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VIETNAM
INVESTMENT GUIDE

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VIETNAM INVESTMENT GUIDE

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The information provided in this booklet has been researched with the utmost diligence, however laws and regulations are subject to change and we shall not be held liable for any information provided. It is suggested to seek updated detailed legal advice prior to embarking on any investment decision.



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Dear Readers,

Despite of the global turmoil of 2009, Vietnam's economy offered a convincing growth rate of 5.32%. Certainly this achievement was partly fuelled by a stimulation package of the Vietnamese Government, it however reflects a sound and sustainable policy geared to grow the confidence of international and local enterprises in Vietnam. The global road to recovery remains bumpy, still the Vietnamese success story is likely to continue. The Government and the international monitoring bodies are confident that the main growth indicator GDP will settle in the region of 6.5 – 7.0% by the end of 2010. Whereas the German Industry and Commerce Vietnam supports this positive outlook in general, there is reason to stay cautious due to various challenges, such as the risk of accelerated inflation, conservative implementation of WTO-commitments or slow development of infrastructure requirements, to just name a few.



What makes Vietnam a continuously attractive and vibrant destination? It does not come as a surprise that many long term investors refer to the young, eager and talented population as a primary reason to not only remain but to enlarge the scope of activities in Vietnam. In addition, the main motivations include the political stability and the central location of Vietnam.

The initiative of Respondek & Fan Ltd. to publish this updated, comprehensive Vietnam Investment Guide is highly appreciated. Dear Reader, I trust you find the information provided in this excellent handbook as useful as I do.

With best wishes,

German Industry and Commerce Vietnam / AHK



Delegierter der Deutschen
Wirtschaft in Vietnam
Delegate of German Industry
and Commerce in Vietnam

Mr. Jan Nöther
Chief Representative



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Dear Investors,

It is the goal of this guidebook to give foreign investors a brief overview of the legal investment conditions in Vietnam. In view of the fact that the legal system in Vietnam is developing at a rather fast pace, there is always a risk that once this guidebook will have been published, some parts of it may have become obsolete.



Obviously, within the scope of this guidebook it will not be possible to address all questions that foreign investors may be faced with and we strongly suggest obtaining specific legal advice on each topic prior to making any investment decision.

We would like to keep this guidebook up-to-date and thank our readers for their comments, hints and advice that are always more than welcome (E-Mail: respondek@rflegal.com; thanhhao.tran@rflegal.com; pamela@rflegal.com; telephone: +65-6324-0060, facsimile: +65-6324-0223).

Respondek & Fan (<http://www.rflegal.com>) is an international law firm with offices in Ho Chi Minh City, Singapore and Bangkok with a focus on corporate investors in the areas of:

- International Corporate, Trade and Economic Law
- International Contract Law
- International Investment Law
- Arbitration and
- Health Care

Other than in English and Vietnamese we work also in German, French, Spanish and Chinese.

All our partners have dual qualifications in Civil and in Common Law jurisdictions.

Kind regards,
RESPONDEK & FAN LTD
Dr. Andreas Respondek
Managing Director



List of Abbreviations

No	Abbreviation	Interpretation
1.	BOT	Build-operate-transfer
2.	BT	Build-transfer
3.	BTO	Build-transfer-operate
4.	CIT	Corporate income tax
5.	DOLISA	Department of Labor, Invalids and Social Affairs
6.	DTA	Double Tax Agreement
7.	DTA's	Double Taxation Agreements
8.	EFOC	Enterprise with foreign owned capital
9.	Enterprises	Four types of corporate under the Law on Enterprises
10.	EPZ	Export Processing Zone
11.	EZ	Economic Zone
12.	HTZs	High-Tech Zones
13.	IP Law	Law on Intellectual Property
14.	IPR	Intellectual property rights
15.	JSC	Joint Stock Company
16.	JVC	Joint Venture Company
17.	LLC	Limited Liability Company
18.	LUR	Land Use Rights
19.	LURC	Land Use Right Certificates
20.	MC	Member Council
21.	MFN	Most Favored Nation
22.	MOF	Ministry of Finance
23.	MOIT	Ministry of Industry and Trade
24.	MOLISA	Ministry of Labor, Invalids and Social Affairs
25.	NOIP	National Office of Intellectual Property of Vietnam
26.	NRL	New Law on Natural Resources Tax
27.	PCT	Patent Cooperation Treaty
28.	PE	Permanent establishment
29.	PIT	Personal Income Tax
30.	PPC	Provincial People's Committee
31.	RO	Representative Office
32.	SCT	Special consumption tax
33.	TRIPs	Trade-Related Aspects of Intellectual Property Rights
34.	VAS	Vietnamese Accounting System
35.	VAT	Value Added Tax
36.	VIAC	Vietnam International Arbitration Centre
37.	WTO	World Trade Organization



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1. VIETNAM - COUNTRY OVERVIEW

1.1 Overview

In the last 30 years, Vietnam has had to recover from the ravages of war, the loss of financial support from the old Soviet Bloc, and the rigidities of a centrally-planned economy. The Socialist Republic of Vietnam is a one-party centrally controlled constitutional republic that has embarked on the path of economic liberalization and reform starting with its “doi moi” (reforms) in 1986.

In the early-to-mid 1990s, liberalization measures resulted in rapidly expanding exports and high economic growth, with real GDP growth averaging 9 per cent per year. Growth slowed in the late 1990s but the momentum picked up again, with GDP growth averaging about 7.5 per cent per year since 2001, reaching a high of 8.5 per cent in 2007 and keeps further developing. The poverty rate is now less than 20 per cent, down from almost 60 per cent in the early 1990s.

In January 2007, the country joined the World Trade Organization (“WTO”) after more than a decade-long negotiation process. WTO membership has provided Vietnam an anchor to the global market and reinforced the domestic economic reform process. Moreover, Vietnam expects to receive a substantial amount of foreign investment to develop the country’s infrastructure and economy.

Vietnam now boasts one of Southeast Asia’s fastest-growing economies.

Summary of Facts for Vietnam

Country Name:	The Socialist Republic of Vietnam
Country Capital:	Hanoi
Population (2009 est.)	86,967,524 millions; Standing as 13 th position on the World Population Ranking
Area (Square Kilometers)	331,690 Km ² ; Standing as 65 th position on the World Area Ranking and slightly larger than New Mexico
Administrative divisions:	63 provinces and cities



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Local Time:	GMT + 7
Public Holidays:	09 days
Currency:	Vietnam Dong; Remaining one US Dollar can be exchanged for 19,050 Vietnam Dong and one EURO can be exchanged for 25,670 VND ¹
Per capita income (2009)	USD 1,100

1.2 Geography and Climate

Lying on the eastern part of the Indochinese peninsula, Vietnam is shaped like the letter “S”. China borders it to the north, Laos and Cambodia to the west, the Eastern Sea to the east and the Pacific Ocean to the east and south. With its geographical position, Vietnam is a major transport junction from the Indian Ocean to the Pacific Ocean.

The country's total length from north to south measures 1,650km. Its width, stretching from east to west, is 600km at the widest point in the north, 400km in the south, and 50km at the narrowest part, in the centre, in Quang Binh Province. The coastline is 3,260km long and the inland border is 4,510km.

Vietnam is located in the tropical and temperate zone characterized by high temperatures and humidity all year round, especially in the rainy season. The annual average temperatures range from 22°C to 27°C. However, the average temperature is different in every location. E.g. in Hanoi the average temperature is 23°C, in Ho Chi Minh City 26°C and 25°C in Hue. Some places like Dalat City and Sapa Town have a maximum temperature of 20°C in the summer.

Every year there are 100 rainy days and the average rainfall is 1,500 to 2,000mm. The humidity ranges around 80%. The monsoon climate also influences the changes of the tropical humidity.

In general, in Vietnam there are two seasons, a hot and rainy season (from May to October), and a cooler season (from November to April). However

¹ Foreign exchange rate published by the Bank for Foreign Trade of Vietnam on 6 April 2010

the four distinct seasons are most evident in the Northern provinces (from Hai Van Pass toward to the north): Spring, Summer, Autumn, and Winter.

1.3 Population and Ethnic Composition

Vietnam's population is estimated at approximately 85.8 million in April 2009 with an annual population growth rate at 1.21%.² The population density is about 250 people per square kilometer. Close to 73% of the population lives in rural areas, and over 60% of the population is under 25 years of age. Vietnam's literacy rate is over 90%.

Vietnam is a multi-ethnic country with 54 ethnic groups, of which the largest are Kinh (or the ethnic Vietnamese), Tay, Thai, Muong, Chinese and Khmer.

The Kinh people account for 87% of the country's total population and mainly inhabit the Red River Delta, the central coastal delta, the Mekong Delta and major cities. The other 53 ethnic minority groups, totaling over 8 million people, are scattered over mountain areas (covering two-thirds of the country's territory) spreading from the North to the South.

1.4 Political System and Administration

Vietnam is a socialist country operating under the leadership of the Communist Party. A nation-wide congress of the Vietnam's Communist Party is held every five years determining the country's orientation, strategies and adopting its policies on solutions for socio-economic development. The Communist Party of Vietnam controls all political organizations.

The communist political regime of Vietnam is composed of the following institutions:

- (i) The Communist Party of Vietnam;
- (ii) The political organizations;
- (iii) The socio-political organizations;
- (iv) The socio-professional organizations; and

² Vietnam General Statistics Office (<http://www.gso.gov.vn>), accessed on March 23, 2010)



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- (v) The mass associations.

The Constitution of Vietnam states that the Vietnam's Communist Party is the only force leading the state and society. A nation-wide congress of the Vietnam's Communist Party is held every five years to discuss and adopt the country's orientation, strategies and policies for socio-economic development of the country.

The Communist Party controls political organizations, socio-political organizations, socio-professional organizations, and the mass associations. Those organizations may be segregated by sex, age, national origin, profession, or other traits designated by the Party, and are responsible for assisting the Communist Party in building up the Party's power. The Vietnam Fatherland Front, among others, is the most important organization as it unites a number of subordinate front organizations.

At the central level, the state political system of Vietnam is organized into several government organizations:

- (i) The National Assembly;
- (ii) The President;
- (iii) The Government;
- (iv) The People's Court; and
- (v) The People's Procuracy.

The National Assembly is the highest representative organ of the people and highest organ of state power of the Socialist Republic of Vietnam. The Vietnamese people directly elect members of the National Assembly to working terms of five years.

The National Assembly has the authority to elect the country's President, the Prime Minister of the Government, the President of the People's Supreme Court, and the Director of the Supreme People's Procuracy.

At local government levels, the people directly elect the People's Councils for a five-year term. People's Committees, which are elected by the People's Councils, are state administrative agencies at local levels. The Central Government and People's Committees at all levels form the State administrative system in Vietnam.

1.5 Provinces and Cities

Vietnam is divided into 58 provinces and 5 cities under the central government. The provinces are further subdivided into provincial municipalities, townships and counties, and then, subdivided into towns or communes. Five centrally controlled cities exist at the same level as provinces. Those cities are also subdivided into districts and counties, and then, subdivided into wards and communes.

Hanoi and Ho Chi Minh City are the centers of Vietnam's economy, finance, culture, education and science.

Hanoi is the capital and the second largest city of Vietnam. It has the highest human development index among the cities in Vietnam. Hanoi is also an important economic and international transaction center of Vietnam. According to a recent ranking by PricewaterhouseCoopers, Hanoi will be the fastest growing city in the world in terms of GDP growth from 2008 to 2025³. Together with economic growth, Hanoi's appearance has also changed significantly, especially in recent years. Infrastructure is constantly being upgraded, with new roads and an improved public transportation system.

Ho Chi Minh City is the “capital” of South Vietnam and the largest city of the whole country, and considered as the national center for education, science, technology, health care and economy.

Ho Chi Minh City's increasing prosperity can be attributed to its exceptional economic growth and development. It has an average growth rate of 10.2% per year, is experiencing an industrial growth rate of 13.2% and achieving the highest GDP per capita (1,682 USD) in the country. The city boasts the best infrastructure in the nation, including modern transportation and telecommunication systems.⁴

3 “Ha Noi and Ho Chi Minh City are topping the world’s highest economic growth cities in 2008-2025” - PricewaterhouseCoopers (<http://www.pwc.com/vn/en/index.jhtml> accessed on 23 March 2010).

4 “4,5 billion dollars of a large-scale consumption demand: Top development” – Minh Anh (Source: Sai Gon Tiep Thi) (<http://www.tuoitre.com.vn>, accessed on 23 March 2010)



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1.6 International Relations

Today Vietnam has established diplomatic relations with nearly 170 countries, including all major world powers. Vietnam has trade relations with 165 countries and territories, signed trade agreements with 76 countries and Most Favored Nation status with 72 countries and territories⁵.

In its foreign policy, Vietnam gives priority to enhancing the relations with neighboring countries namely Laos, Cambodia and China, countries in South East Asia and in the Asia-Pacific region. At the same time, Vietnam attaches great importance to the relations with traditional friends, new partners and international organizations. Vietnam joined the Bali Convention in 1992 and became an official member of ASEAN in July 1995. Since then, Vietnam has been acting as an active member of AFTA and ASEM. Since 1995, Vietnam has normalized diplomatic relations with the US and signed the Framework Agreement on co-operation with the EU.

Vietnam became a member of the Non-aligned Movement in the 70's and joined the United Nations in 1977. Vietnam has also become a member of the Pacific Economic Co-operation Council and started to take part in the activities of the Pacific Basin Economic Council. At present, Vietnam has become a member of APEC and has been admitted into the WTO in November 2006⁶.

1.7 Business Overview and Investment Environment

During the past years, Vietnam has made a number of significant achievements regarding its economic development. Since the beginning of the reform initiated by the Communist Party, the country's state has changed substantially compared to the period of the pre-reform era. Vietnam has made significant progress over the past 20 years in moving from a centrally planned economy to a market economy, opening up to foreign investment, maintaining consistent rapid growth and having accessed the World Trade Organization in November 2006.

⁵ Source: Ministry of Foreign Affairs (<http://www.mofa.gov.vn/en#DNizFxGyPH2y>)

⁶ Ibid

The economy has recorded high growth rates for several years in a row. People's living standards have been considerably improved. In a similar development as in China, since Vietnam's market opening-up the numbers of foreign investors have steadily increased.

A young, well-educated, energetic workforce, low labor costs and a series of legislative reforms all stand to attract rising volumes of foreign investment in the coming years. Some of the changed standards include allowing more autonomy for the board of management in joint-venture companies, and lowering of income taxes. The government has tried to reduce bureaucratic interference in the private sector. Under the new regulations, disclosure of proprietary information no longer is required to register with the government. With lower labor costs than many of its neighbors, Vietnam is a strong candidate for foreign export oriented companies engaged in manufacturing activities.

Regarding international relations, one of the main policies of Vietnam is to push ahead with foreign economic activities, integrate more deeply and fully into existing global, regional and bilateral economic institutions, without losing sight of national interests. In recent years, Vietnam has proactively engaged in international economic integration by emphasizing bilateral and multilateral free trade agreements, promoting comprehensive and efficient cooperation with ASEAN and the Asia-Pacific countries, consolidating and developing reliable bilateral cooperation with strategic partners, effectively taking advantage of opportunities and minimizing challenges and risks following its accession to the WTO.

2. LEGAL FRAMEWORK

Vietnam's legal system has been largely influenced by Chinese, French and Soviet models. Following the open-door policy of 1986, Vietnam has promulgated the Constitution of 1992 (amended in 2002) to strengthen legal institutions and to pave the way for its party-led economic reform.

To create a favorable environment for the development of a multi-sector market economy as well as more open and stable investment

environment, Vietnam is making continued efforts to improve its legal system.

During recent years, many laws and regulations have been enacted to establish the legal framework for the open-door policy, to comply with the integration requirements of international agreements, and especially to comply with the requirements under Vietnam's WTO membership. The most important laws include:

- the Civil Code (2005);
- the Labor Code (1994, as amended in 2002 and 2006);
- the Commercial Law (2005);
- the Law on Enterprises (2005), as amended (2009);
- the Law on Investment (2005);
- the Law on Credit Institutions (1997, as amended in 2004);
- the Land Law (2003) as amended (2009);
- the Law on Real Estate Business (2007);
- the Law on Residential Housing (2005), as amended (2009);
- the Law on Corporate Income Tax (2008);
- the Law on Personal Income Tax (2007);
- the Law on Accounting (2004); and
- the Law on Value Added Tax (2008).

3. LEGAL VEHICLES FOR FOREIGN INVESTORS

Prior to July 1, 2006, foreign investment in Vietnam was regulated by a different law from domestic investment, producing quite a great deal of restrictions for foreign investors. Specifically, the foreign investors were not entitled to set up a project under the following forms: private enterprise (sole proprietorship), incorporated partnership, sole-member limited liability company and joint stock company. In other words, they could only establish a 100% foreign invested company or joint venture company under the form of a limited liability company.

However from July 1, 2006 onwards, a new investment regime was introduced and came into effect, which comprises the new Law on Enterprises and new Law on Investment. The former regulates both foreign and domestic investment in terms of corporations; the latter regulates both foreign and domestic investment in terms of investment. This is a significant progress in respect of drafting laws, as the previously different legal treatment of foreign and Vietnamese investors in Vietnam has now been eliminated.

In this section, we shall discuss the most important points of the (new) Law on Enterprises and Law on Investment that are related to foreign investment activities in Vietnam.

Under the Law on Enterprises⁷, there are four types of corporate structures that the foreign investor can choose for their investment. These are: (i) Private Enterprise (Sole Proprietorship); (ii) Corporate Partnership; (iii) Limited Liability Company (with one member or with more than one member) and (iv.) the Joint Stock Company (all of which will be referred to as “**Enterprises**” hereinafter).

3.1 Legal Forms of Enterprises

The Law on Investment regulates five different legal forms of enterprises: (i) Private enterprise; (ii) Corporate partnership; (iii) Sole Member Limited Liability Company; (iv) Limited Liability Company with more than one member; and (v) Joint Stock Company.

3.1.1 Private Enterprise

A **Private Enterprise** (Sole Proprietorship) is an enterprise owned by one individual who shall be liable for all activities of the enterprise to the extent of all his or her assets (unlimited liability). The private enterprise may not issue any type of securities or shares. An individual owning a private enterprise

⁷ No. 60/2005/QH12 on Enterprises passed by the National Assembly on November 29th 2005 and effective from July 01st 2006 (“**Law on Enterprises**”).

may not establish a second one but is entitled to establishing a limited liability company or a joint stock company.

3.1.2 Corporate Partnership

A **Corporate Partnership** is a business that possesses at least two co-owners who jointly conduct business under one common name. Such co-owners must be individuals who shall be liable for the obligations of the partnership to the extent of all their assets. The partnership may not issue any type of security. In addition to co-owners of the partnership, there are capital-contributing members in the partnership. These capital-contributing members shall only be liable for the debts of the partnership to the extent of the amount of capital they have contributed to the partnership. The owner of a partnership is not entitled to owning a private enterprise or another partnership unless otherwise agreed by other co-owner(s) but is entitled to establishing a limited liability company or a joint stock company.

3.1.3 Sole Member Limited Liability Company

Sole Member Limited Liability Company means an enterprise owned by one organization or individual. The organization or individual shall be liable for all debts and other property obligations of the company within the amount of the charter capital of the company. The limited liability company with one member may not issue any shares.

The organizational structure of a Sole Member Limited Liability Company comprises the following institutions:

- (i) Member Council/President;
- (ii) (General) Director; and
- (iii) Supervisor.



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3.1.4 Limited Liability Company (“LLC”) With More Than One Member

A Limited Liability Company (“LLC”) With More Than One Member means a limited liability company with at least 2 members and a maximum of 50 members. The members of the company shall be liable for the debts and other property obligations of the company by the amount of capital that they have undertaken to contribute to the company. The share of capital contribution of each member may be transferred in accordance with the procedures provided for by laws. The limited liability company with 2 or more members is not entitled to issue shares as a joint stock company.

