required.

11.2 Security Markets

The trading of securities of public companies is primarily conducted at the HOSE and the HNX. These stock exchanges also function as the official mechanism through which government bonds are issued and as the secondary market for existing bond issues. Investment fund certificates are also traded at these stock exchanges

Public companies not listed on the HOSE or HNX may be traded instead on the Unlisted Public Companies Market (“**UPCom**”), a regulated over-the-counter securities market under the auspices of the HNX.

Trading of public companies’ securities listed on a stock exchange (HOSE or HNX) or UPCom (OTC market) can be conducted through one of the following methods:

- Order matching; or
- Direct agreement.

11.3 Offerings of Securities

11.3.1 Private Placements

Private placements of securities by private companies are governed by the Law on Enterprises and other relevant regulations.

Private placements by public companies are governed under the Law on Securities, which sets out the following conditions for doing so:

- Approval of the private placement from the general meeting of shareholders or the board of management;
- A minimum one-year lock-up period on the transfer of privately placed securities must be imposed, subject to certain exemptions;
- A minimum interval of six months between tranches of private placements of securities; and
- The issuing company is not the parent company of the offering company; or neither of companies are subsidiary companies of a parent company.

11.3.2 Public Offerings

By definition, an offer of securities to the public is an offer to sell securities according to one of the following methods: (i) via the mass media, including the internet, (ii) offering securities to 100 investors or more, excluding professional securities investors, or (iii) offering to unspecified number of investors.

Forms of public offerings comprise initial public offers of securities, additional public offers of shares or share purchase rights, and offering of securities to establish joint stock credit institution, new enterprise in high-tech area, or infrastructure area, etc.

An offer of securities to the public must be approved in advance by the SSC. In addition, after obtaining the SSC's approval, an issuer offering securities to the public will have to undertake to list or register its shares for trading on an organized market within one year of completing the offer.

Public offerings of securities must be denominated in VND. The par values are VND 10,000 for shares and investment certificates, and at least VND 100,000, increased by multiples of VND 100,000 for bonds.

11.3.3 Public Offering of Shares

The conditions for a company conducting a public offering of shares are:

- A minimum paid-up charter capital of VND ten billion;
- Its business must be profitable in the year immediately preceding the application for the public offering, and there must not be any accumulated losses;
- An issuance plan and a plan for the utilization of proceeds from the offering must be passed by its general meeting of shareholders; and
- An undertaking must be passed by its general meeting of shareholders to place the shares for trading on an organized securities trading market within one year of the public offering of securities.

11.3.4 Public Offering of Bonds

The conditions for conducting a public offering of bonds are:

- A minimum paid-up charter capital of VND ten billion;
- Its business must be profitable in the year immediately preceding the application for the public offering and there must not be any accumulated losses nor payable overdue debts for more than one year;

- An issuance plan and a plan for the utilization and repayment of proceeds from the offering must be passed by its board of management, Members' Council, or company owner; and
- An undertaking must be made by the company to discharge its obligations to bond investors, including those relating to the issuance and payment of bonds.

11.3.5 Public Offering of Fund Certificates

The conditions for conducting a public offering of fund certificates are:

- The total value of the offering must be at least VND 50 billion; and
- There must be in place an issuance plan and a plan for investment of funds from the offering.

The issuer of a public offering of fund certificates must submit a prospectus in its application, signed by certain personnel and advisers of the issuer. The prospectus for a public offer of investment fund certificates shall include the following particulars:

- Type and scale of the securities investment fund;
- Investment objectives, investment strategy, methods and rules for investment, restrictions on investment, and risk elements of the securities investment fund;
- Summary of main contents of the draft charter of the securities investment fund;
- Plan for issue of the fund certificates and information guiding participation by investment in the securities investment fund;
- Summarized information about the securities investment fund management company and custodian bank, and rules on trading with affiliated persons being people related to the securities investment fund management company and custodian bank; and
- Other information as stipulated in the sample form for a prospectus.

11.3.6 Prospectus for public offering of Shares or Bonds

- Information on the issuer, including management, business operations, assets, financial status, and ownership structure;
- Information on securities being offered, including conditions of offer, risks involved, profit and dividend forecasts, and plans for the issuance and utilization of proceeds; and
- Financial statements of the issuer for the past two years.

The prospectus for a public offering of shares or bonds must be signed by the chairman of the board of management or member's council or company chairman, the director or general director, the financial director or the accountant of the issuing organization and the legal representative of the underwriter or leading underwriter, if any. There must be a power of attorney if the prospectus is signed on behalf of another person.

The template of prospectus for a public offering of shares or bonds is currently updated under Annex No. 3 of Circular 202 of 2015 guiding the listing of securities on stock exchanges ("**Circular 202**").

11.3.7 Prospectus for Public Offering of Investment Fund Certificates

The prospectus for public offering of investment fund certificates must include:

- Type and scale of the securities investment fund;
- Information on the objectives, strategy, methods, rules, restrictions, and risks of the fund's investments;
- Summary of the draft charter of the fund;
- Issuance plan and information guiding participation of investment in the fund; and

- Summary of the fund’s management company and custodian bank, and rules on trading with related persons of the company and custodian bank.

The prospectus for a public offering of fund certificates must be signed by the chairman of the board of management or member's council or company chairman, the director or general director of the securities investment fund management company and the legal representative of the underwriter (if any). There must be a power of attorney if the prospectus is signed on behalf of another person.

The template off prospectus for a public offering of fund certificates is currently updated under Annex no. 2 of the Circular No. 29 of 2017 amending Circular 202 (“**Circular 29**”), supplementing several articles of the Circular 202/2015/TT-BTC on guideline for listing of securities on stock exchanges.

11.3.8 Listing of securities on stock exchanges

In order to list on the HOSE or HNX, public companies must satisfy listing requirements prescribed by the respective stock exchanges. Such requirements include minimum capital, established track record of profitability, minimum number of shareholders, minimum return on equity and undertakings by the management to retain their shares in the company for a minimum period.

11.4 Securities Companies

Under the Law on Securities, securities companies are licensed and regulated by the SSC. To obtain a securities company license, applicants must satisfy requirements on facilities, equipment, capital, and personnel. Once licensed, a securities company is permitted to conduct one or more of the following activities:

- Securities brokerage (acting as an intermediary on behalf of a client);
- Securities self-trading (trading securities on its own behalf);
- Underwriting issues of securities; and
- Securities investment consultancy.

A securities company is also permitted to accept authorization (entrustment) to manage securities trading accounts from individual investors, and to provide financial consultancy services and other financial services in accordance with MOF regulations.

Notably, Decree 60 specifies the rules for foreign investors to establish and purchase shares in securities companies in Vietnam as follows:

- Foreign investors operating in banking, securities and insurance for at least two years before establishing or purchasing shares in securities companies may own 100% capital in securities companies; and
- Foreign investors being other than those specified above may own less than 51% of the charter capital of securities companies.

11.5 Public Companies

Only joint stock companies may issue public offerings of securities. A public company is any joint stock company that meets one or more of the following criteria:

- Has issued shares via a public offering;
- Has its shares listed on one of the stock exchanges; or
- Has its shares owned by at least 100 non-institutional investors with a minimum paid-up charter capital of VND ten billion.

Joint stock companies that have become public companies by meeting the criteria above must notify the SSC of such a change within 90 days.

11.5.1 Foreign Ownership ration in Public Companies

Decree 60 provides that in the case where international treaties in which Vietnam is a member contain provisions on foreign ownership ratio, such international treaties will apply. This means that, for example, where Vietnam's WTO commitments currently allow foreign ownership in certain business lines to be more than 49% (such as 65% for non-facilities-based telecommunication services, or 100% for catering services), then foreign investors may cumulatively hold shares in a public company doing business in such business lines up to the ratio allowed by Vietnam's WTO commitments.

Under the Vietnamese law, the foreign ownership ratio in public companies must comply with the following main principles:

- In the case of public companies operating in business lines and industries to which investment laws and relevant laws provide for a foreign ownership ratio, the provisions under those laws will apply. However, Decree 60 provides that where a public company operates in business lines and industries with conditions applicable to foreign investors but there is no provision on foreign ownership ratio, then the maximum foreign ownership ratio will be 49%. Such foreign ownership cap can only be lifted if the company restructures its business activities to remove the conditional sectors and obtain a confirmation from the SSC; and
- In the case of public companies operating in several business lines and industries with different provisions on foreign ownership ratio, the foreign ownership ratio will not exceed the lowest ratio applicable to the business lines and industries (in which such companies operate) to which there are provisions on foreign ownership, unless otherwise provided under international treaties.

11.5.2 Major Shareholders

Any shareholder who becomes a major shareholder of a public company (defined as a shareholder owning either directly or indirectly five percent or more of the voting shares) must provide particulars to the public company, the SSC, and the stock exchange on which the company's shares are listed, within seven days of becoming a major shareholder.

The particulars required are:

- Where the major shareholder is an organization, its name, address, and line of business;
- Where the major shareholder is an individual, their full name, age, nationality, permanent residence, and profession; and
- The number and percentage of shares the major shareholder owns, or owns jointly with other organizations and individuals, compared to the total number of currently issued shares.

