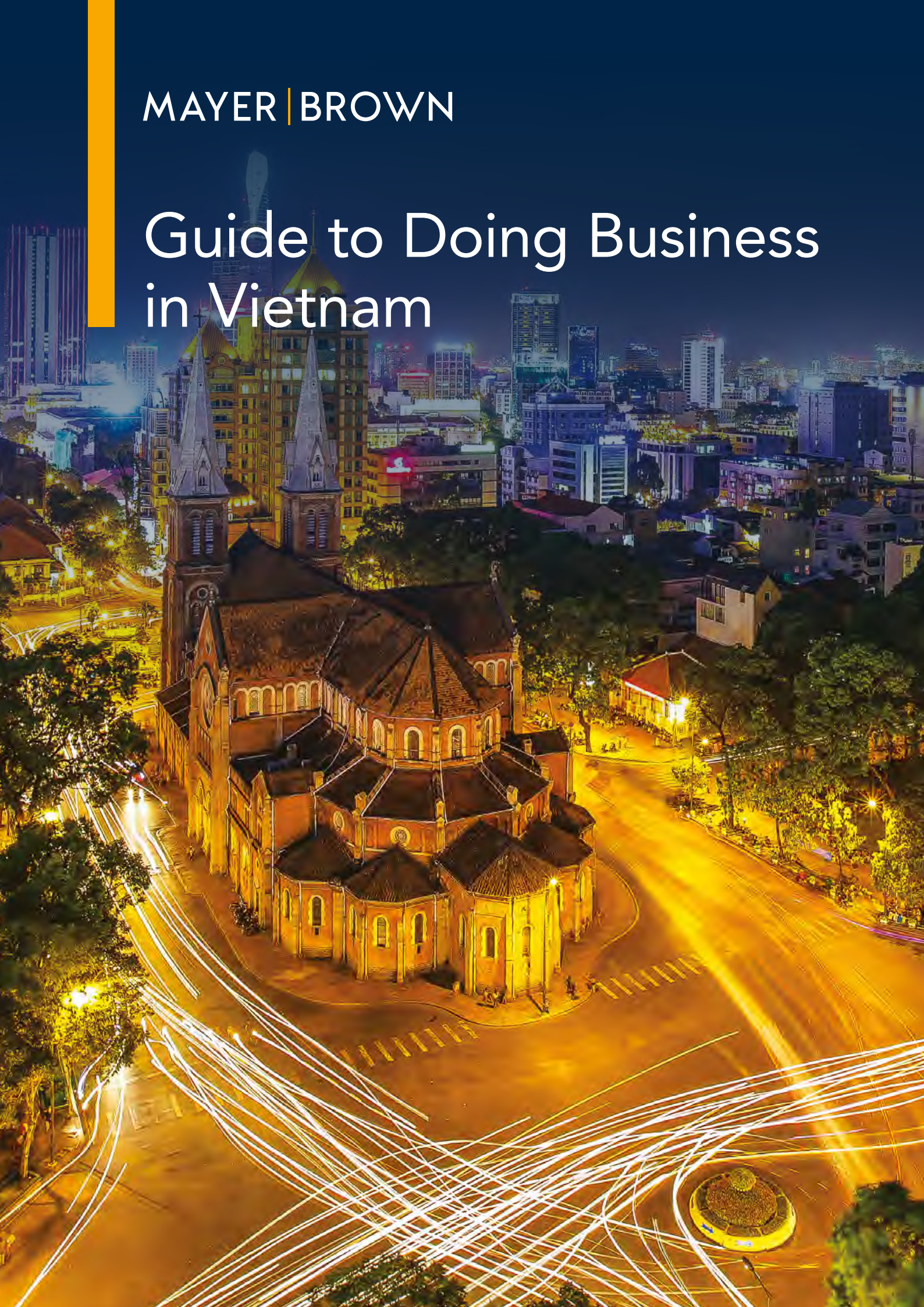


MAYER | BROWN

Guide to Doing Business in Vietnam





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This booklet provides general advice only and should not be treated as a substitute for legal advice. While care has been taken to ensure that details are correct, no responsibility can be taken for losses arising from reliance upon its contents.

The information in this publication is current to June 2019.

Introduction

The Law on Enterprise and Law on Investment that took effect in 2015 introduced refreshing changes to Vietnam's investment and business landscape. Designed to stimulate and better facilitate foreign investments in the country, the two new laws have since given rise to several implementing regulations that expound on important subjects such as foreign ownership up to 100% in listed companies, private public partnerships, trade, and representative offices. A new Civil Code also took effect in 2017 with provisions that promote the principles of freedom of contract and individual business autonomy.

Influenced by the same momentum of reform, the growing sectors of technology and electronic commerce in Vietnam saw a new Law on Technology Transfer in 2018 as well as considerable legislative efforts to improve cyber security and privacy.

The years following 2015 also bore witness to important courtroom reforms in Vietnam. Notably, a new Civil Procedure Code and Penal Procedure Code took effect in 2016 and 2018 respectively, marking the Government's continuing effort to improve courtroom transparency and enforce adversarial principles.

On the international arena, Vietnam has concluded negotiations of free trade agreements with the European Free Trade Association, the European Union, and Israel. It has also signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which is awaiting ratification.

In view of these reforms and developments, this Guide answers some of the most common questions which potential investors in Vietnam might have.





Chapter 01

Forms of Doing Business

1.1 Forms of Investment

The current Investment Law took effect on 1 July 2015. It contains a significant number of investment guarantees and provides a roadmap for the conditions and procedures for investment in Vietnam. Unlike the legislation that it repeals – Vietnam’s 2005 Investment Law – it does not make a distinction between direct and indirect investments. The law provides for the following forms of investment for foreign investors:

- Establishment of an economic organization;
- Implementation of investment activities of economic organizations with foreign owned capital (i.e., a joint venture (“**JV**”));
- Investment in the form of capital contribution or purchase of shares or portion of capital (see “Capital Structure” below);
- Investment in the form of a public private partnership (“**PPP**”); and
- Investment in the form of business co-operation contract (“**BCC**”).

We note that the investment forms listed above are more general than under the 2005 Investment Law. This is, in our view, intentional as the new Investment Law is designed to close the regulatory gap between foreign and domestic investments.

If a foreign entity does not wish, or is not ready, to invest in Vietnam, but desires to have a presence in Vietnam, it may set up a representative office, which is allowed to promote the business and explore business opportunities, but not allowed to engage in activities that directly generate income.

1.2 What are the Conditions to Carry Out an Investment Project by Establishing an Economic Organization?

Before establishing an economic organization, a foreign investor must have an investment project and carry out the required procedures under Article 37 of the Investment Law to obtain an Investment Registration Certificate (“**IRC**”).

The conditions of an investment project, such as the investment form used, the scope of activities,

etc., must also conform to international treaties of which the Socialist Republic of Vietnam is a member.

As of June 2019, almost all the foreign ownership limitations in the service sectors specified under Vietnam’s WTO Commitments have been abolished. Certain highly-specialized and sensitive sub-sectors such as banking, telecommunication, transportation, agriculture and audiovisual services still maintain foreign ownership restrictions.

Decree 60¹ and Circular 123² introduce a significant regulatory change to foreign investments in public companies. Previously, foreign investors could only hold up to 49% of the equity of a public company. Decree 60 and Circular 123 now allow foreign investors to hold an unlimited proportion of voting shares in Vietnamese public companies (including listed companies), subject to certain exceptions discussed under Section 4.5 of this Guide.

1.3 What is a PPP Contract and How to Carry Out Investment in this Form?

A PPP contract means any contract signed between a competent State agency and an investor or project management enterprise to perform an investment project as prescribed in the Investment Law.³ PPP investment projects include building new infrastructural works, improving, upgrading, expanding, managing, and operating infrastructural works, and providing public services. The Government promulgated Decree 136⁴ to provide guidance with respect to the sectors, conditions, and procedures for executing investment projects under PPP contracts.

1.4 What is a BCC and How to Carry Out Investment in this Form?

A BCC is a signed contract between investors to co-operate in business and share profits or products without establishing a new business organization. A BCC with one or more foreign investors as parties requires an IRC.

The parties to a BCC shall establish a coordinating board to supervise the performance of the BCC. The functions, duties and powers of the coordinating board shall be agreed on by the

1 Decree No. 60/2015/ND-CP, effective on 1 September 2015 (“**Decree 60**”).

2 Circular No. 123/2015/TT-BTC, effective on 1 October 2015 (“**Circular 123**”).

3 Investment Law, Article 27.

4 Decree 136/2015/ND-CP (“**Decree 136**”) as amended by Decree 63/2018/ND-CP (“**Decree 63**”).

parties. During the performance of the BCC contract, the parties to the contract are entitled to use assets produced by the business co-operation to establish an enterprise in accordance with the Enterprise Law.

1.5 What Kinds of Investment Incentives or Supports are Foreign Investors Entitled to?

Investment incentives available to foreign investors under the Investment Law include:

- A lower rate of, exemptions from, or reductions of corporate income tax;
- Exemptions from or reductions of import duty on goods imported to form fixed assets, raw materials, supplies, and components for implementation of an investment project; and
- Exemptions from or reductions of land rent, land use fees and land use tax.

To be eligible for the above-mentioned incentives, the investment project must be either a new investment project or an expanded investment project, and satisfy at least one of the following conditions:

- The investment project is in a business line enumerated under Article 16.1 of the Investment Law;
- The investment project is in one of the administrative divisions provided under Article 16.2 of the Investment Law, which includes:
 - » Administrative divisions in areas with difficult or especially difficult socio-economic conditions; and
 - » Industrial zones, export-processing zones, high-tech zones, and economic zones;
- The investment project has a capital investment of at least VND 6,000 billion;
- The investment project has disbursed at least VND 6,000 billion within three years from the date its IRC or decision on the investment policies was issued;
- The investment project is located in a rural area and employs at least 500 employees; or
- The investment project is a high-tech enterprise, or a scientific or technological enterprise.

1.6 In Order to Carry Out an Investment Project in Vietnam in WFOE or JV Form, must an Investor Set Up a Vietnamese Legal Entity?

Not necessarily. A foreign investor carrying out an investment project in Vietnam in a wholly foreign-owned enterprise ("**WFOE**") form or JV form may choose to contribute capital to a legal entity already existing in Vietnam instead of setting up a new one (i.e., "brown field" project). The foreign investor is required to obtain an approval for purchase of shares or capital contribution from the provincial Department of Planning and Investment (with respect to privately held companies). Buying shares in a public company would require the approval of the State Securities Committee.

If the foreign investor does choose to set up and contribute capital to a new legal entity in the form of a WFOE or JV (i.e., "green field" projects), it must apply both for an IRC and an ERC from the Department of Planning and Investment. In this case, the licensing of a foreign investor's first project in Vietnam would take place simultaneously with the incorporation of the Vietnamese legal entity. In other words, a foreign investor cannot incorporate a new legal entity in Vietnam without also registering a project.

In some circumstances, a foreign investor can also implement an investment project by entering into a business cooperation contract ("**BCC**") with an onshore partner. Under a BCC, no legal entity is set up by the parties. The BCC itself is a commercial contract under which the parties allocate their equity contribution and responsibilities with respect to the project.

1.7 What Types of Vietnamese Legal Entities are Available?

Foreign and domestic investors in Vietnam may select from the following legal entities:

- A limited liability company ("**LLC**"), with either a single member ("**SMLLC**") or two or more (up to a maximum of 50) members ("**MMLLC**");
- A shareholding or joint stock company ("**JSC**"), which must have least three shareholders;
- A general partnership or a limited liability partnership; and
- A private enterprise, which is akin to a sole proprietorship.

1.8 What are Some Important Differences Between an LLC and a JSC?

The key difference is the ability of a JSC to mobilise capital through the sale of shares and securities. Only a JSC can issue bonds and preference shares. Furthermore, only JSCs can be listed on a securities exchange in Vietnam. Capital contribution in an LLC is more flexible than in a JSC, as discussed later in this Guide.

In general, shareholders of a JSC have the right to freely assign their shares. In contrast, in an LLC, the assignment of charter capital (equity) is subject to the right of first refusal by members. Finally, the corporate governance structure of a JSC is generally more complex than that of an LLC.

1.9 What Factors Should a Foreign Investor Consider in Deciding Whether to Choose a JV?

The two main factors that might incentivize foreign investors to choose a JV are: (i) whether the JV is the required form of commercial presence in Vietnam for some business sectors; and (ii) whether the foreign investor can and/or wishes to benefit from a Vietnamese party's asset, local know-how/knowledge, etc.

1.10 What is a Representative Office Permitted to Do?

A representative office is a fast and cost-efficient way for a foreign business entity to establish a commercial presence in Vietnam. A representative office does not have a separate legal identity from the offshore enterprise. Decree No. 07/2016/ND-CP ("**Decree 07**"), which took effect on 10 March 2016 and replaces Decree No. 72/2006/ND-CP ("**Decree 72**"), guides the Commercial Law regulations on representative offices. Existing representative offices established under Decree 72 can continue to operate in accordance with their granted licenses until the licenses' expiry.

Under Decree 07, a foreign business entity is permitted to establish representative offices in Vietnam in accordance to Vietnam's commitments in the relevant international treaties. Approvals from ministry agencies are required in cases where the establishment of a representative office is inconsistent with Vietnam's commitments in such international treaties, or when the foreign business

entity seeking to establish a representative office is located in a country or territory that is not a member of the international treaties that Vietnam is a member to. Representative offices are permitted to engage only in liaison activities, market research, promotions of opportunities for investments and business co-operations and monitoring the implementation of contracts entered into by their parents. They cannot engage in profit-generating activities in Vietnam such as entering into a commercial contract to provide services.

Despite their limitations, representative offices may play an important role in facilitating operations and business objectives on behalf of the offshore company. For example, an offshore company engaged in a long-term distribution or manufacturing agreement with a Vietnamese local company may establish a representative office in Vietnam to implement and oversee the contract.



Chapter 02 Government Approvals

2.1 What is the Approval Process for Establishing a JV or WFOE?

When establishing a new enterprise in Vietnam in the form of a WFOE or JV, foreign investors must have an investment project and obtain both an IRC and an ERC. In some cases, as further discussed in Section 11.1 of this Guide, the investors must also procure written decisions on investment policies from competent authorities in advance.

For an ERC application to be approved, the following conditions must be satisfied: (a) investments in the proposed line of business are not prohibited; (b) the name of the enterprise in Vietnamese is not identical to that of any other registered enterprises and complies with other naming conventions set out in the Enterprise Law; (c) the investor has submitted a complete and valid application file for registration of the enterprise; and (d) the investor has paid the enterprise registration fee in full.