The LLC **Organizational structure** is as follows: Member Council (“MC”), Chairman of MC, (General) Director and Board of Supervision if the company has 11 members and more. The Member Council is the highest decision-making body of the company, comprising all capital contributing members.

Quorum: Under the Law on Enterprises, the MC can meet up to three times in order to eliminate quorum deadlocks. For a quorum to be present at the first meeting, appointees representing 75% of the LLC's charter capital must be present. If there is no quorum, a second meeting is held within 15 days where a quorum is reached if 50% of the LLC's charter capital is present. If there is still no quorum, a third meeting is held within 10 working days at which there is no necessary minimum attendance to obtain a quorum.

Voting: For most decisions, a majority representing at least 65% of the capital contribution is necessary to pass a resolution. This means that in order to control an LLC under the EL's default rules, the majority investor must own 65% rather than 51% of the capital. Notwithstanding this requirement, where a resolution concerns the sale of 50% or more of the total assets of the company (or a smaller ratio listed in the company's charter), reorganization or dissolution of the company, a majority representing at least 75% of the capital represented by the MC is required. Investors should be aware of this unusual provision.



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3.1.5 Joint Stock Company

The **Joint Stock Company** (“JVC”) is an enterprise in which the charter capital shall be divided into equal portions called shares. Shareholders may be juristic persons or individuals, the minimum number of shareholders shall be three and there is no restriction on the maximum number. The Joint Stock Company’s shareholders shall be liable for the debts and other financial obligations of the enterprise only within the amount of capital contributed to the enterprise; shareholders may transfer their shares to other persons. The joint stock company may issue all types of securities to raise funds.

Quorum: The procedure is similar to LLCs discussed above. The first meeting needs at least 65% of voting shares to be present to reach a quorum. If there is no quorum, within 30 days of the first meeting a second meeting is held. The second meeting requires 51% of voting shares to be present to reach a quorum. If still no quorum is reached, a third meeting will be held within 20 days without a required quorum.

Voting: Resolutions of the SGM require different majorities depending on the matter being voted on. Generally speaking, a vote will be passed if 65% of the voting shares present are in favor. However, to pass resolutions proposing to issue shares, amend the company's charter, reorganize or dissolve the company, or invest or sell 50% or more of the company's assets, a majority of at least 75% of the voting share present at the meeting is required. When the shareholders wish to pass a written resolution without a shareholders' meeting, the minimum majority needed to pass the vote is 75% of the total voting shares of a JSC.

The documentation for business registration of the above mentioned enterprises basically consists of: Application form; draft Charter; and List of Founding Members.

3.2 Three Forms of Direct Foreign Investment

Furthermore, the Law on Investment provides that there are three basic forms of direct investment: (i) 100% foreign invested enterprises, (ii) joint-venture enterprises and (iii) business co-operation contracts (BCC). It also

stipulates the licensing procedures subject to the scope of business, level of invested capital, etc.

3.2.1 100% foreign invested enterprises

A 100% foreign invested enterprise is a legal entity set up by one or more foreign individuals or organizations under one of the forms of enterprise as presented above.

3.2.2 Joint Ventures

A joint venture may be established under the form of a limited liability company with more than one member, or as a joint stock company or a partnership company, and is a legal entity established on the basis of a joint venture contract between:

- (1) a Vietnamese party and a foreign party;
- (2) a Vietnamese party and a 100% foreign invested enterprise;
- (3) a joint venture enterprise and a foreign party;
- (4) a joint venture enterprise and a 100% foreign invested enterprise; or
- (5) two joint venture enterprises.

Profits and risks are distributed among the parties in proportion to their legal capital contribution/shares in the Joint Venture unless the parties have agreed otherwise in the joint venture contract.

3.2.3 Business Cooperation Contracts (“BCC”)

A **BCC** is an agreement between one or more foreign investors and one or more Vietnamese partners with the objective of cooperating to operate one or more specific business activities. This form of investment does not constitute a new legal entity and the investors have unlimited liability for the debts of the BCC. This form of investment is generally only chosen by foreign investors with respect to projects where investment is restricted to a



BCC, such as certain telecommunications projects or projects in relation to airline, railway or sea transportation. A BCC provides, however, more flexibility than a joint venture or a 100% FOE. Within the framework of Vietnamese law, the parties involved are free to decide on the subject, contents, interests, obligations and responsibilities of and relations among the parties, and to specify these in the contract.

An investor has also the right to sign a BOT, BTO and BT contract with the competent governmental body in order to implement projects for new construction, expansion, modernization and operation of infrastructure projects in the sectors of traffic, electricity production and business, water supply or drainage, waste treatment and other sectors as stipulated by the Prime Minister of the Government. Specifically, BOT, BTO and BT are defined as follows:

- Build-operate-transfer (“**BOT**”) contract means a contract signed between a competent governmental body and an investor to build and operate an infrastructure facility in a specified duration. Upon the expiration of this duration, the investor shall transfer without compensation such facility to the Vietnamese State.
- Build-transfer-operate (“**BTO**”) contract means a contract signed between a competent governmental body and an investor to build an infrastructure facility. After completely building this infrastructure facility, the investor shall transfer it to the Vietnamese State. The Government will grant the investor the right to operate that facility for a specified duration to recover investment capital and earn profits.
- Build-transfer (“**BT**”) contract means a contract signed between a competent governmental body and an investor to build an infrastructure facility. After completely building this infrastructure facility, the investor shall transfer it to the Vietnamese State. The Government will create conditions for the investor to implement other projects for recovering investment capital and earning profits or shall make payments to the investor as agreed in the BT contract.



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3.3 Investment Licensing

3.3.1 Conditional Sectors

In common with many countries, Vietnam reserves its sovereign right to restrict investment in sensitive fields. This is achieved through the use of so-called “conditional sectors”. Investment projects in conditional sectors must satisfy certain specific conditions in order to be licensed. Conditional sectors include:

- (i) sectors impacting on social order, safety or national security;
- (ii) banking and finance;
- (iii) sectors impacting public health;
- (iv) “culture”, information, the press and publishing;
- (v) “entertainment services”;
- (vi) real estate businesses;
- (vii) surveying, prospecting, exploration and mining of natural resources or the “ecological environment”;
- (viii) development of education and training; and
- (ix) other sectors as stipulated by law.

Most importantly for foreign investors, “conditional sectors” also include all “investment fields under international treaties to which Vietnam is a member committing to limited market access to foreign investors”. For example, this covers the market access roadmaps contained in Vietnam’s WTO accession package.

For business sectors that are made “conditional” by international commitments, Decree 108⁸, which implements certain provisions of the Law on Investment, provides that the applicable requirements are those specified in the treaty or other agreement relating to the international commitment. For example, under WTO commitments investors from WTO member countries are permitted to establish engineering firms in Vietnam on the condition that for two years after the date of Vietnam’s accession, 100% foreign-owned companies may only provide such services to other foreign investment enterprises in Vietnam.

⁸ Decree No. 108/2006/NĐ-CP detailing and guiding the implementation of a number of articles of the Law on Investment issued by the Government on 22 September 2006 (“Decree No.108”).



For sectors which are declared conditional but are not mentioned in international agreements, investors must look to domestic laws to find the applicable conditions. For example, the relevant conditions for investment in “real estate business” are contained in the Law on Real Estate Business.

3.3.2 Licensing procedures

Depending on the size and the sector of the investment project, investors must follow one of the following licensing and registration levels.

Level 1 (Business Registration): Domestic enterprises with an invested capital of less than VND15 billion (approx. USD790,000) that are not conditional sectors are only subject to “business registration” procedures. However, if the domestic enterprise’s project falls within a conditional sector or if domestic investors want to apply for investment incentives recorded in their license, they are subject to “investment registration”.

Level 2 (Investment Registration): Investment Registration is required where there is an “investment project”. Foreign investment projects with a total invested capital of less than VND300 billion (approx. USD15,790 million) not falling within a conditional sector require “investment registration” and the issuance of an investment certificate. The investment certificate also serves as business registration of a corporate entity.

Domestic investment projects between VND15-300 billion (approx. USD15,790 million) are also required to obtain “investment registration”. Local investors, who can set up a corporate entity independent of “investment registration”, apply to register any investment project but do not receive an investment certificate. Domestic enterprises can subsequently register additional investment projects without the need to create a separate entity.

The procedure for “investment registration” is set out in Decree No.108. According to Decree No.108, the investor must submit an application for investment registration to the Licensing Authority, along with a “report on the financial capacity of the investor” and the proposed constitutive documents for the enterprise. The Licensing Authority should consider,

approve and issue the investment certificate within 15 working days of receiving the entire application.

Level 3 (Investment Evaluation): Any investment project with a total invested capital of over VND300 billion (approx. USD15,790 million) or investment projects in conditional sectors must undergo an investment evaluation by the Licensing Authority and other relevant authorities. There are three different types of evaluation:

- (i) evaluation for investment projects below VND300 billion (approx. USD15,790 million) falling into conditional sectors;
- (ii) evaluation for investment projects over VND300 billion (approx. USD15,790 million) falling into conditional sectors; and
- (iii) evaluation for investment projects over VND300 billion (approx. USD15,790 million) that do not fall into conditional sectors.

For the evaluation of investment projects greater than VND300 billion, along with the application documents, the applicant must also submit an “econo-technical explanation” of the investment project. This covers the investor’s objectives, size, investment location, investment capital, investment project implementation schedule, land use needs and technological and environmental solutions. When assessing the certificate application, the Licensing Authority will liaise with other Ministries and authorities in evaluating the proposed investment project.

For investment projects in conditional sectors, the investor must also demonstrate compliance with requirements specific to that conditional sector. Decree 108 gives the Licensing Authority 25 days to issue the investment certificate (20 days in industrial zones), or 40 days if the Prime Minister’s approval is required. However, in practice, the process may take as long as three months or more.

3.3.3 Licensing Authority

The Licensing authority to approve investment projects are currently granted to three competent bodies as follows:

- (i) ***The Management Boards*** of industrial zones, export-processing zones, high-technology zones and economic zones are responsible for licensing foreign investments within their zones.
- (ii) ***The Provincial People's Committee*** (“PPC”) is the responsible authority for all other foreign investments. Licensing applications should be made to these bodies, who will consult with other relevant governmental authorities (where required) before issuing final approvals.
- (iii) ***The Prime Minister's approval***. The licensing of certain investment projects in “sensitive sectors” must be approved by the Prime Minister. These investment projects include those relating to, *inter alia*, air and seaports, mining, broadcasting, casinos and cigarette manufacturing.

Also subject to Prime Ministerial approval are foreign investment projects with an investment capital (the total capital, being both charter capital and loan capital) of greater than VND1,500 billion (around USD79 million) in the following industries:

- electricity generation;
- mineral processing;
- road and railway construction;
- alcohol production and trading; and
- other sectors such as post, delivery, telecommunications networks and publishing.

The Prime Minister will decide based on advice from the Licensing Authority and Ministries.

3.4 Representative Office and Branch

Besides the above vehicles, overseas companies with ongoing business relations with Vietnam may choose to set up Representative Offices or Branches in Vietnam. Unlike the establishment of enterprises, the establishment of those businesses is conducted at the provincial Departments of Industry and Trade instead of the Licensing Authority.

3.4.1 Representative Office

A Representative Office (“**RO**”) is the simplest form of presence for a foreign company in Vietnam. It is intended to promote business opportunities for its head office and to supervise or speed up the performance of contracts that the head office has entered into with Vietnamese companies.

A RO cannot, in precise terms, be regarded as an investment in Vietnam since such an office cannot conduct any revenue-generating activities nor contract in its own name. A foreign company can open more than one RO in Vietnam.

The establishment and operation of ROs of credit institutions, education establishments and insurance companies are subject to different regulations and are not addressed in this section.

A foreign company that wants to set up a RO in Vietnam must, in general, satisfy the following requirements:

- it must have obtained a certificate of incorporation in the relevant foreign country where its head office is situated;
- the RO’s parent company must have been in operation for at least one year prior to application for a RO license; and
- its proposed operating activities in Vietnam must not be prohibited by the laws of Vietnam.

The operating duration of a RO in Vietnam is five years, which is extendable.

A RO is permitted to carry out the activities specified in its license. Such permitted activities include non-revenue generating activities such as market research, customer support, marketing or feasibility studies for investment projects.

Foreign companies are not permitted to use ROs as a vehicle to carry on actual business activities in Vietnam. For example, a RO cannot be used to conclude or execute commercial contracts. However, the chief representative of a Representative Office may be authorized by the parent company to negotiate and to sign contracts on its behalf, under a power of attorney on a



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case-by-case basis, provided that such contracts may only be performed by the parent company itself.

In summary, a RO has the following rights:

- (i) lease an office and residential accommodation and other facilities necessary for its activities (but no sublease is permitted),
- (ii) import equipment and facilities necessary for its operation; and
- (iii) employ Vietnamese and expatriates. It may also open a bank account in foreign and Vietnamese currency at a bank in Vietnam, but any conversion or remittance of currencies must comply with the foreign exchange laws of Vietnam. The purpose of this account is to pay for the expenses of the RO and should not be used for the receipt of payments from other companies.

3.4.2 Branch

This is a form of foreign direct investment that does not constitute an independent legal entity. Foreign companies may establish branches in Vietnam to conduct trading activities and activities directly related to trading of goods. The establishment of such trading branches and the scope permitted as of commercial activities of such trading branches, however, will be only scheduled in Vietnam's international commitments (e.g., WTO commitments).

In terms of law, the establishment of a foreign company branch is simpler than the establishment of a foreign invested company since a foreign invested company is a Vietnamese legal entity separate from its parent company, while a branch still holds foreign legal entity status and is dependent on its parent company. Branches of foreign companies in Vietnam are also different from Representative Offices, as a branch is allowed to conduct commercial activities to generate profits in Vietnam which a Representative Office is not authorized to do.

One requirement to be noticed for opening a Branch is that the foreign legal entity must have operated for at least five years since its legal establishment or valid business registration in the country of origin.



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The Branch's operating license expires five years from the licensing date and is further extendable.

As a matter of practice, except for some particular fields such as culture, education and tourism, banking, tobacco, legal services and airlines where previously companies are not entitled to establishing enterprises in Vietnam, there have been very few branches established in Vietnam as such a form does not contain many advantages compared with an independent company.

3.5 Preferential investment conditions in Industrial Zones and Export Processing Zones, High-Tech Zones, Economic Zones

3.5.1 Industrial Zones and Export Processing Zones

An Industrial Zone (“**IZ**”) is a zone in which enterprises specializing in the production of industrial goods and the provision of services for industrial production are concentrated.

An Export Processing Zone (“**EPZ**”) is an industrial zone specializing in the production of goods for export and the provision of services for such production and export activities.

The advantage of locating inside an IZ/EPZ is to eliminate any land clearance problems. Enterprises will be located in a zone in which land lots have already been systematically subdivided. The IZ/EPZ infrastructure is well established, properly maintained, and supplied with wastewater treatment systems, security, roadways, and sometimes with a private power supply. The investor may be entitled to negotiate some commercial terms with the IZ/EPZ developer. Leases, however, are standardized and many non-commercial terms may be more difficult to negotiate. In certain cases, investment in an IZ/EPZ is encouraged, and various incentives, mainly tax incentives, are available.

Moreover, locating in an IZ/EPZ eliminates the concern of whether the factory fits into the local development plan. IZ/EPZ developers may construct factories according to the investors' specifications.

An investor located in an EZ, besides the benefits above, may also enjoy the following:

- It will be entitled to separate investment incentives applicable to areas with special socio-economic difficulties (there is a list of remote areas that have special socioeconomic difficulties).
- It will be entitled to a number of incentives on import duties.
- It will have the opportunity to negotiate an exemption and reduction of land rent for a certain period of time.

In reality, there are IZs / EZs in various stages of development. Those that are mature tend to have full supporting facilities, but tend to be more expensive and have less land still available. New IZs / EZs may be less developed, but the rents may be significantly lower, and the developer may be more willing to negotiate both commercial and non-commercial terms.

3.5.2 High-Tech Zones

A High-Tech Zone is a multi-function, economic-technical zone with a defined boundary. It is established in accordance with a decision of the Prime Minister. The purpose of the zone is to conduct high-tech research and development to nurture high-tech enterprises.

In addition, it is used for training high-tech human resources, and for manufacturing and trading of high-tech products.

Investment in high-tech zones are subject to the Regulations on High-Tech Zones (“**HTZs**”) which are issued in accordance with Government Decree No. 99/2003/NĐ/CP on 28 August 2003 (“**Decree 99**”) and Government Decision 53/2004/QD/TTr dated 5 April 2004.

Foreign and domestic investors operating and doing business in HTZs, and foreign and Vietnamese individuals working for investment projects in HTZs are entitled to the following major preferential treatments:

- (i) Incentives in Corporate Income Tax;



- (ii) **Land Use:** Uniform land lease pricing applies to both foreign and domestic investors in HTZs. Land rent exemptions may be granted to those investing in projects on research and development of technology or on high-level skills training in science and technology.
- (iii) Additional incentives may be granted to the investors in “especially important projects”.

3.5.3 Economic Zones

An Economic Zone (“EZ”) is an identified geographical zone with privileges on investment environment, preferential stable policies, and flexible management, which provides favorable conditions for domestic and foreign investors. Developers of EZs and investors operating and doing business in these zones enjoy a great deal of preferential treatments concerning CIT, PIT, import duties, VAT, land use, etc.

There are currently fourteen EZs operating in Vietnam. One of the largest is Chu Lai in Quang Nam Province; other big EZs include Dung Quat in Quang Ngai Province, Chan May in Hue City and Nhon Hoi in Binh Dinh Province. Those EZs, however, are mostly located in the areas with socio-economic difficulties and far from the economic centers of the country. That is the reason why those EZs are not so attractive to both foreign and domestic investors. Take Chu Lai as an example, after six years from the establishment (2003), Chu Lai Licensing Authority had granted only less than 100 licenses to both Vietnamese and foreign investors for implementing their projects in such a 27,000 ha EZ.⁹

4. VIETNAM’S TAX SYSTEM

Both domestic and foreign invested enterprises are subject to several taxes, including: (1) corporate income tax; (2) withholding taxes; (3) capital assignment profits tax; (4) value added tax; and (5) import duties. Their

⁹ Resource: Business Forum <http://dddn.com.vn> (accessed at 9:35 PM, ngày 15/3/2010), “Khu kinh tế mở Chu Lai: Chờ hoài chưa lớn!”.



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employees are subject to personal income tax, and both employers and employees are liable for social security, unemployment and health insurance.

Various other taxes that may affect certain investors, include: (1) special sales tax; (2) natural resources tax; (3) property taxes; and (4) export duties.

All these taxes are imposed at the national level. There are no local or provincial taxes.

4.1 Corporate Income Tax

4.1.1 General

Corporate income tax ("CIT") is levied on the taxable income of all organizations doing business in Vietnam, including foreign invested companies, and branches and affiliates of offshore companies licensed to operate in Vietnam.

4.1.2 Assessable and Taxable income

The bases for CIT calculation are assessable income and the CIT rate. CIT payable is assessable income multiplied by the CIT rate.

Assessable income

Assessable income within any one tax period is equal to taxable income minus tax exempt income and losses carried forward.

Taxable income

Taxable income (or taxable profits) includes business and other income. In particular, taxable income is turnover minus deductible expenses plus other income (including income received from outside of Vietnam).



Taxpayers are required to prepare an annual CIT return which includes a section for making adjustments between accounting profits and taxable profits.

Non-deductible expenses

Expenses which relate to revenue generation are properly supported by suitable documentation and not specifically identified as being non-deductible are tax deductible.

