



Legal Guide for Vietnam

Second Edition, July 2016

Contents

Introduction to Vietnam	3
Economic growth and structure	3
Population size and language.....	3
Business hours/Time zone.....	3
Culture and religion in Vietnam	4
History	4
Religion	4
Vietnamese names	5
Customs and practices	5
Festivities	6
Economy of Vietnam	6
The Government	7
Judiciary	8
Legal System	8
Regulatory Framework	9
Investment Treatment and Protection	9
Foreign Investment Entry.....	10
Government Approval and Registration	10
Forms of Investment	11
Establishing an EO	12
Branches and Representative Offices.....	12
Investing in an existing enterprise.....	13
Investing in the contractual forms	13
Corporate Forms	15
Banking & Finance	16
Management Forms of Credit Institutions	16
Restrictions on Foreign Ownership	16
Capital Markets	17
Conditions for a public offer of securities	17
Restriction on Foreign Participation	18
Land & Housing	19
Land Allocation	19
Land Lease.....	20
Contribution of an LUR	20
Foreign housing/property ownership.....	20
Labour Law	21
Labour Contract.....	21
Probation.....	22
Minimum Wage.....	22
Foreigner Employment	22
Taxes	23
Personal Income Tax (“PIT”).....	23
Corporate Income Tax (“CIT”).....	24

Value Added Tax (“VAT”).....	24
Import and Export Duties	25
Withholding Tax (“WHT”) for Foreign Contractors	25
Intellectual Property.....	25
Selected Sector Regulations	27
Healthcare	27
Telecommunication	27
Trading & Distribution	28
Dispute Resolution	29
Dispute settlement by Vietnamese courts	29
Dispute settlement by Vietnamese arbitration	30
Foreign and international arbitration	30
About Indochine Counsel.....	31
Contact Us.....	32

Introduction to Vietnam

The Socialist Republic of Vietnam, commonly referred to as Vietnam, is a country in Southeast Asia, that borders the Gulf of Thailand, Gulf of Tonkin, and the East Sea, alongside China, Laos, and Cambodia. Vietnam is a rapidly developing socialist-oriented market economy. Over the past twenty odd years, Vietnam has made a shift from a centrally planned economy to a socialist-oriented market economy. The economy has experienced rapid growth during the period of transition and today, Vietnam is in the process of integrating into the world's economy.

Economic growth and structure

The year 2015 was the last year for implementing the five-year social-economic development plan (2011-2015). In 2015, the GDP increased by 6.7%, faster than its pace of 6% in 2014 and 5.4% in 2013. The economy has rapidly industrialized over the years with the sectors of industry and construction rising by 9.64%, over the previous year's growth rate of 6.42%. These sectors contributed 3.20%, of which industry increased by 9.39% in comparison with the previous year (manufacturing rose 10.60%). GDP per capita in 2015 gained VND45.7 million, equivalent to USD2,109, rose USD57 compared to 2014.

In 2015, Vietnam's total exports reached USD162.4 billion, an increase of 8.1% over 2014, imports reached USD165.6 billion, an increase of 12% over 2014. The composition of GDP by sector is 17% for agriculture, forestry and fishery, 33.25% for industry and construction, and 39.73% for services (product taxes less subsidy product is 10.02%). The corresponding structure of 2014 is: 17.70%; 33.21%; 39.04% (10.05% tax). GDP growth rate in Vietnam averaged 6.15% from 2000 until 2015. Vietnam was one of the few bright spots in Asia last year and the economy closed 2015 with the GDP growth rate of 6.7%. Vietnam's economic activity moderated in the first half of 2016, with GDP expanding by 5.5%, compared to 6.3% over the same period in 2015. This slow-down is considered a result of severe drought - affecting agricultural production - and slower industrial growth.

Population size and language

The total population in Vietnam was estimated at 91.7 million people in 2015, growth of 1.07% over 2014. Vietnamese is the official language. Vietnamese is a tonal language in which the rise and fall of the voice can change the meaning of the words. In written form, Vietnamese uses the Roman alphabet and accent marks to show tones. There are other languages spoken as well: English, Chinese, Khmer, Cham and other minority languages spoken by tribes inhabiting the mountainous regions. English is the most popular foreign language and widely spoken in some urban areas. Moreover, English study is obligatory in most schools.

Business hours/Time zone

A normal working day in Vietnam starts between 7:00 am and 8:30 am and ends between 4:00 pm and 6:00 pm, from Monday to Friday and until noon on Saturday, leaving the afternoon and Sunday off. Lunch is taken very seriously and virtually everything shuts down between noon

and 1:30 pm. Government workers tend to take longer breaks between 11:30 am and 2:00 pm.

The Time zone is (UTC+07:00).

Culture and religion in Vietnam

History

In 1802, Prince Nguyen Anh united the northern, central and southern regions of the country and called it Vietnam. The prince and the emperors who followed established programs to build new bridges and castles and restore old structures. Angered by Vietnam's positions against business deals and Catholic missionaries, the French launched their first major attack against Vietnam in 1847. They fired upon the Vietnamese at the port of Da Nang, a city in central Vietnam. France took control of Vietnam, and in 1887 Vietnam became a French colony. The French took charge of Vietnam's farmlands, minerals and other natural resources. They also introduced the Vietnamese to European schooling and customs.

In 1940, Japan took over Vietnam during World War II after its ally Germany defeated the French. In August 1945, the United States dropped atomic weapons on the Japanese cities of Hiroshima and Nagasaki, which shortly led to the Japanese surrender. Vietnam was once again without a foreign occupation force. A power vacuum existed throughout the Indochine region and without a stronger force to stop them (like England or the United States), France tried to regain control of Vietnam. Ho Chi Minh, a Vietnamese Communist, led an independence movement, called the Vietminh, against the French. The Vietminh subsequently defeated the French and Vietnam was divided into two zones: the Communist-ruled north and a republic in the south. Ho Chi Minh acted as President of North Vietnam until his death in 1969.

American politicians believed that communism threatened to expand all over Southeast Asia. When communists from North Vietnam launched a guerilla war on the South Vietnamese government, the Americans intervened to help South Vietnam in a costly and ultimately unsuccessful war which brought domestic civil unrest and international embarrassment. This was known as the Vietnam War which was protracted and bloody. Thirty years of the 20th century were dominated by war, Vietnam has spent decades recovering from the ravages of war with first the French and then the Americans. Since 1986, Vietnamese authorities reaffirmed their commitment to economic liberalization and international integration. They moved to modernize the economy and to produce more competitive export-driven industries.

Religion

Buddhism is the largest of the major world religions in Vietnam, with about ten million followers. It was the earliest foreign religion to be introduced in Vietnam, arriving from India in the second century A.D. At present, Vietnam has more than 20,000 pagodas dedicated to Buddha, with a large number of other pagodas being built or restored.

The second largest foreign religion in Vietnam is Catholicism, with about six million followers.

Catholicism was introduced to Vietnam by the Spanish, Portuguese, and French missionaries early in the 17th century.

Protestantism came to Vietnam in 1911, and was widely spread throughout Vietnam in 1920, but the number of Protestants in Vietnam is not very large. Islam was introduced to Vietnam long ago, but did not flourish.

In addition to these religions originating in other parts of the world, Vietnam has indigenous religions, such as the Cao Dai and Hoa Hao sects, with their holy lands in the city of Tay Ninh and the provinces of Chau Doc and An Giang in the Mekong Delta.

Vietnamese names

An example of a Vietnamese name is Nguyen Van Nam, where Nguyen is the surname, Van is the middle name and Nam is the first name. Vietnamese names are normally spoken and written in this order. The Vietnamese always call someone his or her first name, e.g. if I want to ask for someone's help whose name is Nguyen Duc Hung, I will say "Hung, could you help me please!"

The most popular surname used in Vietnam is Nguyen. According to a statistical study conducted in 2005, Nguyen accounts for nearly 38% of the population.

The most popular middle names used in Vietnam are "Van" for male and "Thi" for female. Hence, if you see a name of someone in a list who you have never met before, you may know the sex of this person by the middle name.