11.6 Disclosure Requirements

The information disclosure in the securities market is governed by Circular No. 155 of 2015 of the MOF ("**Circular 155**"). The following entities in Vietnam must disclose information:

- Public companies;
- Bond issuing entities;
- Securities companies;
- Fund management companies;
- The Stock Exchanges;
- Vietnam Securities Depository;
- Investors required to disclose information as prescribed; and
- Other relevant individuals and entities.

A disclosure of information may only be made by the legal representative of the company or by a person authorized to disclose information. The legal representative is responsible for the substance of the information disclosed by the

authorized person. Public companies, bond issuing entities, securities companies and fund management companies must register with the SSC and the Stock Exchanges, the persons authorized to disclose information.

Circular 155 sets out requirements for (periodic and extraordinary) information disclosure with respect to the different types of business entities. For example, public companies must disclose annual audited financial statements and annual reports in prescribed forms. Public companies must also disclose extraordinary information within 24 hours from the occurrence of certain events, such as the company's bank account being blocked or unblocked, and partial or complete suspension of business operations.

11.7 Derivative Securities and the Derivative Securities Market

The plan on the development of a regulated market for trading derivatives in Vietnam was approved by the Prime Minister in March 2014 and was followed by the issuance of Decree 42 of 2014 on derivative securities and the derivative securities market ("**Decree 42**"). Decree 42, along with several other subsequent regulations, represent the first phase in setting out the legal framework for trading derivative securities in Vietnam and is an important step in the development of the derivative securities market in Vietnam generally.

11.7.1 Types of Derivative Securities

Under Decree 42, the derivatives instruments permitted to be traded on the regulated market are:

- Future contracts including index futures contracts and Government bonds futures contracts;
- Options;
- Forward contracts where the underlying assets are securities; and
- Other listed or negotiated derivatives securities where the underlying assets are securities traded on the Stock Exchange.

Non-securities derivative transactions, such as interest rate swaps, foreign currency swaps and commodity swaps, are not covered by Decree 42 and will continue to be regulated by the SBV.

11.7.2 Securities derivatives trading

Decree 42 stipulates that all listed derivatives transactions (regardless of whether the investor is a foreign or Vietnamese entity) must be executed via a trading member of the Stock Exchange. Those transactions will then be executed by way of matching an order through the derivatives securities trading system (of the Stock Exchange) or putting through an order between a buyer's trading member and seller's trading member.

A derivatives trading member can only receive an investor's trading order provided such investor has: (i) opened a derivatives trading account with that trading member; and (ii) placed an escrow deposit (either money or securities) as required by a relevant clearing member.

Only Vietnamese entities can be trading members. There are two types of trading members, both of which must be Vietnamese: trading member; and special trading member.

Further, current regulations do not seem to apply to UCom (OTC market) derivative transactions and it is unclear whether the government intends to address such transactions in subsequent regulations.

Chapter 12

Contract Law and Enforcement



Commercial transactions between business entities in Vietnam are governed by the Civil Code, the Commercial Law and other specialized laws. The application priority is the specialized law, Commercial Law and finally the Civil Code.

The Civil Code has 689 articles and is organized into six sections and 27 chapters that constitute one of many significant efforts for the goal of reforming Vietnam legal framework. The Civil Code has been effective since 1 January 2017 and replaced the previous Civil Code from 2005.

12.1 Contract Formation

Under the Civil Code, when the law does not require that a contract has a specific form, a contract can take one of the following forms:

- Written contract;
- Oral contract; and
- Specific actions (i.e. performance).

Under the Civil Code, a contract is entered into in accordance with the following cases:

- A contract is entered into at the time when an offer to enter into a contract is accepted;
- When the parties have agreed that silence shall constitute an acceptance after a limited period of time, the time when a contract is entered into shall be at the moment that period of time elapses, if the offer is not rejected;
- An oral contract is entered into when the parties have reached agreement on the contents of the contract; and
- A written contract is entered into when the last party signs the contract or through other acceptable forms contemplated in the contract.

In addition, the Civil Code provides that a contract entered into orally and then established in written form shall be deemed as entered into from the time when the parties have reached agreement on the contents of the contract.

Besides the Civil Code, the Commercial Law stipulates that, in case there is no other agreement in contract or other regulation of the law, the parties shall be deemed to automatically apply commercially customary terms or the customary terms that are pre-established between the parties in their commercial activities, provided that such customary terms are not contrary to the law.

12.2 Breach of Commercial Contract

Breach of contract occurs when the contracting party does not satisfy its obligation on time or does not fully comply with his obligations or improperly perform his/her obligations under the contract. Breach of contract may result in the following remedies being awarded:

- Specific performance;
- Penalty for breach;
- Damages for loss;
- Temporary cessation of performance of contract;
- Termination of performance;
- Rescission of contract; and
- Other types of remedies agreed by the parties provided such remedies are not contrary to the fundamental principles of the laws of Vietnam, to any international treaty of which Vietnam is a member or to international commercial practice.

12.2.1 Specific Performance

The Commercial Law stipulates specific performance as a contract remedy. It forces the defaulting party to rectify its action or take other measures to perform the contract properly. This remedy allows a specific extension of time-limit to the defaulting party to replace provided goods or services which do not comply with the contractual terms and conditions. The substitute should not be money or other types of goods or services unless the aggrieved party agrees. If the defaulting party fails to rectify its breach, the aggrieved party has the right to purchase goods and services from other suppliers at the defaulting party's expense. In other words, the latter must bear the price differential and reasonable costs.

12.2.2 Penalty of Breach

Penalty for breach is a remedy governed by the Civil Code. Accordingly, this remedy is an agreement between the parties in a contract, whereby a party breaching an obligation must pay a sum of money to the party whose rights are breached. Penalty for breach is an optional remedy which is only applicable when being agreed to in the contract. The parties may agree that a party breaching an obligation must only be subject to a penalty for breach without having to compensate for loss and damage or must be subject to a penalty for breach and also pay compensation for loss and damage. Where the parties have agreed on penalties for breach but do not have an agreement on both penalties for breach and compensation for loss and damage, the party breaching an obligation shall be required to be subject to the penalty for breach only.

Both parties have the discretion to negotiate the quantum of the penalty, unless otherwise provided by related laws. Regarding commercial contracts, the Commercial Law allows 8% of the value of the contractual obligation, which is the subject of the breach. In practice, the penalty in most commercial contracts is often capped at 8%.

12.2.3 Damages for Losses

Before 1 January 2017, "damages for loss" mean that the defaulting party would pay compensation for the loss caused to the aggrieved party by a breach of contract. The damages comprise the actual and direct loss incurred by the aggrieved party due to the breach of the defaulting party and the direct profits that party should have earned in the absence of such breach. Damages were eligible when the following conditions were met:

- There is an act in breach of the contract;
- There occurs an actual loss; and
- The act in breach of the contract is the direct cause of the loss.

From 1 January 2017, the Civil Code takes a new view of "damages". Accordingly, the party whose civil rights are violated shall be compensated for all loss or damage, **except where otherwise agreed by the parties** or otherwise prescribed by law. As such, it seems that the parties could contemplate a fixed calculation of damages for loss that may occur in the future. In other words, it introduces the concept of "liquidated damages", although the new Civil Code does not specifically mention this term.

Regarding late payment, if the defaulting party delays in making payment for goods or payment of service charges and any other reasonable fees, the aggrieved party has the right to demand interest on such delayed payment at the average interest rate applicable to overdue debts in the market at the time of such payment for the delayed period, unless otherwise agreed by the parties or otherwise provided by law. Interest on late payment may not exceed 20% of the overdue amount if such rate has been agreed to by the parties and 10% of the overdue amount if such rate has not been agreed to by the parties and there is a dispute between the parties over such interest rate. Based on this, the interest rate on late payment may not exceed the above interest caps. According to Case Law No. 09/2016/AL, the interest on late payments shall be calculated at an average delinquency rate on the market, based on the average delinquency rate of at least three local banks at the time of payment, unless otherwise agreed or otherwise provided by law. It is noted that while case law is an important legal reference in Vietnam, case law has not yet been recognized as an official legal source.

12.2.4 Temporary Cessation of Contract Performance

Under the Commercial Law, upon the fundamental breach of the contract or circumstances that the parties agreed, the aggrieved party is entitled to temporarily cease performance.

Under the temporary cessation remedy, the contract violated still remains in full force and effect and the aggrieved party has the right to claim damages for loss in accordance with the laws of Vietnam.

The party who applies these remedies must notify the other party.

12.2.5 Termination of Contract Performance

Similarly, to the case of temporary cessation of performance, the Commercial Law also provides that, upon a fundamental breach of contract or other circumstances to which the parties have agreed, the aggrieved party is entitled to the right to temporarily cease or terminate the contract.

The Civil Code also gives contractual parties the right to terminate the performance of contract in the following additional cases:

- Late performance of contractual obligations:
 - Where the obligor fails to perform the obligations that the obligee requests within a reasonable period of time, but the obligor still fails to perform, the obligee may cancel the contract; and
 - If, due to the nature of the contract or by the will of the parties, the contract will not achieve the objective if it is not performed within a certain time limit, and the obligor fails to perform that contract upon the expiry date of such time limit, the obligee has the right to terminate the contract.
- Inability to perform the contract: when the obligor cannot perform a part or all of its obligations, causing the other party to be unable not to reach its contractual obligations; and
- The contractual subject being lost or damaged: where the contractual subject is lost or damaged and the obligor cannot indemnify, compensate by other assets or repair, replace by the same type of assets.

