

SETTING UP AND OPERATING IN VIETNAM

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PREFACE

The information in this booklet will be helpful to a company investigating Vietnam as an investment venue. This booklet discusses material that would normally be on a site selection team's checklist.

While this is only a summary, it provides the information necessary to understand Vietnam's investment landscape. Specifically, this book focuses on foreign investment projects.

We hope that the material is useful. We would be happy to respond to specific questions and to bring the information contained in this book to the next level of detail.

* * *

In this book, we define and abbreviate terms the first time that we use them. We have also prepared a Glossary for those readers who may not read from the beginning.

GLOSSARY

AEC	ASEAN Economic Community
BOM	Board of Management
BTA	US-Vietnam Bilateral Trade Agreement
CERS	Certified Emission Reductions
CIT	Corporate Income Tax
CLUR	Certificate of Land Use Rights
DOLISA	Department of Labor, War Invalids and Social Affairs
DOSTE	Department of Science, Technology and Environment
DPI	Department of Planning and Investment
EIA	Environmental Impact Assessment
EL	Enterprise Law
EP	Economic Police
ERC	Enterprise Registration Certificate
FIE	Foreign Invested Enterprise
FTA	Free Trade Agreement
HCM City	Ho Chi Minh City
GD	General Director
IRC	Investment Registration Certificate
IL	Investment Law
IPR	Intellectual Property Rights
JSC	Joint Stock Company
LCIT	Law on Corporate Income Tax
LFI	Law on Foreign Investment
LLC	Limited Liability Company
LPIT	Law on Personal Income Tax
LUR	Land Use Rights
LVAT	Law on Value Added Tax
M&A	Mergers and Acquisitions
MCT	Ministry of Communications and Transport
MMO	Market Management Office
MOF	Ministry Finance
MOIT	Ministry of Industry and Trade
MOLISA	Ministry of Labor, War Invalids and Social Affairs
MOST	Ministry of Science and Technology
MPI	Ministry of Planning and Investment
MPS	Ministry of Public Security
NGO	Non-governmental Organization
NOIP	National Office of Intellectual Property
ODA	Official Development Aid
PIT	Personal Income Tax
PM	Prime Minister
RO	Representative Office
SBV	State Bank of Vietnam
SGM	Shareholders' General Meeting
SSC	State Securities Commission
TPP	Trans-Pacific Partnership
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
VAT	Value Added Tax

VND
WTO

Vietnamese dong
World Trade Organization

In this book, we use the approximate rate of exchange of $\text{US\$1.00} = \text{VND22,500}$.

Chapter One

INVESTMENT REGIME

This chapter sets out the framework for foreign investment. This outline should be seen as simply a point of reference, as special projects will have special needs.

1.1 Comprehensive Enterprise Law (“EL”) and the Investment Law (“IL”)

The EL creates a unified legal framework to conduct business. The EL provides various business structures from which both foreign and domestic investors can choose. Special forms of business structures that are available for foreign investors are discussed in Section 1.7 below. The EL also provides rather complete regulations on corporate governance. The EL is best understood as a broad law that covers all business structures, whether foreign-owned or domestically-owned.

The IL is a law that specifically addresses investment. The IL provides details on procedures to carry out investment activities, the rights and obligations of investors, assurances of the legitimate rights and interests of investors, investment incentives, state management of investment in Vietnam, and rules on offshore investment from Vietnam.

A foreign investor who invests in Vietnam by establishing a new legal entity needs to apply for an investment registration certificate (“**IRC**”) first for its investment project. After the IRC is issued, the Investor will then apply for and obtain an enterprise registration certificate (“**ERC**”) which allows them to establish the company. Licensing procedures are discussed in Section 1.6 below.

As is normal practice, the EL and the IL have been supplemented with implementing regulations. Some of the key implementing regulations include:

- Decree No. 78/2015/NĐ-CP (September 14, 2015), providing detailed guidelines for enterprise registration (“Decree 78/2015/ND-CP”);
- Decree No. 96/2015/NĐ-CP (October 19, 2015), detailing and guiding implementation of a number of articles of the EL (“Decree 96/2015/ND-CP”)
- Decree No. 118/2015/ND-CP (November 12, 2015), detailing and guiding implementation of a number of articles of the Law on Investment (“Decree 118/2015/ND-CP”);
- Circular No. 16/2015/TT-BKHDT (November 18, 2015), issuing standard forms necessary to comply with investment procedures and investment reports (“Decision 16/2015/TT-BKHDT”);

Setting up and operating enterprises is subject to industry-specific legislation. Industry-specific legislation includes, for example:

- Law on Credit Institutions;
- Law on Petroleum;

- Law on Civil Aviation;
- Law on Publishing;
- Law on Press;
- Law on Education;
- Law on Securities;
- Law on Insurance Business;
- Law on Lawyers;
- Law on Notarization.

If there are any differences among the IL, the EL, and industry-specific legislation on procedures and conditions to establish an enterprise, its ownership structure, or its restructuring or dissolution, then industry-specific legislation will prevail.

1.2 From Vietnam's WTO commitments to TPP and the AEC

Vietnam became a member of WTO in January 2007. In anticipation of Vietnam's WTO accession, the National Assembly ratified Vietnam's WTO commitments by Resolution No. 71/2006/QH11, passed by the National Assembly on November 26, 2006 ("Resolution 71"). This Resolution provides that, where there are discrepancies between Vietnam's WTO commitments and Vietnamese law, the WTO commitments will prevail.

A committed service means a service which Vietnam committed to open. Committed services provide market access to foreign investors, according to Vietnam's Schedule of Specific Commitments in Services. Vietnam has made commitments on a range of services. The WTO commitments adopt the classification of services in the United Nations Statistics Division's Classification Registry¹. The commitments and some of the regulations are in Vietnam's Schedule of Specific Commitments in Services²; other information on the regulations is in the WTO Working Party Report on the Accession of Vietnam³. Vietnam's commitments to open the market in a specific service are generally "unbound", "none", or "conditional/restricted". There are no regulations, as yet, to differentiate between "unbound" and "none". "Unbound" has generally been interpreted to mean that Vietnam has made no commitment in respect of such a service as a result of its WTO accession and is free to impose restrictions on foreign investment. "None" has been interpreted to mean no restrictions or conditions exist.

The legal environment for conditional or restricted investment in services has changed since WTO accession. Some change has been positive, some negative. On the positive

¹ To see the classifications, go to: <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1>.

² Each WTO member agrees to a specific schedule of commitments in services. The schedule is a complex document in which each country identifies the service sectors to which it will apply the market access and national treatment obligations of the GATS and any exceptions from those obligations it wishes to maintain.

³ WTO Working Party Report is the final document passed on to the WTO's General Council for approval, covering the applicant country's commitments on opening its markets and on applying WTO rules upon such country's accession to the WTO. Notable pages of this WTO Working Party Report on the Accession of Vietnam include: pages 9 to 14 which report the discussions on the investment regime; pages 25 to 27 which report on pricing policies; pages 27 to 29 which report discussions on competition policies; pages 118 to 127 which report on (general) policies affecting trade in services; pages 127-129 which report on transparency, publication and notifications. WTO Working Party Report on the Accession of Vietnam can be found on VCCI's WTO Center website: <http://wtocenter.vn/wto/wto-vietnam/vietnam-wto-commitments>.

side, Vietnam allows foreign investment in industries which were previously restricted. In addition, the application of WTO commitments creates a fairer investment environment. For example, government subsidies by way of favorable treatment to export industries or to investment in some (but not all) Industrial Zones (“IZ”)⁴ have stopped.

The negative points relate to a few services that could previously be licensed to foreign investors without restrictions but became conditional/restricted under the WTO. The restrictions have mostly been phased out, but a few remain.

Section 1.13 contains a broader discussion of investment conditions, including those imposed as a result of Vietnam’s WTO accession.

One of Vietnam’s WTO commitments to deal mainly with “indirect investment” affirms that foreign investors may purchase shares of domestic enterprises. Under this commitment, before 2008, the total equity that could be held by foreign investors in a domestic owned enterprise that engaged in a committed service was limited to 30%⁵. This 30% cap persists in the case of purchasing shares by a foreign investor in a joint-stock commercial bank. For other committed sectors and sub-sectors, this 30% cap has been replaced. The total equity that may now be held by foreign investors in a domestically-owned enterprise must be within the limitations on foreign capital participation described in Vietnam’s Schedule of Specific Commitments in Services in its accession to the WTO. As we mentioned above, very few limitations on foreign capital remain.

The establishment of the ASEAN Economic Community (AEC) in 2015 is a major milestone in the regional economic integration agenda offering opportunities in the form of a huge market to its members. One of the four AEC pillars is creation of a single market and production base through the free flow of goods, services, investment, skilled labor, and freer flow of capital. These aim for a more liberalized market that provides greater opportunities to trade and do business within the region. It is intended to result in reduced trade costs and improved investment regimes to make ASEAN a more attractive investment destination for both international and domestic investors⁶.

TPP when ratified is intended to create a new template for conducting international trade and investment, and potentially lead to a comprehensive free trade area in the Asia-Pacific. As a result, commitments under TPP will be WTO plus which require all members including Vietnam to open the market for both goods and services from other members in a broader and deeper manner. This will undoubtedly be reflected in further broadening of the legal framework for foreign investment in Vietnam.

1.3 Key administrative bodies

The Ministry of Planning and Investment (“MPI”) is the central administrative body that

⁴ In fact, there are different types of zones, namely industrial zones, export processing zones and high-tech zones. We use the general term “industrial zone” to include all types.

⁵ Vietnam’s Schedule of Specific Commitments in Services.

⁶ A Blueprint for Growth: ASEAN Economic Community 2015: Progress and Key Achievements, p.5. Available on <http://www.asean.org/storage/images/2015/November/aec-page/AEC-2015-Progress-and-Key-Achievements.pdf>.

oversees all investment activities, including foreign investment. The MPI is responsible for drafting legislation, developing policies, providing guidance and consultation, and coordinating with other authorities. In addition, the MPI will evaluate important investment projects selected by the Prime Minister (“PM”). The MPI is also the contact point for foreign invested enterprises (“FIEs”)--that is, any investment entity with some foreign investment--in respect of problems or issues that arise. The MPI is headquartered in Hanoi and has representative offices in Ho Chi Minh City (“HCM City”) and elsewhere throughout the country.

Provincial/city People’s Committees directly administer their own foreign investment activities and issue (or authorize the Department of Planning and Investment (“DPI”) to issue) IRCs for almost all types of foreign invested projects within their province/city. IRCs are discussed in more detail at Section 1.6.

If an FIE is located within an IZ, it is under the administration of the provincial IZ’s Management Board or sometimes, a Management Board of that IZ. For example, the Vietnam Singapore Industrial Zone administers all FIEs located in that IZ. An FIE in an IZ operates subject to the IZ’s rules on import/export, environment, labor, etc., in addition to the general rules of the Government and the MPI. The Provincial Management Board or a Management Board of an IZ is authorized to issue an IC for a project located within its province or IZ.

Only provincial/city People’s Committees and Management Boards of IZs have the authority to issue IRCs to foreign invested projects. Even so, some conditional projects and some large-size or important projects need approval in principle by the PM or the National Assembly. Projects that need the PM’s approval or the National Assembly’s approval are listed in Appendix 4 of this Chapter.

The DPI, which administers investment activities for the provincial/city People’s Committees, oversees the licensing process. The DPI issues ERCs for almost all types of foreign invested companies.

Other, more specialized ministries are also involved in foreign investment. The DPI often consults line ministries prior to making its recommendation to the People’s Committee for issuance of the IC. For example, for high-tech projects, the Ministry of Science and Technology (“MOST”) plays an administrative role in developing the industry’s specific policies for foreign investment and in overseeing the application of foreign investment regulations to be sure they are in harmony with the industry’s own rules.

1.4 Foreign investment guarantees and investment preferences

In enacting the IL, the Government has committed to creating a safe and friendly environment for foreign investment. The Government expressly states that it provides equal treatment before the law to all investors, including domestic investors and foreign investors. However, the law itself makes distinctions. The Government guarantees that it will neither expropriate nor nationalize investment capital, real property, nor assets of investors, inclusive of foreign investors.

In addition, in the event that law or policy subsequently promulgated provides greater

benefits and incentives than those previously given to investors, such larger benefits and incentives will automatically apply retroactively to those investors. On the other hand, if the law or policy subsequently promulgated provides lower benefits and incentives than those previously given to investors, those investors will continue to be entitled to the investment incentives in accordance with the previous regulations except for cases in which change in the law is for the reasons of national defence and security, social order and safety, social morals, the health of the community, or environmental protection. If changes adversely affect existing investors, the Government commits to adopt offsetting, particular measures, such as deducting actual losses and damages suffered by the investor from taxable income, changing the operational objectives of the investment project, and supporting the investor to remedy lost and damage. This undertaking appeared also in the prior law, and there is a record of Government adherence to this undertaking.

While developing a more comprehensive IL framework, the Government has continued to improve other laws that affect the business environment, such as Law on Construction 2014, Law on Tendering 2013, Law on Corporate Income Tax (CIT) 2013, Customs Law 2014, and Law on Real Estate Business 2014.

Business entities are offered certain incentives to invest in Vietnam, mostly in the form of tax exemptions or reductions. These incentives, along with rules on the operation of business activities, are presented in the appendix that appears at the end of this Chapter. Compared to the former law, incentives are more limited, reflecting a more selective investment environment.

Depending on the sector, an investor is entitled to investment preferences and special investment preferences (collectively “Investment Preferences”). Investment Preferences are available to both domestic and foreign investors. They are based on various factors, but the project location and the business sector are the two major considerations.

1.4.1 Preferences based on locations

Tax and other Investment Preferences are granted to investors in geographical locations in which investment is encouraged. These include geographical locations with socio-economic difficulties, geographical locations with *special* socio-economic difficulties, economic zones, export processing zones, and hi-tech parks.

The list of geographical areas in which investment is encouraged is provided in Government Decree 118/2015/ND-CP.

1.4.2 Preferences based on sectors

Sectors in which investors are entitled to Investment Incentives (both tax and non-tax) generally include but are not limited to:

- (i) High-tech activities, industrial products that support high-tech, and research and development activities;

- (ii) Production of new materials, new energy, clean energy, or renewable energy; production of products with an added value of 30% or more and energy-saving products;
- (iii) Production of electronics, prioritized mechanical products, agricultural machinery, automobiles, automobile parts; and shipbuilding;
- (iv) Production of industrial products that support production of garments and textiles or leather products and the products prescribed in point (iii) above;
- (v) Production of products of information technology, software, and digital content products;
- (vi) Breeding, growing and processing agricultural, forestry, and aquaculture products; forestation and protection of forests; salt production; fishing and fishing logistics, creation of plant and animal varieties, and production of products of biological technology;
- (vii) Collection, processing, reprocessing or reuse of refuse;
- (viii) Investment in development and operation, and management of infrastructure facilities, and development of public transportation in urban areas;
- (ix) Pre-school education, general education, and vocational education;
- (x) Medical consultation and treatment; production of medicines, raw materials for production of medicines, principal medicines, essential medicines and medicines for prevention and treatment of social diseases, vaccines, medical biological products, medicines from pharmaceutical materials, oriental medicines; and scientific research in relation to technology of preparation or biological technology for production of new medicines;
- (xi) Investment in facilities for training and competition of sports or physical practice for disabled people or for professional sportsmen; and protection and promotion of the value of cultural heritage;
- (xii) Investment in centers for geriatrics, psychiatry or treatment of patients exposed to Agent Orange, and centers for care of the old, disabled, orphans, or street children without support; and
- (xiii) People's credit funds, and micro-financial institutions.

Appendix 2 to this Chapter lists criteria necessary to qualify for different corporate income tax ("CIT") rates for businesses established after July 1, 2015.

Non-tax Investment Preferences include exemption from or reduction of land use tax, land use levy, land rent or water surface rent in accordance with the land law and the law on taxation.

Appendix 3 to this Chapter lists the sectors in which investors are entitled to Investment Preferences (both tax and non-tax). The list was issued in conjunction with Decree 118/2015/ND-CP.

1.5 Government's special policies for high-tech industries

Vietnam especially encourages foreign investment in high-tech projects. The MOST identifies what kinds of projects are considered to be high-tech projects.

As they are especially encouraged by the Government, high-tech projects enjoy the best preferential treatment and incentives. For example, the tax rate is the lowest, the tax exemption period is the longest, etc. While we discuss taxes at Chapter Two in more detail, briefly, the corporate income tax rate for a high-tech project can be as low as 10% or 15%, depending on the specific nature and the location of the project. Interestingly, for a high-tech project in software development, individuals who are involved in software development will benefit from preferential personal income tax rates. Furthermore, a company with a project to do research, to develop technology, or to train professionals in science and technology can be exempt from the payment of land rental for a certain period of time.

A number of high-tech investment projects were licensed under the former Law on Foreign Investment (LFI) in Saigon High-Tech Park and other IZs.

The Government issued Decree No. 29/2008/ND-CP (March 14, 2008) on IZs (as amended and supplemented by Decree No. 114/2015/ND-CP (November 9, 2015)), which confirms that a high-tech investment project can be located in any high-tech park, industrial zone, or economic zone. The Law on High-Tech, effective on July 1, 2009, provides only general policies on high-tech investment. A legal framework for high-tech investment must continue to develop to address certain gaps, including a mechanism to apply for high-tech status outside a high-tech park.

1.6 Licensing procedures

Generally speaking, foreign investors are able to choose from the same forms of business structures available to Vietnamese investors. The main difference is that when a foreign investor invests in Vietnam, it must register the investment project and apply for an IRC for its investment project first. After the IRC is issued, the foreign investor will continue applying for and obtain an ERC to establish the new company.

There are lists of investment projects that require in-principle approval from the National Assembly, the Prime Minister, or the provincial People's Committee ("**In-principle Approved Investment Lists**") before the IRC can be issued. In-principle Approved Investment Lists are provided for in Appendix 4 to this Chapter.

Different projects are licensed by different licensing authorities, depending mainly on the project's location.⁷

⁷ Despite different opinions among licensing authorities, Vietnam places no geographical limit on the operation of a properly licensed enterprise.

An IRC is project-specific in another sense. While there are standard documents to be submitted, additional documentation, such as an Environmental Impact Assessment (“EIA”), land documents, and permits are required for certain projects.

An IRC is compulsory for:

- (i) an investment project of foreign investors irrespective of the percentage of foreign investment;
- (ii) an investment project of a company in which foreign investors hold 51% or more of its charter capital;
- (iii) an investment project of a company in which 51% or more of its charter capital is held by a company/companies specified in point (ii) above; and
- (iv) an investment project of a company in which 51% or more of its charter capital is held by a foreign investor(s) and a company/companies specified in point (ii) above.

While an ERC contains only particulars of business registration, an IRC contains particulars of a specific investment project. An FIE may carry out more than one investment project.

The statutory time limit for a licensing authority to consider and issue an IRC is 15 days if the investment project is not subject to the In-principle Approved Investment List, and 5 working days after the investment policy is issued if the investment project is subject to the In-principle Approved Investment List. The statutory time limit for the authorities to issue the investment policy varies depending on whether the investment project needs to be approved by the National Assembly, the Prime Minister, or the provincial People’s Committee. Specifically, the statutory time limit for the provincial People’s Committee to consider and issue the investment policy is 35 days; however, there is no specific time limit for the National Assembly or the Prime Minister to issue an investment policy.

Although statutory time limits are sometimes observed, they are unfortunately often exceeded.

The actual time will probably vary for each company, depending on the extent of special conditions requested by or being offered to the company. The justification for special treatment should be carefully documented ahead of time, and informal discussions with the licensing authority beforehand are important. This will help make the application process proceed more smoothly.

An IRC will specify the privileges to which a “preferential” or “especially preferential” project is entitled in respect of tax holidays, etc.

It is important to know, in advance, what the essential approvals and licenses required for a project are. An IRC is the first step. Other approvals may be required. For example, the construction of a factory requires approvals by certain authorities, such as the land

administration body and construction department in that locale.