The business registration office is responsible for considering the validity of the application file and shall issue an ERC within three working days from the date of receipt of the file.

To receive an IRC, an investor must carry out the required registration procedures for its project type. Depending on the size and significance of the project, written decisions on investment policies from the People's Committees of Provinces, the Prime Minister, or the National Assembly may be required (see Section 11.1 of this Guide, "What are the Investment Procedures Applicable to Foreign Investment in or Ownership of a Project and Related Companies?", for more information). In these cases, the investment registration agency shall issue an IRC to the investor within five working days from the date of receipt of the written decision on investment policies, depending on the size and type of project. For projects where written decisions on investment policies are not required, the investment registration agency shall issue an IRC within fifteen days from the date of receipt of the complete application file.

2.2 What is the Significance of an IRC?

An IRC is a paper or electronic document issued by the licensing authority recording information about an investor's investment project.

An IRC is not required for domestic investors or enterprises where foreign investors hold 51% or less


of equity. Moreover, an IRC is not required when foreign investors invest more than 51% in existing Vietnamese companies that are not in a conditional investment sector. The IRC also sets out the schedule for the implementation of a project, to which the company is to adhere. Failure to observe the implementation schedule may result in the licensing authorities revoking the project and the IRC from the company.

The contents of an IRC include the following:

- the investment project code;
- the name(s) and address(es) of the investor(s);
- the name of the investment project;
- the project's location of implementation the land area to be used;
- the objectives and scale of the investment project;
- the project's investment capital (comprising capital contribution from investors and loans), schedule of capital contribution, and sources of capital;
- the operational duration of the project;
- the schedule of implementation of the investment project; schedule of capital construction and commissioning of the works (if any); schedule of realization of operational objectives and main works of the project; and, for projects to be implemented through multiple phases, the objective, duration and content of operations in each phase must be specified;
- the incentives or investment support, and bases or conditions for application thereof (if any); and
- the conditions applicable to the investor implementing the project (if any).

2.3 What else is required?

For companies that invest in land use projects, an investment performance bond is required. Depending on the size of investment, the bond ranges between 1% and 3% of the total investment of the project. The bond is refundable in installments when the investor completes a certain bench mark of the implementation schedule (i.e., when the procedures for land allocation are completed and when the construction is completed). The bond is forfeited if the company fails to follow the project implementation schedule.



Chapter 03 Business Scope and Authority

3.1 What is the Significance of a Company's ERC?

All validly existing private business enterprises in Vietnam must have an ERC. Foreign investors and companies in which foreign investors hold more than 51% of equity are required to obtain an ERC in addition to an ERC.

An ERC is a paper or electronic document issued by the licensing authority to a company that contains the business registration information of the company.

The contents of an ERC consist of the following:

- the name of the enterprise and its enterprise registration number;⁵
- the head office address of the enterprise;
- the full names, permanent residential addresses, nationalities and identity cards or passport numbers of:
 - » the legal representative of the enterprise in the case of a LLC or JSC;
 - » partners in the case of a partnership; or
 - » the owner of the enterprise in the case of a private enterprise;

- the full names, permanent residential addresses, nationalities, and identity cards or passport numbers of the individual members of an LLC or the shareholders of a JSC;
- the names, enterprise code numbers, and head office addresses of the corporate members of an LLC or the corporate shareholders of a JSC; and
- the company's charter capital.

3.2 What is a "Legal Representative" of a Vietnamese Company?

The legal representative is an officer of a Vietnamese company who has the primary responsibility and power to act on behalf of the company in its dealings with the State and other counterparties. A Vietnamese Company must always have at least one legal representative that resides in Vietnam.

Unlike the law it replaces, the current Enterprise Law allows companies to have more than one legal representative. The condition for the legal representative varies depending on the corporate form:

Corporate Form	Number of Legal Representatives	Condition
Multi Member Limited Liability	1+	The charter of a company shall specify the number, managerial positions, and rights and obligations of the legal representative(s)
Single Member Limited Liability Company	1+	The charter of a company shall specify the managerial positions and rights and obligations of the legal representative(s). If the charter of the company does not contain such provisions, the chairman of the Members' Council or the general director of the company shall be the legal representative of the company.
Joint Stock Company	1+	Where there is only one legal representative, the chairman of the Board of Management or the general director shall be the legal representative of the company. Unless otherwise stipulated in the charter, the chairman of the Board of Management shall be the legal representative of the company. Where there is more than one legal representative, the chairman of the Board of Management and the general director shall automatically be the legal representatives of the company.

⁵ Enterprise registration number is a numerical code created by the national system of information on enterprise registration, issued to an enterprise upon establishment and stated in the enterprise registration certificate. Each enterprise has a unique code number

Corporate Form	Number of Legal Representatives	Condition
Partnership	1+	Unlimited liability partners are entitled to be legal representatives and to organize management of the day-to-day business of the partnership.
Private Enterprise	1	The owner of a private enterprise shall be the legal representative of the enterprise.

In general, a legal representative has the authority to bind the company in commercial contracts. He or she is personally liable for any loss or damage from breaches of his or her duties and obligations, which include to perform his or her duties honestly and prudently, to be loyal to the interests of the enterprise, to timely notify the enterprise of his or her own shareholdings and capital contribution, and to register any changes to the ERC.


3.3 What is the Significance of a Vietnamese Company's "Business Lines"?

Under Vietnamese law, enterprises are free to conduct business in the lines that are not prohibited by the Investment Law (e.g., inter alia, businesses involving certain chemicals, drugs, minerals, wild flora and fauna, prostitution, human trafficking, and human cloning), and other laws, provided that such business lines are registered for

the operations of the company. A company's business activities are set out in its charter, its ERC application file, and its public registration announcement. A company's business activities are not recorded in the ERC itself.

Generally, for a foreign invested enterprise ("**FIE**"), including a WFOE or a JV, the permitted business lines must be closely tied to what is considered necessary for the particular project in which it is investing.

Furthermore, in respect of the business activities which are designated as "conditional" business lines, as set out in the Investment Law, the company must satisfy the specific conditions required to participate in such a business line before commencing business operations, and must maintain fulfillment of such conditions throughout business operation.



Chapter 04 Capital Structure



4.1 What is the Capital Structure of an FIE?

FIEs have both charter capital and investment capital. Charter capital (i.e., registered equity) is the total value of assets contributed or undertaken to be contributed by members of a LLC or partnership, or the total aggregate par value of shares sold or registered for establishing a JSC. Investment capital is the total capital amount, including charter capital and loan capital, required to carry out the investment project.

The Investment Law does not require “thin equity”, but legislation regulating a particular business sector may require “legal capital”, which is the minimum charter capital. For example, companies operating in the insurance or real estate development business are required to follow the legal capital requirements set out in the relevant legislation.

Under the Investment Law, a foreign investor is permitted to own an unlimited proportion of charter capital of an enterprise, subject to the limitations outlined under Section 4.4 of this Chapter. Companies must generally have enough capital resources to successfully realise the business goals set out in their IRCs. The IRC of a FIE sets out both the charter capital and the investment capital. The charter capital is also stated in the ERC .

An FIE cannot incur medium- or long-term debts in excess of its stated loan capital.

4.2 What are the Time Limits for Contribution of Capital?

Investors must contribute capital within 90 days of the establishment of the company (i.e., issuance of the ERC) or the subscription of the shares or a shorter time frame as set out in charter of the company. Failure to do so will result in the member/ shareholder losing the voting right and right to dividend that correspond with such unpaid capital contribution or shares and at the same being liable for liabilities of the company that correspond to the same unpaid proportion for the duration where the charter capital has not been reduced to reflect the capital contribution/shares that are actually paid for.

4.3 Can the Capital Contribution in an FIE be Reduced?

Yes, but there is a qualified waiting or a “lock-in” period. In an MMLLC, investors may reduce their

capital contributions if business operations have been carried out continuously for more than two years from the date of enterprise registration, and if payment of all of the company’s debts after repayment to the company’s owner can be ensured. An MMLLC is also allowed to reduce its charter capital if the company repurchases a member’s stake as prescribed by Article 52 of the Enterprise Law, or if members fail to contribute capital fully and on time.

Likewise, an SMLLC can reduce its charter capital by returning part of its capital contribution if it has carried out business activities continuously for more than two years from the date of enterprise registration, and can ensure payment of all of its debts and other property obligations after it repays its owner. Additionally, an SMLLC may reduce its charter capital if its owner fails to pay the agreed upon charter capital in full and on time.

A JSC can redeem no more than 30% of the total number of ordinary shares sold and part or all of the dividend preference shares sold. The company may redeem shares held by each shareholder in proportion to his/her share ownership in the company. In this case, the decision to redeem shares of the company shall be notified by a method guaranteed to reach all shareholders within thirty days from the date on which such a decision is ratified. Additionally, any shareholder who votes against a resolution on re-organization of the JSC or against a change to the rights and obligations of shareholders stipulated in its charter is entitled to request that the company redeem his/her shares. The request shall be made in writing and sent to the company within ten days from the day on which the General Meeting of Shareholders ratified the resolution in question.

4.4 Are There Limitations on the Amount of Equity a Foreigner can Purchase in a Domestic Enterprise? [See Sections 3.1 & 4.1]

A foreign investor is permitted to own an unlimited proportion of the charter capital of a Vietnamese economic organization, subject to the following exceptions:

- In business sectors where Vietnam’s WTO commitments impose limitations on foreign ownership ratio, such limitations shall be observed. (See Section 1.2)

- For publicly listed companies that are not subject to restrictions on foreign ownership imposed by Vietnam's WTO commitments but are operating in sectors where restrictions on foreign ownership are imposed by Vietnamese law, such restrictions shall be observed. Currently, sectors where this type of restrictions are found include banking, civil aviation, logistics, and publishing and press.
- For publicly listed companies that are not subject to restrictions on foreign ownership imposed by Vietnam's WTO commitments but are operating in business lines that are subject to conditions applied to foreign investors, foreign investor ownership in the company cannot exceed 49%.
- Foreign individual investors (as opposed to organizations) shall own less than 51% of the charter capital of a securities business organization.
- Foreign investors shall own less than 51% of the charter capital of a securities business organization if the investor is an organization that 1) does not operate in banking, securities or insurance with a minimum of two consecutive years of operation immediately preceding the year of capital contribution to establish the securities business organization, purchases shares, or contribute charter capital; or 2) fails to meet one or more of the other conditions listed under Article 71, Clause 10 of Decree 58/2012/ND-CP.

- For State-owned enterprises undergoing equitization through public offering of securities, the foreign ownership ratio shall follow laws on equitization unless they are silent on the issue.

In practice, it should be noted that there may be practical obstacles of licensing authorities refusing to register and/or implement foreign acquisitions of Vietnamese domestic companies in certain sensitive sectors, such as real estate and distribution even when such acquisitions are not restricted by law.

4.5 What Are Permitted Foreign Ownership Levels in Local Banks?

Changes to foreign ownership levels in banks effective as of February 2014 facilitate foreign investment in this strategic sector. A foreign strategic investor may now buy up to 20% of equity in a credit institution without having to obtain approval from the Prime Minister. This is increased from the 15% ceiling under the prior law. Moreover, there is now no distinction with respect to ownership caps between a foreign credit institution and a foreign institutional investor that is not a credit institution. In each case, such an entity may hold up to 15% of a credit institution (or 20% together with its related parties). The total foreign ownership cap remains at 30%.

The table below sets out key differences in shareholding ceilings between the current legal framework introduced under Decree 01⁶ and the prior law, Decree 69⁷:

Decree 01	Decree 69
Any foreign individual: 5%	Any foreign non credit institution investor and its related parties: 5%
Any foreign organisation: 15%	Any foreign credit institution investor and its related parties: 10%
Any foreign strategic investor: 20%	Any strategic investor and its related parties: 15% (or up to 20% with Prime Ministerial approval)
Any foreign investor and its related parties: 20%	
Total shareholding of all foreign investors and their related parties: 30% (exceptions may be given by the Prime Minister to weak credit institutions for restructuring purposes on a case-by-case basis)	Total shareholding of all foreign investors and their related parties: 30% (no exception)

⁶ Decree 01/2014/ND-CP, dated 3 January 2014, on purchase of shares of Vietnamese credit institutions by foreign investors ("Decree 01").

⁷ Decree 69/2007/ND-CP, dated 20 April 2007, on purchase of shares of Vietnamese commercial banks by foreign investors ("Decree 69").

4.6 Shareholding Limit

Decree 01 replaces Decree 69's express requirements that a foreign credit institution may only be a foreign strategic investor in one bank and that a foreign credit institution may only participate in the boards of management of a maximum of two banks. Instead, Decree 01 stipulates that a foreign strategic investor in one credit institution cannot hold 10% or more of the charter capital at any other Vietnamese credit institutions. In theory, a foreign investor could thus be a strategic investor in more than one local credit institution. However, the 10% ceiling for ownership in the second credit institution renders this possibility commercially unattractive.



Chapter 05 Retail and Distribution

5.1 Are There any Restrictions to Foreign Ownerships in Retail and Distribution Businesses in Vietnam?

The last restriction on foreign investment in the retail and distribution sector was lifted on 1 January 2009, as WFEOs are since then allowed to engage in trading and distribution in Vietnam. Foreign investors engaging in direct investment in this sector must apply for and obtain an IRC, and are still limited in their abilities to freely establish retail outlets.

5.2 What are the Requirements for Establishing a Retail Outlet?

Vietnam's accession to the WTO included a commitment on wholesale trades and retailing services, which in turn permits foreign investors who have obtained an IRC for a company engaging in distribution to establish one retail outlet.

Establishment of additional retail outlets beyond the first one is allowed only upon satisfaction of an Economic Needs Test ("**ENT**"). The ENT criteria include the number of existing service suppliers in the geographic area, the impact of the retail outlet on the geographic market, and the scale of the geographic market being affected by the planned retail store. In practice, the licensing of an FIE's retail stores beyond the first one is at the discretion of the Vietnamese authorities.

The establishment of additional retail stores, beyond the first one, will not be subject to the ENT if the store is less than 500m², located in a shopping mall, and not classified as a convenience store or mini supermarket under Decree 09.⁸

5.3 Are There any Restrictions on What Products may be Traded?

Yes. Foreign investors should consult the relevant product lists published by the Ministry of Industry and Trade ("**MOIT**") in accordance with Vietnam's WTO commitments to determine whether they may distribute certain products in Vietnam.

