Contents

04. Introduction

06. Chapter 01: Forms of Doing Business

10. Chapter 02: Government Approvals

12. Chapter 03: Business Scope and Authority

15. Chapter 04: Capital Structure

19. Chapter 05: Retail and Distribution

20. Chapter 06: Taxation

23. Chapter 07: The Right to Purchase Foreign Currency and Remit Profits

24. Chapter 08: WTO and Foreign Investment in Vietnam

26. Chapter 09: Imports/Exports

27. Chapter 10: Lending and Borrowing

29. Chapter 11: Projects and Infrastructure

34. Chapter 12: Dispute Resolution
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 September 2015.
Not since Vietnam’s corporate and investment law were overhauled to prepare for accession to the World Trade Organisation (“WTO”) in 2007 has Vietnam seen as many legal changes as in 2015. A new Law on Enterprises and a new Law on Investment each took effect on 1 July 2015, and represent an effort to harmonise investment and licensing procedures for foreign and domestic enterprises. Since Vietnam’s accession to the WTO nearly 10 years ago, the National Assembly has passed numerous laws and governmental authorities have promulgated a significant number of regulations to implement Vietnam’s WTO commitments and strengthen the basic framework crafted by the 2005 Law on Enterprises and Law on Investment. As anticipated, this has not always been a linear path forward, as conflicting interpretations between local regulators in different provinces, and between different ministries, have created confusion over key issues, such as requirements of foreign investors to obtain an investment certificate when making minority investments in existing Vietnamese enterprises.

The new corporate and investment laws effective this year are designed to rectify deficiencies of the prior legislation and establish distinct procedures for registration of foreign investment and corporate business licensing. While the new laws are now effective, the Government has not yet introduced implementing regulations, and the devil is in the details when it comes to Vietnamese law and its implementation.

Vietnam also ushered in a new Law on Real Estate Business and Law on Residential Housing, both of which became effective on 1 July 2015, in an effort to stimulate the real estate market and in particular, increase foreign investment in the residential real estate market.

Decree 60 of the Government, effective 1 September 2015, represents a significant step towards enhancing liquidity for listed companies. Decree 60 now provides that, subject to certain exceptions, foreign ownership in publicly traded companies can reach 100%. In addition to stimulating liquidity on the Hanoi and Ho Chi Minh City bourses, this welcome change should increase M&A and private equity activity by offering more attractive exit options through listings and public offerings.
2015 has also been a busy year for Vietnam with respect to negotiating bilateral and multilateral treaties. In addition to trade agreements within ASEAN, Vietnam has signed free trade agreements (“FTAs”) with the United States, Japan, Chile, South Korea and the Eurasian Economic Union. Vietnam is also currently negotiating the Trans-Pacific Partnership (“TPP”) accords with other nations across the Pacific basin in Asia, Oceania, and the Americas. The TPP would further open the Vietnamese legal framework to foreign investors.
Chapter 01

Forms of Doing Business

1.1 Forms of Investment

The new Law on Investment 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 Law on Investment – it does not make a distinction between direct and indirect investment. 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")
- 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 Law on Investment. This is, in our view, intentional as the new Law on Investment is designed to harmonize foreign and domestic investment and limit the number of exceptions applicable to foreign investment procedures.

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.
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 procedures to obtain an Investment Registration Certificate (“IRC”) (see below).

The investment forms, scope of activities, Vietnamese party(ies) participating in implementation of investment activities and other conditions are subject to international treaties of which the Socialist Republic of Vietnam is a member.

As of 26 June 2015, 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 No. 60/2015/ND-CP, effective on 1 September 2015 (“Decree 60”), introduces a significant change to foreign investment in listed and other public companies. Previously, foreign investors could only hold up to 49% of the equity in public companies. Decree 60 now allows foreign investors to hold an unlimited proportion of voting shares in Vietnamese public companies (including listed companies) subject to certain exceptions.

1.3 What is a PPP Contract and How to Carry Out Investment in this Form?
An investment in the form of a PPP contract means any contract signed between a competent State agency and an investor or project enterprise to perform an investment project. Investors or project enterprises shall sign a PPP contract with the competent State agency for implementation of an investment project for new construction, or renovation, upgrading, expansion, management and operation of infrastructure facilities or provision of public services.

1.4 What is a BCC Contract and How to Carry Out Investment in this Form?
A business co-operation contract, or BCC, means a signed contract between investors agreeing to co-operate in business and to share profit or products, but does not establish an economic organization. A BCC contract signed between a domestic investor and one or more foreign investors shall require the parties to complete the procedures for issuance of an IRC.

The parties to a BCC contract shall establish a coordinating board to supervise the performance of the BCC contract. The functions, duties and powers of the coordinating board shall be agreed by the parties. During performance of the BCC contract, the parties to the contract are entitled to use assets the produced by the business co-operation to establish an enterprise in accordance with the Law on Enterprises.

1.5 What Kind of Investment Incentives or Supports are Foreign Investors Entitled to?
Investment incentives available to foreign investors under the Vietnamese law may include:

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

For an investment project to be entitled to the above, it must be a new and/or expanded investment project and satisfy one of the following conditions:

- It must be an investment project in a “preferential investment industry and trade” (including production of new materials, renewable resources, garment or textile products); or
01. Forms of Doing Business

- It must be located in one of the designated “preferential investment geographical areas”, which are
  - Areas with difficult socio-economic conditions; and areas with especially difficult socio-economic conditions; and
  - Industrial zones, export processing zones, high-tech zones and economic zones; or
- It must have a scale of capital of VND 6,000 billion or more of which at least VND 6,000 billion is disbursed for a period of three years from the date of issuance of the IRC or the date of the decision on the investment policy; or
- It must be located in a rural area and employ 500 employees or more; or
- The project must be a high-tech enterprise, or a scientific or technological enterprises.

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 may set up a new legal entity as a wholly foreign-owned enterprise (“WFOE”) or as a JV (and contribute capital to this entity); in this case, an investor must apply both for an investment registration certificate (“IRC”) and an enterprise registration certificate (“ERC”), which was formerly called a business registration certificate (“BRC”). A foreign investor may also contribute capital to an existing legal entity in Vietnam, which does not require an issuance of an IRC or ERC.

Thus, in respect of foreign investors carrying out their first project in Vietnam, the incorporation of the Vietnamese legal entity takes place simultaneously with the licensing of their first project. In other words, a foreign investor cannot incorporate a legal entity without a project. However, subsequent to the first project, an investor may carry out additional projects either using the established legal entity or by setting up a new entity.

1.7 What Types of Vietnamese Legal Entities are Available?

A foreign investor (just like a local investor) may select one of the following Vietnamese legal entities to carry out a project:

- A limited liability company (“LLC”), in the form of either a single-member LLC (“SLLC”) or an LLC with two or more (up to a maximum of 50) members (“MLLC”) 
- A shareholding or joint stock company (“JSC”) which is a company with at least three shareholders but no maximum number of shareholders
- A general partnership or a limited liability partnership
- A private enterprise (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 by the sale of shares and securities. Only a JSC can issue bonds and preference shares. Furthermore, a company that wishes to list on a securities exchange in Vietnam must be a JSC. 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 the 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 lead a foreign investor to choose a JV are: (i) some business sectors in Vietnam require a JV to establish a commercial presence in Vietnam; and (ii) the Vietnamese party has a key asset, local know-how and knowledge, or other factors that make the JV the preferred choice. For example, in real estate development projects, the Vietnamese party usually has the land use rights, which by law cannot be directly transferred to a foreign investor, but may be contributed into a JV.

1.10 What is a Representative Office Permitted to Do?

A representative office is often the first step in establishing a commercial presence in Vietnam. A representative office does not have a separate legal personality from the offshore enterprise. Establishing a representative office is generally cheaper and faster than other forms of a commercial presence.

However, representative offices have limited rights. They are permitted to engage only in certain activities, including business development, and cannot engage in activities that generate profit in Vietnam. The head of the representative office is permitted to sign economic or commercial contracts with Vietnamese businesses on behalf of the offshore company only if he or she has specific legal authority from the offshore company for each contract (in other words, a general standing authorisation is not permitted). Despite the limitations, a representative office 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 local company may establish a representative office in Vietnam to implement and oversee the contract.
2.1 What is the Approval Process for Establishing a JV or WFOE?

When establishing a new enterprise in the form of a WFOE, JV or any other permitted form, foreign investors must prepare an investment project and apply for both an IRC and ERC. In some cases (namely investment projects of Types I, II and III as described below), the investors also need to carry out certain procedures in advance to receive written decisions from different authorities on the investment.