1.7 Forms of investment

As aforementioned, foreign investors and domestic investors have virtually the same choice of direct investment vehicles. However, some industries place restrictions on the vehicles foreign investors can adopt.

Generally speaking, domestic and foreign investors can choose the following forms of investment:

- (i) a business entity in which foreign investors own 100% of the capital;
- (ii) a joint venture company between domestic and foreign investors;
- (iii) investment under contracts such as a Business Cooperation Contract (“BCC”), or Build-Operate-Transfer (“BOT”), Build-Transfer-Operate (“BTO”), Build-Transfer (“BT”) contracts or a public private partnership (“PPP”) arrangement;
- (iv) reinvestment in its existing enterprise;
- (v) purchase of shares or contribution of capital and participation in the management of an enterprise;
- (vi) investment in the merger or acquisition of an enterprise;
- (vii) other forms of direct investment.

This section further explains these forms of investment.

- a) The first two forms will result in the establishment of a business entity. Both domestic and foreign investors may choose from the following types of enterprise structures:
 - (i) One-member limited liability company (“LLC”) for a single investor. An individual domestic investor may establish a private enterprise but an individual foreign investor may not.
 - (ii) Two-to-fifty member LLC.
 - (iii) Joint stock company (“JSC”) for a minimum of three shareholders.
 - (iv) Partnership is a business structure available to foreign investors. However, as the liability of a partnership is not limited to the capital contributed by its general partners, but extends to their other assets, it is rarely used.

Appendix 1 to this Chapter compares these structures.

- b) Investment through contracts:
 - (i) Investors may enter into BCCs to cooperate in production with agreed profit-sharing, production-sharing, and other forms of business cooperation.
 - (ii) Investors may sign BOT, BTO, and BT contracts with state agencies to execute projects on construction, expansion, modernization, and operation of infrastructure facilities in the areas of transport, electricity production and business, water supply and drainage, waste treatment, and other areas as stipulated by the Prime Minister.
 - (iii) A new form of state participation is the PPP. Under a PPP arrangement, the government can contribute capital to a project but does not have a share in the profits. The government can contribute capital in several forms (depending on the nature of the specific project), such as by way of funds, land, investment incentives, special financial concessions, and perhaps loans. The State's contribution may not exceed 30% of the project's total investment capital. The project will need to satisfy one of the following project selection criteria: 1) the project is of great significance, large scale, with urgent demand for economic development; 2) the project is capable of repaying investment capital to the investor from its own revenue; 3) the project can exploit advantages in respect of technology, management, and operational experience and is able to mobilize financial capacity of the private sector; 4) other criteria as decided by the Prime Minister. At the end of the pre-approved operating period, the project will be handed over to the State.
- c) Investors may also choose to invest in business development in the following ways:
 - (i) Expand the scale, capacity, or capability of an existing investment;
 - (ii) Update technologies, raise product quality, reduce environmental pollution.
- d) Investors may invest in Vietnam by contributing capital to or purchasing shares from other existing business entities. The ratio of capital contributed or of shares purchased by foreign investors in some fields and industries is subject to industry-specific legislation and regulations.
- e) In addition, investors have the right to merge or to acquire existing companies and branches. The merger and acquisition of companies and branches is subject to the EL, the Competition Law, and other laws. Each case may have its own set of conditions.

1.8 Business lines and investment objectives

An enterprise may have a single or multiple business lines and investment objectives, subject to conditions regarding investment sectors.

Investment objectives or activities must be implemented within the time schedule registered in the IRC. Article 48.2 of the IL entitles the licensing authority to terminate a project in specific cases.

In the case of a project with multiple objectives, the IRC sets out different investment

preferential tax treatment for different groups of activities. For ease of tax registration, an enterprise needs to account separately for investment activities taxed at different preferential rates.

1.9 The legal representative of an enterprise and the corporate seal

Every legal entity must have at least one legal representative. The EL does not limit the number of legal representatives that a legal entity can have. Generally, a legal representative has the right, on behalf of the entity, to enter into and perform all civil transactions that bind the entity. The company's charter must specify the number, managerial positions, and rights and obligations of the company's legal representative(s). The company must ensure that there is always at least one legal representative residing in Vietnam. If the company has only one legal representative, such person must reside in Vietnam. If s/he is absent from Vietnam, s/he must authorize in writing another person to exercise the rights and perform the obligations of the legal representative. In such case, the legal representative remains responsible for the performance of the authorized rights and obligations by the person authorized.

A partnership does not have a single legal representative, as any general partner can represent the firm.

A company may have one corporate seal and may make duplicates of its seal. The EL allows the company to decide on the form, quantity of the duplications, and contents of its seal. The contents of a seal must contain the following required information: (i) the company's name, and (ii) the company's registration number. Before use, the company is obliged to notify the licensing authorities of its sample seal so that it may be published on the National Enterprise Registration Portal.

1.10 Corporate governance and controllers

An enterprise's internal rules are set forth in its charter (which is similar to a company's bylaws or articles of association). The charter must set out certain guidelines on the management and organization of the company, as stipulated in the EL.

The EL introduces basic rules on corporate governance. In general, such rules follow international norms. One notable rule, special to Vietnam, is the requirement that most types of LLCs, those JSCs that have more than 11 shareholders, and an organizational shareholder that holds 50% or more of the JSC's total shares must have a controller. Even though they are not part of management, controllers have a considerable amount of power over almost all legal and financial affairs conducted by both management and the executive teams.

1.11 Term of enterprise and dissolution

The term of an enterprise can be indefinite, unless its charter provides otherwise. However, the term of an invested project may not exceed 50 years. Investment projects in economic zones may be granted a term of up to 70 years. Upon expiration of the term of an investment project, foreign investors can continue to use their enterprise to carry out other new projects, or they may renew the existing one as long as the total duration of a project

including extension must not exceed the maximum duration mentioned above.

The term of a project located in an IZ is limited by the duration of the IZ's own IC. The term of a project located in an IZ commences from the date the project's IC is issued and if its term is longer than the term of the IZ, then its term will end on the date the IC of the IZ expires. If the IZ's IC is extended, enterprises in the IZ may apply to extend their own project terms to coincide with the expiration date of the extended IC.

An enterprise is dissolved in the following circumstances:

- (i) The operating duration expires if a fixed duration is stated in the enterprise's charter, and there is no decision to renew;
- (ii) The owners of the enterprise decide to dissolve it;
- (iii) An enterprise lacks the minimum number of members required by law (ie, two members in a two-to-fifty-member LLC or three members for a JSC) for six consecutive months;
- (iv) The ERC is withdrawn.

An enterprise may be legally dissolved only after it settles its debts and liabilities. If an enterprise is unable to pay its debts when due, it may become subject to bankruptcy procedures.

1.12 Enterprise capital

There are several concepts of capital under the EL and IL:

- (i) *Legal capital*: The minimum capital that is required by law to form an enterprise. A legal capital requirement exists only for a few specific business lines only (eg, real estate, insurance, banking).
- (ii) *Invested capital*: An amount of money and other assets needed to carry out the investment project, including charter capital.
- (iii) *Charter capital*: An amount of capital that members or shareholders contribute or commit to contribute within a certain period as stated in the charter.
- (iv) *Capital contribution*: The portion of a company's charter capital that an owner actually contributes.

Enterprises in the businesses listed in Appendix 5 to this Chapter have a minimum legal capital requirement, which simply means a minimum amount of charter capital must be contributed in order for the IRC or the ERC to be issued.

An LLC must register its proposed schedule for contribution of capital. The timeline for contribution cannot be longer than 90 days counting from the date on which the ERC is issued. The investors are obligated to follow the registered schedule. The charter capital of

a JSC on the date on which the business is registered (the date the ERC is issued) is the total par value of shares for which founding and other shareholders have subscribed, as stated in the company charter; such number of subscribed shares must be paid in full within 90 days from the date the ERC is issued. Founding shareholders must together subscribe and pay in full at least 20% of the enterprise's ordinary shares which are offered for sale within the 90 day period stated above.

Charter capital is the real equity. Invested capital may include, in addition to charter capital, non-equity capital such as loans and accumulated, after-tax profits.

Although it is permissible to reduce charter capital, increasing the charter capital is easier than reducing it.

1.13 Conditional investments

1.13.1 Conditional business lines

Under the IL, a foreign invested project which proposes to operate in sectors or locations which may be adverse to national defense, national security, cultural and historical heritage, traditional customs and morality, or the ecological environment may not be licensed.

There are other sectors in which participation, although not prohibited, is "conditional". The IL provides a detailed list of conditional business lines which apply to both foreign and domestic investment. The conditional investment sectors are listed in Appendix 4 to the IL. The list consists of 267 business lines. For the first time, the list of conditional business lines is attached to the IL. Previously, there was no consolidated list of conditional business lines. The detailed conditions to engage in business lines listed in Appendix 4 to the IL are provided for in industry-specific legislation, decrees of the Government, and international treaties that Vietnam is a party. The conditions that apply in most conditional business lines are in the nature of business requirements that an enterprise must meet after incorporation, rather than as conditions to receipt of a license. However, in the case of a foreign investor that applies for an IRC for a new project, the law requires that all of the business conditions must be satisfied before issuance of the IRC.

There are investment sectors that are conditional only for foreign investors and are additional to the foregoing. Conditional business lines applicable to foreign investors only are usually provided for in industry-specific legislation, decrees of the Government, and international treaties to which Vietnam is a party. Some conditional business lines applicable only to foreign investors are based on Vietnam's WTO Commitment.⁸

1.13.2 Investment conditions

Conditions may relate to the form of investment, professional expertise of the investors,

⁸ Some sectors are not conditional under Vietnamese law (some are even encouraged) but have become conditional, temporarily or permanently, based on Vietnam's WTO Commitments: services incidental to agriculture, sewage treatment, software production, processing and assembly of goods, maintenance and repair of household equipment, market research, warehousing, tourism, etc.

the scale of the investment project, the types of goods and services involved, the duration of the investment project, or the basis on which the FIE may acquire its physical premises.

Typical investment conditions include:

a) Conditions regarding minimum capital: There is no general minimum legal capital requirement, calculated as a percentage of total invested capital. A minimum amount of charter capital to establish an enterprise is currently required in only a few sectors, such as commercial banking, financial services, finance leasing, real estate, securities services, and the securities business. In some sectors, like banking, the foreign investor itself must have a certain minimum capital. The list of the sectors that require minimum capital is attached as Appendix 5 to this Chapter.

b) Conditions regarding experience/licensing of investors: Some sectors, such as education, tourism, commercial advertisement, or most telecommunications services, require the Vietnamese partner to be specifically qualified and licensed. A few sectors, such as insurance, banking, or securities services, generally require the foreign investor to be similarly experienced.

c) Conditions regarding sub-licenses, such as trading in medicine or in some types of tourism services, or ongoing satisfaction of specific business conditions, such as hygienic requirements for restaurant services. Investors must observe industry-specific legislation to obtain a sub-license or to fulfill conditions.

d) Conditions which limit foreign ownership of an enterprise via direct investment, including the purchase of shares or contribution of capital to an existing domestic enterprise (in which foreign investors actively take part in the management of such an enterprise):

- (i) The limitation on foreign ownership in some particular areas is subject to industry-specific legislation, such as the Law on Credit Institutions, Law on Civil Aviation, Law on Education, Law on Securities, Law on Insurance Business, Law on Petroleum, etc. Most of these laws do not specify limitations, but generally refer to Vietnam's international undertakings.
- (ii) In case of an enterprise which is equitized or converted from a State-owned enterprise ("SOE"), the limitation on foreign ownership is regulated by legislation on the equitization or conversion of SOEs (usually up to 49%).
- (iii) The limitation on foreign ownership must accord with Vietnam's WTO Commitments in case of investment in those services which are subject to a Commitment. This limitation varies from service to service. Most limitations are phased out after a few years. For example: for distribution services, the WTO limitation permitted foreign ownership of less than 100%, until the limitation was phased out completely on January 1, 2009; the limitation of 49% for foreign investment in the securities businesses was lifted in 2012; the limitation for warehouse services and freight transport agency services is 51% until it was lifted in 2014; the limitation for maintenance and repair services of household equipment

is 49%, which was raised to 51% in 2010, and was phased out in 2012; and limitation on the ownership of restaurants was phased out in 2015.

e) Conditions regarding the limitation of foreign ownership of an enterprise via indirect investment, mainly in the form of the purchase of shares of, or the contribution of capital to, an existing domestic enterprise (in which the foreign investor will not engage in management).

- (i) The limitation in some particular areas is subject to industry-specific legislation, as discussed in the first paragraph of point (e) above.
- (ii) In case an enterprise is equitized or converted from an SOE, the limitation is regulated by legislation on the equitization or conversion of SOEs, as discussed in the second paragraph of point (e) above.
- (iii) The limitation must accord with Vietnam's WTO Commitments in case of investment in a service sector subject to a Commitment, as discussed in the third paragraph of point (e) above.
- (iv) In the case of an enterprise listed on a stock exchange, the foreign ownership ratio can be up to 100% (subject to certain restrictions).
- (v) In other sectors, there are no limitations on the percentage of capital contribution made by the foreign party or foreign parties.

Other conditions may apply, such as those regarding forms of investment, ENT (Economic Need Test), professional practice certificates, a professional insurance certificate, an economic-technical feasibility study, environmental impact assessment, capital contribution schedule, and the need to legalize certain licensing documents.

Of note, an enterprise which has been incorporated in Vietnam has to comply with requirement regarding investment procedures and investment conditions applicable to foreign investors when it establishes a new enterprise in Vietnam or conducts any form of investment (including but not limited to acquiring shares issued by another enterprise in Vietnam) if it falls into one of the following cases:

- (i) 51% or more of its charter capital is held by a foreign investor(s), or majority of partners being foreign individuals (if the enterprise in question is a partnership);
- (ii) 51% or more of its charter capital is held by an enterprise(s) prescribed in paragraph (a) above;
- (iii) 51% or more of its charter capital is held by a foreign investor(s) and an enterprise(s) prescribed in paragraph (a) above.

In other words, under the new IL, the "third-generation" subsidiary of a foreign investor incorporated in Vietnam is considered a Vietnamese investor and will not be subject to the requirements regarding investment procedures and investment conditions applicable to foreign investors.

APPENDICES
For Chapter One

**APPENDIX 1
COMPARISON OF FORMS OF ENTERPRISE UNDER THE ENTERPRISE LAW**

A. Two-to-Fifty-Member Limited Liability Company (LLC) and Joint Stock Company (JSC)

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
Characteristics	<p>A two-to-fifty-Member LLC is an enterprise in which:</p> <ul style="list-style-type: none"> ▪ Members are organizations which have legal entity status and/or are individuals; the total number of Members may not exceed fifty. ▪ Members are responsible for the enterprise’s debts and liabilities up to the value of capital that they have committed to contribute. <p>The company is not entitled to issue shares.</p>	<p>A JSC is an enterprise in which:</p> <ul style="list-style-type: none"> ▪ Shareholders are organizations which have legal entity status and/or are individuals; the minimum number of shareholders is three, with no maximum number. ▪ Shareholders are liable for the JSC’s debts and liabilities up to the value of the capital to which they subscribe. ▪ Charter capital is divided into shares. <p>A JSC is entitled to issue securities, including common and preferred shares and bonds, to mobilize capital.</p>
Governance Structure	<p>A two-to-fifty-Member LLC is managed by:</p> <ul style="list-style-type: none"> ▪ A Members’ Council (MC), which consists of all Members (ie, owners) of the Company. Members can participate in the MC either in person or by proxy (through Authorized Representatives appointed by the Member which does not personally participate in the MC); and ▪ (General) Director (ie, Chief Executive Officer), who is in charge of day-to-day operation management of the company, and Deputy (General) Directors. 	<p>A JSC is managed by one of the following two models:</p> <p>(i) Two-layer management structure</p> <ul style="list-style-type: none"> ▪ the Shareholders’ General Meeting (SGM), which consists of Shareholders who have the right to vote; ▪ the Board of Management (BOM), which consists of 3 to 11 individuals elected by the GSM; ▪ the Board of Controllers; and ▪ (General) Director (ie, Chief Executive Officer), who is in charge of day-to-day management of the company, and Deputy (General) Directors. <p>(ii) One-layer management structure</p> <ul style="list-style-type: none"> ▪ the Shareholders’ General Meeting (SGM), which consists of Shareholders who have the right to vote; ▪ the Board of Management (BOM), which consists of 3 to 11

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
		<p>individuals elected by the GSM. At least 20% of the members of the BOM must be independent members. The BOM must have an internal audit division; and</p> <ul style="list-style-type: none"> ▪ (General) Director (i.e. Chief Executive Officer), who is in charge of day-to-day management of the company, and Deputy (General) Directors.
<p>Appointments to, selections of boards, management</p>	<p>Each Member may, at its discretion, appoint one or more Authorized Representatives to the MC, and can dismiss its appointees.</p> <p>The MC elects and dismisses its Chairman.</p> <p>The MC elects/dismisses and signs/terminates labor contracts with the (General) Director, Chief Accountant, and other senior management as contemplated in the charter.</p>	<p>Each Shareholder nominates its representatives to be elected to the BOM at an SGM. Unless otherwise provided for in the charter, the attending shareholders will elect members of the BOM through cumulative voting.</p> <p>The BOM elects/dismisses and signs/terminates labor contracts with the (General) Director, Chief Accountant, and other senior management as contemplated in the charter.</p>
<p>Legal representative</p>	<p>The company may have one or more legal representatives. If there are two or more legal representatives, the charter of the Company must specify the number, title, rights, and obligations of each of the legal representatives.</p> <p>Either the Chairman of the Members’ Council or (General) Director will also serve as the legal representative as stipulated in the charter. In case the Charter is silent on this issue, the Chairman of the Members’ Council will be the legal representative of the company.</p>	<p>The company may have one or more legal representatives. If there are two or more legal representatives, the charter of the Company must specify the number, title, rights, and obligations of each of the legal representatives.</p> <p>In case the company has one legal representative, either the Chairman of the BOM or (General) Director will serve as the legal representative. In case the Charter is silent on this issue, the Chairman of the BOM will be the legal representative of the company. In case there are more than one legal representatives of the Company, both the Chairman of the BOM and the (General) Director automatically</p>

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
		serve as legal representatives of the company.
Board of controllers	If the company has 11 members or more, a board of controllers must be established, as discussed in Section 1.10 of Chapter 1.	The JSC must have a board of controllers if: <ul style="list-style-type: none"> ▪ The company chooses two-layer management structure; ▪ There are at least 11 individual Shareholders; and/or ▪ There is a single organizational Shareholder that owns more than 50% of the total shares of the enterprise.
Capital Contribution Schedule	The schedule of capital contribution which is no longer than 90 days from the date on which the ERC is issued must be recorded in the Charter of the company. Members must follow such schedule.	Shareholders must pay for the subscribed shares (which together amount to 100% of the Charter Capital of the JSC) within 90 days of the first issuance of the ERC or the IC. Founding shareholders must together subscribe a number of ordinary shares equivalent to at least 20% of the JSC’s registered ordinary shares. In addition to shares amounting to the Charter Capital of a JSC, at the time of registration for the issuance of the ERC, a JSC may register to issue more shares., which additional shares must be paid for within three years from the date on which the ERC is issued.
Quorum⁹	The quorum for a meeting of the MC is the presence of Members that together own at least 65% of the charter capital. If the first meeting fails to satisfy this condition, the meeting may be convened for a second time within 15 days from the date the first quorum failed. A quorum is present for such a meeting if attended by Members that together own at least 50% of the charter capital. If the second meeting fails to	The quorum for a meeting of the SGM is the presence of Shareholders that together own at least 51% of the total number of votes. If the first meeting fails to satisfy this condition, the meeting may be convened for a second time within 30 days from the date the first quorum failed. A quorum is present for such a meeting if attended by Shareholders that together own at least 33% of the total number of votes. If the second meeting fails to satisfy this condition, the meeting may be convened for a third time within 20 days from the

⁹ In the case of a joint venture LLC or a JSC which operates in the sectors that Vietnam has committed to open pursuant to Vietnam’s WTO Commitments, the enterprise may provide in its charter any quorum to convene a meeting and any mode to adopt a decision of the Members’ Council or the Shareholders’ General Meeting (“SGM”). The meaning of a “joint venture” in this context is not clear. The WTO Commitments and the IL seem to refer to a joint venture in which there are both foreign investors and domestic investors. For companies which do not satisfy the conditions, the quorum stated here is a minimum requirement. Individual charters may require higher ratios.