⁸ Decree 09/2018/ND-CP dated 15 January 2018 of the Government Providing Detailed Guidelines for the Commercial Law and the Law on Foreign Trade Management with Respect to the Sale and Purchase of Goods and Activities Directly Related to the Sale and Purchase of Goods by Foreign Investors and Foreign-Invested Economic Entities in Vietnam ("**Decree 09**").

A wide river flows through a cityscape at sunset. The sky is a mix of deep blue and warm orange, with scattered clouds. In the foreground, a blue barge filled with brown earth or sand is moving across the water. The city skyline in the background features several prominent skyscrapers, including a distinctive pointed tower. The water reflects the golden light of the setting sun.

Chapter 06 Taxation

6.1 What are the Corporate Income Tax (CIT) Rates?

CIT applies to various types of income (profit) earned from the business activities on a company, including capital gains (from transfer of property or shares).

The current CIT rate is 20%, as of on 1 January 2016, subject to two exceptions: (i) CIT rates for businesses that are engaged in the exploration and extraction of oil and other rare resources in Vietnam range between 32% and 50%, depending on the nature of the project and its location; and (ii) incentive CIT rates of 10%, and 17% are available in specific sectors.

A CIT incentive rate of 17% applies (after 1 January 2016) for ten years to the following types of income, counting from the first year such income is generated:

- income of enterprises from performing new investment projects in areas facing difficult socio-economic conditions; and
- income of enterprises from performing new investment projects involving the production of high-quality steel, energy saving products, salt, machinery and equipment for agriculture, irrigation and drainage equipment, and the production and refinement of cattle, poultry and aquatic animal feeds; and
- income of enterprises from performing new investment projects in forestry or fishery.

A CIT incentive rate of 17% also applies (after 1 January 2016) to people's credit fund and micro financial institutions

A CIT incentive rate of 10% applies for fifteen years to the following types of income, counting from the first year such income is generated:

- income from newly established businesses that have investment projects in (i) geographical areas with "especially difficult socio-economic conditions", (ii) economic zones, or (iii) high technology zones;
- income from newly established businesses with investment projects in high technology, scientific research and technological development, development of especially important infrastructure facilities of the State, and software;

- income of enterprises from performing new investment projects in the field of environmental protection;
- income of high technology enterprises and agricultural enterprises that apply high technologies;
- income of enterprises from performing new investment projects for manufacturing certain ancillary industry products that are given priority;
- income of enterprises from performing manufacturing projects using technology that are appraised in accordance with the Law on High Technologies and the Law on Science and Technology, provided that 1) the manufactured products are not subject to special excise tax and are not mineral extraction projects; 2) the capital invested is at least VND 12,000 billion; and 3) the total investment capital is disbursed within five years from the day of IRC issuance; and
- income of enterprises from performing new investment projects in manufacturing and production, provided that the manufactured products are not subject to special excise tax and are not mineral extractions, and that at least one of the following conditions applies:
 - » any project of which the capital is at least VND 6,000 billion that is released within three years from the day the IRC or in-principle approval is issued, and the total revenue reaches at least VND 10,000 billion within three years from the first year in which revenue is earned; or
 - » any project of which the capital is at least VND 6,000 billion that is released within three years from the day on which the IRC or in-principle approval is issued, and which employs more than 3,000 workers within those three years.

The CIT rate of 10% is applicable for the life time of the company with respect to income generated from the following business activities:

- in the education, vocational training, healthcare, cultural, sports, environmental protection, and judicial expertise sectors;
- in the investments in social housing that are for sale, for lease, or for "lease to purchase".

- to press agencies, in printing newspapers, including advertisements on printed newspapers, and incomes of publishers from publishing; and
- in planting, cultivating, and protecting forests; from agriculture, forestry, and aquaculture in areas facing socio-economic difficulties; from the production, multiplication, and cross-breeding of plants and animals; from the production, extraction, and refinement of salt; from investment in post-harvest preservation of agriculture products, aquaculture products and food.

In order to be entitled to the incentive rates, companies must meet the conditions set out in the relevant legislation for the particular sector. Failure to observe such conditions will disqualify a company for the incentive rates.

6.2 What are the Value Added Tax (VAT) Rates?

There are three VAT rates: 0%, 5%, and 10%, depending on the nature of the goods and services in question.

The 0% VAT rate applies to exported goods and services, international transportation and goods and services not liable to value-added; offshore reinsurance services; credit provision, capital transfer and derivative financial services; post and telecommunications services; and exported products which are unprocessed mined resources and minerals.

The 5% VAT rate applies to goods and services that are considered essential, including books, medicine, social housing, etc.

The 10% VAT rate applies to activities that are not exempt from VAT but do not meet the requirements of either the 0% or 5% categories.

6.3 Who is Subject to Personal Income Tax (PIT) and What are the Rates?

In Vietnam, PIT applies to both tax residents and non-residents.

Tax residents are defined as persons who meet one of the following criteria for the purpose of PIT:

- » having been physically present in Vietnam for 183 days or more in either a calendar year or the 12 consecutive months from the date of entry into Vietnam; or
- » having maintained a regular residence in Vietnam, including registered permanent or temporary residency (as recorded in the temporary residency card) and those who have leased residential premises (including hotel accommodation) in Vietnam for an accumulative term of 90 days or more within a tax year and are unable to prove tax residency in a country other than Vietnam.

- a. PIT on income earned from (i) business activities, i.e., manufacturing/trading/providing goods/services (excluding those mentioned in (b) below), and sole practice of qualified professionals; and (ii) employment (i.e., salary income)

While non-residents are subject to a flat PIT rate of 20% only from their employment income sourced from Vietnam, tax residents are subject to Vietnamese PIT on their worldwide salary income, irrespective of where the income is derived, as per the following progressive PIT rates:

Monthly Employment Income (in VND)	PIT Rate in %
Up to 5,000,000	5
From 5,000,000 up to 10,000,000	10
From 10,000,000 up to 18,000,000	15
From 18,000,000 up to 32,000,000	20
From 32,000,000 up to 52,000,000	25
From 52,000,000 up to 80,000,000	30
Over 80,000,000	35

b. PIT on income earned from other activities

Besides the progressive rates or flat rate above, other business activities are subject to PIT flat rates

on the revenue per occurrence/transaction as set out below:

Income Source	PIT Rate in % for Non-Residents	PIT Rate in % for Residents
Manufacturing, transportation and others	2	1.5
Trading goods	1%	See (a)
Providing services	5%	See (a)
Prizes, inheritances or gifts	10	10
Capital investment, IP licensing, and Franchising	5	5
Construction services	2	2 for without supplying material; 1.5 for with supplying material
Real estate transfer	2	2
Capital transfer (i.e., equity in an LLC)	0.1	20 (on profit)
Securities transfer(including shares in private JSC)	0.1	0.1

A nighttime photograph of a city skyline across a body of water. The buildings are brightly lit with various colors, including purple, yellow, and white. The lights reflect on the water's surface. In the foreground, several dark, vertical wooden posts are visible, partially submerged in the water. A solid yellow vertical bar is on the left side of the page.

Chapter 07

The Right to Purchase Foreign Currency and Remit Profits

7.1 May a Foreign Investor Purchase Foreign Currency in Vietnam?

Yes. The current Investment Law and other foreign exchange regulations of Vietnam set out specific provisions on remitting foreign currencies gained by foreign investors during their investment in Vietnam as a form of investment protection. Accordingly, foreign investors and Vietnamese companies, provided that they meet their tax and other financial obligations to the Vietnamese government, are allowed to purchase foreign currencies from licensed credit institutions to carry out “non-capital” transactions and a broad range of other permitted transactions set out by law, including repayment of offshore loans and remittance of dividends abroad.

The banks are in charge of ensuring foreign exchange compliance and will allow remittance offshore upon receipt of proper documentation, including a proof of the source of the fund.

Although all enterprises have the right to exchange currency, they are not guaranteed the availability of any particular foreign currency in Vietnam unless they qualify as one of a select category of important projects where exceptions apply.

7.2 Is it Possible to Repatriate Investments from Vietnam?

Yes. The Investment Law provides that a foreign investor, after meeting its financial obligations to the State, may remit the following from Vietnam:

- profits derived from business activities (may be remitted on an annual basis);
- payments received from the provision of technology and services and from intellectual property;
- invested capital and proceeds from the liquidation of investment; and
- other sums of money and assets legally owned by the investor.



Chapter 08

WTO and Foreign Investment in Vietnam

8.1 How has Vietnam been Complying with its WTO Commitments?

Vietnam's accession to the WTO in 2007 undoubtedly offers foreign investors greater access to various local business sectors. Vietnam has made commitments in 11 service sectors (110 sub-sectors). Except for a limited number of sectors designated as unbound (such as secondary education or machinery and equipment renting/leasing) or restricted (such as the banking sector or electronic games business), most service sectors are currently open to full foreign investment.

The restrictions on foreign investment in the restaurant business fell away in January 2015, making this a promising sector for foreign investment.

The establishment of local branches by foreign companies is still limited. Foreign banks, law firms, franchising service companies, construction and related engineering service companies and non-life insurers are permitted to set up branches, but rarely do so in practice.

Vietnam's implementation of WTO commitments has also presented various practical challenges. For instance, licensing authorities are often reluctant to apply commitments that are not yet clearly supported by comprehensive domestic legislation.

8.2 Do Foreign Investors from Non-WTO Member States Enjoy the Same Treatment as Those from WTO Member States?

It depends on whether the non-WTO member state has an investment treaty with Vietnam which provides for the most-favoured nation principle. An argument can then be made that investors from such non-WTO member country should be entitled to the treatment not less favourable than that afforded to the those from WTO member states. If there is no such treaty, investors from the non-WTO members will not be entitled to the same treatment provided for WTO-member investors.

8.3 Is Vietnam Party to Any Other Notable Trade Agreements?

As a member of the Association of Southeast Asian Nations ("**ASEAN**"), Vietnam is committed to the ASEAN Economic Community ("**AEC**") initiative of building a single market in the region and has signed several agreements in service of AEC,

including the ASEAN Trade in Goods Agreement, the ASEAN Framework Agreement on Services, and the ASEAN Comprehensive Investment Agreement, etc.

Additionally, Vietnam has signed free trade agreements with China, Japan, Chile, South Korea, Australia, New Zealand, India, and the Eurasian Economic Union.

Last but not least, as of 2018, Vietnam is a negotiating party to important free trade agreements with the European Free Trade Association, the European Union, and Israel. It is also a signed member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which is awaiting implementation as of 08 March, 2018.

An aerial night view of a city skyline. The scene is dominated by numerous high-rise buildings, many of which are brightly lit with warm yellow and orange lights. In the foreground, there are several construction sites with cranes and scaffolding, illuminated by work lights. A prominent building in the lower-left corner has a red neon sign that reads "LIỆC HỒNG". The sky is dark, and the overall atmosphere is one of a bustling urban environment at night.

Chapter 09

Imports/Exports

9.1 May a Foreign Invested Company Freely Import its Goods into Vietnam?

A foreign-invested company holding a valid import permit may freely import its goods into Vietnam. Generally, most goods may be imported into Vietnam. Some goods are prohibited, some are restricted and require special permissions from the MOIT, and others (such as health products and foods) must meet certain health and safety requirements.

9.2 Which Items are Prohibited from Being Imported?

Currently, the list of goods prohibited from importing is published in Decree 69/2018/ND-CP and includes, among others, right-hand drive means of transport, assorted automobiles and their spare parts, and used vehicles that have been modified in structure. This list is subject to revision from time to time.

A large, ornate yellow building with a clock tower and a flag, likely a government or institutional building. The building features classical architectural elements such as arches, columns, and a prominent clock tower with a flag on top. The sky is overcast, and the overall scene is captured in a cinematic style.

Chapter 10

Lending and Borrowing

According to the State Bank of Vietnam ("**SBV**"), as of June 2019, the banking system of Vietnam consists of State-owned banks (which includes four 100% State-owned commercial banks, two policy banks, and three commercial banks in which the State holds more than 51% stake), 31 local joint stock commercial banks, one co-operative bank (formally known as the central people's credit fund), 49 branches of foreign banks, 9 wholly foreign-owned banks, 2 joint venture banks, 47 representative offices of foreign credit institutions in Vietnam, 16 financial companies, and 11 financial leasing companies. The network of credit institutions not only covers the domestic market, but has also made great strides in expanding to some international markets.

10.1 Who can Borrow Loans from Credit Institutions?

Vietnam-based credit institutions may grant onshore loans in local and foreign currencies to qualified Vietnamese and foreign organisations and individuals. Circular 24⁹ regulates lendings in foreign currencies by Vietnam-based credit institutions and borrowings of the same by residents in Vietnam.

Vietnamese and foreign-owned entities can also access offshore loans by obtaining credit lines from foreign credit institutions or from their foreign shareholders or a third party lender, subject to conditions set forth in the relevant regulations. Decree 219¹⁰ regulates loans from non-residents under loan agreements, deferred payment commodities sale and purchase agreements, entrusted loan agreements, and debt instruments issuance agreements that are not guaranteed by the government. Under Decree 219, the borrower must comply with the borrowing and repayment conditions as agreed upon by the offshore lender.

Currently, there are no specific regulations of loans from offshore lenders to Vietnamese borrowers. As a result, and until such guidance is issued, Vietnamese individuals may borrow from foreign lenders as long as approvals from the SBV are obtained.

10.2 What Is the General Structure of Loans in Vietnam?

Generally, there are three different types of loans: (i) short-term loans, with a tenor of less than 12 months; (ii) medium-term loans, with a tenor ranging from 12 months to 36 months; and (iii) long-term loans, with a tenor of more than 36 months. A credit institution may select a loan with an appropriate tenor to offer to a borrower upon reviewing the borrower's intended use for the loan.

While a short-term loan is usually intended for meeting working capital requirements, a medium- or long-term loan can be utilised for other longer-term purposes such as formulating fixed assets, developing investment projects, and implementing business plans in accordance with the borrower's ERCs/ IRCs or managerial/ governmental approvals.

10.3 Are there Any Limitations on Borrowing?

Under current Vietnamese law, the balance of medium- and long-term loans (including domestic loans) of a foreign-owned entity must not exceed the applicable loan limits (i.e., the total investment capital amount registered on its IRC less the charter capital). Short-term loans are generally exempt from this requirement unless the borrower is developing a project in its construction stage.

10.4 Can Lenders Refinance an Existing Offshore Loan?

Refinancing an existing onshore loan by a Vietnam-based credit institution is allowed if it meets regulatory requirements below:

- refinancing an existing loan issued by the bank: only refinancing interest payment during construction period;
- refinancing an existing loan issued by another bank if:
 - » the refinanced loan was extended for business purposes
 - » the maturity of the refinancing must not exceed the remaining term of the loan to be refinanced

⁹ Circular 24/2015/TT-NHNN dated 08 December 2015, as amended and supplemented by Circular 18/2017/TT-NHNN dated 27 December 2017 ("**Circular 24**").