For an ERC application to be approved, the following conditions must be satisfied: (a) investment in the proposed line of business is not prohibited; (b) the name of the enterprise in Vietnamese is not identical to that of any other registered enterprise and comply with other naming conventions set out in the Law on Enterprises; (c) the investor has submitted a complete and valid application file for registration of the enterprise; and (d) it 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 a registration procedure based on the size and type of the project. The Law on Investment categorizes investment projects into three types [Type I, Type II, and Type III] as summarized below:

<table>
<thead>
<tr>
<th>Type</th>
<th>Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type I (small scale)</td>
<td>Projects to which the State allocates or leases out land without auction, tendering or transfer (Among these types of projects, those which are implemented in an industrial zone, export processing zone, high-tech zone or economic zone in conformity with the approved master plan are not required to be submitted to the provincial people’s committee for its decision on the investment policy) Projects that will require conversion of the land use purpose Projects using technology in the list of technologies the transfer of which is restricted in accordance with the law on technology transfer</td>
</tr>
</tbody>
</table>
### Type II (medium scale)

Projects that meet one of the following criteria:

- Relocation and settlement of 10,000 people or more in mountainous areas and 20,000 people in other areas;
- Construction and commercial operation of airports and air transportation;
- Construction and commercial operation of national seaports;
- Exploration, production and processing of petroleum;
- Business of betting and casinos;
- Production of cigarettes;
- Development of infrastructure in industrial zones, export processing zones and functional areas in economic zones; and
- Construction and commercial operation of golf courses.

Projects that do not meet any of the criteria listed above, but have a scale of investment capital of VND 5,000 billion or more

Projects of foreign investors in the following sectors: sea transportation; telecommunications services with network infrastructure; publication, press; and establishment of a scientific and technological enterprise with 100% foreign owned capital

Other projects stipulated by law as subject to the authority of the Prime Minister of the Government to make the decision on the investment policy or to make an investment decision

### Type III (large scale)

Projects with a great effect on the environment or with a potentially serious effect on the environment, including nuclear power plants, conversion of the land use purpose of a national park, etc.

Land use with a requirement for conversion of the land use purpose for wet rice cultivation on two harvests in an area of 500 hectares or more

Relocation and resettlement of 20,000 people or more in mountainous areas or 50,000 people or more in other areas

### Type IV

Investment projects other than Types I-III

With respect to Type I, II and III projects, the investment registration agency shall issue an IRC to the investor within a time-limit of five working days from the date of receipt of the written decision on the investment made by the applicable authority, depending on the size and type of project. In case of Type IV projects, the investment registration agency shall issue an IRC within a time-limit of fifteen days from the date of receipt of the complete application file.

(See section 11.1, “What are the Investment Procedures Applicable to Foreign Investment in or Ownership of a Project and Related Companies?”, of this guide for more information.)

#### 2.2 Which Authority has Jurisdiction to Issue Decisions Regarding Investment Projects?

<table>
<thead>
<tr>
<th>Type of investment project</th>
<th>Authority</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type I</td>
<td>Provincial people's committee</td>
<td>The investment registration agency must notify the investor of a result within thirty-five days from the date of receipt of the investment project file</td>
</tr>
<tr>
<td>Type II</td>
<td>Prime Minister of the Government</td>
<td>No time limit set</td>
</tr>
<tr>
<td>Type III</td>
<td>National Assembly</td>
<td>No time limit set</td>
</tr>
<tr>
<td>Type IV (others)</td>
<td>No investment policy is decided upon in this type of investment project</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 03

Business Scope and Authority

3.1 What is the Significance of a Company’s ERC or IRC?

All validly existing private business enterprises in Vietnam must have an ERC or both an ERC and an IRC.

The ERC is the written or electronic document issuing by the licensing authority to a company recording information about company registration. For foreign investors and companies in which foreign investors hold more than 51% of equity, in addition to the ERC, the foreign investors and/or these companies are required to obtain an IRC. The IRC is the written or electronic document issuing by the licensing authority recording information registered by the investors about an investment project. For such investors, the IRC must be included in the application file for the ERC.

The 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 conditional investment sectors.

The contents of an ERC and IRC consist of the following:

**ERC**

- Name of the enterprise and enterprise code number
- Head office address of the enterprise
- Full name, permanent residential address, nationality and identity card or passport number of:
  - The legal representative of the enterprise in the case of a limited liability company or joint stock company
  - Partners in the case of a partnership
  - The owner of the enterprise in the case of a private enterprise

---

1 Enterprise code 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.
• Full names, permanent residential addresses, nationalities, and identity card or passport number of individual members in an LLC or shareholders in a JSC
• Names, enterprise code numbers and head office addresses of corporate members in an LLC or corporate shareholders in a JSC
• Charter capital

IRC

• Investment project code
• Name and address of the investor
• Name of the investment project
• Location of implementation of the investment project and land area to be used
• Objectives and scale of the investment project
• Investment capital of the project (comprising capital contribution of the investor and loans), schedule of capital contribution, and sources of capital
• Operational duration of the project
• 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 in the case of projects to be implemented in various phases, the objective, duration and content of operations in each phase must be specified
• Incentives or investment support and bases or conditions for application thereof (if any)
• Conditions applicable to the investor implementing the project (if any)

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. The legal representative must reside in Vietnam.

The condition for the legal representative varies depending on the corporate form:

<table>
<thead>
<tr>
<th>Corporate Form</th>
<th>Number of Legal Representatives</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi Member Limited Liability Company</td>
<td>1+</td>
<td>The charter of a company shall specify the number, managerial positions and rights and obligations of the legal representative(s) of the company</td>
</tr>
<tr>
<td>One Member Limited Liability Company</td>
<td>1</td>
<td>The charter of a company shall specify the managerial positions and rights and obligations of the legal representative of the company If the charter of the company does not contain a relevant provision, the chairman of the Members’ Council or the general director of the company shall be the legal representative of the company</td>
</tr>
<tr>
<td>Joint Stock Company</td>
<td>1+</td>
<td>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</td>
</tr>
</tbody>
</table>

2 Under the 2005 Law on Enterprises, a legal entity could have only one legal representative.
03. Business Scope and Authority

<table>
<thead>
<tr>
<th>Corporate Form</th>
<th>Number of Legal Representatives</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Stock Company</td>
<td>1+</td>
<td>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.</td>
</tr>
<tr>
<td>Partnership</td>
<td>1+</td>
<td>Unlimited liability partners are entitled to be legal representatives and to organize management of the day-to-day business of the partnership.</td>
</tr>
<tr>
<td>Private Enterprise</td>
<td>1</td>
<td>The owner of a private enterprise shall be the legal representative of the enterprise.</td>
</tr>
</tbody>
</table>

In general, a legal representative has the authority to bind the company in commercial contracts. He or she is personally liable for any loss and damage due to a breach of his or her obligations to perform his or her duties honestly and prudently; to be loyal to the interests of the enterprise; to notify the enterprise of his or her own shareholdings and capital contribution within 15 days from the date undertaken for capital contribution; and to register changes to any content of the enterprise registration certification.

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 which are not prohibited by the Law on Investment (inter alia, businesses in chemicals, drugs and minerals as specified therein), and other laws. The company’s business activities are set out in its charter, the application file to obtain an ERC, and its public registration announcement, but are not recorded in the ERC itself.

Generally, for a foreign invested enterprise (“FIE”) including a WFOE and JV, the permitted business lines must be closely tied to what is considered necessary for that particular project.

Furthermore, in respect of the business activities which are designated as “conditional” business lines, as set out in the Law on Investment and its implementing legislation, the company must satisfy the specific conditions required to participate in such a business line at the time of registration and during its business operations.
4.1 What is the Capital Structure of an FIE?

FIEs have both charter capital and investment capital. Charter capital is the total value of assets contributed or undertaken to be contributed by members of a limited liability company or partnership, or the total aggregate par value of shares sold or registered for subscription of a joint stock company. Investment capital is the total capital amount including charter capital and loan capital required to carry out the investment project.

Under the Law on Investment, a foreign investor is permitted to own an unlimited proportion of charter capital of an enterprise. Companies must generally have enough capital resources to successfully realise the business goals set out in their IRC. The charter capital is stated in the ERC and the investment capital is stated in the IRC.

An FIE cannot incur medium- or long-term debt in excess of its stated loan capital. An exception exists for short-term debt (12 months or less) provided that the project is no longer in its construction phase, if applicable.

4.2 What are the Time Limits for Contribution of Capital?

Under the Law on Investment, investors must contribute capital according to a schedule set our in the IRC and the company’s charter.

However, the timeframe for capital contribution depends on the corporate form:

<table>
<thead>
<tr>
<th>Corporate form</th>
<th>Time-limit and other relevant rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Member Limited Liability Company</td>
<td>The owner must contribute capital in full, and in the type of assets as undertaken when registering establishment of the enterprise, within ninety days from the date of issuance of the enterprise registration certificate</td>
</tr>
<tr>
<td></td>
<td>If the owner does not contribute the full amount of charter capital within this timeframe, the owner must register an adjustment of the charter capital to reflect the value actually contributed</td>
</tr>
</tbody>
</table>
## 04. Capital Structure

<table>
<thead>
<tr>
<th>Corporate form</th>
<th>Time-limit and other relevant rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi Member Limited Liability Company</td>
<td>The charter capital of an MLLC shall be the total value of portions of capital contribution which the members undertake to contribute to the company. Members must contribute their portions of charter capital to the company in full and in the type of assets as undertaken when registering establishment of the enterprise, within ninety days from the date of issuance of the enterprise registration certificate.</td>
</tr>
<tr>
<td>Shareholding Companies</td>
<td>Shareholders must pay in full for the number of shares which have been registered for subscription within ninety days from the date of issuance of the enterprise registration certificate, except where the charter of the company or share subscription agreement stipulates a shorter time-limit.</td>
</tr>
<tr>
<td>Shareholding Companies</td>
<td>If any shareholder has not paid or has only paid for part of the number of shares registered for subscription within this timeframe, the shareholder who has only paid for part of the number of shares registered for subscription shall have the right to vote and receive dividends and other rights in proportion to the number of shares paid and must not assign the right to purchase the number of shares unpaid to another person. Moreover, the shares which have not been paid for shall be deemed unsold shares and the Board of Management has the right to sell such shares.</td>
</tr>
</tbody>
</table>

In addition, the operation of an investment project shall be terminated in the following circumstances: where the investor fails to implement or is unable to implement the project in accordance with the schedule registered with the investment registration agency within twelve months; and where the project is not a case in which the implementation schedule of the investment project may be postponed in accordance with law. In such a case, the investor shall itself liquidate the investment project in accordance with the law on liquidation of assets upon termination of operation of the investment project.