Customs and practices

- Vietnamese culture is concerned more with status obtained with age and education than with wealth.
- Breaking a promise can be a serious violation of social expectation. It is very difficult to re-establish a lost confidence.
- When inviting a friend on an outing, the bill is paid for by the person offering the invitation.
- Vietnamese may not take appointment times literally, and will often arrive late so as not to appear overly enthusiastic.
- Speaking in a loud tone with excessive gestures is considered rude, especially when done by women.
- Summoning a person with a hand or finger in the upright position is reserved only for animals or inferior people. Between two equal people it is a provocation. To summon a person, the entire hand with the fingers facing down is the only appropriate hand signal.
- Modesty and humility are emphasized in the culture of the Vietnamese and deeply ingrained into their natural behavior. Therefore, bragging is often criticized and avoided. When being praised for something, a Vietnamese often declines to accept praise by humbly claiming that he does not warrant such esteem. The Vietnamese do not customarily demonstrate their knowledge, skills, or possessions without being asked to do so.
- The majority of Vietnamese women do not drink alcohol and usually demure when alcoholic

beverages are offered to them. Drinking women are disdained in Vietnamese society. Drinking problems are rare and practically nonexistent among women.

- While smoking has gained wide acceptance among men, very few Vietnamese women smoke; those who do are generally older women. Women smoking in public has been traditionally considered something "unusual."

Festivities

Celebrated across the country, the Tet Festival is the Vietnamese Lunar New Year and is a time for family and friends to get together. It takes place on the first few days of the Chinese Lunar Calendar.

On the 19th of May every year, the entire country celebrates the birthday and the life of its most cherished historical figure Ho Chi Minh. Vietnamese hold parades in cities, carrying posters depicting him. Many women wear the 'áo dài', which is a traditional Vietnamese dress. Speeches about Ho Chi Minh generally follow the parades.

According to Buddhist sutras, the first and the fifteenth days (*Tet Nguyen Tieu*) of every lunar month are Buddha's Days, when acts of worship are performed in Buddhist shrines and before family altars. Joss-sticks are lit and trays of fruit and other offerings are laid out.

Economy of Vietnam

Vietnam is one of the fastest growing economies in Asia. It weathered the 2008 global financial crisis quite well with signs of recovery observed in 2009. Vietnam's membership in the ASEAN Free Trade Area ("AFTA") in 1995 and entry into force of the US-Vietnam Bilateral Trade Agreement in December 2001 has led to rapid changes in Vietnam's trade and economic regime. US-Vietnam bilateral trade has grown from about USD220 million in 1994 to USD45.1 billion in 2015, transforming Vietnam into the 13th-largest source for US imports and 37th-largest destination for US exports. Vietnam is the second-largest source of US clothing imports, and a major source for electrical machinery, footwear, and furniture. In recent years, Vietnam has become a leading agricultural exporter and served as an attractive destination for foreign investment in Asia. Manufacturing, information technology and high-tech industries constitute a fast growing part of the economy. Vietnam is also one of the largest oil producers in the region.

Vietnam's labour force is one of its competitive advantages and accounts for an important part of Vietnam's future economic growth. Vietnam is famous for its young, hardworking, highly literate and easy-to-train labour force. Vietnam's labour force or the economically active population, age 15 years and above was 54.61 million people in the 4th quarter of 2015, an increase of 1.7% year-on-year. The labour force of the statutory working age (15-54 for women and 15-59 for men) was 48.19 million people in the 4th quarter of 2015, an increase of 1.7% year-on-year.

Vietnam has membership in several multilateral economic agreements, and has signed a number of free trade agreements, including agreements with the Eurasian Economic Union, the

European Union, South Korea. The ASEAN Economic Community (AEC) was established on 31 December 2015, many important commitments had become effective for Vietnam and is likely to create more opportunities to attract foreign direct investment from ASEAN and external partners through improving and increasing the attractiveness of the market.

- In addition to building the country's export capacity through private sector development, the Government pursued a strategy to join various international economic and trade agreements. Vietnam became a member of the Association of South East-Asian Nations ("ASEAN"), and concomitantly AFTA in 1995. Under AFTA, Vietnam committed to reduce its tariffs on imports from ASEAN countries to less than 5% by 2006.
- The second breakthrough was the ratification of the US-Vietnam Bilateral Trade Agreement in 2001. The agreement covered not only trade in goods, but also trade in services, intellectual property rights and other investment-related issues. It committed Vietnam to a number of trade-related reforms, while the United States granted Most Favoured Nation status to Vietnamese imports.
- The full integration of Vietnam in the multilateral trade system was finalized with the accession to the World Trade Organization ("WTO") on 11 January 2007, 12 years after application. Vietnam is now party to all the major WTO agreements, including the General Agreement on Trade in Services ("GATS"), the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") and the Agreement on Trade-Related Investment Measures ("TRIMs").
- After years of negotiations, on 4 February 2016 Vietnam and 11 other Pacific Rim countries finally signed the Trans-Pacific Partnership ("TPP") agreement which will take effect upon approval from the legislative bodies of its members. Once ratified by each TPP member country's congress or parliament, the TPP agreement is expected to become the most significant trade agreement in history. As many as 18,000 tariffs are expected to be eliminated and it will create a free trade area comprising up to 40% of the global economy and 30% of global trade.

The Government

The politics of the Socialist Republic of Vietnam are defined by a single-party socialist republic framework, where the President of Vietnam is the head of state and the Prime Minister of Vietnam is the head of government, in a one-party system led by the Communist Party of Vietnam.

The President of the Socialist Republic is elected by the National Assembly for a five-year term and acts as the commander-in-chief of the Vietnam People's Armed Forces and Chairman of the Council for Defence and Security. The government as the main executive state power of Vietnam comprises the Prime Minister, the Deputy Prime Ministers and Ministers heading ministries and ministerial equivalent bodies. Executive power is exercised by the government and the President of Vietnam. The executive branch is responsible for the implementation of

political, economic, cultural, social, defence, security and external activities of the state. The National Assembly has 500 members, representing 63 cities and provinces in Vietnam, elected by popular vote to serve a five-year term. Legislative power is vested in the National Assembly of Vietnam. The Judiciary is independent of the executive.

Judiciary

The Vietnamese court system includes the Supreme People's Court, the Superior People's Court (first introduced by the new Law on Organization of People's Court in 2014), the Provincial People's Courts in cities and provinces, and the District People's Courts.

The court system is based on the two-tier system which ensures that the rulings of one court can be appealed to a higher authority. Such higher authority may either uphold or reverse the ruling from the lower court. Most cases begin at the district or provincial court level with the possibility of appeal to the high courts. If a case has been heard initially at district court, it may in special cases even be brought for a third hearing before the Superior People's Court.

All Courts (except for the Supreme People's Court and District People's Courts) are divided into six divisions: criminal, civil, administrative, economic, labour, and family & juvenile. Such divisions at the District People's Court are not compulsory. Under the Civil Procedure Code, all disputes, whether civil, commercial or labour, are subject to the same set of procedural rules. A dispute may, depending on the type and the value of the dispute, either be heard at the district court or the provincial court at first instance. The recognition of foreign judgments and foreign arbitral awards falls under the jurisdiction of the provincial court.

Legal System

The current legal system is similar to civil law jurisdictions in that its sources of law comprise only written legislation commonly referred to as legal instruments. These are laws and regulations enacted by state bodies which are binding on citizens and enforceable by the state. Court judgments are not officially considered a source of law as judges do not have the power to interpret the law and court judgments are not binding in subsequent cases.

The legal system is organized in a hierarchy in which higher-ranking legal instruments set out general rules and lower-ranking legal instruments provide the details. The Constitution stands at the top of this legal hierarchy and forms the foundation of the entire legal system. Under the Constitution are laws, ordinances, decrees, decisions, circulars and other subordinate legal documents dealing with different aspects of social life.