Examples of non-deductible expenses include:

- a. Depreciation of fixed assets which is not in accordance with the prevailing regulations;
- b. Employee remuneration expenses which are not actually paid or are not stated in a labor contract or collective labor agreement;
- c. Life insurance premiums for employees;
- d. Interest on loans corresponding to the portion of charter capital not yet contributed;
- e. Reserves for research and development not in accordance with the prevailing regulations;
- f. Interest on loans from economic organizations exceeding 1.5 times the interest rate set by the State Bank of Vietnam;
- g. Provisions for stock devaluation, bad debts, financial investment losses, product warranties, or construction work which are not in accordance with the prevailing regulations;
- h. Advertising, promotion (except certain items), conferences/parties, commissions, prompt payment discounts exceeding 10% of total other deductible expenses (this cap is increased to 15% for newly-established enterprises for the first 3 operating years);
- i. Unrealized foreign exchange losses;
- j. Donations except certain donations for education, health care, natural disasters, or building charitable homes for the poor;
- k. Management expenses allocated to permanent establishments in Vietnam by the foreign company's head office which are not in accordance with the regulations;
- l. Penalties;
- m. Creditable input value added tax, business income tax, personal income tax and other fees/ charges.

For certain businesses such as insurance companies, securities trading, and lotteries, the Ministry of Finance provides specific guidance on deductible expenses for CIT purposes.

Business entities in Vietnam are allowed to set up a tax deductible Research and Development fund. Enterprises can appropriate up to 10% of annual profits before tax to the fund.

It is noted that past 5 years after being set up, if the Research and Development Fund is left unused, or has been improperly used, or only less than 70% of this fund has been used, the entities must remit into the state budget the corporate income tax amount imposed on the deducted income which is left unused or has been improperly used and the interest accrued thereon.

4.1.3 Tax Rates

Taxpayers are subject to the tax rates imposed under the CIT Law. The standard rate of tax has been reduced to 25% effective from 1 January 2009 (instead of 28% as under the previous CIT law).

Enterprises operating in the oil and gas industry will be subject to CIT rates ranging from 32% to 50% depending on each project.

4.1.4 Tax Incentives

Tax incentives are granted based on regulated encouraged sectors and difficult socioeconomic locations. The sectors which are encouraged by the Vietnamese Government include education, health care, sport/culture, high technology, environmental protection, scientific research, infrastructural development and computer software manufacture.



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Preferential tax rates

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.

The CIT exemptions and reductions:

Taxpayers may be eligible for tax holidays and reductions. The tax holidays take the form of a complete exemption from CIT for a certain period beginning immediately after the enterprise generates profits for the first time, followed by a period where tax is charged at 50% of the applicable rate. However, where the enterprise has not derived any profits within 3 years of the commencement of operations, the tax holidays/tax reduction will start from the fourth year of operation. Criteria for eligibility to these tax holidays and reductions are set out in the BIT regulations.

As a part of poverty reduction policy provided by the government, additional tax reductions may be available for engaging in manufacturing, construction, and transportation activities which employ many female staff, or employing ethnic minorities.

4.1.5 Carrying Forward Losses

If an enterprise suffers losses, it is permitted to carry its losses forward to the following year, and the amount of the losses may be set off against assessable income. The continuous duration of losses to be carried forward may not exceed five years.

4.2 Capital Assignment Tax

4.2.1 General



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Capital assignment tax is by nature a form of CIT imposed on profits earned from transfers of interests (as opposed to shares) in a foreign invested or Vietnamese enterprise.

4.2.2 Taxable Profit

The taxable profit is determined as the excess of the sales proceeds less costs (or the initial value of contributed charter capital for the first transfer) less transfer expenses.

4.2.3 Tax Rate

The tax rate applied to capital assignment is 25% of the taxable profit.

It should be noted that where the assignor is a foreign organisation or foreign individual, the assignee is required to withhold the tax due from the payment to the assignor, and account for this to the tax authorities. The return and payment is required within 10 days from the date of the approval of the assignment.

Transfers of securities (bonds, shares etc) are subject to CIT on a deemed basis at 0.1% of the total value of the disposal proceeds.

4.3 Value Added Tax (“VAT”)

4.3.1 General

Under a VAT system, output tax is collected from a customer by adding VAT to the amount charged. However, a business also pays input tax to its suppliers on purchases that it makes. The business must pay the output tax to the State after deducting the input tax paid to its suppliers. The business therefore pays tax on the value that it adds in the supply chain. The tax is ultimately borne by the end consumer or businesses that make supplies

exempt from VAT, because they cannot recover input tax paid. The importer has to pay both import VAT and import duties to the customs office.

4.3.2 Taxable amount

VAT is charged on the value of goods or services to be supplied. The output tax to be charged is calculated by multiplying the taxable price (net of tax) by the applicable VAT rate. With respect to imported goods, VAT is calculated on the import dutiable price plus import duty plus special consumption tax (if applicable).

4.3.3 Tax rate

There are three rates as follows:

- 0% This rate applies to exported goods including goods sold to enterprises without permanent establishments in Vietnam (including companies in non-tariff zones), goods processed for export, goods sold to duty free shops, exported services and construction and installation carried out abroad or for export processing enterprises.
- 5% This rate applies generally to areas of the economy concerned with the provision of essential goods and services. This includes: 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.
- 10% This "standard" rate applies to activities not specified as exempt or subject to the 0% or 5%.

When a supply cannot be readily classified based on the tax tariff, VAT must be calculated based on the highest rate applicable for the particular range of goods which the business supplies.

4.3.4 Reclaiming input tax

Generally, where the taxpayer's input VAT for the period exceeds its output VAT, it will have to carry the excess forward for three months. It can then claim a refund from the tax authorities. In certain cases (e.g. exporters where excess input VAT credits exceed VND 200 million), a refund may be granted on a monthly basis. Newly established entities in a construction period and having no output VAT may claim VAT refunds on a quarterly or yearly basis depending on the amount of input VAT incurred.

A taxpayer that applies the deduction method is entitled to claim input VAT provided that he produces the following documentation:

- (i) VAT invoices or tax receipts for VAT paid at the time of import;
- (ii) Documents evidencing that payment for the goods/service that were purchased, was made through bank transfer (with a few exceptions); and
- (iii) In case of exported goods/services, in addition to the documents described in the points above, the taxpayer must provide a customs declaration, sales contract, invoices and documents evidencing that payment for goods/services sold was made through bank transfer.

4.3.5 VAT on exported services - consumed outside Vietnam

The VAT Law stipulates in Article 8.1 that services rendered to foreign companies, including companies in non-tariff areas, will be zero rated if the following conditions are met:

- The foreign company has no permanent establishment (“PE”) in Vietnam. (PE is not defined in the VAT regulations and it is assumed that the definition under the domestic CIT regulations will apply in this respect); and
- The foreign company is not a VAT registrant in Vietnam.

It should be noted however that there are a number of services specified in the VAT regulations which will not qualify for zero rating, in particular various services provided to nontariff areas.

4.4 Foreign Contractor Withholding Taxes

Withholding taxes may apply to payments of interest, royalties, license fees, foreign contractor's fees, and cross border lease charges. Each of these areas is examined separately below.

4.4.1 Dividends

No remittance tax is imposed on profits paid abroad by a foreign investor.

4.4.2 Interest

An interest withholding tax of 10% applies to any loan agreements signed from January 01st 1999 (and to those signed prior to this date where subsequent changes to the agreement have occurred).

However, offshore loans provided by certain Government or semi-Government institutions may obtain an exemption from interest withholding tax where a relevant Double Tax Agreement ("DTA") or Inter-Governmental Agreement applies.

4.4.3 Royalties, license fees, etc.

A 10% royalty withholding tax applies in the case of payments made to a foreign party for transfers of industrial property rights and technology. However, if the transfer of patents, technical know-how, technology processes or technical services is used as part of the capital contribution of a foreign-invested enterprise, there is no tax related to the transfer.

4.4.4 Payments to foreign contractors

A withholding tax on payments to foreign contractors applies where a Vietnamese contracting party (including a foreign invested enterprise licensed



under the Law on Investment) contracts with a foreign party that does not have a licensed investment in Vietnam.

Method of payment:

Foreign contractors can choose one of the following two methods for tax payment:

Method One – Deduction Method: Foreign contractors can apply to be conventional deduction method VAT payers if they (i) have a permanent entity in Vietnam with the duration of the project in Vietnam is more than 182 days, and (ii) adopt the Vietnamese Accounting System. In this scenario, the foreign contractor will pay CIT at 25% of its net profits; otherwise payment is made on a deemed basis.

It should be noted that in case the foreign contractor has more than one project, and qualifies for application of the deduction method for one project, the contractor is required to apply the deduction method for its other projects as well.

Method Two – Direct Method: For the direct (non-deduction) method foreign contractors, VAT and CIT will be withheld by the contracting party at a deemed percentage of taxable turnover. The VAT withheld by the contracting party is generally an allowable input credit in the Vietnamese contracting party's VAT return.

Various rates are specified according to the nature of the services performed specifically as follows.

Industry	VAT rate	CIT rate
Trading: distribution, supply of goods, materials, machinery and equipment in Vietnam.	Exempt	1%
Services	5%	5%
Construction, installation without supply of materials or machinery, equipment	5%	2%
Construction, installation with supply of materials or machinery, equipment	3%	2%
Transportation	3%	2%
Manufacturing, other business activities	3	2%



Interest	Exempt	10%
Royalties	Exempt	10%
Leasing of machinery and equipment	5%	5%
Leasing of aircraft, vessels (including components)	Not specified	2%
Insurance	Exempt	2%
Transfer of securities	Exempt	0.1%

4.5 Double Taxation Agreements (DTA's)

The tax treaties may modify the general principles of the taxation described above. For example, the deemed CIT on foreign contractors may be eliminated or reduced through a relevant DTA.

Vietnam has concluded more than 50 tax agreements. Some of the countries with whom Vietnam has a tax agreement are listed below.

Country	Dividends (%)	Interest (%)	Royalties
Non treaty countries	0 if corporate recipient; 5 if individual	10	10
Australia	10	10	10
Belarus	15	10	15
Belgium	5/10/15	10	15
Bulgaria	15	10	15
Canada	5/10/15	10	7.5/10
China	10	10	10
Cuba	5/10/15	10	10
Czech Republic	10	10	10
Denmark	5/10/15	10	5/15
Finland	5/10/15	10	10
France	7/10/15	NA ¹⁰	10
Germany	5/10/15	10	7.5/10
Hungary	10	10	10
Iceland	10/15	10	10

¹⁰ The treaty does not address the taxation of interest, so the domestic rate applies



India	10	10	10
Indonesia	15	15	15
Italy	5/10/15	10	7.5/10
Japan	10	10	10
Laos	10	10	10
Luxembourg	5/10/15	10	10
Malaysia	10	10	10
Mongolia	10	10	10
Myanmar	10	10	10
Netherlands	5/10/15	10	5/10/15
Norway	5/10/15	10	10
Philippines	10/15	15	15
Poland	10/15	10	10/15
Romania	15	10	15
Russian Federation	10/15	10	15
Singapore	5/7/12.5	10	5/15
South Korea	10	10	10
Sweden	5/10/15	10	5/15
Switzerland	7/10/15	10	10
Taiwan	15	10	15
Thailand	10	10	10
Ukraine	10	10	10
UK	7/10/15	10	10
Uzbekistan	15	10	15

4.6 IMPORT-EXPORT DUTIES

In general, all goods which enterprises are permitted to export and/or import, including goods sold to enterprises in Export Processing Zones (“EPZs”), and/or goods sold by enterprises in EPZs, are subject to export and/or import tax pursuant to the Law on Export Tax and Import Tax of Vietnam.

It should be noted that import and export duty rates are subject to frequent changes and it is always prudent to check the latest position.



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4.6.1 Export Duties

Export duties are charged on a few items, primarily agricultural products (e.g. rice, forest products and fish) and natural minerals. Rates vary between 0% and 37% of the selling price of goods at the port of departure as stated in the contract, excluding freight and insurance costs.

Enterprises that export in the circumstances described below are exempt from export tax:

- (i) Materials, raw materials, semi-finished products sold by enterprises to EPZs and that are used to produce and/or process exported goods;
- (ii) Products that are exported back to foreign parties under signed processing contracts.

4.6.2 Import Duties

Tax rate

Import duty rates are now classified into three categories as follows:

- (i) Preferential rates are applied to goods imported from one of countries which have MFN status with Vietnam. The MFN rates are in accordance with the WTO commitments and are applicable to goods imported from other member countries of the WTO;
- (ii) Ordinary rates apply to goods imported from other countries; and
- (iii) Special preferential rates apply to goods imported from countries which have a special preferential agreement with Vietnam, e.g. the ASEAN member countries under the CEPT; EU member countries under the Textile-Garment Treaty between Vietnam and the EU; and Japan.

Also, as part of ASEAN, Vietnam has special preferential trade agreements with China, Korea, Japan, Australia and New Zealand.

To be eligible for the preferential rates or special preferential rates, the imported goods must be accompanied by an appropriate Certificate of Origin.

Import Duty Exemptions

Foreign invested companies shall be exempted from import duty in the following circumstances:

- (i) Goods imported to create fixed assets of encouraged projects and of projects in geographical areas with either difficult or extremely difficult socio-economic conditions;
- (ii) Equipment imported to create fixed assets for encouraged projects (tax exemption applies to first-time import; it does not apply to replacements);
- (iii) Plant varieties and animal breeds imported for use in investment projects in agriculture, forestry or fisheries;
- (iv) Raw materials and supplies in direct service in the manufacture of software which cannot yet be made in Vietnam;
- (v) Goods imported for direct use in scientific research and technological development;
- (vi) Goods imported to be processed for export for foreign parties under signed processing contracts.

In addition, enterprises are exempt from import tax for five years after they commence production as follows:

- (i) Raw materials, supplies and components imported for production under projects on the list of domains eligible for special investment encouragement; or on the list of geographical areas with extremely difficult socio-economic conditions; or in the manufacture of mechanical, electrical and electronic components and accessories;
- (ii) Raw materials, supplies and semi-finished products which cannot be made in Vietnam and which are imported for production under projects on the list of domains eligible for investment encouragement;
- (iii) Semi-finished products which cannot be made in Vietnam and are imported for production under projects on the list of domains eligible for special investment encouragement or on the list of geographical areas with extremely difficult socioeconomic conditions.

Approval for import duty exempted items

Based on the investment certificate, the feasibility study and the technical design of a project, the MOIT or an agency authorized by it will approve the list of import duty exempted goods.

The imported goods mentioned above must not be assigned or sold in the Vietnamese market except as approved by the MOIT. Otherwise the relevant taxes must be paid in accordance with laws.

4.7 Special Consumption Tax

4.7.1 General

Special consumption tax ("SCT") is a form of excise tax, applied to the production or import of certain goods and the provision of certain services, which are either luxury items or discouraged for consumption. In particular, the following goods and services are subject to SCT:

- (i) Goods: cigarettes, cigars, spirits, beers, automobiles of less than 24 seats, gasoline, air-conditioners up to 90,000 BTU, playing cards, and votive papers; and
- (ii) Services: discotheque, massage, karaoke, casino, jackpot, betting entertainment, golf course businesses (i.e. selling golf memberships), and lotteries businesses.

4.7.2 Tax rates

Products/ services	Tax rates (%)
Cigar/Cigarettes	65
Spirit/Wine	20 - 65
Beer	40 - 75
Automobiles	15 - 60
Motorcycle of cylinder capacity above 125%	20
Petrol	10



Air-conditioners (not more than 90,000BTU)	10
Playingcards	40
Votivepaper	70
Discotheques, massage, karaoke	40
Casinos, jackpot games, entertainment with betting	30
Golf	20
Lottery	15

4.7.3 Additional Remarks

In addition to being subject to SCT, the above goods and services also are subject to VAT. If they are imported, import duty at various rates will apply in addition.

4.8 Natural Resources Tax

4.8.1 General

Natural Resources Tax is imposed on the exploitation of Vietnam's natural resources such as minerals, petroleum, forests, fisheries and natural water. This tax is calculated based on the value of actual production output, taxable price and tax rates.

4.8.2 New Law on Natural Resources Tax

On 25 November 2009, the National Assembly of Vietnam passed Law No. 45/2009/QH12 on Natural Resources Tax (the “NRL”). The NRL will take effect on 1 July 2010.

The followings are tax rates of a number of specific minerals under the NRL:

Items	Tax rates
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	(%)
Metallic minerals	5 - 25
Non-metallic minerals	3 - 30
Crude oil	6 - 40
Gas	1 - 30
Natural forest products	1 - 35
Natural aquatic products	1 - 10
Natural water	0 - 5
Natural bird's nests	10 - 20
Others (except for swallow's nests)	1 - 20

4.9 Land Rentals

4.9.1 General

The rental of land use rights by foreign investors (if not contributed to capital) is in effect a form of property tax. It is usually known as land rental and the range of rates is wide depending upon the location, infrastructure and the industrial sector in which the business is operating.

4.9.2 Land tariffs

The tariff frame for land rental is determined by the Government. Based on such tariff frame, the People's Committee of the relevant province will determine the specific land rental tariff. The land rental is kept stable for a period of at least five years from the investment license date. Where land rentals have been paid for the entire duration of the lease contract, the land rental shall be kept stable until the expiration of the lease.

4.10 Personal Income Tax

4.10.1 Governing laws



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Personal Income Tax (“**PIT**”) is currently regulated by Law No. 04/2007/QH12 on Personal Income Tax adopted by the National Assembly on 21 December 2007, effective from 1 January 2009. The main points are presented below.

4.10.2 Tax payers

Vietnamese citizens living in Vietnam or working in foreign countries, expatriates working in Vietnam and receiving income, and/or expatriates whose income is derived from Vietnam (even if they do not live in Vietnam) are subject to PIT.

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 term of 90 days or more in a tax year).

Tax residents are subject to Vietnamese PIT on their worldwide taxable income, wherever it is paid or received. Employment income is taxed on a gradual tax rates basis. Non-employment income is taxed at a variety of different rates.

Those who do not meet the conditions for being tax residents are considered as tax nonresidents in Vietnam. Non-residents are subject to PIT at a flat tax rate of 20% on the income received as a result of working in Vietnam in the tax year, and at various other rates on their non-employment income. However, this will need to be also considered in light of the provisions of any DTA that might apply.

4.10.3 Taxable income

The term “taxable income” is broadly defined in the PIT law, which includes both monetary and non-monetary benefits. Under the PIT law, the following items are taxable:

- (i) Employment income, including all cash remuneration and benefits-in-kind, except the following items:
 - Payments for business trip (capped);
 - Payments for telephone charges (capped);
 - Payments for uniform/stationery costs (capped); and
 - Overtime premium (the additional payment above the normal wage, but not the full amount of the overtime payment).
- (ii) Non-employment income, including:
 - Business income (e.g., income from producing, trading goods, or providing services, etc.);
 - Income from capital investment (e.g., loan interest, dividends, etc.);
 - Income from capital transfer (e.g., transfer of interest in companies, sale of shares, etc.);
 - Income from transfer of real estate (e.g., transfer of land use right, house, or rental, etc.);
 - Income from winnings (e.g., lottery, prizes, etc.);
 - Income from royalties (e.g., use fees, technology transfer, etc.);
 - Income from commercial franchises;
 - Income from inheritance in excess of VND 10 Billion; and
 - Income from receipt of gifts.