### 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 LLC, investors may reduce their capital contribution if business operations have been carried out for more than two years from the date of business registration; and, at the same time, ensure that the company is able to pay in full all of its debts and other property obligations after such capital reduction.

Likewise, a SLLC can reduce its charter capital by returning part of its capital contribution if it carries out business activities continuously for more than two years from the date of enterprise registration, and ensures payment of all of its debts and other property obligations after it repays the owner, or if the owner fails to pay in full and on time for the charter capital.

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 of each shareholder in proportion to the respective numbers of shares each shareholder holds 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 decision is passed. Also, a shareholder voting against a resolution on re-organization of the JSC or against a change to the rights and obligations of shareholders stipulated in its charter may demand the company redeem its shares.
4.4 Are There Limitations on the Amount of Equity a Foreigner can Purchase in a Domestic Enterprise?

A foreign investor is permitted to own an unlimited proportion of charter capital of an economic organization, except for the following cases:

- For publicly listed companies, the cap on foreign ownership is currently 49% if the company operates in a business investment line with conditions applicable to foreign investors (although this restriction seems slightly unclear given that the new Law on Investment dated 26 November 2014 provides a lengthy list of 267 conditional investment sectors. Further implementing regulations are necessary before foreign investors could determine whether the foreign ownership limitations in these conditional sectors will be capped at 49% or not)
- The permitted foreign ownership ratio in the banking, civil aviation, logistics, publishing and press sectors is restricted.
- A foreign investor may own a maximum of 49% of the charter capital of a securities business organization if the investor itself does not operate in banking, securities or insurance; or if it has been operational for less than two consecutive years immediately preceding the year of capital contribution to establish the securities business organization or the year in which it purchases shares or charter capital
- The ratio of ownership of foreign investors in State enterprises which conduct equitization or convert their ownership into another form is restricted under the law on equitization and conversion of State enterprises
- The ownership ratio for those sectors restricted in Vietnam’s WTO commitments must follow the limits set out therein. As of 26 June 2015, almost all 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 the same foreign ownership limitation

In practice, it should be noted that there may be practical issues with licensing authorities refusing to register and/or implement foreign acquisitions of domestic companies doing business in certain sensitive sectors, such as real estate and distribution, despite there being no limitations in the law.

4.5 What Are Permitted Foreign Ownership Levels in Local Banks?

Changes to foreign ownership levels in banks effective as of February 2014 will 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 01 (Decree 01/2014/ND-CP, dated 3 January 2014 on purchase of shares of Vietnamese credit institutions by foreign investors) and prior law, Decree 69 (Decree 69/2007/ND-CP, dated 20 April 2007 on purchase of shares of Vietnamese commercial banks by foreign investors):

<table>
<thead>
<tr>
<th>Decree 01</th>
<th>Decree 69</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any foreign individual: 5%</td>
<td>Any foreign non credit institution investor and its related parties: 5%</td>
</tr>
</tbody>
</table>
04. Capital Structure

<table>
<thead>
<tr>
<th>Decree 01</th>
<th>Decree 69</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any foreign organisation: 15%</td>
<td>Any foreign credit institution investor and its related parties: 10%</td>
</tr>
<tr>
<td>Any foreign strategic investor: 20%</td>
<td>Any strategic investor and its related parties: 15% (or up to 20% with Prime Ministerial approval)</td>
</tr>
<tr>
<td>Any foreign investor and its related parties: 20%</td>
<td></td>
</tr>
<tr>
<td>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)</td>
<td>Total shareholding of all foreign investors and their related parties: 30% (no exception)</td>
</tr>
</tbody>
</table>

4.6 Shareholding Limit

Decree 01 omits the 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 under Decree 69. 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 institution. This opens the door to the possibility that a foreign investor could theoretically be a strategic investor in more than one local credit institution, though the 10% ceiling on ownership in the second entity may make this unattractive commercially.
5.1 Are there any Foreign Ownership Limitations in the Retail and Distribution Business in Vietnam?

Since 1 January 2009, WFOEs are allowed to engage in trading and distribution in Vietnam, thereby eliminating the last restriction on foreign investment in this sector. Foreign investors engaging in direct investment in this business sector will still need to apply for and obtain an IRC, and are still limited in the ability 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 trade and retailing services. Its commitment in this sector permits foreign investors to establish one retail outlet when they obtain an IRC for a company engaged in distribution. Establishment of additional retail outlets beyond the first one is allowed only upon satisfaction of an Economic Needs Test [“ENT”]. The intention in the WTO commitment is that ENT criteria include the number of existing service suppliers in the geographic area, the stability and needs of the local market and geographic scale. In practice, the licensing of an FIE’s retail stores beyond the first one is at the discretion of the Vietnamese authorities.

The ENT requirement for FIEs has recently been relaxed somewhat. Establishing additional retail stores, beyond the first one, will not be subject to ENT if the store has an area of less than 500m², is located in an area zoned for goods sale and purchase activities, and there is an infrastructure system available to facilitate such activities.

5.3 Are there any Restrictions on What Products maybe Traded?

Although the retail and distribution sector has been further liberalised to permit more foreign investment, there are still restrictions on the distribution of certain products. Foreign investors should consult the relevant product lists prescribed by the Ministry of Industry and Trade [“MOIT”] in accordance with Vietnam’s WTO commitments in order to determine whether they may distribute certain products in Vietnam.
Chapter 06

Taxation

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

The current CIT rate is 22% and will be reduced to 20% on 1 January 2016. There are some exceptions to the basic CIT rate. Enterprises having total revenue that does not exceed VND 20 billion per year are eligible for a CIT rate of 20%. CIT rates on businesses that are engaged in the exploration and extraction of oil and other rare resources in Vietnam range between 32% and 50%, depending on each project and each business establishment.

There is a special incentive CIT rate of 10%, applied for a period of 15 years calculated from the first year in which the enterprise has turnover, for the following types of businesses:

- Newly established businesses that have investment projects in (i) geographical areas with “especially difficult socio-economic conditions”, (ii) economic zones and (iii) high-tech zones
- Newly established businesses with investment projects in high technology, scientific research and technological development, development of especially important infrastructure facilities of the State, and production of software products
- Incomes of hi-tech enterprises and agricultural enterprises that apply high technologies
- Incomes of enterprises from the execution of new projects of investment in production, which meet one of the two criteria below:
  - 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 investment registration certificate or the in-principle approval for the investment project 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 is issued, and which employs more than 3,000 workers
The tax rate of 10% is applicable to the following investment projects during their operation term:

- Incomes of private enterprises from investment in education, vocational training, health, culture, sports, and the environment
- Incomes of enterprises from the investments in social housing that are for sale, for lease, or for hire purchase
- Incomes from press agencies from printing newspapers, including advertisements on printed newspapers and incomes of publishers from publishing
- Incomes of enterprises from planting, cultivating, and protecting forests; from agriculture, forestry, and aquaculture in localities 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

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

There are three VAT rates: zero percent, 5%, and 10%, depending on the nature of the transaction.

The tax rate of zero percent 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.

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

Persons who are considered “resident individuals” are subject to PIT. Non-residents are also subject to PIT, if the income is derived in Vietnam, irrespective of where the income is paid.

Foreigners who fall under one of the following categories are considered to be resident individuals of Vietnam for the purpose of PIT:

- Those who are physically present in Vietnam for a period of 183 days out of one calendar year or 12 consecutive months from the date of entry into Vietnam
- Those who maintain regular residence in Vietnam, including registered temporary residents or those who have leased residential premises in Vietnam for a term of 90 days or more within a tax year

The taxable income of resident individuals includes income arising from both within and outside the territory of Vietnam, irrespective of where the income is paid, i.e., resident individuals are subject to “global taxation”.