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
	<p>satisfy this condition, the meeting may be convened for a third time within 10 days from the date the second quorum failed. Such a meeting shall be conducted regardless of the number of participating Members and the percent of their charter capital ownership.</p>	<p>date the second quorum failed. Such a meeting shall be conducted regardless of the number of participating Shareholders and the percent of their total number of votes.</p>
Resolution	<p>Unless the charter provides for higher percentages, a resolution of the MC requires an affirmative vote equivalent to at least¹⁰:</p> <ul style="list-style-type: none"> ▪ 65% of the LLC’s total charter capital in case of a resolution adopted by collecting written opinions without holding an in-person meeting; ▪ 75% of the total charter capital contribution of attending Members in the following cases: <ul style="list-style-type: none"> ○ Sale of 50% or more of total assets, ○ Amendment of the charter, ○ Re-organization of the company, and ○ Dissolution; ▪ 65% of the total charter capital contribution of attending Members is required in other cases. 	<p>Unless the charter provides for higher percentages, a resolution of the SGM requires an affirmative vote equivalent to at least:</p> <ul style="list-style-type: none"> ▪ 51% of the total number of votes of all shareholders who have the right to vote in case of a resolution adopted by collecting written opinions without holding an in-person meeting; ▪ 65% of the total number of votes of attending Shareholders in the following cases: <ul style="list-style-type: none"> ○ Decision on classes and number of shares to be offered, ○ Investment or sale of 35% or more (unless the charter provides for a smaller percentage) of total assets recorded in the last financial statement of the company, ○ Amendment of the charter, ○ Re-organization of the company, and ○ Dissolution; ▪ 51% of the total number of votes of attending Shareholders is required in other cases.
BOM	<p>Not applicable.</p>	<p>Those matters that do not require a SGM resolution can be decided by the BOM. A decision of the BOM is adopted by a simple majority (the BOM’s Chairman has a casting vote in case of a tie).</p>

¹⁰ In the case of a joint venture LLC or a JSC operating in sectors in which Vietnam agreed to open its market pursuant to its WTO Commitments, the enterprise may provide in its charter a lesser ratio (as low as 51%) to adopt a decision.

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
Title documents	<p>A company’s Member Registration Book includes a list of Members together with detailed information about their ownership percentages and identifying information; it must be established as soon as the ERC is issued, and must be kept at the head office of the company.</p> <p>Upon full payment of subscribed capital, a Member will receive a capital contribution certificate.</p>	<p>A JSC must establish and maintain a register of Shareholders as soon as the ERC is issued. The register of Shareholders may be in the form of a written document or an electronic file, or both. It must be kept at the company’s head office or at the Securities Depository Center.</p> <p>A Shareholder of a JSC is entitled to a share certificate, which may be either in the form of a written certificate or a book entry certifying the ownership of one or more shares. Share certificates can be bearer or non-bearer.</p>
Dividends	<p>Dividends can be distributed only when the company generates profits and after it has fulfilled its tax and other obligations. It must ensure that its debts and other property obligations can be paid in full even after distribution of profits.</p>	<p>Dividends can be distributed only when the company generates profits and after it has fulfilled its tax and other obligations. It must ensure that its debts and other property obligations can be paid in full even after distribution of profits.</p> <p>Dividends may be paid in cash, shares, or in other assets as provided for in the company’s charter.</p>
Change in charter capital	<p>Any change in the charter capital of a company requires a resolution of the MC. A change in the company’s charter capital must be registered with the licensing authority.</p> <p>The charter capital may be increased by way of:</p> <ul style="list-style-type: none"> ▪ Increase in Members’ contributed capital; and/or ▪ Increase in contributed capital raised from new Members. <p>The charter capital may be decreased:</p> <ul style="list-style-type: none"> ▪ After two years of continuous operation, part 	<p>Any change in the charter capital of a company requires a resolution of the SGM. A change in the company’s charter capital must be registered with the licensing authority.</p> <p>The charter capital (or registered shares) can be increased by issuing additional shares.</p> <p>The law differentiates between a private placement and a public offer of shares issued by a JSC. More stringent rules apply to a public offer.</p> <p>The charter capital may be decreased by buying back shares in cases permitted in the law.</p>

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
	<p>of the contributed capital may be returned to Members in proportion to their share of contributed capital provided that the company is still capable to pay its debts and other property obligations after returning [part of the contributed capital] to members;</p> <ul style="list-style-type: none"> ▪ By share buy-back as permitted by law; <p>Charter capital may also be decreased by the amount that is unpaid by members within the period of time required by law (ie, 90 days from the date on which the ERC is issued). A company may only decrease its charter capital if, after such decrease, the company will still be able to meet its financial obligations.</p>	
<p>Transfer of capital/shares</p>	<p>Capital can be freely transferred between/amongst Members. A Member of a company is entitled to transfer part or all of its capital to a third party as follows:</p> <ul style="list-style-type: none"> ▪ A capital share must be offered to all other Members of the company under the same conditions and in proportion to their share of charter capital; ▪ A capital share may be transferred to a non-Member if all remaining Members fail to buy such capital share within 30 days from the date of offer. 	<p>Shares are freely transferable, save voting preference shares. Ordinary shares of founding Shareholders may not be transferred within three years from the date the ERC is granted, with some exceptions¹¹.</p> <p>The transfer may be made in writing or by mere delivery of the share certificate.</p>

¹¹ Within three years from the day on which the ERC is issued to the JSC, any transfer of ordinary shares of a founding shareholder to any non-founding shareholder requires approval by the SGM, excluding the vote of the transferring shareholder. When such a transfer is approved, the shareholder acquiring the shares becomes a founding shareholder. The foregoing restriction shall only apply to the number of shares that founding shareholders registered for subscription at the time of registration of the JSC and paid for within 90 days from the date on which the ERC was issued.

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
M&A related issues	<p>The number of Members after a transfer/allocation of capital may not exceed 50. If there is only one Member, the enterprise must convert to a one-Member LLC, which has different rules in terms of organizational structure, quorums, voting, etc.</p> <p>Dilution of the ownership of a Vietnamese Member must not alter any applicable limitation on foreign ownership discussed in Section 1.13 of Chapter 1.</p>	<p>The number of Shareholders may not be less than three.</p> <p>Dilution of the shareholding of a Vietnamese shareholder must not alter any applicable limitation on foreign ownership discussed in Section 1.13 of Chapter 1.</p>
Termination of ownership	<p>A Member who votes against a decision of the Members’ Council on matters involving the rights and obligations of the Members or the Members’ Council, on re-organization of the company, and on other matters specified in the charter may leave the company by:</p> <ul style="list-style-type: none"> ▪ Redemption by the company of the Member’s capital contribution; and/or ▪ Transfer to a third party or to the remaining Members if the enterprise does not or cannot redeem the capital. <p>A Member may also transfer all of its capital contribution, as discussed above in “Transfer of capital/shares.”</p> <p>If a Member is dissolved or goes bankrupt, creditors may become Members of the Company if the Members’ Council agrees. Otherwise such Member has to transfer its capital contribution as discussed above in “Transfer of capital/shares.”</p>	<p>A Shareholder who votes against a decision of the GSM on matters involving the rights and obligations of the Shareholder or on re-organization of the company may leave the company by asking the JSC to buy back his/her shares.</p> <p>A Shareholder may withdraw its capital by transferring all of its shares to others (as discussed above in “Transfer of capital/shares”).</p> <p>A JSC must redeem, redeemable preferred shares upon satisfaction of conditions stated in the share certificate or upon the holder’s request.</p> <p>A shareholder may not otherwise withdraw its contributed capital.</p>

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
	A Member may not otherwise withdraw its contributed capital.	

B. One-Member Limited Liability Company (LLC)

Appendix 1.B	One-member LLC owned by an <u>organization</u>	One-member LLC owned by an <u>individual</u>
Characteristics	<p>The enterprise is established and owned by an entity, either foreign or domestic.</p> <p>The enterprise is a legal entity separate from the owner; the owner is liable for the debts of the enterprise up to the value of the enterprise’s charter capital.</p> <p>The enterprise is not entitled to issue shares.</p>	<p>The enterprise is established and owned by an individual, either foreign or domestic.</p> <p>The enterprise is a legal entity separate from the owner; the owner is liable for the debts of the enterprise up to the value of the enterprise’s charter capital.</p> <p>The enterprise is not entitled to issue shares.</p>
Governance structures	<p>The owner authorizes a single representative or multiple representatives to manage the enterprise.</p> <p>If two or more representatives are authorized, they will together constitute the Members’ Council. In this type of Members’ Council, a member represents a portion of the owner’s capital but does not himself own capital, as in a two-to-fifty-Member LLC. As a result, unless otherwise stipulated in the charter, the quorum and votes are based on the number of members, not on the capital each owns. The owner appoints the Chairman of the Members’ Council from among its members.</p> <p>If only a single representative is authorized, he or she will be the President of the enterprise. In that case, there will not be a Members’ Council.</p> <p>Apart from the President or Members’ Council, management includes a (General) Director who is either appointed or employed by the President/Members’ Council.</p>	<p>The owner is the President.</p> <p>The President can concurrently be the (General) Director or can hire another person to be the (General) Director.</p>

Appendix 1.B	One-member LLC owned by an <u>organization</u>	One-member LLC owned by an <u>individual</u>
Legal representative	Name and identification information of the legal representative must be stated in the Charter and in the ERC of the company.	Name and identification information of the legal representative must be stated in the Charter and in the ERC of the company.
Controllers	There must be one to three controllers as discussed in Section 1.10 of Chapter 1.	There are no controllers in this type of enterprise.
Capital Contribution Schedule	The schedule of capital contribution which may be no longer than 90 days from the date on which the ERC is issued must be recorded in the company’s Charter. The owner must follow the schedule.	The schedule of capital contribution which may be no longer than 90 days from the date on which the ERC is issued must be recorded in the company’s Charter. The owner must follow the schedule.
Change in Charter Capital	<p>The charter capital can be increased by additional contribution by the owner and/or contribution by others. In the latter case, the enterprise must be converted to a two-to-fifty-Member LLC within 15 days from the date on which new Members contribute capital.</p> <p>The charter capital may be decreased:</p> <ul style="list-style-type: none"> ▪ After two years of continuous operation, part of the contributed capital may be returned to the owner provided that the company is still capable to pay all of its debts and other property obligations after returning [part of the contributed capital] to the owner; ▪ By the amount which is unpaid by the owner within the period of time required by law (ie, 90 days from the date on which the ERC is issued). 	<p>The charter capital can be increased by additional contribution by the owner and/or contribution by others. In the latter case, the enterprise must be converted to a two-to-fifty-Member LLC within 15 days from the date on which new Members contribute capital.</p> <p>The charter capital may be decreased:</p> <ul style="list-style-type: none"> ▪ After two years of continuous operation, part of the contributed capital may be returned to the owner provided that the company is still capable to pay all of its debts and other property obligations after returning [part of the contributed capital] to the owner; ▪ By the amount which is unpaid by the owner within the period of time required by law (ie, 90 days from the date on which the ERC is issued).
Transfer of	The owner is entitled to sell all or part of its capital share.	The owner is entitled to sell all or part of its capital share. If the

Appendix 1.B	One-member LLC owned by an <u>organization</u>	One-member LLC owned by an <u>individual</u>
capital	If the transfer of capital leads to an increase in the number of investors, the enterprise must convert to a two-to-fifty-Member LLC.	transfer of capital leads to an increase in the number of investors, the enterprise must convert to a two-to-fifty-Member LLC.
Owner's documentation required for business registration	<p>For business registration, the owner must file:</p> <ul style="list-style-type: none"> ▪ Copy of its certificate of incorporation (or an equivalent document, such as business license or ERC). For an owner who is a foreign investor, this document must be legalized; ▪ Copy of its articles of association (or an equivalent document, such as by-laws or charter); ▪ Copy of the passports (or Vietnamese identity card) of the legal representative (eg, CEO or president) who signs the business registration application and of the owner's representatives in the LLC; ▪ List of the owner's authorized representatives, and ▪ Letter of appointment of the authorized representatives. ▪ IRC if the owner is a foreign investor. 	<p>For business registration, the owner must file:</p> <ul style="list-style-type: none"> ▪ Copy of his/her passport or Vietnamese identity card. ▪ Copy of its articles of association (or an equivalent document, such as by-laws or charter); ▪ IRC if the owner is foreign investor.

APPENDIX 2

APPLICATION OF CORPORATE TAX RATES/INCENTIVES¹²

(The information below is taken from the Law on Corporate Income Tax 2008 (as amended in 2013 and in 2014) and Government Decree No. 218/2013/ND-CP (December 26, 2013) detailing and guiding implementation of a number of articles of the Law on Corporate Income Tax (as amended in 2013 and in 2014) which is effective from January 1, 2015)

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period¹³	50% Reduction Period¹⁴
20%	The whole term of the project	This is the common CIT rate on every project, unless the project qualifies for a lower rate or the project is operating in the sector of prospecting, exploring, and mining of petroleum, gas and other rare or precious natural resources (in which case, the applicable CIT rate is between 32% to 50%, depending on specific criteria).	None	None
17%	The whole term of the project	Income received by peoples' credit funds and micro-finance institutions.		
	10 years from the first year in which there are sales/revenues (after which the rate	<ul style="list-style-type: none"> ▪ Income from new investment projects in geographical locations with socio-economic difficulties. Income from new investment	2 years	4 years following the Exemption Period

¹² Unless otherwise provided in the table, these rates/incentives take effect from January 1, 2014 and apply to enterprises which are established from January 1, 2009 onward. For enterprises which were established before January 1, 2009, the old tax rates and incentives still apply (for the remaining term of their project) if they are more favourable than the rates and incentives provided for in the current LCIT.

¹³ The Exemption Period is the period for which the enterprise is exempt from payment of CIT. The Exemption Period is counted from either the first year of taxable income or the fourth year after the first year sales or revenues are achieved, whichever comes first. This rule also applies to an existing enterprise if the first year in which its CIT exemption period was to begin under the former LCIT had not yet begun as of January 1, 2009.

¹⁴ The Reduction Period is the period for which the Enterprise's CIT obligation is reduced by 50%.

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period¹³	50% Reduction Period¹⁴
	reverts to 22%)	projects in the following businesses: production of high-grade steel; production of energy-saving products; manufacture of machinery and equipment which services products in the agriculture, forestry, fisheries and salt production sectors; manufacture of irrigation equipment; production and refining of feed for poultry, livestock [domestic animals] and fisheries; and development of traditional trades.		
15%	The whole term of a project	Income from cultivation, husbandry and processing in the agriculture and aquaculture sectors not located in geographical areas with difficult or especially difficult socio-economic conditions.	None	None
10%	The whole term of a project	<ul style="list-style-type: none"> ▪ Income from activities in the following sectors: education and training, vocational training, health care, culture, sport, and environment; ▪ Income from projects involving investment in and commercial operation of social residential housing for sale, lease or hire-purchase to entities prescribed in Article 53 of the 2005 Law on Residential Housing; 	4 years	9 years following the Exemption Period

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period ¹³	50% Reduction Period ¹⁴
		<ul style="list-style-type: none"> <li data-bbox="634 359 1065 716">▪ Income received by the press from activities in connection with printed newspapers including advertising in printed newspapers as stipulated in the Law on Press; and income generated from certain forms of publishing as stipulated in the Law on Publishing; <li data-bbox="634 758 1065 1556">▪ Income from planting, caring for, and protecting forests; from cultivation and processing in agriculture and aquaculture in geographical areas with socio-economic difficulties; from cultivation in forestry in geographical areas with socio-economic difficulties; from producing, multiplying and hybridizing crop seeds and livestock breeds; from producing, exploiting and refining salt except for salt production which is tax exempt under Art 4.1 of the LCIT; income from the preservation of post-harvest agricultural products and preservation of agricultural, aquaculture, and food products; <li data-bbox="634 1598 1065 1839">▪ Income received by cooperatives operating in agriculture, forestry, fishery, and in salt production, except for salt production which is tax exempt under Art 4.1 of the LCIT. 		

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period ¹³	50% Reduction Period ¹⁴
	<p>15 years from the first year in which there are sales/revenues (after which the rate reverts to 20%).</p>	<ul style="list-style-type: none"> ▪ Investments of any kind in geographical locations with <u>especial</u> socio-economic difficulties, economic zones and high-tech zones; ▪ Income of high-tech enterprises and of agricultural enterprise applying high-tech in accordance with the Law on High-Tech; ▪ Income from new investment projects comprising: scientific research and technological development; application of high-tech on the list of high-tech for which incentives are granted as stipulated under the Law on High-Tech; high-tech incubation and high-tech incubator enterprises; investment in the development of qualifying high-tech as stipulated under the Law on High-Tech; investment in construction and commercial operation of high-tech incubation and high-tech incubation enterprises; investment in development of specially important State infrastructure in accordance with the law; manufacture of software products; manufacture of composite materials, various types of light building materials and of rare 	<p>4 years</p>	<p>9 years following the Exemption Period</p>

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period¹³	50% Reduction Period¹⁴
		<p>materials; production of recycled energy, clean energy and energy which can be generated from waste; development of biological technology; and protection of the environment;</p> <ul style="list-style-type: none"> ▪ Income from new investment projects in manufacturing sectors (except for manufacture of lines of goods subject to special sales tax and except for mineral mining projects) which satisfy either of the following criteria: <ul style="list-style-type: none"> ○ The project has investment capital of a minimum of VND6,000 billion and the drawdown of the entire capital is made within three years (from the date the IC is issued) and has a minimum total turnover of VND10,000 billion per year no later than three years after the date on which it (first) has turn over; or ○ The project has a minimum investment capital of VND6,000 billion and the drawdown of the entire capital is made within three years (from the date the IC is issued) and employs of more 		

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period ¹³	50% Reduction Period ¹⁴
		<p>than 3,000 employees;</p> <ul style="list-style-type: none"> ▪ Income from new investment projects for manufacture of a product on the List of supporting industrial products for which development is prioritized [and which product] satisfies one of the following criteria: <ul style="list-style-type: none"> ○ It is an industrial product which supports high-tech as defined in the Law on High-Tech; ○ It is an industrial product which supports the manufacture of products in the following industries: namely garments and textiles; leather products and footwear; electronics and informatics; automobile production and assembly; and engineering manufacture [and being] a product which, as of January 1, 2015, is unable to be produced domestically or is able to be produced domestically but is required to satisfy technical specifications of the European Union or equivalent specifications; ▪ Income from investment 		

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period ¹³	50% Reduction Period ¹⁴
		<p>projects in the manufacturing sector (except for manufacture of lines of goods subject to special consumption tax and mineral exploitation projects) having a minimum investment capital of VND12,000 billion and using technology which must be evaluated in accordance with the Law on High-Tech [and/or] the Law on Science and Technology, and drawing down total registered investment capital no later than five years after the IC date.</p>		

In addition, investors are exempt from CIT on income generated from¹⁵:

1. Cultivation, husbandry, and aquaculture and salt production received by cooperatives; income from agriculture, forestry, fisheries, and salt production in geographical areas with socio-economic difficulties or with special socio-economic difficulties received by cooperatives; income from cultivation, husbandry, and aquaculture in geographical areas with socio-economic difficulties or with special socio-economic difficulties; and income from fisheries;
2. Performance of technical services directly serving agricultural production;
3. Performance of contracts for scientific research and technological development; sale of products during a period of trial production, in accordance with the law; and products made by applying technologies for the first time in Vietnam;
4. Production and trading of goods or service activities received by enterprises with 30% or more of their average number of employees in a year being disabled people, people in post-detoxification, or who are HIV-infected, which enterprises employ an average number of 20 or more employees in a year, and this tax exemption does not apply to enterprises which operate in the finance or real estate business;

¹⁵ Article 4 of the LCIT and Article 4 of Decree 218/2013/ND-CP of the Government dated December 26, 2013.