- *Constitution* and *laws* are passed by the National Assembly and are the highest form of legal direction in Vietnam;
- *Ordinances* and *resolutions* are issued by the Standing Committee of the National Assembly when the National Assembly is not in session;
- *Decrees* are adopted by the Government on the implementation of laws and ordinances;

- *Decisions* are issued by the Prime Minister on the implementation of regulations; and
- *Circulars and Joint Circulars* are issued by ministries and provide guidance for implementation of decrees.

Regulatory Framework

Vietnam has embarked on a vast program to reform its legal and regulatory framework for investment to make it consistent with a market economy. A number of reforms were undertaken as prerequisite conditions for Vietnam's formal accession to the WTO. Recent improvements in the legal and regulatory framework have affected numerous areas, including taxation, intellectual property, trade, price controls, accounting and foreign exchange controls. As far as foreign investors are concerned, a fundamental shift occurred in 2005, when Vietnam adopted the Law on Investment (the "2005 Investment Law") and a new Law on Enterprises (the "2005 Enterprise Law"). One of the key purposes of these two laws is to put all investors, regardless of their nationality, on a more equal footing. Breaking away from past practice, all investors are now subject to the same key laws, even though in practice differences in treatment remain.

With the aim of creating a breakthrough for the business environment in the country and improving the administration process for investors, on 25 November 2014, the National Assembly of Vietnam adopted the new Law on Investment (the "2014 Investment Law") and Law on Enterprises (the "2014 Enterprise Law"), which came into force on 1 July 2015.

Investment Treatment and Protection

As regulated in the 2014 Investment Law, in term of policies on investment, the State provides equal treatment before the law to all investors from all economic sectors, and as between domestic and foreign investment. The State recognizes and protects the ownership of assets, invested capital and revenue and other lawful rights and interests of investors. The State has also guaranteed to open the investment market in compliance with the schedule committed in international treaties to which Vietnam is a member.

As part of its accession to the WTO, Vietnam ratified TRIMs. In order to comply with TRIMs requirements, the Investment Law specified that the State will not impose any of the following requirements on foreign investors:

- Priority purchase of domestic goods or services;
- Export requirements or export limitations;
- Foreign exchange balancing;
- Localization ratios of goods produced;
- Minimum level of research and development activities in Vietnam;
- Obligation to supply goods or services in a particular location; and
- Obligation to establish head offices in a particular location.

Although Vietnam started negotiating bilateral investment treaties ("BIT") only in the 1990s, by June 2013, it had signed 60 BITs, including those with most of its important trade and

investment partners. All BITs typically provide for:

- National treatment, with certain exceptions;
- Fair and equitable treatment;
- Most Favoured Nation treatment;
- Protection against nationalization or expropriation (allowed for a public purpose only in a non-arbitrary and non-discriminatory basis) and the obligation to provide prompt (without undue delay and including interests) adequate (typically the market value before the expropriation decision was made public) and effective compensation (realizable and freely transferable);
- The right to repatriate returns and assets; and
- Recourse to international arbitration.

Foreign Investment Entry

There are three main legal sources that define the specific restrictions to foreign investment entry: (i) the 2014 Investment Law and its guiding subordinate regulations; (ii) sectoral laws and regulations; and (iii) the schedule of specific commitments in services under the WTO accession agreement and other international treaties on the investment field, to which Vietnam is a party.

The 2014 Investment Law defines two types of investment sectors, including (i) prohibited sectors, where investment is prohibited for both domestic and foreign investors; and (ii) conditional sectors, i.e., sectors in which conduct of business investment activities must satisfy conditions for the reason of national defense or security, social order or safety, social ethics or the health of the community.

Following the constitutional revision effective from 1 January 2014, which declares the people's right to do business in all areas not explicitly prohibited, the 2014 Investment Law decreases the prohibited sectors from 51 to 6 and the conditional sectors from 386 to 267.

The 2014 Investment Law itself does not fully specify the nature and extent of the conditionality, and most of the conditional sectors are sectors that are subject to stringent licensing conditions in most countries. The precise nature and extent of foreign direct investment entry restrictions in conditional sectors are stipulated in sectoral laws and regulations and international treaties of which Vietnam is a member. Typical restrictions include ceilings on foreign ownership, joint venture requirements, and restraints on operations.

In addition to the conditionality defined in the 2014 Investment Law and the foreign investment entry-restrictions specified in sectoral laws, Vietnam negotiated specific commitments on trade in services under WTO's schedule of specific commitments in the services sectors (the "WTO Commitments").

Government Approval and Registration

The 2014 Investment Law and the 2014 Enterprise Law provide for two separate registration

procedures: investment registration and enterprise registration. The investment registration is required only for investment projects owned by foreign investors or foreign invested enterprises with 51% foreign ownership (“51% FIE”). Under Article 23.1 of the 2014 Investment Law, such 51% FIE will be subject to the same conditions and investment procedures applicable to foreign investors if: (a) 51% or more of its charter capital is held by foreign investors; (b) 51% or more of its charter capital is held by an enterprise under Item (a); or (c) 51% or more of its charter capital is held by foreign investors and enterprises under Item (a).

In case where the investors being foreign investors or 51% FIEs want to set up an enterprise in Vietnam, they must go through the following two steps:

- First, the investors must apply for an Investment Registration Certificate (“IRC”) which may be granted by the competent authority within 15 days only (or 5 working days in case of certain strategic or mega projects which have obtained an investment policy as required by the 2014 Investment Law). The IRCs would be issued either by the local department of planning and investment (“DPI”) or by the Management Committee if the foreign invested enterprise is located in a special purpose zone (industrial zone, export processing zone, high-tech zone or economic zone);
- After receiving the IRC, the investors can establish a foreign invested enterprise by going through the procedure of enterprise registration for an Enterprise Registration Certificate (“ERC”) which may be granted by the competent authority within 3 working days.

Under the 2014 Investment Law, M&A activities are not required to obtain an IRC, but shall be registered with the local DPI if (i) the target company operates in a conditional investment sector applicable to foreign investor; or (ii) as a consequence, the foreign investor or 51% FIE hold 51% or more of the charter capital of the target company. The local DPI will have only 15 days (in comparison with 30 days under 2005 Investment Law) to consider compliance with the regulation on investment conditions, ratio of ownership of foreign investors in the target company and notification of its opinion in writing to the investors.

The investors shall not be required to notify the local DPI about the M&A transaction if foreign investors invest in a Vietnamese company with less than 51% foreign ownership and this company operates in a non-conditional sector.

Forms of Investment

The 2014 Investment Law provides for the following investment forms which are no longer grouped under direct or indirect investment:

- to establish an economic organization (“EO”) to develop a project;
- to contribute capital, purchase shares or capital contribution of an EO; and
- to invest by way of a contractual arrangement, including investment contracts in the form of a business co-operation contract (“BCC”) and a public private partnership (“PPP”).

Establishing an EO

An EO is an organization established and operating in accordance with the laws of Vietnam. EOs include enterprises, co-operatives and unions of co-operatives and other organizations conducting business investment activities. Before establishment of an EO, a foreign investor must have an investment project, carry out the procedures for issuance of an IRC and must satisfy certain conditions on ownership rates of charter capital and other conditions prescribed in international treaties. Subject to the market restrictions applicable to foreign investors in certain economic sectors, foreign investors can choose to establish a wholly foreign owned enterprise (“WFOE”) or a joint venture with Vietnamese partner (“JV”).

WFOE is an independent legal entity owned and established by foreign investor(s). A WFOE may cooperate with another existing WFOE and/or foreign investor(s) to establish another new WFOE. A WFOE allows an investor to have independence and full management control over business operations, yet they assume full responsibility for its debt and liabilities.

The WTO Commitments permit the establishment of WFOEs in many but not all sectors in Vietnam. A foreign investor is required to have a Vietnamese JV partner if the market access restriction is regulated in the WTO Commitments. In this case, a foreign investor must set up a JV with Vietnamese partner(s). The maximum ownership of a foreign investor in a JV depends on the business sector. Usually, the foreign investor may hold a majority share, except for certain business sectors which place a cap on foreign ownership.