The party who applies these remedies must notify the other party. Where a contract is terminated, it is deemed to have been terminated from the time of receipt by one party of a notice of termination.

12.2.6 Rescission of Contract

Rescission of contract is a remedy which makes a part of a contract or the whole contract void. This remedy can be applied when the agreed conditions for rescission occur or there is a fundamental breach of contractual obligations.

The Commercial Law specifies conditions for contract rescission pertaining to the trade of goods or services. Where the parties to a contract agree to deliver goods or services on a piecemeal basis, and one party fails to perform its obligation of delivery or payment, which constitutes a fundamental breach, this remedy shall apply. Based on the relationship of the goods delivered or service provided, the aggrieved party may declare the rescission in regard to not only the current act of default but also the subsequent attempt at contract performance or the contract as a whole.

A rescinded contract is void from the date it was established. Each party must return any benefits received or earned from the other party. In case the benefits cannot be returned in kind, cash may be deemed an acceptable substitute.

The rescinding party has an obligation of notify the other party of the rescission.

12.2.7 Relationship of Remedies

While the penalty and damages remedies may be applied at the same time if the parties have specifically agreed so, the other remedies, including specific performance, temporary cessation of contract performance, termination of contract and

recession of contract, cannot be applied together. However, by applying these remedies, a party is not prevented from claiming for damages or a penalty. The rights of a party to claim damages for loss for a breach of contract by the other party shall be preserved after other remedies have been applied.

12.2.8 Exemption from Liability for Breach

When both parties agree an act of breach is exempted or that act arose without fault of the violating party, that party is immune from any liability. These circumstances could be:

- Force majeure;
- Total fault of the violated party; and
- Implementation of a decision of the State that the parties could not have known.

The violating party must promptly notify the other party of the occurrence of the liability exemption event. An extension of time might be granted to the violating party in order for this party to perform its contractual obligation. After this period, contract violation remedies shall apply to any violation caused by the parties.

In addition to the above exemption, logistics companies are entitled to more detailed exemptions, as laid out by the Commercial Law, such as:

- Loss and damages incurred due to the fault of the client;
- Loss and damages arising because the logistics company complied with the instruction of the client;
- Loss and damages due to defects in the goods; and
- Loss and damages arising in circumstances where the law and practice on transportation stipulates that it is exempt from liability.

12.2.9 Time Limitations

Unlike the regulation of the Civil Code, the Commercial Law requests the contracting party, in certain cases, to make a complaint first to the other party before proceeding to take legal action. After the expiry of the statute of limitations for notifying the other party, the law assumes that neither party has issues with the goods or services delivered.

The statute of limitation for lodging a complaint is stipulated in the Commercial Law as follows:

- Three months from the date the goods are delivered, with respect to the quantity of the goods;
- Six months from the date the goods are delivered or three months from the expiry of the date of warranty with respect to the quality of the goods; and
- Nine months from the date on which the defaulting party should have fulfilled its contractual obligations or, in case of a warranty, nine months from the expiry date of the warranty period with respect to other breaches.

The statute of limitation for initiating a legal action applicable to commercial disputes is two years from the time of infringement of a right or interest. A force majeure period is not counted towards the time limitation. After two years, the limitation will recommence upon the acknowledgement of the obligation of the violating party or performance of the contractual obligation by the violating party.

Notwithstanding the above, the Civil Code provides an additional time limitation applicable to the initiation of a legal action with regard to contractual issues. A three-year limitation, commencing from the date the claiming party knows or should know of the infringement of the legitimate right or interest, applies to contract matters.

Chapter 13

Dispute Resolution



Vietnam has made significant efforts to improve its legal framework to adapt it to the contemporary business environment. Important steps toward this goal include the adoption and amendment of the Law on Enterprises, the Law on Investment, the Civil Code, the Code on Civil Procedure, the Law on Commercial Arbitration of 2010 (the “**Law on Arbitration**”) and Law on Administrative Procedure.

The Code on Civil Procedure, passed on 25 November 2015, prescribes principles governing civil proceedings in Vietnam, thereby enabling Vietnamese courts to resolve disputes of a civil nature, including labor, commercial, and business disputes. The Law on Administrative Procedure passed on the same date, (i.e. 25 November 2015) covers administrative activities and administrative documents arising from administrative litigation and proceedings.

In addition, the Law on Commercial Arbitration of 2010 (the “**Law on Commercial Arbitration**”) (alternative dispute resolution) constitutes a major step of improvement as explained below. It demonstrates the continuing progress toward the goal of making the Vietnamese legal system more suitable to handling commercial investment disputes.

The Law on Investment sets out several options for the resolution of disputes in connection to business investment in Vietnam (“**investment-related disputes**”). An investment-related dispute may be resolved through either court or arbitration proceedings. Organizations that are competent to rule on an investment-related dispute (“**competent organizations**”) include Vietnamese courts and a Vietnamese arbitration body. In the case where a party of the investment-related dispute is a foreign investor or a company in which more than 51% of the charter capital is directly or indirectly held by the foreign investor; besides the Vietnamese courts and Vietnamese arbitration bodies, the competent organizations will include a foreign arbitration body, an international arbitration body, or an arbitral tribunal established pursuant to an agreement between the parties. The Law on Investment, however, encourages the negotiation and the conciliation of any disputes.

Under the Law on Investment, any investment-related dispute in Vietnam between a foreign investor and a state administrative body shall be resolved either by a Vietnamese arbitration body or a Vietnamese court, unless otherwise agreed between a representative of a competent state body of Vietnam and the foreign investor with respect to special investment agreements such as BOT and BTO agreements. Finally, if Vietnam signed an international treaty providing for other means of dispute resolution, options of this international treaty shall prevail over the Law on Investment.

13.1 Code on Civil Procedure

The Code on Civil Procedure governs any dispute relating to civil issues from civil marriage, family, business, trade, and labor. Furthermore, the Code on Civil Procedure applies to any dispute arising from any aforementioned areas of law if containing a foreign element (referred to collectively as “**civil matters**”). Moreover, civil cases would include disputes with any foreign element such as foreign parties, contracts governed by a foreign law, foreign arbitral awards that require enforcement in Vietnam, etc. In any event, Vietnamese law will govern the case and it will be settled by Vietnamese courts.

The (new) Code on Civil Procedure partly took effect on 1 July 2016, with the exception of certain articles related to representatives, guardians, persons having difficulty in awareness and control of their behavior, and rules on a court’s ability to refuse adjudication in the absence of applicable law, which took effect on 1 January 2017. This Code provided some significant changes to the rules on civil procedures, including the following:

- The statute of limitations for initiating legal action in civil cases;
- Jurisdiction of the People’s court;
- Rights and obligations of the parties in civil cases; and
- Sources of law for dispute resolutions.

In respect of the limitation period for initiating legal action for civil cases, the Code on Civil Procedure determines the applicability of the Civil Code’s time limits. Specifically, the three-year limitation will not be applied if other relevant laws regulate otherwise. For example, the limitation period to initiate a legal action for a dispute related to a civil inheritance is 30 years, if the inheritance pertains to real estate; the limitation period is ten years from the date of the individual’s death, in accordance with Article 623 of the Civil Code.

Furthermore, the Court will only apply the limitation period to a lawsuit upon the request of a party or parties if such request is made before the court of first instance renders its judgment or its decision. The party who may benefit from applying the statute of limitation is entitled to refuse such application, except for the purpose of avoiding the performance of its obligation.

The Code on Civil Procedure increases the scope of civil matters, such as those for compensation for damages caused by the administration of preventative measures in breach of the laws of Vietnam, disputes on exploitation of water resources, and consequences of waste discharge into water sources.

In addition, the Code on Civil Procedure grants rights to the parties in civil proceedings, such as the right to examine other people concerned with the matter, if permitted by the court, and the right to ask the court to allow or summon a person with related rights and obligations to participate in the proceedings. The Code on Civil Procedure also allows the parties to request authorized persons and agencies to protest a court's judgment or decision in accordance with the judicial review procedure, if the judgment or decision is contrary to the law.

The Code on Civil Procedure allows the Court to apply new sources of law, including court precedent and equity principles if the analogous laws or customs are not applicable. As explained by the Supreme Court under its Resolution 04/2019/NQ-HĐTP, dated 28 October 2015, the court precedents are judgments which are selected and announced by the Supreme Court, which lower courts may study and apply to their cases when applicable. The Code on Civil Procedure defines equity principles with two components namely the rightful principle of humanity combined to the principle of impartiality and equality in terms of rights and obligations of the parties to a dispute.

13.2 Law on Administrative Procedure

On 25 November 2015 the National Assembly passed the Law on Administrative Procedure 2015, replacing the previous Law on Administrative Procedure 2010 from 1 July 2016.

Administrative decisions covered by this law may derive from actions carried out by the government of Vietnam and/or diplomats representing Vietnam, as well as administrative procedures where foreign elements are involved.

Under the Law on Administrative Procedure, there is no requirement to present complaints prior to launching a lawsuit against administrative decisions, and the period to which a person must wait prior to launching a lawsuit against a particular decision is 30 days.

