

# 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.

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.

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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.

This booklet was written by lawyers from Russin & Vecchi.  
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## 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
CPTPP	Comprehenship and Progressive Agreement for Trans-Pacific Partnership
DOLISA	Department of Labor, War Invalids and Social Affairs
DOSTE	Department of Science, Technology and Environment
DPI	Department of Planning and Investment
EIAR	Environmental Impact Assessment Report
EL	Enterprise Law
EP	Economic Police
EPR	Environment Protection Registration
ERC	Enterprise Registration Certificate
EVFTA	EU - VN Free Trade Agreement
EVIPA	EU – VN Investment Protection Agreement
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
MC	Members’ Council
MCT	Ministry of Communications and Transport
MMO	Market Management Office
MNRE	Ministry of Natural Resources and Environment
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
PPP	Public-Private Partnership

RO	Representative Office
SBV	State Bank of Vietnam
SGM	Shareholders' General Meeting
SSC	State Securities Commission
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
VAT	Value Added Tax
VIPRI	Vietnam Intellectual Property Research Institute
VND	Vietnamese dong
WTO	World Trade Organization

In this book, we use the approximate rate of exchange of US\$1.00 = VND23,000.

## 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 Enterprise Law (“EL”) and 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 specifically addresses investment. It 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.

Except for establishment of a small or medium-sized creative start-up<sup>1</sup> enterprise or a creative start-up investment fund in accordance with the Law on Supporting Small and Medium-sized Enterprises, a foreign investor which invests in Vietnam by establishing a new legal entity first needs to apply for an investment registration certificate (“**IRC**”) for its investment project. After the IRC is issued, the Investor will then apply for an enterprise registration certificate (“**ERC**”) which allows it to establish the company. Licensing procedures are discussed in Section 1.6 below.

The EL and the IL have been supplemented. Some of the key regulations include:

- Decree No. 01/2021/ND-CP (January 4, 2021), providing detailed guidelines for enterprise registration (“Decree 01/2021/ND-CP”);
- Decree No. 31/2021/ND-CP (March 26, 2021), detailing and guiding implementation of a number of articles of the Law on Investment (“Decree 31/2021/ND-CP”);
- Decree No. 47/2021/ND-CP (April 1, 2021), detailing and guiding implementation of a number of articles of the EL (“Decree 47/2021/ND-CP”)
- Circular No. 03/2021/TT-BKHDT (April 9, 2021), issuing standard forms necessary to comply with investment procedures and investment reports, outward investment activities and investment promotion activities (“Circular 03/2021/TT-BKHDT”); and

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<sup>1</sup> Under the EL, a creative start-up project is defined as an investment project that implements ideas on the basis of exploiting intellectual property, technologies and new business models and the project can grow quickly.

- Decision No. 29/2021/QĐ-TTg (October 6, 2021 on special investment incentives (“Decision 29/2021/QĐ-TTg”).

Setting up and operating enterprises are 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 Vietnam’s commitments to WTO and other regional FTAs**

### **1.2.1 Vietnam’s commitments to WTO**

Vietnam became a member of WTO in January 2007. In anticipation of accession, the National Assembly ratified Vietnam’s WTO commitments by Resolution No. 71/2006/QH11, 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 Vietnam made will prevail. In brief, 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 side, Vietnam allows foreign investment in industries which were previously restricted. Vietnam’s WTO commitments dealing with “indirect investment” affirms that foreign investors may purchase shares of domestic enterprises. In addition, the application of WTO commitments creates a fairer investment environment.

### **1.2.2 Vietnam’s commitments under other regional FTAs**

The establishment of the ASEAN Economic Community (“AEC”) in 2015 was 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 objectives 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 investors<sup>2</sup>.

The CPTPP was signed in March 2018 by 11 member States. Vietnam ratified the CPTPP and it took effect on January 14, 2019. Under the CPTPP, Vietnam's commitments cover, among other things, various trading businesses, such as trade in goods, customs and trade facilitation, trade remedies, services, etc.

A notable commitment under the CPTPP is import duty reductions. All CPTPP members have committed to eliminate import duties for almost all tariff lines. The market access commitments are presented in detail for each tariff line in Members' Import Tariff Schedules. In general, most CPTPP members apply the same preferential import duties to other CPTPP partners.

In addition, the CPTPP provides specific commitments to the members in the areas of labor, services and investment sectors, environment, government procurement, intellectual property, investor-state dispute settlement, etc.

Vietnam and the European Union signed the EVFTA and the EVIPA in June 2019. Both the EVFTA and the EVIPA were ratified by the European Parliament in February, 2020 and approved by the Vietnamese National Assembly in June, 2020. EVFTA came into force on August 1, 2020. To take effect EVIPA still needs to be ratified by the Parliament of all 27 EU member States.

EVFTA is a new-generation FTA between Vietnam and the EU with 27 member States, and a wide range and high degree of commitments. Vietnam's commitments under EVFTA are generally similar to the level and the coverage of its commitments under CPTPP.

Section 1.13 contains a broader discussion of investment conditions, including those imposed as a result of Vietnam's accession to WTO, AEC, CPTPP and EVFTA.

### **1.3 Key administrative bodies**

The Ministry of Planning and Investment ("**MPI**") is the central administrative body that 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

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<sup>2</sup> 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>.

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 IRC 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 defense 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 loss and damage. This undertaking appeared also in the prior law, and there is

a record of Government adherence to this undertaking.

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 31/2021/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, production of products formed from scientific and technological results according to the provisions of law on science and technology;
- (ii) Manufacture 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) Manufacture of electronics, prioritized mechanical products, agricultural machinery, automobiles, automobile parts; and shipbuilding;
- (iv) Manufacture of products on the List of prioritized industry products;
- (v) Manufacture 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, vocational education, university education;
- (x) Medical consultation and treatment; manufacture of medicines, raw materials for production of medicines, preservation of medicines, and scientific research scientific research on preparation technology and biotechnology for production of new drugs; manufacture of medical equipment;
- (xi) Investment in facilities for training and competition of sports 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;
- (xiii) People's credit funds, and micro-financial institutions; and
- (xiv) Manufacture of products, provisions of services that create or join value chains or industry link clusters.

Appendix 2 to this Chapter lists criteria necessary to qualify for different corporate income tax (“CIT”) rates for businesses established after January 1, 2021.

In addition to the corporate income tax preferences stated in Appendix 2, Decision 29/2021/QĐ – TTg offers many special investment incentives for investment projects specified in Clause 2, Article 20 of the IL<sup>3</sup>. For example, the preferential tax rate of 9 percent for a period of 30 years or the preferential tax rate of 7 percent for a period of 33 years applies to income of economic organizations with investment projects (listed in clause 2, Article 20 of the IL) and satisfying certain criteria stated in Decision 29/2021/TTg.

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.

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<sup>3</sup> Pursuant to Clause 2, Article 20 of the IL, following projects are qualified for special investment incentives:

- a) New investment projects (including expansion of such newly established projects) to establish new innovation centers, research and development centers with total investment capital of VND 3,000 billion or more and with disbursement of at least VND 1,000 billion within the first three years from the date of issuance of investment registration certificate or approval of investment policy; or investment project to establish national innovation center as per the Prime Minister's decision;
- b) Investment projects in industries and trades in business sectors which are eligible for special investment incentives and with an investment capital of VND 30,000 billion or more and with disbursement of at least VND 10,000 billion within the first three years from the date of issuance of the investment registration certificate or of receiving an in-principal investment approval.

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 31/2021/ND-CP.

### 1.5 Government's special policies for high-tech industries

Vietnam especially encourages foreign investment in high-tech projects. The MOST identifies the kinds of projects that 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.

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.<sup>4</sup>

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

An IRC is compulsory for:

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<sup>4</sup> Despite different opinions among licensing authorities, Vietnam places no geographical limit on the operation of a properly licensed enterprise.

- (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 directly hold more than 50% of its charter capital;
- (iii) an investment project of a company in which more than 50% of its charter capital is held by a company/companies specified in point (ii) above (second level of foreign ownership) ; and
- (iv) an investment project of a company in which more than 50% 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 in-principle approval is issued and the approval of selection of investor is obtained if the investment project is subject to the In-principle Approved Investment List. The statutory time limit for the authorities to issue the in-principle approval 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 in-principle approval is 35 days from the date on which a sufficient application dossier is received; however, there is no specific time limit for the National Assembly or the Prime Minister to issue an in-principle approval.

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 are the essential approvals and licenses required for a project. 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.

Appendix 6 of this Chapter provides a chart that describes procedures to start an investment project depending on the type of the project under the IL.