Like all business formations, a JV has both advantages and disadvantages. On the positive side, the Vietnamese partner may contribute crucial relationships with government officials and clients, local market know-how, staff, and land-use rights. On the negative side, a foreign investor in a JV will have a lot less control over that company than they would in a WFOE. Besides, disagreement can and often does arise between local and foreign parties to a JV. Arguments particularly occur when the foreign investor tries to increase its share in the company. If the dispute cannot be resolved, the company may have to be wound up at a significant cost to all involved.

Branches and Representative Offices

The laws of Vietnam allow certain foreign business entities to establish two other forms of commercial presence in Vietnam: a branch or a representative office. Both must be licensed by the relevant authorities.

A foreign company that wishes to establish a representative office in Vietnam must be duly established for at least one year in accordance with the laws of its home jurisdiction. Representative offices are not an independent legal entity and thus are permitted to engage in commercial enhancement activities only within the scope permitted by laws and cannot directly conduct profit-making activities in Vietnam.

Foreign businesses can establish their branch(es) in Vietnam in accordance with the WTO Commitments and other international treaties to which Vietnam is a member. Under the WTO

Commitments, a branch may be established in Vietnam by a foreign business entity in certain areas subject to certain phasing (e.g. non-life insurance, securities, computer and related services, management consultant services, construction, and franchising).

Branches of foreign companies are different from representative offices in that a branch is permitted to conduct commercial activities in Vietnam. To be permitted to open a branch, a foreign company must be duly established for at least five years in accordance with the laws of its home jurisdiction.

Investing in an existing enterprise

Investors may also choose to invest directly in Vietnam by making capital contribution to an EO or purchasing shares or portion of capital contribution in an existing EO with no limitation, subject to the following restrictions:

- The cap on foreign investment in public companies is regulated by the law on securities and its subordinate regulations;
- The cap on foreign investment in companies in certain sectors where specialized branch laws provide for foreign ownership must comply with such provisions;
- The cap on foreign investment in enterprises engaged in services business must be in accordance with the WTO commitments on services; and
- The cap on foreign investment in enterprises with 100% State owned capital undergoing equitization or conversion of their form by other methods shall be implemented in accordance with the law on equitization and conversion of enterprises with 100% State owned capital.

Investing in the contractual forms

A Business Cooperation Contract (“BCC”) is a written agreement between investors in which the parties agree to cooperate to undertake certain business activities in Vietnam and to share the revenue or profits arising from such activities. The investment form of a BCC is usually used in order to establish a partnership which does not create a new legal entity but which is licensed to engage in business activities in respect of a specific project in Vietnam. During performance of the BCC, the contracting parties are entitled to use assets formed from business co-operation for establishment of an enterprise in accordance with the law on enterprises.

PPP investment form is a form of investment conducted on the basis of a contract between an authorized State agency and the investor or the project enterprise in order to implement, manage and operate an infrastructure project or to provide public services. PPP investments are allowed in transportation, lighting systems, water supply systems, drainage systems, waste and wastewater collection and treatment systems, power plants and transmission, and infrastructure facilities for healthcare, education, culture, sport, industry and agriculture, and other projects as decided by the Prime Minister.

The concept of PPP is wide and covers any cooperation between the private sector and the public sector for infrastructure development or public services. Before adoption of the 2014

Investment Law and the new Decree No. 15/2015/ND-CP on PPP dated 14 February 2015 (“new PPP Decree”), the investment in the form of PPP in Vietnam was regulated by the Decision of the Prime Minister on pilot PPP regulations dated 9 November 2010 (“PPP Regulations”) and some PPP models as contracts of build-operate-transfer (“BOT”), build-transfer-operate (“BTO”) and build-transfer (“BT”) which are governed by the Decree on BOT, BTO, BT dated 27 November 2009 and the 2005 Investment Law. The PPP Regulations cap the State participation to a maximum of 30% of the total investment level, unless the Prime Minister decides otherwise. As from April 2015, there is no longer a cap on the State capital that can be used in a PPP project. The level of State capital is to be determined according to the project’s actual need for viability gap funding.

PPP Regulations do not set up any distinct investment regime for PPP projects. Investors still need to comply with all applicable investment regulations, including the obtaining of IRCs and ERCs for the establishment of a project enterprise.

The investor can choose to implement the PPP investment project through the various types of PPP contract, including the BOT, BTO and BT which were introduced by the previous regulations or by the new forms of contract as provided by the new PPP Decree, such as build-operate-own (“BOO”), build-transfer-lease (“BTL”), build-lease-transfer (“BLT”) and operate-manage (“O&M”). In essence, BOT, BTO and BOO contract forms permit the investor to recover an investment through charging user fees to end users for delivering services while the other forms of PPP contracts would permit the investor to recover its investment through periodic fixed payments by the competent state authority as agreed in the project contract.

A Build-Operate-Transfer Contract (“BOT”) is an investment form signed by a competent State body and an investor in order to construct and operate commercially an infrastructure facility for a fixed duration. Upon expiry of the contract’s duration, the investor, without compensation, will transfer the facility to the State of Vietnam.

A Build-Transfer-Operate Contract (“BTO”) is an investment form signed by a competent State body and an investor in order to construct an infrastructure facility; and, upon completion of construction, the investor transfers the facility to the State of Vietnam. In exchange, the government will grant the investor the right to commercially operate the facility for a fixed duration in order to recover the invested capital and obtain profits.

A Build-Transfer Contract (“BT”) is an investment form signed by a competent State body and an investor in order to construct an infrastructure facility, and, upon completion of construction, the investor transfers the facility to the State of Vietnam. In exchange, the government will create conditions for the investor to implement another project in order to recover the invested capital and obtain profits or to make a payment to the investor in accordance with an agreement in the BT contract.

A Build-Own-Operate Contract (“BOO”) is a contract signed by a competent State body and an investor for the construction of an infrastructure facility, and, upon the completion of construction, the investor owns and has the right to commercially operate the facility for a fixed term.

A *Build-Transfer-Lease Contract* (“BTL”) is a contract signed by a competent State body and an investor for the construction of an infrastructure facility, and, upon the completion of construction, the investor transfers such facility to the competent State body and has the right to provide services on the basis of operating and exploiting the facility for a fixed term; the competent State body shall hire such services and make payment to the investor as agreed in the contract.

A *Build-Lease-Transfer Contract* (“BLT”) is a contract signed by a competent State body and an investor for the construction of an infrastructure facility, and, upon the completion of construction, the investor has the right to provide services on the basis of operating and exploiting such facility for a fixed term; the competent State body shall hire such services and make payment to the investor as agreed in the contract; upon the expiry of the term for provision of such services, the investor transfers the facility to the competent State body.

Corporate Forms

To work hand-in-hand with the Investment Law, in 2014, Vietnam also adopted the 2014 Enterprise Law which unifies the legal framework for all business entities, regardless of ownership.

Investors who decide to establish a legal entity in Vietnam may select one of the following types of enterprise structures:

- Limited liability company (“LLC”) that may have a single member (“SM-LLC”) or multiple members (up to a maximum of 50) (“MM-LLC”). A single investor can only set up an SM-LLC. If there are two or more owners, an MM-LLC must be chosen.
- Shareholding (joint stock) companies (“JSC”) must have a minimum of three shareholders whose liability is limited to their capital contribution. The company is allowed to issue ordinary shares as well as preference shares. The management structure follows international standards and is based on a general meeting of shareholders, a board of management, a director general and an inspection committee.
- Unlimited or limited liability partnership. A partnership requires at least two individuals to act as general partners (i.e. partners who are liable with their private assets for debts incurred by the partnership). This usually rules a partnership out as a suitable investment vehicle.
- Private enterprise (i.e. sole proprietorship).

An LLC or a JSC is likely to be the most appropriate structure for investors, especially for foreign investors who want to set up a JV or a WFOE in Vietnam. Both LLC and JSC forms shield their owners from liabilities incurred by the LLC or JSC. This means that owners may lose the capital that they contributed or committed to contribute to the LLC or JSC, but are not liable with other assets for debts of the LLC or JSC.