The applicable PIT rates are progressive, applied to resident individuals and are set out as follows:

<table>
<thead>
<tr>
<th>Monthly Income</th>
<th>PIT Rate in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to US$250</td>
<td>5</td>
</tr>
<tr>
<td>From US$250 to US$500</td>
<td>10</td>
</tr>
<tr>
<td>From US$500 to US$900</td>
<td>15</td>
</tr>
<tr>
<td>From US$900 to US$1,600</td>
<td>20</td>
</tr>
<tr>
<td>From US$1,600 to US$2,600</td>
<td>25</td>
</tr>
<tr>
<td>From US$2,600 to US$4,000</td>
<td>30</td>
</tr>
<tr>
<td>Over US$4,000</td>
<td>35</td>
</tr>
</tbody>
</table>
Tax on incomes of non-resident individuals is set out as follows:

<table>
<thead>
<tr>
<th>Income</th>
<th>PIT Rate in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries or wages</td>
<td>20</td>
</tr>
<tr>
<td>Prizes, inheritances or gifts</td>
<td>10</td>
</tr>
<tr>
<td>Capital investment; Copyright or franchising</td>
<td>5</td>
</tr>
<tr>
<td>Doing business in production, construction and transportation</td>
<td>2</td>
</tr>
<tr>
<td>Real estate transfer</td>
<td>2</td>
</tr>
<tr>
<td>Capital transfer</td>
<td>30</td>
</tr>
</tbody>
</table>
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 Law on Investment and other foreign exchange regulations of Vietnam set out specific provisions on the remittance of foreign currencies gained by foreign investors during their investment in Vietnam to overseas as an investment protection. Accordingly, foreign investors, subject to meeting their tax and other financial obligations to the Vietnamese government, are allowed to purchase foreign currencies from licensed credit institutions in order to meet their “non-capital” transactions and other permitted transactions (such as repayment of offshore loans, and remittance of dividends abroad). The law sets out a broad range of permitted transactions. The banks are in charge of foreign exchange compliance and will guide their customers accordingly. As long as the proper documentation is provided to the bank, including proof of the source of the fund, remittance offshore is not a problem. There is no profits remittance tax.

Although all enterprises have the right to convert currency, there is no guarantee of the availability of any particular foreign currency in Vietnam except for important projects in certain industries.

7.2 Is it Possible to Repatriate Investments from Vietnam?

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

- Profits derived from business activities (profits 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 investments
- Other sums of money and assets legally owned by the investor
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 and this is shaping up to be a promising sector for foreign investment.

Establishment of a branch by a foreign company 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 also presents 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?

The short answer is no. Vietnam’s WTO commitments benefit only investors from WTO member nations. This means that a proposed investment by investors from non-WTO members, such as the British Virgin Islands, is subject to the approval of the licensing authorities.
8.3 Is Vietnam Party to Any Other Notable Trade Agreements?

Vietnam, together with other ASEAN members, is committed to establishing a single market in the region by 2015. This ambitious goal is being achieved through the liberalisation of trade in goods through the Common Effective Preferential Tariff (“CEPT”) under the ASEAN Free Trade Agreement (“AFTA”), and through the liberalisation of trade in services through the ASEAN Framework Agreement on Services (“AFAS”). The conclusion of the final package (10th package) of commitments under the AFAS framework, scheduled for completion by 2015, would create a free trade market in services within the region.

In addition to trade agreements within ASEAN framework, Vietnam has signed FTAs with the United States, Japan, Chile, South Korea and the Eurasian Economic Union.

Last but not least, Vietnam is now a negotiating party to a number of important FTAs, including TPP, and the bilateral FTAs with the European Union and the Regional Comprehensive Economic Partnership. The negotiations on the FTA with the European Union were concluded in August 2015. These are all important trade agreements not only to conventional trade in goods but also to foreign investors looking for opportunities in Vietnam. ◆
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 permission from the MOIT, and others (such as health products and foods) must meet health and safety requirements.

9.2 Which Items are Prohibited from Being Imported?

Currently, the list of prohibited goods includes: weapons, assorted firecrackers, certain types of second-hand consumer goods, prohibited cultural products, right-hand-drive motor vehicles, refrigeration equipment using chlorofluorocarbons or CFCs, chemicals stipulated under Annex III of the Rotterdam Convention, plant protection agents prohibited from use in Vietnam, products containing asbestos of the amphibole group, and certain toxic chemicals. This list is subject to revision from time to time. ◆
Although the Vietnamese government has made significant efforts to upgrade Vietnam’s legal framework (as a whole) in recent years, the regulations on lending and borrowing in Vietnam continue to develop. As published by the State Bank of Vietnam ("SBV") in its website, as on 31 December 2014, the banking system of Vietnam consists of one State-owned commercial bank, 34 local joint stock commercial banks, 2 policy banks, 1 co-operative bank (formally known as the central people’s credit fund), 46 branches of foreign banks, 5 wholly foreign-owned banks, 4 joint venture banks, 20 representative offices of foreign credit institutions in Vietnam, 17 financial companies, 14 financial leasing companies. The network of credit institutions covers not only the domestic market but also has taken big 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 43/2014/TT-NHNN dated 25 December 2014 regulates lending in foreign currencies by Vietnam-based credit institutions and borrowing 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, subject to some conditions set forth in the relevant regulations. Decree 219/2013/ND-CP dated 26 December 2013 on the management and repayment of offshore loans that are not guaranteed by the government ["Decree 219"] provides that offshore loans that fall under Decree 219 include 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, a borrower must comply with the borrowing and repayment conditions as agreed with the offshore lender.

Currently, there is no specific guidance on lending to Vietnamese individuals by offshore lenders. As a result, and until such guidance is issued, a Vietnamese individual may borrow funds from a foreign lenders if he or she secures the approval from the SBV.
10. Lending and Borrowing

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. Subject to the purpose of use of the loans proposed by the borrower, which is normally reviewed by the credit institutions, the credit institution can offer the borrower a loan(s) with an appropriate tenor.

While a short-term loan is usually intended for meeting working capital requirements, a medium- or long-term loan can be utilised for other long-term purposes such as formulating fixed assets, developing investment projects and implementing business plans which are in accordance with the ERC/IRC of an entity or are approved by the competent authorities or by the management levels of that entity.

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 applicable loan limits or the total investment capital amount registered on its IRC. Short-term loans are generally exempt unless the borrower is developing a project in the construction stage.

10.4 Can Lenders Refinance an Existing Offshore Loan?
Refinancing an existing onshore loan by a Vietnam-based credit institution is not allowed under the current banking regulations. This restriction may not be applicable to an offshore refinancing as a matter of Vietnamese law.

10.5 Is it Necessary to Register an Offshore Loan?
An offshore loan transaction is subject to the registration with the SBV if the proposed loan is taken out with a tenor of more than one year. The Borrower must obtain a registration certificate from the SBV. To secure the registration certificate for an offshore loan, the borrower is required to submit an application file (duly certified copies of the executed loan agreement and other transactional documents) within 30 days following the execution of the financial documents. Such certificate must be obtained before the first loan drawdown being made. If the application is in order, the SBV would grant a registration certificate within 20 days following submission.

10.6 Can Lenders Take All of Borrower’s Assets as Security?
While a Vietnam-based credit institution can take security over either movable assets (shares/equity interest, equipment and machinery, cars, stocks and goods in circulation, deposits, accounts, receivables, insurance proceeds, etc.) or immovable assets (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?
Interest payments received from Vietnam by an offshore lender may be subject to foreign contractor tax, which is deducted at the source. Currently, such tax is 5%. Therefore, lenders should ensure that their loan agreements contain gross-up provisions. This means that the borrower has a duty to withhold and pay the tax due to the State of Vietnam.

However, this foreign contractor tax may be exempted 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 DTAAAs with more than 50 jurisdictions.
11.1 What are the Investment Procedures Applicable to Foreign Investment in or Ownership of a Project and Related Companies? [See 2.1 What is the Approval Process for Establishing a JV or WFOE?]

The equity ownership of a foreign investor in a Vietnamese project or company must be registered in an IRC granted to the company. A foreign investor investing in a project is required to apply for an IRC from the licensing authority, which is usually the Department of Planning and Investment of the province where the project is located [“DPI”]. (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. The IRC sets out the identities of the equity holders in the project company, its capital structure, and key information about the project. It also will set 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 for the project.

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

- **In-principle Approvals of the National Assembly**
  
  Certain projects of national importance require approval of the National Assembly, such as (i) projects valued at VND 35 trillion or more (approximately US$1.67 billion) of which the State capital is VND 11 trillion or more (approximately US$529.80 million); (ii) nuclear power projects; (iii) projects which use land from 50 hectares to 1,000 hectares, depending on the type, location and the proposed use of such land; (iv) projects which involve re-locating 25,000 people in mountainous areas or 50,000 people in other areas; and (v) projects in locations of special importance to the country for security or national defence purposes, or cultural heritage reasons.

- **In-principle Approval by the Prime Minister**
  
  This approval is required for (i) projects in sectors such as airports, national ports, oil and gas exploration and production, mineral exploration and mining, industrial zones and export processing zones, the casino business,
or the productions of cigarettes; (ii) projects with foreign investment in sea transportation, and certain investments in postal, telecommunications, Internet and network services; and (iii) projects with an investment amount exceeding VND 1,500 billion (approximately US$71.40 million) in power, mineral production and metallurgy, construction of railways, roads and internal waterways, and alcoholic beverage production.