## 1.7 Forms of investment

As mentioned above, foreign 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 a business cooperation contract (“BCC”);
- (iv) reinvestment in an 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 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 implement an investment project under the public-private partnership scheme (“PPP”). PPP can be used to implement investment projects in the following areas: (i) transportation; (ii) power grids and power plants, except for hydroelectric plants and other cases of state monopoly under the provisions of the Electricity Law; (iii) irrigation, provision of clean water, drainage and wastewater treatment and waste treatment; (iv) medical and education; and (v) information technology infrastructure. In principle, investors will be responsible to fund and to carry out PPP projects. State capital can be used in PPP projects only for the following purposes: (i) supporting the construction of infrastructure works and systems; (ii) making payments to PPP project enterprises providing public products and services; (iii) paying compensation, site clearance, support and resettlement expenses; supporting the construction of temporary structures; (iv) payment of revenue reduction; (v) payment of expenses of competent agencies, contracting agencies, PPP project preparation units, and bid solicitors for performing activities under their tasks to implement PPP project in accordance with the Law on Public-Private Partnership; and (vi) payment of expenses of the PPP project appraisal council, the unit assigned to appraise the PPP project. The proportion of state capital contributing to a PPP project as prescribed at points (i) and (ii) above must not exceed 50% of the total investment of the project. Investors may sign PPP contracts such as BOT (Build-Operate-Transfer), BTO (Build-Transfer-Operate), BOO (Build-Own-Operate), O&M (Operate-Manage), BTL (Build-Transfer-Lease) and BLT (Build-Lease-Transfer) contracts with State agencies to execute a PPP project.

c) Investors may also choose to further 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 residing in Vietnam and 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, contents, custody and the management of its seal.

### **1.10 Corporate governance**

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.

Appendix 1 to this Chapter compares, among other things, rules on corporate governance of different types of companies.

### **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, in locations with socio-economic difficulties or extreme socio-economic difficulties or investment projects with large investment capital but slow return of capital 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 shareholders 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, 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. This is a significant obligation and some strategies have developed to meet this obligation.

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 227 business lines. The detailed conditions to engage in such business lines listed in Appendix 4 to the IL are provided for in industry-specific legislation, decrees of the Government, and international treaties to which 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 receive 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 the IRC will be issued.

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, securities and securities services. In some sectors, like banking, the foreign investor itself must have a certain minimum capital. The list of sectors that require minimum capital is attached as Appendix 5 to this Chapter. Even in cases in which there is no minimum capital requirement, the DPI would comment if it thought the charter capital was significantly less than the proposed or an appropriate investment capital for the project.
- 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, land 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.

In addition to the above investment conditions, foreign investors are subject to additional conditions on market access which are discussed below.

### **1.13.2 Conditions on market access applicable to foreign investors**

Market access conditions refer to the industries and sectors which are subject to limitation on access to the local market. Appendix 1 to Decree 31/ 2021/ND-CP provides two lists: one is the list of industries and sectors in which foreign investors are not yet permitted to invest, in, and the other is the list of industries and sectors in which market access is conditional to foreign investors. For other industries and sectors which are not listed on the foregoing lists, foreign investors are treated as local investors in terms of market access.

Market access conditions apply to the following investors:

- a) Foreign individuals or organizations established in accordance with foreign laws investing in Vietnam (“Foreign Investors”);
- b) An enterprise which has been incorporated in Vietnam and which falls into one of the following cases when it invests in another enterprise or acquires shares issued by other enterprises or enters into a BCC with other parties:
  - (i) more than 50% of its charter capital is held by Foreign Investor(s), or a majority of partners are foreign individuals (if the enterprise or is a partnership);
  - (ii) more than 50% of its charter capital is held by an enterprise(s) prescribed in paragraph (i) above; or
  - (iii) more than 50% of its charter capital is held by foreign investors and enterprises prescribed in paragraph (ii) above.

In other words, under the IL, the “third-generation” subsidiary of a Foreign Investor incorporated in Vietnam is considered a local investor and is not subject to market access conditions applicable to Foreign Investors.

Market access conditions applicable to Foreign Investors include conditions on the following: (i) maximum ratio of foreign ownership; (ii) form of investment; (iii) scope of investment activities; (iv) capacity of investors; partners participating in investment activities; and (v) other conditions as stipulated in other laws/decrees/international treaties.

Market access conditions are determined based on the following principles:

- a) The market access conditions must accord with Vietnam’s commitments under WTO and other regional FTAs. This limitation varies from industry to industry. Most limitations on maximum foreign ownership and forms of investment, when they occur, 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 securities services was lifted in 2012; the limitation for warehouse services and freight transport agency services was 51% until it was lifted in 2014; the limitation for maintenance and repair services of household equipment was raised from 40% to 51% in 2010, and was phased out completely in 2012; and limitation on the ownership of restaurants was phased out in 2015;

b) For industries or sectors that are not covered by any specific international commitments, the limitation on market access 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., if these laws specify limitations. In many cases, these laws generally refer to Vietnam's international undertakings.

c) Foreign Investors that are subject to the application of different international treaties on investment with different market access conditions may choose to apply market access conditions under one of the treaties.

d) Public companies that operate in industries or sectors which are subject to market access conditions applicable to foreign investors, but where there are no specific limitations on the level of foreign ownership, have a maximum foreign ownership rate of 50% of the charter capital. For public companies operating in industries or sectors that are not subject to market access conditions, there is no limitation on foreign ownership. In case the public company wants to lower the maximum foreign ownership ratio (lower than the ratio provided for in one of Vietnam's international treaties, or as stipulated by industry-specific legislation or otherwise, such specific maximum foreign ownership ratio must be approved by the company's SGM and stipulated in the charter of the company.

e) In case the target enterprise has many lines of business and the international treaty on investment contains different provisions on the percentage of foreign ownership, a Foreign Investor's ownership ratio in such enterprise must not exceed the restriction on foreign ownership ratio for the industry or sector with the lowest foreign ownership rate.

f) In the case of an enterprise which is equitized or converted from a State-owned enterprise ("SOE"), the limitation on foreign ownership is determined based on the forgoing principles unless legislation on the equitization or conversion of SOEs otherwise provides (usually up to 49%).

# APPENDICES

## 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)**

<b>Appendix 1. A</b>	<b>Two-to-Fifty-Member LLC</b>	<b>JSC</b>
<b>Characteristics</b>	<p>A two-to-fifty-Member LLC is an enterprise in which:</p> <ul style="list-style-type: none"> <li>▪ Members are organizations which have legal entity status and/or are individuals; the total number of Members may not exceed fifty.</li> <li>▪ Members are responsible for the enterprise’s debts and liabilities up to the value of capital that they have committed to contribute.</li> </ul> <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"> <li>▪ Shareholders are organizations which have legal entity status and/or are individuals; the minimum number of shareholders is three, with no maximum number.</li> <li>▪ Shareholders are liable for the JSC’s debts and liabilities up to the value of the capital to which they subscribe.</li> <li>▪ Charter capital is divided into shares.</li> </ul> <p>A JSC is entitled to issue securities, including common and preferred shares and bonds, to mobilize capital.</p>
<b>Governance Structure</b>	<p>A two-to-fifty-Member LLC is managed by:</p> <ul style="list-style-type: none"> <li>▪ 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</li> <li>▪ (General) Director (ie, Chief Executive Officer), who is in charge of day-to-day operation management of the company, and Deputy (General) Directors.</li> <li>▪ Board of Controllers is required if the company</li> </ul>	<p>Unless otherwise required by the laws on securities (applicable to public companies), 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"> <li>▪ the Shareholders’ General Meeting (SGM), which consists of Shareholders who have the right to vote;</li> <li>▪ the Board of Management (BOM), which consists of 3 to 11 individuals elected by the GSM;</li> <li>▪ the Board of Controllers (except for JSCs with less than 11 shareholders and each shareholder being organizations holding less than 50% of the shares of the JSC); and</li> <li>▪ (General) Director (ie, Chief Executive Officer), who is in charge of day-to-day management of the company, and Deputy</li> </ul>

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
	<p>is a State-owned company or a subsidiary of a State-owned company.</p>	<p>(General) Directors.</p> <p>(ii) One-layer management structure</p> <ul style="list-style-type: none"> <li>▪ the Shareholders’ General Meeting (SGM), which consists of Shareholders who have the right to vote;</li> <li>▪ the Board of Management (BOM), which consists of 3 to 11 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</li> <li>▪ (General) Director (i.e. Chief Executive Officer), who is in charge of day-to-day management of the company, and Deputy (General) Directors.</li> </ul>
<p><b>Appointments to, selections of boards, management</b></p>	<p>Each Member may, at its discretion, appoint or dismiss one or more Authorized Representatives to the MC.</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><b>Legal representative</b></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</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.</p>