Banking & Finance

The banking and financial system in Vietnam is made of various credit and financial institutions, including bank, non-bank credit institutions, microfinance institutions and people's credit funds. Non-banking credit institutions include finance companies, finance-leasing companies and other non-banking credit institutions. The scope and contents of permitted activities of each credit institution are subject to the form of credit institution and specified in the license granted to it.

Banking activity in Vietnam is governed by the Law on the State Bank of Vietnam and the Law on Credit Institutions both passed on 16 June 2010, as well as a number of implementing decrees, circulars and decisions issued by the Government, the State Bank of Vietnam ("SBV") and the Ministry of Finance.

Management Forms of Credit Institutions

Banks established in Vietnam must operate under one of the following permitted forms:

- State-owned commercial bank established and organized in the form of a one member LLC where 100% of the charter capital is owned by the State;
- Joint stock commercial bank;
- Joint venture commercial bank established and organized in the form of an LLC; and
- Entirely foreign-owned commercial bank established and organized in the form of an LLC.

Restrictions on Foreign Ownership

The acquisition by foreign entities of a shareholding in a Vietnamese commercial joint stock bank is subject to significant restrictions. All such acquisitions must be approved in writing by the SBV.

As a rule, the total shareholding of any foreign organization must not exceed 15%, and the shareholding of any foreign individual may not exceed 5% of the charter capital of a Vietnamese bank. However, the law does permit a foreign "strategic investor" and its affiliated persons to acquire up to 20% of the charter capital of a Vietnamese bank. The total aggregate shareholding of foreign investors in a Vietnamese bank may not exceed 30% of its charter capital (exceptions may be given by the Prime Minister to weak credit institutions for restructuring purposes on a case by case basis).

Entirely foreign-invested banks, in which one of the foreign shareholders is a parent bank holding a majority equity interest, may be established in Vietnam. The parent bank must have total assets of more than USD20 billion at the end of the year prior to application. Entirely foreign-owned banks must comply with Vietnamese prudential requirements on a stand-alone basis.

Foreign banks may also open branches as subsidiary units with no separate legal status. The parent bank must have total assets of more than USD20 billion at the end of the year prior to

application. A foreign bank branch may not open transaction points at locations other than its registered branch office.

Representative offices of foreign banks are prohibited from conducting commercial operations in Vietnam. Its activity is generally limited to market research and the promotion and follow-up of the offshore parent entity's activities involving Vietnamese credit institutions or companies.

The total shareholding level of foreign investors at a Vietnamese non-banking credit institution must comply with legislation applicable to public companies and listing companies.

Capital Markets

Vietnamese capital markets are divided into two categories: the primary market, where newly issued securities are bought and sold; and the secondary market, where securities are bought or sold after initial sale in the primary market.

The secondary market in Vietnam was first launched on 28 July 2000. Currently, there are two trading centers including the Ho Chi Minh City Stock Exchange ("HOSE"), which was the first to open in July 2000, and the Hanoi Stock Exchange ("HNX"), which opened in March 2005. The types of securities that are traded on the two exchanges are limited to ordinary shares, fund certificates and bonds.

All securities of unlisted public companies must be registered at the Vietnam Securities Depository and transacted through securities houses. The registered public companies are responsible for making disclosures as required by law.

The State Securities Commission ("SSC"), established in November 1996, is the primary supervisory body over the capital markets and their participants. The SSC is the body that licenses securities business, approves public offers of securities and takeovers, oversees management of the markets and market players and investigates breaches of, and enforces, the securities laws.

The key legal framework for the securities market operation is the 2006 Securities Law as revised in 2010. In addition, more than 40 effective legal documents have been issued, specifying market regulations in details.

Conditions for a public offer of securities

Under the securities law, issuing companies must comply with certain requirements in order to launch a public offer of securities. The requirements differ subject to the types of securities. Particularly, an issuing company must have at the time of registration of the offer at least VND10 billion in paid-up charter capital (for public offer of shares or bonds) and VND50 billion (for public offer of fund certificates). Business operation in the year previous to the offer must have been profitable. And there cannot be any accumulated losses calculated up to the year of registration of the offer. There must also be an issue plan and a plan for utilization of the

proceeds earned from the offer, passed by the general meeting of shareholders (for public offer of shares) or by the board of management or the members' council or the company owner (for public offer of bonds).

Restriction on Foreign Participation

Within the first 5 years from the date of Vietnam's accession to the WTO, the applicable legal form for foreign securities service suppliers to establish a commercial presence was limited to representative offices and JVs with foreign participation capped at less than 49%. From January 2012 (five years from the date of accession), securities service suppliers with 100% foreign-invested capital were permitted.

Foreign investors purchasing or selling securities on the securities market of Vietnam are permitted to hold:

- 100% of the total number of shares in a public company, except for the following cases:
 - If the public company engages in a business activity in respect of which foreign ownership has been agreed in an international treaty to which Vietnam is a party, then the agreed foreign ownership thresholds will be applied;
 - If the public company engages in economic sectors and/or business lines which are subject to a foreign ownership cap as specified in the Investment Law or relevant specific sector laws, such foreign ownership cap will be applied;
 - If the public company engages in sectors and/or business lines subject to conditions applicable to foreign investors but there is no specific law regulating the foreign ownership cap for such sectors and/or business lines, then the maximum ratio of foreign ownership is 49%; and
 - If the public company engages in multiple business sectors, where the foreign ownership cap may vary according to each different activity, then the most restrictive will be applied (unless otherwise provided in an international treaty);
- A maximum 49% of the total number of investment fund certificates of any one public securities investment fund;
- A maximum 49% of the charter capital of any one public securities investment company; and
- Regarding bonds, the issuing organization may regulate the limits on percentage ownership of circulating bonds of such issuing organization.

Foreign investors wishing to invest in securities must first obtain a securities trading code from the Vietnam Securities Depository and open an indirect investment capital account at an appropriately authorized bank in Vietnam.

An investor may trade through a securities company, authorized transaction representative or local fund manager, depending on the investor's desired level of supervision of their investments.

Land & Housing

In Vietnam, all land belongs to the people and is uniformly managed by the State. As such, the private ownership of land is not permitted. Organizations and individuals only have land use rights (“LUR”), which are presented and proved on LUR Certificates granted by the State (the local Department of Natural Resources and Environment). The LUR may be used only for the specific purpose for which it was granted. Failure to meet such condition can lead to withdrawal of the LUR.

The State grants the LUR to individuals and organizations via the form of allocation of land, lease of land, and recognition of LUR for persons currently using the land in a stable and regular fashion.

In principle, an LUR Certificate does not pass land ownership from the State to the holder. The term of an LUR Certificate issued is normally limited to a maximum of 50 years, although in certain circumstances (e.g. if the investment project involves large amounts of capital and recovery is expected to take longer, or if the project is located in an area facing difficult socio-economic conditions) the term may be for as long as 70 years.

Land Allocation

The State can allocate LURs to land users by way of an administrative decision. The allocated LURs may be subject to a land use fee depending on the purpose of land use. Land may be allocated by the State with the collection of land use fees in the following cases:

- to family households and individuals for residential purposes;
- to economic organizations for implementing investment projects for construction of residential housing for purposes of sale or for sale and lease;
- to Vietnamese residing overseas and foreign invested enterprises for implementing investment projects for construction of residential housing for purposes of sale or for sale and lease; and
- to economic organizations for implementing projects on investment in infrastructure of cemeteries and graves and for the purposes of transfer of the land use rights attached to the infrastructure.

LURs obtained by way of allocation without collection of land use fees cannot be exchanged, assigned, donated, leased, mortgaged, guaranteed or used as a capital contribution; and the land users are not entitled to compensation for land when the State resumes possession of the land.

Generally, the allocated LURs with payment of land use fees can be assigned, leased, donated, mortgaged or guaranteed, and used as capital contribution in accordance with the laws.