- Conditional sectors
  Projects in sectors designated as “conditional sectors” for foreign investment (such as banking and finance, mining, publishing, real estate, entertainment) must meet specific conditions applicable to the relevant sector before a foreign investor may invest in that sector. (See section 2, “Government Approvals”, of this guide for more details.)

- Appraised projects
  Projects of over VND 300 billion (approximately US$14.20 million) must be appraised by the relevant licensing authority before the investment is allowed. The appraisal criteria vary from sector to sector, but may include a requirement for a feasibility study, EIA report, and similar requirements.

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 amendment of 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.

Vietnam’s domestic law, as well as its schedule of exceptions to its WTO accession commitments also contain other restrictions on foreign investment, which vary from sector to sector. For instance, foreign ownership in a facility-based network operator is capped at 49%. Although most of Vietnam’s exceptions to its WTO commitments were scheduled to be phased out within five years of its WTO accession (2012), Vietnamese licensing authorities generally will not give effect to the WTO schedule unless there are domestic regulations specifically guiding them to do so. (See section 8, “WTO and Foreign Investment in Vietnam”, of this guide for more details.)

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 relevant project company. The Build-operate-transfer (“BOT”) regulations allow for step-in rights by lenders in BOT projects; however, these step-in rights will still require additional approvals in order for the lenders to exercise them.

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

The National Assembly and Prime Minister must approve certain projects of national importance. (See opening of this section, above, for more details.) MOIT is responsible for power, oil and gas, energy, and other important infrastructure projects, and the Ministry of Transportation (“MOT”) is responsible for roads, airports and other transportation projects. The Ministry of Natural Resources and Environment (“MONRE”) is in charge of land, water, mineral resources, other natural resources, and environmental matters. MONRE often acts through the local Department of Natural Resources and Environment (“DONRE”).

Local people’s committees and other government authorities 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 an industrial zone or an export processing zone.
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, the investors must prepare an 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 6 million to VND 96 million, depending on the project type and size.

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 may acquire the right to use the same and pay relevant use fees or taxes to the government, unless an exemption applies.

Foreign-invested companies will enter into a land lease agreement with the relevant government authority. Certain projects, such as those developed under the BOT or Build-transfer-operation (“BTO”) frameworks, are exempt from land rental for the entire duration of the project.

Foreign investors may obtain the right to explore or extract minerals by applying to the government authority for a licence. A licence to explore mineral resources may be granted for up to 48 months over a specific land area, subject to extension for another 48 months, but this does not guarantee that the holder will obtain a mineral extracting licence.

Foreign investors may apply for a mineral extracting licence, which may be for a duration of up to 30 years, renewable for up to another 20 years. Foreign investors may obtain the right to explore or produce oil and gas by entering into a production sharing contract (“PSC”) with the government. This can last up to 25 years if the exploration and production area is in an area with normal economic and social conditions, or 30 years for a project in an area where investment is encouraged. The exploration phase is five or seven years, respectively, and is inclusive in the PSC duration. The exploration phase could be extended for two years, or longer with Prime Ministerial approval.

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

Royalty tax is revenue-based, and varies from one industry to another. For example, petroleum extraction applies rates of 7% to 29%; minerals extraction ranges from 10% to 15%.

Environmental protection fees are payable by companies that extract natural resources. For crude oil and gas extraction the fee is VND 100,000 per tonne or VND 50,000 per cubic metre. Fees for mineral extraction vary. In addition to the above-mentioned fees, investors in the oil and gas sector are required to establish and pay a deposit into a reserve fund to address prospective costs related to abandonment. The deposit amount is calculated based on the total estimated cost for abandonment, and is payable annually.

Similarly, investors in the mining sector are required to pay a deposit into a reserve fund for environmental rehabilitation upon closure of the mine.

11.6 What Restrictions, Fees or Taxes Exist on the Export of Natural Resources?

The export of unprocessed ores for many types of minerals (except for crude oil) is prohibited.

The export of natural resources is also subject to an export tax. The export tax rate differs from one type of mineral to another, and the rates may change from time to time.
11. Projects and Infrastructure

11.7 Can Private Parties Grant Security Over any Such Rights in Natural Resources, and in the Event of Enforcement of that Security Would the Local Granting Body be Bound by that Security? Would Change of Control in the Borrower (For Example, Upon Exercise of Share Security) Trigger a Forfeit of those Rights?

Private parties may grant security over their mining rights. (See opening of section 11, “Projects and Infrastructure”, for more details.) Prospective creditors should address this issue 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 would be payment for imported goods, services, or equipment, and salary for foreign employees. Vietnamese legal entities (including foreign-invested project companies) would need 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 provisions in the account documentation permitting the offshore collateral agent to invest funds in the account in term deposits and typical low-risk investments. Moreover, the approval process can take several months, so it may not be feasible for funding an offshore debt service reserve account to be a condition precedent.

The complexity of the flow of funds and account structures of major projects typically will go further than a strict reading of Vietnamese law would permit. Consequently, the project company may seek additional legal comfort 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, if Any, Tax Incentives or Other Incentives are Provided Preferentially to Foreign Investors or Creditors? What, if Any, Taxes Apply to Foreign Investments, Loans, Mortgages or Other Security Documents, Either for the Purposes of Effectiveness or Registration?

Projects in certain fields and geographical areas are entitled to favourable corporate tax treatment, tax-free importation of equipment and supplies, and exemptions or discounts on land use fees. (See section 11.4, above.)

Thermal power projects developed according to the BOT framework enjoy additional incentives as outlined in Official Letter 1604 of the Prime Minister dated 12 September 2011 (OL 1604). OL 1604 exempts lenders from payment of withholding tax on loan interest, and provides duty exemptions on the import of materials unavailable domestically.

Electricity tariffs may be paid in foreign currency to protect against depreciation. Thermal BOT projects are entitled to specific provisions of government guarantees, which historically have been difficult to negotiate. Such guarantees may include foreign currency availability and performance guarantees of SOEs that are off-takers (Vietnam Electricity) and suppliers (including Vinacomin with respect to coal).

11.10 Public Private Partnership (PPP) Legal Framework

On 14 February 2015, the government issued the long-awaited Decree 15 on PPP investments. Decree 15 took effect on 10 April 2015 and provides a single legal framework for private investments in the public infrastructure sectors. It also repealed previous regulations on BOT, BTO and Build-transfer (“BT”) investments, and the pilot PPP scheme.

Decree 15 was modeled after Decree 108 dated 27 November 2009 (as amended) on BOT, BTO and BT investments, and introduces some incremental improvements from the existing regulations, as follows:
• It sets out the detailed procedures for pursuing a PPP project, including the process of preparing a project proposal, its appraisal and approval by the government and announcement of the approved PPP projects. It also expressly provides for criteria of a qualified PPP project.

• It introduces a more detailed viability-gap-funding (“VGF”) regime, and removes the 30% cap for VGF by State capital set out in previous regulations, and allows government agencies to determine the use of State capital based on the project’s needs.

• It clarifies that the investors of a BT project will receive land use rights to develop an additional project, and allows the investors to develop the BT project and the additional project in parallel.

• It expressly allows investors of a PPP project to mortgage concession rights under the project contracts, in addition to other assets of the project, and allows lenders to a PPP project to designate a qualified third party to exercise the step-in rights of the lenders against both the investors and the project company.

• It provides that only certain PPP projects may be considered for a guarantee that their foreign exchange needs are met, namely projects that require in-principal approval by the National Assembly, infrastructure projects which are included in the government’s investment program, and other important projects as may be determined by the prime minister on an ad hoc basis.
A. Litigation in Court

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

The court system of Vietnam has three tiers: at the top is the Supreme Court, then the provincial courts, and then the district courts. The Supreme Court is composed of one Council of Supreme Court Judges and separate special courts, namely the Central Military Court, the Criminal Court, the Civil Court, the Economic Court, the Labour Court, the Administrative Court and respective appellate courts. A provincial court is composed of one Committee of Provincial Court Judges and separate special courts, namely the criminal court, the civil court, the economic court, the labour court, and the administrative court.

12.2  How is Jurisdiction Divided in the Court System?

The Supreme Court 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 hold supervisory and/or review trials of cases with judgments which have already taken legal effect but have been protested.

A provincial court is empowered to hold first-instance trials of cases according to the provisions of the Code of Civil Procedure, to conduct appellate trials of cases where the first-instance judgments and/or rulings of lower courts have not yet taken legal effect but have been appealed and/or protested against according to the provisions of the procedural law and to supervise/ review cases where judgments and/or rulings of lower courts have already taken legal effect but have been protested, according to provisions of the procedural law. All cases involving foreign elements – for example, cases where one party or the related asset is located offshore and subject to the enforcement of foreign arbitral awards and foreign judgments – are subject to the jurisdiction of the provincial court.

A district court has the power to hold first-instance trials in civil, commercial, and labour cases except for when the provincial courts deem it necessary to exert jurisdiction over a matter.
12.3  How does the Court Conduct a Hearing?

Interrogation dominates all court hearings. Any party choosing Vietnam as a jurisdiction in which to settle its dispute must bear in mind that court procedures are time consuming and sometimes unpredictable. Although, by law, court proceedings are taken within three months (or five months if the case is complicated) from the date on which the case is filed with the court, in practice, this time limit is normally longer. By law, a panel consisting of a judge and two people’s juries should conduct the hearing. In practice, at the district court, a single judge will conduct the hearing. At the appeal court, a case is heard by a panel of three judges. The burden of proof is on the plaintiff and the defendant. Witness evidence is heard and the documents submitted by the parties are reviewed. The case is decided on the documents and the evidence.