5. Job training exclusively for ethnic minorities, disabled people, children in exceptionally difficult circumstances, and victims of social evils;
6. After-tax profits/dividends distributed from activities of capital contribution, joint venture or association with a domestic enterprise;
7. Income (financed by sponsors) used for education, scientific research, culture, art, charitable or humanitarian activities, and other social activities;
8. Transfer of certified emission reductions (“CERS”) of enterprises issued with certificates of emission reduction;
9. Performance of duties assigned by the State to the Vietnam Development Bank regarding credit investment, development, and export activities; income from lending activities to poor people and other groups of people as prescribed for by the Social Policy Bank; income of the state financial funds which operate for non-profit purposes; income received by 100% state owned organizations which are established in order to settle bad debts of Vietnamese credit organizations;
10. The portion of undistributed income earned by establishments in education and training, medical health, and other sectors which is retained for the purpose of reinvestment in those sectors as stipulated in relevant law; and the portion of income used to form undistributed assets of cooperatives established under the Law on Cooperatives; and
11. Transfer of technology in the sectors which are encouraged to transfer to any organization or individuals located in geographical areas with special socio-economic difficulties.

APPENDIX 3

BUSINESS SECTORS AND GEOGRAPHICAL LOCATIONS ELIGIBLE FOR INVESTMENT PREFERENCES

(The list below was issued in conjunction with Government Decree No. 118/20156/ND-CP (November 12, 2015) detailing implementation of the Investment Law)¹⁶

A. Activities Eligible for Investment Preferences

I. SCIENCE AND TECHNOLOGY, ELECTRONICS, MECHANICAL ENGINEERING, PRODUCTION OF IT, AND ITS MATERIALS

1. Manufacture of products on the List of important mechanical engineering products as decided by the Prime Minister.
2. Investment in research and development (R&D).
3. Production of steel billets from iron ore, high-grade steel, and alloys.
4. Production of coke coal and carbon coal.
5. Production of energy saving products.
6. Production of petrochemicals, pharmaceutical chemicals, basic chemicals, and technical plastic-rubber components [electronics].
7. Production of products with an added value of thirty (30) percent or more (in accordance with guidelines of the Ministry of Planning and Investment).
8. Manufacture of automobiles and their accessories and shipbuilding.
9. Production of electronic components, accessories, and detailed electronic parts not on List A above.
10. Manufacture of instruments, machine tools, equipment, spare parts, and machinery servicing production of agricultural, forestry, aquaculture [marine] and salt products; of food processors, and of irrigation equipment not on List A above.
11. Manufacture of materials to replace chrysotile [white asbestos].

¹⁶ When quoting the text of the legal documents in this booklet, we mostly use the English translation made by Allens.

II. AGRICULTURE

1. Cultivation and breeding, growing, harvesting, and processing pharmaceutical materials; preservation and conservation of gene sources and other types of rare and special pharmaceutical materials.
2. Production and refining of feed for cattle, poultry, and fisheries [aquatic creatures].
3. Scientific and technical services in support of cultivation of crops, animal husbandry, aquaculture, and protection of plants and livestock.
4. New construction, reconstruction, and upgrading of abattoirs; preservation and processing of poultry and cattle on a concentrated industrial scale.
5. Construction and development of concentrated raw material zones servicing industrial processing.
6. Exploitation of marine or aquaculture products.

III. ENVIRONMENTAL PROTECTION AND CONSTRUCTION OF INFRASTRUCTURE

1. Construction and development of industrial infrastructure groups.
2. Construction of apartments for workers in industrial zones, export processing zones, high-tech zones, and economic zones; construction of student hostels and residential housing for people entitled to social welfare policies; and investment in construction of functional urban zones (comprising kindergartens, schools, and hospitals) servicing the citizens.
3. Dealing with oil spills and remedying other disasters such as avalanches, landslides, damage to river and sea walls, to dams, reservoirs, and other environmental disasters; application of other technology aimed at reducing gas emission causing the glass-house affect and affecting the ozone layer.
4. Investment in commercial operation of exhibition centres for goods, logistic centres, goods storage facilities, supermarkets, and commercial centers.

IV. EDUCATION, CULTURE, SOCIALIZATION, SPORT, AND MEDICAL HEALTH

1. Investment in commercial operation of infrastructure at educational and training establishments; investment in development of non-public schools and educational establishments at all levels including pre-schools, secondary schools, and trade vocational training centres.
2. Manufacture of medical equipment and construction of storage facilities for pharmaceutical materials and reserves of medical drugs in case of natural disaster, fire, or dangerous epidemics.

3. Production of raw materials to make medicines and drugs being protection agents, insecticides, drugs for preventing and curing diseases in animals and aquatic creatures.
4. Investment in biology testing laboratories, of establishments assessing feasibility of drugs, and of establishments satisfying good practice standards for the production, preservation and testing of drugs used in forestry.
5. Investment in research and certification by scientific establishments of oriental and traditional medicines and formulation of standards for certification of oriental and traditional medicines.
6. Investment in commercial operation of sports and training establishments including sports and training clubs, stadiums, and swimming pools; and establishments producing and repairing sports training equipment and facilities.
7. Investment in commercial operation of public libraries and cinemas.
8. Investment in construction of cemeteries and crematoriums.

V. OTHER SECTORS

1. Activities of people's credit funds and of micro-finance institutions.

B. Activities Eligible for Special Investment Preferences

I. HIGH-TECH, INFORMATION TECHNOLOGY [IT], AND SUPPORT INDUSTRIES

1. Application of high-technology on the List of high-tech with priority for investment in development as decided by the Prime Minister.
2. Manufacture of products on the List of high-tech products in which development is encouraged as decided by the Prime Minister.
3. Manufacture of support industry products as decided by the Prime Minister.
4. High-tech incubation [nursery] and high-tech incubation enterprises; venture investment in high-tech development; application, research, and development of high-tech in accordance with the law on high-tech; and manufacture of bio-technological products.
5. Manufacture of important [pivotal] software products, digital items, and IT products; software services and other services remedying breakdowns in information safety and protecting confidentiality of information in accordance with the law on IT.
6. Production of recycled and clean energy and energy from processed waste.
7. Production of composite materials, various types of light building materials, and rare materials.

II. AGRICULTURE

1. Afforestation; taking care of, growing, protecting, and developing forests.
2. Cultivation and breeding, processing, and preserving agriculture, forestry, and aquaculture [marine] products.
3. Production, generation, and hybridization of seeds, animal breeds, and forestry and aquaculture seeds.
4. Production, exploitation, and refining of salt.
5. Deep sea fishing and aquaculture using up-to-date [progressive] fishing methods; logistic services for the fishing industry; construction of establishments for building fishing vessels and the construction of fishing vessels.
6. Sea salvage services.

III. ENVIRONMENTAL PROTECTION AND INFRASTRUCTURE CONSTRUCTION

1. Concentrated [centralized] collection and treatment of waste; recycling and reuse of waste.
2. Construction and commercial operation of infrastructure in industrial zones, export processing zones, high-tech zones and within functional areas of economic zones.
3. Investment in development of water plants, power plants, water supply, and discharge systems; in bridges, roads and railways; in airports, sea ports and river ports; in airports and air terminals and in other specially important infrastructure works as decided by the Prime Minister.
4. Development of public transport in urban areas.
5. Investment in construction, management, and commercial operation of markets in rural areas.

IV. CULTURE, SOCIALIZATION, SPORT AND MEDICAL HEALTH

1. Construction of social residential housing and resettlement housing.
2. Investment in commercial operation of establishments providing sanitation services to prevent and fight against epidemics.
3. Scientific research into pharmaceutical technology and bio-technology in order to manufacture new types of medicines.
4. Production of raw materials to make basic and essential medicines including medicines to prevent and fight social diseases; vaccines, medical bio-products, medicines from pharmaceutical

materials, and traditional medicines; medicines for which patents or related monopolies are about to expire; application of progressive technology and bio-technology to produce curative medicines satisfying international GMP standards; and production of packaging which directly contacts the medicine inside it.

5. Investment in establishments producing methadone.

6. Investment in commercial operation of sports centres for elite athletes and sports centres for disabled people; construction of sporting establishments with equipment and facilities for holding international standard competitions; and training establishments for specialized physical education and sports.

7. Investment in commercial operation of geriatric centres, psychiatric centres, centres for treatment of Agent Orange sickness; centers for the care of elderly people, disabled people, orphans, and homeless youth.

8. Investment in commercial operation of centres for medical treatment – education, labour, social affairs; of drug and tobacco [smoking] detoxification centres; and of HIV/AIDS treatment centres.

9. Investment in commercial operation of national museums and of people's cultural houses; singing and dancing groups performing national music and dance; theatres and film studios, film printing establishments; fine art and photography exhibition centres; production and repair of national musical instruments; renovation and conservation of museums, cultural houses and fine art schools; investment in commercial operation of establishments and villages which introduce and develop traditional crafts.

C. Geographical Locations with Socio-Economic Difficulties

The List is provided in Government Decree No. 118/2015/ND-CP (November 12, 2015). It contains geographic names and is quite extensive. If you are interested in obtaining the List, please contact us.

APPENDIX 4

LISTS OF PROJECTS THAT NEED TO BE APPROVED IN PRINCIPLE BY THE NATIONAL ASSEMBLY OR THE PRIME MINISTER BEFORE AN INVESTMENT REGISTRATION CERTIFICATE CAN BE ISSUED

I. List of projects that need to be approved in principle by the National Assembly:

1. Projects that have great impact or a potentially serious impact on the environment, including:

(a) Nuclear power plants;

(b) Projects that require changes in: the land use purpose of a national park, natural conservation zone, landscape protection zone, forest for scientific research, or an experiment involving 50 hectares or more; an upstream protective forest of 50 hectares or more; a protective forest as windbreaker, shelter from flying sand or breakwater or for reclamation from the sea or for environmental protection with an area of 500 hectares or more; and in forests for production with an area of 1,000 hectares or more;

2. Projects that require a change in the land use purpose of the land for wet rice cultivation for two harvests in an area of 500 hectares or more;

3. Projects that require the relocation and resettlement of 20,000 people or more in mountainous areas or 50,000 people or more in other areas;

4. Projects that require application of a special mechanism or policy that should be decided by the National Assembly.

II. List of projects that need to be approved in principle by the Prime Minister:

1. Projects in the following sectors, irrespective of source (domestic or foreign) and amount of invested capital:

(a) Projects that require the relocation and settlement of 10,000 people or more in mountainous areas and 20,000 people in other areas;

(b) Construction and commercial operation of airports and air transportation;

(c) Construction and commercial operation of national seaports;

(d) Exploration, production, and processing of petroleum;

(e) Business of betting and casinos;

(f) Production of cigarettes;

(g) Development of infrastructure in industrial zones, export processing zones, and functional areas in economic zones;

(h) Construction and commercial operation of golf courses.

2. Projects that are not in categories that fall into Clause 1 of this article and that have a scale of investment capital from 5,000 billion dong or more.

3. Projects of foreign investors in the following sectors: sea transportation, telecommunications services with network infrastructure, a forestation, publication, press, and establishment of a scientific and technological organization or a scientific and technological enterprise with one hundred (100) percent foreign owned capital.

APPENDIX 5

LIST OF BUSINESS LINES WHICH REQUIRE MINIMUM LEGAL CAPITAL¹⁷

No	Form	Level of legal capital requirement
I	Credit institutions	
1	Shareholding commercial bank	3,000 billion VND
2	Policy bank	5,000 billion VND
3	Development bank	5,000 billion VND
4	Foreign invested bank	3,000 billion VND
5	Foreign bank branch	15 million USD
6	People's credit fund	0.1 billion VND
II	Non banking credit institutions	
1	Finance company	500 billion VND
2	Finance leasing company	150 billion VND
III	Real estate business	
	Enterprise or cooperative	20 billion VND
IV	Security service	2 billion VND
V	Debt collection service	2 billion VND
VI	Film production	1 billion VND
VII	Operation of aviation port and airport	
1	Domestic airport operator	30 billion VND
2	International aviation port and airport operator	100 billion VND
VIII	Other Aviation services	
1	Operating in a domestic airport	10 billion VND
2	Operating in an international airport	30 billion VND
IX	International air transportation service	
1	Airline with 10 aircraft or fewer for international flights	500 billion VND
2	Airline with 10 aircraft or fewer for domestic flights	200 billion VND
3	Airline with 11 – 30 aircraft for international flights	800 billion VND
4	Airline with 11 – 30 aircraft for domestic flights	400 billion VND
5	Airline with over 30 aircraft	1,000 billion VND for international flights and 500 billion VND for domestic
6	General trading aviation	50 billion VND
X	Insurance Business	
1	Non-life insurance business	300 billion VND
2	Life insurance business	600 billion VND
3	Insurance brokerage	4 billion VND

¹⁷ This list has been compiled from many sources. We believe the list is complete, but there may be some inadvertent omissions.

XI	Commodities exchange	
1	Commodities exchange operator	150 billion VND
2	Traders on the commodities exchange	75 billion VND
3	Commodities exchange brokerage	5 billion VND
XII	Securities business	
1	Securities company <ul style="list-style-type: none"> • Securities trading • Securities brokerage • Underwriting for securities issuance • Securities investment consultancy 	100 billion VND 25 billion VND 165 billion VND 10 billion VND
2	Fund management company	25 billion VND
3	Securities investment company	50 billion VND
XIII	Importing books	5 billion VND
XIV	Multimodal transportation business	80.000 SDR ¹⁸
XV	Establishment of private university	50 billion VND (excluding land use rights value)
XVI	Labour exporting service	5 billion VND
XVII	Auditing service	5 billion VND
XVIII	Establishment of ground fixed telecommunication network	
	Without using radio frequency band and telecommunication subscription numbers <ul style="list-style-type: none"> • Within a province • Within a region • Nationwide 	5 billion VND 30 billion VND 100 billion VND
XIX	Establishment of ground mobile telecommunication network	
1	Using radio frequency channel	20 billion VND
2	Without using radio frequency channel	300 billion VND
3	Using radio frequency channel	500 billion VND
XX	Establishment of satellite fixed and mobile telecommunication network	30 billion VND

¹⁸ SDR units are Special Drawing Rights and are calculated and valued by the International Monetary Fund. The exchange rate between SDRs and Vietnamese dong is announced by the State Bank of Vietnam from time to time.

Chapter Two TAXES

Both domestic and foreign invested enterprises are subject to several taxes, including corporate income tax, import and export taxes, and value added tax. In addition, their employees are subject to personal income tax. Depending on the nature of its business, an enterprise may be subject to other taxes such as natural resource tax, special consumption tax, and foreign contractor tax. The Law on Corporate Income Tax (“LCIT”), the Law on Value Added Tax (“LVAT”) and the Law on Personal Income Tax (“LPIT”) are significant pieces of legislation regulating corporate income tax, personal income tax, and value added tax.

Tax incentives – mainly in the form of preferential tax rates, tax exemptions, and tax reductions – depend mainly on the location and type of business in which a company is engaged and on standard incentives which the Government grants. They are discussed in more detail in Chapter One.

2.1 Corporate income tax (“CIT”)

CIT calculation is based on assessable income and the CIT rate. CIT payable is assessable income multiplied by the CIT rate.

2.1.1 Assessable income

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

2.1.1.1 Taxable income

Taxable income includes business and other income¹⁹. In particular, taxable income is turnover minus deductible expenses plus other income (including income received from outside of Vietnam).

Turnover

Turnover is the total sum earned from the sale of goods or services, processing fees, surcharges, additional charges and fees to which a taxpayer is entitled.

Deductible expenses

Since January 1, 2014, under the LCIT, a taxpayer has been entitled to deduct all expenses

¹⁹ As defined in the amended LCIT, the concept of “other income” includes: income derived from capital gains, from the transfer of real estate; interest income, sale of foreign exchange; collection of bad debts which have been written off; income from liabilities in situations in which creditors have not been identified; income recaptured from previous fiscal years and other income ; income derived from the right to use/own assets (including income from intellectual property rights), income from the assignment, lease, liquidation of assets (including valuable papers); income derived from transfer of the right to contribute capital; investment projects; the right to participate in an investment project; a concession to explore, exploit, and process minerals; income deriving from intellectual properties.

(instead of only “reasonable” expenses as specified in the prior law) provided that such expenses (i) are actual and related to the taxpayer’s operation, occupational education (since January 1, 2015), and national defense and security, (ii) can be established by proper invoices, vouchers, and payment via bank transfer for invoices with a value of VND20 billion or more, and (iii) are not classified as non-deductible expenses as described below.

Non-deductible expenses

Non-deductible expenses include:

- a) Expenses that fail to meet the conditions of a deductible expense (except for damages resulting from natural calamity, epidemics, and other force majeure events);
- b) Expenses payable for administrative fines;
- c) Expenses covered by other funding sources;
- d) That part of management expenses incurred by a foreign company allocated to a permanent establishment in Vietnam, which exceed the level calculated by the allocation method under Vietnamese law;
- e) Expenses that exceed the level of provisional reserves set out by law;
- f) Interest payable to a non-credit organization or an economic entity that exceeds 150% of the base interest rate announced by SBV at the time the loan was made;
- g) Depreciation or amortization made contrary to law;
- h) Accrued expenses made contrary to law;
- i) Salary, remuneration paid to an owner of a private enterprise; remuneration paid to founding members of an enterprise who do not manage the business; salary, remuneration and other compensation recorded as expenses paid to employees but not actually paid, or which lack the vouchers, documentation required by law;
- j) Interest payable for loan capital which is used in place of the amount of charter capital which has not been paid in;
- k) Input VAT that has been credited, output VAT paid in accordance with the deduction method, corporate income tax;
- l) Financial aid (except for financial aid for education, health care, scientific studies, relief for natural disasters and construction of charitable homes, state programs applicable to geographical locations with special socio-economic difficulties);
- m) Provisions for volunteer pension funds or social security funds, contributions to volunteer pension funds for employees to the extent that the contributions exceed the statutory levels;

n) Expenses for business activities such as: banking, insurance, lotteries, securities, and other special business activities as stipulated in regulations issued by the Ministry of Finance.

2.1.1.2 Tax exempt income

To determine assessable income for any tax period, a taxpayer is entitled to deduct the following income:

a) Income from cultivation, husbandry, and aquaculture and salt production of cooperatives; income from cooperatives which engage in the agriculture, forestry, fish-breeding, salt-production businesses in geographical locations with special socio-economic difficulties or in geographical locations with socio-economic difficulties; income from cultivation, husbandry, and aquaculture received by enterprises operating in geographical locations with special socio-economic difficulties; income from fisheries activities.

b) Income from the performance of a technical service contract that directly serves agriculture.

c) Income from the performance of contracts that relate to scientific research and technological development, products made within a trial period, and products made with technologies used for the first time in Vietnam.

d) Production and trading of goods or service activities received by enterprises with 30% or more of their average number of employees in a year being disabled people, people in post-detoxification, or who are HIV-infected which enterprises employ an average number of 20 or more employees in a year, and this tax exemption does not apply to enterprises which operate in the finance or real estate business.

e) Income from job-training activities that relate exclusively to ethnic minorities, the disabled, extremely disadvantaged children, and persons involved in social evils.

f) Income received from capital contribution to joint ventures or associations with domestic enterprises, after such enterprises have paid corporate income tax.

g) Financial support received and used for education, scientific research, or cultural, artistic, charitable, humanitarian, and other social activities in Vietnam.

h) Income received from the transfer of certified emission reductions.

i) Income from the performance of duties assigned by the State to the Vietnam Development Bank regarding credit investment, development and export activities; income from lending activities to poor people and other groups of person as prescribed for by the Social Policy Bank; income from state financial funds which operate for non-profit purposes; income received by 100% state owned organizations which are established in order to settle bad debts of Vietnamese credit organizations.

j) Undistributed income of establishments which perform socialized programs in education-training, medical, and other socialized sectors, and which is used to develop

such establishments; and the portion of income used to form undistributed assets of cooperatives established under the Law on Cooperatives.

k) Income received from the transfer of technology in sectors which are encouraged to transfer to organizations, individuals which locate or reside in geographical locations with special socio-economic difficulties.