Land Lease

The other form of LUR available to land users including Vietnamese residing overseas and foreign invested enterprises, is land leasing on the basis of a contract. LURs can be leased directly from the State. The land authority is the People's Committee and/or the Department of Natural Resources and Environment. The land users have to apply for a land lease and an LUR Certificate and they are free to select either annual rent payments or a one-off payment for the entire term of the lease. The land users are allowed to assign, sublease or mortgage the LURs only if they make a one-off rent payment. A party making an annual rent payment is only allowed to assign, sublease or mortgage the assets owned by them attached to leased land.

LURs can be subleased from national, foreign invested enterprises and economic organizations, including zone developers. LURs also can be used as capital contributions by the Vietnamese partner in joint ventures as well. Foreign invested enterprises are not allowed to sublease land from family households, individuals or communities.

Land use rents or the value of LURs are negotiated freely when foreign invested enterprises sublease land from an economic organization or other foreign invested enterprises or when LURs are used as capital contributions to an investment project. All transactions with the State, including for the payment of taxes and fees, are based on land prices as determined by laws.

Contribution of an LUR

Where economic organizations and foreign invested enterprises are allocated land with collection of land use fees or leased land by making a one-off payment, they may contribute the land as capital to a JV. However, foreign invested enterprises are not permitted to receive capital contributions by way of LURs from Vietnamese individuals and households. After the establishment of the JV, the LUR Certificate will be granted to the JV and the term of the LUR will equal the duration of the project as recorded in the investment certificate of the JV.

Foreign housing/property ownership

The current foreign property ownership regulations took effect on 1 July 2015 and allow all foreign individuals and organizations that invest in developing residential projects in Vietnam, as well as foreign invested enterprises, RO or branches of foreign enterprises, foreign investment funds, branches of foreign banks operating in Vietnam and foreigners who have a visa to enter Vietnam to own properties in Vietnam. The ownership rights include the right to use, sell, lease out, donate, bequeath, mortgage or contribute houses as capital to a legal entity. However, if the residential houses are located on leased land, then foreigners may lease out such residential houses only.

Foreigners are allowed to own residential housing (including apartments and individual residential houses) under investment projects for construction of residential housing, but not the houses beyond a real estate project. The total number of units owned by foreigners may not exceed 30% of the total units in one apartment building and not exceed 250 landed property units in one particular administrative award.

Foreigners are permitted to own apartments for a maximum term of 50 years (with a renewal possibility upon expiration) and foreign companies are permitted to own apartments for a term equal to the term recorded in its IRC prior to the expiry of the period of residential house ownership. The owner can give or sell this house for the subjects who are permitted to own houses in Vietnam. If the time limit of ownership is over but the owners do not sell or donate such property, then that property shall belong to the State of Vietnam.

Labour Law

Vietnam's labour legislation and its implementation in practice are well developed. In comparison to some other countries in the region, the position of employees is well protected. Vietnamese labour law is mandatory in a one-sided way: Employer and employee may not agree on terms that are less favourable to the employee than the conditions set out in labour legislation. They may, however, agree on terms that are more favourable.

Labour Contract

With the exception of short-term labour contracts (less than three months), labour contracts must be entered into in writing. It is recommended to use the standard labour contract issued by the Ministry of Labour, War Invalids and Social Affairs ("MOLISA") as a template in order to avoid unnecessary explanations at its local departments, though this is not required by law. In principle, the labor contract must include certain major items including work to be performed, working hours and rest breaks, wages, location of job, duration of contract, conditions on occupation, safety and hygiene, and social insurance for the employee. In addition to the compulsory items, and depending on a particular industry, employers can include additional items or clauses such as those for the protection of intellectual property rights, confidentiality, the protection of trade secrets, and non-compete and non-solicitation undertakings. Any additional items must be in compliance with the labor laws and the Vietnamese laws in general.

The terms of labour contracts can be: indefinite, definite with a period between 12 and 36 months; or less than 12 months (for seasonal or contract work).

Termination of a labour contract must comply with provisions of the labour code. At will termination by employers is prohibited. The employer may only terminate a labour contract prior to its term under certain specific conditions as set out by the law. Depending on the ground for termination, the requirements for severance or job-loss allowance, notice periods and procedures differ.

Labour contracts may be terminated in cases of the employee's failure to carry out tasks, breach of discipline or other misconduct, or serious injury or illness. Both employer and employee may unilaterally terminate a labour contract in certain circumstances specified in the labour code. However, regulations require a minimum notice period for each type of contract in which the minimum length is 30 days for definite labour contracts, 45 days for indefinite labour contracts and 3 days for seasonal or short term contract work.

Probation

The employer and the employee may reach agreement on a probationary (trial) period of work and the rights and obligations of the two parties within that period.

The duration of a probationary period depends on the nature and complexity of the work and must not exceed 60 days for jobs requiring professional or technical college qualification or above; 30 days for jobs requiring an intermediate-level qualification or for technicians or trained staff; and 6 days for any other work.

During the probationary period, the employer must pay a salary that corresponds to at least 85% of the ordinary salary for the job. Either party may terminate the employment relationship during the probationary period without providing advance notice and without paying compensation.

Minimum Wage

The laws provide for two categories of minimum wage: general minimum wage and regional minimum wage.

Contributions to compulsory social insurance are calculated on the basis of the salary stated in the labour contract. However, if the salary exceeds an amount above 20 times of general minimum wage, the basis of calculating the contributions is an amount appropriate to that wage. Currently, the general minimum wage is VND1,210,000 per month (approximately USD55 per month). As from 1 July 2017, the general minimum wage shall be VND1,300,000 per month (approximately USD60 per month).

The regional minimum wage is the minimum monthly salary to which an employee is entitled. Based on the level of development, the government divides the whole country into 4 regions (regions I, II, III, IV). The regional minimum wage depends on the place of employment.

Foreigner Employment

The employment of an expatriate by an enterprise is allowed but generally limited to a managerial position or to a position requiring a high level of expertise that Vietnamese workers are not yet able to satisfy.

Foreign employees, with definite exceptions, are required to obtain work permits when they work in Vietnam. Work permits are issued by the local Department of Labour, Invalid and Social Affairs ("DOLISA") where the foreign employee is working. They are issued for a maximum period of 24 months and may be renewed if no qualified Vietnamese national has been found to replace the foreigner. A work permit is tied to the specific employer who applied for the employee's work permit, and the foreigner may legally work only for that employer.

Foreign employees who work without work permits shall be forced to exit or be expelled from

Vietnam. Employers employing foreign employees without work permits are subject to an administrative fine.

Annually, an employer is responsible to determine its need to employ foreigners for each working position for which Vietnamese workers are unable to satisfy the requirements, and report and explain the same to the chairman of the People's Committee of the province or city in the locality where the employer has its head office. The chairman of the provincial people's committee shall provide written consent to each employer regarding employment of a foreigner for each working position.

Taxes

As in the area of general investment and company regulation, Vietnam has embarked on a process to harmonize taxation for domestic and foreign companies as well as foreign individuals. It has also initiated a number of institutional and administrative reforms in order to improve the administration of taxation.

Personal Income Tax ("PIT")

A PIT payer is any resident individual with taxable income arising either within or outside the territory of Vietnam, or any non-resident individual with taxable income arising within the territory of Vietnam. Residents and non-residents are subject to PIT at different rates, and on different ranges of income.

Tax residents are those individuals residing in Vietnam for 183 days or more in a calendar year or in 12 consecutive months from the first date of arrival; or those having a permanent residence in Vietnam (including a registered residence, or a leased house in Vietnam with lease duration of 90 days or more in a tax year).

Individuals not meeting the conditions for being tax residents are considered as tax non-residents in Vietnam. Where an individual stays in Vietnam for more than 90 days but less than 183 days in a tax year, the individuals will be treated as a tax non-resident if they can prove that they are tax resident of another country.

The PIT rates vary depending on whether the income in question is irregular income or regular income. Taxable income is the income after deducting personal allowance of VND9 million/month and dependent allowance of VND3.6 million/month/dependent and other contributions applicable under the law.