Appendix 1. A	Two-to-Fifty-Member LLC	JSC
	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.	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 serve as legal representatives of the company.
<b>Board of controllers</b>	If the company is a State-owned company or a subsidiary of a State-owned company, it must have a board of controllers.	The JSC must have a board of controllers if: <ul style="list-style-type: none"> <li>▪ The company chooses a two-layer management structure;</li> <li>▪ There are at least 11 Shareholders; and/or</li> <li>▪ There is a single organizational Shareholder that owns 50% or more of the total shares of the JSC.</li> </ul>
<b>Capital Contribution Schedule</b>	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 issuance of the ERC unless a shorter period is provided in the charter. 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.
<b>Quorum<sup>5</sup></b>	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	The quorum for a meeting of the SGM is the presence of Shareholders that together own more than 50% 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

<sup>5</sup> 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

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
	<p>attended by Members that together own at least 50% of the charter capital. If the second meeting fails to satisfy this condition, the meeting may be convened for a third time within 10 days from the date the second quorum failed. Such meeting shall be conducted regardless of the number of participating Members and the percent of their charter capital ownership.</p>	<p>votes. If the second meeting fails to satisfy this condition, the meeting may be convened for a third time within 20 days from the 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>
<p><b>Resolution</b></p>	<p>Unless otherwise provided in the charter of the Company, a resolution of the MC requires the affirmative vote of at least<sup>6</sup>:</p> <ul style="list-style-type: none"> <li>▪ 65% of the LLC’s total charter capital in case of a resolution adopted by collecting written opinions without holding an in-person meeting;</li> <li>▪ 75% of the total charter capital contribution of attending Members in the following cases: <ul style="list-style-type: none"> <li>○ Sale of 50% or more (or a lesser percentage as provided for in the company’s charter) of total assets,</li> <li>○ Amendment of the charter,</li> <li>○ Re-organization of the company, and</li> <li>○ Dissolution;</li> </ul> </li> <li>▪ 65% of the total charter capital contribution of attending Members is required in other cases.</li> </ul>	<p>Unless the charter provides for other percentages, a resolution of the SGM requires the affirmative vote of at least:</p> <ul style="list-style-type: none"> <li>▪ more than 50% 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;</li> <li>▪ 65% of the total number of votes of attending Shareholders in the following cases: <ul style="list-style-type: none"> <li>○ Decision on classes and number of shares to be offered,</li> <li>○ Change of the business lines or sectors of the company,</li> <li>○ Investment or sale of 35% or more (unless the charter provides for another percentage or another specific value) of total assets recorded in the last financial statement of the company,</li> <li>○ Amendment of the charter,</li> <li>○ Re-organization of the company,</li> <li>○ Dissolution,</li> </ul> </li> </ul>

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.

<sup>6</sup> A joint venture LLC or a JSC operating in sectors in which Vietnam agreed to open its market pursuant to its WTO Commitments 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
		<ul style="list-style-type: none"> <li>○ Other matters expressly provided for in the charter.</li> <li>▪ 75% or more of the total number of preferred shares in the case of a resolution that adversely changes the rights and obligations of shareholders owning that class of shares.</li> <li>▪ More than 50% of the total number of votes of attending Shareholders is required in other cases.</li> </ul>
<b>BOM</b>	Not applicable.	<p>Those matters that do not require an SGM resolution can be decided by the BOM.</p> <p>Unless the charter of the company requires a higher percentage, 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>
<b>Title documents</b>	<p>A company's Member Registration Book includes a list of Members together with detailed information about their ownership percentages and identifying information; a Registration Book 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>
<b>Dividends</b>	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>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>

Appendix 1. A	Two-to-Fifty-Member LLC	JSC
<p><b>Change in charter capital</b></p>	<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"> <li>▪ Increase in Members’ contributed capital; and/or</li> <li>▪ Increase in contributed capital raised from new Members.</li> </ul> <p>The charter capital may be decreased:</p> <ul style="list-style-type: none"> <li>▪ After two years of continuous operation, part 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;</li> <li>▪ By share buy-back as permitted by law;</li> </ul> <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>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
<b>Transfer of capital/shares</b>	<p>Capital can be freely transferred between/amongst Members.</p> <p>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"> <li>▪ 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;</li> <li>▪ 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.</li> </ul>	<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 exceptions<sup>7</sup>.</p> <p>The transfer may be made in writing or by mere delivery of the share certificate.</p>
<b>M&amp;A related issues</b>	<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>
<b>Termination of ownership</b>	<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</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>

<sup>7</sup> 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 only applies 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
	<p>matters specified in the charter may leave the company by:</p> <ul style="list-style-type: none"> <li>▪ Redemption by the company of the Member’s capital contribution; and/or</li> <li>▪ Transfer to a third party or to the remaining Members if the enterprise does not or cannot redeem the capital.</li> </ul> <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 Member may not otherwise withdraw its contributed capital.</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>

**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>
<b>Characteristics</b>	<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>
<b>Governance structures</b>	<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>
<b>Legal</b>	Name and identification information of the legal	Name and identification information of the legal representative

Appendix 1. B	One-member LLC owned by an <u>organization</u>	One-member LLC owned by an <u>individual</u>
<b>representative</b>	representative must be stated in the Charter and in the ERC of the company.	must be stated in the Charter and in the ERC of the company.
<b>Board of Controllers</b>	A company wholly owned by a State-owned company must have a Board of Controllers	There are no controllers in this type of enterprise.
<b>Capital Contribution Schedule</b>	The schedule of capital contribution which must be completed no later than 90 days from the date on which the ERC is issued and must be recorded in the company’s Charter.	The schedule of capital contribution which must be made no later 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.
<b>Change in Charter Capital</b>	<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"> <li>▪ 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;</li> <li>▪ By the amount which is unpaid by the owner within the period of time required by law (i.e, 90 days from the date on which the ERC is issued).</li> </ul>	<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"> <li>▪ 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;</li> <li>▪ 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).</li> </ul>
<b>Transfer of capital</b>	The owner is entitled to sell all or part of its capital share. If the transfer of capital leads to an increase in the number	The owner is entitled to sell all or part of its capital share. If the transfer of capital leads to an increase in the number of investors,



Appendix 1. B	One-member LLC owned by an <u>organization</u>	One-member LLC owned by an <u>individual</u>
	of investors, the enterprise must convert to a two-to-fifty-Member LLC.	the enterprise must convert to a two-to-fifty-Member LLC.
<b>Owner's documentation required for business registration</b>	<p>For business registration, the owner must file:</p> <ul style="list-style-type: none"> <li>▪ 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;</li> <li>▪ Copy of its articles of association (or an equivalent document, such as by-laws or charter);</li> <li>▪ 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;</li> <li>▪ List of the owner's authorized representatives, and</li> <li>▪ Letter of appointment of the authorized representatives.</li> <li>▪ IRC if the owner is a foreign investor.</li> </ul>	<p>For business registration, the owner must file:</p> <ul style="list-style-type: none"> <li>▪ Copy of his/her passport or Vietnamese identity card.</li> <li>▪ Copy of its articles of association (or an equivalent document, such as by-laws or charter);</li> <li>▪ IRC if the owner is foreign investor.</li> </ul>

**APPENDIX 2**

**APPLICATION OF CORPORATE TAX RATES/INCENTIVES<sup>8</sup>**

**(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, 2014, 2015 and 2021))**

<b>CIT rate</b>	<b>Application Period</b>	<b>Criteria for CIT exemption and reduction</b>	<b>Exemption Period<sup>9</sup></b>	<b>50% Reduction Period<sup>10</sup></b>
<b>20%</b>	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
<b>17%</b>	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 reverts	<ul style="list-style-type: none"> <li>▪ Income from new investment projects in geographical locations with socio-economic difficulties.</li> <li>Income from new investment</li> </ul>	2 years	4 years following the Exemption Period

<sup>8</sup> Unless otherwise provided in the table, these rates/incentives took effect on January 1, 2014 and apply to enterprises which have been established since January 1, 2009. 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 favorable than the rates and incentives provided for in the current LCIT.

<sup>9</sup> 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.

<sup>10</sup> The Reduction Period is the period for which the Enterprise's CIT obligation is reduced by 50%.