The following items are not considered as taxable income:

- (i) interest earned on deposits with credit institutions/banks and on life insurance policies;
- (ii) compensation paid under life/non-life insurance policies;
- (iii) retirement pensions paid under the Social Insurance law;
- (iv) income from transfer of properties between wife & husband, natural/adoptive father/mother and children/adopted children;
- (v) inheritances/gifts between wife and husband, natural/adoptive father/mother and children/adopted children



4.10.4 PIT rates

- (i) PIT rates of partial progressive apply to residents-employment income, excluding social and health insurance premium, specifically as follows:

No.	Taxable monthly income (VND) ¹¹		Rate (%)
	From	To	
1	0	5,000,000	5
2	Over 5,000,000	10,000,000	10
3	Over 10,000,000	18,000,000	15
4	Over 18,000,000	32,000,000	20
5	Over 32,000,000	52,000,000	25
6	Over 52,000,000	80,000,000	30

- (ii) PIT rate of full progression applies to residents-non employment income. The rate of PIT is provided below:

Sources of Income	Rate (%)
a) Income from capital investment	5
b) Income from royalty, trading concession	5
c) Income from lottery	10
d) Income from inheritance and gifts	10
e) Income from differences in the costs of capital transfers (based on the difference between selling price and buying price)	20

¹¹ The exchange between VND and USD on 5 March 2009 is at the rate of 1 USD = 19,050 VND

f) Income from transfers of securities (based on selling price)	0.1
g) Income from differences in the cost of property transfers (based on the difference between the selling cost and buying price)	25
h) Income from property transfers (based on selling price)	2

- (iii) Non-resident individuals in Vietnam will be subject to the PIT rate of partial progression or full progression as below:

Income	Rate (%)
a) Employment income	20
b) Income from business	
- Revenues from goods trading;	1
- Revenues from provision of services;	5
- Revenues from activities of manufacturing, construction, transportation and other business.	2
c) Income from capital investment	5
d) Income from capital transfer (based on selling price)	0.1
e) Income from property transfers (based on selling price)	2
f) Income from royalty, commercial franchising (over 10 million VND/contract)	5
g) Income from lottery, inheritance and gifts (over 10 million VND/time)	10

4.10.5 Reduced Income

The PIT law introduces a new policy for deduction of taxable income (i.e. **reduced income or deductions from income**) which applies to income from business, salary, and wages of resident individuals. The reduced income



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is amounts of money to be reduced or deducted from the taxable income before calculating PIT.

- Reduction for family conditions includes: Reduction of 4 million VND/ month to an individual which is subject to personal income tax; Reduction of 1.6 million VND/ month will be applied to one dependent person.
- Deductions for contributions to mandatory overseas social and health insurance schemes.
- Reduction for amounts of contribution to charity funds or humanitarian aid.

4.10.6 Tax codes and tax payment

Tax codes

Tax payers are required to obtain a tax code. Employees should submit the tax registration file to their employer who will subsequently submit this to the local tax office.

Individuals who have non-employment income are required to submit their tax registration file to the district tax office of the locality where they reside.

Tax declarations and payment

For employment income, tax has to be declared and paid provisionally on a monthly basis by the 20th day of the following month. The amounts paid are reconciled to the total tax liability at year-end. Tax refunds due to excess tax payments are only available to those who have a tax code.

Individuals who have non-employment income are required to declare and pay PIT in relation to each type of taxable non-employment income. The PIT regulations require income to be declared and tax to be paid on a regular basis (i.e., each time income is received).



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4.11 Social Insurance and Health Insurance

4.11.1 Social Insurance

Compulsory social insurance applies to Vietnamese employees only (not expatriates). The employer is obliged to contribute an amount equal to 15% of an employee's salary to the Social Insurance Fund. From 2010, the employer contributes an additional 1% every two years until the contribution reaches 18%.

Likewise, from 2010, the employee's contribution, which was at 5% of his/her salary, increases by 1% every two years until it reaches 8%.

The law sets a ceiling on the salary on which contributions by both employers and employees will be calculated, and beyond which no contribution needs to be made. Contributions and benefits are based on the employees' gross monthly salary. If the gross monthly salary is higher than 20 times the Government's country-wide minimum salary, then for purposes of calculating social insurance contributions/benefits, the salary will be deemed to be fixed at 20 times the country-wide minimum salary.¹²

Therefore, social insurance contributions and benefits will depend on the country-wide minimum salary fixed by the Government from time to time.

4.11.2 Health Insurance

Both Vietnamese workers and expatriates employed to work in Vietnam for three months or more are subject to compulsory health insurance contribution (the “HIC”) as stipulated under the Health Insurance Law and its implementations.¹³

¹² The Law on Social Insurance, Article 94.3.

¹³ Health Insurance Law, Article 12.1; Decree No.62/2009/NĐ-CP guiding the implementation of a number of articles of the Health Insurance Law, Article 2; and Circular No. 09, Article 1.1.



The HIC is based on contractual salary and wage, but capped at 20 times of the regulatory minimal wage.¹⁴ For the period from 1 October to 31 December 2009, the monthly HIC rate is 3% of the base for the HIC. As from 1 January 2010, the contribution is 4.5% of which 2/3 is contributed by employers and 1/3 is contributed by employees. Similar to other financial obligations towards the State, employers must withhold, declare, and pay for the HIC within the statutory deadlines.

It is noted further that it is not clear as to whether the Vietnam health insurance applies to expatriates who are sent to work in Vietnam under an assignment by their offshore parent companies, but not contractually employed by a local entity (whether Vietnamese or foreign-invested entity). In practice, the interpretation of such an ambiguous seems to vary widely among the various government authorities. Therefore, in a particular case, it is recommended that foreign investors should officially consult with the relevant Social Insurance Department about this issue.

4.11.3 Unemployment Insurance

The unemployment insurance regime came into effect on January 1, 2009, applying to employers with 10 or more employees, if those employees have labor contracts either of indefinite term or of a term that is between 12 and 36 months. Specifically, the employer, employees, and the State will each contribute 1% of the salary on which contribution is based, up to 20 times the country-wide minimum salary.

Unemployment insurance compensates an employee when he loses his job or terminates his labor contract with the employer. In particular, unemployment insurance benefits include (i) unemployment allowance, (ii) re-training vocational support, and (iii) job search support.

Summary of payments for insurances as of 2010

Item	Paid by employers	Paid by employees
Social insurance	16%	6%

¹⁴ Currently, under Decree No. 28/2010/NĐ-CP, the common minimum wage level is at VND 730,000 x 20 = VND 14.6 million per month).



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Health insurance	3%	1.5%
Unemployment insurance	1%	1%
Total	20%	8.5%

5. ACCOUNTING AND AUDITING

Vietnam has issued 26 accounting standards and 37 auditing standards which are basically modeled on the international standards with local modifications.

5.1 Accounting

Under the Vietnamese laws on accounting, it is compulsory that the foreign invested companies use the Vietnamese Accounting System (“VAS”) unless they obtain the approval of the Ministry of Finance for the adoption of a foreign accounting system. As a result, foreign investors now have to either convert their system to the VAS or use two systems at the same time.

The VAS should be followed strictly by the foreign invested companies, otherwise it has to be registered and approved by the Ministry of Finance before implementation.

The main requirements of VAS are:

- (i) Companies have to maintain charts of accounts, accounting vouchers and ledgers, financial reports and filing systems following prescribed requirements;
- (ii) The accounts are normally maintained in Vietnamese Dong. However, foreign invested entities can maintain their accounts and issue their financial statements in a foreign currency with the prior registration and approval from the MOF;
- (iii) The financial year of foreign-invested entities must be the same as the tax year;



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-
- (iv) The financial year-end may be the end of the calendar year (December 31) or another date that is approved by the MOF. The first fiscal year begins on the date of issuance of the Investment Certificate.
 - (v) Foreign-invested entities can maintain their accounting system internally or by using the services of an independent accounting firm.

5.2 Auditing

All foreign invested companies in Vietnam are required to have their annual financial statements audited by a qualified audit firm operating in Vietnam. The annual financial statements must be audited and submitted within 90 days from the last date of the calendar year.

6. FOREIGN EXCHANGE MANAGEMENT

The prevailing Foreign Exchange Ordinance was passed by the Standing Committee of the National Assembly on December 13th 2005 to regulate the foreign exchange market in Vietnam and satisfy the conditions for the country's integration into the WTO. The Ordinance became effective on June 1st 2006.

6.1 Vietnamese Dong vs. Foreign Currency

Under the Law, all monetary transactions (e.g. trading, lending, transfer) carried out in Vietnam must use the Vietnamese currency (Vietnamese Dong). Transactions concerning foreign currency should be made through credit institutions and other financial institutions authorized by the State Bank of Vietnam.

Exceptions are applicable to payments for consigned transactions; payments for goods or services supplied by organizations or institutions authorized to receive foreign currency payments such as payments for air tickets, shipping and air freight, insurance, international communications, etc..



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6.2 Bank accounts

All foreign invested companies and foreign parties to BCCs must open one Capital Account with one bank located in Vietnam. The main purpose of the Capital Account is to monitor the flow of capital in foreign currency into and out of Vietnam. Therefore, certain transfers of capital (e.g. transfer of capital/equity, profits or off-shore loans) must be effected through this Account.

The opening and operation of off-shore accounts are under the strict control of, and must be approved by, SBV. Normally, SBV approves off-shore accounts for the purposes of disbursement and repayment of an off-shore loan provided that the loan principal must not be less than USD5,000,000. Foreign invested companies may open an offshore bank account after approval from the State Bank. The foreign party to a BOT, BTO or BT who requires an offshore account to successfully implement the project may open an account at an offshore bank.

6.3 Transfer of foreign currency abroad

The transfer of foreign currency abroad is administered strictly by the government and is only authorized for certain transactions such as: payments for imports and services abroad, refunds of loan contracted abroad and payment of interest accrued thereon, transfer of profits and dividends and revenues from transfer of technology.

Foreign investors and foreigners working in Vietnam are entitled to transfer abroad their investment profits and income legally earned in Vietnam and invested capital remaining after the liquidation of an investment project, but it should be noted that they may not be able to remit their paid-in capital out of Vietnam prior to the termination of a BCC or dissolution of a foreign invested company. This requirement is to prevent a project company in Vietnam from making reimbursements of pre-incorporation costs to its sponsors.

6.4 Buying foreign currency

The obligation of residents to sell a part of their foreign currency revenues from current transactions to a local authorized bank was abolished in 2003 and foreign-invested enterprises may, subject to certain conditions, buy foreign currency from the banks to fulfill certain foreign currency obligations from their transactions.

7. TRADING AND DISTRIBUTION

In the decades of renovation since 1986, Vietnam's foreign trade has had strong developments to become an important driving force for economic growth. As a transitional economy, Vietnam is moving to a market based economy. By gradually introducing reform strategies, the economic policies have been modified, renewed and changed over time towards an economy with more market orientation, more private focus and less emphasis on state owned companies. Vietnam's foreign trade and distribution also moves in that direction. This part of the summary will overview changes in Vietnam's trade policies since the reforms started in the late 1980s.

7.1 Regulatory regime

Previously a foreign invested company in Vietnam could directly distribute or set up a distribution network to sell the products produced by itself in Vietnam and export those products directly but it could not conduct trade of products produced by other entities. In other words, the business of trading (without manufacturing in Vietnam) of a foreign invested company was restricted, subject to Vietnamese commitments under bilateral and multilateral international agreements to which Vietnam is a party.

Upon Vietnam's accession to the WTO, foreign investors were allowed to conduct trading activities in Vietnam. The enactment of Decree 23¹⁵ is considered as Vietnam's endeavor to implement its WTO commitments in respect of foreign investment in trading and distribution. Decree 23 sets the

¹⁵ Decree No. 23/2007/NĐ – CP detailing the Commercial Law regarding goods purchase and sale activities or goods purchase and sale related activities of foreign-invested enterprises in Vietnam issued by the Government on 12 February 2007 (“Decree 23”).

stage for the Ministry of Industry and Trade (“**MOIT**”) to respond with its implementing legislation.

On 21 May 2007, the MOIT issued Decision 10-2007-QD-BTM announcing the schedule for implementation of trading and distribution activities (“**Decision 10**”). This was the “road map” that investors had sought and clearly set out the lists of products that were prohibited from export/import and distribution and the relevant time frames for products and distribution rights to be phased-in over a period of time.

Nevertheless, authorities were still not ready to issue the necessary business licenses for foreign investment in this sector until the MOIT issued its implementing circular with all the required forms and step-by-step instructions.

On 17 July 2007, the MOIT finally issued such circular, Circular 09-2007-TT-BTM guiding implementation of Decree 23 (“**Circular 9**”). The response from the legal and investment communities has not been overly welcoming. It would appear that the MOIT has watered down the rights of foreign investors that were stipulated in Decree 23.

On 14 April 2008, Circular 05-2008-TT-BCT (“**Circular 5**”) was issued by the Ministry of Industry and Trade to amend some articles of Circular 09-2007-TT-BTM mentioned above. Nevertheless, the outcome, in reality, is not much positive and encouraging.

From our experience, the procedures for obtaining a distribution license remain time-consuming and burdensome as the MOIT and the Licensing Authority require an investor (i) to be experienced in distribution businesses as well as in the sector in which its products are distributed, and (ii) to have enough financial capability to carry out the registered distribution project. Those conditions are not specifically regulated in the law, but discretionarily decided by the governmental authorities on a case-by-case basis. This is why to date few companies have obtained such a license.

7.2 Export Rights

Under Decree 23, the right to export means “the right to purchase goods in Vietnam for export”. While it did not include the right to establish a “network

of purchasing in separate parcels throughout Vietnam for export”, it was not further restricted (except by the types of products permitted for export).

Circular 9 now adds the following qualification to an enterprise with foreign owned capital’s (“**EFOC**”) right to export, specifying that it means to “directly purchase goods from business entities which have business registration for the purchase and sale of, or which have the right to distribute, such goods in order to export them.” Whether this qualification has any significant practical impact will depend on the requirements of the various EFOCs seeking to export products from Vietnam.

7.2 Import Rights

Under Decree 23, the right to import means ‘the right to import goods into Vietnam for sale to business entities which have the right to distribute such goods in Vietnam’. As with export rights, the right to import “does not include the right to organize or participate in a goods distribution system in Vietnam”. Under Circular 09, this right to import has been sharply curtailed by adding the qualification that such EFOC’s right to import means that it must “*sell each group of imported goods to one business entity with business registration to trade or with the right to distribute such group of goods. An enterprise with foreign owned capital shall have the right to make its own selection of this business entity and to register it with the competent licence-issuing body. Each group of goods comprises the lines of goods in one chapter of the Import Tariff List*”. Then, according to Circular 05, it is amended that “an EFOC which has been licensed to import goods is entitled to sell imported goods to more than one business entities with business registration to trade or with the right to distribute such goods.” That is to say, the Government, after all, removes the restriction of the distribution rights of EFOC.

7.3 Distribution



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Retail Asia Magazine named Vietnam's retail market a "rising star" in the region. Meanwhile, the US consultancy firm A.T Kearney said Vietnam has replaced India to become the world's most attractive retail market¹⁶.

According to the General Statistics Office of Vietnam, Vietnam earned 45.5 billion USD in total retail revenue during 2007, and this figure is expected to reach 53 billion USD in 2010, with an annual growth rate of 20 percent. Vietnam remains an attractive destination for retail investment until 2012, according to a US market research company, citing the country's strong GDP growth, regulatory structure changes favoring foreign investors, and increasing consumer demand for modern retail concepts¹⁷.

As of 1 January 2009, 100% foreign-owned companies are allowed to engage in commission agency activities, and in the wholesale and retail of legally imported and domestically produced products, except for certain types of goods such as gasoline, pharmaceuticals, magazines, newspaper, books, DVDs, tobacco, rice, sugar, precious metals, processed oil and crude oil.

However, the establishment of outlets for retail services is still to be limited at the first retail outlet, from the second one, the basis of "Economic Needs Test" will apply. Decision 10 stipulated that the establishment of such additional retail outlets would be considered on the basis of "*an inspection of the economic requirements (the current number of service providers within a geographical area, market stability and the size of the geographical area)*". In practice, it is not easy to obtain a retail license, even for the first outlet.

8. LAND USE RIGHTS

Similar to China, Vietnam follows the "double-ownership" regime in which the State, on behalf of the entire people, owns and administers land, and land-users own the rights to use land ("land use right"). Ownership and use of land are mostly governed by the Land Law 2003, and its amendments and

¹⁶ Source: Vietnam News Agency dated 17th November 2008 (<http://www.smes.vn/Web/News/Default.aspx/Economic+Financial+News/Vietnamese+businesses+among+top+500+Asia-Pacific+retailers?lang=en-us>)

¹⁷ Source: General Statistics Office (<http://www.gso.gov.vn/default.aspx?tabid=622&ItemID=6929>)



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implementing regulations. On the broadest level of laws, the Civil Code also covers issues relating to land and property.

8.1 Land Use Rights (“LUR”) and Land Use Right Certificates (“LURC”)

As above mentioned, private ownership of land is not permitted in Vietnam and the State/Government performs all ownership powers. However, the laws of Vietnam also recognize ownership deriving from land use rights rather than simply the rights attached to the land.

The Land Use Right Certificate ("LURC") is similar to a title deed in most countries; however there are some differences and also uncertainties. The LURC, unlike a title deed, is not a certificate of ownership of the land, but a certificate of ownership of the LUR.

With respect to LURC concerning Apartment Owners, land use rights of the land an apartment building is built on are owned jointly by the building's unit owners. At first, the initial LUR certificate is issued to the developer. Then, when the developer sells units in a building, the apartment owner receives an LURC stating the land is jointly owned and the developer's LURC is amended to reflect the joint ownership. For common areas used by one or more apartment buildings, separate LURC may be issued to the developer or the management company.

While the Land Law allows domestic companies to purchase the LUR from others, foreign investors are not allowed to do so. Foreign investors in Vietnam however could obtain the LUR by way of either (i) capital contribution in the form of the LUR value by the local partner to a JVC, or (ii) land lease directly from certain permitted lessors, including the State.

8.2 Land Contribution by a Local Party to a Joint Venture Company (“JVC”)



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It is a matter of practice that JVCs in Vietnam have been developed in which local partners contribute their portion of capital in the form of the LUR value (in this case, the land payment must not be sourced from the State budget). The reason behind this practice is that the relevant land, which is located in attractive investment areas, has been in use by local entities (usually state-owned enterprises). Foreign investors cannot obtain that land without jointly investing with the existing local user.

Under the current Land Law, the Vietnamese party to a JVC is able to make capital contributions in the form of the LUR only after it has received a land "allocation," rather than a land "lease," from the People's Committee of the relevant province or city and has paid in full the use fees for the "allocation" of the land. In the case where the land use fee payment is deferred, the contribution of the LUR into foreign investment projects is still permissible as far as the deferment is allowed in writing by the relevant People's Committee¹⁸.

There is, however, one exception under the Land Law where a Vietnamese party which "leases" land (as opposed to the "allocation") from the Government can make its contribution in the form of the LUR to a JVC. This exception requires the two following conditions to be satisfied¹⁹:

- the Vietnamese Party has leased the relevant land before the effective date of the new Land Law, i.e. 1 July 2004; and
- the land rentals have been prepaid in full for the whole lease term or for the majority of the term and the remaining prepaid term is of at least 5 years.

After the JVC is incorporated as a result of the issuance of the Investment License by the Licensing Authority, the LURC will be issued to and in the name of the JVC.

Regarding the valuation of the LUR for the capital contribution into a JVC, it appears that the current regime allows the Vietnamese party to negotiate with the foreign party on the value of the contributed LUR based on the prevailing market value. It is noted further that in case where the JVC is involved in real estate business, there must be a deed issued by a licensed organization operating in Vietnam certifying results of the price appraisal of the LUR used for capital contribution.

¹⁸ Article 98.1(b) of Decree 181.

¹⁹ Article 111.1(d) of the Land Law.

The land use fee tariff issued by the relevant provincial People's Committee will be referred to when the Vietnamese party pays the usage fees to the State budget.

8.3 Land Lease

In case the foreign investor does not prefer obtaining the LUR in the form of capital contributions from the local partner to a JVC, or in case a foreign investor wants to set up a 100% foreign owned enterprise, such investor may consider leasing the land directly from the Government after he/she establishes an enterprise in Vietnam.