2.1.1.3 Loss carry forward

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

2.1.2 CIT rate

The current standard CIT rate is 20%. The CIT rate applicable to business establishments that conduct exploration and exploitation of oil and gas and other valuable and rare natural resources, ranges from 32% to 50%.

Preferential CIT rates of 17%, 15%, or 10% can apply if the enterprise meets certain specific criteria. The tax incentive period starts from the first year in which the enterprise generates revenue or from the date on which the enterprise receives a certificate either of a high-tech enterprise or of an agricultural enterprise applying high-tech. See Appendix 2 to Chapter One.

2.1.3 Tax exemption and reduction

Enterprises that receive preferential CIT rates because they qualify for tax incentives enjoy CIT preferences for a certain number of years. Depending on the nature of the investment, sector and location, an enterprise can enjoy a maximum 4-year period of CIT exemption, plus a 50% CIT reduction period for up to nine more years. See Appendix 2 to Chapter One.

2.1.4 Place to pay CIT

A taxpayer is required to pay CIT to the tax authority where its head office is located, but it must also allocate its CIT payments among the tax authorities where its manufacturing facilities are located. The allocation is made *pro rata* on the basis of expenses. The purpose of the rule is to distribute tax collections to provinces in which the taxpayer's manufacturing facilities are located.

2.2 Export tax and import tax

The Law on Export Tax and Import Tax of the Government (June 14, 2005), as amended by Law No. 71/2014/QH13 (November 26, 2014) amending certain provisions of the Law on Export Tax and Import Tax, provides incentives in the nature of reduced export and import taxes. Generally, all goods which enterprises are permitted to export and/or import, including goods sold to enterprises in EPZs and/or goods sold by enterprises in EPZs, are subject to export and/or import tax pursuant to the Law on Export Tax and Import Tax. There are some exemptions.

2.2.1 Export tax

Most finished products, if exported, are subject to an export tax rate of 0%. Enterprises that export in the circumstances described below are exempt from export tax:

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

2.2.2 Import tax

Enterprises are exempt from import tax in the following circumstances:

- Goods imported to create fixed assets of projects funded by Official Development Aid (ODA) of projects invested in certain business sectors²⁰ and in certain geographical areas²¹ which are eligible for preferential import tax;
- Certain equipment²² imported to create fixed assets of projects which are eligible for preferential import tax and of projects funded by ODA on hotels, offices, apartments for lease, residential housing, commercial centers, technical services, supermarkets, golf courses, resorts, entertainment areas, medical, training, cultural, financial, banking, insurances, auditing, and consulting services (tax exemption applies to first-time import. It does not apply to replacements.);
- Plant varieties and animal breeds imported for use in investment projects in agriculture, forestry or fisheries;
- Goods imported to support petroleum activities;
- Raw materials and supplies not yet available in Vietnam for direct service in the manufacture of software;
- Goods imported for direct use in scientific research and technological development (including equipment, machinery, spare-parts, materials, transportation means which cannot be made in Vietnam, technology which is not yet available domestically; and scientific magazines, books, and technological and scientific data);
- Equipment, facilities, and forms of transportation of a technological nature used to form fixed assets in connection with shipbuilding (including raw materials, materials and semi-finished products which are not yet able to be produced domestically);
- Goods imported to be processed for export for foreign parties under signed processing contracts;
- Goods which are produced, processed, recycled, or assembled in non-tariff zones without using raw materials or component parts imported from abroad and which are then “imported” into Vietnam for domestic use.

²⁰ The list of projects which are eligible for preferential import tax was issued together with Government Decree 87/2010/ND-CP dated August 13, 2010, as amended by Government Decree 12/2015/ND-CP dated February 2, 2015 (“Decree 87”).

²¹ The list of geographical areas was issued together with Government Decree 218/2013/ND-CP (December 26, 2013), as amended by Government Decree 91/2014/ND-CP dated October 1, 2014 and Government Decree 12/2015/ND-CP dated February 2, 2015 (“Decree 218”).

²² The list of equipment and facilities entitled to import tax exemption was issued together with Decree 87.

In addition, enterprises are exempt from import tax for five years after they commence production of raw materials, supplies, and components which are not yet able to be produced domestically and which are imported for production under projects on the list of domains eligible for special investment encouragement; or on the list of geographical areas with extremely difficult socio-economic conditions²³ (except for projects which produce or assemble automobiles, motorbikes, air conditioners, electric heaters, fans, irons, refrigerators, washing machines, dishwashers, disk players, stereo systems, water boilers, hairdryers, and other goods as decided by the Prime Minister from time to time);

Enterprises will be reimbursed for import tax paid on goods temporarily imported for re-export and in other cases stipulated in the Law on Export Tax and Import Tax.

2.3 Value added tax (“VAT”)

Goods and services used for production, business and consumption in Vietnam are subject to VAT, except for some goods and services which are specifically exempt.

Most organizations that produce and trade in goods and services are subject to VAT. Under the VAT law, an enterprise is responsible to pay VAT if it sells goods/provides services in Vietnam. The VAT rate on exported goods/services is 0%, as discussed in more detail below.

2.3.1 VAT calculation bases

Calculation of VAT is based on two elements: taxable price and VAT rate.

2.3.1.1 Taxable price

Taxable price is the selling price for goods sold or services rendered, prior to inclusion of VAT. The taxable price of imported goods is the border-gate import price plus import tax.

2.3.1.2 VAT rates

Currently, VAT rates are 10%, 5%, and 0%. The common rate is 10%. The 5% rate is limited to certain goods and services. The zero rate applies to:

- international transportation;
- exported goods and services (ie, goods/services consumed outside of Vietnam or in duty-free zones; or goods/services provided to foreign customers pursuant to Government regulations); and
- goods and services which are not subject to VAT.

2.3.2 VAT payable

VAT payable is calculated by the deduction method, as stipulated in the LVAT. Briefly, the deduction method means that an enterprise’s VAT payable is output VAT (VAT received) minus deductible input VAT (VAT paid).

²³ The list of geographical areas was issued together with Decree 218.

Output VAT is the taxable price of goods sold or services rendered, multiplied by the applicable VAT rate.

Deductible input VAT is determined on the basis of the amount of VAT paid by the enterprise. The amount appears on the VAT invoices that a seller issues to the enterprise.

2.3.3 Conditions to claim input VAT

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

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

2.4 Personal income tax (“PIT”)

2.4.1 PIT payers

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

2.4.2 Assessable income

The computation of assessable income may vary depending on the kind of income. For example: with regard to salary and wages, certain amounts may be deducted before determining assessable income, including a personal deduction (VND9 million per month), deduction for each dependant (VND3.6 million per month)²⁴, charitable contributions, social insurance, health insurance, and compulsory professional liability insurance.

With regard to business income, a taxpayer is entitled to deduct reasonable expenses that relate to creation of revenue, provided that the taxpayer implements the accounting regime in respect of invoices and vouchers. If a taxpayer fails to do so, the tax authorities are entitled to fix assessable income in respect of business income.

2.4.3 Income subject to PIT

Certain income is subject to PIT under the LPIT (eg, income from salary, remuneration, income from interest, dividends, sale of real estate, sale of securities, assignment of

²⁴ When the CPI changes by 20%, the deduction for each dependant will be adjusted accordingly based on the Government’s suggestion and subject to approval of the Standing Committee of the National Assembly (to be applied the following tax period).

interest in an entity, inheritance, etc.). Moreover, taxable income includes both monetary and non-monetary benefits. The term “non-monetary benefit” includes several items, including premium paid for non-compulsory insurance; membership fees; other services for individuals in healthcare, entertainment, sports and aesthetics; housing rent, electricity, water, and other related services paid by the employer, accumulated premiums paid under a life insurance policy or under other types of voluntary insurance, accumulated contributions under a voluntary pension plan contributed to by employers for employees. Under the LPIT, the following items are taxable:

- a) Business income (eg, income from producing, trading goods, or providing services; income from independent professional activities, etc.). Annual turnover of VND100 million or less is exempt;
- b) Income from salaries, wages, and similar income; allowances and subsidies (with a few exceptions); brokerage commissions, payments for participation in projects, schemes, royalties, and other remuneration; stipends paid for participation in business associations, boards of directors, control boards, management boards, associations, professional societies, and other organizations; monetary or non-monetary benefits other than salaries and wages paid by employers to or on behalf of taxpayers in any form (except for organizational membership cards for common use; transportation for common use; mid-shift meal; training to improve an employee’s knowledge and skills; per diem expenses for travel, telephone, uniform, etc.). There are some exceptions that apply only to expatriates: a one-off relocation allowance; one round trip air ticket for annual leave; tuition paid by the employer for children, through high school level; house rental paid by the employer that exceeds 15% of total taxable income; monetary or non-monetary bonuses (including securities in lieu of bonus), etc.;
- c) Income from capital investments [eg, loan interest (except interest received from banks or from life insurance policies); dividends; income that represents an increase of the value of capital contribution in case of merger, dissolution, re-structure, consolidation, or capital withdrawal)];
- d) Income from capital transfer (eg, transfer of interest in companies, cooperatives, or other entities; sale of securities, etc.);
- e) Income from transfer of real estate (eg, transfer of land use rights, transfer of land use rights, and assets attached to the land; transfer of house ownership; transfer of the right to lease a house/land/water surface, etc.);
- f) Income from winnings (eg, lottery, prizes received from commercial promotions, winnings from legal betting; winnings all forms of betting, etc.)
- g) Income from royalties (eg, use fees, assignment of rights in respect of intellectual property assets, technology transfer, etc.);
- h) Income from commercial franchises;
- i) Income from inheritance (eg, securities, real estate, interest in an entity, etc.); and
- j) Income from receipt of gifts (eg, securities, real estate, interest in an entity, etc.).

In the case of a resident, taxable income includes income generated both inside and outside of Vietnam, regardless of the place where it is paid or received.

In the case of a non-resident, taxable income includes income generated from Vietnam, again, regardless of the place where it is paid or received.

An expatriate is taxed with reference to the duration of his stay in Vietnam or the nature of his residence in Vietnam. Depending on these two factors, personal income is taxed at a partially progressive rate described at point 2.4.3.1 below or at a flat rate.

- If an expatriate stays in Vietnam for 183 days or more during a period of 12 consecutive months counting from the date of his arrival or during a calendar year, or if he leases a house with a term of more than 183 days, or if he has registered a permanent residence in Vietnam, then for tax purposes, he is considered to be a resident of Vietnam²⁵, and is taxed on his worldwide income at the partially progressive rates listed in Section 2.4.3.1.
- If an expatriate is not a resident, as defined above, his income is taxable on the basis of gross income at the following flat rates:

Income from	Rate (%)
Trading in goods	1
Services	5
Manufacturing, construction, transportation, and other businesses	2
Royalty, franchising fees (except contractual income less than VND10 million)	5
Salaries, remuneration generated from Vietnam (regardless of place of payment/receipt)	20
Capital investments (dividends/interest)	5
Inheritance, gifts, winnings, and prize	10
Sale of securities/transfer of interest in an entity	0.1
Sale of real estate	2

2.4.3.1 Tax rate for residents

- a) The tax on a resident’s business income, including salary and wages, is calculated on the basis of partially progressive rates and on average monthly assessable income.

There is no difference between a resident-expatriate and a Vietnamese taxpayer as far as tax rates are concerned. The same partially progressive rates apply equally to assessable

²⁵ If an expatriate who has a permanent residence in Vietnam or who leases a house to live in with a term of more than 183 days but in fact is present in Vietnam less than 183 days, he is still considered to be a resident of Vietnam for tax purposes unless he can prove that he is a resident of another country.

income of both Vietnamese and resident expatriate taxpayers. See table below:

Tax bracket	Annual assessable income (million VND)	Monthly assessable income (million VND)	Tax rate (%)
1	Up to 60	Up to 5	5
2	Over 60 to 120	Over 5 to 10	10
3	Over 120 to 216	Over 10 to 18	15
4	Over 216 to 384	Over 18 to 32	20
5	Over 384 to 624	Over 32 to 52	25
6	Over 624 to 960	Over 52 to 80	30
7	Over 960	Over 80	35

b) The tax on other income of a resident is determined on the basis of the type of assessable income and flat rates. See table below:

Assessable Income	Rate (%)
Royalty, franchising fees	5
Winnings and prizes	10
Capital investments (dividends/interest)	5
Inheritance and gifts	10
Capital transfer	20
Sale of securities/transfer of interest in an entity	0.1
Sale of real estate	2

c) Individuals (regardless of whether they are Vietnamese or expatriates) who work in all economic zones are entitled to a 50% reduction of their PIT.

2.4.3.2 Non-taxable compensation

The following incomes and allowances paid to employees (whether Vietnamese or expatriates) are tax free:

- Mid-shift meal within the permitted cap;
- Training to improve employee’s knowledge and skills;
- Per diem expenses for telephone, uniform, stationary, etc. within the permitted cap;
- Travel expenses for business trips;
- The positive difference between income from night-shift or overtime payment and the day shift payment or the salary payment for normal working hours;
- Allowances given to employees who work under hardship conditions in remote areas, offshore areas, etc. and in a toxic or dangerous environment;
- Allowances as set out in the Labor Code and in the Law on Social Insurance: one-off payment for delivery of a child or for adopting a child; one-off payment on retirement and monthly death gratuity, severance allowance, retrenchment allowance, unemployment allowance, etc.;
- Pension paid by the Social Insurance Fund.

Some compensation is non-taxable only to expatriates or Vietnamese working overseas:

- One round trip air ticket for annual leave;
- Tuition paid by the employer for the employee's children, through primary and secondary education level;
- Compulsory insurance paid in a foreign country.

Of course, the expatriate is obliged to provide documents and receipts (eg, employment contract, air ticket, receipt for tuition, insurance receipts, etc.).

2.4.3.3. Examples

Following are examples of the PIT obligation which applies to seven different levels of income. The presentation is on a monthly tax basis and is made in US dollars rather than Vietnamese dong. Payment, however, must be made in Vietnamese dong. In order to calculate tax rates, we have converted Vietnamese dong to US dollars in this table at the rate of US\$1 = VND22,500.

Please refer to the next page.

Taxable Income (Gross Income)	Employee reductions before Assessable Income					Assessable Income	Personal Income tax	Take-home Salary (Net Income)	Employer contribution (*)			Total cost
	Taxpayer Deduction	Social Insurance	Unemployment	Health Insurance	Total				Social Insurance	Unemployment	Health Insurance	
		(**)	(**)	(**)	Deduction				(**)	(**)	(**)	
		8%	1%	1.50%				18%				
(1)	(2) ²⁶	(3)	(4)	(5)	(6)	(7)	(8)	(9) ^[2]	(10)	(11)	(12)	(13) ^[3]
300	400	24.00	3	5	432	-	-	268.00	54	3	9	366.00
500	400	40.00	5	8	453	47.00	2.35	444.65	90	5	15	610.00
750	400	60.00	8	11	479	271.00	15.99	655.01	135	8	23	916.00
1,000	400	80.00	10	15	505	495.00	40.92	854.08	180	10	30	1,220.00
2,000	400	82.00	10	15	507	1,493.00	228.81	1,664.19	184	10	31	2,225.00
2,500	400	82.00	10	15	507	1,993.00	353.81	2,039.19	184	10	31	2,725.00
5,000	400	82.00	10	15	507	4,493.00	1,134.77	3,758.23	184	10	31	5,225.00

²⁶ Every taxpayer is entitled to a deduction of VND 9 million (equivalent to US \$400) per month when calculating his assessable income for his own personal expenses.

Note that:

(*) There is no statutory requirement for an employer to contribute/deduct social and unemployment insurance of an expatriate.

(**) The Law on Social Insurance and the Law on Health Insurance set a ceiling on the salary on which contributions by both employers and employees will be calculated and beyond which no contribution need be made. Contributions and payment of social insurance benefits and health insurance are based on employees’ monthly salary. If total salary on which contributions are based is higher than twenty times the Government’s basic salary²⁷, then for purposes of calculating social and health insurance contributions, salary will be deemed to be fixed at twenty times the basic salary. Currently, basic salary is VND1,150,000 per month.²⁸ The maximum contribution salary fixed as of July 1, 2013 is VND23,000,000.

2.5 Tax treaties

Vietnam has signed treaties in avoidance of double taxation with many countries. Expatriates living in Vietnam who are residents of any treaty partners are allowed to deduct tax paid in their home country from their Vietnamese tax obligation. Certain conditions have to be met in order to qualify. Of course, treaties in avoidance of double taxation affect many rules and regulations that regulate CIT and other forms of taxation.

Following is a list of countries that have signed treaties in avoidance of double taxation, up to August 1, 2015.²⁹

No.	Country	Date Signed	Effective date
1	Algeria	6/12/1999 Algiers	Not yet effective
2	Australia	13/10/1992 Hanoi	30/12/1992
3	Austria	2/6/2008 Vienna	01/01/2010
4	Bangladesh	22/3/2004 Dhaka	19/08/2005
5	Belarus	24/4/1997 Hanoi	26/12/1997
6	Belgium	28/2/1996 Hanoi Amended Protocol: 12/3/2012 Hanoi	25/06/1999 The amended Protocol: Not effective yet

²⁷ The Government’s basic salary is the minimum salary fixed by the Government from time to time. It is a minimum base on which government salaries and allowances are fixed.

²⁸ Article 3.2 of Government Decree 66/2013/ND-CP dated June 27, 2013.