¹⁰ Decree 219/2013/ND-CP on the management and repayment of offshore loans that are not guaranteed by the government ("**Decree 219**").

- » the repayment schedule of the loan to be financed has not been restructured.

The same restriction may not be applicable to an offshore refinancing under Vietnamese law.

10.5 Is it Necessary to Register an Offshore Loan?

An offshore loan transaction must be registered with the SBV if the tenor of the proposed loan that is medium/long-term. The borrower must obtain a registration certificate from the SBV before the first loan drawdown is made. To secure the registration certificate, the borrower is required to submit an application file, including duly certified copies of the executed loan agreement and other transactional documents, within 30 days following the execution of the financial documents. If the application is approved, the SBV will grant a registration certificate within 15 days following submission.

10.6 Can Lenders Take All of Borrowers' Assets as Security?

While a Vietnam-based credit institution can take security over all movable assets (e.g. shares/equity interests, equipment and machinery, cars, stocks and goods in circulation, deposits, accounts, receivables, insurance proceeds, etc.) and immovable assets (e.g. land use rights and assets attached to land), an offshore lender can only take security over movable assets.

10.7 Is There a Tax Applicable to an Interest Payment in Relation to an Offshore Loan?

Interests paid on offshore loans is subject to a 5% Vietnamese withholding tax. Therefore, lenders should ensure that their loan agreements contain gross-up provisions, which would impose a duty on the borrower to withhold and pay the above-mentioned tax.

This foreign contractor tax may be waived or reduced if an offshore lender registers its head office in a jurisdiction that has signed a Double Taxation Avoidance Agreement ("**DTAA**") with Vietnam. Currently, Vietnam has entered into DTAA's with more than 75 jurisdictions.



Chapter 11 Projects and Infrastructure

11.1 What are the Investment Procedures Applicable to Foreign Investment in or Ownership of a Project and Related Companies?

A foreign investor's ownership of equity in a Vietnamese project or company must be registered in an IRC granted to the company. A foreign investor investing in a project in Vietnam other than a PPP project (see Section 11.10) is required to apply for an IRC from a competent licensing authority, which is usually the Department of Planning and Investment of the province where the project is located (see Section 2, "Government Approvals", of this Guide for a detailed discussion).

In rare cases, the licensing authority may be the Ministry of Planning and Investment ("MPI"), and for most investments in the oil and gas sector, the licensing authority is the MOIT. An IRC sets out the identities of the investors, the capital structure of the investment project, and other key information about the project such as duration and location. It also sets out investment incentives and tax holidays to which the project may be entitled. Depending on the size and importance of the project, the licensing authority may need to consult with higher-ranking government agencies before issuing an IRC.

Project sponsors may need to fulfill one or more of the requirements below:

- In-principle Approvals by the National Assembly
Certain public investment projects may be subject to decisions on investment policies by the National Assembly as required by the Law on Public Investment. Additionally, the Investment Law require that the following types of projects be approved by the National Assembly: (i) projects that have significant environmental effects (e.g. nuclear power plants); (ii) projects that involve certain enumerated types of repurposing of land from 50 hectares to 1,000 hectares; (iii) projects that repurpose land meant for rice cultivation with two or more crops of 500 hectares or larger; (iv) projects that require the relocation of 20,000 people or more in mountainous areas or 50,000 people or more in other areas; and (v) projects that require special policies decided by the National Assembly.
- In-principle Approval by the Prime Minister

Certain public investment projects may be subject to decisions on investment policies by the Prime Minister as required by the Law on Public Investment. Additionally, the Investment Law require that the following projects be approved by the Prime Minister: (i) projects in the constructions and operations of airports, national seaports, and golf courses, regardless of amount in capital; (ii) projects in oil and gas exploration and production, regardless of amount in capital; (iii) projects in infrastructure development of industrial parks, export-processing zones, and specialized sectors in economic zones, regardless of amount in capital; (iv) projects in gamble and casino services, regardless of amount in capital; (v) projects requiring the relocation of 10,000 people or more in mountainous areas or 20,000 or more people in other areas, regardless of amount in capital; (vi) projects in cigarette production, regardless of amount in capital; (vii) investments of VND 5,000 billion or above; (viii) projects involving foreign investments in sea transport, telecommunications services with network infrastructure, afforestation, publishing, journalism, and the establishment of wholly foreign-invested science and technology organizations or science and technology companies; and (ix) other projects subject to issuance of decisions on investment policies by the Prime Minister as prescribed by law.

- In-principle Approval by the People's Committees of Provinces

Certain investment projects may be subject to decisions on investment policies by the People's Committees of Provinces as required by the Law on Public Investment. Additionally, the Investment Law prescribes that the following types of projects must be approved by the People's Committees of Provinces: (i) projects that use land allocated or leased by the State without auction or bidding or transfer, except for those executed at industrial parks, export-processing zones, high-tech zones, and economic zones in conformity with planning approved by competent authorities; (ii) project that require changes of land purposes, except for those executed at industrial parks, export-processing zones, high-tech zones, and economic zones in conformity with planning approved by competent authorities; and (iii)

projects that use technologies on the list of technologies restricted from transfer prescribed by the Law on Technology Transfers.

- Conditional sectors

Foreign investments in projects in sectors designated as “conditional sectors” for foreign investment (such as banking and finance, mining, insurance, publishing, entertainment) must meet specific conditions applicable to the sectors.

- » Appraised projects

Many public investment projects require appraisals by competent licensing authorities before the issuance of IRCs. The appraisal criteria vary from sector to sector, but may require a feasibility study, EIA report, and other similar documents.

An assignment of equity interests in an offshore holding company for the project company’s equity generally will not trigger compliance with any onshore requirements in Vietnam. Any transfer at the ownership level in Vietnam will require amending the IRC. This will trigger a new appraisal process. In most cases, a capital assignment will also require the approval of the relevant government authority that initially approved the project.

If foreign creditors enforce security over equity interests by taking ownership of equity, or if they sell equity to another foreign investor, the regulatory and appraisal requirements described above apply to whoever takes over the equity interest in the project company.

Additional approvals from competent authorities are also required for lenders who wish to exercise their step-in rights in Build-operate-transfer [“**BOT**”] projects .

11.2 What are the Relevant Government Agencies or Departments with Authority Over Projects in the Typical Project Sectors? What are the Nature and Extent of Their Authority?

As mentioned under Section 11.1, the National Assembly and the Prime Minister must approve certain public projects of national importance. The MOIT has authority over the master planning for

power, oil and gas, energy, and other important infrastructure projects, while the Ministry of Transportation (“**MOT**”) roads, airports and other transportation projects. The Ministry of Natural Resources and Environment (“**MONRE**”) is in charge of regulating projects that involves land, water, mineral resources, other natural resources, and environmental matters. MONRE always acts through the local Department of Natural Resources and Environment (“**DONRE**”). Projects in the journalism, publishing and telecommunications sectors are subject to the Ministry of Information and Communications (“**MIC**”) while high-tech projects the Ministry of Science and Technology (“**MST**”)

Local people’s committees, acting through its Department of Planning and Investment, have the authority to issue the IRC (and amendments) for most projects, including those which have been approved by the Prime Minister. The boards of management of industrial zones and export processing zones are responsible for issuing IRCs and amendments to projects located in industrial zones or export processing zones.

11.3 What Government Approvals are Required in Relation to Environmental Concerns for Typical Project Finance Transactions? What Fees and Other Charges Apply?

In a typical project finance transaction which involves the use of land, the investors must prepare an environment impact assessment (“**EIA**”) report and obtain the approval of MONRE (or the relevant DONRE). A fee is payable to MONRE or the relevant DONRE for review of the EIA report. These fees range from VND 8 million to VND 96 million, depending on the type of project and its investment size.¹¹

11.4 Who has Title to Natural Resources? What Rights May Private Parties Acquire to these Resources and What Obligations Does the Holder Have? May Foreign Parties Acquire Such Rights?

Under Vietnamese law, natural resources belong to the people. Private parties, including foreign entities, may acquire the right to use the same and

¹¹ Circular No. 56/2018/TT-BTC.

pay relevant use fees to the government, unless an exemption applies.

Private parties may own the right to conduct reconnaissance and mining activities. The law is silent on whether onshore incorporation is required for reconnaissance purposes, but does expressly require onshore incorporation for mining purposes. Onshore incorporation is also advisable for exploration purposes given that the law is ambiguous as to whether it is required.

Private parties may obtain the right to explore by applying to the government authority for an exploration licence. Such a licence to explore mineral resources may be granted for up to 48 months over a specific land area, subject to multiple extensions as long as the total extended time does not exceed an additional 48 months.

Private parties who wish to conduct mining operations must acquire an exploitation licence, which has a term of up to 30 years, subject to extensions of up to another 20 years.

The right to use the surface land does not come automatically with the exploration and exploitation licences. After these licenses are issued, the investor will enter into a land lease agreement with the State to lease the needed land from the State for the project. If land rent for the entire lease term is paid upfront, the holder of the land use rights can mortgage these rights with onshore banks to finance the project. The State will be responsible for resettling the occupants of the leased land once the mining project is approved, although the investors are encouraged to help expedite the relocation by advancing funds for the resettlement. Funds advanced for resettlement purposes will be applied against the land rent payable to the State.

Entities conducting exploration and mining projects must have an approved plan on environmental protection and an EIA report. They must also follow required waste management and quarry closure procedures. For oil and gas projects, when decommissioning the well, the decommissioning party must execute an environmental monitoring plan and submit required reports to the MOIT.

Investors, including foreign entities, may obtain the right to explore or produce oil and gas by entering into an agreement with the Vietnam Oil and Gas Group, a State-owned company with statutory control over all exploration and exploitation of oil and gas in Vietnam. The agreement could be either a production sharing contract ("**PSC**") or a JV. The standard term for a PSC is 25 years, with an exploration term of no more than five years. In limited circumstances, a PSC can have a term of up to 30 years with a maximum seven-year exploration period. The contract term and exploration period can be extended for five and two years, respectively.

Investors engaging in oil and gas production are also required to fulfill certain field clearance obligations provided in Decree No. 95,¹² including establishing and maintaining a field clearance fund.

11.5 What Royalties and Taxes are Payable on the Extraction of Natural Resources, and are They Production- or Profit-Based?

Entities exploiting Vietnam's natural resources must pay natural resources tax ("**NRT**"). NRT is applied to the production output of the taxed project and varies in rates depending on the type of resources being exploited.

Companies that extract natural resources must also pay environmental protection fees ("**EPF**"). The current EPF schedule in mining materials is set out in Decree 12¹³.

In addition to the EPF, entities engaging in mining projects in Vietnam are also subject to the NALU Tax and CIT.

Royalties of 1%-5% of the estimated value of the reserves apply to entities conducting mineral mining activities. Royalties do not apply to holders of residue mining rights.

11.6 What Restrictions, Fees Or Taxes Exist On the Export Of Natural Resources?

The export of metallic minerals, non-metallic minerals, and industrial minerals must meet the

¹² Decree No. 95/2015/ND-CP dated 16 October 2015 of the Government Providing Details for a Number of Provisions of the Petroleum Law ("**Decree 95**").

¹³ Decree No. 12/2016/ND-CP dated 19 February 2016 of the Government on Environment Protection Fees with Respect to Mineral Exploitation ("**Decree 12**").

conditions set out in Circular 41¹⁴ pertaining to the metals' origins, processing, and qualities, as well as whether required export and reporting procedures are followed.

A natural resources export tax of varying rates also applies.

11.7 Can Private Parties Grant Security Over any Such Rights in Natural Resources?

Private parties may grant security over their mining rights (see opening of this Section for more details). Prospective creditors should address issues regarding the enforcement of such security in a direct agreement with the government authority.

11.8 May Project Companies Establish and Maintain Foreign Currency Accounts in other Jurisdictions and Locally?

A project company is permitted to open foreign currency accounts onshore provided that the funds are used for legal purposes under Vietnamese law. The circumstances in which foreign currency may be used in Vietnam are limited and the most common permissible uses for a project company are as payment for imported goods, services, or equipment, and as salary for foreign employees. Vietnamese legal entities (including foreign-invested project companies) must obtain special permission from the SBV to open offshore accounts, such as a debt service reserve account. The SBV has generally authorised the opening of offshore debt service accounts, subject to certain restrictions. For instance, the SBV has been reluctant to authorise an offshore debt service reserve account in which more than six months of scheduled debt service is on deposit, and has objected to term deposit and typical low-risk investments in offshore debt service accounts by offshore collateral agents. Moreover, the approval process of an offshore debt service account can take several months, which makes it unfit for being a condition precedent.

Given the complexity of the flow of funds and account structures in major projects, the project company may seek additional legal assurance on the enforceability of these structures in the form of

a government guarantee and/or a legal opinion from the Ministry of Justice ("**MOJ**").

11.9 What tax Incentives or Other Incentives are available to Foreign Investors or Creditors?

Investors in PPP projects are entitled to several investment incentives and guarantees provided by Decree 63/2018/ND-CP ("**Decree 63**"). The available investment incentives include favourable corporate tax treatment, tax-free importation of equipment and supplies, and exemptions or discounts on land use fees. The guarantees granted pertain to fulfillment of obligations assumed by investors, land use rights, balancing of foreign currency, property ownership, etc.

Solar power projects enjoy additional incentives as outlined in Decision No. 11/2017/QĐ-TTg ("**Decision 11**"). Decision 11 allows entities involved in the development of solar power projects to raise both domestic and foreign capital to carry out the projects and provides exemptions on import duties on materials (particularly those not domestically available) along with other tax, and incentives, and feed-in tariffs.

11.10 Public Private Partnership (PPP) Legal Framework

The government issued Decree 63, which took effect on 19 June 2018. Decree 63 replaces Decree 15/2015/ND-CP in providing a single legal framework for private investments in public infrastructure sectors.

Decree 63 introduces the following key changes from Decree 15:

- It gives high-tech PPP projects the further procedural flexibility of selecting investors after project approvals and pre-feasibility studies, and having the selected investors be responsible for preparing the feasibility studies.
- It allows the use of "hybrid contracts" between investors and the State in developing PPP projects. Hybrid contracts are contracts that combine elements of the seven existing types of PPP contracts: build-own-transfer contract, build-transfer-operate contract, build-transfer contract, build-own-operate

¹⁴ Circular No. 41/2012/TT-BCT dated 21 December 2012 of the Ministry of Industry and Trade on Export of Minerals ("**Circular 41**").

contract, build-transfer-lease contract, build-lease-transfer contract, and operation and maintenance contract.