This trend is becoming increasingly preferable to foreign investors given discrepancies among foreign and local partners in JVCs in recent years. Difficulties experienced by foreign investors in this option are that it is not easy to find land in a desirable location or have the relevant lessor accept the lease (as opposed to the form of capital contributions).

8.3.1 Lessors permitted to lease land to foreign invested companies

Previously, foreign invested companies in Vietnam could only lease land from the Government or sublease land from an infrastructure developer. In addition to these conventional rules, Article 93.3 of the current Land Law has allowed foreign invested companies, which are set up by foreign investors in Vietnam to lease land from:

- Vietnamese economic organizations, including State owned companies, private joint stock companies and limited liability companies;
- Overseas Vietnamese; or
- An existing foreign invested company which leases land from the Government and develops infrastructure facilities on the land, provided that this existing foreign invested company has paid land rental for the whole land lease term.



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It should be noted that the Land Law only allows the lessor who has obtained the land under the "allocation" regime to lease his or her land to foreign invested companies. Only one exception where the land obtained by the lessor under the "lease" regime can be subleased to foreign invested companies is the case that the landlord has leased the relevant land before the effective date of the new Land Law, i.e. 1 July 2004, and the land rentals have been prepaid in full for the whole lease term or for the majority of the term providing that the remaining prepaid term is of at least 5 years.

Although the Land Law allows foreign invested companies to lease land from private lessors (such as private joint stock or limited liability companies), Decree 181 does not have any provision stipulating the procedure for such lease. Except for lease in the area of IZs and EPZs, the interpretations of the regulatory provision are variable among the central government and provincial governments.

As a consequence, some provinces allow foreign-invested companies to lease land from a non-State entity, whereas, some others do not. The authors discussed this issue with the Ministry of Natural Resources and Environment ("MONRE"), the body that is in charge of land administration. Conservatively, the MONRE insists that foreign-invested companies can only lease land from the Government or sublease land from an infrastructure developer.

8.3.2 Lease term

The lease term must be consistent with the duration of the approved project provided that it must not exceed 50 years or, in some special circumstances, 70 years. The extension of the lease term may be allowed by the Government upon expiry if the lessee wants to continue to use the land.

Foreign investors wishing to extend their lease term must obtain approval of its supplemented projects under Decree 181. Foreign land users must apply for an extension six months before expiration of their land use rights, and include in their applications amended business or production plans approved by relevant licensing bodies. The extension of the LUR is subject to the Government's discretion.

8.3.3 Rights of foreign-invested companies to the land leased

The LUR of foreign investors shall vary depending on the payment arrangement of land rentals. Where land is being leased from the Government, the Land Law contemplates two payment methods for land rental:

- (i) annual rental payment (the “**Annual Payment**”); and
- (ii) one-off payment of rentals for the entire lease term (the “**One-off Payment**”).

Under a land lease for the Annual Payment, the rights of foreign invested companies are basically such as the foreign invested company could use the land only and is not allowed to transfer, sub-lease or mortgage the LUR.

However, foreign invested companies adopting the One-off Payment regime are entitled to *transferring* land use rights and assets attached to the land (foreign investors with an Annual Payment plan may only transfer assets attached to land); *subleasing* land and assets attached to the land; *contributing* land use rights and assets attached to the land as capital to joint ventures; *mortgaging or guaranteeing* land use rights and assets to credit institutions in Vietnam during the term.

Another additional right of residential housing developers is to sell or lease houses together with the LUR over their project site to others when the foundation of the houses has been constructed thereon. Purchasers can be Vietnamese households, individuals or organizations. Foreign individuals working in Vietnam or foreign-invested enterprises can buy one or a number of apartments in a commercial residential housing zone for their expatriates' residence, which is conditional and subject to certain restrictions provided by the law (see 8.8 for further information).

Furthermore, the project site can also be transferred to a corporate entity for the latter to continue the project (i.e., project assignment).

8.3.4 Land Prices

The land price may be determined in three ways:



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- (i) by the relevant People's Committee;
- (ii) via auction; or
- (iii) by land users upon transfer/lease, sublease of land use rights or contribution of land use rights as capital.

The State determines land prices based on actual value of land in normal circumstances, if there is a large discrepancy in their calculations compared to the market price the State must adjust the price.

The provincial People's Committee is authorized to issue an official land tariff for various types of land every year. Such official land tariff must not be 20% higher than the maximum price or 20% lower than the minimum price in the land price framework provided by law.

The State determines prices for the purposes of:

- (i) assessing land use tax, income tax for the transfer of land use rights, land use registration fees, compensation when land use rights are withdrawn by the State, penalties for those that violate the Land Law causing harm to the State, and land rentals;
- (ii) putting a project that involves land out for bidding; and
- (iii) calculating LUR value when land is allocated without a land use fee.

8.4 Lease of Commercial Property

As an alternative to leasing a piece of land, service or software companies may consider leasing an office in a commercial building.

The procedure for the lease of such an office is quite simple and is not subject to any approval by Vietnamese authorities.

Another alternative is leasing an office or factory from another company located in an IZ or EPZ.

8.5 Notarization of Land Contracts

Under the Vietnamese Land Law, all contracts related to land transactions must be notarized at the notary public office, except for the transfer or lease of a property of which the owner or the landlord is licensed to do real estate business.

8.6 Land Clearance

Under the old land law, foreign investors had to pay for compensation and site clearance of land withdrawn by the State for foreign investors' use. This was a heavy burden making land prices in Vietnam extremely high since foreign investors would pay for land twice (first for land clearance, and second for land rental). Further, unsatisfactory compensation provided for by the old law led to claims from the land users and unnecessary delays in implementation of projects in foreign invested projects.

This has changed under the current Land Law. Foreign organizations and individuals, and overseas Vietnamese investing in Vietnam do not have to pay compensation and assistance for the resettlement of land users. Land recovery by the State is quite limited for economic development, and will only be recovered in certain special cases.

The cases are for IZs, HTZs, economic zones, Group A projects and for 100% FICs which cannot locate in IZs. The State, under Decree 69 implementing the Land Law, must take charge of site clearance and compensation to displaced land users, when withdrawing land for use by foreign organizations and individuals and overseas Vietnamese. When the State clears land for domestic parties, they are still responsible for negotiating the clearance of the current land users.

It is not particularly clear how this provision applies to a JVC, though in practice when a JVC falls under one of the special cases where clearance is available the State will recover land and compensate land users as stated above.



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8.7 Mortgage over Land Use Rights

While private ownership of land is not permitted, Vietnamese law expressly recognizes mortgages over land use rights in favor of credit institutions in Vietnam, including foreign bank branches in Vietnam. Unfortunately, Vietnamese laws do not have any reference to the creation of security interests over land or land use rights in favor of offshore entities and this is usually understood to mean that land use rights cannot be mortgaged in favor of offshore financial institutions.

The laws of Vietnam are not entirely clear regarding whether an onshore security agent is able to take a mortgage over land use rights for and on behalf of offshore finance parties. In practice, this agency arrangement has been adopted with a specific approval from the Government for at least one recent financing transaction.

To be eligible for giving a mortgage over land use rights, it should be noted again that a foreign invested lessee is required to pay land rental in advance for the whole period of the land lease.

In practical terms, there are limits to the value of the entitlement to mortgage land use rights due to the absence of reliable enforcement procedures. In addition, the comparatively short term of a land lease (maximum 50 years, or 70 in limited circumstances) means that it does not constitute a particularly attractive form of security for mortgage purposes, where internationally a longer term (i.e. 99 years) is the norm.

8.8 Apartments owned by foreigners

On 3 June 2008, the National Assembly passed Resolution No. 19/2008/QH12 on pilot permission for foreign organizations and individuals to purchase and own residential houses in Vietnam (“**Resolution 19**”). Resolution 19 took effect on 1 January 2009 and applies on a pilot basis for five years.

Which residential houses are eligible for sale and purchase?



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Residential houses which foreign organizations and individuals are allowed to purchase and own are apartments built under projects on development of residential houses for commercial purposes and not located in areas in which residence or travel by foreigners is restricted or banned.

Who is eligible for purchase of residential houses in Vietnam?

The following foreign organizations and individuals are allowed to purchase and own residential houses in Vietnam:

- (1) Foreign individuals who make direct investment in Vietnam under the Investment Law, or are hired to work as managers by enterprises operating in Vietnam under the Enterprises Law, including domestic enterprises and foreign-invested enterprises;
- (2) Foreign individuals who have made contributions to Vietnam and are conferred orders or medals by the President of the Socialist Republic of Vietnam; foreign individuals who have made special contributions to Vietnam as decided by the Prime Minister;
- (3) Foreign individuals who are working in socio-economic domains and posses university or higher degrees, and specialists in field for which Vietnam has demand;
- (4) Foreign individuals who marry Vietnamese citizens;
- (5) Foreign-invested enterprises which are operating in Vietnam under the investment law but not engaged in real estate business, and wish to purchase residential houses for their employees.

What conditions must an eligible person satisfy?

Individuals defined in (1), (2), (3) and (4) above must be residing in Vietnam, permitted by competent state agencies to reside in Vietnam for at least one year, and ineligible for diplomatic or consular privileges and immunities under Vietnamese law. Those people may own only one apartment in a commercial housing development project. In case he/she is donated or inherits another residential house, he/she can only choose to own that apartment while enjoying the value of the donated or inherited residential house.



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Foreign-invested enterprises specified in (5) must possess investment certificates or written certifications of investment activities as appropriate to investment forms specified by the Investment Law (investment certificates) granted by a competent Vietnamese state agency. Such foreign-invested enterprises may own one or a number of apartments in a commercial housing development project for its employees. In case the enterprise is being donated or inherits other residential houses (not in a commercial housing development project), it can only own those apartments while enjoying the value of the donated or inherited residential houses.

Can Non-Vietnamese own an apartment permanently?

An eligible individual may own an apartment for a maximum 50 years from the date of grant of the residential house ownership certificates as stated in the residential house ownership certificates. Within twelve months after the expiration of the duration of owning residential houses in Vietnam, such individual must sell or donate his/her apartment.

An eligible foreign-invested enterprise may own apartments for a duration stated in its investment certificate, including also for an extended duration. Such duration is counted from the date the enterprise is granted a residential house ownership certificate as stated in such certificate. Upon the expiration of licensed investment durations or in case of dissolution or bankruptcy of the enterprise, its apartments shall be handled in accordance with the provisions of Vietnamese law.

What are the rights of an apartment owner?

An apartment owner can only sell or donate its apartment after twelve months from the date the ownership certificate is granted to him/her. In case the owner can no longer reside in Vietnam, he/she may sell or donate its apartment ahead of the time limit specified above.

Such an owner has the right to use the apartment only for residential purposes, but is not allowed to lease out, or use the apartment for working or office or for other purposes.



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The owner can also mortgage the apartment at credit institutions licensed to operate in Vietnam.

9. CONTRACT LAW

Together with the Civil Code, the Commercial Law which became effective from 01.01.2006 is the major legal instrument which governs nearly all types of commercial contractual relations in Vietnam. Due to the limitation of this handbook, we introduce some among various provisions concerning the liability for goods, the passing of ownership and risk in sales and purchase contract; commercial agency relation; applicable remedies in commercial relations; time limit for complaints and litigation.

9.1 Sales and Purchase Agreement

Goods which do not conform to the contract include:

- (a) Those unfit for the ordinary use purpose of goods in the same category or unfit for any specific purpose about which the purchaser has informed the seller;
- (b) Those not of the same quality as sample goods;
- (c) Those which were not preserved or packed in the usual manner applicable to other goods in the same category, or not in an appropriate way for goods preservation.

In these cases, the purchaser is entitled to refuse goods as above described.

Liability for goods not conforming to the contract:

Unless the parties agree otherwise, the seller shall be liable for any defect in the goods which existed prior to the time risk passed to the purchaser, even if it is discovered after the time risk passed, except if at the time of entering into the contract the purchaser knew or should have known such defect.



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However, the seller is also liable for defect(s) in the goods arising after the time risk passed if such defect results from a breach of contract by the seller.

Remedy for delivery of insufficient goods and of goods which do not conform to the contract

Unless the parties agree otherwise, if there is a time-limit provision for delivery of the goods, the seller is entitled to remedy the incompatibility of the goods within such time-limit without being considered breaching the contract.

Suspension of payment

Under the following cases, suspension of payment can be acceptable:

1. The purchaser can prove fraud on the part of the seller.
2. The purchaser can prove that the goods are currently subject to a dispute until the dispute has been resolved.
3. The purchaser can prove that the seller delivered goods not conforming to the contract until the seller remedies such incompatibility.

Passing of risk

In case where there is a specified place of delivery

Unless there is otherwise agreement, the risk of loss or damage to the goods shall pass to the purchaser when the goods have been delivered to the purchaser or the person nominated by the purchaser, including cases where the seller is authorized to retain the vouchers which confirm ownership of the goods.

In case where there is no specified place of delivery

Unless there is otherwise agreement, the risk of loss or damage shall pass to the purchaser when the goods have been handed over to the initial carrier.



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In case where the goods are handed over to a bailee for delivery not being a carrier

Unless there is otherwise agreement, the risk of loss or damage to the goods shall pass to the purchaser in one of the following cases:

1. Upon the purchaser's acceptance of the vouchers evidencing ownership of the goods.
2. Upon the bailee's acknowledgment that the purchaser has the right of possession of the goods.

Passing of risk in cases of sale and purchase of goods in transit

Unless there is an agreement to the contrary, where the subject of the contract is goods currently in transit then the risk of loss or damage to the goods shall pass to the purchaser as from the time of entering into the contract.

Time of passing of ownership of goods

Unless otherwise stipulated by law or unless otherwise agreed by the parties, ownership of goods shall pass from the seller to the purchaser as from the time the goods are handed over.

9.2 Commercial agency

Forms of agency

1. “Off-take agency” means a form of agency whereby the agent conducts the sale or purchase of the whole quantity of goods or provides complete services on behalf of the principal.
2. “Exclusive agency” means a form of agency whereby within a specified geographical area a principal only authorizes one sole agent to sell or purchase one or a number of specified lines of goods, or to provide one or a number of specified types of services.
3. “General sale and purchase agency” or “provision of services” means a form of agency whereby the agent organizes a network of sub-agents

to conduct the sale or purchase of goods or to provide services on behalf of the principal.

The general agent shall represent the network of sub-agents. Sub-agents shall operate under the management and in the name of the general agent.

Ownership: The principal is the owner of goods and money delivered to the agent.

Remuneration for the agent

Unless there is an agreement to the contrary, remuneration for the agent is under the form of commission or difference of prices of goods or service.

Term of agency

1. Unless there is agreement to the contrary, the term of agency shall only terminate after a reasonable period of time but no earlier than sixty (60) days from the date when either party serves a notice of termination of the agency contract on the other party.
2. Unless there is an agreement to the contrary, if the principal serves a notice of termination of contract, the agent shall have the right to request the principal to pay an amount for the period of time during which the agent acted as agent for the principal.

The amount shall be the average monthly agent's remuneration for each year that the agent acted as agent for the principal. If the term of agency was less than one year, the amount shall be calculated as the average monthly agent's remuneration during the term of the agency. If an agency contract is terminated at the request of an agent, the agent shall not have the right to claim damages from the principal for the term for which the agent acted as agent for the principal.

9.3 Remedies in Commerce



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Commercial Laws provides for six basic types of remedy for the act of contract breach as follows: Specific performance, Penalty for breach, Damages for loss, Stay (or adjournment or temporary cessation) of contractual performance, Suspension of contractual performance, Rescission of contract.

Immunity from liability for acts in breach

1. The defaulting party shall be immune from liability in the following cases:
 - (a) Upon the occurrence of any event for which the parties have agreed there will be immunity from liability;
 - (b) Upon the occurrence of an event of force majeure;
 - (c) Upon a breach by one party which was totally due to the fault of the other party;
 - (d) Upon a breach by one party which was due to implementation of a decision of a competent State administrative agency about which the parties could not have known at the time of entering into the contract.
2. The defaulting party shall bear the burden of proof that an event is one of immunity from liability.

Extension of time-limit for contractual performance, refusal to perform a contract upon occurrence of an event of force majeure

The extension of the time-limit for performance of contractual obligations is not applicable to contracts with a fixed time-limit for delivery of goods or for provision of the service.

Except for the above mentioned situation, upon occurrence of an event of force majeure the parties may agree to extend the time-limit for performance of contractual obligations; if the parties fail to so agree, then the time-limit for performance of contractual obligations shall be extended for an additional period of time equal to the length of such event of force majeure plus a reasonable amount of time for remedying the consequences of such event, but not to exceed the following time-limits:



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- (a) Five (5) months in respect of goods or services for which the agreed time-limit for delivery or provision is not more than twelve (12) months as from the date the contract was entered into;
- (b) Eight (8) months in respect of goods or services for which the agreed time-limit for delivery or provision is more than twelve (12) months as from the date the contract was entered into.

Once the time-limits expire, the parties have the right to refuse to perform the contract and neither party is entitled to demand the other party to compensate for damages or loss. The party refusing to perform a contract must, within a time-limit not exceeding ten (10) days from the date of expiry, serve advance notice of refusal to perform the contract on the other party prior to commencement by the other party of discharge of its contractual obligations.

Specific performance of contracts

Specific performance of a contract means the aggrieved party requests the defaulting party to properly implement the contract or to take other measures to cause the contract to be performed, and the defaulting party shall bear any costs incurred. The aggrieved party may extend the time-limit by a reasonable period in order for the defaulting party to perform its obligations.

Relationship between specific performance and other remedies

Unless otherwise agreed by the parties, during the period of the remedy of specific performance, the aggrieved party has the right to claim damages for loss and penalty for breach but it shall not be permitted to apply the other types of remedies.

Penalty for breach

Penalty for breach is a remedy whereby the aggrieved party requires the defaulting party to pay a penalty sum for breach of contract where this is so stipulated in the contract, except for cases of immunity from liability as mentioned hereinabove.

The level of penalty in respect of any one breach of a contractual obligation or the total amount of penalty in respect of more than one breach shall be as agreed by the parties in the contract, but shall not exceed eight (8) per cent of the value of the contractual obligation which is the subject of the breach except for the activities of assessment business.

Penalty for breach will only be applicable if it was agreed by the parties and stipulated in the contract.

9.4 Limitation period for lodging complaints

Except for the business of logistics services, the limitation period for a complaint shall be as agreed upon by the parties, but in the absence of such agreement the limitation period for a complaint shall be regulated as follows:

- With respect to a complaint relating to the quantity of goods, three (3) months from the date of delivery of goods.
- With respect to a complaint relating to the quality of goods, six (6) months from the date of delivery of the goods or if the goods are under warranty then three (3) months from the expiry date of the warranty period.
- With respect to complaints relating to other breaches, nine (9) months from the date on which the defaulting party should have discharged its contractual obligations under the contract, or in the case of goods under a warranty nine (9) months from the expiry date of the warranty period.

Limitation period for initiating legal actions

The limitation period for initiating legal action applicable to all commercial disputes shall be two (2) years from the time of infringement of lawful rights and interests.

10 LABOR LAW

10.1 Labor Contracts



Signing of labor contracts

Based on the term of the contract, the Labor Code introduced three types of labor contracts:

- (i) indefinite term labor contract;
- (ii) definite term labor contract (from 12 to 36 months); and
- (iii) less-than-12-months term labor contract (hereinafter referred to as “**seasonal contract**”).

It is forbidden that a labor contract is signed for a seasonal job or a specific job with a duration of less than one year to perform tasks of a perpetual nature, i.e. jobs lasting more than one year, except when temporary replacement is necessary for an employee who is called for military duty or who takes maternity leave or who is temporarily absent for other reasons.

The labor contract must be made in writing. However, the commitment can be made orally if the job has a temporary character and its term does not exceed three months or it is the job of housework. When a verbal commitment is used, the two parties must comply with the prescriptions of the labor legislation.