In addition, the Law on Administrative Procedure provides the Court the rights to determine and propose amendments, as well as to supplement or abolish legal documents during the procedures of settling administrative cases and to resolve a number of administrative cases under summary procedures in court. The Law on Administrative Procedure offers methods to be applied to acts obstructing the administrative procedure.

13.3 Penal Code

The National Assembly of Vietnam passed the Penal Code No. 100/2015/QH13 (the "**New Penal Code**") on 27 November 2015. However, the new Penal Code officially came into force on 1 January 2018 due to technicalities and modifications by the issuance of Law No. 12/2017/QH14 on amendments to the Penal Code on 20 June 2017.

The new Penal Code for the first time introduces the concept of corporate criminal liability and provides a number of felonies under which a corporate entity can be criminally prosecuted. There are seven main offenses for which a corporate entity may be criminally liable including counterfeiting crimes, intellectual property crimes, competition crimes, insurance crimes, securities crimes, environmental crimes and other crimes (terrorism financing and money laundering). Criminal prosecution of a corporate entity does not exclude the prosecution of its directors or managers.

A corporate entity is criminally liable if:

- The criminal act is made on behalf of the entity;

- The criminal act is made in the interest of the entity; and/or
- The criminal act is made under the direction, management or approval of the corporate entity;
- The criminal act is committed within the statute of limitation for prosecution.

Applicable criminal sanctions and remedies for corporate entities under the New Penal Code include:

- Restraining measures (forcible termination, suspension of business operations and bans from participating in certain business activities and/or capital mobilization);
- Pecuniary fines of at least VND 50 million;
- Judicial measures (confiscation; return of property, repair or compensation; compulsory dismantlement of works; compulsory relief of environmental pollution or spread of diseases; removal of infringing products and goods being circulated on the market; etc.)

13.4 Arbitration

Vietnam's Law on Arbitration addresses commercial arbitration, arbitration tribunals, and arbitration procedures, amongst others, in respect to disputes between parties, where at least one is involved in commercial activities. The law also covers disputes for which the law requires arbitration as a form of dispute resolution.

Vietnam currently has 23 arbitration centers (although in the past, arbitration was never favored in Vietnam over traditional methods of dispute resolution because of the lack of a suitable arbitration framework).

The Law on Arbitration is expected to continue to change the flow of legal settlements in Vietnam by facilitating and encouraging the use of arbitration as a form of dispute resolution.

Some of the specific provisions under the Law on Arbitration include the following:

- Parties are free to select arbitrator(s) whom they consider competent for the task, regardless of their nationality or education;
- Arbitral tribunals are able to choose the language of the arbitral proceedings whenever an arbitration has a foreign element;
- Arbitral tribunals are free to apply foreign law without the requirement for such law to comply with the "basic principles of Vietnamese law" (although it should be noted that courts remain bound to apply the basic principles of Vietnamese law when enforcing the award);
- Arbitral awards are regarded as final (subject to the parties' right to dispute awards under specific grounds); and
- Arbitration agreements are regarded as agreements that stand independently of the contract in dispute.

The procedures and competency of national courts towards arbitration and application forms of arbitral proceedings shall be performed in accordance with Resolution No. 01/2014/NQ-HDTP dated 20 March 2014 of the Council of Judges on Guidance on provisions of the Law on Commercial Arbitration.

The application of the Law on Arbitration is not retroactive. Therefore, agreements which were formed prior to 1 January 2011 will remain governed by the Ordinance on Arbitration.

13.5 Commercial Conciliation

Decree No. 22 on Commercial Conciliation of 2017 ("**Decree 22**") sets out the legal framework and requirements applicable to commercial conciliations. The Decree 22 is based on the UNCITRAL Model Law on International Commercial Conciliation (*In Vietnamese: Luật mẫu về Trọng tài thương mại quốc tế của Ủy ban liên hiệp quốc về Luật thương mại quốc tế*) but includes several local modifications. With effect from 15 April 2017, parties to a commercial contract or agreement will

have the option to resolve their disputes through commercial conciliation as an alternative to the usual options of arbitration or court proceedings. Commercial conciliation is defined as a method of commercial dispute resolution agreed by the parties where a commercial conciliator acts as the mediator of conciliation to assist in dispute resolution.

There are currently 5 centers of commercial mediation among which Vietnam International Commercial Mediation Center (VICMC) was officially launched on 7 June 2019 in Hanoi.

There are some advantages of commercial conciliation namely:

- Parties more active in reaching resolution;
- Confidentiality; and
- Flexible procedures.

Upon reaching a successful conciliation result, the parties will enter into a conciliation agreement which is enforceable in accordance with the Civil Code. If a successful conciliation result is not reached, the parties have the right to continue conciliation or to request that the dispute be resolved by arbitrators or a court in accordance with applicable law.

In accordance with Decree 22, foreign commercial conciliation institutions would be licensed to set up their branches or ROs in Vietnam. Branches of foreign conciliation institutions are permitted to provide conciliation services to local clients. In the meanwhile, ROs are permitted to conduct activities to seek and promote opportunities for development of the conciliation service in Vietnam.

Chapter 14

Financing and Secured Transactions



14.1 Types of Collateral to be Provided as Security

Under the Civil Code an obligor may use objects under his/her ownership rights, except in cases of reserving ownership of assets and retaining property until completion of payment in case of any violations to be described below, as security for his performance of a civil obligation. The following types of collateral are allowed to be provided as security:

- Objects;
- Monies;
- Valuable papers: stocks, bonds, bills of exchange, promissory notes, bonds of credit, deposit certificates, checks, fund certificates and other legally-prescribed valuable papers which are monetizable and tradable according to the law of Vietnam; and
- Property rights.

As for project finance transactions, typical security packages include immovable property (LURs, properties attached to the land), movable assets, contractual rights (including rights under an insurance policy), onshore and offshore bank accounts, and conditional assignment of equity.

Collateral can also be property that arises in the future, for example a construction or agreement to be signed. However, note that property that arises in the future shall not include the LUR. Pursuant to the Civil Code, property arising in the future includes property which has not formed and property which has formed but property ownership is established immediately after the time of establishing the transaction, for example, an ongoing construction or agreement to be signed.

A civil obligation may be fully or partly secured as agreed or as provided by law. If there is no agreement on the scope of security or if the law does not provide for one, the obligation, including the obligation to pay interest, penalties and compensation shall be deemed to be fully secured. For the security for the performance of obligations, the value of any properties may be smaller, equal or greater than the value of secured obligations unless otherwise provided by law. In particular, when a single item of property may be used as security for performance of several obligations, the value of such property is greater than the total aggregate value of the secured obligations.

14.2 Type of Security

The Civil Code further provides for the following types of security:

- Pledge of property;
- Mortgage of property;
- Performance bond;
- Security deposit;
- Escrow deposit;
- Reserving ownership of property until completion of payment;
- Guarantee;
- Fidelity guarantee; and
- Retaining property.

The following Vietnamese peculiarities are relevant when considering security methods in Vietnam:

- A (foreign or domestic) shareholder may pledge any shares in favor of a foreign lender. However, as there are practical (although not legal) limits on foreign ownership in some sectors (such as real estate companies, banks, logistics companies, etc.), foreign lenders can only be transferred shares up to the applicable practical maximum foreign ownership cap, and would need to sell the remainder to Vietnamese purchasers;

- The land use rights may only be mortgaged to credit institutions that are licensed to operate in Vietnam, and not to offshore lenders including shareholders; and
- The security over the bank accounts is actually a pledge over the monies standing to the credit of the accounts of the security provider.

14.2.1 Pledge of Property

Pledge of property means the delivery by one party (the pledgor) of property under its ownership to another party (the pledgee) as security for the performance of a civil obligation.

The pledge of property shall be effective as from the time of execution, unless otherwise agreed by the parties or provided by law (i.e. pledges of aircraft must be registered to competent authorities). The pledge of property shall be and effective against the third party as from the time that the pledgee receives the property. In case the pledged property is immovable assets, such pledge shall be effective from the time of registration.

The pledge of property shall be terminated in the following cases:

- The civil obligation secured by the pledge has terminated;
- The pledge has been cancelled or substituted with another security;
- The pledged property has been realized; and
- As agreed by the parties.

Accordingly, the pledged property and documents evidencing the ownership rights shall be returned to the pledgor. Any benefits and income derived from the pledged property shall also be returned to the pledgor unless otherwise agreed.

14.2.2 Mortgage of Property

Mortgage of property means the use by one party (the mortgagor) of property under the ownership of the obligor as security for the performance of a civil obligation to the other party (the mortgagee) without transferring such property to the mortgagee.

The mortgaged property shall be held by the mortgagor. The parties may agree to deliver the mortgaged property to a third person to hold.

Regarding mortgaged property, where the entire immovable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed by the parties. Where a portion of immovable property or moveable property having auxiliary objects is mortgaged, such auxiliary objects shall also form part of the mortgaged property, unless otherwise agreed by the parties.

Where mortgaged property is insured, the mortgagor shall notify the insurer that the insured property is being mortgaged. Accordingly, the insurer shall pay the insured sum directly to the mortgagee where there are insured circumstances. If the mortgagee failed to notify the insurer, the insurer shall pay the insured sum according to the insurance contract and the mortgagor shall be obliged to make payment to the mortgagee.