- It increases the minimum equity requirements for investors in PPP projects. For projects where the total investment capitals do not exceed VND 1.5 trillion, the minimum equity requirement is now 20% of the total project investment capital. For projects whose total investment capitals exceed VND 1.5 trillion, the minimum equity requirement is now 20% of the capital portion up to VND 1.5 trillion.
- It introduces a number of new regulations on build-transfer PPP projects, including detailed appraisal requirements.
- It provides for several additional means through which Government financing of PPP projects can be carried out, and requires open-tendering in PPP projects involving State investment capital.
- It now restricts private investors from assigning their rights and obligations in a signed PPP contract until after the completion of construction or the start of the operational phase of the project.



Chapter 12

Dispute Resolution

A. Litigation in Court

12.1 What is the Structure of the Court System in Vietnam?

The court system of Vietnam consists of four levels: (i) the People's Supreme Court, (ii) the Regional Superior People's Court, (iii) the People's Provincial Courts, and (iv) the People's District Courts. Besides, there are military courts.

The People's Supreme Court and is composed of the Justice Council, the Assisting Apparatus, and Training Institutions. The People's Supreme Court, the People's Regional Superior Courts and the People's Provincial Courts comprise of the Judge Committees, the Chambers of Courts (criminal, civil, administrative, economic, labor, family and juvenile).

The People's District Courts may also be organised into family and juvenile division, civil divisions, and criminal divisions.

12.2 How is Jurisdiction Divided in the Court System?

a. The People's Supreme Court

This is the highest level of court in Vietnam. It has the power to supervise the hearings conducted by the lower courts. The Law on Organisation of the People's Courts also empowers the Supreme Court to review contested judgments from lower courts that have already taken legal effect under the special review procedure.

b. The People's Regional Superior Court

This court has jurisdiction over three geographical regions of Vietnam, is located in Hanoi, Ho Chi Minh City, Danang, and Can Tho. Each of the three geographical regions covers a number of provinces and provincial-level cities, as follows:

- i. Hanoi-area: Hanoi, Hai Phong, Hoa Binh, Phu Tho, Tuyen Quang, Ha Giang, Thai Nguyen, Cao Bang, Bac Kan, Lao Cai, Yen Bai, Lang Son, Son La, Lai Chau, Dien Bien, Vinh Phuc, Hung Yen, Hai Duong, Bac Ninh, Bac Giang, Ha Nam, Quang Ninh, Thai Binh, Nam Dinh, Ninh Binh, Thanh Hoa, Nghe An, and Ha Tinh;
- ii. Ho Chi Minh City-area: Ho Chi Minh City, Can Tho, Ninh Thuan, Binh Thuan, Dong Nai, Ba Ria-Vung Tau, Binh Duong, Binh Phuoc, Long An, Tay Ninh, Dak Nong, Lam Dong,

Hau Giang, Dong Thap, Tien Giang, Ben Tre, Tra Vinh, Vinh Long, Soc Trang, Bac Lieu, Ca Mau, An Giang, and Kien Giang; and

- iii. Danang-area: Danang, Quang Binh, Quang Tri, Thua Thien-Hue, Quang Nam, Quang Ngai, Binh Dinh, Phu Yen, Khanh Hoa, Gia Lai, Kon Tum, and Dak Lak.

The Superior Court is charged with reviewing first-instance cases adjudicated by the Provincial Court under the appellate review procedure (i.e., judgements that have not taken legal effect) and reviewing appellate cases adjudicated by the Provincial Court under the special review procedure (i.e., judgements that have already taken legal effect).

c. The Provincial Courts

Provincial courts are empowered (i) to hold first-instance trials of cases as prescribed by the laws, and (ii) to conduct appellate trials of cases where the first-instance judgments and/or rulings of district courts have not yet taken legal effect but have been appealed and/or contested against under the appellate review procedure. Besides, provincial courts also monitor judgments and/or rulings of lower courts have already taken legal effect and recommend the special review by the higher courts if such judgements/rulings are found to have potentially violated the laws.

d. The District Courts

These courts have the power to hold first-instance hearings in criminal, civil, commercial, and labour cases.

12.3 How does the Court Conduct a Hearing?

Interrogation dominates all court hearings. Any party choosing Vietnam as a jurisdiction for its disputes in must bear in mind that court procedures are time consuming and sometimes unpredictable. Although, by law, court proceedings should conclude within three months to five months from the date on which the case is filed with the court, trials in practice often take longer. First instance hearings are conducted by a panel comprising of a judge and a two-person jury. Each member of the panel will independently decides on both matters of facts and matters of law. At the appellate level, a case is heard by a panel of three judges. The burden of proof is borne by both the plaintiff and

the defendant, and cases are decided on the documents and the evidence submitted and heard.

A court hearing is open unless the court decides otherwise (for certain circumstances). A judgment or decision may be appealed before it comes into legal effect. A party may appeal the entire or a part of a judgment within 15 days from the date on which it is issued. The review of an appeal can take between four months to five months, or longer depending on the complexity of the case. The appellate decision takes effect immediately.

12.4 How can a Judgment be Enforced?

In the event that the losing party fails to voluntarily follow a judgment, the winning party may enlist the help of a civil judgment enforcement agency. Enforcement of a judgment in Vietnam is often time consuming due to the large volume of judgments waiting to be enforced. Although a private bailiff system has been introduced on a pilot basis since 2009 to assist enforcement of civil judgments, its effectiveness remains limited.

12.5 What Changes to Court Procedures have Occurred in Recent Years?

Since the new Law on Court Organisation was introduced in 2014, the Vietnamese Government has demonstrated ongoing efforts in improving the court system. A new Civil Procedure Code and Penal Procedure Code took effect in early 2016 and early 2018 respectively, both help further promote courtroom fairness, efficiency, and other adversarial principles.

12.6 Are Foreign Court Judgements Enforceable in Vietnam?

Foreign court judgements are generally not recognised for enforcement in Vietnam, unless there is a judicial assistance treaty between Vietnam and jurisdiction where the foreign court judgement is made for the recognition of the judgements of the two countries. Such treaty must cover the nature (i.e., criminal, civil and/or commercial) of the judgements to be recognised for enforcement. Vietnam may elect to enforce judgments issued by courts in countries that do not have any judicial assistance agreements with Vietnam on a reciprocal basis.

B. Arbitration

12.7 What is the Arbitration System in Vietnam?

Commercial arbitration centres were set up in Vietnam towards the end of the 1990s as a result of the global restructuring of economic arbitration centres. Currently, there are seven commercial arbitration centres in Vietnam with about 300 arbitrators. Although Vietnamese law allows both ad hoc and institutional arbitrations, ad hoc arbitration is rare due to its informal nature.

12.8 What Types of Disputes are Settled by Commercial Arbitration?

Commercial arbitration centres settle commercial disputes upon parties' consent. Some disputes, such as those involving land use rights, are required to be resolved by a Vietnamese court and cannot resort to arbitration.

12.9 What Changes have been Brought About by the Law on Commercial Arbitration?

The enactment of the Law on Commercial Arbitration, replacing the 2003 Ordinance on Commercial Arbitration, has improved the terms of commercial arbitration. One benefit of the Law on Commercial Arbitration is that, for disputes that fall within its scope, an arbitral award issued by institutional arbitration can be brought directly to an enforcement agency for enforcement unless such award is cancelled by a Vietnamese court (cancellation, if any, is to be made within 30 days of the arbitral award).

The Law on Commercial Arbitration also makes the following further improvements from the 2003 Ordinance on Commercial Arbitration:

- A foreign arbitrator may now be appointed to comprise an arbitration tribunal in Vietnam;
- There is no limitation with respect to the qualifications of an arbitrator as regards the possession of a bachelor's degree;
- An arbitration tribunal now has the power to impose interim relief measures to prevent changes in the status quo ante.

Additionally, the use of Vietnamese is no longer required and the parties can choose the language to use during arbitrations instead.

12.10 Is Arbitration a Preferable Method of Dispute Resolution?

Arbitration is not widely used in Vietnam due to its lack of familiarity to local businesses as well as the difficulty of enforcing arbitration decisions. Enforcement agencies in Vietnam are less effective in helping enforce arbitration awards as they are with court decisions. The additional risk of court nullification of arbitration decisions also further compromises the popularity of arbitration in Vietnam.

12.11 Does Commercial Mediation Exist in Vietnam?

Yes. Decree No. 22/2017/ND-CP ("**Decree 22**"), which came into effect on 15 April 2017, sets out detailed conditions and procedures for commercial mediation as an alternative dispute resolution method in Vietnam. Decree 22 marks the first time that Commercial Mediation is formally recognized in Vietnam.

12.12 Can an Arbitral Award be Enforced in Vietnam?

As a member of the 1958 New York Convention, Vietnam must enforce arbitration judgements rendered by the other convention members, with the reservation that the recognition for enforcement of a foreign award will not be inconsistent with the fundamental principles of Vietnamese laws. A foreign award from a country that is not a party to the convention may also be enforced in Vietnam on a reciprocal basis.

12.13 What are the Obstacles to the Enforcement of a Foreign Judgment/Award?

For a foreign award/judgment to be enforceable in Vietnam, it must first be recognised by a competent court in Vietnam. A Vietnamese court may refuse to recognise a foreign arbitral award under a number of circumstances prescribed by the Law on Commercial Arbitration, including if it determines that the foreign arbitral award fails to comply with "fundamental principles" of Vietnamese law or if subject matter does not have commercial nature. The Law on Commercial Arbitration affords courts considerable discretion in deciding whether a foreign arbitral award triggers one of the prescribed grounds for refusal, which makes enforceability of foreign arbitral awards in Vietnam

unpredictable. A Supreme Court resolution in 2014, Resolution No. 01/2014/NQ-HDTP, helps curb lower court discretion on this issue.

C. Corporate Criminal Liability

The 2015 Penal Code for the first time introduces the concept of corporate criminal liability and provides a number of felonies under which a corporate entity can be criminally prosecuted.

12.14 When is a Corporate Entity Criminally Liable?

A corporate entity is criminally liable if:

- a. the criminal act is made on behalf of the entity;
- b. the criminal act is made for the benefit of the entity; and/or
- c. the criminal act is made under the direction, management or approval of the corporate entity;

Criminal prosecution of a corporate entity does not exclude that of the individual director/manager of the entity.

12.15 What are the Felonies Applicable to Corporate Entities?

There are 32 felonies under which a corporate entity can be prosecuted. The felonies include, among others, smuggling, manufacturing and trading of counterfeits (food, drugs, and other goods), IP infringement, securities illegal dealings (tampering and insider trading), tax/accounting/ insurance offenses, environment-related offenses, anti-competition offenses.

12.16 What are the Criminal Sanctions for Corporate Entities?

Corporate entities are subject to any or any combination of the following sanctions:

- a. Monetary fine (the minimum rate is VND 50 million);
- b. Temporary suspension of operation for a definite term (6 months to 3 years);
- c. Permanent termination of operation of the entity or in the business line/sector in which the criminal act is committed;

- d. Forbidden mobilization of capital (borrowings, securities issuance, collection from buyers/customers, joint ventures/joint business, and establishment of real estate investment funds); and
- e. Forbidden dealing/operation in certain business lines/sectors (from 1 to 3 years).

Besides the sanctions above, the court may order any or any combination of the following measures:

- f. Restoration of primary condition;
- g. Confiscation of (i) tools and means used for the criminal act, (ii) items, profit, or money earned from the criminal act; or (iii) prohibited;
- h. Return of property to lawful owner/administrator;
- i. Compensation for the victims of the criminal act; and
- j. Specific performance for the prevention or remedy of consequences such as:
 - i. Demolition of illegal construction work;
 - ii. Remedy of the environmental contamination or plague contagion;
 - iii. Export of commodity, goods, means, or materials previously illegally imported, infringing intellectual property rights, and/or being used for the manufacturing of counterfeits;
 - iv. Destruction of goods and/or items harmful for the health of human, animal, and/or plant species, and/or the environment, or toxic cultural materials;
 - v. Removal of infringing elements from the goods, packaging, materials or other means of business;
 - vi. Recall of infringing/faulty products, and/or goods from the market.

An aerial photograph of a mountain resort. The scene is dominated by several large, multi-story buildings with bright yellow facades and terracotta-tiled roofs. The buildings are nestled on a hillside, surrounded by dense evergreen forests. A thick layer of white mist or fog hangs in the valleys and around the lower parts of the buildings, creating a dreamy atmosphere. In the background, more buildings are visible on higher slopes, some partially hidden by the mist. The overall color palette is a mix of vibrant yellows, earthy reds, and deep greens, contrasted against the white mist and a dark, overcast sky. A vertical yellow bar is visible on the left side of the page, partially overlapping the text.

Chapter 13 Real Estate

Real estate matters are regulated by a set of legislation comprising of the Land Law, the Real Estate Business Law, the Housing Law, and the Construction Law.

13.1 Is it Possible For FIEs to Own Land in Vietnam?

There is no private ownership of land in Vietnam. Individuals and entities only have land use rights (“LUR”). Land belongs to the people and the land use rights are administered by the State on behalf of the people. LURs are evidenced by way of a land use rights certificate, which, akin to a title deed, sets out the duration and the purpose of the land use. LURs can be granted on an indefinite basis or “long-term and stable use” (i.e., without a specific duration of use) or for a limited duration (which can be as long as 99 years). Long-term and stable LURs are granted for residential use only. Specific duration (in the maximum of 50 years) is granted for commercial/business purposes. Certain exceptions allow for a use term of seventy (70) years, such as with respect to investment projects with large investment capital but a slow capital recovery rate and investment projects in areas with especially difficult socio-economic conditions.

A land site may be used only for the specific purposes for which it was granted. Failure to observe this can lead to revocation of the LUR by the land regulator. Under certain circumstances, compensation (only for the investment made on the development of the land) may be offered.

An FIE may obtain LUR by way of (i) entering into a land lease with the State, for commercial/manufacturing purposes, and paying land rental on an annual basis or in an upfront lump sum payment; (ii) receiving land grant from the State, for development of residential projects, with payment of a land use fee; (iii) receiving capital contribution by a Vietnamese party/shareholder that holds land use rights for which the land rental has been paid under the upfront lump sum arrangement; or (iv) acquiring a part or the entirety of a half-way developed project (including the land allocated for such project) from other investors.

13.2 Are there any limits to land use?

Yes. Current land legislation provides area limits to agricultural land and residential land. In particular:

- a. Agricultural land (per land user): a limit of not more than 3 hectares is provided in the Land Law;
- b. Residential land (per property): specific area limits are set by the provincial authorities for residential land in urban areas and in rural areas.