Level	Taxable income/year (VND million)	Taxable income/month (VND million)	Tax rate (%)
1	Up to 60	Up to 5	5
2	Above 60 to 120	Above 5 to 10	10
3	Above 120 to 216	Above 10 to 18	15
4	Above 216 to 384	Above 18 to 32	20

Level	Taxable income/year (VND million)	Taxable income/month (VND million)	Tax rate (%)
5	Above 384 to 624	Above 32 to 52	25
6	Above 624 to 960	Above 52 to 80	30
7	Above 960	Above 80	35

Corporate Income Tax (“CIT”)

Enterprises incorporated in Vietnam and foreign enterprises permanently established in Vietnam must pay CIT on their worldwide income. Foreign enterprises that are not permanently established in Vietnam only have to pay CIT on income derived from Vietnam.

Currently, the standard CIT is 22%. Except for some cases provided by law, enterprises with total annual turnover not exceeding VND20 billion are entitled to the tax rate of 20%.

Enterprises entitled to the tax rate of 22% shall be entitled to the tax rate of 20% as from 1 January 2016.

The CIT rate applicable to activities of prospecting, exploring and mining of petroleum and gas and other rare and precious natural resources in Vietnam are from 32% to 50% depending on each specific project and business establishment.

CIT incentives—preferential tax rates and duration of tax exemption and reduction are based on two main criteria: incentive (or special incentive) sectors; and difficult (or special difficult) socio-economic regions. The two preferential rates of 10% and 20% are available for 15 years and 10 years respectively, starting from the commencement of operating activities. When the preferential rate expires, the CIT rate generally reverts to the standard rate. CIT payers may be eligible for tax exemptions and tax reductions. The extent of the incentives depends on the combination of the sector and region where it takes place.

Value Added Tax (“VAT”)

Vietnam introduced a VAT in 1999 to replace the turnover tax. All business establishments are subject to VAT, regardless of size or sales of taxable goods. Although the real VAT payer is the purchaser of the goods and services, it is the seller’s responsibility to include VAT when they charge for the goods or services they have supplied. In the case of imported goods, the importer must pay VAT to Customs at the same time that they pay import duties.

The rate of VAT payable will depend on the goods and services in question.

- *VAT rate of 0%* is applied to exported goods or services, including goods or services sold to enterprises without permanent establishments in Vietnam, goods processed for export, goods sold to duty free shops, exported services and construction and installation carried out abroad or for export processing enterprises.
- *VAT rate of 5%* is applied generally to areas of the economy concerned with the provision of essential goods and services, such as clean water, fertilizer production, teaching aids,

books, foodstuffs, medicine and medical equipment, husbandry feed, various agricultural products and services, technical/scientific services, rubber latex, sugar and its by-products.

- *Standard VAT rate of 10%* applies to activities not specified as exempt or subject to the 0% or 5% rates.

Import and Export Duties

Import and export duties rates are subject to frequent changes. The import duty rates are classified into 3 categories: ordinary rates, preferential rates and special preferential rates.

Preferential rates are applicable to imported goods from countries that have Most Favoured Nation status with Vietnam. With the accession to the WTO, the Most Favoured Nation rates are in accordance with the WTO Commitments and are applicable to goods imported from other member countries of the WTO.

Special preferential rates are applicable to imported goods from countries that have a special preferential trade agreement with Vietnam. Vietnam has special preferential trade agreements with the following countries: ASEAN member states, Japan, China, Korea, Australia, New Zealand and some others.

Withholding Tax (“WHT”) for Foreign Contractors

Foreign contractors doing business in Vietnam or earning income in Vietnam without establishing a legal entity therein are subject to a WHT. WHT is applicable to payments of interest, royalties, services, construction, management fees, and the like. WHT is a combination of the VAT (in which the taxpayer is the customer, i.e., the Vietnamese enterprise) and the CIT (in which the taxpayer is the supplier, i.e., the foreign contractor) to which the transaction would have been subject if the payment had been made in Vietnam rather than abroad.

Depending on whether or not the foreign contractors adopt Vietnamese Accounting Standards, the WHT can be applied on a deemed method or a deduction method.

Intellectual Property

Vietnam has been a member of the World Intellectual Property Organization (“WIPO”) since 1976. It is a contracting party to eight WIPO-related treaties or conventions, including the Bern, Brussels and Paris Conventions, the Madrid Agreement and the Patent Cooperation Treaty. The legal and regulatory framework for IPRs was overhauled and greatly improved in preparation for WTO accession. Most importantly, it adopted the first Law on Intellectual Property in 2005 (as revised in 2009) (the “IP Law”). The Law is comprehensive in coverage and raises the legal IP framework to modern standards. The adoption of the IP Law was necessary in order to make Vietnam compliant with the WTO’s TRIPS agreement, to which Vietnam is a party. It was also needed for Vietnam to fulfill its commitments under the bilateral trade agreement with the US. The law provides international standards of protection, as well as the traditional limitations on IPRs:

Copyright and Copyright Related Rights protect literary, artistic and scientific works, including music, motion pictures, photography, books, stage works, computer programs, lectures or textbooks, fine art works and applied art works. Moral rights are protected for an indefinite term, while economic rights for motion pictures, photography, applied art works and anonymous works are protected for 75 years from the first publication, or for the whole life of the author plus 50 years after author's death for other works. Copyrights and related rights may be assigned or licensed freely, and conducts constituting infringements are clearly defined by law.

Industrial Property Rights cover inventions, industrial designs, layout designs of integrated circuits, marks, trade names, geographical indications and trade secrets. Patents are delivered by the National Office of Intellectual Property ("NOIP"), pending the usual requirements of worldwide novelty, inventiveness, susceptibility to industrial application. Precise definitions of each of these requirements are provided in associated decrees and circulars. Vietnam usually applies the "first to file" principle, but priority can be invoked in a certain number of cases. Invention patents are granted for 20 years, utility solution patents for 10 years, industrial design patents for 5 years (renewable twice), and registered designs for semi-conducting closed circuits are valid for 10 to 15 years. Registered trademarks are valid for 10 years and renewable indefinitely for further 10 year periods.

Plant Varieties may also be registered for protection on the condition that they are new, distinct, uniform, stable and designated by proper denominations. Vietnam became a member of the International Union for the Protection of New Varieties of Plants at the end of 2006.

The IP Law provides a number of tools for the authorities to deal with infringements and to protect IPRs:

Administrative measures can be applied in four main situations, including acts that cause loss or damage to authors, IPR holders, or consumers, and acts of production, import, transport or trading in counterfeit goods. Administrative measures are the most practical for IPR holders, but they do not provide significant compensation. Sanctions can include a warning, fine, confiscation and destruction of counterfeit goods or suspension of business activity. They can be imposed by inspectorates, market surveillance agencies, customs offices, police offices and People's Committees.

Civil remedies include compulsory termination of the infringing acts, compensation for damages, compulsory destruction of goods and public apology and rectification. Damages or losses are defined as both material and moral, and the extent of the compensation is determined on the basis of actual losses suffered.

Criminal procedures are regulated under the Criminal Procedure Code. They are applicable to cases involving manufacturing and/or trading of counterfeit goods in significant quantities or values.

Selected Sector Regulations

Healthcare

With its large population, Vietnam is recognized as a potential market offering many opportunities for foreign investors in the health sector. However, in comparison with finance, securities and real estate, the health sector remains less lively in the panorama of foreign investment in Vietnam.

According to the WTO Commitments, foreign medical service suppliers are permitted to provide services through the establishment of 100% foreign-invested medical establishments, joint-ventures with Vietnamese partners, and through a business cooperation contract.

Also under the WTO Commitments, the minimum investment capital for a foreign invested project in hospital services must not be less than:

- USD20 million for a hospital;
- USD2 million for a polyclinic unit; and
- USD200,000 for a specialty unit.

However, it appears that none of the domestic laws issued post-WTO accession mentions the requirements on minimum investment capital. This potential 'omission' may be interpreted to mean that Vietnam has yet exercised its right (i.e. the right to require foreign investors to meet conditions on minimum investment capital). Legally, however, the silence of legal provisions on the matter does not prevent authorities from directly invoking the provisions of the WTO Commitments.