Where there is a mortgage over LURs and the mortgagor also has ownership rights over assets attached to land, such assets shall form part of mortgaged property and be realized together with the LUR if the mortgagor fails to perform or performs incorrectly a civil obligation when it falls due, unless otherwise agreed by the parties. Where the mortgagor does not have ownership over assets attached to land, the owner of assets attached to land shall be able to continuously use the land within his rights and obligations during the realization of the land use right. The rights and obligations of the mortgagor in the relationship with the owner of assets attached to land will be assigned to the transferee of the LUR, unless otherwise agreed by the parties.

Where there is a mortgage over the assets attached to land without the LUR and the owner of assets attached to land is also the land user, the assets will be realized together with the LUR, unless otherwise agreed by the parties. Where the owner is not the land user, the transferee of the ownership over assets attached to land will be entitled to continuously use the land within the rights and obligations of the owner of assets attached to land in replace of the mortgagor, unless otherwise agreed by the parties.

Vietnamese laws clearly require that the following secured transactions be registered with the related security registration agencies to be effective between parties:

- Mortgage of LUR;
- Mortgages of assets attached to land in case such assets which is recorded under the certificate;
- Mortgages of aircraft; and
- Mortgages of ships.

For mortgage of other assets, the mortgage shall be effective from the time of execution between parties, unless otherwise agreed by the parties or provided by law. However, the mortgage shall be only effective against the third party as from the time of registration.

The mortgage of property shall be terminated in the following cases:

- The civil obligation secured by the mortgage has terminated;
- The mortgage has been cancelled or substituted with another security;
- The mortgaged property has been realized; and
- As agreed by the parties.

14.2.3 Performance Bonds

Performance bond means a sum of money, precious metals, gemstones or other valuable objects (the performance bond property) delivered by one party to another party for a period of time as security for entering into or performance of a contract.

Upon a civil contract being entered into or performed, any performance bond shall be returned to the party which delivered the bond or deducted from the amount of an obligation to pay money. If the party which delivered the bond refuses to enter into or perform the civil contract, the performance bond property shall belong to the recipient of the bond. If the recipient of the bond refuses to enter into or perform the civil contract, it must return the performance bond property and pay an amount equivalent to the value of the performance bond property to the party which delivered the bond, unless otherwise agreed.

14.2.4 Security Deposits

Security deposit means a sum of money, precious metals, gemstones or other valuable objects (the security deposit) delivered by a lessee of moveable property to the lessor for a period of time as security for the return of the leased property.

Where the leased property is returned, the lessee is entitled to recover the security deposit after any outstanding rent is deducted there from. If the lessee does not return the leased property, the lessor is entitled to reclaim the leased property. If the leased property is no longer able to be returned, the security deposit shall belong to the lessor.

14.2.5 Escrow Deposits

Escrow deposit means a sum of money, precious metals, gemstones or other valuable papers deposited by an obligor into an escrow account at a bank as security for the performance of an obligation.

Where an obligor fails to perform or performs incorrectly an obligation, the obligee is entitled to be paid, and compensated for any damage that the obligor causes, by the bank where the account is held, after bank service charges are deducted.

The procedures for making deposits and making payments shall be as provided by the law.

14.2.6 Reserving Ownership of Property until Completion of Payment

In a sale and purchase contract, the ownership of property may be reserved by the seller until completion of payment. The reserve of ownership shall be in writing in a separate document or included in the sale and purchase contract.

The reserve of ownership shall be effective against the third party from the time of registration.

Where the buyer fails to complete the payment obligation, the seller is entitled to request the return of property. The seller shall refund the buyer the amount that the buyer paid after deduction of the depreciation of assets because of the buyer's use. Where the buyer lost or damaged the property, the seller is entitled to request compensation.

The reservation of ownership shall be terminated in the following cases:

- The payment obligation is completed;
- The seller has received the property; and
- As agreed by the parties.

14.2.7 Guarantee

Guarantee means an undertaking made by a third person (the guarantor) to an obligee (the beneficiary) to perform an obligation on behalf of an obligor (the principal) if the obligation falls due and the obligor fails to perform or performs the obligation incorrectly. The parties may agree that the guarantor shall only be obliged to perform the obligation in place of the principal if the principal is incapable of performing it.

About the scope of guarantee, a guarantor may guarantee an obligation in whole or in part on behalf of a principal. A guaranteed obligation includes interest on the principal, penalties and compensation for any damages, interest on the overdue payment unless otherwise agreed.

Parties may agree to use the security method over assets to secure the guaranteed obligation. Where the obligation is an obligation arising in the future, the scope of guarantee shall not include the obligation arising after the individual guarantor dies or organizational guarantor ceases to exist.

When more than one person guarantees an obligation, those persons must perform the guarantee jointly, except where it is agreed or provided by law that the guarantee comprises separate portions. The obligee may demand any of the joint guarantors to perform the obligation in its entirety. Where one of the joint guarantors has performed the entire obligation on behalf of the principal, the guarantor may demand the other guarantors to perform their respective portions of the obligation with respect to that guarantor.

The guarantee shall be terminated in the following cases:

- The obligation secured by the guarantee terminates;
- The guarantee is cancelled or is substituted by another security;
- The guarantor has satisfied the guaranteed obligation; and
- As agreed by the parties.

14.2.8 Fidelity Guarantee

A socio-political organization at the grassroots level may provide a fidelity guarantee in order to allow poor individuals and households to borrow sums from banks or other credit institutions for purposes of production, business or provision of services.

A loan guaranteed by a fidelity guarantee must be made in writing, specifying the loan amount, the purpose of the loan, the term of the loan, the interest rate, and the rights, obligations and responsibilities of the borrower, the lending bank or credit institution and the guarantor organization.

14.2.9 Retained Property

Retained property means the obligee (the retaining party) is currently lawfully holding property being the subject matter of a bilateral contract and shall be permitted to retain the property when the obligor fails to perform the obligation or performs the obligation not as agreed.

Retained property arises from the time when an obligor fails to perform an obligation or performs the obligation not as agreed. Retained property takes effect against the third parties from the time that the retaining party retains the property.

Retained property is terminated in the following cases:

- The retaining party no longer occupies the property;
- The parties agree to use other security methods in place of retained property;
- The obligation has been completely performed;
- The property is no longer available; and
- As agreed by the parties.

14.2.10 Realization of Property

Secured property shall be realized in the following circumstances:

- The obligor fails to perform or performs the obligation incorrectly when it falls due;
- The obligor is in breach of its obligation resulting in liability for early performance of the obligation pursuant to an agreement or as stipulated by law; and
- Other circumstances as agreed by parties or provided by law.

Under the Civil Code, the methods to realize secured property are as follows:

- Property auction;
- The secured party sells the property by itself;
- The secured party receives the property in place of the performance of the obligation by the securing party;
- Other methods.

Where there is no agreement on the method to realize the secured property, the secured property shall be sold by auction, unless otherwise provided by law.

However, before the realization, the secured party shall provide written notice of realization of the security property in a reasonable period to the securing party and other jointly secured parties at the addresses supplied by the securing party and must register the notice of realization of the property in accordance with the law on registration of security transactions.

When the security property is in danger of losing or diminishing in value, in the case of the right to reclaim a debt, and in the case of valuable papers, saving deposit cards and bills of lading, the realizer shall have the right to immediately realize such property and at the same time shall notify the other secured parties about the realization of the property.

A notice of realization of security property shall contain the following main particulars:

- Reasons for realization of the property;
- Secured obligation;
- Description of the property; and
- Method and time for realization, and location of realization of the security property.

Failing to comply with the notification obligation, the realizer must pay compensation for loss of other secured parties and the securing party.

The parties have the right to reach their own agreement or to rely on a property evaluation organization to provide the basis for fixing the selling price of the security property. The money obtained from the realization of the security property after paying for the costs of preservation, seizure and disposal of security property shall be paid in the following order of priority:

- Where security transactions have effect against third parties, the order of priority for payment upon realization of the security property shall be determined according to the order of the establishment of the effect against third parties;
- Where there are security transactions have effect against third parties and security transactions without effect against third parties, the order of priority for payment for the security transaction having effect against third parties shall prevail; and
- Where there are only security transactions without effect against third parties, the order will be determined upon the establishment of the security transactions.

The order of priority of payment above may be changed only if the secured parties together agree to change the order. The party having the priority transferred from the other party shall be paid only to the extent of the transferred priority that party received.

Chapter 15

Natural Resources and Environment



In Vietnam, natural resources belong to the Vietnamese people. Private parties may acquire rights to use/exploit of natural resources but will be required to pay relevant fees and taxes. To balance natural resource exploitation and environmental protection with the need to encourage sustainable exploitation and investment, the government has enacted several laws including:

- The Law on Forest Protection and Development;
- The Minerals Law;
- The Land Law;
- The Law on Water Resources;
- The Law on Sea and Island Natural Resources and Environment;
- The Law on Environmental Protection; and
- The Law on Electricity.

15.1 Energy

Entities operating in the energy sector in Vietnam are required to apply to regulatory authorities for company and operational approvals, permits and licenses.

The MOIT is the government agency, which primarily manages the electricity sector in Vietnam. Pursuant to Decree 98/2017/ND-CP of the Government dated 18 August 2017 on the functions, tasks, authorities and sector structure of the MOIT, its management powers are principally handled by two sub-agencies, the Electricity and Renewable Energy Authority (“**EREA**”) and the Electricity Regulatory Authority of Vietnam (“**ERAV**”). The EREA is responsible for overall energy policy and planning whereas ERAV is the regulatory agency responsible for supervising the power market, licensing and tariff regulation. The provincial- People’s Committee (“**People’s Committee**”) has authority regarding environmental approvals and the establishment and monitoring of local electricity development plans.