The court hearing is open unless the court decides that it must be held in private. A court judgment or decision may be appealable. A party may appeal the entire or part of the court judgment which has not come into force. The time limit for an appeal is 15 days from the date on which the court judgment is issued. The time limit for review of a case on appeal is between four months and five months depending on whether the case is simple or complicated. In practice, this time limit may be longer or shorter depending on the case.

12.4  How can a Judgment be Enforced?

A court judgment or decision, if not voluntarily enforced by the losing party, may be referred to the civil judgment enforcement agency. Enforcement of a judgment is normally time consuming in Vietnam due to the overload of cases that need to be enforced. Although a private bailiff system has been introduced on a pilot basis since 2009 to support the civil judgment enforcement system, its effectiveness remains restrictive.

12.5  What Changes are Expected in the Court System?

There have been ongoing efforts to improve the court system. In 2014, the National Assembly passed the new Law on Court Organisation, which is viewed as making courts more independent from the undue influence from the relevant authorities. The Civil Procedure Code and the Penal Procedure Code are also being redrafted in a manner that, among the other things, improves the transparency and speeds up the litigation process.

B. Arbitration

12.6  What is the Arbitration System in Vietnam?

Commercial arbitration centres were set up in Vietnam by the end of the 1990s as a result of the 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 arbitration, ad hoc arbitration is very rare due to its lack of a formal presence and relatively restricted decision enforcement.

12.7  What Types of Disputes are Settled by Commercial Arbitration?

Under the Law on Commercial Arbitration, commercial arbitration centres may settle non-commercial cases if the parties have agreed to bring their case to arbitration. However, in cases where a dispute must be resolved by a Vietnamese court, such as those involving land use rights, arbitration is not possible.

12.8  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 arising pursuant to it may be brought directly to an enforcement agency for enforcement unless such award is cancelled by a Vietnamese court.
12. Dispute Resolution

The following are the salient points set forth under the Law on Commercial Arbitration which address defects of 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

The use of Vietnamese language is no longer required and the parties to arbitration can choose to use the most convenient language during proceedings.

12.9 Is Arbitration a Preferable Method of Dispute Resolution?

Although it may be a preferable method of dispute resolution in other countries, arbitration is yet to be popular in Vietnam. This may be because arbitration is not well known among businesses and there are still enforcement problems. Although enforcement of an arbitration decision is treated in the same way as a court judgment, in practice, enforcement of an arbitration award is more difficult due to the attitude of the enforcement agency towards arbitration. There is also a risk that an arbitration may be nullified by a court decision for various reasons. All these matters make arbitration less attractive, although this form of alternative dispute resolution (“ADR”) has strong potential in Vietnam.

12.10 Does Commercial Mediation Exist in Vietnam?

Commercial mediation does not exist in Vietnam. As an attempt to set up an ADR along with commercial arbitration, a decree on commercial mediation is being considered.

12.11 Can a Foreign Court Judgment/Arbitral Award be Enforced in Vietnam?

Vietnam is a party to the 1958 New York Convention, therefore an award rendered by a convention state member is enforceable in Vietnam. A foreign award from a country which is not a party to the convention may also be enforced in Vietnam on a reciprocal basis. Similarly, judgments issued by courts in countries that have entered into a judicial agreement with Vietnam will also be considered for enforcement in Vietnam. Recognition of judgments issued by the courts in those countries that have not signed a judicial agreement may be considered for recognition on a reciprocal basis.

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

In order for a foreign award/judgment to be enforceable in Vietnam, it must first be recognised by a competent court in Vietnam. However, a competent court may deny the recognition of a foreign award/judgment in circumstances provided for by the laws.

As a matter of Vietnamese law, a Vietnamese court is not empowered to re-hear the case but only to review the documents to ensure that they are in compliance with Vietnamese law and/or the relevant treaty. However, the interpretation of the refusal grounds by local courts may sometimes be bias and arbitrary. Historically, the interpretation on what constitutes the “basic principles” of the laws of Vietnam as the refusal ground has been abused by local courts to reject the application for arbitral award enforcement. To address this situation, the Judge Council of the Supreme Court issued on 20 March 2014 Resolution No. 01/2014/NQ-HDTP guiding, among the other things, the interpretation of “basic principles” of the laws of Vietnam. The effectiveness of this Resolution, however, remains to be seen. ✶
13.1 Is it Possible For FIES to Own Land in Vietnam?

Technically, no. In Vietnam, land belongs to the people and the right to use the land is administered by the State for the people. Ownership is referred to as a “right to use land” [“LUR”] and evidence of such right is a land use rights certificate, akin to a title deed, which sets out the duration and the purpose of the land use. LURs can be granted on a long-term basis (i.e., without a specific duration of use) or for a limited duration. In general, “long-term use” LURs can be granted for residential, commercial, tertiary, business construction, and different purposes. However, the duration of allocation or lease of land to foreign invested enterprises for the purpose of implementing investment projects in Vietnam is not allowed to exceed fifty (50) years. Nevertheless, the duration of allocation or lease of land can be up to maximum seventy (70) years, with respect to investment projects with large investment capital but a slow capital recovery rate and investment projects in areas with difficult or specially difficult socio-economic conditions which require a longer period.

While an LUR certificate is similar to a deed in most countries, there are some key differences and uncertainties. For example, the LUR may be used only for the specific purpose for which it was granted. Failure to observe this can lead to withdrawal of the LUR. In general, the State is required to provide compensation if it withdraws or reclaims the land. However, there are certain circumstances when no compensation is required. Moreover, it is worth noting that the Vietnamese law does not have a concept of equitable interests in any property.

An FIE may obtain land and have the LUR by way of (i) receiving a lease from the State with payment of land rental on an annual basis or in one lump-sum payment, (ii) receiving land allocation from the State with payment of a land use fee, (iii) obtaining land use rights as capital contribution by a Vietnamese party into a JV with a foreign company, or (iv) obtaining land use rights by way of acquiring a part or the entirety of the project (attached to land) from other investors.

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

Yes, when an FIE builds assets on land for which it has an LUR, it has an ownership interest in the assets provided that it registers the assets. An FIE can also has an ownership interest in the assets it acquire for its own use.
13. Real Estate

Generally, the law does not allow an FIE to directly purchase real properties re-selling, or leasing. It does, however, allow FIEs to lease the assets for sub-leasing.

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

Financial revenue items from land include a land rental from land leased by the State and a land use fee in the cases of allocation of land.

The calculation of land use fees take into account of the area of the land, land use purpose and the land price list issued by the People’s Committee of each city or province setting out the value of land. 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, land lease term, land rent unit price, and the form of land lease by the State; in the case of an auction of a land use right, the leased land price shall be the winning auction price unit.

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

Thus, The land use fee and land rental are calculated to be the actual market value to be consistent with the land price of the type of land with the same use purpose as the land which has been assigned or with the winning auction price of the land use right in the place where an auction of land use right is held or with income received from land use. 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.

The timing for calculating land use fee and land rental to be collected shall be the time when the State makes a decision allocating land, leasing land, permitting to convert land use purpose or recognizing the land use right.

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

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

Mortgages must be registered with the local Land Use Right Registration Office. The procedures for registration are fairly clear and LUR Registration Offices have prescribed time periods for carrying out registration formalities.

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 mortgagor may transfer the land use rights to a third party or request a State body to transfer the land use rights by auction and commence legal proceedings at the relevant court.
14.1  Does Vietnam have Laws Relating to Electronic Transactions?

Vietnam has specific laws and regulations which govern 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, execution and performance of electronic contracts, and security, safety, protection and confidentiality of electronic transactions. The MOIT and the Ministry of Information and Communications ("MIC") are responsible for regulating electronic transaction activities.

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

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 in an e-transaction are entitled to select measures to keep information confidential upon conducting the e-transaction.

No organisation or individual is permitted to violate the integrity of data messages of another organisation or individual.

No organisation or individual is allowed to use, provide or disclose any private information or information of another organisation or individual which the former has accessed or controlled in an e-transaction without the consent of the latter.
15.1 Do the Labour Laws of Vietnam Favour the Employees?

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 employment. 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 local Vietnamese 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). Most importantly, while employers are encouraged to grant more favourable treatment to employees than is required by the law, it is not possible to contract out of the terms of the employment legislation.

15.2 What Are The Hiring Requirements?

When hiring employees in Vietnam, priority should be given to hiring Vietnamese citizens, and expatriates should only be employed if there are no suitably qualified Vietnamese available. Employees should be over 18 years of age unless consent is obtained from the employee’s legal representative for employment to commence from the age of 15. Special provisions apply in relation to junior workers (aged 15-18 years old), senior employees (60 years old for men and 55 years old for women), the disabled and those with highly specialised skills. In addition, particular protection is given to female employees.