It also regulates the principles for signing labor contracts as follows:

- (i) where the first definite term labor contract has expired but the employee continues to work, the two parties must sign a new labor contract within 30 days from the expiry date of the first contract, otherwise, the first definite term labor contract will automatically become an indefinite term labor contract;
- (ii) an employer is entitled to signing definite term labor contracts with an employee maximum twice; and thereafter, if the employee continues to work, the two parties must enter into an indefinite term labor contract.

A labor contract contains the following details: work descriptions, working hours and rest time, holidays, wage, workplace, term of contract, health and safety provisions, and social insurance.



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The contents of a labor contract must be in compliance with the laws of Vietnam and the collective labor agreement of the relevant company if there is one.

In general, under the Labor Code, an employee who has an indefinite term labor contract will have more advantages than the one who signs definite term contracts. Please refer to the following parts regarding the differences.

10.2 Internal Working Rules

The standard form employment contract of the Ministry of Labor, Invalids and Social Affairs ("MOLISA") does not contain provisions designed to protect the interests of employers. Hence, a company may create a system of internal rules to regulate the corporate activities by way of:

- a. specifying additional terms and conditions to the labor contract, including major obligations such as non-disclosure of business information and trade secrets; non-competition (working for or advising the employer's competitors); and a code of conduct (receipt of gifts, financial incentives, and so on);
- b. issuing a set of working rules ("**Working Rules**") to set out the obligations and requirements applicable to all employees.

Signing of a labor contract together with the employer's Working Rules will maximize the protection for employers and provides them with remedies under the law. In the absence of these documents, it may be difficult for an employer to dismiss the employee who breaches the labor regulations.

Under the law, a company is required to issue Working Rules if it has 10 or more employees. The company's employees must be publicly notified of the Working Rules. The Working Rules are expected to form the basis on which the company disciplines employees. Grounds for termination prescribed by the Labor Code are rather restrictive, but include "conduct seriously detrimental to the assets or well being of the enterprise." A set of written and posted Working Rules serves as a good benchmark for such "detrimental conduct". The Working Rules should contain provisions relating to the following:

- (i) hours of work and rest;
- (ii) organizational hierarchy within the company;
- (iii) occupational safety and hygiene;
- (iv) the protection of the property and technological and business secrets of the company; and
- (v) acts and conduct in respect of labor discipline, disciplinary measures and measures concerning material liability.

Within 6 months of the date of operation, a company is required to register its Working Rules (which are only effective from the date of such registration) with the Department of Labor, Invalids and Social Affairs (“**DOLISA**”). In the absence of registered Working Rules, a company would find it very difficult to dismiss employees.

10.3 Probationary period

A probationary period can be applied before execution of a labor contract. The employer and the employee shall agree on the terms, and the rights and obligations of the two parties. The salary of the employee during the period of probation must not less than 70% of the statutory salary of his/her job.

During the probationary period, either party can terminate the employment contract without prior notice. The probationary period must not exceed 60 days for positions requiring college level qualifications; 30 days for positions requiring vocational level qualifications; and 6 days for manual employment labor.

10.4 Suspension and Termination of Employment

The labor contract can be temporarily suspended in the following circumstances:

- (i) The employee is called for military duty or other citizen duties prescribed by law.
- (ii) The employee is taken into temporary custody or detention.
- (iii) Other circumstances as may be mutually agreed upon.



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At the end of the temporary suspension of the labor contract, the employer must reinstate the employee.

The termination of a labor contract can be made in the following circumstances:

- The expiry of the contract;
- The tasks stated in the contract have been completed;
- Both parties agree to terminate the contract;
- The employee is sentenced to serve a jail term or is prevented from performing his former job in accordance with a decision of a court;
- The employee dies or is declared missing by a court.

10.5 Unilateral termination

The Labor Code only allows unilateral termination of a labor contract in limited circumstances, irrespective of any mutual agreement or other circumstances. There are different procedures for termination by employers and employees. Generally, a party intending to terminate a labor contract unilaterally must give prior notice of termination to the other party.

10.5.1 Unilateral termination by an employee

An employee who signs a labor contract with a definite term of 12-36 months, or for seasonal work or a specific task of less than 12 months, is entitled to unilaterally terminate the contract prior to expiration if the employee:

- (i) is not assigned to the work or workplace, or working conditions as agreed under the labor contract;
- (ii) is not paid the full amount or at the time specified in the labor contract;
- (iii) is subject to maltreatment or forced labor;
- (iv) cannot continue their employment due to adverse personal or family difficulties;
- (v) is elected to a full-time position in a representative public office or is appointed to an office in the State apparatus;



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- (vi) is sick or involved in an accident requiring medical treatment for either three consecutive months in respect of a fixed-term labor contract of 12 months to 36 months, or a quarter of the contract term in respect of a seasonal job or a specific job with a term less than 12 months; or
 - (vii) in the case of female employees, is pregnant and must stop working based on the advice of a doctor.

When the employee decides to unilaterally terminate the labor, he/she must notify the employer of the termination in advance. The time for advance notification is various depending on the circumstance of the unilateral terminations.

An employee who signs a non-definite term labor contract is entitled to unilaterally terminate the contract whenever he/she wishes so, provided that a 45 day prior notice is duly given to the employer.

10.5.2 Unilateral termination by an employer

It is not easy for employers to unilaterally terminate labor contracts in Vietnam. During the term of a labor contract, unilateral termination by an employer is permitted only in the following circumstances:

- (i) the employee regularly fails to perform his contractual duties;
- (ii) the employee is dismissed for disciplinary reasons;
- (iii) the employee has been sick for an extended period (6 months or 12 months depending on the term of the employment contract);
- (iv) the employer is forced to make cuts in the production and workforce due to force majeure events such as fire or natural disaster; or
- (v) the company or organization ceases operations.

If an employer unlawfully terminates a labor contract, the employer must be obliged for the following:

- (i) to reinstate the terminated employee into their old job in accordance with their old contract;
- (ii) to compensate him/her for an amount equivalent to his/her salary and salary allowances (if any) for the days he/she was prohibited from working due to the termination plus at least two-month salary and salary allowances (if any).



If the employee does not want to return to work for the employer, he/she will be entitled to receive severance pay equivalent to a half month salary for each year of his/her service in addition to the foregoing compensation.

If the employer does not want the employee to return to work, the employer will be obliged to pay the employee severance and compensation (as set out above) and an additional amount to compensate the employee for the loss of job. The compensation amount can be agreed by the parties.

The most common circumstance for unilateral termination is dismissal for disciplinary reasons. However, there are legal restrictions as well as procedural requirements of which employers should be aware when dismissing employees. In addition, under items (i), (ii) and (iii) above, an employer may have to obtain the trade union's opinion prior to unilateral termination.

10.6 Dismissal

Dismissal is permitted only when the employee has committed one (or more) of the following acts²⁰:

- (i) theft;
- (ii) embezzlement;
- (iii) disclosure of technological and business secrets;
- (iv) any act that causes severe losses to the company's assets or interest;
- (v) repeating a breach while a disciplinary sanction remains in place for an earlier breach (this is only applicable where the sanction in question involves either a delay in awarding a salary rise to the relevant employee or the transfer of the relevant employee to another job);
- (vi) repeating a breach after being demoted for the earlier breach; or
- (vii) absence for 5 working days or more in a month or 20 working days in a year without justifiable reason.

Circular 19 of MOLISA dated 22 September 2003 provides some flexibility to employers in this regard by allowing them to set the monetary threshold

²⁰ As prescribed by Article 85 of the Labor Code.



applicable to the first four types of offences listed above and damage in the amount higher than such threshold will justify dismissal.

While companies should pay more attention to the drafting of detailed dismissal provisions in their Working Rules, it should be noted that the MOLISA did indicate that the employee's act must have actually caused the damage to the company's assets or interests. In the absence of such a causal relationship, a dismissal based on the concept of severe damage could be challenged.

Companies should exercise caution when dismissing employees. The laws and practice of Vietnam differ from those in various other countries. The concept of employee conflict of interests or employee loyalty is not yet well developed. For example, in other countries, an employee may be prevented from taking commission from the company's suppliers or working concurrently for both the employer and its competitors. In these countries, breaches of such corporate ethics could constitute grounds for termination. However, in Vietnam, in the absence of clearly worded obligations in the contract, the court would not necessarily interpret the Labor Code against the employee in this regard.

10.7 Retrenchment

A company may retrench its employees where there is an organizational restructuring or technological change, including:

- (i) partial or complete changes of machinery or equipment or replacement by advanced technological process in order to achieve increased capacity;
- (ii) changes of product lines or structure of products leading to a reduction in the number of employees required; or
- (iii) merger or dissolution of a number of departments within the company.

Where one of the above circumstances arises, which results in the redundancy of an employee who has worked for the company for 12 months or more, the Labor Code requires the company to retrain the affected employee and to assign him/her to a new job that may be available at the company.

If no new job is available, the company may terminate the employment of the redundant employee and the employee is entitled to retrenchment allowance equivalent to one month's salary for each year employment, with at least two months guaranteed. A company is required to place 1-3% of the total wages into a Retrenchment Allowance Fund for such purpose.

10.8 Wages, Overtime Payments, and Statutory Minimums

Minimum wage and wage

The Labor Code requires foreign-invested enterprises to denominate and pay wages to Vietnamese employees in Dong. Salaries for foreigners may be denominated and paid in foreign currencies.

The Government decides and publishes a minimum wage which varies, depending on geographical regions and types of work. In particular, foreign invested companies must not pay salaries to their employees lower than the statutory minimum wage levels applicable to untrained laborers.

Region-based minimum wage levels for payment to laborers doing simplest jobs under normal working conditions for Vietnamese local enterprises are applied from 1st January 2010, specifically as follows:

- (i) The level of VND 980,000/month (approx. USD51) applies to enterprises located in region I.
- (ii) The level of VND 880,000/month (approx. USD46) applies to enterprises located in region II.
- (iii) The level of VND 810,000/month (approx. USD42) applies to enterprises located in region III.
- (iv) The level of VND 730,000/month (approx. USD38) applies to enterprises located in region IV.

The following region-based minimum wage levels apply to payment for laborers doing the simplest jobs under normal working conditions for foreign-invested enterprises, foreign agencies and organizations, international organizations and foreigners in Vietnam as from January 1, 2010:

- (i) The level of VND 1,340,000/month (approx. USD71) applies to enterprises located in region I.



- (ii) The level of VND 1,190,000/month (approx. USD63) applies to enterprises located in region II.
- (iii) The level of VND 1,040,000/month (approx. USD55) applies to enterprises located in region III.
- (iv) The level of VND 1,000,000/month (approx. USD53) applies to enterprises located in region IV.

Localities of regions I, II, III and IV are specified in Decree 97/2009/NĐ-CP and Decree 98/2009/NĐ-CP dated 30 October 2009. In brief, the economies get less developed from region I to region IV.

The lowest wage level paid to laborers who have received vocational training (including laborers trained by enterprises themselves) must be at least 7% higher than the region-based minimum wage.

Enterprises are encouraged to apply a minimum wage level higher than the region-based minimum wage.

Overtime payments

Overtime on a normal working day (six days of the week and non-public holidays) must be at least one and half times the normal hourly rate. On non-working days (1 day a week) overtime pay is at least twice the normal hourly pay, while overtime on public holidays and paid annual leave is three times the normal pay rate. Overtime may not exceed 4 hours a day or 16 hours a week, up to 200 hours in a year or 300 hours a year in special circumstances, for which the approval of the provincial People's Committee may be required.

Working time and leave

A normal working week is 48 hours, comprising six 8-hour working days, but this may be extended by mutual agreement. Employees working in dangerous, noxious, or especially toxic jobs (as defined by MOLISA) will have their work day shortened to 6 or 7 hours.

An employee working for at least 12 months is entitled to annual leave of 12 days in addition to public holidays. Especially certain hazardous and toxic jobs are entitled to either 14 or 16 days annual leave as determined by the



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Government. Employees will be compensated for their untaken leave prior to departure from work.

An employee is entitled to paid leave for the following personal reasons: marriage (3 days' leave); marriage of son or daughter (1 day's leave); and death of parents, spouse's parents, spouse, son or daughter (3 days' leave).

Female employees are entitled to maternity leave of at least 4 months, with an allowance equal to 100% of the salary to be paid by the Social Insurance Fund.

10. 9 Work Permits

Expatriates working in Vietnam for 3 months or more must obtain a work permit. A work permit's term should correspond with the length of the labor contract, which is capped at 36 months but allows extensions at an employer's request.

Before signing a labor contract with an expatriate, a foreign-invested company must apply to MOLISA or its authorized agency to obtain a work permit for that expatriate. MOLISA or its authorized agency is obliged to give its decision within 15 days of its receipt of such application. Clear reasons must be provided if the application is refused. In addition, a work permit can be withdrawn in certain circumstances, including for a breach of the laws of Vietnam by the expatriate.

Seven groups of foreign employees are exempt from necessary work permits: (i) foreign employees entering Vietnam to work for less than 3 months; (ii) shareholders of a liability limited company ("LLC") with two members and more; (iii) owners of sole-member LLCs; (iv) members of Board of Management of a joint-stock company; (v) foreigners entering Vietnam to offer (and not sell) services; (vi) foreigners entering Vietnam less than 03 months to resolve emergency situations for which no Vietnamese or foreigners in Vietnam is qualified; (vii) foreign lawyers certified to practice in Vietnam.



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10.10 Trade Unions

Within 6 months of the commencement of a company's operations, a provincial federation of trade union must set up a provisional trade union organization at the company, representing and protecting the rights and interests of employees and the workforce.

An employer must recognize a trade union's status once it is validly organized. There are strict rules protecting the trade union and its members from any coercion or discrimination from employers regarding activity within the trade union. The employer is responsible for ensuring an environment conducive to the activities of the trade union.

10.11 Labor Disputes

An individual employee or an entire class of employees may initiate court proceedings in relation to a labor dispute. Where an action is commenced by a class of employees, it is called a "collective action". There is a one year statute of limitation for "collective actions". Collective actions are treated as disputes between an employer and the class' representative. The statute of limitation for individual actions depends on the dispute. For disputes over unilateral termination, dismissal, compensation for termination and payment of social insurance the statute of limitation is 1 year. For disputes in labor export operations the statute of limitation is 3 years. For all other disputes, the statute of limitation is 6 months.

If an individual labor dispute arises, it must first be referred to, and settled by, the labor reconciliation council at the relevant enterprise (the "**Enterprise Reconciliation Council**") or the Labor Conciliator. If this fails, either party may refer the dispute to the relevant court for hearing. Individual labor disputes cannot give a rise to a labor strike under the law.

Collective labor disputes are classified into collective labor disputes over rights ("**Disputes over Rights**") and collective labor disputes over interests ("**Disputes over Interests**").

Disputes over Rights are defined as those arising out of the implementation of labor laws and regulations, the collective labor agreement, registered internal



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working rules or other lawful rules and agreements in an enterprise. Disputes over Rights will first be referred to the Enterprise Reconciliation Council (or the Labor Conciliator). If reconciliation fails, the dispute is referred to the Chairman of the district People's Committee for settlement. If this second step fails, the dispute can finally be brought to the People's Court or give rise to a labor strike, subject to the decision of the collective laborers.

By contrast, Disputes over Interests are defined as those arising out of new labor conditions and benefits other than the objects of Disputes over Rights. Disputes over Interests will first be referred to the Enterprise Reconciliation Council (or the Labor Conciliator). If reconciliation fails, the dispute is referred to the provincial Labor Arbitration Council for settlement. Failure in settlement by the Labor Arbitration Council can give a rise to a labor strike by the collective laborers.

10.12 Labor Strikes

A lawful labor strike must be conducted by the (provisional) Trade Union in the enterprise (or the representative appointed by the collective laborers in the absence of the Trade Union).

A labor strike will lawfully be carried out if (i) in an enterprise of less than 300 employees, at least 50% of the total employees agree to the strike; or (ii) in an enterprise of 300 employees or more, at least 75% of the compulsorily consulted persons agree (including the Trade Union's members, heads and deputy heads of the Trade Union's divisions and/or production teams).

Before and during the labor strike, the employer is entitled to commence legal action before the People's Court for settlement of the Dispute over Rights or judgment on the lawfulness of the strike. The right to take legal action is vested in both the employer and relevant employees even for 3 months after the strike terminates.

10.13 Employees' liability for unlawful strikes



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The policy on salaries payable to employees during a strike has recently been changed. Laborers who take part in a strike will not be paid during that strike. Those who do not strike but have to cease working because of the strike will still be entitled to the work-suspended salary. The Labor Code attempts to balance the interests of both the employer and employees conducting the strike. From the employees' perspective, collective laborers are entitled to strike to protect their rights and interests; the employer is not allowed to terminate labor contracts with those employees, or otherwise seek retribution against them. From the employer's perspective, certain sanctions are imposed on employees who participate in unlawful strikes or abuse strikes, e.g., laborers who deliberately continue striking after the court opines on the unlawfulness of the strike will have to compensate for any damage that the employer has incurred due to the strike. However, it is difficult to determine the level of compensation under the Labor Code and Civil Code.

11. INTELLECTUAL PROPERTY

Vietnam was considered to be among the weakest countries in intellectual property protection. This has been changed since the promulgation of the revised Civil Code in June 2005, Law on Intellectual Property which took effect on 1st July 2006 (“**IP Law**”) and the amended IP Law that was passed by the National Assembly on 19th June 2009 with effect from 1st January 2010 followed by a number of subsequent implementing decrees.

Vietnam consolidated previously scattered regulations on intellectual-property rights (“**IPR**”). The Civil Code sets out general provisions for copy right, industrial property, technology transfer. The IP Law sets regulations on copyright and related rights, industrial-property rights, plant varieties, and policies, procedures and measures for protection.

Besides, Vietnam already agreed to implement the Trade-Related Aspects of Intellectual Property Rights (“**TRIPs**”) agreement immediately upon accession to the World Trade Organization on 11th of January 2007. The government has expressed strong commitments to IPR protection, including the signing of the so-called Bern Treaty.

Areas of IP assessment include assessment of copyright and related rights, assessment of industrial property rights, and assessment of the rights to plant varieties. The contents of Intellectual property assessment are as follows:

- (i) Determination of the legal status and protectability of the IPR subject matter;
- (ii) The scope of IPR protection;
- (iii) Determination of evidence for calculation of the level of damage;
- (iv) Determination of infringing elements, infringing products/services, the element serving as a basis for determination of the value of the protected IPR subject matter, the infringing objects;
- (v) Determination of the ability to prove the IPR holder status, infringement, infringing goods or the ability to prove to the contrary of documents and evidence used in the dispute or infringement; and
- (vi) Other circumstances of the case that need to be clarified.

11.1 Copyright

Copyright means rights of organizations and individuals to works they have created or own and is considered a “natural” right because it arises automatically on creation of an original work of authorship.

Types of works eligible for copyright protection are as below:

- (i) Literary and scientific works, textbooks, teaching courses and other works expressed in written languages or other characters;
- (ii) Lectures, addresses and other sermons;
- (iii) Press works;
- (iv) Musical works;
- (v) Dramatic works;
- (vi) Cinematographic works and works created by a process analogous to cinematography (below collectively referred to as cinematographic works);
- (vii) Plastic-art works and works of applied art;
- (viii) Photographic works;
- (ix) Architectural works;
- (x) Sketches, plans, maps and drawings related to topography, architecture or scientific works;
- (xi) Folklore and folk art works of folk culture; and

(xii) Computer programs and data compilations.

There is no need to register a copyright in Vietnam in order for it to exist. However, a copyright works may be registered with the National Office of Intellectual Property of Vietnam (“**NOIP**”), which can be helpful in seeking to establish ownership/authorship in the event of a conflict.