Currently, the Vietnamese electricity market is monopolistic, dominated by the state-owned-enterprise Electricity Vietnam (“**EVN**”), which is supervised by the MOIT. EVN monopolizes electricity transmission and distribution across Vietnam. EVN and its subsidiaries are responsible to operate and maintain the national grid through the National Power Transmission Corporation, which charges distributors for the transmission of electricity with the price set by the ERAV.

Vietnam is one of the most efficient power markets in Southeast Asia. The EVN generated and purchased 212.9 billion kWh of electricity in 2018, and plans to supply 232.5 billion kWh in 2019. According to MOIT’s report in 2018, the MOIT alone approved more than 70 projects, which need be put into operation before June 2019 with a total capacity of over 3,000MW.

Since the adoption of the Law on Electricity in 2012 (the “**Electricity Law**”), there has been a move towards unbundling State control and deregulating the Vietnamese electricity sector. Initial steps have involved establishing a legal framework to facilitate the vertical de-integration of EVN, privatize portions of EVN, and incorporate electricity pricing adjustment mechanisms. Particularly, the legal frameworks for solar and wind power projects include key legal documents as follows:

- Decision 428/QD-TTg of the Prime Minister of Vietnam dated 18 March 2016 on the approval of the Revised National Power Development Master Plan for the 2011-2020 period with vision to 2030;
- Decision No. 11/2017/QD-TTg dated 4 November 2017, as amended by Decision No. 02/2019/QD-TTg dated 8 January 2019, offers special incentives for solar energy projects;
- Decision No. 37/2011/QD-TTg of the Prime Minister dated 29 June 2011 on the support mechanisms for development of wind power projects in Vietnam as amended by Decision No. 39/2018/QD-TTg of the Prime Minister dated 10 September 2018;

- Circular No.16/2017/TT-BCT of the Ministry of Industry and Trade dated 12 September 2017 on project development and model PPA for solar power projects as amended by Circular No. 05/2019/TT-BCT of the Ministry of Industry and Trade dated 11 March 2019; and
- Circular No. 02/2019/TT-BCT of the Ministry of Industry and Trade regulating the implementation and development of wind power projects and a model power purchase agreement for wind power projects.

Together, these include guidelines on the approval process, power development plans, technical requirements, and tariff structures and covers both utility-scale as well as rooftop projects.

Accordingly, EVN purchases all power from renewable projects through a 20 year power purchase agreement. Feed-in tariffs are proposed by the MOIT and approved by the Prime Minister. Tariff is currently set for biomass, wind, waste-to-energy, and solar projects. For example, tariffs for wind projects and solar projects are set out as follows:

- Wind projects:
 - VND 1,928/ kWh (US cents 8.5 per kWh) for onshore wind projects; and
 - VND 2,223/kWh (US cents 9.8 per kWh) for offshore wind project;
- Solar projects:

US cents 9.35 per kWh for all on-grid solar power projects that achieve commercial operation date prior to 30 June 2019 (except projects in Ninh Thuan Province). New tariffs have been proposed, which are currently under discussion for projects from 1 July 2019 through 30 June 2021.

15.2 Mining

Mining activities are primarily governed by the Law on Minerals (No 60/2010/QH12, dated 17 November 2010) and the accompanying subordinate regulations, which regulate all mining activities from geological baseline surveys of minerals, to mineral exploration and mining, and processing.

Depending on the type of mineral, the key regulator for mineral exploration, exploitation activities will either be the General Department of Geology and Minerals of Vietnam - within the MONRE, or the provincial Department of Natural Resources (“DONRE”) - within the People's Committee. Key responsibilities of these authorities include:

- Licensing;
- Holding the auction of mining rights; and
- Establishing policies and technical standards.

Depending on the type of mineral, either the Office of the National Mineral Reserves Assessment Council, within MONRE, or DONRE is the key regulator for approval of mineral reserves, or either MONRE or the People's Committee is in charge of the evaluation and approval of environmental assessments and plans.

Exploitation and processing of minerals are conditional investment activities. After obtaining an investment certificate, companies are required to separately obtain licenses for minerals exploration, exploitation, and processing activities.

A license to explore mineral resources may be granted for up to 48 months over a specific land area, subject to extension for another 48 months, but this does not guarantee that the holder will obtain a mineral exploitation license. Foreign investors may apply for a mineral exploitation license, which may last for the duration of up to 30 years, renewable for up to another 20 years.

15.3 Oil & Gas

State capital divestment in oil and gas industry in Vietnam, including the on-going equitization of 3 state-owned petrol companies, brings forward a prospect of entering the market for foreign investors. In 2018, domestic retail witnessed the first chain of petrol stations opened by a foreign-owned company. Potential exploration, production and pipeline projects also offer plenty of opportunities for foreign contractors, promising to improve the capacity and competitiveness of domestic firms.

Petroleum activities in Vietnam are primarily governed by the Law on Petroleum 1993, dated 6 July 1993, amended and supplemented in 2000 and 2008, (the “**Law on Petroleum**”) and subordinate regulations, which regulate all petroleum exploration and production activities, relevant contracts and tax. The MOIT is the direct regulatory body and also presides over the submission of petroleum contracts and projects to the Prime Minister for approval.

Pursuant to the Law on Petroleum, the investor must enter into a contract with the state-owned PetroVietnam in order to engage in petroleum exploration and exploitation activities in Vietnam, subject to approval of the Prime Minister. The production sharing contract is most common and allows the investor to export its stipulated product share without applying for an export permit, while joint venture contract is another type typically used for petrochemical projects. For each project, a joint operating company, operating office, or joint venture company must be established in Vietnam to operate its activities.

Otherwise than exporting within its contractual portion of product share, the investor must obtain an export license in order to export petrol and oil produced in Vietnam. A petrol and oil export license shall be valid for five years from the date of new issuance and could be supplemented, amended or reissued upon expiration. However, the investor would be obliged to sell part or all of its product share in the Vietnamese market if requested by the Government.

Depending on specific commercial petroleum activities, other key licenses include Certificate of Satisfaction of Conditions for a business entity exporting LPG/LNG/CNG, trading LPG/LNG/CNG, or distributing petrol and oil.

15.4 Protection of the Environment

The MONRE is the primary authority responsible for environmental matters under the Law on Environmental Protection, dated 23 June 2014 (the “**Law on Environmental Protection**”). Among other tasks, MONRE:

- evaluates strategic environmental assessment reports;
- issues certificates of satisfaction of environmental standards; and
- supervises, inspects and deals with breaches of the environmental laws.

In addition, other ministries and state bodies are entrusted with responsibility for specific aspects of environmental protection and management. In particular, the People’s Committees, at all levels, organize the evaluation and approval of environmental impact assessment reports, while the Natural Resources and Environment Inspectorate supervises activities, and inspects manufacturing businesses and services establishments for compliance.

15.1.1 Environmental Impact Assessment

Subject to the scale of the project, the requirements for environmental impact assessments (“**EIA**”) or environmental protection commitments would be applicable as provided in the Law on Environmental Protection, as guided by Decree No. 18/2015/ND-CP, and dated 14 February 2015 (“**Decree 18**”).

By law, certain investments, mostly depending on scope, size, and nature of project, are required to conduct and submit an EIA for approval. Energy investments, exploitation of mineral, and oil & gas projects are heavily regulated in term of environmental protection, and obtaining an approval of EIA is required in many circumstances.

The project investors are responsible for the preparation and submission of an EIA and approval may then be given by the competent state agency. The EIA report should be conducted concurrently with the formulation of the investment project's feasibility study report.

The current regulations provide that the approval of an EIA report, in some specific cases, is a basis for the competent authority to grant or modify a specialized license, such as a mining license, oilfield development plan, construction license, or to make a decision on a project investment.

During the preparation of the EIA report, the investment owner will normally consult state agencies (i.e. the People's Committee) except in certain exceptional cases as below:

- An investment project in a consolidated production, business, or service zone whose EIA report has been approved by a competent authority in the phase of building the zone's infrastructure facilities, provided that this project conforms with the sector and trade planning in the approved EIA report of such zone;
- An investment project in a sea area for which the administration responsibility has not yet been assigned to any commune-level People's Committee; or
- An investment project involving state secrets.

The EIA report must include details of the projects origin, project owner, agency competent to approve the project, sources of information and data and methods, organization and process of EIA reporting, consultations and details of the communities' affected by the project

In the EIA report, there are two major stages:

- Preparation and submission of the application dossier with required documentation to the competent authority, conducted by the project owner; and,
- Appraisal and approval of the EIA report conducted by the competent authority.

Under the current laws, the competent authorities responsible for appraisal and approval of an EIA report, depend on the kind of project and include:

- The MONRE (for large-scale projects as listed below);
- Ministries, ministerial-level agencies, and government-attached agencies;
- The Ministry of National Defense;
- The Ministry of Public Security; and
- Provincial People's Committee.