In addition to the requirement for an IC for its project, investors are required to obtain an operation license so as to fully satisfy the conditions of operation of medical establishments. Conditions for operation licenses include:

- To meet requirements under national technical regulations on hospitals;
- To have sufficient practitioners relevant to its scope of professional operation; and
- The person responsible for professional and technical operations of hospitals must have provided medical examination and treatment for at least 36 months.

Telecommunication

The telecommunications sector has developed rapidly over the past few years. Foreign direct investment into the telecommunications sector is severely restricted, even though Vietnam has made concessions in terms of access as part of its WTO Commitments.

Current laws on telecommunications dismantled the monopoly of State owned enterprises over the telecommunication network infrastructure. At the same time, however, the law established a distinction between non facilities-based telecom services and facilities-based services. Non-

facilities based service suppliers are service suppliers which do not own transmission capacity but contract for such capacity including submarine cable capacity, from a facilities-based supplier.

The facilities-based vs. non-facilities-based distinction forms the basis of Vietnam's commitments under the WTO to liberalize its telecommunications market. As from January 2010, foreign investors are allowed to own up to 51% of the legal capital of JVs with non-facilities-based operators. Foreign ownership of facilities-based operators, in turn, is capped at 49% as of accession and Vietnam is not committed to increase that threshold. The Government seems determined to keep control of facilities-based operators and it has no further long-term commitments under the WTO framework.

Trading & Distribution

When a company is granted trading rights, it is given the right to directly import and export goods, without having to go through a state-owned or local trading company. Trading rights permit the import and export of goods only and do not cover the ability to distribute goods once they are imported. The distribution of goods is subject to GATS distribution services commitments and bilateral trade agreements.

Opening the Vietnamese market for the trade and distribution sector was one of the major points in the country's WTO accession negotiations. The WTO sets up a schedule and forms of commercial presence dealing in trading and distribution. Upon Vietnam's WTO accession, JVs with Vietnamese partners were required and foreign capital contribution could not exceed 49%. From 1 January 2008, the restriction on capital contribution of a maximum of 49% was raised (to 99%) but the companies still had to be JVs; On 1 January 2009, the restriction was lifted and it became possible to set up a 100% foreign owned company in the trade and distribution sector.

Foreign investors and foreign-invested enterprises in Vietnam that meet the conditions specified by laws may invest in import, export and distribution.

Right to export allows foreign invested enterprises to directly purchase goods in Vietnam from Vietnamese business entities. Those entities must have business registrations or the right to import and/or distribute such goods in order to export those goods overseas. It is not permitted to organize a network to purchase goods in Vietnam for export. This includes the prohibition to open any locations in order to purchase exported goods.

Right to import allows the foreign invested enterprises to import goods from overseas into Vietnam and sell such imported goods to Vietnamese business entities that have a business registration or the right to export or distribute the goods. It is not permitted to organize or participate in any distribution system for goods in Vietnam.

Distribution includes wholesaling, retailing and agency for the purchase and sale of goods, and franchising.

Wholesaling allows foreign invested enterprises to sell goods, including goods manufactured in Vietnam and goods imported to Vietnam, only to traders or other organizations but not to end-consumers.

Retail allows foreign invested enterprises to sell goods, including goods manufactured in Vietnam and goods imported to Vietnam, directly to end-consumers. Vietnam restricts the establishment of additional retail sales outlets after the first outlet. Further retail sales outlets are considered on a 'case by case' basis based on an economic needs test ("ENT") of the locality and based on the following criteria: (i) number of retail sales outlets; (ii) market stability; (iii) population density; and (iv) size of the district where the retail sales outlet is proposed to be set up.

Franchising, as defined by the 2005 Commercial Law, means a commercial activity whereby the franchisor grants the franchisee the right to carry out the business of selling its goods or supplying services under certain conditions. Under the WTO Commitments, as of 1 January 2009, foreign investors are permitted to set up 100% foreign-owned companies or establish their branches to engage in franchising activities. The Ministry of Industry and Trade is responsible for registration of franchising activities from outside of Vietnam and the Departments of Industry and Trade of cities and provinces are responsible for management of domestic franchising.

In the form of *agency for purchase and sale of goods*, a foreign investor is allowed, in its own name, to conduct the sale or purchase of goods in return for remuneration from the customer.

Dispute Resolution

Any disputes to which one disputing party is a foreign investor and any disputes as between foreign investors can be referred either to a Vietnamese court, Vietnamese arbitration or foreign or international arbitration.

In addition, foreign investors and their Vietnamese partners are generally permitted to choose either Vietnamese law or foreign law as the governing law of their contract. However, Vietnamese law will be applied whether there is a foreign law chosen by the parties or if the contract is entered into in Vietnam and performed entirely in Vietnam or the contract relates to real property located in Vietnam.

Dispute settlement by Vietnamese courts

Decisions and judgments issued by Vietnamese courts are enforceable in Vietnam. Foreign investors should be aware of certain statutes of limitation and the time-consuming process for court proceedings. In general, the laws provide that the statute of limitation for initiating court proceeding is two years from the date the dispute arises although the entire court proceedings for a dispute may take several months or even several years. Although the laws set strict time limits for courts to dispose of cases (for example, two months to four months for first instance proceedings), the possibility of lengthy appeals and reviews make court proceedings very time-

consuming. In practice, some disputes have been held for hearing and review for a period of several years.

Parties in dispute should not expect a Vietnamese court to uphold the choice of foreign law governing a case brought before the Vietnamese court. Vietnamese judges may not apply foreign law as a matter of practice and have no authority to call foreign lawyers or legal experts to a hearing.

Dispute settlement by Vietnamese arbitration

Governmental Decree No. 116/CP dated 5 September 1994 is the birth certificate of economic arbitration centers in Vietnam. For a long time, arbitration was not very popular among investors as there was no legal basis to compel the enforcement of arbitration awards. The scope for arbitration is likely to increase in the coming years, however, as Vietnam adopted a much improved legal framework with the 2010 Law on Commercial Arbitration. Arbitration is available for disputes arising from commercial activities, which is broadly defined to mean activity for profit-making purposes comprising the purchase and sale of goods, provision of services, investment, commercial enhancement, and other activities for profit-making purposes. Recourse to arbitration may be agreed upon as a contractual clause or in a separate document, and it can also be agreed upon after a dispute. Courts may not accept jurisdiction over disputes that are expressly subject to a preliminary arbitration agreement.

Arbitral awards are final and binding, and may be challenged only in certain circumstances mainly involving procedural errors that arose during the process of arbitration. A party may request a domestic arbitral award to be set aside within thirty days of the date the award was granted. The court's decision on a petition to set aside an award may not be appealed and is final and valid for enforcement.

Foreign and international arbitration

Parties of commercial transactions with foreign elements are allowed to choose foreign or international arbitration to settle their dispute. However, foreign arbitral awards cannot be enforced in Vietnam until they are formally recognized by the Vietnamese court. The court's judgment regarding enforcement of a foreign arbitral award is appealable.

In September 1995, Vietnam became a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). Thus, subject to limited exceptions, Vietnamese courts are required to recognize and enforce an arbitral award made in another New York Convention state as if it were a judgment of a Vietnamese court. In practice, however, the enforcement of foreign arbitral awards may be difficult and Vietnamese courts may refuse enforcement on quite technical and formal grounds.

About Indochine Counsel



Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 35 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For more information about investing in Vietnam, please contact the following Indochine professionals:

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Le Nguyen Huy Thuy

Partner
thuy.le@indochinecounsel.com

Tran Quang

Associate
quang.tran@indochinecounsel.com

To Xuan Tinh

Partner
tinh.to@indochinecounsel.com

Steve Jacob

Foreign Associate
steven.jacob@indochinecounsel.com

Phan Anh Vu

Partner
vu.phan@indochinecounsel.com

Nguyen Thi Hong Anh

Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +848 3823 9640
F +848 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +844 3795 5261
F +844 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

The content of this legal guide is current as at July 2016.

© 2016 Indochine Counsel. All Rights Reserved.