13.3 Can an FIE Own Improvements and Other Assets on Land in Vietnam?

Yes, when an FIE builds assets on the land, it has an ownership interest in the assets. However, save for a few exceptions, an FIE cannot acquire and establish ownership in an existing finished property (See 13.6 below.).

13.4 How is the Land Use Fee and Land Rental Calculated and When is it Payable?

The calculation of land use fees takes into account the area of the land, the purpose of land use, and the value of the land set out by the land price list issued by the People’s Committee of each city or province. In the case of an auction of a land use right, the land price shall be the winning auction price.

The calculation of land rentals is based on the area of land leased, the land lease term, the land rent unit price, and the type of land lease. In the case of an auction of a LUR, the leased land rent unit price shall be the winning auction unit price.

Decree No. 35/2017/ND-CP sets out special rules for determining land rentals and land lease fees for land in economic zones and high-tech zones.

If, at the time of the allocation or lease, the published land price list is not considered to reflect the land’s market value, the land use fee or land rental will be based on what the People’s Committee considers to be the actual market value.

These rules ensure that the same price shall apply to different parcels of land adjoining each other which at the same point of time have the same use purpose, and the same profitability and income from use of the land.

Land use fees and land rentals are calculated at the time the land allocation or land lease decision is made by the State.

13.5 May Land Use Rights be Mortgaged and is Registration of a Mortgage Required?

In respect of an investor leasing land from the State, LURs may only be mortgaged if the land rental is paid in advance, in a lump-sum, for the entire use term. Furthermore, the land use rights may only be mortgaged to credit institutions licensed to operate in Vietnam, not to offshore lenders or shareholders.

The LUR mortgage agreement must be notarised and the mortgage must be registered with the local Land Registrar's Office in order to be valid.

Enforcement of a mortgage is based on the agreed terms in the relevant security contract. If enforcement cannot be carried out in accordance with the relevant security contract, the mortgagee would have to commence legal proceedings at the relevant courts for enforcement.

13.6 Is Foreign Ownership of Properties Allowed in Vietnam?

Yes. Foreign ownership of properties in Vietnam is divided into two categories:

- a. Corporate ownership of all types of properties:
 - i. FIEs can own the properties that they develop on the land for which land use rights are legally acquired (see 13.1);
 - ii. FIEs can purchase existing properties that serve their own use (such as a manufacturing facility);
 - iii. FIEs can acquire (by way of purchase or a deed of gifting by the property owner) and own residential properties only for purposes of providing accommodation for their staff.
- b. Individual ownership of residential properties: foreign individuals who are allowed to enter Vietnam can purchase and own only residential properties in a commercially developed project (i.e., not a project developed for low income earners).

Foreign ownership of residential properties in (a)(ii) and (b) above is subject to an overall foreign ownership cap of not more than 30% of apartment units in an apartment building and/or not more than 250 detached/semi-detached houses in a geographical area having the population equivalent to that of a ward, or another cap provided by the

government. Besides these caps, there is no limitation as to the quantity of properties an FIE or a foreigner can acquire and own. Corporate foreign ownership of residential properties is conterminous with the duration of the IRC issued to the corporate owner, whereas individual foreign ownership is limited to 50 years from the date of issuance of the certificate of ownership.

13.7 Are There Conditions/Requirements for a Development Company?

Yes. The legal capital (i.e., minimum registered equity) of VND 20 billion applies to a development company. Previous regulations requiring minimum equity of 15%-20% of total investment for development companies investing in a new township were abolished in 2018.

13.8 Is there any Restriction for a Real Estate FIE?

Yes, FIEs in the real estate business sector are not allowed to engage in certain business activities that a Vietnamese-owned company can.

With respect to real estate services (e.g., brokerage, management, consulting/advisory, and trading floor), there is no discrimination against a real estate service FIE. However, as far as trading activities are concerned, while real estate FIEs can lease existing properties for sub-leasing, they are not allowed to purchase existing real properties for re-selling, or leasing purposes. Real estate FIEs are restricted to mostly trading properties that they develop.

13.9 Can a Development Company Pre-sell the Units/Building?

Yes, development companies can pre-sell the units/building, subject to certain conditions, under the regime for transaction of "future property" (also known as "off the plan" transaction), and collect pre-sale proceeds in instalments. Pre-sale of residential properties are subject to more stringent conditions than those applicable to other types of properties.

- a. Non-residential properties

To be eligible for pre-sale, a property must have:

- i. proper documentation on land use rights;
- ii. the project approval;

- iii. the approved design of the construction drawing;
- iv. construction permit (if it is required for the project);
- v. documentation on acceptance of completion of the infrastructure in accordance with the scheduled progress of the project.

Development companies can collect pre-sale proceeds in instalments, with the first instalment not exceeding 30% of the price of the property, and the total collection not exceeding 70% of the price if the property is not yet physically delivered to the end buyers (for development FIEs, the limit is 50% of the price). Upon delivery, development companies can collect up to 95% of the price, and the remaining 5% is collected upon the handover of the certificate of ownership of the property to the end buyers.

b. Residential properties

In addition to those listed in (a) above, pre-sale of residential units are subject to the following conditions:

- i. with respect to apartment units or residential mixed use building, completion of the foundation of the building, evidenced by the minutes of acceptance of the foundation;

- ii. a guarantee provided by a properly licensed bank for the benefit of the end buyer for the pre-sale amount guaranteeing the developer's obligation to deliver the unit to the buyer; and
- iii. certification by the provincial department of construction that the conditions for pre-sale are satisfied.

Collection of pre-sale proceeds for residential properties is the same as that applicable for non-residential properties.

13.10 Does Vietnam Have Property Tax?

Yes, but property tax in Vietnam is still underdeveloped. There is currently only non-agricultural land use tax, which applies to non-agricultural land, at the rate of 0.03% for land area within the limit, 0.07% for land area in excess of the limit but within 3 times of the limit, and 0.15% for land area in excess of 3 times of the limit. Vietnam does not have tax on the property/asset developed on the land.

13.11 Are there fees or stamp duty for property transaction?

Yes, land and building are subject to registration fee, at 0.5% of the applicable price. The price subject to the registration fee may not be the transactional price, because unit price regulated by the local authority will apply (see below).

a. With respect to land, the applicable land price is calculated as follows:

$$\text{Applicable Land Price (in VND)} = \text{Applicable Land Area (in m}^2\text{)} * \text{Unit Price (in VND per square meter) provided in the List of Land Price issued by the provincial People's Committee}$$

b. With respect to building, the applicable building price is calculated as follows:

$$\text{Applicable Building Price (in VND)} = \text{Applicable gross floor area (in m}^2\text{)} * \text{Unit Price (in VND per square meter) provided in the List of Construction Price issued by the provincial People's Committee} * \text{Percentage (\% of remaining quality of building)}$$

13.12 What is the Income Tax Applicable for Real Property Transactions?

While corporate owners are subject to the standard CIT for the gains earned from transfer of the property (see 6.1), individual owners are subject to:

- i. an exemption of PIT, if the property sold is the only property under his/her ownership; or
- ii. a flat rate of 2% of the transaction price for each transaction (see 6.3).



Chapter 14 Electronic Commerce



14.1 Does Vietnam have Laws Relating to Electronic Transactions?

Vietnam has specific laws and regulations governing the formation and performance of contracts by electronic means, although these laws and regulations need to be interpreted in line with the comprehensive legal framework that applies to commercial transactions in general (i.e., the Commercial Law and the Civil Code). The current law and regulations govern the legal validity of data messages and electronic signatures, the execution and performance of electronic contracts, and the security, safety, protection and confidentiality of electronic transactions. The MOIT and the MIC are responsible for regulating electronic transactions.

14.2 Do E-Documents in Commercial Transactions have Legal Validity?

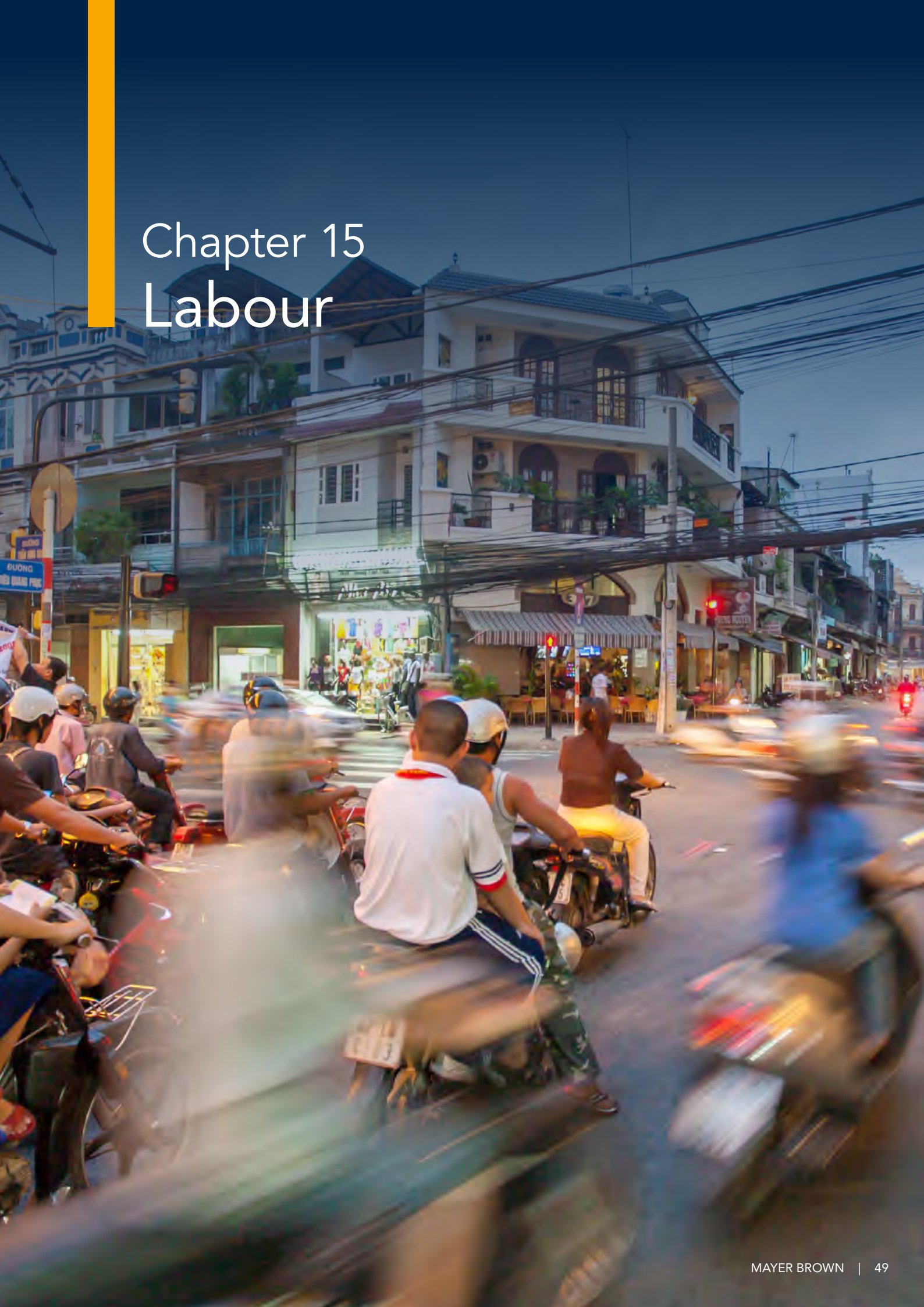
An e-document in a commercial transaction is legally valid if the following two conditions are fully satisfied:

- i. there is reliable assurance of the integrity of the information contained in the e-document from the time that the information is first generated in the form of an e-document; and
- ii. information contained in the e-document is accessible and usable in its complete form when necessary.

14.3 Is Information in an E-Transaction Kept Confidential?

Yes, the parties entering into an e-contract shall have the right to reach an agreements on confidentiality.

Personal information and the integrity of data messages in e-transactions are strictly protected. A new Law on Cyber-Information Security came into effect on 1 July 2016, offering further comprehensive cyber-information protection.

A photograph of a busy street scene in Vietnam at dusk. The foreground is dominated by a dense traffic of motorbikes, with riders wearing helmets. The background features a large, multi-story building with a traditional architectural style, including a tiled roof and arched windows. The street is lined with shops and signs, and the overall atmosphere is one of a bustling urban environment. A yellow vertical bar is on the left side of the page.

Chapter 15 Labour

15.1 Do the Labour Laws of Vietnam Favour the Employees?

Yes. The current Labour Code came into force on 1 May 2013 and replaced the 1994 Labour Code. Together with an extensive body of law comprising a number of separate decrees and circulars, the Labour Code creates a uniform legal framework for regulating the rights and obligations of employers and employees. Vietnamese labour laws contain very detailed provisions on a wide range of issues relating to the relationship between an employee and an employer. In general, employment relationships are highly regulated to protect the interests of employees.

Vietnamese labour laws apply to both Vietnamese citizens and expatriates working in Vietnam (unless an expatriate is hired by the parent offshore company and seconded to work in its subsidiary in Vietnam under an employment contract governed by a foreign law). Foreign employees (including expatriates hired by parent offshore companies) are required to obtain a work permit, unless they are qualified for an exemption. Most importantly, while employers are encouraged to grant favourable terms to their employees that are not legally required, they cannot contract out of what the law does require.

15.2 What Are the Hiring Requirements?

Domestic employers in Vietnam may only employ foreign citizens in positions that they are unable to fill with Vietnamese employees to meet production and business requirements. Foreign employers are required to obtain written approvals (either a work permit, a work permit substitute, or a written exemption) from competent state agencies before employing foreign citizens to work in the territory of Vietnam. Employees should be over 18 years of age unless the consent of the employee's legal representative is obtained. Special provisions apply in relation to junior workers (aged 15-18 years old), senior employees (above 60 years old for men and above 55 years old for women), the disabled and those with highly specialised skills. In addition, particular protection is given to female and minor (between 15 and 18 years old) employees.

15.3 What are the Terms of an Employment Contract?

Employment in Vietnam must be made in the form of a written employment contract, unless the length of employment is under three months.

An employment contract must include items enumerated in the 2012 Labor Code and Decree 05/2015/ND-CP. These compulsory items include employee and employer information, job title and work place, working and rest time, salary and raise information, term of the contract, labour safety, social and health insurance, and information on training. Apart from these compulsory items, employers can provide for additional items based on their particular needs, such as a requirement to protect the trade secrets of the employer.