15.1.2 Environmental Protection Plan

For manufacturing, trading and services enterprises that were put into operation prior to Decree 18's effective date of 1 April 2015, without any approved EIA report or any certification of registration for commitment to environment protection, those enterprises must, within 36 months from Decree 18's effective date, have a detailed environment plan for facilities that would require an EIA report, or have a simple environment protection plan for facilities that would require a commitment of environment protection under Decree 18.

Appendix I

Abbreviations & Acronyms



| | |
|-------------------|--|
| 1. ASEAN | Association of the Southeast Asian Nations |
| 2. ATIGA | ASEAN Trade in Goods Agreement |
| 3. BCC | Business Cooperation Contract |
| 4. BO | Build Operate |
| 5. BOT | Build-Operate-Transfer |
| 6. BT | Build-Transfer |
| 7. BTO | Build-Transfer-Operate |
| 8. CIT | Corporate Income Tax |
| 9. DICA | Direct Investment Capital Account |
| 10. DOIT | Department of Industry and Trade |
| 11. DOLISA | Department of Labor, Invalids and Social Affairs |
| 12. DONRE | Department of Natural Resources and Environment |
| 13. DPI | Department of Planning and Investment |
| 14. DTA | Double Tax Agreement |
| 15. EPT | Environmental Protection Tax |
| 16. EPZ | Export Processing Zone |
| 17. ERC | Enterprise Registration Certificate |
| 18. FBE | Foreign Business Entity |
| 19. FIEs | Foreign-invested Enterprises |
| 20. FTA | Free Trade Area |
| 21. GMS | General Meeting of Shareholders |
| 22. HCFCs | Hydro Chlorofluorocarbons |
| 23. HNX | Hanoi Stock Exchange |
| 24. HOSE | Ho Chi Minh City Stock Exchange |
| 25. HTZ | High Technology Zone |
| 26. IICA | Indirect Investment Capital Account |
| 27. IRC | Investment Registration Certificate |
| 28. IZ | Industrial Zone |
| 29. JSC | Joint-Stock Company |
| 30. LLC | Limited Liability Company |

| | |
|-------------------|--|
| 31. LUR | Land Use Right |
| 32. MFN | Most Favored Nation |
| 33. MOF | Ministry of Finance |
| 34. MOIT | Ministry of Industry and Trade |
| 35. MOLISA | Ministry of Labor, Invalids and Social Affairs |
| 36. MONRE | Ministry of Natural Resources and Environment |
| 37. MPI | Ministry of Planning and Investment |
| 38. PPP | Public Private Partnership |
| 39. RO | Representative Office |
| 40. SBV | The State Bank of Vietnam |
| 41. SoIT | Service of Industry and Trade |
| 42. SSC | State Securities Commission |
| 43. VAT | Value-Added Tax |
| 44. VND | Vietnamese Dong |
| 45. WFOE | Wholly Foreign-Owned Enterprise |
| 46. WTO | World Trade Organization |

Appendix II

List of Domains Entitled to Special Investment Incentives

(Issued with Decree 118-2015/ND-CP of the Government, dated 12 November 2015)



A. ESPECIALLY INCENTIVE INDUSTRIES AND TRADES

I. High-Tech, Information Technology (IT), and Support Industries

1. Application of high-technology on the List of high-tech with priority for investment in development as decided by the Prime Minister.
2. Manufacture of products on the List of high-tech products in which development is encouraged as decided by the Prime Minister.
3. Manufacture of support industry products as decided by the Prime Minister.
4. High-tech incubation and high-tech incubation enterprises; venture investment in high-tech development; application, research and development of high-tech in accordance with the law on high-tech; and manufacture of bio-technological products.
5. Manufacture of important software products, digital items, and IT products; software services and other services remedying breakdowns in information safety and protecting confidentiality of information in accordance with the law on IT.
6. Production of recycled and clean energy, and energy from processed waste.
7. Production of composite materials, various types of light building materials, and rare materials.

II. Agriculture

1. Afforestation; taking care of, growing, protecting and developing forests.
2. Cultivation and breeding, processing and preserving agriculture, forestry, and aquaculture products.
3. Production, generation, and hybridization of seeds, animal breeds, and forestry and aquaculture seeds.
4. Production, exploitation, and refining of salt.
5. Deep sea fishing and aquaculture using up-to-date fishing methods; logistic services for the fishing industry; construction of establishments for building fishing vessels and the construction of fishing vessels.
6. Sea salvage services.

III. Environmental Protection and Infrastructure Construction

1. Concentrated collection and treatment of waste; recycling and reuse of waste.
2. Construction and commercial operation of infrastructure in industrial zones, export processing zones, high-tech zones and within functional areas of economic zones.
3. Investment in development of water plants, power plants, water supply and discharge systems; in bridges, roads, and railways; in airports, sea ports and river ports; in airports and air terminals and in other specially important infrastructure works as decided by the Prime Minister.
4. Development of public transport in urban areas.
5. Investment in construction, management and commercial operation of markets in rural areas.

IV. Culture, Socialization, Sport and Medical Health

1. Construction of social residential housing and resettlement housing.
2. Investment in commercial operation of establishments providing sanitation services to prevent and fight against epidemics.
3. Scientific research into pharmaceutical technology and bio-technology in order to manufacture new types of medicines.

4. Production of raw materials to make basic and essential medicines including medicines to prevent and fight social diseases; vaccines, medical bio-products, medicines from pharmaceutical materials, and traditional medicines; medicines for which patents or related monopolies are about to expire; application of progressive technology and bio-technology to produce curative medicines satisfying international GMP standards; and production of packaging which directly contacts the medicine inside it.
5. Investment in establishments producing methadone.
6. Investment in commercial operation of sports centres for elite athletes and sports centres for disabled people; construction of sporting establishments with equipment and facilities for holding international standard competitions; and training establishments for specialized physical education and sports.
7. Investment in commercial operation of geriatric centres, psychiatric centres, centres for treatment of Agent Orange sickness; centres for the care of elderly people, disabled people, orphans and homeless youth.
8. Investment in commercial operation of centres for medical treatment – education, labour, social affairs; of drug and tobacco detoxification centres; and of HIV/AIDS treatment centres.
9. Investment in commercial operation of national museums and of people's cultural houses; singing and dancing groups performing national music and dance; theatres and film studios, film printing establishments; fine art and photography exhibition centres; production and repair of national musical instruments; renovation and conservation of museums, cultural houses and fine art schools; investment in commercial operation of establishments and villages which introduce and develop traditional crafts.

B. INCENTIVES INDUSTRIES AND TRADES

I. Science and Technology, Electronics, Mechanical Engineering, Production of IT and IT Materials

1. Manufacture of products on the List of important mechanical engineering products as decided by the Prime Minister.
2. Investment in research and development (R&D).
3. Production of steel billets from iron ore, high-grade steel and alloys.
4. Production of coke coal and carbon coal.
5. Production of energy saving products.
6. Production of petrochemicals, pharmaceutical chemicals, basic chemicals, and technical plastic-rubber components.
7. Production of products with an added value of thirty (30) per cent or more (in accordance with guidelines of the Ministry of Planning and Investment).
8. Manufacture of automobiles and their accessories, and shipbuilding.
9. Production of electronic components, accessories and detailed electronic parts not on List A above.
10. Manufacture of instruments, machine tools, equipment, spare part and machinery servicing production of agricultural, forestry, aquaculture and salt products; of food processors, and of irrigation equipment not on List A above.
11. Manufacture of materials to replace chrysotile.

II. Agriculture

1. Cultivation and breeding, growing, harvesting and processing pharmaceutical materials; preservation and conservation of gene sources and other types of rare and special pharmaceutical materials.

2. Production and refining of feed for cattle, poultry and fisheries.
3. Scientific and technical services in support of cultivation of crops, animal husbandry, aquaculture and protection of plants and livestock.
4. New construction, reconstruction and upgrading of abattoirs; preservation and processing of poultry and cattle on a concentrated industrial scale.
5. Construction and development of concentrated raw material zones servicing industrial processing.
6. Exploitation of marine or aquaculture products.

III. Environmental Protection and Construction of Infrastructure

1. Construction and development of industrial infrastructure groups.
2. Construction of apartments for workers in industrial zones, export processing zones, high-tech zones and economic zones; construction of student hostels and residential housing for people entitled to social welfare policies; and investment in construction of functional urban zones (comprising kindergartens, schools and hospitals) servicing the citizens.
3. Dealing with oil spills and remedying other disasters such as avalanches, landslides, damage to river and sea walls, to dams, reservoirs and other environmental disasters; application of other technology aimed at reducing gas emission causing the glass-house to affect and affecting the ozone layer.
4. Investment in commercial operation of exhibition centers for goods, logistic centers, goods storage facilities, supermarkets and commercial centers.

IV. Education, Culture, Socialization, Sports and Medical Health

1. Investment in commercial operation of infrastructure at educational and training establishments; investment in development of non-public schools and educational establishments at all levels including pre-schools, secondary schools and trade vocational training centers.
2. Manufacture of medical equipment, and construction of storage facilities for pharmaceutical materials and reserves of medical drugs in case of natural disaster, fire or dangerous epidemics.
3. Production of raw materials to make medicines and drugs being protection agents, insecticides, drugs for preventing and curing diseases in animals and aquatic creatures.
4. Investment in biology testing laboratories, of establishments assessing feasibility of drugs, and of establishments satisfying good practice standards for the production, preservation and testing of drugs used in forestry.
5. Investment in research and certification by scientific establishments of oriental and traditional medicines, and formulation of standards for certification of oriental and traditional medicines.
6. Investment in commercial operation of sports and training establishments including sports and training clubs, stadiums and swimming pools; and establishments producing and repairing sports training equipment and facilities.
7. Investment in commercial operation of public libraries and cinemas.
8. Investment in construction of cemeteries and crematoriums.