²⁹ Based on the tax authorities’ link:

http://www.gdt.gov.vn/wps/portal!/ut/p/z1/tVPLTsMwEPwVLj1a3tpuEh_TB2nSBxRI0vhSJY7TBmjaglUeX48jQAKhNkIFH2yvtDuzsx5jgedYVom-XKa63FTpvYkTYS16s1EvGkUATnjZB38ysaPQ7wPc2Dh-T_DeIbPHJoF5AD7rXkyHvVkbflrF13pvxgj4Ay_oTq8GbTjvfNTDgeVCU32EBRay0lu9wsky12dyU2IV6RY8pgsTt0DvzLaqb1buUOVkKZKUK8SkQxFPmUIOpnxhJM_sgtRwW1nmOOEFzRWRBeIyI4hZ7Rw5GXBkZzxTdkexnMhP-YfnI46ri2u-hgE2YSSmB_tgDwHD8b5UTzisNg9r86TXv5Q4bGSwTmQ4Cu-N4H_hyYnwwXeL_rSA-UP17W4nXGPU2pzPGs__wqnbdrIuHfqC7orJgLIk2L92p6g-xu4biNZ2Wg!!/dz/d5/L2dBISevZ0FBIS9nQSEh/

No.	Country	Date Signed	Effective date
7	Bulgaria	24/5/1996 Hanoi	04/10/1996
8	Canada	14/11/1997 Hanoi	16/12/1998
9	China	17/5/1995 Beijing	18/10/1996
10	Cuba	26/10/2002 Havana	26/06/2003
11	Czech Republic	23/5/1997 Hanoi	03/02/1998
12	Denmark	31/5/1995 Copenhagen	24/04/1996
13	Egypt	6/3/2006 Cairo	Not yet effective
14	Finland	21/11/2001 Helsinki	26/12/2002
15	France	10/02/1993 Hanoi	01/07/1994
16	Germany	16/11/1995 Hanoi	27/12/1996
17	Hong Kong	16/12/2008 Hanoi Amended Protocol: 13/01/2014 Hong Kong	12/08/2009 The amended Protocol: Not effective yet
18	Hungary	26/8/1994 Budapest	30/06/1995
19	Iceland	3/4/2002 Hanoi	27/12/2002
20	India	7/9/1994 Hanoi	02/02/1995
21	Indonesia	22/12/1997 Hanoi	10/02/1999
22	Iran	14/10/2014 Teheran	Not yet effective
23	Ireland	10/3/2008 Dublin	01/01/2009
24	Israel	4/8/2009 Hanoi	24/12/2009
25	Italy	26/11/1996 Hanoi	20/02/1999
26	Japan	24/10/1995 Hanoi	31/12/1995
27	Kazakhstan	31/10/2011 Hanoi	Not yet effective
28	Korea (North)	3/5/2002 Pyongyang	12/08/2007
29	Korea (South)	20/5/1994 Hanoi	11/09/1994
30	Kuwait	10/03/2009 Kuwait	11/02/2011
31	Laos	14/1/1996 Vientiane	30/9/1996
32	Luxembourg	4/3/1996 Hanoi	19/5/1998
33	Macedonia	15/10/2014 Skopje	Not yet effective
34	Malaysia	7/9/1995 Kuala Lumpur	13/8/1996
35	Mongolia	9/5/1996 Ulan Bator	11/10/1996
36	Morocco	24/11/2008 Hanoi	12/09/2012
37	Mozambique	3/9/2010 Hanoi	Not yet effective
38	Myanmar	12/5/2000 Yangon	12/8/2003
39	Negara Brunei Darussalam	16/8/2007 Bandar Seri Begawan	01/01/2009
40	New Zealand	05/8/2013 Hanoi	05/5/2014
41	Norway	1/6/1995 Oslo	14/4/1996
42	Oman	18/4/2008 Hanoi	01/01/2009
43	Pakistan	25/3/2004 Islamabad	04/2/2005
44	Palestine	06/11/2013 Hanoi	02/4/2014
45	Philippines	14/11/2001 Manila	29/9/2003
46	Poland	31/8/1994 Warsaw	28/1/1995
47	Portugal	03/6/2015 Lisbon	Not yet effective
48	Qatar	8/03/2009	16/3/2011
49	Republic of Azerbaijan	19/5/2014 Hanoi	Not yet effective
50	Republic of Serbia	01/3/2013 Hanoi	Not yet effective

No.	Country	Date Signed	Effective date
51	Republic of Seychelles	4/10/2005 Hanoi	07/7/2006
52	Republic of Uruguay	10/12/2013 Montevideo	Not yet effective
53	Romania	8/7/1995 Hanoi	24/4/1996
54	Russia	27/5/1993 Hanoi	21/3/1996
55	San Marino	14/02/2013 Roma	Not yet effective
56	Saudi Arabia	10/4/2010 Riyadh	01/02/2011
57	Singapore	02/3/1994 Hanoi Amended Protocol: 12/9/2012 Singapore	09/9/1994 11/01/2013
58	Slovak Republic	27/10/2008 Hanoi	29/7/2009
59	Spain	07/3/2005 Hanoi	22/12/2005
60	Sri Lanka	26/10/2005 Hanoi	28/9/2006
61	Sweden	24/3/1994 Stockholm	08/8/1994
62	Switzerland	6/5/1996 Hanoi	12/10/1997
63	Taiwan	6/4/1998 Hanoi	06/5/1998
64	Thailand	23/12/1992 Hanoi	29/12/1992
65	Tunisia	13/4/2010 Tunis	06/3/2013
66	Turkey	08/7/2014 Ankara	Not yet effective
67	The Netherlands	24/1/1995 Hague	25/10/1995
68	UAE	16/2/2009 Dubai	12/4/2010
69	Ukraine	08/4/1996 Hanoi	22/11/1996
70	United Kingdom	09/4/1994 Hanoi	15/12/1994
71	United States	07/7/2015 Washington	Not yet effective
72	Uzbekistan	28/3/1996 Hanoi	16/8/1996
73	Venezuela	20/11/2008 Caracas	26/5/2009

Chapter Three

ENVIRONMENTAL CONSIDERATIONS

In this Chapter, we provide an overview of environmental legislation. While environmental legislation is not yet fully developed, Vietnam pays attention to protection of the environment. Foreign investors should find the discussion helpful in understanding the environmental framework.

3.1 Environmental legislation

Although the 1993 Law on Environmental Protection and the subsequent 2006 Law on Environment Protection created a legal framework for Vietnam to protect the environment, it revealed limitations that had to be addressed amid the country's efforts to boost industrialization, modernization, and Vietnam's global economic integration. To improve protection of the environment, Vietnam adopted a new Law on Environmental Protection with effect from January 1, 2015. It replaced the 2006 Law.

As a normal practice, the new law required implementing regulations. There are a number of implementing documents. Decree 19/2015/ND-CP of the Government (February 14, 2015) ("Decree 19") detailing and guiding implementation of a number of articles of the Law on Environmental Protection; Decree 179/2013/NĐ-CP of the Government (November 14, 2013) ("Decree 179") on sanctioning administrative violations in environmental protection; Decree 18/2015/NĐ-CP (February 14, 2015) ("Decree 18") regulating strategic evaluation on environmental impact, commitment to environmental protection;; Circular 27/2015/TT-BTNMT of the Ministry of Natural Resources and Environment (May 29, 2015) ("Circular 27") implementing Strategic Environmental Assessments, Environmental Impact Assessment Reports and Environmental Protection Undertakings; Circular 26/2015/TT-BTNMT of the MNRE (May 28, 2015) ("Circular 26") regulating detailed environmental protection, simple environmental protection; Circular 41/2015/TT-BTNMT promulgated by the Ministry of Natural Resources and Environment (9 September 2015) on environmental protection in import of scrap for use as raw production materials; Circular 25/2009/TT-BTNMT of MNRE (November 16, 2009) ("Circular 25") promulgating National Technical Regulations on the Environment; Circular 32/2013/TT-BTNMT of MNRE (October 25, 2013) ("Circular 32") promulgating National Technical Regulations on the Environment; Circular 47/2011/TT-BTNMT of MNRE (December 28, 2011) ("Circular 47") also on National Technical Regulations on the Environment.

In addition, there are some other specific provisions, such as: Decree 59/2007/ND-CP of the Government (April 9, 2007) ("Decree 59") on Management of Solid Wastes; Decree 38/2015/ND-CP of the Government (April 24, 2015) ("Decree 38") on management of waste and discarded materials; Circular 36/2015/TT-BTNMT of MNRE (June 30, 2015) ("Circular 36") management of hazardous wastes; Circular 35/2015/TT-BTNMT of the Minister of MNRE (June 30, 2015) providing for the environmental protection of

economic zones, industrial parks, export processing zones and hi-tech parks (“Circular 35”)

3.2 State management agencies

The Ministry of Natural Resources and Environment (“MNRE”) is the primary regulatory body responsible for protecting the environment under the Law on Environmental Protection. Its responsibilities include:

- Submitting to the Government for promulgation, or itself promulgating and implementing detailed laws and regulations to protect the environment;
- Submitting to the Government for decision national policies, strategies, and plans on environmental protection;
- Establishing and regulating a system of environmental standards;
- Creating plans to combat environmental degradation; and
- Performing uniform management of the evaluation and approval of environmental impact assessment reports and registration of environmental protection undertakings nationwide; organizing the evaluation and approval of environmental impact assessment reports; guiding the registration of environmental-friendly establishments and products and granting environmental standard conformity certificates.

While it is MNRE that is primarily responsible for regulating protection of the environment, a number of other agencies are also involved. Local environmental authorities, local governments, and non-governmental entities also play a major role in monitoring and enforcing environmental protection policies within their jurisdictions.

3.3 Enterprises and environmental obligations

Any Vietnamese or foreign individual or organization that invests in Vietnam must comply with Vietnam’s Law on Environmental Protection. Although Vietnam is a developing country, in practice, it seems to take seriously the need to protect the environment. Although there are certainly lapses, Vietnam does pay attention, at least to the large industrial environmental issues, at both a local and national level.

The Law on Environmental Protection requires that certain foreign investors prepare either an Environmental Impact Assessment Report (“EIAR”) or an Environmental Protection Undertaking (“EPU”) for their projects, depending on the importance and level of environmental impact of the project. An EIAR must be submitted to the appropriate authority for appraisal, while an EPU need only be registered.

Under Article 19.2 of the Law on Environmental Protection, an EIAR must be prepared concurrently with the feasibility study of a project. The law does not clearly state when an EIAR must be submitted. Based on the Investment Law and conversations with officials of the HCM City DPI – the licensing authority – investors may submit an EIAR after they receive their investment certificate. In other words, an EIAR is required only after an investment certificate is issued. Depending on the nature of each project, the appropriate authority to appraise an EIAR can be the MNRE, or a ministry, government agency, or

provincial-level people's committee. The appropriate authority appoints a council to perform the actual appraisal.

An EPU is simpler than an EIAR. An EPU is registered with the district-level people's committee. That body, when necessary, may authorize commune-level people's committees to issue a certificate of registration and the investor may proceed with the activity. An EPU is also normally required only after an investment certificate is issued.

Investors must comply with Vietnam's environmental laws and regulations. Violation may result in penalties, the most severe of which is the withdrawal of the investment certificate. Investors are subject to civil and criminal penalties (see Section 3.8 below). At the same time, incentives are provided to those that employ technological innovations to limit pollution. Investors that employ environmentally friendly technology in otherwise polluting industries will find it easier to obtain an investment certificate.

3.4 Building a factory: compulsory environmentally friendly facilities

In order for a project to satisfy environmental requirements, as mentioned above, the investor must prepare either an EIAR or an EPU, depending on the importance of the project.

Projects for which an EIAR must be prepared are specified in Appendix II to Decree 18 irrespective of the location of the projects. Following are several examples:

- Projects that need National Assembly's or Prime Minister's approval;
- Projects using national park land, wildlife sanctuaries, world heritage sites, biosphere reserves; projects using historic-cultural sites or national scenic sights;
- Projects involving deforestation; change in the use of forested land; changes in the use of paddy land;
- Projects relating to construction; construction materials;
- Projects relating to transportation;
- Projects relating to power, radioactive substances;
- Projects relating to telecommunications facilities;
- Projects relating to irrigation, forestation and forest exploitation, minerals;
- Projects relating to oil and gas; waste treatment;
- Projects relating to mechanical and metallurgy matters;
- Projects relating to wood processing, glass production, pottery, food and drink processing plants; farm products processing plants, poultry, aquatic products processing plants;
- Projects relating to chemical fertilizer plants;
- Projects involving paper and stationery production;
- Projects relating to chemical substances, pharmaceutical products, cosmetics, dyeing textiles and garments.

We do not discuss EIAR considerations in great detail, but a number of projects will be affected.

Investors in projects other than those for which an EIAR is required must register an EPU.

An EPU registration includes: location, form and scale of manufacturing business and raw materials, fuel that will be used, types of waste produced, and an “undertaking to apply measures aimed at minimizing and treating wastes and to comply strictly with the provisions of the Law on Environmental Protection.” Unlike procedures for approval of an EIAR, as mentioned above, an EPU need only be registered. The registration procedure is quite simple. An EPU registration serves as a basis for the state to inspect the factory’s design, construction, and operation.

3.5 Application of Vietnamese environmental standards

Environmental standards refer to the permitted parameters of the quality of the surrounding environment and the nature and content of pollutants contained in wastes. The standards are set by the responsible state agencies as a basis for management and protection of the environment.

All investment projects in Vietnam must apply Vietnamese environmental standards issued by MNRE. Some provinces or cities have issued their own environmental standards; those standards may be applied, provided they are more strict than those issued by MNRE. Vietnam’s environmental standards apply mainly to air quality, water quality, noise, vibration, and soil quality.

In case Vietnam’s environmental standards are silent on a particular quality measure, an investor may obtain written permission from MNRE to apply environmental standards of other advanced countries in that area. Generally, obtaining such permission is not difficult.

3.6 Responsibility of environmental protection of investor in production, business and service activities

According to the Law on Environmental Protection, every individual and organization is responsible to:

- Comply with the Law on Environmental Protection;
- Take such environmental protection measures as are required in an EIAR or EPU and satisfy environmental standards;
- Prevent and limit any adverse impact on the environment caused by its activities;
- Remedy environmental pollution caused by its activities;
- Disseminate, educate, and raise environmental protection awareness among its employees;
- Comply with requirements of environmental reporting;
- Observe environmental protection, supervision, and inspection regimes;
- Pay environmental tax and environmental protection fees. An environmental tax is applicable to any individual, organization that produces and trades in products that have a long-term adverse impact on the environment and human life.

3.7 Investor's responsibility for environmental protection in case of imported products

Imported machinery, equipment, means of transportation, materials, fuels, chemicals, and other imported products must satisfy environmental standards.

The Law on Environmental Protection prohibits an enterprise from importing new or used machinery, equipment, means of transportation, materials, fuels, chemicals, and other kinds of products in the following cases:

- Machinery, equipment, and means of transportation do not meet environmental standards;
- Machinery, equipment, and means of transportation are intended for scrap;
- Materials, fuels, chemicals are on a list of substances that are prohibited from import;
- Machinery, equipment, and means of transportation are contaminated with radioactive substances, pathogenic microbes, or other poisons;
- Foods, medicines are either out of date or do not satisfy standards of hygiene or safety.

3.8 Corporate liability in respect of environmental management

According to the Law on Environmental Protection, insurance for environmental damage is compulsory for organizations that engage in activities that have the potential to cause large-scale environmental damage.

The Law on Environmental Protection specifically discusses handling violations. Entities that violate the Law, depending on the nature and severity of their violations, may be administratively sanctioned. Sanctions include warnings, monetary fines, revocation of an investment certificate, or criminal penalties. Moreover, if an entity's violations cause environmental pollution or degradation that damages other individuals or organizations, it may be required to provide remedies, rehabilitate the environment, and pay compensation. Compensation for environmental damage is handled on the basis of negotiations between parties. In case negotiations fail, the parties may request settlement by arbitration, or they may initiate lawsuits.

Polluters may also face criminal penalties. These penalties are stated in the Penal Code. The most severe sentence for a polluter has been dramatically increased. It is now seven years imprisonment under the Penal Code 2015 effective July 1, 2016. In addition to these penalties, polluters shall be fined up to VND3,000,000,000 (equivalent to roughly US\$133,334) for individual and VND10,000,000,000 (equivalent to roughly US\$444.445) for commercial entities.

Chapter Four

LAND AND CONSTRUCTION

In this Chapter, we discuss a number of legal and practical issues to acquire land to construct a factory. This Chapter does not discuss the special rules that apply to acquire land for development and for resale or sublease.

4.1 Foreign invested enterprises (“FIEs”) and Land Use Rights (“LURs”)

In Vietnam, land cannot be owned either by individuals or by entities, whether they are Vietnamese or foreign. The Constitution provides that land is owned by the entire people and that the State administers it on their behalf. In its exercise of the people’s ownership rights, the State *allocates* [ie, the State gives a piece of land to a land user to use for a definite or an indefinite period of time, with or without the need to pay a land use fee (levy)] or *leases* a piece of land to individuals, households, or entities to use in accordance with the Land Law and its implementing regulations.

Any individual or entity to which a piece of land has been allocated or leased must use the land for the purposes stipulated in the land allocation decision or in the land lease. After being allocated or leased a parcel of land, or after a land user receives a piece of land (land use rights) transferred from others, the land user is entitled to receive a Certificate of Land Use Rights, Residential House Ownership, and Ownership of Other Assets Attached to the Land (“LURs Certificate”) granted by a competent State agency.³⁰ An LURs Certificate permits a land user to protect its rights and interests. Even though individuals and entities do not have outright ownership of land, when they receive LURs, they have basic control over the land and are entitled to exercise the right to use, transfer, mortgage, lease, and many other rights that are associated with land ownership.

Land users include any individual or entity that has been allocated or leased land, or that has had its LURs recognized by the State, or that has received its LURs through transfer.

The rights and obligations of a land user that has been allocated land by the State are different from those of a land user that has been leased land from the State or that leases or subleases land from others. Generally speaking, each type of land user may have different ways to obtain LURs of a specific parcel of land. For example, Vietnamese individuals and entities can receive their LURs by transfer from another LURs holder. FIEs can receive their LURs, in some cases, by being leased or subleased land from others who are permitted by law to lease or sublease land to them. An FIE might also receive LURs as contribution of capital from a local enterprise. This mode has features of both a lease and

³⁰ The name of this Certificate of Title has been changed several times. Before December 10, 2009, there were two different certificates: Land Use Right Certificate and House Ownership Certificate (or House Ownership and Land Use Right Certificate if the owner of the house is also the one who has the land use right). Currently, the land user and owner of houses or owner of other assets attached to the land is issued a Certificate called Certificate of Land Use Rights, Residential House Ownership, and Ownership of Other Assets Attached to the Land. The Certificate will clearly state information on whether the land user has the right to use such piece of land by being allocated by the State or by being leased by others and whether there is any residential house or any other assets affixed to the land.

of capital contribution. However, an FIE is not allowed to receive LURs transferred from another LURs holder.

Land users including a Vietnamese entity or an FIE with an investment project for construction of residential houses for sale or for lease will be allocated land by the State and pay land use fees. If the project is to construct underground works not for business purposes, land users will be allocated land by the State without collection of land use fees. Land users carrying out an investment project for other business purposes will be leased land by the State and may select to pay rent either annually or in a lump sum for the entire term of the lease.

The means by which an FIE can secure land to implement its project vary slightly depending on the location of the project:

- An FIE that requires land outside an industrial zone, a hi-tech zone, or an economic zone to construct a factory or a commercial building for its own use may either: lease land from the State or lease or sublease land from overseas Vietnamese or domestic economic entities that are permitted to sublease land. In the latter case, they may do so only if there is already construction work or infrastructure affixed to the land. An FIE may also sublease land (on which infrastructure has already been built) from other FIEs, as long as the FIE lessor is permitted to sublease land.
- An FIE that has a license to develop an industrial zone can lease land from the State. An FIE that puts its factory in an industrial zone may also choose to sublease land from the industrial zone developer or sublease land with infrastructure from other enterprises located in the zone if a sublease is approved by the industrial zone developer.
- An FIE that has a license to develop a hi-tech zone or an economic zone can lease the land from the zone management board.
- Finally, the foreign investor may form a joint-venture with a Vietnamese company, and the Vietnamese company may contribute its LURs as capital for use by the new enterprise. There are many conditions and exceptions to this general statement, and each case must be separately examined.

An FIE will be granted an LURs Certificate if it receives land from the State or subleases land in industrial zones, in hi-tech zones, or some specific areas in economic zones. The term of validity of the land lease and of the LURs Certificate of an enterprise coincides with the term of the investment certificate but may not exceed fifty (50) years in normal cases and seventy (70) years in special cases. If an FIE leases land in an industrial zone, the duration of the lease may depend on the duration of the industrial zone's own investment certificate.

Besides being the most vital land document that the enterprise might possess, the LURs Certificate brings an added value to the FIE. The FIE can mortgage its LURs with a Vietnamese credit organization, a branch of a foreign bank, or with a joint venture bank

licensed to operate in Vietnam when it pays the land use fees (in case the land is allocated by the State) or the rent in a lump sum for the entire term of the lease (if it leases land from the State or subleases land from the industrial zone developer). There are specific laws which detail the method of calculating the value of LURs and which outline mortgage procedures. There are certain limitations, but we do not discuss these limitations here. In order to mortgage LURs based on a lease, the main requirement is that rent for the entire term of the lease has been paid.

4.2 Choosing and renting a land site: outside vs. inside an Industrial Zone (“IZ”)/Export Processing Zone (“EZ”)

A foreign investor may lease a piece of land inside or outside of an IZ/EZ. There are advantages and disadvantages attached to each option.

4.2.1 Location outside an IZ/EZ

If an investor decides to locate its project outside an IZ/EZ, it may choose a location which is best suited to its needs such as: close to an airport or a seaport, close to its major suppliers or its major customers, or to secure some other advantage. However, the investor needs to assure itself that its project, once it is built, will be in line with the State’s development plan for that area. It must also clear that parcel of land and must compensate inhabitants or owners of any properties existing on the land. We discuss land clearance issues in more detail below, but it is a difficult exercise, and strong support from the local government is very important.