Generally, the term of copyright protection is life of the author plus 50 years. In the case of photographic, cinematographic and dramatic works, and works of applied art, however, the term of protection is 50 years from the date of first publication.

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 which is a member of the Berne Convention, or his/her work has been first published in a Berne member country.

A copyright owner enjoys various moral and economic rights in relation to the work. Moral rights include the right to be acknowledged as author of the work and the right to prevent amendment to, or distortion of, the work. Economic rights include the exclusive right to reproduce, publish, and broadcast the copyright work.

In certain special circumstances where use of the work, or part of the work, is deemed to be fair, a copyright can be used without license. For example, one may use the published work, or part thereof, for:

- (i)** Duplication of works for personal scientific research or leaching purpose;
- (ii)** Reasonable recitation of works without misrepresenting the authors' views for commentary or illustrative purpose;
- (iii)** Recitation of works without misrepresenting the authors* views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;
- (iv)** Recitation of works in schools for lecturing purpose without misrepresenting the authors" views and not for commercial purpose;
- (v)** Reprographic reproduction of works by libraries for archival and research purpose;



- (vi) Performance of dramatic works or other performing-art works in mass cultural, communication or mobilization activities without collecting any charges in any form;
- (vii) Audiovisual recording of performances for the purpose of reporting current events or for teaching purpose;
- (viii) Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for the purpose of presenting images of these works;
- (ix) Transcription of works into Braille or characters of other languages for the blind; and
- (x) Importation of copies of others' works for personal use.

Organizations and individuals that use works above may neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of these works.

11.2 Trademarks

A trade mark is a sign in the form of a picture, name, word, letters, figures or a combination of these elements, used in the course of trade, primarily to distinguish the goods or services of one trader from those of another, i.e. to function as a badge of origin.

Trademarks can be registered with the National Office of Intellectual Property (“**NOIP**”). Foreigners are entitled to register their trade marks in Vietnam, but applications must be filed by a local IP agent.

Trademarks are registered in relation to particular goods or services. The International Classification of Goods and Services, which has been adopted in Vietnam, sets out 45 classes of goods and services. Multi-class applications are accepted in Vietnam. Well-known trademarks can be protected in Vietnam without registration, but as yet few have been.

The registration process involves three steps: formal examination, publication in the Official Industrial Property Gazette and substantive examination. It takes normally one year in reality.

A trade mark is protected from the date of registration for 10 years from the date of filing. The registration can be renewed for additional 10 year periods,



subject to payment of renewal fees. If the mark is not used by the registrant or its licensee for a consecutive five-year period, the registration can be cancelled for non-use.

A mark shall be deemed to be distinctive if it consists of one or more easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination. It shall be deemed to be indistinctive if it is a sign falling into one of the following categories:

- (i) Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such sign has been widely used and recognized as a mark;
- (ii) Conventional signs or symbols, pictures or common names in any language of goods or services that have been widely and regularly used and known to many people;
- (iii) Signs indicating time, place and method of production; category, quantity, quality, properties, ingredients, use, value or other characteristics descriptive of goods or services, except where such sign has acquired distinctiveness by use before the filing of the application for registration of the mark;
- (iv) Signs describing the legal status and business sector of business entities;
- (v) Signs indicating the geographical origin of goods or services, except where such sign has been widely used and recognized as a mark or registered as a collective mark or certification mark as stipulated in this Law;
- (vi) Signs other than integrated marks which are identical with or confusingly similar to registered marks of identical or similar goods or services on the basis of applications for registration with earlier filing dates or priority dates, as applicable, including applications for registration of marks filed pursuant to a treaty of which the Socialist Republic of Vietnam is a member;
- (vii) Signs identical with or confusingly similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;
- (viii) Signs identical with or confusingly similar to another person's mark which has been registered for identical or similar goods or services, the registration certificate of which has been invalidated for no more than five years, except where the ground for such invalidation was non-use of the mark;



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- (ix) Signs identical with or confusingly similar to another person's mark recognized as a well known mark which has been registered for goods or services which are identical with or similar to those bearing such well known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well known mark or the mark registration was aimed at taking advantage of the reputation of the well known mark;
 - (x) Signs identical with or similar to another person's trade name currently in use if the use of such sign may cause confusion to consumers as to the origin of goods or services;
 - (xi) Signs identical with or similar to a protected geographical indication if the use of such sign may mislead consumers as to the geographical origin of goods;
 - (xii) Signs identical with, containing or being translated or transcribed from protected geographical indications for wines or spirits if such sign has been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;
 - (xiii) Signs identical with or insignificantly different from another person's industrial design which has been protected on the basis of an application for registration of an industrial design with a filing date or priority date earlier than that of the application for registration of the mark.

Vietnam is a member of the major international trade mark treaties including the Paris Convention and the Madrid International Trade Mark Registration System (Madrid Agreement and Madrid Protocol). Foreign applicants can file a separate national application or include Vietnam in an international application.

11.3 Trade names and Domain names

“Trade name” means a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing such trade name from another entity in the same business domain and area. A business area mentioned in this case means a geographical area where a business entity has its partners, customers or earns its reputation.



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Under the IP Law, a trade name shall be protected when it is capable of distinguishing the business entity bearing the trade name from other business entities operating in the same business sector and locality. Objects ineligible for protection as trade names are as below:

- (i) Names of State bodies, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations, socio-professional organizations; or
- (ii) Names of other entities not involved in business activities.

Registration of trade names is not required. IPRs in the trade name are established through lawful use of the name. A trade name may only be transferred with the transfer of the entire business establishment and business activities associated with such trade name.

A trade name shall be deemed to be distinctive when it satisfies the following conditions:

- (i) It consists of a proper name, except where the proper name was widely known by use;
- (ii) It is not identical with or confusingly similar to a trade name which was used earlier by another person in the same business sector and locality;
- (iii) It is not identical with or confusingly similar to another person's mark or a geographical indication which was protected before the date of use of such trade name.

A domain name is the name used to identify an internet address. It is important to register the domain name with the Vietnam National Internet Center in order to avoid cyber-squatting as Vietnam applies the ‘first come, first served’ rule when registering domain names. Domain names cannot be sold or assigned in Vietnam.

11.4 Inventions and Inventions Patents

“Invention” means a technical solution in the form of a product or a process which is intended to solve a problem by application of laws of nature.

An invention patent is a right granted to an inventor in respect of inventions, both products and processes, that are new, involve an inventive step, and are



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capable of industrial application. It gives the patentee the exclusive right, for a limited period, to prevent others making, using or selling the invention without permission, in return for the patentee giving the public details of the invention. Objects ineligible for protection as inventions in Vietnam are listed below:

- (i) Scientific discoveries or theories, mathematical methods;
- (ii) Schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games and doing business; computer programs;
- (iii) Presentations of information;
- (iv) Solutions of aesthetic characteristics only;
- (v) Plant varieties, animal breeds;
- (vi) Processes of plant or animal production which are principally of a biological nature, other than microbiological processes; or
- (vii) Human and animal disease prevention methods, diagnostic and treatment methods.

In addition to the ‘invention patents’ referred to above, Vietnam also has ‘Utility Solution Patents’, which provide a similar type of protection, but are subject to less stringent patentability requirements and provide protection for a much shorter period.

In case many applications are filed for registration of the same invention or similar inventions, the protection title may only be granted to the valid application with the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection title.

In case there are many registration applications satisfying all the conditions for the grant of a protection title and having the same earliest priority or filing date, the protection title may only be granted for the object of a single application out of these applications under an agreement of all applicants. Without such agreement, all relevant objects of these applications will be refused for the grant of a protection title.

Priority in applications for patent protection is determined by the date on which the NOIP receives the application, or in accordance with the applicable international treaties. Applicants who wish to rely on international treaties to establish a right of priority must make an express statement to that effect in their application and present evidence in support of their priority claim.



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Vietnam is a signatory to the Patent Cooperation Treaty ("PCT"). The signatories to the PCT have agreed to permit an applicant to wait for up to 30 months after the initial filing of a patent application in one country to begin prosecuting the application in other countries. Vietnamese law extends this period to 31 months.

An application for registration is lodged with the NOIP. As in other countries, the application process is complex. Nationals of a PCT Member Country can seek protection of their inventions either by filing a national patent application with the NOIP or by designating Vietnam in a PCT application.

Once a national patent application has been filed with the NOIP, it will first be examined as to form to determine whether it, and its enclosures, comply with the legislative requirements. If the application does comply, it will be published in the Official Industrial Property Gazette during the 19th month after the filing date, or priority date. In the case of PCT applications, the application will be published within two months of the Notice of Acceptance.

A request for substantive examination must be filed with the NOIP within 42 months (for an invention patent) or 36 months (for a utility solution patent) of the filing date or priority date. These periods can be extended for a further six months, subject to payment of the appropriate fees. If no request is submitted within this time frame, the patent application will be deemed withdrawn.

The substantive examination period is 12 months. The Examiner conducts an examination to see whether the invention satisfies the protection criteria. If it does satisfy the protection criteria, the patent will be granted and notification of the grant will be published in the Official Industrial Property Gazette.

Invention patents last 20 years from the filing date. Utility solution patent registrations last for 10 years from the filing date.

11.5 Industrial Designs

An industrial design shall be eligible for protection when it satisfies the following conditions:

- (i) It is novel;
- (ii) It is of a creative nature; and
- (iii) It is susceptible of industrial application.

The following items shall be ineligible for protection as industrial designs:

- (i) Outward appearance of a product which is necessarily due to the technical features of the product;
- (ii) Outward appearance of civil or industrial construction works; or
- (iii) Shape of a product which is invisible during the use of the product.

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 novel, creative and capable of being used in industry. These criteria are applied in much the same way as they are for invention patents, although much less strictly. Novelty is assessed on a worldwide basis.

The prescribed period is nine months but applications are currently taking from 12 to 15 months to proceed to registration. Once registered, an industrial design is protected from the date of registration for a period of five years from the date of filing. The registration can be renewed for two consecutive five-year periods.

If any of the following conditions apply, an industrial design registration will be denied:

- (i) before filing, or the date of priority claimed, the same industrial design was published or filed in Vietnam or anywhere in the world;
- (ii) the industrial design is not inventive; or
- (iii) the industrial design is not incapable of industrial application.

11.6 Trade Secrets

“Trade secret” means information obtained from financial or intellectual investment activities, which has not yet been disclosed and can be used in business. Use of a trade secret means the performance of the following acts:

- (i) Applying the trade secret to the manufacture of products, provision of services or trade in goods; or

- (ii) Selling, advertising for sale, stocking for sale or importing products manufactured with the application of the trade secret.

The following acts shall be deemed infringements of the right to trade secrets:

- (i) Accessing or acquiring information pertaining to a trade secret by taking acts against secrecy- keeping measures applied by lawful controllers of such trade secret;
- (ii) Disclosing or using information pertaining to a trade secret without the permission of the owner of such trade secret;
- (iii) Breaching secrecy-keeping contracts or deceiving, inducing, buying off, forcing, seducing or abusing the trust of persons in charge of secrecy-keeping in order to access, acquire or disclose a trade secret;
- (iv) Accessing or acquiring information pertaining to the trade secret of an applicant for a license for trading in or circulating products by taking acts against secrecy-keeping measures applied by competent bodies;
- (v) Using or disclosing trade secrets, while knowing or having the obligation to know that they have been acquired by others engaged in one of the acts stipulated in sub-clauses (a), (b), (c) or (d) of this clause; or
- (vi) Failing to perform the secrecy-keeping obligation according to IP regulations.

Trade secrets can be comprised of any industrial and commercial information that has not been made available to the public. They can be among a company's most valuable assets, e.g. the Coca-Cola formula.

A trade secret is protected as long as it meets the following conditions:

- (i) it is not common knowledge or easily obtained;
- (ii) it is of commercial value; and
- (iii) the owner applies appropriate measures to keep it secret.

11.7 Integrated Circuits

An integrated circuit is a product, in final form 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 semiconductor



material and which is intended to perform an electronic function. ‘Integrated circuit’ is synonymous with IC, chip and microelectronic circuit.

An integrated circuit is capable of protection if it is original and commercially novel. Its commercial novelty will not be destroyed by commercial exploitation undertaken by the owner during the two year period immediately prior to the date of filing. An integrated circuit is protected for a period of ten years from the date of registration.

11.8 Plant Variety Rights

“Plant variety” means a plant grouping within a single botanical taxonomy of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, 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.

Organizations and individuals, that have rights to plant varieties protected are those that select and breed or discover and develop plant varieties or invest in the selection and breeding or the discovery and development of plant varieties or are transferred rights to plant varieties, are define as below:

- (i) Vietnamese organizations and individuals;
- (ii) organizations and individuals of foreign countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties, i.e., foreign organizations and individuals that have permanent offices or residences in Vietnam or have establishments producing or trading in plant varieties in Vietnam; or
- (iii) foreign organizations and individuals that have permanent offices or residences or establishments producing or trading in plant varieties in countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties.

A plant variety will be considered distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of filing the application or the priority date, as the case may be. Plant varieties whose existence is a matter of common knowledge are those falling into one of the following cases:



- (i) Their reproductive or harvested materials have been widely used in the market of any country at the time of filing of the protection registration application;
- (ii) They have been protected or registered in the list of plant varieties in any country; or
- (iii) They are subject matters of protection registration applications or applications for registration in the list of plant varieties in any country, provided that these applications are not rejected.

The following acts are not regarded as infringements of rights to protected plant varieties:

- (i) Using plant varieties for personal and noncommercial purposes;
- (ii) Using plant varieties for testing purposes;
- (iii) Using plant varieties to create new plant varieties, except the case specified in Article 187 of IP Law; or
- (iv) Using harvested materials of protected plant varieties by individual production households for self-propagation and cultivation in the next season on their own land areas.

Rights to plant varieties are not applicable to acts related to materials of protected plant varieties which have been sold or otherwise brought into the Vietnamese or foreign markets by protection certificate holders or their licensees, except the following acts:

- (i) Acts relating to further propagation of such plant varieties;
- (ii) Acts relating to export of reproductive materials of such plant varieties to countries where the genera or species of such plant varieties are not protected, unless such materials are exported for consumption purpose.

Assignment of rights to a plant variety means the transfer by the plant variety protection certificate holder of all rights to that plant variety to the assignee. The assignee will become the plant variety protection certificate holder from the date of registration of the assignment contract with a slate management agency in charge of rights to plant varieties according to law-prescribed procedures.

In case rights to a plant variety are under joint ownership, the assignment of these rights to another person must be agreed upon by all co-owners. The



assignment of rights to a plant variety must be effected in the form of written contract. The assignment of rights to a plant variety created with slate budget funds complies with the Law on Technology Transfer.

The registrant of rights to a plant variety shall designate with the state management agency in charge of rights to plant varieties a proper denomination for a plant variety which must be the same as the denomination already registered for protection in any country which has concluded with the Socialist Republic of Vietnam an agreement on the protection of plant varieties.

The denomination of a plant variety shall be considered proper if it is distinguishable from those of other plant varieties of common knowledge in the same or similar species. Denominations of plant varieties shall be considered improper in the following cases:

- (i) They consist of numerals only, unless such numerals are relevant to characteristics or the breeding of such varieties;
- (ii) They violate social ethics;
- (iii) They may easily cause misleading as to features or characteristics of such varieties;
- (iv) They may easily cause misleading as to identifications of the breeders;
- (v) They are identical or confusingly similar to marks, trade names or geographical indications protected before the date of publication of protection registration applications of such plant varieties; or
- (vi) They affect prior rights of other organizations or individuals.

Generally, registration of a plant variety lasts for 20 years from the date of registration. Plant variety rights for trees and vines, however, last for 25 years from the date of registration.

Organizations and individuals that offer for sale or market reproductive materials of plant varieties shall use the denominations of such plant varieties as stated in their protection titles even after the expiration of the term of protection.

When denominations of plant varieties are combined with trademarks, trade names or indications similar to denominations of plant varieties already registered for sale offer or marketed, such denominations must still be distinguishable.



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Organizations and individuals mentioned above may file applications for registration of rights to plant varieties directly or through their lawful representatives in Vietnam. Organizations that satisfy the following conditions may provide services of representing rights to plant varieties in the capacity as rights-to-plant varieties representation service organizations:

- (i) Being Vietnamese law-practicing businesses, cooperatives or organizations, scientific and technological service organizations which are lawfully established and operating, except foreign law-practicing organizations practicing in Vietnam;
- (ii) Having the function of providing rights-to-plant varieties representation services as stated in their business registration certificates or operation registration certificates; and
- (iii) Heads of those organizations or persons authorized by heads of those organizations who satisfy the conditions specified in IP Law may provide services of representing rights to plant varieties.

Individuals shall be allowed to provide services of representing rights to plant varieties when satisfying the following conditions:

- (i) Possessing a rights-to-plant varieties representation service practice certificate; and
- (ii) Working in a rights-to-plant varieties representation service organization.

Individuals who satisfy the following conditions will be granted rights-to-plant varieties representation service practice certificates:

- (i) Being a Vietnamese citizen and having the full civil act capacity;
- (ii) Permanently residing in Vietnam;
- (iii) Possessing a university degree;
- (iv) Having personally conducted legal activities related to rights to plant varieties for five or more consecutive years, or personally examined various applications for registration of rights to plant varieties in a national or international office for rights to plant varieties for five or more consecutive years, or graduated from a training course on the law on rights to plant varieties as recognized by a competent agency;
- (v) Being other than civil servants or public employees currently working in state agencies competent to establish and secure the enforcement of rights to plant varieties; and



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-
- (vi) Having passed an examination of the profession of representing rights to plant varieties, organized by a competent agency.

The Government shall specify lawful representatives for filing applications and rights-to-plant varieties representation service organizations.

11.9 Enforcement of Intellectual Property Rights

11.9.1 Course of action

The remedies for industrial property infringement fall into two categories - judicial and administrative.

The judicial remedy is in principle straightforward. An owner or registered user of industrial property is entitled to commence proceedings in court for infringement of their intellectual property rights and the courts have the power to issue an injunction preventing the infringement from continuing and to award damages. The competent authorities have the powers to enforce such an injunction. However, the court has a duty to conciliate which can be time consuming and are therefore more likely to pursue an award of damages.

11.9.2 Administrative penalties for infringement

Vietnam has a more powerful executive than judiciary, when compared with western jurisdictions and, as a result, administrative remedies are likely to be more efficient regarding enforcements. Proceedings should first be filed with the NOIP for verification of the infringement. The customs authorities, the market management authorities and the economic police have the power to regulate industrial property control of goods and take necessary action to seize infringing products. The courses of action available to them include powers of search, sealing up of premises, temporary detention and suspension of production and sale.

Infringement of rights over industrial property objects shall be subject to penalties in the form of either a "warning" or a fine. Other sanctions may also

be applied such as suspension of business license, confiscation of violating means or materials, forcible restoration of original state, dismantling of violating goods and compensation for damages.

Penalties must be applied within one year, or two years for business activities which infringe legal rights of registered trademarks, appellations of origin or industrial designs, following the date of the infringement. After these statutory time limits have passed, infringers will not be subject to penalties.

12. DISPUTE RESOLUTION

In Vietnam, foreign investors may choose among the following ways of dispute settlement: conciliation, arbitration and the courts.

12.1 Conciliation and Mediation

The laws of Vietnam emphasize the need for parties to settle their disputes by conciliation and mediation. Both foreign and local parties are encouraged to seek the assistance of relevant authorities to reach an amicable solution to any dispute, although no formal system of mediators and conciliators has been developed. A settlement agreement reached between the parties during mediation or conciliation is currently treated the same way as a normal contractual agreement.

If conciliation and mediation fail, the parties may, under certain circumstances, refer the matter to various forums, including international arbitrators, commercial arbitrators in Vietnam, Vietnamese courts or foreign courts.