<b>CIT rate</b>	<b>Application Period</b>	<b>Criteria for CIT exemption and reduction</b>	<b>Exemption Period<sup>9</sup></b>	<b>50% Reduction Period<sup>10</sup></b>
	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.		
<b>15%</b>	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
<b>10%</b>	The whole term of a project	<ul style="list-style-type: none"> <li>▪ Income from activities in the following sectors: education and training, vocational training, health care, culture, sport, and environment;</li> <li>▪ 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;</li> </ul>	4 years	9 years following the Exemption Period

<b>CIT rate</b>	<b>Application Period</b>	<b>Criteria for CIT exemption and reduction</b>	<b>Exemption Period<sup>9</sup></b>	<b>50% Reduction Period<sup>10</sup></b>
		<ul style="list-style-type: none"> <li data-bbox="646 359 1075 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> <li data-bbox="646 758 1075 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> <li data-bbox="646 1598 1075 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.</li> </ul>		

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period <sup>9</sup>	50% Reduction Period <sup>10</sup>
	<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"> <li>▪ Investments of any kind in geographical locations with <u>special</u> socio-economic difficulties, economic zones and high-tech zones;</li> <li>▪ Income of high-tech enterprises and of agricultural enterprise applying high-tech in accordance with the Law on High-Tech;</li> <li>▪ 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 materials; production of recycled energy, clean energy</li> </ul>	<p>4 years</p>	<p>9 years following the Exemption Period</p>

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period <sup>9</sup>	50% Reduction Period <sup>10</sup>
		<p>and energy which can be generated from waste; development of biological technology; and protection of the environment;</p> <ul style="list-style-type: none"> <li>▪ 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"> <li>○ 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</li> <li>○ 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 than 3,000 employees;</li> </ul> </li> </ul>		

<b>CIT rate</b>	<b>Application Period</b>	<b>Criteria for CIT exemption and reduction</b>	<b>Exemption Period<sup>9</sup></b>	<b>50% Reduction Period<sup>10</sup></b>
		<ul style="list-style-type: none"> <li data-bbox="649 357 1071 640">▪ 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"> <li data-bbox="706 682 1071 829">○ It is an industrial product which supports high-tech as defined in the Law on High-Tech;</li> <li data-bbox="706 871 1071 1701">○ 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;</li> </ul> </li> <li data-bbox="649 1743 1071 1837">▪ Income from investment projects in the manufacturing sector (except for manufacture</li> </ul>		

CIT rate	Application Period	Criteria for CIT exemption and reduction	Exemption Period <sup>9</sup>	50% Reduction Period <sup>10</sup>
		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.		

In addition, investors are exempt from CIT on income generated from<sup>11</sup>:

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;
5. Job training exclusively for ethnic minorities, disabled people, children in exceptionally difficult circumstances, and victims of social evils;

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<sup>11</sup> Article 4 of the LCIT and Article 4 of Decree 218/2013/ND-CP of the Government dated December 26, 2013.



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. 31/2021/ND-CP (March 26, 2021) detailing implementation of the Investment Law)<sup>12</sup>**

#### **I. ACTIVITIES ELIGIBLE FOR SPECIAL INVESTMENT PREFERENCES**

##### **A. 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; training labour forces in high-tech; provision of high-tech services.
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; production of network information security products and providing network information security services which satisfy the conditions as prescribed by the laws on network information security; production of products based on the development of science and technology in accordance with the laws on science and technology;
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.
8. Manufacture of products on the List of important mechanical engineering products as decided by the Prime Minister.

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<sup>12</sup> When quoting the text of the legal documents in this booklet, we mostly use the English translation made by Allens.

## **B. Agriculture**

1. Afforestation; taking care of, growing, protecting, and developing forests, development of production forests in bare land, barren hills and mountains, plant large timber forests and convert small timber plantations into large timber plantations; development of non-timber products, restoration of natural 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 plants to build fishing vessels and the construction of fishing vessels.
6. Sea salvage services.
7. Invest in research and production of biotechnological products to be used as food.
8. Manufacture of wooden products; manufacture of artificial boards, including: plywood, jointed boards and MDF boards.

## **C. 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.
6. Investment in development, operation and management of technical infrastructure works for industrial clusters.

#### **D. 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, new veterinary drugs, vaccines, biological products for veterinary use.
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 special packaging.
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 illness; 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 detoxification centres; and of HIV/AIDS treatment centres; public drug addiction treatment establishments; drug rehabilitation establishments; counseling and supportcenters for treatment of drug addiction .
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; investment in folk performing arts; investment in the National Library of Vietnam, public libraries of provinces and central cities.
10. Investment in facilities to support gender-based violence prevention and control in the community for prostitutes.

## **II. ACTIVITIES ELIGIBLE FOR INVESTMENT PREFERENCES**

### **A. Science and Technology, Electronics, Mechanical Engineering, Production of IT, and IT's Materials**

1. Investment in research and development (R&D).
2. Production of steel billets from iron ore, high-grade steel, and alloys.
3. Production of coke coal and carbon coal.
4. Production of energy saving products.
5. Production of petrochemicals, pharmaceutical chemicals, basic chemicals, and technical plastic-rubber components [electronics].
6. Production of products with an added value of thirty (30) percent or more (in accordance with guidelines of the Ministry of Planning and Investment).
7. Manufacture of automobiles and their accessories and shipbuilding.
8. Production of electronic components, accessories, and detailed electronic parts not on List A above.
9. 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.
10. Manufacture of materials to replace chrysotile [white asbestos].
11. Production of light unburnt building materials (with density less than 1000 kg/m<sup>3</sup>).
12. Investment in making use of waste heat to generate electricity from building material production facilities in order to save energy and to protect the environment.
13. Production of artificial crushed sand to replace natural sand.
14. Investment in the treatment and use of waste from thermal power plants, chemical fertilizer plants, metallurgical plants to make construction materials.
15. Investment in treatment and use of domestic waste as fuel in production of building materials.
16. Investment in the production of equipment, supplies and spare parts for the cement industry; glasses; ceramic tiles, refractory materials; investment in the production of building materials to replace building materials produced by using outdated technology.

17. Production of all kinds of environmentally friendly means of transport.
18. Production and assembly of diesel locomotives; freight wagons with a tonnage of 30 tons or more; high-class passenger cars with a construction speed of 100 km/h; spare parts for locomotives and wagons in the railway sector.
19. Production of and processing minerals as building materials.
20. Production and trade of products formed from the scientific and technological efforts of science and technology enterprises.

## **B. 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 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; wholesale markets, auction facilities for livestock and livestock products.
5. Construction and development of concentrated raw material zones servicing industrial processing.
6. Exploitation of marine or aquaculture products.
7. Investment in production of biological plant protection drugs, production of organic fertilizers, scientific research activities and technology transfer to develop organic fertilizers.
8. Cultivation and processing of agricultural, forestry and aquatic products in the form of linkages along the product chain; farming and processing agricultural, forestry and aquatic products in the form of organic agricultural production.
9. Producing handicrafts, bamboo and rattan products, ceramics, glass, textiles, yarns, embroidery, knitting.
10. Scientific research and technological development in the field of agricultural science.

11. Breeding original livestock breeds, conserving genetic resources of precious and rare livestock breeds and indigenous breeds.

### **C. Environmental Protection and Construction of Infrastructure**

1. Construction and development of industrial infrastructure clusters.

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 workers.

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 green-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.

5. Production and supply of environmental monitoring equipment, on-site domestic wastewater treatment equipment, environmentally friendly products and services certified with Vietnam Eco-label according to the provisions of the law on environmental protection.

6. Investment in and operation of technology incubators and science and technology enterprises in accordance with the law on technology.

7. Investment in innovation centers, research and development centers.

8. Treatment of concentrated domestic wastewater with a design capacity of 2,500 m<sup>3</sup>/day (24 hours) or more, for urban areas of grade IV or higher.

9. Collection, transportation and treatment of solid waste in a concentrated manner.

10. Hazardous waste treatment, hazardous waste co-treatment.

11. Treatment and renovation of contaminated environmental areas within public areas.

12. Responding to and handling oil spills, chemical incidents and other environmental incidents.

13. Building technical infrastructure for environmental protection in industrial parks, industrial clusters, and craft .

14. Relocation or changing operations of establishments which cause serious environmental pollution.

15. Environmental monitoring.
16. Investment in the construction of cemeteries, and cremation facilities.
17. Environmental damage assessment; environmental health assessment; environmental assessment of imported goods, scrap, machinery, equipment and technology.
18. Production that applies environmentally friendly inventions which are protected by the State in the forms of patents for inventions or patents for utility solutions.
19. Production of environmentally friendly products that are labeled with the Vietnam Green Label by the Ministry of Natural Resources and Environment; products from solid waste recycling and treatment activities of waste treatment facilities (domestic, industrial and hazardous waste).
20. Production of gasoline, diesel fuel and biofuels certified in conformity with regulations; biochar; energy from using wind, sunlight, tides, geothermal and other forms of renewable energy.
21. Producing and importing special-use machinery, equipment and vehicles directly used in the collection, transportation and treatment of waste; automatic and continuous monitoring equipment for wastewater and emissions; instrumentation, sampling and environmental analysis; renewable energy production; treatment of environmental pollution; responding and handling of environmental incidents.
22. Production, business and service activities of environmentally friendly establishments which are certified with eco-labels by the Ministry of Natural Resources and Environment.
23. Production of products, equipment and technologies which use water sparingly.