15.3 What are the Terms of an Employment Contract?

Employment in Vietnam must be made via an employment contract. Employment contracts with a term of less than three months may be in verbal form, while those with a term of three months or more must be in written form.

The employment contract must include certain details, such as the job specification, working and rest time, salary, place of work, term of the contract, labour safety and hygiene, and social security. 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 he or she is able to fully perform the work specified in each contract. Care should be taken in drafting an employment contract to ensure that the 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 its enforceability 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 contracts have no fixed duration. We note that an indefinite term contract does not create an “at will” labour relationship
- Definite term contracts have a fixed term of between 12 months to 36 months
- Seasonal contracts or contracts for short-term replacement of absent employees have a term of less than 12 months

If an employee continues to work after the expiration of a definite term contract or a seasonal contract, but the parties do not sign a new labour contract within 30 days after the expiration, the law provides that the expired contract will automatically convert into an indefinite term contract, with the same terms and conditions set out in the expired contract. Further, the law only permits one renewal of a definite term contract. After expiration of the renewed contract, if the employee will remain employed, the parties must enter into an indefinite term 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 contracts in circumstances where an employee will work for an employer on a long-term basis.

In practice, employers commonly prefer to sign definite term 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 discussion under section 15.5 below.

Unilateral termination, overtime work, and employees’ entitlements must be fulfilled in accordance with the labour laws.

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 compulsory for companies with more than 10 employees. The Regulations must be registered with the local Department of Labour, Invalids, and Social Affairs (“DOLISA”) and must include mandatory issues required by the Labour Code.

As the Regulations serve as a basis for dealing with employees’ breaches of labour discipline (which could ultimately allow a unilateral termination of the employment contract by the employer), all businesses, regardless of the number of employees, are encouraged to issue the Regulations. The registered Regulations must specify in as much detail as possible all acts regarded as disciplinary breaches, with corresponding disciplinary measures (provided that such measures do not run contrary to the labour laws). Otherwise, without such Regulations, it would be very difficult to enforce disciplinary measures in court, unless they are specifically provided for by the labour laws.
15. Labour

15.6 Do Expatriate Employees Need Work Permits to Work in Vietnam?
Yes, expatriate employees must obtain a work permit. There are some limited exceptions to the work permit requirement, for example, members of the board of management 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 quite limited.

15.7 Are Clauses on Confidentiality and Non-Competition Enforceable in Vietnam?
The labour laws of Vietnam are undeveloped with regards to confidentiality and non-competition in connection with an employee.

Regarding confidentiality obligations, there are general provisions within the Labour Code that state that in respect of employees working in areas involving business or trade secrets, an employer may reach agreement with the employees on the scope of protection required, and the remedies in case of breach.

Internal Labour Regulations must provide for the protection of the employer’s technology and business. Violation by an employee of this obligation might entail immediate dismissal of the employee. It is, therefore, very important for employers, especially those in information-sensitive sectors such as banking, finance, securities, information technology, etc. to specify what constitutes confidential information to require strict compliance with the Regulations by employees. Where relevant, it is advisable to enter into a confidentiality agreement with each employee. Otherwise, the Internal Labour Regulations and/or employment contract, at least, must contain details of confidentiality obligations and the consequences of breach.

Non-competition, on the other hand, is not addressed at all by the labour laws of Vietnam. Employers may include a non-competition clause in the Internal Labour Regulations and/or the relevant employment contract. Although Vietnamese law does not prohibit an employer and an employee from entering into a non-competition and non-solicitation agreement, the enforcement of such an agreement remains questionable. In our experience, an employer should rely on remedies available under the civil law such as compensation for damages and/or losses caused by the breach of the covenant. In order to do this, the employer has the burden of proving that the damages and/or losses have been directly caused by the breach. Even if this is satisfactorily proven, the final decision will be at the sole discretion of the court. However, such a clause on remedies would at least serve as a warning to employees.

15.8 What Types of Mandatory Insurance are Applicable?
Contribution to social, health insurance and unemployment is mandatory for both employer and employees.

As from 1 January 2014, the contributions made by the employer and employee to the social insurance fund are 18% and 8% respectively. For health insurance, these 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, then the monthly salary used to calculate the social insurance and health insurance contribution is equal to 20 times the minimum salary set by the government. As of February 2014, the common minimum salary is VND 1,050,000.

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 months 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.
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 can be compared as follows:

<table>
<thead>
<tr>
<th>EIA Report</th>
<th>EPP Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulated by:</td>
<td>Ministry of Natural Resources and Environment</td>
</tr>
<tr>
<td>Regulated by:</td>
<td>• Projects for which the National Assembly, Government or the Prime Minister must provide approval;</td>
</tr>
<tr>
<td></td>
<td>• Projects that use land parcels situated in designated wildlife sanctuaries, national parks, historical and cultural monuments, world heritage sites, biosphere reserves or scenic beauty areas; and</td>
</tr>
<tr>
<td></td>
<td>• Projects that may damage the environment.</td>
</tr>
<tr>
<td>Contents:</td>
<td>• Specifications of the project;</td>
</tr>
<tr>
<td></td>
<td>• Evaluation of technology selected to implement the project;</td>
</tr>
<tr>
<td></td>
<td>• Assessment of the impact of the project on the environment;</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
16. Environmental Protection

### EIA Report

<table>
<thead>
<tr>
<th>Contents</th>
<th>EPP Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 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);</td>
<td>• Environmental protection measures to be put in place.</td>
</tr>
<tr>
<td>• Consultation reports; and</td>
<td></td>
</tr>
<tr>
<td>• Alternative measures for environmental protection.</td>
<td></td>
</tr>
</tbody>
</table>

**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 provides for a tax on a variety of products that have negative consequences for the environment and on public health, such as gasoline, oil and grease and petroleum.

**Environmental protection fees**

These must be paid by individuals, but not organizations, discharging waste 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 rehabilitate the local environment upon completion of the project.

**Environmental protection funds**

The Law on Environmental Protection provides regulatory policies which include reserving a specified amount of expenditures allocated from the government budget for the environmental protection, which equals to a gradual increase in the growth rate, and performance of the consistent management of funds for the environmental protection.

With respect to the above financial responsibilities, proper investigations must be carried out into natural resources and biodiversity to prepare a plan for proper utilization and define the limit on permitted extraction levels, severance tax rates, environmental protection fees, environmental remediation deposits, biodiversity reimbursable costs, environmental damages and other measures for the environmental protection.
Restructuring, Bankruptcy and Insolvency

17.1  Who can Initiate Bankruptcy Proceedings?

Vietnam passed a new law on bankruptcy in 2014, which came into effect as of 1 January 2015. Under Vietnam’s 2014 Bankruptcy Law, 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 or the legal representative of a company in any form is required to file a bankruptcy petition upon observing that the company has become insolvent. In addition, the following persons have the right, but are not required, to file a bankruptcy petition upon observing that the company has become insolvent:

- Unsecured creditors or partially secured creditors
- A union representative or an elected representative of the company’s employees
- Shareholders of the company

An enterprise is considered insolvent under Vietnamese law if it fails to repay an unsecured or partially secured, undisputed mature debt within three months following the due date of the debt. A claim by a creditor for repayment is not required for a company to be considered insolvent under the 2014 Bankruptcy Law.

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

**Bankruptcy stay**

Enforcement by secured creditors against assets of the debtor is restricted until a bankruptcy order is entered. Secured loans are to be repaid with the relevant 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 use of such assets. The court has discretion to allow immediate enforcement of secured assets if there is a risk of destruction or considerable decrease in value.

**Preference period**

Acceptance of a bankruptcy petition triggers a six-month look-back or “preference” period. Certain transactions aiming
17. Restructuring, Bankruptcy and Insolvency

Transactions subject to review may include (i) asset assignment which is not at market price, (ii) conversion of an unsecured debt into a debt secured or partly secured by the debtor’s assets, (iii) donating movable or immovable assets, (iv) payment or setoff which benefits 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) the transaction is outside the company’s normal business operations.

An eighteen-month “preference” period will apply to a transaction involving a related party to the debtor.

17.3 What are the Stages of a Bankruptcy Proceeding?
- Stage 1: Filing of bankruptcy petition and court’s acceptance of jurisdiction over the bankruptcy petition.
- Stage 2: Within 30 days after the petition is filed, the court enters a decision to commence bankruptcy proceedings or rejects the petition.
- Stage 3: The court convenes a meeting of creditors. The creditors 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 basic 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 the asset inventory, preparing the list of creditors and list of debtors of the company, taking steps to protect assets, preventing unauthorized sale or transfer of assets, selling assets in accordance with decisions of the court, and organizing the valuation and liquidation of assets.

17.5 Outside the Formal Bankruptcy Process, what Regulatory Issues are Associated with Common Restructuring Tools?
Waiver or forbearance
Waivers and/or forbearance agreements do not require any regulatory registrations, approvals, or filings (such as registration with the SBV).

Amendments to credit agreements
Amendments to credit agreements can range from technical amendments to restructuring financial covenants, payment terms and security packages.