V. Other Sectors

1. Activities of people's credit funds and of micro-finance institutions.

Appendix III

List of Geographical Areas Entitled to Investment Incentives

(Issued with Decree 118-2015/ND-CP of the Government, dated 12 November 2015)



| No. | Province/City | Areas with especially difficult socio-economic conditions | Areas with difficult socio- economic conditions |
|-----|---------------|--|---|
| 1 | Bắc Kạn | All districts, townships and cities | |
| 2 | Cao Bằng | All districts and Cao Bằng City | |
| 3 | Hà Giang | All districts and Hà Giang City | |
| 4 | Lai Châu | All districts and Lai Châu City | |
| 5 | Sơn La | All districts and Sơn La City | |
| 6 | Điện Biên | All districts, townships and Điện Biên City | |
| 7 | Lào Cai | All districts | Lào Cai City |
| 8 | Tuyên Quang | Na Hang, Chiêm Hóa, Lâm Bình Districts | Hàm Yên, Sơn Dương, Yên Sơn Districts and Tuyên Quang City |
| 9 | Bắc Giang | Sơn Động District | Lục Ngạn, Lục Nam, Yên Thế, Hiệp Hòa Districts |
| 10 | Hòa Bình | Đà Bắc, Mai Châu Districts | Kim Bôi, Kỳ Sơn, Lương Sơn, Lạc Thủy, Tân Lạc, Cao Phong, Lạc Sơn, Yên Thủy Districts |
| 11 | Lạng Sơn | Bình Gia, Đình Lập, Cao Lộc, Lộc Bình, Tràng Định, Văn Lãng, Văn Quan, Bắc Sơn Districts | Chi Lăng, Hữu Lũng Districts |
| 12 | Phú Thọ | Thanh Sơn, Tân Sơn, Yên Lập, Cẩm Khê Districts | Đoan Hùng, Hạ Hòa, Phù Ninh, Thanh Ba, Tam Nông, Thanh Thủy, Cẩm Khê Districts |
| 13 | Thái Nguyên | Võ Nhai, Định Hóa, Đại Từ, Phú Lương, Đồng Hỷ Districts | Phổ Yên, Phú Bình Districts |
| 14 | Yên Bái | Lục Yên, Mù Căng Chải, Trạm Tấu Districts | Trấn Yên, Văn Chấn, Văn Yên, Yên Bình Districts, Nghĩa Lộ Township |
| 15 | Quảng Ninh | Ba Chẽ, Bình Liêu Districts, Cô Tô Island District and provincial islands. | Vân Đồn, Tiên Yên, Hải Hà, Đầm Hà Districts |
| 16 | Hải Phòng | Bạch Long Vĩ, Cát Hải Island Districts | |
| 17 | Hà Nam | | Lý Nhân, Thanh Liêm, Bình Lục Districts |
| 18 | Nam Định | | Giao Thủy, Xuân Trường, Hải Hậu, Nghĩa Hưng Districts |
| 19 | Thái Bình | | Thái Thụy, Tiền Hải Districts |
| 20 | Ninh Bình | | Nho Quan, Gia Viễn, Kim Sơn, Tam Điệp, Yên Mô Districts |

| | | | |
|----|----------------|---|--|
| 21 | Thanh Hóa | Mường Lát, Quan Hóa, Quan Sơn, Bá Thước, Lang Chánh, Thường Xuân, Cẩm Thủy, Ngọc Lặc, Như Thanh, Như Xuân Districts | Thạch Thành, Nông Cống Districts |
| 22 | Nghệ An | Kỳ Sơn, Tương Dương, Con Cuông, Quế Phong, Quỳnh Hợp, Quỳnh Châu, Anh Sơn Districts | Tân Kỳ, Nghĩa Đàn, Thanh Chương Districts and Thái Hòa Township |
| 23 | Hà Tĩnh | Hương Khê, Hương Sơn, Vũ Quang, Lộc Hà, Hỳ Anh Districts | Đức Thọ, Nghi Xuân, Thạch Hà, Cẩm Xuyên, Can Lộc Districts |
| 24 | Quảng Bình | Tuyên Hóa, Minh Hóa, Bố Trạch Districts | Other remaining districts and Ba Đồn Town |
| 25 | Quảng Trị | Hướng Hóa, Đa Krông Districts, Cồn Cò Island District and provincial islands | Remaining districts |
| 26 | Thừa Thiên Huế | A Lưới District, Nam Đông | Phong Điền, Quảng Điền, Phú Lộc, Phú Vang Districts and Hương Trà Township |
| 27 | Đà Nẵng | Hoàng Sa Island District | |
| 28 | Quảng Nam | Đông Giang, Tây Giang, Nam Giang, Phước Sơn, Bắc Trà My, Nam Trà My, Hiệp Đức, Tiên Phước, Núi Thành, Nông Sơn, Thăng Bình Districts and Cù Lao Chàm Island | Đại Lộc, Quế Sơn, Phú Ninh, Duy Xuyên Districts |
| 29 | Quảng Ngãi | Ba Tơ, Trà Bồng, Sơn Tây, Sơn Hà, Minh Long, Bình Sơn, Tây Trà, Sơn Tịnh Districts and Lý Sơn Island District | Nghĩa Hành District |
| 30 | Bình Định | An Lão, Vĩnh Thạnh, Vân Canh, Phù Cát, Tây Sơn, Hoài Ân, Phù Mỹ Districts | Tuy Phước District |
| 31 | Phú Yên | Sông Hinh, Đồng Xuân, Sơn Hòa, Phú Hòa, Tây Hòa Districts | Sông Cầu Township; Đông Hòa, Tuy An Districts |
| 32 | Khánh Hòa | Khánh Vĩnh, Khánh Sơn Districts, Trường Sa Island District and provincial islands | Vạn Ninh, Diên Khánh, Cam Lâm, Ninh Hòa Districts, Cam Ranh City |
| 33 | Ninh Thuận | All districts | Phan Rang City – Tháp Chàm |
| 34 | Bình Thuận | Phú Quý District | Bắc Bình, Tuy Phong, Đức Linh, Tân Linh, Hàm Thuận Bắc, Hàm Thuận Nam, Hàm Tân Districts |
| 35 | Đắk Lắk | All districts and Buôn Hồ Township | Buôn Ma Thuột City |
| 36 | Gia Lai | All districts and townships | Pleiku City |

| | | | |
|----|-------------------|--|--|
| 37 | Kon Tum | All districts and cities | |
| 38 | Đắk Nông | All districts and townships | |
| 39 | Lâm Đồng | All districts | Bảo Lộc City |
| 40 | Bà Rịa - Vũng Tàu | Côn Đảo District | Tân Thành, Châu Đức, Xuyên Mộc Districts |
| 41 | Tây Ninh | Tân Biên, Tân Châu, Châu Thành, Bến Cầu Districts | Remaining districts |
| 42 | Bình Phước | Lộc Ninh, Bù Đăng, Bù Đốp, Bù Gia Mập, Phú Riềng Districts | Đồng Phú, Chơn Thành, Hớn Quản Districts, Bình Long Township, Phước Long |
| 43 | Long An | Đức Huệ, Mộc Hóa, Vĩnh Hưng, Tân Hưng Districts | Kiến Tường Township; Tân Thạnh, Đức Hòa, Thạnh Hóa Districts |
| 44 | Tiền Giang | Tân Phước District, Tân Phú Đông | Gò Công Đông, Gò Công Tây Districts |
| 45 | Bến Tre | Thạnh Phú, Ba Trì, Bình Đại Districts | Remaining districts |
| 46 | Trà Vinh | Châu Thành, Trà Cú Districts | Cầu Ngang, Cầu Kè, Tiểu Cần Districts, Trà Vinh City |
| 47 | Đồng Tháp | Hồng Ngự, Tân Hồng, Tam Nông, Tháp Mười Districts and Hồng Ngự Township | Remaining districts |
| 48 | Vĩnh Long | | Trà Ôn, Bình Tân, Vũng Liêm, Mang Thít, Tam Bình Districts |
| 49 | Sóc Trăng | All districts and Vĩnh Châu Township, Ngã Năm Township | Sóc Trăng City |
| 50 | Hậu Giang | All districts and Ngã Bảy Township | Vị Thanh City |
| 51 | An Giang | An Phú, Tri Tôn, Thoại Sơn, Tịnh Biên Districts and Tân Châu Township | Châu Đốc City and remaining districts |
| 52 | Bạc Liêu | All districts and townships | Bạc Liêu City |
| 53 | Cà Mau | All districts, islands and provincial islands | Cà Mau City |
| 54 | Kiên Giang | All districts, islands, provincial islands and Hà Tiên Township | Rạch Giá City |
| 55 | | Economic zones, high-tech zones (including a concentrated information technology (IT) zone established in accordance with Government regulations). | Industrial zone or export processing zone established in accordance with Government regulations. |