An employment contract is to be signed directly between the employee and the employer. An employee may enter into employment contracts with multiple employers provided that the employee is able to fully perform the work specified in each contract. Care should be taken in drafting the employment contracts to ensure that each employer is protected, to the extent possible, from the employee's multiple employment relationships. Depending on the nature of the work, the employment contract may need to include a non-competition clause, although the enforceability of such a clause is still unclear (see Section 15.7 for more details).

15.4 What are the Types of Labour Contract?

The labour laws of Vietnam provide for three types of employment contract:

- Indefinite term labour contracts. This type of contract does not stipulate a fixed duration. An indefinite term labour contract does not create an "at will" labour relationship, i.e., it cannot be terminated at the sole discretion of the employer.
- Definite term labour contracts. This type of contract stipulates a fixed term that is between 12 and 36 months.
- Seasonal contracts or contracts for short-term replacement of absent employees. This type of contract has a term of less than 12 months.

If an employee continues to work after the expiry of a definite term labour contract or a seasonal

contract, but the parties do not sign a new labour contract within 30 days after the expiry, the law provides that the expired definite term labour contract will automatically convert into an indefinite term labour contract, while the expired seasonal contract will automatically convert into a definite term labour contract with a term of twenty-four months. Further, the law only permits one renewal of a definite term labour contract or a seasonal contract. After renewed contract expires, if the employee remains employed, the parties must enter into an indefinite term labour contract. This means that an employer is permitted to enter into, at most, two consecutive definite term or seasonal contracts with an employee.

These provisions protect the interests of employees and restrict the use of definite term labour contracts in circumstances where an employee works for an employer on a long-term basis.

In practice, employers commonly prefer to sign definite term labour contracts. In the event they do not wish to retain the employee, the expiration of the definite term contract will avoid termination of the employee. It is difficult for the employer to terminate an employment contract unilaterally, unless such termination is specifically allowed under the labour laws (see Section 15.5 for more details).

The labour laws also contain detailed provisions for overtime work compensation and other employee entitlements that an employer must carefully follow.

15.5 Are Internal Labour Regulations Mandatory?

Written internal labour regulations (the “**Regulations**”, also commonly referred to as the “Employee Handbook” or the “Employee Code of Conduct”) are required for any company with ten or more employees. The Regulations must be registered with a provincial-level labor regulator and must include items enumerated under Article 119 of the Labour Code.

As the Regulations serve as a basis for addressing employee violations of labour disciplines (which could ultimately allow the employer to unilaterally terminate an employment contract), all employers, regardless their number of employees, are encouraged to issue Regulations. The registered Regulations must specify in as much detail as possible all acts regarded as disciplinary breaches, and the corresponding disciplinary measures

(provided that such measures do not run contrary to the labour laws). Without registered Regulations, it would be very difficult for an employer to enforce disciplinary measures that are not specifically provided for by the labour laws themselves in court.

15.6 Do Expatriate Employees Need Work Permits to Work in Vietnam?

Yes, generally expatriate employees must obtain work permits. There are some limited exceptions to this requirement provided in the Labour Code to, among others, individuals such as board members of joint stock companies, lawyers who have been licensed by the Ministry of Justice, individuals who come to Vietnam to handle emergency incidents, and those who are seconded to Vietnam, as long as the company is operating in one of the certain service sectors provided for under Vietnam’s WTO commitments. As a practical matter, however, the exceptions are still quite limited. Even in the case of exception, a written recognition for exception issued by the provincial labour regulator is required.

15.7 Are Clauses on Confidentiality and Non-Competition Enforceable in Vietnam?

The labour laws of Vietnam are underdeveloped with regards to confidentiality and non-competition in connection with an employee. While non-competition clauses of an employment agreement are likely considered invalid, the Labour Code allows an employer to reach agreements with employees on confidentiality when the employees’ work involves the handling of trade or business secrets.

An employer can use Regulations to stipulate enforce confidentiality obligations. It is very important for employers, especially those in information-sensitive sectors such as banking, finance, securities, information technology, etc., to specify what constitutes confidential information in their Regulations. Where relevant, it is advisable to enter into a confidentiality agreement with each employee. At the very least, an employer should clearly state in its Regulations and/or employment contracts the terms of the employers’ confidentiality obligations and disciplinary measures for events of breach.

Non-competition, on the other hand, is not addressed at all by the labour laws of Vietnam. Employers may attempt to include a non-competition clause in their Regulations and/or employment contracts, but such provision may not be accepted by the labour regulator or the court on the ground that it is contrary to the principle of freedom of employment for employees provided in the Labour Code.

Because Vietnamese law is silent about non-competition or non-solicitation agreements, the enforceability of such agreements remains questionable. In our experience, an employer should rely on remedies available under the civil law, such as seeking damages for loss caused by breach of covenant. In order to do this, the employer bears the burden of proving causation. Although the court in any event would have sole discretion to decide whether to award damages, the employer' seeking of damages could at the very least serve as a warning to its employees.

15.8 What Types of Mandatory Insurance are Applicable?

Vietnam's social security system consists of social insurance, health insurance, and unemployment insurance. Contributions to all three insurances are mandatory for both employers and employees.

Several important changes to the Social Insurance Law took effect in 2018, including imposing social insurance contribution obligations to certain groups of foreign workers that were previously exempt. Under the new regime, the contributions made by the employer and employee to the social insurance fund (which covers pension, paid sick leave, maternity leave, occupational diseases and accidents, and death gratuity) remain 17.5% and 8% respectively. For health insurance contributions, the ratios are 3% and 1.5% respectively.

The salary used to calculate the social insurance contribution is the monthly salary of the employee stated in the labour contract. If such monthly salary is higher than 20 months' common minimum salary, the 20 months' common minimum salary amount is used. The common minimum salary applicable for each year is promulgated by the MOLISA usually towards the end of the preceding year.

The unemployment insurance scheme applies to employers with more than 10 employees with either indefinite term employment contracts or definite

term employment contracts of between 12 and 36 months. Both the employer (1% of the total salary fund) and the employee (1% of monthly salary) must contribute to the unemployment fund.

While social insurance, health insurance and unemployment insurance apply to Vietnamese employees, only health insurance applies to foreign employees.

A wide-angle photograph of a river scene at sunset. The sky is filled with soft, colorful clouds in shades of blue, purple, and orange. The sun is low on the horizon, casting a golden glow over the water and buildings. On the right bank, there is a row of colorful, multi-story buildings with tiled roofs. Several boats are docked along the riverbank, and a few are moving through the water, leaving wakes behind them. The water reflects the colors of the sky and the buildings. A yellow vertical bar is on the left side of the page.

Chapter 16

Environmental Protection

16.1 What Environmental Reports or Studies Must be Submitted for Investment Projects in Vietnam?

Depending on the investment sector and/or the scope of the investment, an investor may need to

submit either an environmental impact assessment (“**EIA**”) report or an environmental protection plan (“**EPP**”) report. EIA reports and EPP reports differ in the following respects:

	EIA Report	EPP Report
Regulated by:	Ministry of Natural Resources and Environment	Provincial People’s Committee
Regulated by:	<ul style="list-style-type: none"> Projects for which the National Assembly, Government or the Prime Minister must provide approval; Projects that use land parcels situated in designated wildlife sanctuaries, national parks, historical and cultural monuments, world heritage sites, biosphere reserves or areas of scenic beauty; and Projects that may damage the environment. 	<ul style="list-style-type: none"> Projects for which an EIA Report is not required.
Contents:	<ul style="list-style-type: none"> Specifications of the project; Evaluation of technology selected to implement the project; Assessment of the impact of the project on the environment; Assessment of measures to minimise any negative effects on the environment (including an assessment of water disposal measures and a budget estimate for the construction of environmental protection facilities); Consultation reports; and Alternative measures for environmental protection. 	<ul style="list-style-type: none"> Description of project site; Type, technology and scale of production, trading and service; Required raw materials and fuels; Forecast of wastes and any other substances affecting the environment; Measures for disposing of waste and mitigating negative impact on the environment; and Environmental protection measures to be put in place.
Timeframe for approval:	Within 20 days from the date the EIA Report is filed.	Within 10 days from the date the EPP Report is filed.

16.2 What are Some of the Possible Environment-Related Financial Obligations an Investor May Face in Vietnam?

Environmental protection tax

The Law on Environmental Protection Tax imposes tax on a variety of products that negatively affect the environment and public health, such as gasoline, oil and grease, and petroleum.

Environmental protection fees


These must be paid by individuals, but not organizations, discharging wastes that could be harmful to the environment. For example, households that fail to comply with environmental protection requirements must pay fees for waste collection and waste treatment services.

Natural resource exploitation and restoration funds

Organizations that explore, extract, and process minerals must make environmental remediation deposits to for environmental restoration upon project completion.

Environmental protection funds

As set out in the Law on Environmental Protection, environmental protection funds include the central environment protection fund, environment protection funds of ministries and specialized authorities, and provincial environment protection funds. The state has also encouraged enterprises, organizations, and individuals to establish their own environmental protection funds.

A vibrant street scene in Vietnam at dusk. The street is lined with traditional buildings, some with balconies adorned with pink flowers. Numerous glowing yellow lanterns are strung across the street, creating a warm and festive atmosphere. People are seen riding bicycles and scooters, and a red flag with a yellow star is visible on a building. The overall scene is lively and colorful.

Chapter 17 Restructuring

17.1 Who can Initiate Bankruptcy Proceedings?

Vietnam passed its current Law on Bankruptcy in 2014, which came into effect on 01 January 2015. The law places duties on the owner of a private company, the chairman of the board of a joint stock company, the chairman of the members' council of a limited liability company, a partner of a partnership, and the legal representative of a company to file a bankruptcy petition upon observing that the company has become insolvent. In addition, the following persons have the right, not duty, to file a bankruptcy petition upon observing that the company has become insolvent:

- unsecured creditors or partially secured creditors;
- union representatives or elected representatives of the company's employees; and
- shareholders of the company.

An entity is considered insolvent under the Law on Bankruptcy if it fails to meet its debt liabilities within three months following the date that the debt became due. A claim by a creditor for repayment is not required.

17.2 What are the Effects of a Court's Acceptance of a Bankruptcy Petition?

Bankruptcy stay

The enforcement by secured creditors against the assets of the debtors is restricted until a bankruptcy order is entered. The court has discretion to allow immediate enforcement, however, upon finding risks of destruction or considerable decreases in value of a debtor's assets. Secured loans are to be repaid with the corresponding secured assets, unless the assets are required to implement a business recovery plan for the company, in which case the creditors committee may make a special recommendation for the use of such assets.

Preference period

A court's acceptance of a bankruptcy petition triggers a look-back or "preference" period of either six or eight months. The court may rule certain transactions that occurred during this defined period preceding the date that the bankruptcy petition invalid, particularly those aiming at dispersing the insolvent entity's assets. Transactions that may be ruled invalid include (i)

asset assignments that are not at market price; (ii) conversion of an unsecured debt into a debt secured or partly secured by the debtor's assets; (iii) donations of movable or immovable assets; (iv) payments or setoffs benefiting a creditor in respect of a debt that has not yet become due or with a sum that is larger than a debt which has become due; and (v) transactions that are outside the insolvent entity's normal scope of business.

The standard preference period is six months. An eighteen-month "preference" period applies to transactions involving parties that are related to the insolvent entity.

17.3 What are the Stages of a Bankruptcy Proceeding?

- Stage 1: Filing of bankruptcy petition and the court's acceptance of the petition.
- Stage 2: The court enters a decision to commence bankruptcy proceedings or rejects the petition.
- Stage 3: The court convenes a meeting of creditors for them to decide whether to instruct the company to prepare a recovery plan, or request the court to enter an immediate decision of bankruptcy.
- Stage 4: If the meeting of creditors instructs the company to prepare a recovery plan, the company must prepare and circulate a plan within 30 days or the court will enter a decision of bankruptcy.
- Stage 5: Both the court and the meeting of creditors must approve the plan.
- Stage 6: The company implements the recovery plan under the guidance of a liquidator.

An immediate order of bankruptcy, followed by liquidation of the company and settlement of its obligations, can be issued in the following circumstances: (i) the company has no assets to pay the bankruptcy fees; (ii) the court or the creditors determine the company cannot be rehabilitated; or (iii) the company cannot prepare a recovery plan, or the recovery plan is not approved or implemented.

17.4 Who Manages the Bankruptcy Process?

At the time the court accepts the bankruptcy petition, the judge in charge will appoint an asset management officer or an asset management and

liquidation company. The role of the asset manager is to supervise the business operations and liquidate the assets of the company. These tasks include preparing an asset inventory, preparing a list of creditors and a list of debtors of the company, taking steps to protect assets, preventing unauthorized sales or transfers of assets, selling assets in accordance with decisions of the court, and organizing the valuation and liquidation of the assets.

17.5 What Regulatory Issues are Associated with Other Common Restructuring Tools?

Waivers or Forbearance Agreements

Waivers and/or forbearance agreements do not require any regulatory registrations, approvals, or filings (such as registrations with the SBV).

Amendments to Credit Agreements

Parties can amend credit agreements to restructure financial covenants, payment terms, and security packages.

If the amended credit agreement has been registered with the SBV, an amendment to the registration is required if the changes to the credit agreement include revisions on loan tenor, interest rate, repayment and interest payment schedule, security packages, or the identities of financing parties.

In some cases, approvals from other regulatory bodies may also be required. For example, if the amendments entail modifications to a corporate charter, the business registration authority must register the revised charter.

Debt-for-Equity Swaps and Capital Cures

These tools may not be practical in Vietnam due to the cap on foreign investment ratios in many key investment sectors, such as ports, airlines, and logistics. In addition, this restructuring method inevitably involves altering the borrower's capital structure, which may trigger onerous regulatory steps. This is particularly relevant when the borrower is already a foreign invested entity. The restructuring must ensure that any revised foreign ownership stake is permissible under Vietnam laws. In most cases, amendments to the corporate charter, ERC, IRC will likely be required.

17.6 Can Reorganisation Schemes in Other Jurisdictions be Used in Vietnam?

Mayer Brown represented Vinashin, Vietnam's national shipbuilding company, in successfully rescheduling US\$600 million in debt through an English Scheme of Arrangement. A scheme of arrangement is not an insolvency proceeding but a court sanctioned debt restructuring plan binding on all creditors. This represented the first offshore debt workout/restructuring of a Vietnamese entity.