If an investor decides to lease a factory that has already been built instead of leasing a piece of land in order to construct its own factory, it may lease from the owner of the factory. In such case, the investor must ensure that the lessor owns the factory or that the lessor is allowed by law to sublease that property.

In addition, before leasing a piece of land for a factory outside an IZ/EZ, the investor should check with the licensing authority to ensure that the location of the factory is acceptable, meaning it does not violate any zoning plan. Factories likely to pollute the environment or cause noise may not be allowed to locate in populated areas.

Furthermore, there are infrastructure issues to consider such as: clean water, stable power, waste disposal, and a waste water treatment system. If they are lacking, can existing facilities be augmented? For example, should a power plant be built or can the enterprise tap into a nearby private power source? What is the volume of available clean water?

Although an enterprise located outside an IZ/EZ will not receive benefits available to an enterprise located in an IZ/EZ, discussed below, it can achieve some benefits:

- If an enterprise located outside an IZ/EZ leases land from the State, the local provincial Department of Natural Resources and Environment will decide the rent, based on a the land rental list issued by the local provincial People’s Committee on the date of the decision on leasing the land. An FIE may also obtain the land through a tender, and in such a case the rent will be decided by bidding.

- Some provinces provide full rent holidays.

4.2.2 Location inside an IZ/EZ

Locating inside an IZ eliminates any land clearance problems. The enterprise will be located in a zone in which land lots have already been systematically subdivided. The IZ infrastructure is well established, properly maintained, and supplied with wastewater treatment system, security, roadways, and sometimes with a private power supply. Some IZs have on-site Customs clearance. The investor may be entitled to negotiate some commercial terms with the IZ developer. Leases, however, are standardized and many non-commercial terms may be more difficult to negotiate. In certain cases, investment in an IZ is encouraged, and some incentives, mainly tax incentives, are available. Moreover, locating in an IZ eliminates the concern of whether the factory fits into the local development plan.

IZ developers may construct factories to investors' specifications. It may or may not be hard to find a small piece of land or small factory in an IZ. Of course, land within an IZ is more expensive, and the lease term will be limited to the lease term of the land as leased by the IZ developer.

Besides the benefits to which an investor is entitled if it locates in an IZ, if an investor located in an EZ, it may also enjoy the following:

- Generally speaking, in some areas of an EZ, the land has been cleared, and there are no occupants to compensate.
- It will be entitled to separate investment incentives applicable to areas with special socio-economic difficulties (there is a list of remote areas that have special socio-economic difficulties).
- It will have the opportunity to negotiate an exemption and reduction of land rent for a certain period of time.

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

4.3 Building a factory outside of an IZ

As mentioned, more issues arise if one builds a factory outside of an IZ. If investors want to lease land from the State, the threshold task in many instances is land clearance. By law, it is the State's responsibility to relocate and compensate residents and to clear the land in order to lease it to investors. Once land is approved for lease by the State, the local People's Committee is responsible to organize both the compensation and the relocation process. The investors often advance the cost of land clearance. That amount is then deducted from the rent that investors must pay to the State. The basic unit price for

relocation compensation is fixed according to State regulations, but negotiation may often still be required. If the foreign investor pays compensation that exceeds the government guidelines, there is an issue of whether the excess can be set off against the rent.

If problems occur, it will most often be during the land clearance stage. The most common difficulty is usually that residents do not want to move because they are not satisfied with the compensation, typically because they do not like the new location or sometimes because the new location is not ready. Even though the Land Law supports State involvement in land clearance, in practice an investor needs to pay compensation to the existing user of the land to speed up the land clearance process. After approvals for land recovery are issued along with a compensation program, site clearance plans and the resettlement of occupants must proceed according to the land recovery decision. If a land user fails to comply with the decision, the People's Committee may force relocation.

A foreign investor should be sure to examine the site clearance plan for each location it considers. If the local People's Committee plays a strong and active role, as it should, problems can be mitigated. It will be important to secure assistance from the People's Committee.

Leasing land directly from the State may result in lower rent. Because the State tends to reserve land for large and more important projects, obtaining a lease from the State can be difficult, especially for smaller projects. In order to lease land directly from the State, investors must satisfy certain criteria.

If investors prefer to lease land from enterprises, the investor must negotiate directly with the holder of the LURs Certificate. This is much closer to simple, unregulated economic negotiation. It is important to ensure that the lessors are legally allowed to lease the land and ascertain what infrastructure is available on the land.

4.4 Obtaining a construction permit

An investor must obtain a construction permit before building a factory. The investor may authorize its contractor to obtain the permit on its behalf, and this is often done. In most cases, the zone authority is competent to issue the construction permit. Otherwise, the local construction department under the provincial People's Committee has the responsibility to do so. A construction permit can usually be expected within 20 days from submission of an application.

A construction permit will not be required in a number of special cases, for example:

- Secret State works; works to be constructed pursuant to an emergency order; temporary works to service construction of the main works;
- Construction works built along a route which does not pass through an urban area and which comply with the construction master plan;
- Repairs or improvement and interior installation of equipment which does not change the architecture, weight-bearing structure, or safety of the works;

- Technical infrastructure works which only require formulation of an eco-technical report and separate dwelling houses in remote and distant regions for which there is no approved rural residential master plan (master plan on construction of new rural communes).

4.5 Selecting a contractor

A 100% FIE is not required to invite bids in order to select a contractor. A 100% FIE may select any contractor it wishes. However, the contractor must be qualified under the law of Vietnam.

In the case of a joint venture FIE, if the project contains 30% or more state capital, the FIE must invite bids to select the contractor.

4.6 Construction agreements

A construction agreement between an enterprise and a contractor (a legal entity) is a commercial contract. In addition, foreign contractors can be used. For projects performed by international companies, international contract formats are quite common. There is also a model construction agreement provided by law that contains compulsory provisions.

A construction agreement can have special provisions in respect of governing law, place of arbitration, and the arbitration rules under which a dispute will be resolved. Vietnam is a signatory of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and is developing a record of recognizing foreign arbitral awards. However, because foreign awards are not automatically enforced in Vietnam, there may be a number of obstacles to efficient enforcement. The parties will need to go through a two-part enforcement process: first, it will need to have the award recognized by a competent Vietnamese court; second, once recognized, the award may then be enforced.

Foreign court judgments are generally not enforceable in Vietnam, except in cases where Vietnam and the country in which the court judgment is issued have signed or acceded to an international treaty on judicial assistance in civil procedures. Such countries are mostly former Soviet bloc countries. Enforcement is also possible if judicial assistance in civil procedures is accepted by the two countries on the principle of reciprocity. The outcome of litigation in Vietnamese courts is sometimes unpredictable.

4.7 Approval of completion of construction work

Generally speaking, a construction project can be divided into several phases, each of which is stated in the construction agreement. Upon completion of the whole project, the investor must invite its design consultants, its contractors, and its supervising consultants to witness the commissioning of a project. Minutes of commissioning and acceptance are executed by all parties. Such minutes constitute a legal document and allow the investor to bring the project into operation. In addition, they serve as the basis on which the investor can prove the contribution of its investment capital and on which the FIE can register its ownership of the building.

4.8 Certification of ownership of a factory

The FIE will be issued an LURs Certificate upon submission of an application dossier to the provincial Land Registration Office under the Department of Natural Resources and Environment where the factory is located. This LURs Certificate will record the status of the FIE's LURs and the ownership of the FIE over the factory or the construction work which has been developed on the leased land. The FIE may mortgage its factory to credit institutions licensed to operate in Vietnam. If the FIE has paid the rent for the land to which the factory is affixed in a lump sum upfront for the entire lease term, it can also mortgage the LURs as well as the factory affixed to the land but only at a credit institution licensed to operate in Vietnam.

4.9 The right of foreign organizations to purchase and own residential houses in Vietnam

A foreign organization including FIEs, FIE branches or representative offices, foreign investment funds, and foreign bank branches in Vietnam are entitled to buy and own houses in order to provide accommodations for their employees.

A foreign organization must meet certain conditions in order to buy/own houses: (i) it must have an investment certificate and (ii) it must not be licensed to operate in the real estate sector.

A foreign individual may buy and own houses in Vietnam if he is permitted entry into Vietnam. Foreign individuals may own houses in Vietnam for the maximum period of 50 years, and such period may be extended.

A foreign organization or foreign individuals are entitled to buy and own houses, including villas and townhouses with attached land, apartments, or condominiums in commercial residential projects. The number of apartments/condos is limited to 30% of the total number of apartments/condos in one apartment building. The number of separate houses is limited to 250 villas/town-houses in an area having a population size equivalent to the administrative level of a ward.

In addition to the outright purchase of a house, a foreigner may own a house through hire-purchase, gift, or inheritance. However, a foreign organization is entitled to use such houses only for residential purposes. Other purposes (eg, leasing, office use, etc.) are not permitted. Payment for purchase or hire-purchase of houses must be made through a licensed credit institution in Vietnam (eg, a bank).

The term of ownership that applies to a foreign organization is limited to the investment term defined in that foreign organization's investment certificate, including the extended term.

Chapter Five LABOR

This Chapter highlights several basic concepts from the substantial body of law that governs workplace relationships and employment conditions.

5.1 Brief comments on Vietnam's labor force

Vietnam has a young labor force. The level of experience and expertise in certain areas is still low. However, literacy is high, and computer literacy in particular has quickly developed. Young Vietnamese are dynamic, eager, and quick to learn and acquire new skills.

A near universal view within the foreign manufacturing community is that Vietnamese workers have good assembly skills. They are attentive to detail, especially in areas that require a high level of accuracy.

5.2 State management agencies

The Ministry of Labor, War Invalids, and Social Affairs ("MOLISA") acts on behalf of the State in managing labor and the labor-related activities of enterprises. MOLISA formulates and enforces policies on the salary system and the management and development of the labor force. It sets out general employment rules applicable to all enterprises.

Acting under Departments of Labor, War Invalids, and Social Affairs ("DOLISA"), People's Committees are responsible for management of labor in their locale. They implement labor rules and monitor compliance. They follow labor issues and report to the MOLISA.

Trade unions exist at all levels, from the enterprise level to the industry level and from the provincial level to the central level. They participate in the supervision of labor-related activities. Trade unions have traditionally been regarded as an essential part of Vietnam's political system. Their current task is to represent and protect workers' rights and interests. In reality, however, they have not been very dynamic as a political force or even in labor matters.

There are also labor inspectorates that have been established by the MOLISA and People's Committees at all levels to survey compliance and investigate labor complaints. Normally, these bodies are reactive rather than proactive.

5.3 Employers' Representative

The Vietnam Chamber of Commerce and Industry ("VCCI") is recognized by law as a representative of Vietnam's employers (and of the business community) to promote

employers' interests in domestic and international labor relations. Any employer can become a member of the VCCI. VCCI provides services to members regarding labor issues (ie, labor disputes, wage determination, work safety, etc.). It serves as a liaison between employers and the State.

In addition, the law also recognizes the Vietnam Cooperative Alliance ("VCA") and Association of Small and Medium Enterprises ("ASME") as representatives of Vietnam's employers.

5.4 General employment conditions

The Labor Code regulates the employment of workers. It also provides for rights and obligations of both employees and employers. There are many independent regulations which implement the Labor Code.

5.4.1 Basic wage

Basic wage applies to employees who work for non-foreign-invested enterprises such as state agencies, state-owned enterprises, and other domestic enterprises. The basic monthly wage is VND1,150,000 per month³¹.

5.4.2 Minimum wage

The minimum wage is the lowest monthly wage that may be paid to an employee hired to perform a basic job that does not require training. The minimum wage is fixed from time to time by the Government.

There are three types of minimum wage. The minimum wage is computed on a monthly, daily, and hourly basis, and it is defined in accordance with regional areas and industries.

"Regional minimum wage" applies to employees who work for enterprises with foreign-invested capital and other foreign organizations and is dependent on the classification of the enterprise. The regional minimum wage system is divided into four levels:³²

- Level 1: VND3,500,000 per month for employees who work for enterprises in urban districts of Hanoi, urban and rural districts of Hai Phong, urban and rural districts of Ho Chi Minh City and some designated cities and districts of Dong Nai, Binh Duong, and Ba Ria-Vung Tau provinces.
- Level 2: VND3,100,000 per month for employees who work for enterprises in various designated cities and districts of provinces and in centrally-run cities.
- Level 3: VND2,700,000 per month for employees who work for enterprises in cities and districts of other provinces.
- Level 4: VND2,400,000 per month for employees who work for enterprises in other locations.

³¹ Art. 1 Decree 66/2013/ND-CP dated June 27, 2013. From July 1, 2016, basic wage is VND 1,210,000.

³² Art.3 Decree 122/2015/ND-CP dated November 14, 2015.

An enterprise will pay wages based on the above minimum wage structure. If an employee has gone through “vocational training or an apprenticeship” (that is, he is a trained employee), he is eligible for at least the applicable minimum wage plus 7%.

“Industry minimum wage” is recorded in an industry collective agreement. This wage, however, is not less than the regional minimum wage as discussed above.

5.4.3 Overtime payment

Generally speaking, a worker who works overtime is entitled to receive commensurate pay. The Labor Code provides different mandatory payment rates for overtime: 150% after normal working hours, 200% on weekends, and 300% on a holiday or a paid leave, exclusive of the wage for the holiday. Employees and their employer may agree on an amount of overtime that may generally not exceed four hours per day and 200 hours per year. In some special cases, it may reach 300 hours per year.

The Labor Code requires that workers who work overtime at night must receive an amount which is at least equal to the rate applied to overtime payment as mentioned above, plus the nightshift salary rate³³, plus 20% of salary which applies to normal working hours during the daytime.

5.4.4 Annual leave

An employee who has worked for one year is entitled to a statutory annual leave of at least 12 working days. An employee who has worked for less than a year may receive leave on a pro-rated basis. If by reason of termination of employment or for any other reason an employee has not taken all of his annual leave, the employee must be paid for the days not taken.

5.4.5 Bonuses

Paying annual bonuses is generally a matter of an employer’s own discretion, based on the enterprise’s annual business performance and its workers’ performance. However, the practice most employers have consistently followed is to pay an annual bonus equivalent to at least one’s month salary. An employee in his first year may receive a portion of the annual bonus corresponding to the time he has been with the enterprise.

5.4.6 Social, health, and unemployment insurance

Social insurance and medical insurance are compulsory for any employee who works for at least three months³⁴. In addition, an employee who works for an employer under a labor contract or a work contract (whether indefinite term or not) or under a seasonal or special job labor contract with term of from full three months up to less than 12 months is obliged to participate in the unemployment insurance regime. However, an employee who

³³ The nightshift salary rate is equal to 130% of the normal working hour salary.

³⁴ From January 1, 2018, compulsory social insurance applies to an employee who works under a labor contract from one month or more.

currently receives a retirement pension is not required to participate in the unemployment insurance.

Under the compulsory social insurance, compulsory health insurance, and unemployment regimes, both the employer and the employee are required to contribute to the insurance fund. Their contributions are based on the entire contracted salary that an employee receives. The government also contributes and provides additional funds.

Nevertheless, the Law on Social Insurance sets a ceiling for the salary on which contributions will be calculated, and no contribution need be made beyond this ceiling. If an employee's salary is higher than 20 times the Government's basic wage, then for the purposes of calculating social insurance contributions, the employee's salary will be deemed to be fixed at 20 times the basic wage. Therefore, the maximum social insurance contribution will depend on the minimum wage fixed by the Government from time to time. The maximum salary for the purpose of unemployment insurance contribution is 20 times that of regional minimum wage.

Under the compulsory social insurance regime, employees and their beneficiaries can claim social benefits in the form of compensation for sick leave, maternity leave, compensation for work-related accidents and occupational diseases, retirement, and death benefits. Upon termination of their employment, unemployment insurance provides employees with (i) an unemployment allowance, (ii) re-training vocational support, and (iii) job search support. In addition, unemployment insurance provides employers with maintenance employment support. Medical insurance covers non work-related medical expenses.

Employees who are not required to contribute to social insurance, social, unemployment, and medical insurance will be entitled to have those contributions included in their wages. Such employees may voluntarily join the social insurance fund or they may elect to obtain insurance from other sources.

5.4.7 Retrenchment

An employer has a right to terminate employees in certain circumstances and must pay a retrenchment (severance/redundancy) allowance. The Labor Code provides for the payment of the retrenchment allowance for employees who have worked for the employer for at least a year.

Types of retrenchment allowance vary depending on the particular circumstances of a retrenchment. For example, if the employer unilaterally terminates an employee in case of natural disasters, fire, or other cases of force majeure, and the employer has in fact made every effort to avoid termination but is nevertheless compelled to make cuts in production and workforce, the employee may receive a severance equal to one-half of a month's salary for every year of employment. If the enterprise merges or is divided, an employee whose employment is discontinued as a result of such merger or division is entitled to receive a redundancy allowance of one month's salary for every year of employment or a total of two months' salary, whichever is greater. Other benefits, such as accumulated leave or bonuses, must also be paid.

As of January 1, 2009, seniority for severance/redundancy allowance purposes stopped accruing for Vietnamese employees who participated in unemployment insurance scheme. In this connection, the duration during which the employee contributes to unemployment insurance plan is not counted for the purpose of calculating severance/redundancy allowance.

5.5 Individual and collective labor agreements

5.5.1 Individual labor agreement

Essentially, all employees are required to have a labor agreement with their employer. There are three types of individual labor agreements recognized by law: (i) an agreement for an indefinite term, (ii) an agreement for a definite term of 12 to 36 months, and (iii) an agreement to perform a specific task which will last for less than 12 months.

Insofar as the second and third types are concerned, if such an agreement expires without being renewed or if no new agreement is executed but the employee continues to work after its expiration, the expired agreement will be deemed to remain effective with one condition--that is, in certain circumstances, it will become an indefinite term agreement for the labor agreement from 12 to 36 months or become a 24 month-definite term agreement for a labor agreement of less than 12 months. More specifically, a definite term labor agreement may be used only for two consecutive terms, including one renewal. After the second consecutive definite term, if the employer and the employee enter into a new labor agreement, this agreement must be an indefinite term labor agreement. If the employment continues, but no new labor agreement is executed, the current labor agreement will automatically be considered to be an indefinite term labor agreement.

An individual labor agreement signed between an enterprise with foreign investment and an employee is often prepared by the enterprise. It contains particulars such as the nature of the work, working hours, employment term, remuneration package, leave, bonus, and insurance. Additional terms may be added. The employer and the employee must each receive one original.

Before signing a labor agreement, an employer and an employee may enter into an agreement on probation within the following parameters:

- A probationary period cannot exceed 60 days if the employee is recruited for a position that requires a professional or technical college qualification or above;
- A probationary period cannot exceed 30 days if the employee is recruited for a position that requires an intermediate-level qualification or if he is recruited to be a technical worker or staff;
- A probationary period cannot exceed six working days if the employee is recruited for other positions.

During the probationary period, the employee is entitled to a salary equivalent of at least 85% of the salary to which he will be entitled if he is employed.

Upon expiration of the probationary period, the employer must give notice to the employee of the result of his probationary performance. If the probation period is from 30 to 60 days, the employer is responsible to inform the result of probation at least three days prior to the end of the probation period; if the probation period is six working days, the employer must notify the employee on the last day of probation at the latest. If the performance meets the requirements set out in the agreement on probation, the employer must enter into a labor contract.

During the probationary period, either the employer or the employee may terminate employment without the need to give notice or reason. Neither party is obliged to pay compensation for such early termination.

5.5.2 Collective labor agreement

An employer may enter into a collective labor agreement with its employees in cases where an internal trade union has been formed in the enterprise. If the enterprise does not have an internal trade union, the collective labor agreement can be signed between the employer and trade union of higher level. A collective labor agreement must contain terms which are more favorable to employees than what the law provides. A collective labor agreement may be signed for a term of one to three years. The term could be less than one year if it is the first time the employer has entered into a collective labor agreement.

A collective labor agreement must be filed with the relevant labor department within 10 days after its execution. A collective labor agreement is the main source of employees' rights and interests. There may be some overlap between a collective labor agreement and an individual labor agreement. In that case, a collective labor agreement prevails.