If the credit agreement has been registered with the SBV, and the changes to the credit agreement include revisions regarding loan tenor, interest rate, repayment and interest payment schedule, security packages and identity of financing parties, then the SBV registration must be amended.
Approvals may be necessary from other regulatory bodies; for instance, 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 solutions in Vietnam because foreign investment ratios are capped in many key investment sectors, such as ports, airlines and logistics. In addition, because such remedies fundamentally alter the borrower’s capital structure, onerous regulatory steps may be involved. This is particularly relevant where the borrower is already a foreign invested entity. The restructuring must ensure any revised foreign ownership stake is permissible under Vietnam laws. In most cases, amendments to the corporate charter and ERC or IRC will likely be required.

17.6 Can Reorganisation Schemes in Other Jurisdictions be Used in Vietnam?
Vinashin, Vietnam’s national shipbuilding company, successfully rescheduled 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. Mayer Brown represented Vinashin in this watershed transaction.◆
18.1 What Laws Protect Intellectual Property in Vietnam?


Industrial property and copyright are regulated separately. Industrial property is administered principally by the National Office of Intellectual Property and copyright is regulated by the Copyright Office.

18.2 Is Registration Required to Protect Intellectual Property?

Yes, registration is required except for copyright. Registration of copyright will create prima facie evidence for protection. Generally, for other intellectual property rights, the rights are protected upon registration on a first to file priority basis. Exceptions to the first to file rule are trade secrets, geographic indications, and trade names which are entitled to legal protection upon fulfillment of their own conditions for formation and usage.

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

<table>
<thead>
<tr>
<th>Type</th>
<th>Brief Legal Description</th>
<th>Duration of Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patent</td>
<td>A technological solution presenting worldwide novelty, an inventive step applicable in socio-economic fields</td>
<td>20 years from the date of application</td>
</tr>
<tr>
<td>Type</td>
<td>Brief Legal Description</td>
<td>Duration of Protection</td>
</tr>
<tr>
<td>--------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Copyright</td>
<td>Rights of an organisation or individual to works which such organisation or individual created or owns. “Works” means a creation of the mind in the literary, first artistic or scientific sectors, expressed in any mode or form</td>
<td>Author’s life plus 50 years except for movies, photographs, plays, and applied works of fine art, which enjoy only 50 years’ protection from date of publication</td>
</tr>
<tr>
<td>Trademark</td>
<td>Marks used to distinguish goods or services of different organisations and individuals. They may take the form of words, images or any combination presented in one or more colours</td>
<td>10 years from the date of application, renewable for successive 10-year periods without limit</td>
</tr>
<tr>
<td>Industrial design patent</td>
<td>The outward appearance of a product embodied in three dimensional configuration, lines, colours or a combination of such elements</td>
<td>5 years from the date of application, renewable for two additional periods of 5 years each, up to a maximum of 15 years</td>
</tr>
<tr>
<td>Trade name</td>
<td>The designation of an organisation or individual used in business activities in order to distinguish the business entity bearing such trade name from other business entities in the same business sector and area</td>
<td>Entire duration of use</td>
</tr>
</tbody>
</table>
Chapter 19

Technology Transfer

19.1 Who has the Right to Transfer Technology?

The following organisations and individuals are entitled to transfer the right to use (by licensing/sub-licensing) or the ownership of technology:

- The owner of the technology
- Any organisation or individual permitted by the owner of the technology to transfer the use or ownership of the technology

A technology transfer must be implemented on the basis of a written contract that includes specific terms required by law. The technology transfer contract is not required to be registered. However, the transferor and transferee may agree to register in order to enjoy incentives provided by law.

19.2 What Kind of Technology may be Transferred?

A technology transfer contract may transfer:

- Technical know-how
- Technical knowledge in the form of technological plans, technical solutions, formulae, technical parameters, design drawings, technical plans, computer programs, and data or information about the transferred technology
- Solutions for rationalisation of production and improvements to technology, licences for special business rights and other objects as provided in the Law on Technology Transfer

If the technology is also protected by intellectual property rights, 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 Technology Transfers are Prohibited?

The following technologies are not permitted to be transferred:

- Technology that does not meet regulations on occupational safety, occupational hygiene, public health, or environmental protection
- Technology that adversely affects culture, security and social safety
- Technology that lacks technical, economic or social efficiency
- Technology that serves national security or defence, if the authorised State body has not given permission for the transfer

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

The transfer of technology which is restricted by law requires an approval and a permit from the Ministry of Science and Technology (“MOST”).

Any entity that plans to receive or to transfer restricted technology must submit an application to MOST for approval of transfer of such technology. If the entity receives written approval from MOST, the entity will be permitted to enter into a technology transfer contract, and thereafter file an application to the MOST for a technology transfer permit.

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. The value of such capital contribution will be agreed by the parties in the technology transfer contract.
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 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 Prime Minister of Vietnam is the head of government, presiding over a council of ministers.

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 Supreme People's Court of Vietnam, which is the highest court of appeal in the nation, is also answerable to the National Assembly.

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 policy.

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

![National Structure Diagram]

20.3 Government of Vietnam

![Government of Vietnam Diagram]
20. Government of Vietnam and Charts of Major State Agencies

20.4 Local Structure

Provincial People’s Committee

- Department of Trade
- Department of Planning and Investment
- Department of Finance
- Department of Agriculture and Rural Development
- Department of Science and Technology
- Department of Natural Resources and Environment
- Department of Justice
- Department of Construction
- Other Departments
### List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternative dispute resolution</td>
</tr>
<tr>
<td>AFAS</td>
<td>ASEAN Framework Agreement on Services</td>
</tr>
<tr>
<td>AFTA</td>
<td>ASEAN Free Trade Agreement</td>
</tr>
<tr>
<td>BCC</td>
<td>Business cooperation contract</td>
</tr>
<tr>
<td>BOT</td>
<td>Build-operate-transfer</td>
</tr>
<tr>
<td>BT</td>
<td>Build-transfer</td>
</tr>
<tr>
<td>BTO</td>
<td>Build-transfer-operate</td>
</tr>
<tr>
<td>CEPT</td>
<td>Common Effective Preferential Tariff</td>
</tr>
<tr>
<td>CIT</td>
<td>Corporate income tax</td>
</tr>
<tr>
<td>DONRE</td>
<td>Department of Natural Resources and Environment</td>
</tr>
<tr>
<td>DPI</td>
<td>Department of Planning and Investment</td>
</tr>
<tr>
<td>DTAA</td>
<td>Double Taxation Avoidance Agreement</td>
</tr>
<tr>
<td>EIA Report</td>
<td>Environmental Impact Assessment Report</td>
</tr>
<tr>
<td>ENT</td>
<td>Economic Needs Test</td>
</tr>
<tr>
<td>EPU</td>
<td>Environmental protection undertaking</td>
</tr>
<tr>
<td>ERC</td>
<td>Enterprise registration certificate</td>
</tr>
<tr>
<td>FIE</td>
<td>Foreign invested enterprise</td>
</tr>
<tr>
<td>FTA</td>
<td>Free trade agreement</td>
</tr>
<tr>
<td>IRC</td>
<td>Investment registration certificate</td>
</tr>
<tr>
<td>JSC</td>
<td>Joint stock company</td>
</tr>
<tr>
<td>JV</td>
<td>Joint venture</td>
</tr>
<tr>
<td>LLC</td>
<td>Limited liability company</td>
</tr>
<tr>
<td>LUR</td>
<td>Land use rights</td>
</tr>
<tr>
<td>MIC</td>
<td>Ministry of Information and Communications</td>
</tr>
<tr>
<td>MLLC</td>
<td>Multiple member LLC</td>
</tr>
<tr>
<td>MPI</td>
<td>Ministry of Planning and Investment</td>
</tr>
<tr>
<td>MOIT</td>
<td>Ministry of Industry and Trade</td>
</tr>
<tr>
<td>MONRE</td>
<td>Ministry of Natural Resources and Environment</td>
</tr>
<tr>
<td>MOST</td>
<td>Ministry of Science and Technology</td>
</tr>
<tr>
<td>MOT</td>
<td>Ministry of Transportation</td>
</tr>
<tr>
<td>PC</td>
<td>People's Committee</td>
</tr>
<tr>
<td>PIT</td>
<td>Personal income tax</td>
</tr>
<tr>
<td>PPP</td>
<td>Public private partnership</td>
</tr>
<tr>
<td>PSC</td>
<td>Production sharing contract</td>
</tr>
<tr>
<td>SBV</td>
<td>State Bank of Vietnam</td>
</tr>
<tr>
<td>SLLC</td>
<td>Single-member limited liability company</td>
</tr>
<tr>
<td>TPP</td>
<td>Trans-Pacific Partnership</td>
</tr>
<tr>
<td>VAT</td>
<td>Value added tax</td>
</tr>
<tr>
<td>WFOE</td>
<td>Wholly foreign-owned enterprise</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
</tbody>
</table>
Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world’s leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world’s three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit www.mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or be a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Taul & Chequer Advogados (a Brazilian law partnership) (collectively the “Mayer Brown Practices”) and non-legal service providers, which provide consultancy services (the “Mayer Brown Consultancies”). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website.

“Mayer Brown” and the Mayer Brown logo are the trademarks of Mayer Brown.
© 2018 Mayer Brown. All rights reserved.
Attorney Advertising. Prior results do not guarantee a similar outcome.