#### **D. Education, Culture, Socialization, Sport, and 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. Production of veterinary drugs, raw materials for making veterinary drugs, preserving veterinary drugs; manufacture of equipment and instruments used in veterinary medicine.



5. 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.
6. Investment in research and certification by scientific establishments of oriental and traditional medicines and formulation of standards for certification of oriental and traditional medicines.
7. 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.
8. Investment in commercial operation of district-level public libraries, specialized libraries, university libraries, libraries of educational institutions, community libraries, private libraries that serve the community and develop a reading culture for life-long learning.
9. Investment in the development of vocational education quality accreditation organizations and the production of vocational education equipment.

#### **E. Other Sectors**

1. Activities of people's credit funds and of micro-finance institutions.
2. Publishing activities of electronic publications.
3. Investment in distribution chain of small and medium-sized enterprises; investment in incubators of small and medium-sized enterprises; investment in technical facilities to support small and medium enterprises; investment in and operating a co-working space for small and medium-sized enterprises and creative startups in accordance with the law on supporting small and medium-sized enterprises.
4. Investment in innovative start-ups.

### **III. GEOGRAPHICAL LOCATIONS WITH SOCIO-ECONOMIC DIFFICULTIES**

The List is provided in Government Decree No. 31/2021/ND-CP (March 26, 2021). 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 special-use forest, a watershed protective forest or a border protective forest of at least 50 hectares; protective forests to shield from wind and sand, and forests to protect against wave and sea encroachment of 500 hectares or more; productive forests 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) New projects in investment and construction: airports; runways of airports and airfields; the passenger terminal of an international airport; cargo terminals of airports and airfields with a capacity of 1 million tons or more per year;
  - (c) New investment projects in passenger transportation by air;
  - (d) New construction investment projects: a harbor, a harbor area of a special seaport; ports, port areas with investment capital of VND2,300 billion or more, belonging to seaports of class I;
  - (e) Exploration, production, and processing of petroleum;

(f) Investment projects in betting and casino activities, except for video games with prizes for foreigners;

(g) Housing investment projects (for sale, lease, or lease purchase), urban areas in the following cases: investment projects with a land use scale of 50 hectares or more or with a size of less than 50 hectares but with a population of 15,000 or more in urban areas; investment projects with a land use area of 100 hectares or more or a size of less than 100 hectares but with a population of 10,000 or more in non-urban areas; investment projects, irrespective of the size of the land area, population under the protected scope of relics recognized by competent authorities as national monuments or special national monuments;

(h) Development of infrastructure in industrial zones, export processing zones;

2. Investment projects of foreign investors in telecommunications services business with network infrastructure; afforestation, publishing, journalism.

3. Investment projects which fall under the approval authority of at least 02 provincial-level People's Committees.

4. Other investment projects subject to in-principal approval or approval of the Prime Minister.

APPENDIX 5

LIST OF BUSINESS LINES WHICH REQUIRE MINIMUM LEGAL CAPITAL<sup>13</sup>

No	Form	Level of legal capital required
<b>I</b>	<b>Credit institutions</b>	
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 <sup>14</sup>
6	People's credit fund	0.1 billion VND
<b>II</b>	<b>Non banking credit institutions</b>	
1	Finance company	500 billion VND
2	Finance leasing company	150 billion VND
<b>III</b>	<b>Security service</b>	2 billion VND
<b>IV</b>	<b>Debt collection service</b>	2 billion VND
<b>V</b>	<b>Film production</b>	1 billion VND
<b>VI</b>	<b>Operation of aviation port and airport</b>	
1	Domestic airport operator	30 billion VND
2	International aviation port and airport operator	100 billion VND
<b>VII</b>	<b>Other Aviation services</b>	
1	Operating in a domestic airport	10 billion VND
2	Operating in an international airport	30 billion VND
<b>VIII</b>	<b>International air transportation service</b>	
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 flights
6	General trading aviation	50 billion VND
<b>X</b>	<b>Insurance Business</b>	
1	Non-life insurance business	300 billion VND

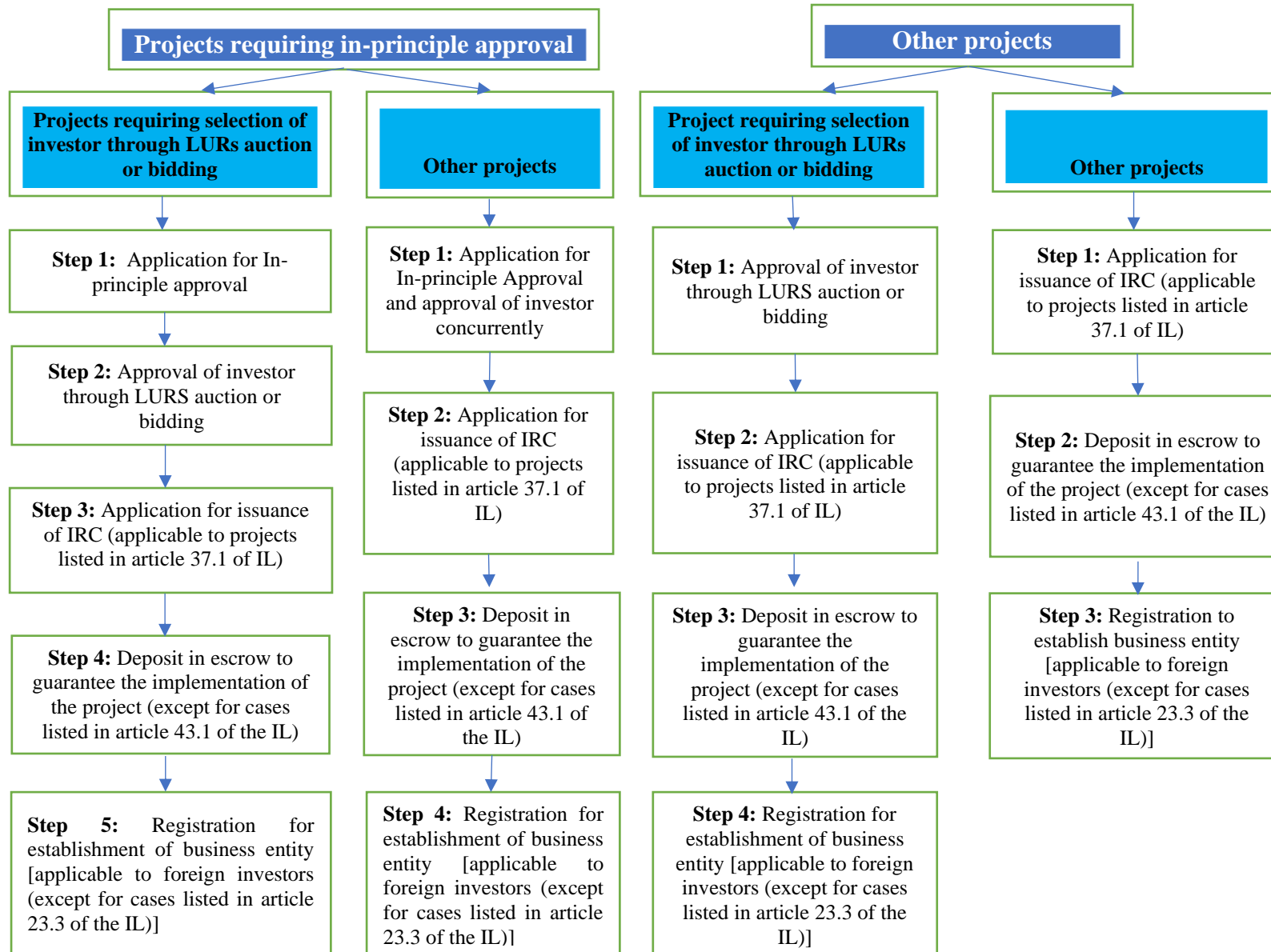
<sup>13</sup> This list has been compiled from many sources. We believe the list is complete, but there may be some inadvertent omissions.