Chapter 18 Intellectual Property



18.1 What Laws Protect Intellectual Property in Vietnam?

The Civil Code and the Law on Intellectual Property codify the bulk of Vietnam’s regulations on Intellectual Property. Vietnam is also a signatory to the Paris Convention, the Madrid Agreement and the Stockholm Convention of 1967, the Berne Convention for the Protection of Literary and Artistic Works, and the Geneva Convention for the Protection of Producers of Phonogrammes against Unauthorised Duplication of their Phonogrammes.

Intellectual property and copyright are regulated by separate agencies in Vietnam. Intellectual property matters are regulated principally by the National Office of Intellectual Property, while Copyright is managed by the Copyright Office.

18.2 Is Registration Required to Protect Intellectual Property?

Yes. In Vietnam, legally recognizable intellectual property rights only arise upon registration with a competent State agency, and are granted to parties on a first-to-file basis. Exceptions to the first-to-file rule apply for trade secrets, rights to repress unfair competition, and trade names.

Copyright, on the other hand, arises at the moment of “fixation” and does not require registration. Registration of copyright will create prima facie support for protection.

18.3 What are the Durations of Protection for Patent, Copyright, Trademark, Industrial Design and Trade Name?

Type	Brief Legal Description	Duration of Protection
Patent	A technological solution presenting worldwide novelty, an inventive step applicable in socio-economic fields	20 years from the date of application
Copyright	Rights of organisations or individual to works they created or own.	Author’s life plus 50 years, except for movies, photographs, plays, and applied works of fine art, which enjoy 50 years of protection from the date of first publication or fixation
Trademark	Marks used to distinguish goods or services of different organisations and individuals. They may take the form of words, images, or any combinations of the two presented in one or more colours	10 years from the date of application, renewable for successive 10-year periods without limit
Industrial design patent	The outward appearance of a product embodied in three dimensional configurations, lines, colours, or combinations of these elements	5 years from the date of application, renewable for two additional periods of 5 years each, up to a maximum of 15 years
Trade name	The designation of an organisation or individual used in business activities in order to distinguish the business entity bearing such a designation from other business entities in the same business sector	The entire duration of use



Chapter 19
Technology Transfer

19.1 Who has the Right to Transfer Technology?

The owner of a technology is entitled to transfer both the right to use and the ownership of technology.

An entity has the right to transfer the right to use a technology if it is permitted by the owner of the technology to do so.

A technology transfer must be implemented on the basis of a written contract that includes specific terms required by law. A new Law on Technology Transfer came into effect on 01 July 2018. Under the new law, technology transfer contracts are now required to be registered barring limited exceptions. The parties are now also required to agree upon the scope of the transferred right to use a technology in terms of whether the right is exclusive and whether a right to re-transfer is attached.

Technology transfer contracts signed before 1 July 2018 may remain effective in accordance with the old Law on Technology Transfer, but shall comply with the new Law upon renewal.

19.2 What Kind of Technology may be Transferred?

Technological objects eligible for transfer include:

- technical know-how and technological know-how;
- technological plans or processes;
- solutions for optimizing production and for technological innovation; and
- machinery and/or equipment accompanying transferable technologies.

If the technology is also protected by an intellectual property title, the transfer of such technology must be conducted together with the transfer of intellectual property rights in accordance with the Law on Intellectual Property.

19.3 What Kinds of Technology Transfers are Prohibited?

The new Law bans transfers of the following technologies:

- technologies failing to meet regulations on occupational safety, occupational hygiene, public health, or environmental protection;

- technologies that adversely affects socio-economic development, national security, and social safety;
- technologies that are no longer popularly used and transferred in developing countries and fail to satisfy national technical standards and regulations;
- technologies that use toxic chemicals or generate hazardous waste or radioactive substance failing relevant standards; and
- technologies of State secret, unless otherwise permitted.

19.4 What Approvals or Procedures Should be Obtained or Followed In Order to Transfer Technology in Vietnam?

Under the new Law, a licence from the Ministry of Science and Technology ("**MOST**") must be obtained in advance of transferring technologies that are restricted from transferring. Technologies that are restricted from transferring are enumerated under Article 10 of the new law.

Additionally, the new law also requires comments, appraisals, and auditing of certain technologies and their pricings before investments projects in or transfers of them can be approved. During the implementation of an approved investment project, the investor must report any changes in the technologies to the appraising authorities.

19.5 Can a Foreign Investor Contribute Capital to an Investment Project by Transfer of Technology?

Foreign investors can contribute capital to an investment project by transfer of technology. Doing so might trigger appraisal requirements. The value of such capital contribution will be agreed on by the parties in the technology transfer contract.

A photograph of a modern cable-stayed bridge with a tall, curved building in the background, set against a sunset sky. The bridge has a prominent pylon with multiple stay cables. The building is a high-rise with many windows. The scene is illuminated by the warm light of the setting sun, creating a golden glow on the water and the bridge's structure. The sky is a mix of blue and orange, with some clouds.

Chapter 20 Government of Vietnam and Charts of Major State Agencies

20.1 Overview of the Government of Vietnam

The Socialist Republic of Vietnam is a single-party state. Only political organisations affiliated with or endorsed by the Communist Party are permitted to hold elections.

The National Assembly of Vietnam is the unicameral legislature of the government, composed of 500 members. It is superior to both the executive and judicial branches. All members of the council of ministers are derived from the National Assembly. The National Assembly, which adopts the laws of the country and ratifies treaties, has 10 committees, one council and a few auxiliary/support bodies. The committees and council of the National Assembly are:

- i. Standing Committee;
- ii. Economic Committee;
- iii. Foreign Relations Committee;
- iv. Judicial Committee;
- v. Legislation Committee;
- vi. Finance and Budgeting Committee;
- vii. Defence and Security Committee;
- viii. Social Affairs Committee;
- ix. Committee for Science, Technology and Environment;
- x. Committee for Culture, Education, Youth, Adolescence and Children; and
- xi. Ethnicity Council.

The Supreme People's Court of Vietnam, which is the highest court of appeal in the nation, is also answerable to the National Assembly. The judicial system, divided into district, provincial and regional superior courts, hear cases at first-instance and appellate levels.

The President of Vietnam is the titular head of State and the nominal commander in chief of the military of Vietnam, chairing the Council on National Defence and Security. The President, assisted by the Vice President, formally promulgates the laws adopted by the National Assembly.

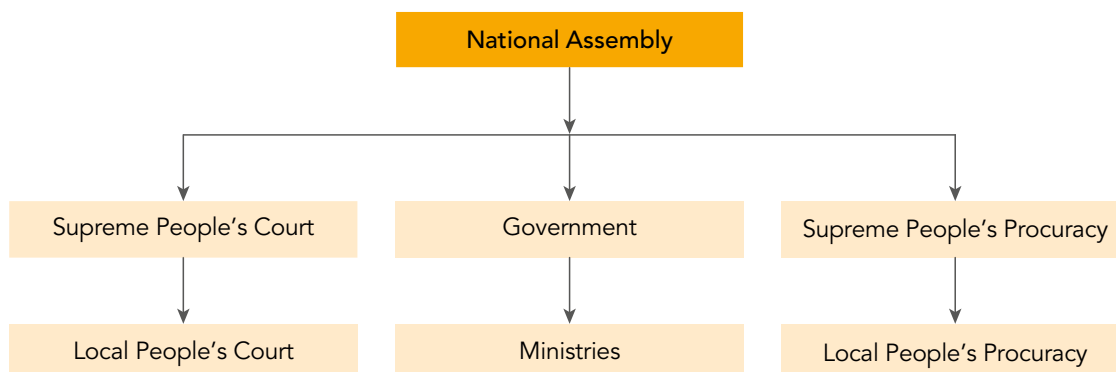
The Prime Minister of Vietnam is the head of government, presiding over a council of ministers, who head the ministries and ministerial-level bodies.

The government of Vietnam consists of 18 ministries, 4 ministerial-level bodies, and 8 government agencies.

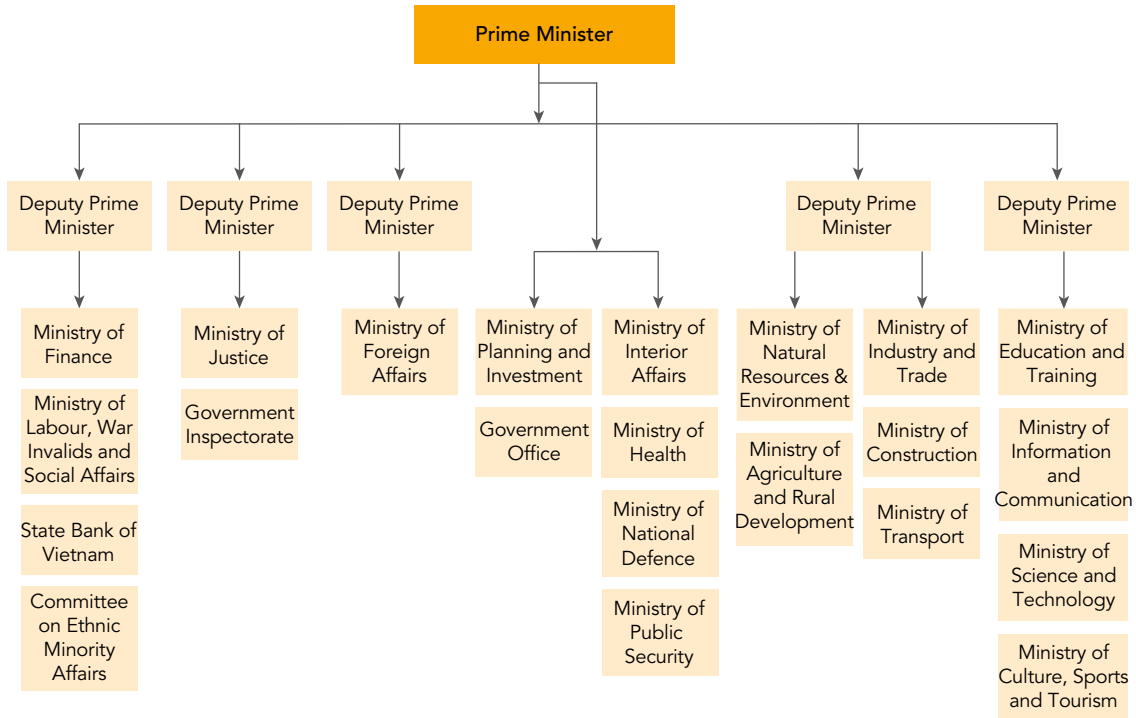
The General Secretary of the Communist Party is perhaps one of the most important political leaders in the nation, controlling the Party's national organisation and State appointments, as well as setting policies for the country.

The following charts show the general organisational structure of the Socialist Republic of Vietnam.

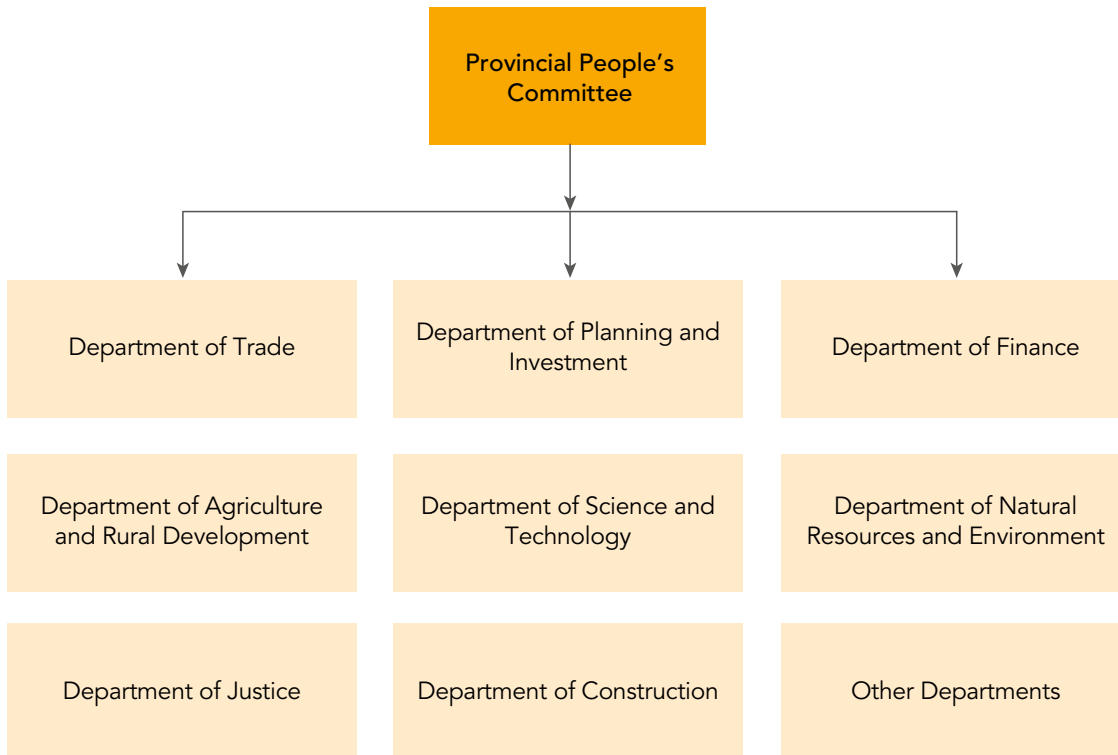
20.2 National Structure



20.3 Government of Vietnam



20.4 Local Structure



List of Abbreviations

ADR	Alternative dispute resolution
AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Agreement
BCC	Business cooperation contract
BOT	Build-operate-transfer
BT	Build-transfer
BTO	Build-transfer-operate
CEPT	Common Effective Preferential Tariff
CIT	Corporate income tax
DONRE	Department of Natural Resources and Environment
DPI	Department of Planning and Investment
DTAA	Double Taxation Avoidance Agreement
EIA Report	Environmental Impact Assessment Report
ENT	Economic Needs Test
EPU	Environmental protection undertaking
ERC	Enterprise registration certificate
FIE	Foreign invested enterprise
FTA	Free trade agreement
IRC	Investment registration certificate
JSC	Joint stock company
JV	Joint venture
LLC	Limited liability company
LUR	Land use rights
MIC	Ministry of Information and Communications
MLLC	Multiple member LLC
MPI	Ministry of Planning and Investment
MOIT	Ministry of Industry and Trade
MONRE	Ministry of Natural Resources and Environment
MOST	Ministry of Science and Technology
MOT	Ministry of Transportation
PC	People's Committee
PIT	Personal income tax
PPP	Public private partnership
PSC	Production sharing contract
SBV	State Bank of Vietnam
SLLC	Single-member limited liability company
TPP	Trans-Pacific Partnership
VAT	Value added tax
WFOE	Wholly foreign-owned enterprise
WTO	World Trade Organisation



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