5.6 Internal Labor Rules

A company must have internal labor rules (“**ILRs**”) in writing if it has 10 or more employees. The ILRs must include information on the following:

- Working hours and rest breaks;
- Company rules and discipline;
- Occupational safety and hygiene in the work place;
- Protection of assets and confidentiality of technology and business secrets of the company; and
- Conduct which is in breach of labor rules and penalties imposed for those breaches and responsibility for damages.

Carefully worded ILRs are important in order for the employer to take disciplinary action against an employee or to terminate a labor contract in case of an employee's poor performance. It is difficult for a company to dismiss an employee for an offense if that offense is not specified in its ILRs or if the company does not have duly registered ILRs.

5.7 Trade unions

Trade unions exist at all levels and, as mentioned, form a part of Vietnam's political

system. Vietnam has a separate Law on Trade Unions that deals with the establishment and operation of trade unions at all levels. Trade unions are empowered to monitor compliance with labor regulations. They have a role in educating workers to perform their duties of citizenship in the interest of the country.

The right to form a trade union is given to all employees. The employer is required to acknowledge the status of a legally established trade union to assist, if requested, in its formation and to provide facilities in order for the trade union to function. An employer may not discriminate against an employee because he has formed or joined a trade union.

Whether in the public or private sector, an enterprise is required to contribute to a fund for trade union. The rate of contribution is equal to 2% of the payroll.

5.8 Work safety

The law strictly requires an employer to implement safety measures in the workplace. Liability is imposed on the employer in relation to work-related accidents that cause injuries or casualties to its employees in the course of employment. If an employee is not covered by social insurance, the employer is obliged to pay compensation to the employee or his beneficiary. Whether or not the employee was at fault is irrelevant in respect to the employer's obligation to pay compensation, but fault is relevant in determining how much is to be paid.

5.9 Labor dispute resolution

Emphasis is placed on negotiation and conciliation in order to resolve individual labor-related disputes. The law sets out rules for conciliation, including powers of conciliators and responsibilities of parties to a dispute. If conciliation fails, a court action may be instituted with the appropriate court³⁵. The time limit within which an employee must file a request to resolve a dispute with the court ranges from six months to one year, depending on the nature of a particular dispute. DOLISAs can participate in labor dispute settlement by appointing conciliators and arbitrators for negotiations.

5.10 Employment of expatriates

The employment of an expatriate is generally limited to a managerial position or to a position requiring a high level of expertise for which position Vietnamese are not yet qualified.

The foreign expatriates working in Vietnam are regulated by Decree No. 11/2016/ND-CP of the Government.

5.11 Work Permits

With limited exceptions, most expatriates who work in Vietnam are required to have a work permit. An expatriate is exempt from a work permit in the following circumstances:

³⁵ In some cases, the disputing parties are entitled to sue without conciliations.

- a) He is a capital contributing member or owner of a limited liability company established in Vietnam;
- b) He is a member of a management board of a joint stock company established in Vietnam;
- c) He is head of either the representative office (“RO”) or a project in Vietnam of an international organization or of a foreign non-governmental organization (“NGO”). A chief representative of a foreign trader’s RO is not included in this category, and this expatriate is required to obtain a work permit;
- d) He enters and stays in Vietnam for less than three consecutive months to provide services (service sales person). A work permit is required if a foreign service sales person stays in Vietnam for three consecutive months or more;
- e) He enters Vietnam and stays for less than three consecutive months to handle complicated technical or technological problems that affect or could affect production/business, and these problems cannot be adequately addressed within Vietnam. However, if the situation requires the expatriate to stay in Vietnam for three months or more, a work permit is necessary;
- f) He is a foreign lawyer with a Certificate of Law Practice in Vietnam granted by the Ministry of Justice;
- g) He is a foreign pupil/student who is studying in Vietnam. The employer, however, must inform the provincial labor authority of its recruitment of a foreign pupil/student seven days prior to the recruitment;
- h) He is seconded to Vietnam as permitted under Vietnam’s WTO Commitments. Under Appendices 1 and 2 of the Circular 41, the 11 services include: business services (eg, professional services, computer and related services, research and development services, rental services without operator), communication services, construction and related engineering services, distribution services, educational services, environmental services, financial services, medical and social services, tourism and related travel services, recreational, cultural and sporting services, and transport services;
- i) He provides expert and technical consultancy services or undertakes other tasks with respect to research, formulation, evaluation, monitoring and assessment, or management and implementation of a program or project using official development aid (“ODA”) in accordance with an international treaty on ODA signed by both Vietnam and the foreign country;
- j) He has a media license issued by the Ministry of Foreign Affairs;
- k) He is appointed by a competent authority in a foreign country to teach at an international school that is managed by a foreign diplomatic office or an

international organization in Vietnam or is permitted by the Ministry of Education and Training to teach and research in Vietnam's education and training institutions;

- l) He is a volunteer certified by a foreign diplomatic mission or international organization in Vietnam;
- m) He works as an expert, manager, executive director, or technician for less than 30 days and with no more than 90 cumulative days in one year;
- n) He implements an international treaty to which a Vietnamese government authority, provincial body, or central socio-political organization is a signatory;
- o) He is a student studying in a foreign school or institution having an agreement on an internship in agencies, organizations, and enterprises in Vietnam;
- p) He is a relative³⁶ of a member of a diplomatic agency in Vietnam and that relative is permitted to work in Vietnam by the Ministry of Foreign Affairs, except where an international treaty to which Vietnam is a member provides otherwise;
- q) He has official/mission passport and works for a State agency, political organization, or socio-political organization.

In order for an expatriate to be exempt from a work permit, the employer must file an application with the provincial labor authority to confirm the exemption, except in the following cases:

- Expatriate enters Vietnam for under three months to offer services for sale;
- Expatriate enters Vietnam for under three months to deal with complicated technical or technological problems that may or do adversely impact production and business activities and that cannot be handled by Vietnamese and foreign experts who are currently in Vietnam; and
- Expatriate who enters Vietnam to work as managers, executive directors, experts, or technicians for a period of less than 30 days and the accumulated working period in Vietnam does not exceed 90 days per year.

An employer must prepare a plan to recruit expatriates for each job for which a Vietnamese citizen does not qualify and file such plan 30 calendar days or more prior to the proposed recruitment.³⁷ It must be approved by the provincial People's Committee.³⁸ This is a compulsory step in order for an expatriate to be issued a work permit. However, in case of (m) and (o) above, the employer neither has to identify the need for foreign workers nor seek approval from the authorities.

³⁶ There is no provision which gives a clear definition of "relative", such as whether relatives mean parents, spouse, children only or including parents-in-law, cousins, nephews and nieces, etc.

³⁷ Art 3 of Circular 03. It is noted that Decree 11 has not been detailed by a circular yet, so Circular 03 remains effect.

³⁸ Art 4 of Decree 11.

Only a criminal record from Vietnam is required in the case of a foreigner who resides in Vietnam. However, this provision needs further clarification and a foreign criminal record may be required in some circumstances; for example, if a foreigner resided in Vietnam for two years, but then left Vietnam to live abroad for one year and then returns to Vietnam. In such case a criminal record issued by the competent authority in that foreign country is required.

Several notable provisions apply in case a foreigner works for more than one employer or holds more than one position or intends to move to a new employer, as follows:

- If a foreigner has an effective work permit but plans also to work for another employer in the same position, the health certificate, the criminal record and the document proving the foreigner is a manager, executive director, expert or technician are not required;
- If a foreigner has an effective work permit but plans to work in another position for the same employer, the health certificate and the criminal record in the application for the new work permit are not required; or
- If a foreigner has an expired work permit and plans to continue working in the same position for the same employer, a document proving that the foreigner is a manager, a general director (“GD”), an expert, or a technician is not required.

A work permit can be re-issued or cancelled. The time to apply to reissue a work permit in case the current work permit expires is at least five days prior to expiration but may not exceed 45 days before the expiration of the work permit. This provides the employer and the foreigner with additional time to prepare documents for reissuance of the work permit prior to expiration.

Upon request for cancellation of a work permit by the employer or by the Director of DOLISA, the DOLISA will provide confirmation of cancellation.

Vietnam made a commitment in respect of employee immigration in the tourism industry in 2009. It is the ASEAN Mutual Recognition Arrangement on Tourism Professionals (MRA-TP). The MRA-TP takes effect in ASEAN in 2015. Under the MRA-TP, Vietnamese may work in ASEAN member countries and vice versa. It is likely that a significant number of employees in the tourism industry will enter Vietnam to work.

In Chapter Two, we discuss the personal income taxes that apply to expatriates.

CHAPTER SIX

PROTECTION OF INTELLECTUAL PROPERTY

Vietnam continues to move forward. The need to protect intellectual property rights (“IPRs”) stimulated by foreign investors and the World Trade Organization has resulted in positive action to recognize and protect IPRs.

6.1 IPRs recognized in Vietnam

IPRs which are recognized in Vietnam include the following:

1. Copyright of literary, artistic, and scientific works; copyright related rights of performances, audio and visual fixation, broadcasts, and encrypted program-carrying satellite signals;
2. Industrial property rights, comprise inventions, industrial designs, layout designs of integrated circuits, trade secrets, trademarks, trade names, and geographical indications;
3. Plant varieties and plant reproductive materials.

These rights are regulated by domestic laws and international agreements. Please see Appendix 6.

6.2 Enforcement of IPRs in Vietnam

When the IPRs of an owner that is an entity are infringed, it can follow either administrative or judicial procedures in order to enforce its rights. Each procedure has its advantages but also has its shortcomings. Please see discussion below.

In either procedure, the following steps are required:

- Collect evidence on infringement: place of sale, manufacture, etc;
- To the extent possible, identify the infringer;
- Send warning letter to infringer.

There are generally three procedures to enforce IPRs. Essentially, they are administrative, civil, and criminal procedures, and they are discussed below:

6.2.1 Administrative procedures

The State bodies involved in administrative procedures include:

- Local inspectors of the Ministry of Science and Technology.

- Market Control (“MC”) and Economic Police (“EP”). They have the right to apply enforcement measures: to seize, confiscate, or destroy infringing products. Both the MC and the EP can also impose administrative fines on infringers;
- Provincial or city level customs offices.

When an infringement is suspected, an IPR holder files a request to act against the infringer with any of the above authorities. The request must be accompanied by proof of infringement.

If an intellectual property right is infringed, one of the principal penalties, a warning or a monetary fine up to VND500,000,000 (about US\$22.222) is imposed. Besides the principal penalty and depending on the seriousness of the infringement, one or more additional penalties may be imposed: removal of the infringing labels and seizure of the infringing goods or facilities; revocation of the business license or suspension of the infringer’s business activities; destruction of infringing articles which is harmful to human health or detrimental to society; etc.

In practice and in the current environment, the use of administrative procedures is the most efficient way to deal with an infringement. It is more simple and cost-effective than judicial procedures. However, there are several principal shortcomings of administrative procedures:

MC, EP, and Customs usually base their actions on a decision on infringement. In the past, decisions on infringement were issued by the National Office of Intellectual Property (“NOIP”). However, generally, the NOIP no longer does so. In some limited cases, the NOIP still issues decisions on infringement, but based on the request of enforcement bodies, not on the request of the IPR owner. Currently, the question of how to use administrative procedures to enforce IPRs without the NOIP’s official decision on infringement is still open. A private organization –the Vietnam Intellectual Property Research Institute (“VIPRI”) has been established to provide expert consultation on IPR-related issues such as infringement. Others may follow. An opinion on infringement from such a body is largely for reference purposes only and is not legally binding. However, since the NOIP has ceased to issue decisions on infringement, an opinion on infringement issued by VIPRI seems preferable based on which enforcement bodies may act.

One cannot claim compensation for damages under administrative procedures. Damages can only be determined by a court.

Sanctions may not be strict enough to prevent new violations.

6.2.2 Civil procedures

If the problem cannot be solved through administrative procedures, an IPR holder can bring an infringer to the Civil Court. The rights holder does not have to apply administrative procedures first. It can bring the matter immediately to the Court.

The IPR holder files a complaint against the infringer in a provincial court where the alleged infringer is located. The complaint must be accompanied by documents that prove the ownership of the intellectual property right and the proof of infringement.

Before the hearing, the Court is required to attempt conciliation between the two parties. If the infringement cannot be solved, a hearing usually takes place within six months from the date the Court receives the complaint. During the intervening period, both parties submit their written arguments.

If the parties attend and there is no postponement, then the matter is usually heard and dealt with at that one hearing.

If one of the two parties does not agree with the Court's judgment, then that party may appeal to the Supreme People's Court within 15 days after the judgment is issued. In which case, the Supreme People's Court's decision will be final. A Court can order damages. It can also force an infringer to cease its violation, to make a public apology, and to pay damages.

Seeking civil procedures takes more time and effort than following administrative procedures; however, in most cases, the outcomes are not necessarily better. This is largely due to the lack of experience of judges who deal with intellectual property issues. In addition, in the past, judges usually based their judgments on the opinion of the NOIP (in some cases, when a court requests, the NOIP can provide an opinion on whether there is an infringement) which is an administrative body. See our discussion of the current problem above. The initial response from the NOIP will certainly provide a good indication of how the Court will decide. The only noticeable advantage of judicial procedures over administrative procedures is that a court can order the infringer to compensate the IPR holder for damages. However, under Vietnamese law, it is difficult to establish damages.

6.2.3 Criminal procedures

In serious cases, infringement of other people's IPRs is subject to criminal liability. The Criminal Code deals with infringement of copyrights and other types of IPRs. Depending on the seriousness of the infringement, criminal liability is subject to a fine of VND50-500 million (currently about US\$2,200 to US\$22,000) or non-detention for up to two years. If the infringement is committed in an organized manner or committed repeatedly, the infringer can be fined from VND400 million-1 billion or be imprisoned for a period from six months to three years. In addition to the principal penalties above, the infringer may also be subject to additional penalties: (i) monetary fine from VND20-200 million (about US\$880-8,800) and/or (ii) ban from holding certain posts, practicing certain occupations, or doing certain jobs for up to five years.

Article 156 of the Criminal Code also provides that counterfeiters or persons trading in counterfeit goods can be imprisoned for a period from six months to 15 years, depending on the seriousness of the infringement. Article 157 of the Criminal Code provides that capital punishment can be imposed if the counterfeit goods are foods or pharmaceuticals. In addition, the infringer may also be subject to additional penalties (i) monetary fine from

VND5-50 million (about US\$220-2,200); (ii) confiscation of part or all the property; and/or (iii) ban from holding certain posts, practicing certain occupations, or from doing certain jobs for up to five years.

6.2.4 Enforcement of intellectual property rights at the border

An IPR holder can request the Customs Office to suspend normal customs procedures at the border for the import or export of suspected goods. The request is filed with the provincial Customs Office through which the suspected goods are being exported or imported. The request must be accompanied by documents that prove ownership of the IPRs that have been infringed and that prove infringement. The IPR holder is also required to deposit an amount equal to 20% of the value of the suspected goods (if the IPRs have been infringed, the deposit will be returned). Customs will suspend its normal procedures for 10 days from the date the provincial Customs Office issues a Decision of Suspension. This period of suspension can be extended for another 10 days.

If an IPR has been infringed, one of two principal penalties can be imposed on the infringer: a warning or a monetary fine (up to VND20 million). Besides the principal penalty, depending on the seriousness of the infringement, the provincial Customs Office can also impose additional penalties, such as seizure of the infringing goods or facilities; it can revoke an import/export license or destroy infringing articles which are harmful to health or detrimental to society, etc.

Enforcement of IPRs at the border has several shortcomings: inadequate means to determine if goods are counterfeit, lack of detailed procedures, poorly motivated customs officials, corruption, and finally, low penalties.

6.3 Current attitudes and prospects

While Vietnamese law on the registration of IPRs is in conformity with international norms, the protection of IPRs does not yet satisfy the expectation of manufacturers and IPR holders. In many cases, enforcement needs to be conducted promptly; however, delay is usually due to time-consuming procedures and to the lack of human resources of enforcement bodies. Those elements undermine efforts against counterfeiters, especially against small counterfeiters. Small counterfeiters with a small amount of equipment have mobility and often disappear before enforcement bodies discover them.

Even so, there are signs that Vietnam wants to deal with IP violators more severely. Monetary fines imposed on actions that infringe IPRs in respect of inventions, industrial designs, and layout designs of integrated circuits have been modestly increased. Governmental Decree 97/2010/ND-CP dated September 21, 2010 has increased the maximum fine from VND300,000,000 to VND500,000,000. Articles 156 and 157 of the Criminal Law increased penalties for the sale and manufacture of counterfeit goods.

One matter that remains unresolved is the lack of a mechanism to recognize well-known (or famous) marks in Vietnam. The common way an owner of a well-known trademark will try to have its trademark recognized after its application for the mark has been rejected based on a prior applied/registered mark or when it wishes to oppose the

application of a new mark is to file a complaint with the NOIP. The complaint or opposition must be accompanied by several required documents or proof. If the complaint or opposition is successful, the owner's mark will be recognized as well-known. In that case, the application of the prior applied mark will be rejected, and the registration of the prior registered mark will be cancelled.

6.4 Domain names

Domain names are protected under the Law on Information Technology, number 09/2006/L-CTN, dated July 12, 2006, and other guidance regulations.

Registration of domain names follows the principle of "first registered, first protected". Currently, conflict in the field of domain names are mainly settled by negotiation between parties.

APPENDIX 6

This Appendix lists out the main domestic law and implementing regulations regulating intellectual property in Vietnam and main international agreements or treaties to which Vietnam is a party

1. Main domestic laws and guidelines:

- Civil Code 2005, effective January 1, 2006;
- Criminal Law (Articles 156, 157, 158, 170, 171 on sale and manufacture of counterfeit goods in violation of regulations on granting title for protection of industrial property rights and in violation of intellectual property rights);
- Intellectual Property Law, effective July 1, 2006 (“IP Law”);
- Decree 100/2006/ND-CP of the Government dated September 21, 2006, detailing and guiding the implementation of a number of articles of the Civil Code and the IP Law regarding copyright and related rights (as amended by Decree 85/2011/ND-CP of the Government dated September 20, 2011);
- Decree 103/2006/ND-CP of the Government dated September 22, 2006, guiding implementation of several provisions of the Intellectual Property Law (as amended by Decree 122/2010/ND-CP of the Government dated December 31, 2010);
- Decree 88/2010/ND-CP of the Government dated August 16, 2010, guiding implementation of several provisions of the Intellectual Property Law and the Law on Amendment of the IP Law, and supplementing several revisions of the IP Law in respect to plant varieties;
- Decree 114/2013/ND-CP of the Government dated October 3, 2013 on penalties for administrative violations in the field of plant varieties.
- Decree 105/2006/ND-CP of the Government dated September 22, 2006, guiding implementation of several provisions of the Intellectual Property Law in respect of protection of intellectual property rights and of State management in the field of intellectual property (as amended by Decree 119/2010/ND-CP of the Government dated December 30, 2010);
- Decree 99/2013/ND-CP of the Government dated August 29, 2013, on sanctions against administrative violations in the field of industrial property.
- Decree 47/2009/ND-CP of the Government dated May 13, 2009, on sanctions against administrative violations in the field of copyrights and related rights (as amended by Decree 109/2011/ND-CP of the Government dated December 2, 2011).

2. Main international agreements and treaties:

To date, Vietnam has ratified the following main conventions and treaties:

- Paris Convention for the Protection of Industrial Property;
- Patent Cooperation Treaty (PCT);
- Madrid Agreement concerning the International Registration of Marks;
- Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- Berne Convention for the Protection of Literary and Artistic Works;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- International Union for the Protection of Plant Varieties;
- Brussels Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
- Phonograms Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Programs;
- Washington Treaty on Intellectual Property in respect of Integrated Circuit;
- Budapest Treaty on International Recognition of Deposit of Microorganisms for the purposes of Patent Procedures;
- Hague Agreement concerning International Registration of Industrial Designs;
- Lisbon Agreement for Protection of Appellations of Origin and their International Registrations;
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).