<sup>14</sup> The approximate rate of exchange is US\$1.00 = VND23,000.

2	Life insurance business	600 billion VND
3	Insurance brokerage	4 billion VND
<b>XI</b>	<b>Commodities exchange</b>	
1	Commodities exchange operator	150 billion VND
2	Traders on the commodities exchange	75 billion VND
3	Commodities exchange brokerage	5 billion VND
<b>XII</b>	<b>Securities business</b>	
1	Securities company <ul style="list-style-type: none"> <li>• Securities trading</li> <li>• Securities brokerage</li> <li>• Underwriting for issuance of securities</li> <li>• Securities investment consultancy</li> </ul>	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
<b>XIII</b>	<b>Importing books</b>	5 billion VND
<b>XIV</b>	<b>Multimodal transportation business</b>	80.000 SDR <sup>15</sup>
<b>XV</b>	<b>Establishment of private university</b>	50 billion VND (excluding land use rights value)
<b>XVI</b>	<b>Labour exporting service</b>	5 billion VND
<b>XVII</b>	<b>Auditing service</b>	5 billion VND
<b>XVIII</b>	<b>Establishment of ground fixed telecommunications network</b>	
	Without using radio frequency band and telecommunications subscription numbers <ul style="list-style-type: none"> <li>• Within a province</li> <li>• Within a region</li> <li>• Nationwide</li> </ul>	5 billion VND 30 billion VND 100 billion VND
<b>XIX</b>	<b>Establishment of ground mobile telecommunications network</b>	
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
<b>XX</b>	<b>Establishment of satellite fixed and mobile telecommunications network</b>	30 billion VND

<sup>15</sup> 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.

**APPENDIX 6  
PROCEDURES TO START AN INVESTMENT PROJECT UNDER INVESTMENT LAW 2020 (“IL”)**



## 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 resources 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.

Tax incentives – mainly in the form of preferential tax rates, tax exemptions, and tax reductions 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 income from business activities and other income<sup>16</sup>. 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.

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<sup>16</sup> 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; 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 and the right to participate in an investment project; income from a concession to explore, exploit, and process minerals; income deriving from intellectual properties; and other income.

***Deductible expenses***

Since January 1, 2014, a taxpayer has been entitled to deduct all expenses that (i) are actual and related to the taxpayer's operation, occupational education, 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 are unqualified to meet conditions of a deductible expense (except for damages resulting from natural calamity, epidemics, and other force majeure events);
- b) 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 payable to employees, but these expenses are not actually paid, or without vouchers and documentation required by law;
- j) Interest payable for loan capital which is used in place of the amount of un-paid charter capital;
- 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; and

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**

For the purpose of determining assessable income, a taxpayer is entitled to deduct the following nontaxable 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. 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 (no. 107/2016/QH13 dated April 6, 2016) 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 of foreign individuals/organizations, which are eligible for preferential treatment or tax exemptions (e.g. diplomatic establishment, consular department, representative of international organizations under the United Nations or certain non-governmental organizations, etc.);
- Luggage of visitors entering/leaving Vietnam ;
- Movable assets, which are defined to be tools, supplies for daily life and work of individuals, families and organizations when they stop residing or cease their operations in Vietnam ;
- Goods imported to support petroleum activities;
- Gifts and souvenirs;
- Goods which are traded, purchased by residents living at the border area;
- Goods imported to be processed for export;
- Goods imported for the production of fixed assets of entities which are eligible to enjoy investment incentives;
- Raw materials, supplies and components that cannot be domestically manufactured, and that are imported to serve manufacturing activities of investment projects in the fields eligible for special investment incentives or in geographical locations with special socio-economic difficulties are exempt from import duties for five (5) years from the manufacture commencement date;
- Goods imported for the purpose of scientific research, technological development, national defense, national security, education or other non-commercial purposes;
- Goods imported for the production of money;
- Goods imported under international treaty, goods of minimum value and goods sent by express delivery service; and
- Goods imported for purposes of social welfare, recovery from natural disaster, epidemic or other special incidents.

These exemptions are not automatically applied. An eligible enterprise must follow the procedures set out in Decree 134<sup>17</sup>. 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.

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<sup>17</sup> Decree 134/2016/ND-CP of the Government dated September 1, 2016 (“Decree 134”)

## **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 exempted<sup>18</sup>.

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 ‘
- construction activities and installation of work in a foreign country or within duty-free zones; or goods/services provided to foreign customers pursuant to Government regulations); and
- goods and services which are not subject to VAT once these goods and services are exported.

### **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).

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.

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<sup>18</sup> The list of VAT exemptions can be found in Circular 219/2013/TT-BTC of the Ministry of Finance dated December 31, 2013, as amended by Circular 26/2015/TT-BTC dated February 27, 2015, Circular 130/2016/TT-BTC dated August 12, 2016 and Circular 25/2018/TT-BTC dated March 16, 2018.

### 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 (VND11 million per month), deduction for each dependant (VND4.4 million per month)<sup>19</sup>, charitable contributions to licensed entities in Vietnam, social insurance, health insurance, and compulsory professional liability insurance.

With regard to business income, the total revenue is taxed at flat rates. Subject to business activities, the flat rates may vary. Below are applicable PIT rates for business incomes:

No	Business activities	PIT rates
1	Distribution and supply of goods	0.5%
2	Services, construction activities without supply of materials	2%
3	Production, transportation, provision of services with supply of goods, construction activities with supply of materials	1.5%
4	Lease of properties	5%
5	Commissions/bonuses paid by lottery/insurance/direct selling companies	5%
6	Other activities	1%

<sup>19</sup> 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 from the following tax period).

### 2.4.3 Income subject to PIT

Certain income is subject to PIT under the Law on Personal Income Tax (“**LPIT**”) (eg, income from salary, remuneration, income from interest<sup>20</sup>, dividends, sale of real estate, sale of securities, assignment of 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 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)<sup>21</sup>;
- 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, , 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 all forms of legal betting, etc.)

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<sup>20</sup> Interest income received from commercial banks/credit institutions is not taxed.

<sup>21</sup> A taxpayer who has annual revenue of VND100 million or less is eligible to tax exemption

- 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 Vietnam<sup>22</sup>, 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:

<b>Income from</b>	<b>Rate (%)</b>
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

<sup>22</sup> 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.

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

<b>Tax bracket</b>	<b>Annual assessable income (million VND)</b>	<b>Monthly assessable income (million VND)</b>	<b>Tax rate (%)</b>
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:

<b>Assessable Income</b>	<b>Rate (%)</b>
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.).

## 2.5 Tax treaties

Vietnam has signed treaties for 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, PIT and other forms of taxation.

Following is a list of countries that have signed treaties in avoidance of double taxation, which was updated by the General Department of Taxation on June 4, 2019. The list has yet to be further officially updated.

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
7	Bulgaria	24/5/1996 Hanoi	04/10/1996
8	Cambodia	31/03/2018 Hanoi	20/02/2019
9	Canada	14/11/1997 Hanoi	16/12/1998
10	China	17/5/1995 Beijing	18/10/1996
11	Croatia	27/07/2018	23/05/2019
12	Cuba	26/10/2002 Havana	26/06/2003
13	Czech Republic	23/5/1997 Hanoi	03/02/1998
14	Denmark	31/5/1995 Copenhagen	24/04/1996