12.2 International Arbitration

12.2.1 Recognition and enforcement of a foreign arbitral awards



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Under the Civil Proceedings Code, foreign arbitral awards are defined as arbitral awards rendered outside Vietnam and also arbitral awards rendered by non-Vietnamese arbitrators within Vietnam. A Vietnamese court will only consider an application for recognition and enforcement of a foreign arbitral award where the award has been made in or by arbitrators of a country being a party to the New York Convention or, in the case of a country not being a party to the New York Convention, to the extent a country grants reciprocal treatment to Vietnam.

An organization or individual which wins a foreign arbitral award may petition a Vietnamese court for recognition of the award and permission to enforce it, provided that: (i) in respect of an organization, the losing party has its head office in Vietnam; (ii) in respect of an individual, the individual resides or works in Vietnam; or (iii) the enforcement relates to property which is in Vietnam at the time the petition is made. An award recognized by a Vietnamese court will have the same legal effect as a judgment given by a Vietnamese court and can be enforced in Vietnam.

It used to be the case under the Ordinance on Foreign Arbitral Awards that recognition and enforcement of arbitral awards were limited to disputes arising out of or in connection with commercial legal relations, which was generally interpreted as being limited to sales contracts and trade-related contracts. The Civil Proceedings Code has significantly broadened the scope of recognition and enforcement of arbitral awards in relation to business and commercial disputes (i.e. most commercial relations) bringing the Vietnamese legal position in line with international practice and the intent of the New York Convention.

12.2.2 Grounds for rejection of foreign arbitral awards

A Vietnamese court may reject an application for recognition and enforcement of a foreign arbitral award if the respondent can provide evidence proving that:

- the parties lacked the capacity to sign the arbitration agreement in accordance with the law applicable to each party;
- the arbitration agreement is invalid under the applicable law;

- the respondent did not receive due notice of appointment of arbitrators or the arbitration proceedings or for other legitimate reasons the respondent could not exercise its rights in the proceedings;
- the foreign arbitral award was made where no settlement was requested or was beyond the request of the disputing parties;
- the composition of the arbitration body and/or the arbitration proceedings was not in accordance with the arbitration agreement of the parties or the applicable law;
- the award is not yet binding on the parties; or
- the award has been overruled or suspended by competent authorities of the countries where the award was made or whose law was the governing law.

In practice, Vietnamese courts have, on many occasions, refused to recognize and enforce several foreign arbitral awards on the basis that the underlying contract (including the arbitration provision) was invalid due to the fact that the signatory to that contract has not been duly authorized to sign it.

In addition, a Vietnamese court may reject an application for recognition and enforcement of a foreign arbitral award if, subject to the court's decision, the recognition and enforcement of the award is contrary to "basic principles of the laws of Vietnam". This concept is not expressly defined by law.

Interestingly, the procedures prescribed by law in relation to recognition and enforcement of foreign arbitral awards appear to require only the respondent's attendance (i.e. the party who is subject to enforcement of the arbitral award) in the court hearing. The applicant (i.e. the party who is seeking recognition and enforcement of the arbitral awards) is not required to attend therein.

12.3 Foreign Courts

Under the laws of Vietnam, normally, foreign invested companies may not be able to refer their disputes to a foreign court.

Judgments issued by foreign courts are not enforced in Vietnam unless Vietnam has signed a bilateral treaty with the relevant country regarding enforcement of that country's court judgments.

To date, Vietnam has entered into bilateral treaties with a few countries including Russia, Cuba, Bulgaria, Hungary and France in relation to the enforcement of civil judgments issued by foreign courts.

With the exception of the treaty with France, civil judgments are those relating to non-commercial disputes and therefore these bilateral treaties are neither useful nor applicable to commercial disputes. The Civil Proceedings Code now allows the Vietnamese courts to recognize and enforce court judgments from a foreign country on the basis of reciprocity (comity), although it is not yet clear how this will be implemented in practice.

12.4 Domestic Arbitration

In the past, arbitrators in Vietnam were members of economic arbitration centers and the Vietnam International Arbitration Centre ("VIAC"), both of which were established in the 1990s. However, the operation of these arbitration centers was very limited due to the fact that their arbitral awards were not enforceable in practice.

Since the issuance of the Ordinance on Commercial Arbitration on 25 February 2003, Vietnam has significantly improved its legislation on the operation of commercial arbitrators in Vietnam.

Under the Ordinance on Commercial Arbitration, commercial disputes may be resolved by an arbitration tribunal organized by an arbitration centre or set up by the parties (ad hoc arbitration). The arbitration tribunal may consist of three arbitrators or a single arbitrator as agreed by the parties.

Commercial arbitrators in Vietnam have jurisdiction to arbitrate commercial disputes. The Ordinance on Commercial Arbitration has adopted a broad interpretation of "commercial disputes" to include various disputes relating to sales and purchase of goods, provision of services, distribution, business representation and agency, custodianship, leasing or hiring, hire purchase, construction, consultancy, licensing, investment, finance, banking, insurance, exploration and exploitation, transportation and other commercial activities.

For the first step, the laws of Vietnam allows parties to a dispute with "foreign elements" to: (i) appoint foreigners as their arbitrators provided that they are qualified to act as arbitrators in their own countries and (ii) to agree on



application of foreign substantive law, foreign arbitration rule, foreign language for arbitral proceedings and an appropriate location for arbitral proceedings inside or outside Vietnam.

The Ordinance on Commercial Arbitration expressly confirms that arbitral awards issued by commercial arbitrators in Vietnam will be enforced in Vietnam. Unlike arbitral awards given under the New York Convention, arbitral awards given by the commercial arbitrators under the Ordinance on Commercial Arbitration do not need to be recognized by a Vietnamese court. Following the arbitration proceeding, a successful claimant is entitled to bring the relevant arbitral award to the relevant enforcement agency for enforcement unless such arbitral award is cancelled by a Vietnamese court.

Although the Ordinance on Commercial Arbitration gives parties to a dispute an opportunity to request a relevant Vietnamese court to cancel an arbitral award, the court may only review procedural matters and cannot re-hear the dispute. The court may, at the request of a party to the dispute, cancel an arbitral award given under the Ordinance on Commercial Arbitration in the following circumstances:

- the parties do not have an arbitration agreement;
- the arbitration agreement is void (for example, the party to the relevant agreement does not have the authority to sign such agreement);
- the composition of the arbitration tribunal or the arbitral proceedings is not in accordance with the agreement of the parties;
- the dispute does not fall under the jurisdiction of the relevant arbitration tribunal;
- the relevant arbitrators are in breach of their obligations; and
- the arbitral award is contrary to the public interest of Vietnam.

Unless otherwise stipulated by law, the statute of limitation for arbitration proceedings is two years from the date of the dispute. The parties have 30 days after the arbitral award is given to apply to the court for cancellation of the award.

The Ordinance on Commercial Arbitration imposes the following restrictions on the governing law for arbitration proceedings:

- disputes between Vietnamese entities must be resolved in accordance with the laws of Vietnam; and

- disputes involving a "foreign element" may be resolved in accordance with any law agreed between the parties to the dispute provided that the selection and the application of that law is not contrary to the basic principles of the laws of Vietnam. For this purposes, a "foreign element" means: (i) one party to the dispute is a foreign entity; or (ii) the basis of the dispute arises outside Vietnam; or (iii) the assets subject to dispute are located outside Vietnam.

12.5 Vietnamese Courts

The Vietnamese court system consists of the Administrative Court, Economic Court, Civil Court, Labor Court and Criminal Court. Each type of court has different jurisdiction depending on the type of dispute. The Economic Court has jurisdiction over most commercial and financial disputes.

Vietnam has unified its court procedures for the different courts under the Civil Proceedings Code. Under the Civil Proceedings Code, all disputes, whether civil, commercial or labor, are now subject to the same set of procedural rules. A dispute may depend on the type of dispute 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 fall under the jurisdiction of the provincial court.

Generally speaking, court procedures in Vietnam can be divided into three distinct stages: first instance, appeal and review (second appeal). Most cases go to both first instance and appeal, as parties are entitled to appeal against a judgment within 15 days of the judgment and first instance judgments are not enforceable until the case has been disposed of by the appellate court. This is different from most countries where court judgments, even at first instance, are immediately enforceable and appellate review normally stays enforcement upon the appellant furnishing a bond or other security ensuring enforcement if the appellant fails on appeal. As there is no such security requirement in Vietnam, appeals are often used as a delaying tactic to avoid enforcement.

Under the laws of Vietnam, anyone may petition for review (second appeal) of a case (on the grounds of legal errors or newly discovered evidence) whether they are a party to the proceedings or not although this can be a very cumbersome process). The decision to grant such a review is made



administratively by either the Chief Judge or Chief Procurator of a competent court or Procuracy. The grant of review can also be accompanied by an order for stay of enforcement. The review takes place in closed court rooms where the parties are not permitted to submit arguments. The non-transparent nature of this process, plus the long period available for review (for example, 12 months for a petition for review of legal errors), increases the uncertainty attributed to Vietnam's litigation system. The highest judicial tribunal in Vietnam, the Judicial Council of the Supreme People's Court, is not always the court for second appeal, therefore a case can be opened for review more than once.

The new Civil Proceedings Code has introduced some features of a more adversarial litigation system in particular, provisions on procedural issues like burden of proof, interim relief (such as temporary injunctions) and declaratory judgments. Parties are now required to take the initiative in adducing evidence to support their cases and the court no longer assumes the role of an inquisitor of truth.

The Civil Proceedings Code and its guiding regulations now provide for a much more comprehensive set of rules on the application of these important remedies. In addition, the Civil Proceedings Code also allows temporary measures to be requested even before the court formally accepts a case for resolution.

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 Civil Proceedings Code provides that the statute of limitation for initiating court proceeding is two years from the date of the infringement although the entire court proceedings for a dispute may take several months or even several years, subject to provisions in other laws. Although the laws of Vietnam set strict time limits for courts to dispose of cases (for example, two months to four months for first instance proceedings), as discussed earlier, the possibility of lengthy appeals and reviews makes court proceedings very time-consuming. In practice, some disputes have been heard and reviewed in various court proceedings for a period of several years.

Parties in dispute should not expect a Vietnamese court to uphold the choice of foreign law governing the 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.



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12.6 Enforcement Process

Following the court or the arbitration proceeding, the successful claimant is required to initiate the enforcement process by sending an application to the enforcement authority.

The statute of limitation for filing an application for enforcement of a court's judgment or decision is three years from the effective date of the court judgment or decision.

It should be noted that the enforcement process is very cumbersome and expensive in practice and it may take several months or even to several years to achieve an outcome.

12.7 Draft Law on Arbitration

As a consequence of Vietnam's WTO accession and Vietnam's ongoing economic liberalization and legal reforms, arbitration is increasingly viewed as a more business-friendly and efficient option for dispute resolution. Foreign investors already look to arbitration to avoid difficulties with the local court system.

Currently, the Ordinance on Commercial Arbitration (the "**Ordinance**") covers only commercial disputes. To foster the further development of arbitration, Vietnam has proposed a draft Law on Arbitration for comments from experts, relevant organizations and State entities.

The draft law would allow arbitration to be used as a dispute resolution mechanism for civil and labor disputes, contractual and non-contractual, and not merely commercial disputes.

For foreign investors, the right to resolve disputes by arbitration would also extend to contractual disputes between foreign investors and Vietnamese State agencies relating to investment activities in accordance with the Law on Investment.

With regard to the qualifications required of arbitrators, the draft law would make a major change over the current Ordinance. While the Ordinance



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requires that arbitrators must be Vietnamese citizens, the draft law would allow foreigners to act as arbitrators. This allows the disputing parties to select capable, reliable and neutral arbitrators and increase foreign investor confidence in the process.

Furthermore, the draft law would eliminate the requirement that an organization qualified to conduct arbitration proceedings must be founded by at least five professionally qualified arbitrators. Instead, it requires recommendation by a professional association.

According to the draft law, once arbitration commences, the arbitration board would be constituted with powers to issue injunctive orders during the course of dispute resolution. This is a notable expansion of the powers of the arbitrator from what was set forth in the Ordinance, which required parties in arbitration proceedings to request a court to issue injunctive orders.

In addition, the draft law would impose more responsibilities on courts to support arbitration proceedings in such processes as collecting and preserving evidence or ensuring that witnesses are present at arbitration hearings. It remains unclear whether courts would be willing to accept these additional responsibilities.

In conclusion, the draft law represents the government's efforts to promote and facilitate arbitration as an alternative dispute resolution method.²¹

²¹ Referring to <http://www.tanlonghousing.com/?lang=0&mn1=4&mn2=1&mn3=0&id=506> (accessed on 5 April 2010)

APPENDIX I

WEBSITES OF GOVERNMENT AGENCIES IN VIETNAM

#	Agency	Website
1	National Assembly	www.na.gov.vn
2	Ministry of Agriculture and Rural Development	www.mard.gov.vn
3	Ministry of Construction	www.moc.gov.vn
4	Ministry of Education and Training	www.moet.gov.vn
5	Ministry of Finance	www.mof.gov.vn
6	Ministry of Foreign Affairs	www.mofa.gov.vn
7	Ministry of Health	www.moh.gov.vn
8	Ministry of Industry and Trade	www.moit.gov.vn
9	Ministry of Information and Communications	www.mpt.gov.vn
10	Ministry of Justice	www.moj.gov.vn
11	Ministry of Labor, War-Invalids and Social Affairs	www.molisa.gov.vn
12	Ministry of Natural Resources and Environment	www.nea.gov.vn
13	Ministry of Planning and Investment	www.mpi.gov.vn
14	Ministry of Science and Technology	www.most.gov.vn
15	Ministry of Transportation	www.mt.gov.vn
16	Ministry of Culture, Sport and Tourism	http://english.cinet.vn/
17	State Bank of Vietnam	www.sbv.gov.vn
18	State Securities Commission	www.ssc.gov.vn
19	Vietnam National Administration of Tourism	www.vietnamtourism.gov.vn
20	General Department of Customs	www.customs.gov.vn
21	General Department of Taxation	www.gdt.gov.vn
22	Hanoi People's Committee	www.hanoi.gov.vn
23	Hanoi Authority for Planning and Investment	www.hapi.gov.vn
24	HCMC People's Committee	www.hochiminhcity.gov.vn



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25	HCMC Department for Planning and Investment	www.dpi.hochiminhcity.gov.vn
26	Can Tho People's Committee	www.cantho.gov.vn
27	Ba Ria - Vung Tau People's Committee	www.baria-vungtau.gov.vn
28	Binh Duong People's Committee	www.binhduong.gov.vn
29	Da Nang People's Committee	www.danang.gov.vn
30	Dong Nai People's Committee	www.dongnai.gov.vn
31	Hai Phong People's Committee	www.haiphong.gov.vn



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APPENDIX II

REPRESENTATIVE OFFICES OF MINISTERIAL AGENCIES IN HO CHI MINH CITY

#	Agency	Address	Telephone/ Fax
1	Ministry of Agriculture and Rural Development	135 Pasteur Street, District 3	(84-8) 38293685 Fax: 38224776
2	Ministry of Construction	14 Ky Dong Street, District 3	(84-8) 39317219 Fax: 39317152
3	Ministry of Culture and Information	7 Nguyen Thi Minh Khai Street, District 1	(84-8) 38292711 Fax: 38229662
4	Ministry of Education and Training	Cong Truong Quoc Te Street, District 3	(84-8) 38290396 Fax: 38242066
5	Ministry of Finance	138 Nguyen Thi Minh Khai Street, District 3	(84-8) 39303026 Fax: 39303375
6	Ministry of Industry and Trade	163 Hai Ba Trung Street, Ward 6, District 3	(84-8) 38296322 Fax: 38221778
7	Ministry of Interior	258 Nguyen Trai Street, District 1	(84-8) 38391655 Fax: 38324841
8	Ministry of Justice	30 Tran Cao Van Street, District 3.	(84-8) 38224543 Fax: 38299277
9	Ministry of Labor, War Invalids & Social Affairs	168 Hai Ba Trung Street, District 1	(84-8) 38290070 Fax: 38224115
10	Ministry of Marine Products	30 Ham Nghi Street, District 1	(84-8) 38214480
11	Ministry of Planning and Investment	178 Nguyen Dinh Chieu Street, District 3	(84-8) 39306671 Fax: 39305413
12	Ministry of Public Health	51 Pham Ngoc Thach Street, District 3	(84-8) 38293570
13	Ministry of Science & Technologies	31 Han Thuyen Street, District 1	(84-8) 38299623 Fax: 38294453



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APPENDIX III

PROVINCIAL GOVERNMENT AGENCIES IN HO CHI MINH CITY

#	Agency	Address	Telephone/ Fax
1	The People's Committee of HCMC	86 Le Thanh Ton Street, District 1	(84-8) 38291054 Fax: 38296988
2	Department of Industry and Trade	59-61 Ly Tu Trong Street, District 1	(84-8) 38292991 Fax: 8224536
3	Department of Planning and Investment	32 Le Thanh Ton Street, District 1	(84-8) 38295008 Fax: 38290817
4	Department of Labor, War Invalids and Social Affairs	159 Pasteur Street, District 3	(84-8) 38291302 Fax: 38294032
5	Department of Finance & Pricing	140-142 Nguyen Thi Minh Khai Street, District 3	(84-8) 39306572 Fax: 38291663
6	Tax Department of HCMC	140 Nguyen Thi Minh Khai Street, District 3	(84-8) 39305854
7	Department of Justice	143 Pasteur Street, District 1	(84-8) 38297052 Fax: 38243155
8	Department of Foreign Affairs	6 Alexandre De Rhodes Street, District 1	(84-8) 38290028 Fax: 38297785
9	Department of Education & Training	66-70 Le Thanh Ton Street, District 1	(84-8) 38222136 Fax: 38222136
10	Department of Posting & Telecommunication	59 Ly Tu Trong Street, District 1	(84-8) 38223651
11	Department of Transport & Public Works	63 Ly Tu Trong Street, District 1	(84-8) 38290452 Fax: 38290458
12	Department of Agriculture and Rural Development	176 Hai Ba Trung Street, District 3	(84-8) 38294764 Fax: 38232742
13	Department of Science and Technologies	244 Dien Bien Phu Street, District 3	(84-8) 39237831 Fax: 39325584
14	Department of Environment and Natural Resources	63 Ly Tu Trong Street, District 1	(84-8) 38293653 Fax: 38225119
15	Department of Culture and Information	164 Dong Khoi Street, District 1	(84-8) 38292093 Fax: 38223221
16	Department of Health	59 Nguyen Thi Minh	(84-8) 39309912



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		Khai Street, District 1	Fax: 39309088
17	Department of Construction	60 Truong Dinh Street, District 3	(84-8) 39326214 Fax: 39325056
18	Investment and Trade Promotion Center (ITPC)	92-96 Nguyen Hue Street, District 1	(84-8) 38222982 Fax: 38222983
19	The People's Court	131 Nam Ky Khoi Nghia Street, District 1	(84-8) 38292448 Fax: 38297758
20	Enforcement Agency	200C Vo Van Tan Street, District 3	(84-8) 62110826
21	HCMC Committee for Overseas Vietnamese	147 Nguyen Dinh Chieu Street, District 3	(84-8) 38292522 Fax: 8296737
22	Chamber of Commerce & Industry HCMC Branch	171 Vo Thi Sau Street, District 3	(84-8) 39326598 Fax: 38294472
23	Department of Customs	21 Ton Duc Thang Street, District 1	(84-8) 38290095 Fax: 38290096
24	Department of Statistics	21 Han Thuyen Street, District 1	(84-8) 38225388 Fax: 38244734
25	HCMC EPZs & IPs Authority (HEPZA)	35 Nguyen Binh Khiem Street, District 1	(84-8) 38290405 Fax: 38294271
26	Department of Culture, Sport and Tourism	140 Nguyen Dinh Chieu Street, District 3	(84-8) 38242903 Fax: 3829305



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