No.	Country	Date Signed	Effective date
15	Egypt	6/3/2006 Cairo	Not yet effective
16	Estonia	26/09/2015 NY	14/11/2016
17	Finland	21/11/2001 Helsinki	26/12/2002
18	France	10/02/1993 Hanoi	01/07/1994
19	Germany	16/11/1995 Hanoi	27/12/1996
20	Hong Kong	16/12/2008 Hanoi Amended Protocol: 13/01/2014 Hong Kong	12/08/2009 The amended Protocol: 08/01/2015
21	Hungary	26/8/1994 Budapest	30/06/1995
22	Iceland	3/4/2002 Hanoi	27/12/2002
23	India	7/9/1994 Hanoi	02/02/1995
24	Indonesia	22/12/1997 Hanoi	10/02/1999
2	Iran	14/10/2014 Teheran	26/06/2015
26	Ireland	10/3/2008 Dublin	01/01/2009
27	Israel	4/8/2009 Hanoi	24/12/2009
28	Italy	26/11/1996 Hanoi	20/02/1999
29	Japan	24/10/1995 Hanoi	31/12/1995
30	Kazakhstan	31/10/2011 Hanoi	18/06/2015
31	Korea (North)	3/5/2002 Pyongyang	12/08/2007
32	Korea (South)	20/5/1994 Hanoi	11/09/1994
33	Kuwait	10/03/2009 Kuwait	11/02/2011
34	Laos	14/1/1996 Vientiane	30/9/1996
35	Latvia	19/10/2017 Riga	06/08/2018
36	Luxembourg	4/3/1996 Hanoi	19/5/1998
37	Macao	16/04/2018 Macao	03/10/2018
38	Macedonia	15/10/2014 Skopje	Not yet effective
39	Malaysia	7/9/1995 Kuala Lumpur	13/8/1996
40	Manta	15/07/2016 Ulaanbaatar	25/11/2016
41	Mongolia	9/5/1996 Ulan Bator	11/10/1996
42	Morocco	24/11/2008 Hanoi	12/09/2012
43	Mozambique	3/9/2010 Hanoi	07/03/2011
44	Myanmar	12/5/2000 Yangon	12/8/2003
45	Negara Brunei Darussalam	16/8/2007 Bandar Seri Begawan	01/01/2009
46	New Zealand	05/8/2013 Hanoi	05/5/2014
47	Norway	1/6/1995 Oslo	14/4/1996
48	Oman	18/4/2008 Hanoi	01/01/2009
49	Panama	30/08/2016 Hanoi	14/02/2017
50	Pakistan	25/3/2004 Islamabad	04/2/2005
51	Palestine	06/11/2013 Hanoi	02/4/2014
52	Philippines	14/11/2001 Manila	29/9/2003
53	Poland	31/8/1994 Warsaw	28/1/1995
54	Portugal	03/6/2015 Lisbon	09/11/2016
55	Qatar	8/03/2009	16/3/2011
56	Republic of Azerbaijan	19/5/2014 Hanoi	11/11/2014
57	Republic of Serbia	01/3/2013 Hanoi	18/10/2013
58	Republic of Seychelles	4/10/2005 Hanoi	07/7/2006

<b>No.</b>	<b>Country</b>	<b>Date Signed</b>	<b>Effective date</b>
59	Republic of Uruguay	10/12/2013 Montevideo	26/07/2016
60	Romania	8/7/1995 Hanoi	24/4/1996
61	Russia	27/5/1993 Hanoi	21/3/1996
62	San Marino	14/02/2013 Roma	13/01/2016
63	Saudi Arabia	10/4/2010 Riyadh	01/02/2011
64	Singapore	02/3/1994 Hanoi Amended Protocol: 12/9/2012 Singapore	09/9/1994  11/01/2013
65	Slovak Republic	27/10/2008 Hanoi	29/7/2009
66	Spain	07/3/2005 Hanoi	22/12/2005
67	Sri Lanka	26/10/2005 Hanoi	28/9/2006
68	Sweden	24/3/1994 Stockholm	08/8/1994
69	Switzerland	6/5/1996 Hanoi	12/10/1997
70	Taiwan	6/4/1998 Hanoi	06/5/1998
71	Thailand	23/12/1992 Hanoi	29/12/1992
72	Tunisia	13/4/2010 Tunis	06/3/2013
73	Turkey	08/7/2014 Ankara	09/06/2017
74	The Netherlands	24/1/1995 Hague	25/10/1995
75	UAE	16/2/2009 Dubai	12/4/2010
76	Ukraine	08/4/1996 Hanoi	22/11/1996
77	United Kingdom	09/4/1994 Hanoi	15/12/1994
78	United States	07/7/2015 Washington	Not yet effective
79	Uzbekistan	28/3/1996 Hanoi	16/8/1996
80	Venezuela	20/11/2008 Caracas	26/5/2009

## Chapter Three

# ENVIRONMENTAL CONSIDERATIONS

In this Chapter, we provide an overview of environmental legislation. Vietnam pays attention to protection of the environment. Foreign investors should find the discussion helpful in understanding the environmental framework.

### 3.1 Environmental legislation

Vietnam has long had a legal framework to protect the environment, but protection was weak amid the country's efforts to boost industrialization, modernization, and Vietnam's global economic integration. To improve protection of the environment, in November 17, 2020, a new Law on Environmental Protection was issued by the National Assembly. It took effect on January 1, 2022 and replaces the 2015 Law ("Law on Environmental Protection 2020").

In this Chapter we discuss some key aspects of the environmental legal framework under the new Law on Environmental Protection 2020.

### 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 (such as Ministry of Defence and Ministry of Public Security) 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, it has taken seriously the need to protect the environment. Although there are certainly lapses, Vietnam pays attention, at least to the large industrial environmental issues, at both a local and national level.

Article 28 of the new Law on Environmental Protection categorizes investment projects into four groups to determine their environmental obligations. They are: (i) Group I - Projects with high risk of an adverse environmental impact; Group II - Projects with risk of adverse impact on the environment; Group III – Projects with low risk of adverse impact on the environment; and Group IV – Projects without risk of adverse impact on the environment.

Under Article 30.1 of the Law on Environmental Protection, an EIAR is required for all Group I projects and certain project in Group II. An EIAR must be prepared concurrently with the feasibility study of a project. An EIAR is required before 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 Environment Licence is required for investment projects belonging to Group I, Group II and Group III that generate wastewater, dust or gas which must be treated or generate hazardous waste which must be managed in accordance with regulations on waste management when the projects start their official operation (for projects that require an EIAR) and before the investment certificate is issued (for the projects that do not require an EIAR). This is a new requirement under the Law on Environmental Protection 2020. Projects belonging to the above groups which have operated before the date on which the Law on Environmental Protection 2020 took effect are nevertheless required to obtain an Environment Licence.

An EPR is required for projects that generate waste but does not belong to projects which require an Environment Licence. An EPR is registered with the commune-level people's committee before operation of the project can begin. An EPR is also required for projects that require an EIAR, but are not required to obtain an Environment Licence.

Investors must comply with Vietnam's environmental laws and regulations. Violation may result in penalties, the most severe of which is 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, except for public investment projects which need to be urgently implemented, projects for which an EIAR must be prepared include (i) projects with high risk of an adverse environmental

impact and (ii) projects that are likely to have an adverse impact on the environment.

Projects with a high risk of adverse environmental impact consist of the following:

- a) Large scale projects which risk causing environmental pollution; projects which provide hazardous waste treatment services; projects which use imported scrap as raw production materials;
- b) Medium scale projects which risk causing environmental pollution and with environmentally sensitive conditions; large scale projects without an environmental pollution risk but which have sensitive environmental factors;
- c) Projects which use land, land with water surface or sea area on a large or medium scale and which have sensitive environmental factors;
- d) Large scale projects on exploitation of minerals and water resources with medium scale but which have sensitive environmental factors;
- e) Projects requiring the change of land use purpose on a medium or higher scale and which have environmentally sensitive factors; and
- f) Projects which require large-scale migration and resettlement.

Projects with risk of adverse environmental impact include the following:

- a) Projects which use land, land with water surface, sea area on a medium or small scale but which have sensitive environmental factors;
- b) Projects which exploit minerals and water resources at a medium scale or at a small scale but which have sensitive environmental factors;
- c) Projects which require change of the land use purpose on a small scale but which involve environmentally sensitive factors; and
- d) Projects which require migration and resettlement on a medium scale.

The Government will provide a list of the above projects.

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

### **3.5 Application of Vietnamese environmental standards**

Environmental standards refer to the permitted parameters 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 to manage and protect 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 Investor's responsibility to ensure environmental protection in its production, business and service activities**

Under 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, Environment License or EPR 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 on environmental reporting;
- Observe environmental protection, supervision, and inspection regimes;
- Pay environmental tax and environmental protection fees. An environmental tax applies to any individual, organization that produces and trades in products that have a long-term adverse impact on the environment and on 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, and criminal penalties. Moreover, if a violation causes environmental pollution or degradation that damages other individuals or organizations, the responsible entity 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. In addition to these penalties, polluters may be fined up to VND3,000,000,000 (equivalent to roughly US\$130,500) for individual and VND10,000,000,000 (equivalent to roughly US\$435,000) 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.<sup>23</sup> 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 have 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 a contribution of capital from a local enterprise. This mode has features of both a lease and of capital

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<sup>23</sup> 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 was also the one who had 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 as being allocated by the State or as being leased by others and whether there is any residential house or any other assets affixed to the land.

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 sale together with lease will be allocated land by the State and will 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 (including those with foreign citizenship) 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 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. Many 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 will fit into the local development plan as it evolves.

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 is located within an IZ, an investor may also enjoy the following:

- Generally speaking, 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 they have been assigned 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.

#### **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**

A basic wage applies to employees who work in state agencies, state-owned enterprises. The basic wage is VND1,490,000 per month<sup>24</sup>.

##### **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:<sup>25</sup>

- Level 1: VND4,420,000 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: VND3,920,000 per month for employees who work for enterprises in various designated cities and districts of provinces and in centrally-run cities.
- Level 3: VND3,430,000 per month for employees who work for enterprises in cities and districts of other provinces.
- Level 4: VND3,070,000 per month for employees who work for enterprises in other locations.

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,

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<sup>24</sup> Art. 1 Decree 38/2019/ND-CP dated May 9, 2019. From July 1, 2019, the basic wage is VND 1,490,000.

<sup>25</sup> Art.3 Decree 90/2019/ND-CP dated November 15, 2019.

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 rate<sup>26</sup>, 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 redundancy, an employee has not taken all of his annual leave, the employee must be paid for the days not taken. After every five years of employment, one day is added to an employee's annual leave.

#### **5.4.5 Bonuses**

Paying an annual bonuses is generally in the employer's discretion, and is 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 both Vietnamese and foreign employees who work for at least one months. There are some exemptions for foreign employees not to participating in social insurance (eg, reaching statutory retirement age).

In addition, a Vietnamese employee who works for an employer under a labor contract with an indefinite term or a definite term of from three months up to 36 months is obliged to participate in the unemployment insurance regime. However, an employee who currently receives a retirement pension is not required to participate in the unemployment insurance. Unemployment insurance regime does not apply to a foreign employee.

Under the compulsory social insurance, compulsory health insurance, and unemployment regimes, both the employer and the employee are required to contribute to the insurance

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<sup>26</sup> The nightshift salary rate is equal to 130% of the normal working hour salary.

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.

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.

The maximum salary for the purpose of unemployment insurance contribution is 20 times that of regional minimum wage.

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 one 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 and contractual bonuses, must also be paid.

As of January 1, 2009, unemployment insurance became compulsory if the employer has 10 or more employees. Since January 1, 2015, the employer who hires fewer than 10 employees, is obliged to pay unemployment insurance for its employees. Thus, eligibility for severance/redundancy allowance purposes stopped accruing for Vietnamese employees.

In this connection, the time during which the employee contributes to the 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 two types of individual labor agreements recognized by law: (i) an agreement for an indefinite term, and (ii) an agreement for a definite term of up to 36 months.

If a definite term 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. More specifically, a definite term labor agreement may be used only for two consecutive terms. 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. This rule does not apply to foreign employees. Stated differently, an employer can sign an unlimited number of definite-term with its foreign employees.

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 180 days if the employee is recruited for a managerial position. A “*managerial position*” is defined in EL<sup>27</sup> or the employer’s Charter;
- 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.

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<sup>27</sup> Article 4.3 of EL provides that a managerial position of an enterprise includes owner of a sole proprietorship, a partner of a partnership company, chairperson or member of the Board of Member, President of a company, President or member of the Board of Directors, Director/General Director, or holder of another managerial position prescribed in the company’s charter

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 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 the trade union of district 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.

A collective labor agreement must be filed with the DOLISA 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 be registered with the DOLISA within 10 days after its execution. 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;
- Transfer an employee to work in a job different from the labor agreement;
- Sexual harassment; 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 to support employees' rights and benefits. The employer is required to consult with the trade union in dealing with issues relating to employee's rights and benefits, such as issuance of the ILRs, issuance of policy to review working performance and dismissal.

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.

In addition to the trade union, the employees have the right to establish another organization – employees' representative within the company to protect their rights and interests under the new Labor Code. Such organization is independent from the trade union. The establishment employees' representative will be subject to the procedures which shall be guided by a decree to be issued by the Government.

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 court<sup>28</sup>. 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.

An individual's labor-related disputes can be settled by labor arbitration if the employee and the employer agree to do so. The arbitrator is appointed by DOLISA or VCCI.

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<sup>28</sup> In some cases, the disputing parties are entitled to sue without an attempt to conciliate.

## 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.

Expatriates working in Vietnam are regulated by Decree No. 152/2020/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:

- a) He is a capital contributing member or owner of a limited liability company established in Vietnam with a capital contributed amount stipulated by the Government<sup>29</sup>;
- b) He is a member of a management board of a joint stock company established in Vietnam with a capital contributed in an amount stipulated by the Government<sup>30</sup>;
- 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 married to a Vietnamese citizen and living in Vietnam;
- 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,

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<sup>29</sup> Article 7.1 of Decree 152/2020/NĐ-CP dated December 30, 2020 requires an expat to contribute at least VND 3,000,000,000 to a limited liability company in order to be exempt from a work permit.

<sup>30</sup> Article 7.2 of Decree 152/2020/NĐ-CP dated December 30, 2020 requires an expat who is the chairman or a member of the board of management to contribute at least VND 3,000,000,000 to a joint stock company in order to be exempt from a work permit.

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 assistance (“ODA”) to Vietnam;

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 visits Vietnam no more than three times per 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 relative 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 an official/mission passport and works for a State agency, political organization, or socio-political organization; and

r) He is in the process of establishing a commercial presence in Vietnam.

In order for an expatriate to be exempt from a work permit, the employer must file an application with the DOLISA to confirm the exemption, except in the cases a), b), d), f), g), m) and p) above.

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.<sup>31</sup>

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<sup>31</sup> Art 4 of Decree 152/2020.



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 and then returns to Vietnam. In such case a criminal record issued by the competent authority in that foreign country is required.

A work permit can be extended or cancelled. The time to apply to extend 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 extension of the work permit prior to expiration. A work permit can be extended for an additional term of two years, but there is only one extension for each issued work permit. After the extension, the employer must obtain a new work permit for its foreign employee to continue working in Vietnam.

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 has a solid legal framework to protect intellectual property rights (“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 which 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, the owner can follow either an administrative or judicial process to enforce its rights. Each procedure has its advantages and shortcomings. See our discussion below.

In either process, 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. 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 with either of these authorities to act against the infringer. 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\$22,000) 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 are harmful to human health or detrimental to society; etc.

In practice and in the current environment, the use of administrative procedures is probably 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 whether an infringement has occurred. An IPRs owner will seek an opinion that an IPRs infringement has occurred. The opinion is issued by a private organization—the Vietnam Intellectual Property Research Institute (“VIPRI”). VIPRI provides expert consultation on IPR-related issues such as infringement. An opinion on infringement from such a body is for reference purposes and is not legally binding. However, since there is no other authority to issue a decision on infringement, an opinion on infringement issued by VIPRI provides a basis on which enforcement bodies may act.

One cannot claim compensation for damages if she uses 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 that show that infringement has occurred.

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 such 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. 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\$900-9,000) 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, about US\$900). 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 generally compactible 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.

However, Vietnam wants to deal severely with IP violators . Monetary fines imposed on actions that infringe IPRs in respect of inventions, industrial designs, and layout designs of integrated circuits are severe. Governmental Decree 99/2013/ND-CP dated August 29, 2013 has increased the fine from VND500,000,000 to VND1,000,000,000. Articles 192, 193, 194 and 195 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 67/2006/L-CTN, dated June 29, 2006 (amended and supplemented by the Planning Law, number 21/2017/QH14, dated November 24, 2017), and other regulations.

Registration of domain names follows the principle of “first registered, first granted”. Currently, conflicts in the field of domain names are mainly settled by negotiation between parties.

## APPENDIX

This Appendix lists the main domestic laws and implementing regulations which govern intellectual property within 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 192, 193, 194, 195 on sale and manufacture of counterfeit goods);
- Intellectual Property Law, effective July 1, 2006 (“IP Law”), amended by Law number 36/2009/QH12, effective October 1, 2010;
- 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 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 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 99/2013/ND-CP of the Government dated August 29, 2013, on sanctions against administrative violations in the field of industrial property;
- Decree 131/2013/ND-CP of the Government dated October 16, 2013, on sanctions against administrative violations in the field of copyrights and related rights (amended and by Decree 28/2017/ND-CP, dated March 20, 2017);
- Decree 185/2013/ND-CP of the Government dated November 15, 2013, on sanctions against administrative violations on sale and manufacturing of counterfeit goods;
- Decree 22/2018/ND-CP of the Government dated February 23, 2018, 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 of copyrights and related rights;
- Law number 42/2019/QH14, amending and supplementing several revisions of the Law on Insurance and the IP Law.

## **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 Program-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).
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership.