
Guide For Doing Business in Vietnam

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Doing Business in Vietnam

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1. BACKGROUND

1.1 Geography

The territory of Vietnam comprises a land mass of 330,000 km², a vast sea area including a large continental shelf, and a string of archipelagos stretching from the Gulf of Tonkin to the Gulf of Thailand.

On the map, Vietnam takes an elongated "S" shape. The national territory is approximately 1,750 km long, ranging from its Northernmost point to its Southernmost point, and its width varies from 50 km to 600 km. The total inland border line is 4,230 km in length, including 1,650 km of common border with the People's Republic of China in the North, 1,650 km with the Laos People's Democratic Republic in the West, and 930 km with the Kingdom of Cambodia in the West and South West.

The sea area in Vietnam is to the east, the South and the South West borders on the territorial water of Cambodia, Indonesia, Malaysia, the Philippine and Thailand. Vietnam possesses a large continental shelf, many coastal and offshore islands and archipelagos. The main islands and archipelagos are Phu Quoc Island (70 km off the Ha Tien coast), Hoang Sa (Paracel) archipelago (300 km off the Da Nang coast), Truong Sa (Spratly) archipelago (500 km off Cam Ranh coast) and Tho Chu archipelago (200 km off the Rach Gia coast).

Vietnam has a rather diversified topography of plains, midlands, and mountains. Mountains and forests with more than 7,000 vegetable breeds make up three fourths of the area of Vietnam and can be divided into four main zones: the North-eastern mountain area, or Viet Bac; the North-western region; the North Truong Son region; and the Central Highlands. The largest and potentially most fertile plains are the Me Kong River Delta in the South and the Red River Delta in North.

The capital of Vietnam is Hanoi, which lies in the North of the country. Principal cities include Ho Chi Minh City ("HCMC") in the South, Hai Phong on the north-east coast and Da Nang, Hue and Nha Trang, all on the east coast.

1.2 Climate

Vietnam lies in the tropical monsoon zones. The typical features of this zone include warmth, humidity and abundant seasonal rainfall.

In the North, climate changes occur in four seasons: spring (from January to April), the feature of which is drizzle and constant humidity; summer (from May to July), which is hot and rainy season, autumn (from August to October) and winter (from October to early January), the season with the lowest temperatures of the year.

In the Central and the Southern parts (from Da Nang southwards), it is hot all the year round and there are only two seasons: a rainy season (from May to October), and a dry season (from October to April).

1.3 Population and Demography

The total population of Vietnam is now accounting for about 91.7 million (not including 4 million Vietnamese living abroad); Vietnam is ranked at 13th in the world, 8th in Asia and 3rd in Southeast Asia in term of population size. The population is composed of 54 ethnic groups, of which the Viet (Kinh) accounts for 86.2% and lives in the deltas and coastal areas.

Distribution of population is uneven, with rural population accounting for about 69.4% of the total. Also, the population is not evenly distributed within the regions, Red River and Mekong River Deltas, for instance, accounting for 17% of the total land area but are home to over 41% of the total population whereas the Central highlands and Northern mountainous areas which account for over 48% of the total land area but have only about 21% of the total population. As for urban areas, Hanoi and HCMC, for instance, are the two largest population-density cities, with about 7.1 million and 8 million, respectively.

The average population growth rate now is about 1.08% per year which is among the highest rate in the region. Population growth rates are also different and vary sharply from region to region. Normally, the mountainous and rural areas have a much higher growth rate as compared with that in the urban areas, particularly in Hanoi and other principal cities.

In addition, a matter of fact is that the rate of migration to urban areas is growing significantly in recent years and expected to continue in the future, from rural to urban areas and/or big cities. The main reason is that agricultural sector becomes more mechanized while high labor demand is arising in urban areas and in industrial zones.

1.4 Language

As earlier said, although the population of Vietnam comprises a number of ethnic groups, each with its own culture and language, Vietnamese (the language of the Viet) is used as the national standard for communications among all ethnic groups in Vietnam. Although the writing is the same throughout the country, there are in fact some differences in speaking by Vietnamese between the two parts, the North and the South.

Amongst foreign languages in Vietnam, English becomes now the most common one for communications in Vietnam after a very short of time practicing here. Although it is a generalization, it is seen that French and Chinese are still quite widely spoken in Vietnam by the older generations due largely to the historical reasons. Thanks to the close co-operations between Vietnam and other former socialist countries, including the U.S.S.R., DDR, etc., in the past, a number of Vietnamese can now speak and understand Russian, and German. Because of being quite common in use, English and French are used in support for Vietnamese, in some legal documents relevant to foreign trade and foreign direct investment.

2. POLITICAL AND LEGAL ENVIRONMENT

2.1 Political and Legislative System

The Constitution in general establishes the mastery of the people under the leadership of the Communist Party, of which the highest representation is the Politburo and the Party Secretary General. The power of the people is to be exercised through the National Assembly at the central level and the People's Councils at different local levels.

The National Assembly is the supreme representative and legislative body and determines both domestic and foreign policy. It is elected by universal suffrage. The National Assembly in turn elects and may remove from office the President, Vice-President, Chairman of the National Assembly, Vice-chairman of National Assembly, members of the Standing Committee of the National Assembly, the Prime Minister, the Chief Justice of the Supreme People's Court, and the Head of the Supreme People's Procuracy. In addition, the National Assembly has the responsibility of sanctioning the Prime Minister's selection of Deputy Prime Ministers and Ministers.

The National Assembly is also responsible for approving the organization of the Government and

its agencies, and is the supreme law making body. The duration of the National Assembly is 5 years and elections are held two months prior to the expiry of its term. The Standing Committee possesses the power to manage the day-to-day affairs of the National Assembly when it is not in session and during this time the Standing Committee assumes all its powers, including the law-making power on matters entrusted to it by the National Assembly.

The Head of State is the President. He/she is elected by the National Assembly and represents the Nation internally and externally.

The highest executive body in Vietnam is the Government, formerly known as the Council of Ministers. It is charged generally with the management of the economy and the state. It is made up of the Prime Minister, Deputy Prime Ministers, Ministers and the Chairmen of the various State Committees and the Governor of the State Bank. Individual ministries and organizations equivalent to ministries aid the Prime Minister in the administration of the Country within the specific fields in which they have jurisdiction. The deputy prime ministers and the ministers are selected by the Prime Minister but must be approved by the National Assembly. With the exception of the Prime Minister, the members of the Government do not have to be members of the National Assembly. Decisions on major issues must be taken on a majority basis.

Below the Government are People's Committees and People's Councils. The People's Councils are elected by the people and in turn elect the People's Committees. These bodies occur at the levels of city/province, district and commune. Each city/province, district and commune is governed by a People's Committee.

The court and prosecution systems in Vietnam have a structure similar to the administrative system. In the central level, the Supreme People's Court is the highest juridical body in Vietnam and the Chief Justice is elected by the National Assembly for the term of the National Assembly. The Supreme People's Procuracy has the highest power on prosecution in Vietnam and the Head is also elected by the National Assembly for the term of the National Assembly. In local levels, these bodies occur at the levels of city/province and district.

For information, the political system and State apparatus are outlined below:

Leaders of the State and Communist Party	
Secretary General of the Communist Party	Nguyen Phu Trong
President of the State	Tran Dai Quang
Chairman of the National Assembly	Nguyen Thi Kim Ngan
Government	
Prime Minister	Nguyen Xuan Phuc
Deputy Prime Ministers (5)	Truong Hoa Binh Vuong Dinh Hue Trinh Dinh Dzung Vu Duc Dam Pham Binh Minh
Ministries and ministerial-level agencies	
Ministry of Planning and Investment	Nguyen Chi Dzung
Ministry of Industry and Commerce	Tran Tuan Anh
Ministry of Finance	Dinh Tien Dzung
Ministry of Science and Technology	Chu Ngoc Anh
Ministry of National Resources and Environment	Tran Hong Ha
Ministry of Construction	Pham Hong Ha
Ministry of Agriculture and Rural Development	Cao Duc Phat

Ministry of Labour, War Invalids and Social Affairs	Dao Ngoc Dzung
Ministry of Transport	Truong Quang Nghia
Ministry of Education and Training	Phung Xuan Nha
Ministry of Health	Nguyen Thi Kim Tien
Ministry of Information and Communications	Truong Minh Tuan
Ministry of Defense	Ngo Xuan Lich
Ministry of Public Security	To Lam
Ministry of Foreign Affairs	Pham Binh Minh
Ministry of Justice	Le Thanh Long
Ministry of Culture, Sports and Tourism	Nguyen Ngoc Thien
Ministry of Home Affairs	Le Vinh Tan
Government Inspectorate	Phan Van Sau
State Bank of Vietnam	Le Minh Hung
Government Office	Mai Tien Dzung
Committee for Ethnic Affairs	Do Van Chien
Other State Agencies	
Supreme People's Court	Nguyen Hoa Binh
Supreme People's Procuracy	Le Minh Tri

2.2 Legal System

In Vietnam, the legal system comprises of constitution, codes, laws, ordinances, decrees, decisions, circulars, directives, and official letters, to some extent. Although all have the force of law, only a law passed by the National Assembly is referred to as such.

Ordinances are issued by the National Assembly's Standing Committee, commonly to regulate on an area where a law is not yet promulgated and/or regulated. On matters that the National Assembly entrusted to the Government, the Government issues decrees or decisions or directives to implement the issued laws or ordinances.

Circulars, decisions and regulations are normally issued by individual ministries and other State agencies including people's committees, with respect to subjects within their sphere of responsibility and the force of subordinate legislation.

It should be noted when using that while codes, laws and ordinances are referred to by the name, decrees, decisions, circulars and directives are usually referred to by the number, signing date, and the name of issuer.

3. ECONOMIC ENVIRONMENT

3.1 Gross Domestic Product (GDP) Growth

Economy and society development in the recent years took place in the context of global market turmoil, the world economy still faces a big risk with unpredictable factors. In such a context, Vietnam registered quite a high growth, with 2009 at 5.32%, 2010 at 6.78%, 2011 at 5.89%, 2012 at 5.25%, 2013 at 5.42%, 2014 at 5.98%, 2015 at 6.68%, and 2016 at 6.21%. Due to the impact of a prolonged global economic crisis combined with the difficulties and inherent inadequacies of Vietnam's economy, the growth rate of Vietnam sometimes decreased. However, in the last years, Vietnam's economy is undergoing stronger restoration and development. Growth rate of 2016 although being lower than that of 2015 and not achieving the set target of 6.7%, is still higher than those of years from 2011 to 2014 in the context of unfavourable world economy, prices and global

trade falling, the country coping with many difficulties due to complicated weather and sea environment, the achievement of such growth rate is a success, affirming the rightness, timeliness and efficiency of the measures and solutions enacted and directed by the Government to be drastically implemented in all branches and localities at different levels; and simultaneously reveals clear recovery of our country's economy.

Year	2009	2010	2011	2012	2013	2014	2015	2016
GDP Growth	5.32%	6.78%	5.89%	5,25%	5.42%	5.98%	6.68%	6.21%

3.2 Sectorial Growth

The structure of the Vietnam's economy, which is basically made up of three sectors: agriculture, industry and construction, and services, has been undergoing a considerable transformation over the last few years, with the agriculture sector declining its contribution while the industrial and service sectors increasing their shares.

Year	2009	2010	2011	2012	2013	2014	2015	2016
Agriculture, Forestry & Fishery	1.82%	2.78%	3.08%	2.67%	2.63%	3.44%	2.41%	1.36%
Industry & Construction	5.52%	7.7%	6.49%	5.43%	5.08%	6.42%	9.64%	7.57%
Services	6.63%	7.52%	6.12%	6.56%	6.72%	6.16%	6.33%	6.98%

3.3 Foreign Direct Investment (FDI) Flow

Up to 20 March 2017, as many as 23,071 foreign-invested projects from 116 countries and territories with a total registered capital of over US\$300.074 billion, had been licensed in Vietnam. In the first three months of 2017, there were 493 new foreign-invested projects with a total capital registered of US\$2.917 billion were issued with Investment Registration Certificates (IRCs), or 6.5% compared to the same period of 2016. In addition, there are 223 projects adjusted their investment capital with a total increased capital registered of over US\$3.94 billion, up 206.4% compared to the same period in 2016; 1,077 capital contributions and equity acquisitions by foreign investors with the total value of US\$ 852,86 million, increasing by 171.5% compared to the same period of 2016. For the whole of new & additional funds and capital contribution & equity acquisition, in the first three months of 2017, investors have registered to invest US\$7.71 billion in Vietnam, equivalent to 171.5% compared to the same period in 2016. Total capital disbursed in the first three months in 2017 has reached US\$3.62 billion, increasing by 3.4% compared to the same period of 2016. This confirms Vietnam's FDI is recovering steadily after years affected by the global and domestic economic downturns.

By sectors, the Processing and Manufacturing sector absorbs the largest quantity of foreign capital into Vietnam, with registered capital of over US\$178.574 billion and 11,903 projects. The Property & Construction sector stands behind with the registered capital of over US\$63.509 billion and 2,008 projects; the Electricity, Gas & Water Production and Distribution with the registered capital of over US\$12.908 billion and 108 projects; the Accommodation & Food services with the registered capital of around US\$11.539 billion and 562 projects; and the Wholesale, Retail and Automobile & Motorcycles repair sector with the registered capital of around US\$5.6 billion and 2,357 projects.

By localities, all 63 cities and provinces of Vietnam have been fully covered by foreign investment. Nation-wide, foreign investment most focuses on the South, especially Ho Chi Minh City, Binh Duong, Ba Ria-Vung Tau, Hanoi and Dong Nai. Among the principal cities and provinces, HCMC and Binh Duong are the most attractive ones, which accounted for about 15.1% and 9.2% of the total registered capital in Vietnam. Ba Ria-Vung Tau, Hanoi and Dong Nai

stand behind, with the registered capital accounted for 9%, 8.6% and 8.5% of the total registered capital respectively.

By nationality, 116 different countries and territories have so far invested in Vietnam. The Republic of Korea now is the biggest foreign investor with 5,932 projects and registered capital of over US\$54.01 billion, followed by Japan, Singapore, Taiwan, British Virgin Islands, etc. These top five economies have invested in 14,396 projects (over 62.18% of the total licensed projects) with total registered capital of over US\$188.768 billion (around 62.77% of the total registered capital). Other countries and territories like Hong Kong, Malaysia, China, the United States and Thailand, which have given impetus to get a steady foothold in Vietnam, and are now among the top ten. The “top ten” investors account over 82.29% of the total licensed projects and over 82.3% of the total registered capital in Vietnam.

3.4 Official Development Aid (ODA) and Preferential Loan Commitments

Vietnam first received US\$1.8 billion of ODA from international donors in 1993. The figure has been increased year by year and during the period from 1993 to 2014, the total value of ODA commitments to Vietnam amounted to US\$89.5 billion, total capital of signed commitments reaching US\$73.68 billion, US\$3.5 billion/ year on average, has been provided by the community of 51 global donors (28 bilateral donors and 23 multilateral donors). Thanks to the positive economic development and the political stability, the ODA commitments by the international donor community to Vietnam although still being quite high follow the trend of being decreased from year to year. Particularly, US\$6.144 billion was agreed for 2009, US\$8.063 billion for 2010, US\$7.88 billion for 2011, almost US\$7.4 billion for 2012, over US\$7 billion for 2013, about US\$5.6 billion for 2014, more than US\$2.75 billion for 2015, and around US\$5.38 billion for 2016 due to many countries stop or reduce provision of ODA to Vietnam when Vietnam became a lower middle-income country since 2010 in going line with the country’s policy on mobilization of ODA and preferential loans focusing on the quality and efficiency of ODA capital and preferential loans to ensure public debt sustainability. In practice, thanks to Vietnam’s capacity and experience on receiving funds, capital from this source was being disbursed progressively better from US\$3 billion in 2009, US\$3.5 billion in 2010, US\$3.65 billion in 2011, US\$3.9 billion in 2012, US\$5.1 billion in 2013, around US\$5.65 in 2014, US\$3.7 billion in 2015, and approximately US\$3.7 billion in 2016 increasing the total ODAs which have been disbursed so far to about US\$65.1 billion.

3.5 Global Integration

Thanks to the excellent preparations, Vietnam officially became the 150th member of the WTO from November 2007, and at the same time, achieved the Permanent Normal Trade Relations (PNTR) with the US in the same year. In addition to an ASEAN - China Free Trade Agreement as of 2004 and a Framework Agreement on Comprehensive Economic Cooperation among the ASEAN countries and the Republic of Korea of 2005, the coming into full effect of a Comprehensive Economic Partnership Agreement between ASEAN countries and Japan as well as the signing of another separated one between Vietnam and Japan in 2008 and the coming into force of an ASEAN-Australia-New Zealand FTA in 2010, added by the initial negotiations for a future FTA between Vietnam and the EU in June 2012, and in 2015 Vietnam ended basically negotiating a FTA with the European Union (officially signed at the end of 2015) to create conditions for Vietnam’s products to penetrate more easily into five of the largest economy in the world, with much lower tax rates. Concurrently, on 4 February 2016, 12 countries contracting the Trans-Pacific Partnership Agreement (TPP), including Vietnam, attended the signing ceremony for authentication of TPP wordings in Auckland, New Zealand. With the authorization of the Prime Minister, the Minister of Industry and Trade Vu Huy Hoang Vietnam on behalf of the Government signed authenticity of wordings of TPP and 35 bilateral agreements in domains related to financial services, textiles and garment, agriculture, intellectual property, etc. that Vietnam has agreed with the TPP countries. These bilateral agreements will take effect at the same time with TPP.

4. SOCIAL ENVIRONMENT

4.1 Education

Vietnamese are most well-educated, with a literacy rate of over 95%. As for university and college training alone, there are in total about 412 universities, colleges and junior colleges throughout the country, attracting nearly million students each academic year.

Although having not a State school for foreigners in Vietnam, foreign diplomatic and economic institutions have set up schools for their staff's children. Recently, expatriates in Hanoi can enroll their children aged 4 to 15 years old at the United Nations International School (UNIS), meantime the same in HCMC can join the International School Ho Chi Minh City (ISH).

4.2 Accommodation

The quality and availability of international hotels has increased dramatically in recent years in Vietnam. Five and four-star international hotels are well abundant in Hanoi, Da Nang and HCMC. Besides, mini hotels are plentiful, easy to find and very cheap in comparison with the said first-tier hotels. For recent years, the current supply has been outstripping the demand.

In addition to hotels, housing space is now easy to find in big urban areas, especially Hanoi and HCMC. Many high-class and international standard residential buildings are now open for rent, with much lower prices compared to few years ago. Local standard housing space is also abundant, mainly from individual landlords, with cheaper prices. The high-class is often preferred by individual foreigners.

4.3 International and Local Travel

International flights are daily available from Hanoi and HCMC. Vietnam Airlines, and other domestic and foreign airlines have booking offices in both cities. Local flights are also daily busy from Hanoi to HCMC and vice versa. Actually, for local travels, Vietnam Airlines, Jestar Pacific, Vietjet Air, SkyViet, Vietstar Airlines and Hai Au (Albatros) are the six operating players. All these airlines use French or American made aircrafts.

By land travel, buses and trains are very common for local transportation of passengers around towns/cities and for inter-province trips including from Hanoi to HCMC and vice versa. Metered-radio taxis are available in the major cities and at Noi Bai (Hanoi) and Tan Son Nhat (HCMC) airports. Car hire is relatively cheap and for shorter journeys cyclos (pedal driven transport) can be hired. It is expected that from 2016 onwards, Vietnam shall have another type of public transport, tramways (including skytrain and subway) to be put into use in two major cities, Hanoi and HCMC.

4.4 Media and Communications

The international communications system (telephone, telefax and telex) and internet infrastructure (broad band, optical cable, Wi-Fi) have been frequently upgraded so as to respond the increasing market demand. Also, electronic communications including Wi-Fi spot are quite common, standard and at reasonable cost, even Wi-Fi-free areas in Vietnam, especially in urban and industrial areas.

English-language newspapers including online-versions are well available in Vietnam at present. The Vietnam News Agency publishes daily the English-language Vietnam News newspaper. In

In addition, there are a number of local newspapers and magazines in English language being published in Vietnam, which include the weekly Vietnam Investment Review newspaper, the weekly Vietnam Economic News Magazine, the monthly Vietnam Economic Times Magazine, etc. A number of other business magazines, published in neighboring countries, are also available.

The official Voice and Television of Vietnam broadcast news in English and other widely-used language, for instance, French. TV and Radio programs broadcast by foreign stations such as CNN, BCC, Australia Network, TV5, DW, Russia-1, NHK, KBS, etc. are also available.

5. FOREIGN DIRECT INVESTMENT

5.1 Legislation

From 1 July 2015, the Law on Enterprises 2014 (“LE”) and Law on Investment 2014 (“LI”) replace the previous Laws of 2005 and generally govern investment activities, establishment and operation of enterprises in Vietnam. At present, the Government continues to issue Decrees and other lower level legal documents providing guidelines for the entire process from the investment registration, business registration to the business operations.

The LE and LI continuously confirm to guarantee the legal capital and assets of foreign investors in Vietnam, and allow foreigners to invest in most sectors of the economy, particularly in sectors of export-oriented, agricultural activities, new materials, high technology, development research, environment protection, and others of similar nature.

5.2 Vehicles of Foreign Direct Investment

Under the ULE and CLI, foreign investors are entitled to select one of the following vehicles or forms for their investment in Vietnam:

- (i) Establishment of a foreign-invested company: Limited Liability Company, with One or More Members (“LLC”); Joint Stock Company (“JSC”); Partnership; or other economic organization
- (ii) Capital contribution to; purchase of shares/ capital contribution portions in Vietnamese company
- (iii) Public - Private Partnership (“PPP”) contract; and
- (iv) Business Co-operation Contract (“BCC”).

It is worthy of note that for establishment of any new economic organization, it is required to attach the establishment to an investment project in Vietnam. The LI and LE separate application for the issuance of IRCs of investment projects and application for the issuance of Enterprise Registration Certificates (“ERC”) of the newly-established economic organization instead of the old regulations allowing the IRC to serve at the same time as the ERC.

Details concerning each vehicle are described hereunder.

(i) LLC

LLC may be established by a single investor or pursuant to a joint venture contract signed by one or more investors, either Vietnamese investors and one or more foreign investors; or between foreign investors, individually or institutionally, for the purpose of carrying out business activities in Vietnam. The difference of the LLC compared with the JSC is that the LLC is not permitted to issue shares (and list its shares on stock exchange), and the number of investors, regardless individual or institutional, is not allowed to be excessive of 50.

Unlike the Law on Foreign Investments in Vietnam (“FIL”), which was no longer valid, the old LE

and LI since 2005 introduced the term of “charter capital” for replacement of the confused “legal capital”, and do not require the ratio between the charter capital of the LLC per the invested capital of their investment project being at least 30%. It seems that under the LE and LI, foreign investors will have more choice in making their contributions to the charter capital in cash or in kinds compared with the FIL in the past, and that there are no floor limits of the foreign investors in the charter capital of the LLC (pursuant to the FIL in the past, the contribution by the foreign investors is required to be at least 30% of the company’s charter capital).

Unlike the FIL in the past where the JVC or FOC is managed by the Board of Management (“BOM”), and members are nominated by the parties in proportion to their contributions, under the LE and LI, the LLC shall be ultimately managed by the Member Council or Company Chairperson. The general director/ director shall be responsible before the Member Council or Company Chairperson, for the day-to-day management and business of the LLC. No specific regulations on the nationality of the general director/director in the LLC are provided, and the unanimous agreement/ voting on some matters of the LLC (i.e. revising the charter, appointing the general director, etc.) have been no longer valid. Instead of those, the voting principles by majority of votes representing at least 65% and/ or 75% (as the case may be) of the total capital contributed by attending members for LLC with Two or More Members, or more than 1/2 and 3/4 (as the case may be) of attending members for LCC with One Member, in a duly-organized Member Council meeting.

(ii) JSC

JSC is a company established by at least 3 investors, regardless individual or institutional, local or foreign. Differing from the LLC, JSC can issue shares to the public and list its shares on stock exchange. JSC is a kind of limited liability company, and has the legal person status in accordance with the laws of Vietnam.

Like LLC, under the LE, the specific requirements of the ratio of the charter capital of the JSC per the invested capital for the investment projects by the JSC (i.e. 30%) and the same of the contributions by the foreign investors in charter capital (i.e. 30%), are no longer valid.

Similarly, the LLC, the highest management authority of a JSC is the general shareholder meeting, which decides all the most principal matters of the company. However, the LE is opener than the old Law with provisions permitting JSCs to choose either of two organizational and managerial models, or to have one or more legal representative(s). The general director/ director is responsible to the general shareholder meeting and BOM for the day-to-day management and business of the JSC. Assisting the general shareholder meeting in supervising the performance of the BOM, general director/ director and other the management positions is the Board of Supervision.

Finally, voting principles by majority of 51% or 65% (as the case may be) of the total number of votes of all shareholders attending a duly-organized general shareholder meeting, or a number of shareholders representing at least 51% of the total number of votes in the case of collecting opinions in writing.

(iii) Partnership

Partnership is a company by at least 2 members, who are individual or organization, domestic or foreign, together under one common name (“general partners”). In addition to the members of the partnership, partnership can have capital contributing partners. Unlike JSC, partnership may not issue any type of securities, and general partners shall be liable with all its assets for the obligations of the company. Partnership has legal personality under the law of Vietnam.

Members’ council of the partnership is consisted of all members of the company, and has the right to decide on all the business activities of the company. The general partners have the right

of legal representatives of the company, and organize and direct daily business operations of the company. Chairperson of the Members' Council is concurrently general director or director if the company's charter does not provide otherwise. The decision of the Council of Members shall be adopted with the approval of at least 3/4 or 2/3 of the total number of partners (as applicable).

(iv) Capital contribution to, purchase shares/ capital contribution portion in Vietnam-based company

Foreign investors are entitled to:

- (a) Capital contribution to companies in Vietnam in the following forms: Purchase of initially-issued shares or additionally-issued shares of a JSC; Capital contribution to a LLC or Partnership; Capital contribution to other economic organizations; and
- (b) Purchase of shares/ capital contribution portion in the companies in Vietnam in the following forms: Purchase of shares of a JSC from the company or its shareholders; purchase of capital contribution portion of existing members of a LLC to become a member of such LLC; purchase of capital contribution portion of capital contributing partner(s) in a partnership to become capital contributing member of such partnership; Purchase of capital contribution portion of a member of other economic organization.

(v) PPP Contract

A PPP is a new form of investment stipulated in the LI, based on the provisions of previous laws on the BOT, BTO and BT contracts; made on the basis of contracts between competent State agencies and investors, project companies for implementation, management and operation of infrastructure projects, provision of public services.

PPP contracts may take any of 5 forms specified by the Government, including: Build - Operate - Transfer ("BOT") contracts; Build - Transfer - Operate contracts ("BTO"); Build - Transfer ("BT") contracts; Build - Own - Operate ("BOO") contracts; Build - Transfer - Lease ("BTL") contracts; Build - Lease - Transfer ("BLT") contracts; Operation - Management ("O&M") contracts; and other similar contracts. There are two groups of contracts: *First*, investors directly charge users or generate revenue through product consumption contract; *Second*, the investor's income comes from repeated payment of State agencies depending on the quality and progress of the investment made.

And also, there are two ways for investors to participate in the projects: *First*, the State determines ideas, proposals and feasibility study reports. Investors will be consulted during project preparation and tendering to gain the right to implement the project. This is a key way for the projects on socio-economic development planning and sectorial planning. *Second*, investors propose the idea, and prepare the project proposal and feasibility study report. When the report is approved, the State agency shall organize tendering for selection of investors. Investors preparing the proposals are entitled to certain incentives in tendering; if they do not win the tendering, the cost of project study will be reimbursed.

Almost all projects must apply for the issuance of IRC (except for Group C projects under the Law on Public Investments), and apply for the establishment of a project company (excluding Group C projects and projects under BT contracts).

(vi) BCC Contract

BCC is a cooperation contract signed by investors with the objective of conducting jointly one or more business operations in Vietnam, on the basis of mutual allocation or responsibilities and sharing of profits and products or losses, without creating or forming a legal entity in Vietnam.

As BCC is not a separate legal entity, the contractual rights and obligations of the parties must be shared. To implement the contract and co-ordinate the daily operation of a BCC, if necessary, a

co-ordination board having the functions, duties and powers as agreed by the parties, can be set up when necessary, with presence of the equal nominees from the parties.

To do joint business under the BCC, the parties to a BCC signed between a local investor and a foreign investor or between foreign investors must apply for the issuance of IRC.

5.3 Project Classification and Licensing Agencies

Unlike the FIL in the past, the projects under the LI are classified into two groups: projects requested to apply for the issuance of IRC and those not requested to do so. In which, investment projects of foreign investors normally fall on the first group. More decentralized, all projects (except PPP projects to which MPI or provincial-level PC will issue the IRCs) are approved and licensed by the provincial-level Department of Investment and Planning (DPI) with respect to projects outside IZs, EPZs, HZs and EZs, and provincial-level Management Boards of IZs, EPZs, HZs and EZs with respect to projects inside an IZ, EPZ, HZ or EZ.

5.4 Application Document Requirement

An application/ registration file for submission to investment registration agencies, under the LI, normally includes:

- (a) Written application for implementation of the investment project;
- (b) Personal papers for individual investors, the documents certifying the legal status of institutional investors;
- (c) Proposal for investment project;
- (d) Written confirmation of investor's financial capacity;
- (e) Proposal for a need for land use; where the project does not require the State to allocate or lease out land or to permit conversion of the land use purpose, a copy of the site lease agreement or other document certifying that the investor has the right to use the site for implementation of the investment project shall be submitted;
- (f) Explanatory statement on technology to be used in respect of the projects using technology falling within the List of technologies limited to be transferred under the laws on transfer of technology;
- (g) BCC contract in the case of investment projects in the form of a BCC contract; and
- (h) Explanation on satisfaction of WTO's requirements, as the case may be.

Vietnamese language is lawfully required, but a widely-used foreign language may also be accompanied, for instance, English. In principle, the two languages have equal legal weight in determining the parties' intentions, but in case of discrepancies, the Vietnamese shall prevail.

5.5 Licensing Procedures and Timing

All the new establishment of LLCs, JSCs, Partnerships, BCCs, other economic organizations; implementation of PPP contracts (except for Group C projects) are required to get IRCs. The licensing procedures and timing for obtaining the certificates are in the same and described hereunder:

- (a) For investment projects subject to investment policy decisions, the investment registration agency shall issue IRCs to investors within 5 working days from the date of receipt of the written investment policy decision.
- (b) For the remaining projects, the investment registration agency shall issue the IRC within 15 days from the date of receiving the complete dossier.

6. REPRESENTATIVE OFFICE

Representative office ("RO") is not a separate legal entity under the laws of Vietnam. The activities of a RO are limited to business promotion; identification and accelerating the trade opportunities; and supervising the implementation of contracts signed between its parent/represented company(ies) and local partners. However, a RO may sign commercial contracts on behalf of its parent companies, with appropriate authorization, on a case-by-case basis.

In this Section, only ROs of foreign businesses, which fall within the jurisdiction of the Provincial-level Departments of Industry and Trade ("DOIT") are focused (ROs of foreign banks, auditing, law firms, tourism organizations, fall within the power of the State Bank of Vietnam ("SBV"), the Ministry of Finance, and the Ministry of Justice ("MOJ"), respectively). It is noted that a foreign business shall be entitled to set up one or several ROs, each in a different city or province in Vietnam.

6.1 Legislation

The Commercial Law dated 14 June 2005 constitutes the legal ground for representative offices and branches of foreign businesses in Vietnam, which is further specified by the Government's Decree No.07/2016/ND-CP, dated 25 January 2016, detailing the provisions of the Commercial Law on representative offices and branches of foreign traders in Vietnam ("Decree 07").

To implement Decree 07, on 5 July 2016, the Ministry of Industry and Trade ("MOIT") issued Circular No.11/2016/TT-BCT, detailing all standard forms related to the issuance of licenses to, organizations and activities of representative offices and branches of foreign enterprises in Vietnam ("Circular 11").

6.2 Requirements

Under Article 7 of the Decree 07, a foreign trader shall be issued with a license for establishment of the representative office in Vietnam upon satisfying the following requirements:

- (i) The foreign trader is incorporated and registers for doing business in accordance with provisions of laws of countries or territories being parties to treaties to which Vietnam is a signatory or is recognized by the aforesaid countries or territories;
- (ii) The foreign trader has come into operation for at least 1 year from the date of establishment or registration;
- (iii) The foreign trader's Certificate of Business Registration or the equivalent document if having expiry date is valid for at least 1 more year from the date of submission of the application;
- (iv) The scope of operation of the representative office is consistent with that in Vietnam's Commitments to treaties to which Vietnam is a signatory;
- (v) Where the scope of operation of the representative office is inconsistent with Vietnam's Commitments or the foreign trader is not located in the country or territory being party to treaties to which Vietnam is a signatory, the representative office can be established only if relevant Ministers, Heads of ministerial agencies (hereinafter referred to as "relevant Ministers") have given approval for establishment of the representative office.

6.3 Applications

To establish a representative office in Vietnam, a foreign company must apply for a license issued by the provincial-level DOIT. A set of application files for establishment of the representative office must be submitted to the provincial-level DOIT.

To obtain a seal, the chief representative of the representative office or its staff may be required

to personally lodge the applications due to security reasons. The following documents must be submitted to the licensing authority for obtaining the License:

- (i) Application for License (standard form);
- (ii) A legalized copy and Vietnamese translation of the Certificate of Incorporation or the equivalent document and any amendments thereto of the parent company;
- (iii) A certified copy and Vietnamese translation of the parent company's letter of appointment of the Chief Representative;
- (iv) A certified copy and Vietnamese translation of the audited financial statements of the parent company for its latest financial year issued by an auditing company or certificates of fulfillment of tax liabilities or financial obligations of the last fiscal year or equivalent documents as proof of existence and operation of the foreign trader issued or certified by competent authorities where such foreign trader is established;
- (v) Documents on the expected location of the representative office; and
- (vi) A certified copy and Vietnamese translation of Chief Representative's passport.

6.4 Licensing Timing

A RO license will be granted within 7 days from the receipt of the satisfactory file. The applicant is required to pay the license fee of VND3 million for a license for establishment of a new representative office. The license fee would be paid upon the approval of the application file.

Within 15 days from the date of issuance of the licence, information about the RO shall be publicly published on the licensing agency's website.

6.5 Permitted Activities

According to Decree 07, a RO will be entitled to do the functions as stipulated in the granted license. Operational functions of a RO are limited to:

- (i) the conduct of liaison activities;
- (ii) market research, and promotion of its head office's businesses, excluding services the establishment of representative office in which is specified in specialized legislative documents.

A RO shall have the following rights and obligations:

- (i) RO shall be entitled to do the functions as stipulated in the granted license;
- (ii) The Head of the RO shall have the right to conduct activities authorized by the parent company;
- (iii) RO's staff shall be subject to relevant tax obligations in accordance with the laws of Vietnam;
- (iv) RO shall have to report provincial-level PCs, once a year, the RO's operations.

6.6 Term of Licence

The license of a representative office has a term of five years but not exceeding the remaining effective period of the parent company's Certificate of Business Registration or the equivalent (for documents having expiry date). If the parent company's business licence or establishment certificate expires, the licence of the representative office will also expire. In other words, the term of the representative office cannot exceed any term of existence of its parent company. The license of a representative office may be extended upon its expiry unless it commits one of the following violations:

- (i) Fail to come into operation for 1 year and fail to enter into transactions with licensing agencies;

- (ii) Fail to submit reports on the operation of the representative office for 2 consecutive years; and
- (iii) Fail to submit reports, provide documents or explanations on issues related to its operations to the licensing agency within 6 months from the deadline of submission or at the written request of the licensing agency; and
- (iv) Other cases provided for by law.

In addition, the License may be revoked when the representative office committed any of the above-mentioned violations.

6.7 Taxation

No taxes are applicable to ROs' operation, except for personal income tax charged their staff which will be further described in **Section 16** hereunder.

7. COMPANY BRANCH

Foreign banks, auditing firms, law firms, fund management companies, and foreign economic organizations can set up their branches in Vietnam. The licensing agencies are varied, of which e.g. SBV grants licenses to foreign banks' branches, MOF grants licenses to branches of foreign auditing firms and fund management companies' branches, and MOIT is authorised to grant licenses to foreign businesses.

In this Section, only branches of foreign business/traders which fall within the sole power of the provincial-level DOIT are focused, with a note that the new establishments thereof shall be all conditional to the Vietnam's WTO commitments, pursuant to which the establishment of branches of foreign service providers is unbound, except for the following sectors and sub-sectors:

- (i) Legal services;
- (ii) Computer and related services;
- (iii) Management consultant services;
- (iv) Services related to management consulting;
- (v) Construction and related engineering services;
- (vi) Franchising services;
- (vii) Non-life insurance services;
- (viii) Banking services;
- (ix) A number of securities services (Asset management service, Settlement and clearing services for securities, derivative products, and other securities-related instruments; Provision and transfer of financial information, and related software by suppliers of securities services; Advisory, intermediation and other auxiliary securities-related, including investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy; etc.).

Nevertheless, the licensing in practice may vary from what is provided by the Vietnam's WTO Commitments as itemised above. At this moment, no information about the abrogation of this hurdle to market is revealed by the Vietnamese government so far.

7.1 Legislation

The Commercial Law dated 14 June 2005 constitutes the legal ground for representative offices and branches of foreign businesses in Vietnam, which is further specified by the Government's Decree No.07/2016/ND-CP, dated 25 January 2016, detailing the provisions of the Commercial Law on representative offices and branches of foreign traders in Vietnam ("Decree 07").

To implement Decree 07, on 5 July 2016, the MOIT issued Circular No.11/2016/TT-BCT, detailing all standard forms related to the issuance of licenses to, organizations and activities of representative offices and branches of foreign enterprises in Vietnam (“Circular 11”).

7.2 Requirements

Under Decree 07, normally, a Branch license shall be granted if the applicant satisfies the following conditions:

- (i) The parent company is incorporated and registers for doing business in accordance with provisions of laws of countries or territories being parties to treaties to which Vietnam is a signatory or is recognized by the aforesaid countries or territories;
- (ii) The parent company has come into operation for at least 5 years from the date of establishment or registration;
- (iii) The Certificate of Business Registration or equivalent document having expiry date is valid for at least 1 more year from the date of submission of the application;
- (iv) The scope of operation of the branch is conformable with Vietnam’s Commitments to market access stipulated in treaties to which Vietnam is a signatory shall be consistent with lines of business of the parent company;
- (v) Where the businesses of the branch are inconsistent with Vietnam’s Commitments or the parent company is not located in one of countries or territories being parties to treaties to which Vietnam is a signatory, the branch can be established only if they obtain a prior consent of the relevant Minister for establishment of the branch.

7.3 Applications

To establish a Branch in Vietnam, a foreign company must submit a set of application files for a license issued by the MOIT. The following documents must be submitted to the licensing authority for obtaining the License:

- (i) Application for the license (standard form);
- (ii) A legalized copy of the Certificate of Incorporation or equivalent documents of the parent company and any amendments thereto;
- (iii) A certified copy and Vietnamese translation of the parent company’s letter of appointment of the Head of Branch;
- (iv) A certified copy and Vietnamese translation of the audited financial statements or certificates of fulfillment of tax liabilities or financial obligations of the last fiscal year or equivalent documents as proof of existence and operation of the parent company issued or certified by competent authorities where such foreign trader is established;
- (v) A certified copy and Vietnamese translation of the Memorandum and Articles of Association of the Branch;
- (vi) Documents on the expected location of the Branch including: copies of memorandum of understanding (MOU) or leasing agreements or documents as proof of the right to use a location as the branch, copies of documents on the expected location of the Branch; and
- (vii) A copy of the passport or ID card (for Vietnamese), or certified copy and Vietnamese translation of the passport (for foreigners) of the Head of the Branch.

7.4 Licensing Timing

A Branch license will be normally granted within 7 days from the receipt of the satisfactory file. The applicant is required to pay the license fee of VND1 million for a license. The license fee would be paid upon the approval of the application file.

Within 15 days from the date of issuance of the licence, information about the Branch shall be publicly published on the licensing agency’s website.

7.5 Permitted Activities

A Branch is permissible to trade the products and carry out the trading-related activities in accordance with the provisions of the Commercial Law, concretely:

- (i) Provide services other than those specified in specialized legislative documents;
- (ii) Lease the office, lease and/ or purchase the utilities necessary for the operation of the Branch;
- (iii) Recruit staff;
- (iv) Execute the contract in Vietnam in accordance with the License;
- (v) Open the bank account;
- (vi) Remit profits abroad;
- (vii) Have stamp in the name of the Branch;
- (viii) Carry out the trading activities and other activities specified in the License.

7.6 Term of Licence

The license of a Branch has a term of five years but not exceeding the remaining effective period of the parent company's Certificate of Business Registration or the equivalent (for documents having expiry date). The license of a Branch may be extended upon its expiry unless it commits one of the following violations:

- (i) Fail to come into operation for 1 year and fail to enter into transactions with licensing agencies;
- (ii) Fail to submit reports on the operation of the branch for 2 consecutive years;
- (ii) Fail to submit reports, provide documents or explanations on issues related to its operations to the licensing agency within 6 months from the deadline of submission or at the written request of the licensing agency; and
- (iii) Other cases provided for by law.

In addition, the License may be revoked when the representative office committed any of the above-mentioned violations.

7.7 Taxation

Branches of foreign businesses shall be subject to the taxes prevailing in Vietnam, which are well described in **Section 16** hereunder.

8. TECHNOLOGY TRANSFER

8.1 Legislation

The Civil Code of which the former was passed by the National Assembly on 14 June 2005 and replaced by the new one dated 24 November 2015 is now the principal legal basis for technology transfer activities in Vietnam. Guiding the Civil Code, on the technology transfer, are now Law on Transfer of Technology passed by the National Assembly on 29 November 2006, and its implementing Decree No.133/2008/ND-CP issued by the Government, on 31 December 2008, as amended and supplemented by Decree No.103/2011/ND-CP dated 15 November 2011 ("Decree 133") and Decree No.120/2014/ND-CP dated 17 December 2014 ("Decree 120").

8.2 Scope of Technology Transfer

The scope of technology transfer is quite broad. Technology to be the transfer must not fall within

the lists technologies of which transfer is restricted or prohibited as stipulated in Appendices 2 and 3 of Decree 120. Technology objects which shall be eligible for transfer shall be a part or the whole of the following technologies:

- (i) Technical know-how;
- (ii) Technical information about technology shall be permitted to be transferred in the form of technological plans, technological processes, technical solutions, formulae, technical specifications, drawings, technical maps, computer programs and information files;
- (iii) Solutions for production optimization and for renovation of technology; and
- (iv) Franchising.

Technology objects shall be permitted to be transferred whether attached or unattached to industrial property objects.

8.3 Contents of the Contract

Parties entering into a technology transfer contract may reach agreement on inclusion of the following particulars:

- (i) Name of the technology transfer contract, clearly stating the name of the transferred technology;
- (ii) The technology object which is being transferred and the products created from the technology;
- (iii) Transfer of the ownership of [and/or] right to use the technology;
- (iv) Method of transfer of the technology;
- (v) Rights and obligations of the parties;
- (vi) Price and mode of payment;
- (vii) Date of effectiveness and term of validity of the contract;
- (viii) Definition of terms and concepts (if any) used in the contract;
- (ix) Plan and schedule for transfer of the technology, and location for implementing the transfer of the technology;
- (x) Liability to provide a warranty for the transferred technology;
- (xi) Penalties for breach of contract;
- (xii) Liability for breach of contract;
- (xiii) Applicable law for dispute resolution;
- (xiv) Tribunal for dispute resolution; and
- (xv) Other agreements, on condition that they are not contrary to the law of Vietnam.

It is required that a technology transfer contract must be in writing or some other written form with equivalent validity such as a telegram, telex, facsimile or data message or other form as stipulated by law. The contract language shall be as agreed by the parties, but in the case of a transaction in Vietnam there must be a contract in Vietnamese. The Vietnamese and the foreign language versions of a contract shall be of equal validity.

Compared with the old regulations, the new regulations on technology transfer are more open and respect the business intention of the parties, by removing a number of contractual restrictions and prohibitions in a technology transfer contract, relating the price, the supplies, term of validity, etc.

8.4 Registration and Timing

Compared to the old regulations, the existing regulations permit the parties to a technology transfer contract to register at their own discretion only for obtaining incentives under applicable laws instead of required registration as in the past.

According to Decree 133, the competent levels of certifying the registration of technology transfer contracts, are:

- (i) At the central level, the MOST shall issue technology transfer contract registration certificates for technologies of investment projects in which investment is approved by the Prime Minister. One copy of a technology transfer contract registration certificate shall be sent to the DOST in the locality where the transferee is headquartered for coordinated monitoring and inspection of contract performance; and
- (ii) At the local level, the DOST shall issue technology transfer contract registration certificates for technologies other than those specified above. One copy of a technology transfer contract registration certificate shall be sent to the MOST for management

It is required that the technology transfer contracts must be registered within 90 days from the signing date. And as a routine, and subject to the satisfaction of the registration file, the contract registration certificate shall be issued within 15 days from the receipt of the satisfactory file.

A file for registration of technology transfer contract must include the following:

- (i) Registration letter;
- (ii) The original or a certified copy of the technology transfer contract in Vietnamese and a foreign language. In case the parties to technology transfer are Vietnamese organizations or individuals, technology transfer contracts may be in Vietnamese only. The contract must be signed and sealed by the contracting parties and must be initialed and sealed by the contracting parties on every two adjoining pages and annexes in case a contracting party is an organization.

8.5 Taxation

Taxes applicable to transferors are well described in [Section 16](#) hereunder.

9. FOREIGN CONTRACTOR

Foreigners can take part in biddings for doing projects and other business undertakings in Vietnam. However, it is quite confused for them to do business in Vietnam because of the absence of general regulations on this matter.

9.1 Legislation

At the moment, Decree No.59/2015/ND-CP dated 18 June 2015 of the Government, on the management of construction projects, replacing Decision No.87/2004/QD-TTg dated 19 May 2004 of the Prime Minister, promulgating the regulation on management of operations of foreign contractors in the construction domain in Vietnam, as amended and supplemented by Decision No.03/2012/QD-TTg dated 16 January 2012 of the Prime Minister; Circular No. 12/2009/TT-BXD dated 24 June 2009 of the Ministry of Construction (“MOC”), detailing the issuance of construction practice certificates (to be replaced by Circular No. 17/2016/TT-BXD dated 30 June 2016 of the MOC providing guidelines on the capacities of organizations and individuals involved in construction activities as from 1 September 2016); Circular No.14/2016/TT-BXD dated 30 June 2016 of the MOC providing guidelines for the issuance of construction licenses and the management of foreign construction contractors in Vietnam; Circular No. 53/2015/TT-BCT dated 30 December 2015 of the MOIT, detailing the registration of imported goods and temporarily-imported goods of foreign construction contractors in Vietnam; and Circular No.103/2014/TT-BTC dated 6 August 2014 of MOF, providing guidelines for fulfillment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam, are the most reference legal

documents. Subject to the nature of business, the contractor activities shall be subject to the specific sectorial regulations, including technology transfer, construction, etc.

Below are some regulations on foreign construction contractors and sub-contractors.

9.2 Requirements

To become a foreign construction contractor or sub-contractor in Vietnam, an applicant must satisfy the following criteria:

- (i) Having posted information on the website of the MOC and provincial-level Department of Construction (“DOC”) in charge;
- (ii) Having won biddings or having been selected by the owner for contracting and having full capability suitable to contracted works according to Vietnamese laws on construction if bidding packages not subject to Vietnamese laws on tendering; and
- (iii) Setting up a partnership with a Vietnamese contractor or employing Vietnamese sub-contractors, unless the Vietnamese contractor is not qualified to execute any tasks of the bidding package.

9.3 Applications

For a construction license, 1 set of application file must be submitted directly or by post to the licensing agency (including the specialized construction authority directly under the MOC or the DOC of the locality where the project is conducted).

Each set of application file applicable to organizations must contain the following papers:

- (i) Application for licence made in Vietnamese according to set form;
- (ii) A certified copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) of a report on bidding results or decision on lawful contract award;
- (iii) A legalized copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) and Vietnamese translation of the establishment license (or the business registration certificate of organizations) and the professional practice certificate (if any) granted by the country of which the foreign contractor bears the nationality or by the country where the construction project is conducted;
- (iv) A digital file containing a color copy of the original which is an image or other format (*.pdf) of a report on experiences in construction activities related to the contracted job, made according to a set form and the audited financial report for the latest 3 years (for cases where the contractors undertaking bidding packages not subject to the compulsory application of the provisions of Vietnamese bidding legislation);
- (v) A digital file containing a color copy of the original which is an image or other format (*.pdf) of the partnership contract with a Vietnamese contractor or a contract with Vietnamese sub-contractor (already included in the bids or bidding dossiers), which specifies the tasks of the Vietnamese contractor;
- (vi) Lawful authorization letter, for persons other than the contractor’s representative at law according to set form; and
- (vii) A digital file containing a color copy of the original which is an image or other format (*.pdf) of the decision to invest in the project or the investment certificate or the written approval for the investment policies.

Each set of application file applicable to individuals must contain the following papers:

- (i) Application for licence made in Vietnamese according to set form;
- (ii) A certified copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) of a report on bidding results or decision on lawful contract award;

- (iii) A legalized copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) and Vietnamese translation of the operation license or professional practice certificate granted by the country of which the foreign contractor bears the nationality or by the country where the construction project is conducted, and a notarized/certified copy and Vietnamese translation of passport;
- (iv) A digital file containing a color copy of the original which is an image or other format (*.pdf) of the decision to invest in the project or the investment certificate or the written approval for the investment policies.

Application files for contracting licenses arising in the same year are not necessary to include the documents referred to in (iii).

Subject to the nature and scale of the bidding projects, construction contractor license shall be issued by either the specialized construction authority directly under MOC or provincial-level DOC, within 20 working days from the receipt of the satisfactory file.

Foreign construction contractor shall pay a fee of VND2 million when receiving the license.

9.4 Permitted Activities

Once being licensed, foreign construction contractors have the following obligations:

- (i) To set up their executive offices (to have office lease contracts or executive offices at the localities where the projects exist, where the owners' offices are headquartered or where a part of the work is located, subject to the awarded contracts); and to register the addresses, phone number, fax number, email address, seal, accounts and tax code of their work executive offices. Regarding contracts pertaining to the formulation of construction planning, formulation of construction investment project, construction survey or construction design, the foreign contractor may establish an Executive office at the place where the office of the project owner is headquartered.

After registering the above-mentioned information about the Executive office, the foreign contractor shall send a written notice such information directly or by post to the provincial-level DOC of the locality where the Executive office is located, the specialized construction authority directly under the MOC and relevant agencies using the standard form. If any information about the executive office is modified, the foreign contractor shall notify such agencies;

- (ii) To register the use of seals of their work executive offices at the Police Offices of the provinces and centrally-run cities where construction works are located. Foreign contractors shall only use these seals for affairs in service of contract performance in Vietnam according to the provisions of their contracting licenses. Upon the expiry of contracts, foreign contractors must return their seals to the agencies which have granted them;
- (iii) To register and pay taxes according to Vietnamese law provisions; to observe the accounting regime, open accounts and make payments as guided by the MOF and the SBV in service of business activities under contracts;
- (iv) To recruit and employ Vietnamese and foreign workers according to the Vietnamese labour legislation. To register only economic managerial and technical experts and highly skilled workers whom Vietnam lacks for entry into Vietnam;
- (v) To carry out the procedures for exporting or importing supplies, machines and equipment related to the contracts in Vietnam according to Vietnamese law provisions and the MOIT's guidance, including:

- Registration for temporary import for re-export of construction supplies, machines and equipment;
 - Registration of the list of import raw materials, fuels, materials, complete and synchronous equipment for works under the contracts;
- (vi) To perform partnership contracts already signed with Vietnamese contractors or use Vietnamese subcontractors determined in the application file for the issuance of a construction licence;
- (vii) To purchase insurance according to Vietnamese law provisions for contractor's works, including: insurance for professional liability of contractors providing investment and construction consultancy; insurance for assets and goods for procurement contractors; insurances of various kinds for construction contractors and other insurance regimes according to Vietnamese law provisions;
- (viii) To register for inspection of the quality of supplies and equipment imported and supplied under the contracts;
- (ix) To register the safety of construction equipment and transport means related to business activities of foreign contractors according to Vietnamese law provisions;
- (x) To observe the regulations on norms, standards, management of quality of construction works, labour safety and environmental protection as well as other relevant Vietnamese law provisions;
- (xi) To send the periodical reports according to standard form on the project implementation situation (on 20 December every year) to the license issuing agency and the provincial-level DOC of the locality where the contracted projects exist; and
- (xii) Upon the completion of works, foreign contractors shall have to compile dossiers on work completion; provide warranty; make the settlement of imported supplies and equipment; handle unused supplies and equipment in work construction contracts according to the regulations on export and import; re-export construction supplies and equipment already registered for temporary import - re-export; and liquidate the contracts. And at the same time, to notify the concerned State management agencies of the expiry of the contracts, terminate operation of their executive offices.

9.5 Taxation

Taxes applicable to foreign contractors and sub-contractors in Vietnam are well described in **Section 16** hereunder.

10. PROCESSING ACTIVITIES

Foreigners can hire local companies and foreign-invested companies for processing of goods of all kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the lists of goods the import and export of which is subject to issuance of a permit, business entities may only enter into processing contracts after they have been issued with a permit by the MMOIT. The processing contract must be in writing or in another form with equivalent legal validity in accordance with the Commercial Law, and must minimally include certain prescribed terms.

10.1 Legislation

Local processing for foreigners are being governed by the Commercial Law dated 14 June 2005; Decree No.187/2013/ND-CP dated 20 November 2013 of the Government making detailed provisions for implementation of the Commercial Law with respect to international purchases and sales of goods, and agency for sale and purchase, processing and transit of goods involving foreign parties, as amended and supplemented by Decree No.77/2016/ND-CP dated 1 July 2016 of the Government); and Circular No.38/2015/TT-BTC dated 15 August 2011 of the MOF on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods.

10.2 Contents of the Contract

Having the similar contents of a formal economic contract, a processing contract must include: Names and addresses of contracting parties and of the party directly conducting the processing; name and quantity of processed products; price for processing; time-limit for and method of payment; list, quantity and value of imported raw materials, sub-materials and supplies and domestically produced raw materials, sub-materials and supplies (if any) for processing; levels of use of raw materials, sub-materials and supplies; level of consumption of supplies and wastage rate of raw materials in processing; list and value of machinery and equipment leased, lent or donated for the purpose of processing (if any); measures to treat scrap and discharged waste and principles for dealing with leased or borrowed machinery and equipment and with left-over raw materials, sub-materials and supplies upon termination of the processing contract; location and time of goods delivery; trade mark of goods and origin appellations of goods; and duration of validity of contract. Trademark and the origin of goods in relation to the processing activities are normally falling within the responsibilities of the foreign principals.

As a matter of fact, a list defining quantities and values of input raw materials, auxiliary materials and supplies for processing activities with a defined rate of consumption and waste, and a list defining values of the machinery and equipment leased, borrowed or donated for processing service, should be present in the contract. Dealings on relevant equipment are also contracted due to the fact that equipment are often leased to local processors from foreign principals in most cases. Both input materials and equipment can be imported into Vietnam on the basis of temporary import and re-export.

10.3 Permitted Activities

Foreign principals are entitled to receive and remit abroad finished products, surplus input materials and leased equipment. To supervise the local processing activities and guide on technical issues, foreign experts can be seconded to Vietnam by foreign principals.

10.4 Taxation

Input materials and equipment serving for the local processing activities are in principle, being exempted from taxes prevailing in Vietnam.

11. AGENT ACTIVITIES

Foreigners can request for local agent for sale and purchase of goods of various kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the list for which import or export is subject to issuance of a permit, the business entity shall only be permitted to sign an agency contract after the competent agencies have issued a permit. The agency contract must be in writing or in another form with equivalent legal validity. Under the Commercial Law, agent activities vary by the following forms: commission agent, package agent, exclusive agent and general agent.

11.1 Legislation

The same legal basis applicable for the processing for foreigners is effective to the agent activities for foreigners in Vietnam.

11.2 Contents of the Contract

A sale and purchase agent contract is requested to contain quite simple contents in comparison to the other types of commercial or economic contracts. Only the following are compulsory present therein: the description about both principals and agents; the contractual goods: name, specifications, quality, quantity, volume; Time-limit for, method and place of goods delivery; Price; Commission rate and costs; Method and time of payment; Bonuses, penalties and indemnity; and duration of validity of contract.

11.3 Permitted Activities

Amongst others, foreign principals can decide at their own discretion the selling or purchasing price and service charge to customers, and the price which the principal fixes for the agent; request the agent to implement security measures; receive deposits or documents on mortgaged assets from the agents, and request the agents to make payment or deliver goods in accordance with the signed contracts. To inspect and supervise the contract performance, foreign principals can second their people to agents' facilities in Vietnam.

As a matter of fact, the following actions are often carried out by local agents instead of foreign principals, which include the dealing with the import/export procedures, the declaration and payment of relevant taxes on behalf of foreign principals.

11.4 Taxation

Contractual goods are likely subject to the import/export duties of Vietnam.

12. CAPITAL CONTRIBUTION TO, PURCHASE OF CAPITAL CONTRIBUTION PORTION/ SHARES IN LOCAL COMPANY

Foreign investors irrespective of individual or institutional ones, may hold or acquire, in theory, up to 100% stake in all types of local companies, except for some special cases where the investment is made in specific business sectors (e.g. banking) or in public companies operating in a sector where business is conditional for foreign investors and detailed provisions on foreign ownership are not yet available (up to 49%), or the listed or public company's charter limits foreign ownership and the State Securities Commission of Vietnam ("SSC") has been reported thereon. The current laws recognize and treat the foreign-invested companies (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of less than 51% of the charter capital similar to entirely Vietnamese-invested companies.

12.1 Legislation

The Law on Enterprises and the Law on Investment, both dated 26 November 2014 and effective from 1 July 2015, constitute the principal legal base for foreigners to buy stakes or shares of local enterprises. This right is further detailed in a number of implementing regulations, including Decree No.96/2015/ND-CP, dated 19 October 2015; Circular No.131/2010/TT-BTC dated 6 September 2010 guiding the Regulation on capital contribution to or purchase of shares by foreign investors in Vietnamese enterprises ("Circular 131"); Circular No.19/2014/TT-NHNN dated 11 August 2014 of the State Bank of Vietnam providing guidelines on the foreign exchange control for foreign direct investments in Vietnam ("Circular 19"); v.v. Covering all service sectors

and as a supplementation to the national laws and regulations as mentioned above, is the commitments of Vietnam when accession to the WTO, which is particularly reflected in the specific service commitments, which was effective from 11 January 2007.

12.2 Requirements

At present, and in general, all types of companies in Vietnam, including SOEs, joint stock companies, limited liability companies, and partnerships are entitled to offer stakes to foreign investors, who can buy, in theory, up to 100% of the charter capital of the company; however, in particular, the maximal or ceiling rates of less than 100% are still in existence and applicable, from time to time, to a number of specific cases, e.g. banking sector in which foreign investment is now permitted to have maximally 30%, or in public companies operating in the industries or trades in which business investment is conditional in respect of foreign investors, and detailed guidelines on foreign ownership are not yet available foreign stakes cannot exceed 49%.

According to the prevailing regulations, foreigners can purchase stakes and remit abroad dividends and principals, directly or indirectly through local and foreign banks licensed and operating in Vietnam. To facilitate these transactions, foreign stake holders are entitled to open their indirect investment accounts at banks licensed to operate in Vietnam, except where Vietnamese company was now granted by competent authorities with investment certificate/ investment registration certificate, such company must open a direct investment account, which is a payment account denominated in foreign currencies or Vietnam, in a bank licensed to carry out transactions relating to the activities of foreign investors in Vietnam.

The laws confirm that the legal rights and benefits of foreign stake holders in Vietnam are protected by the laws and the State of Vietnam.

12.3 Permitted Activities

Being stake holders, foreigners can:

- (i) Involve or not involve in the company management and administration;
- (ii) Convert their dividends and all others receipts from local into foreign currency before remitting abroad;
- (iii) Mortgage and pledge by using stakes in hands for their credit transactions;
- (iv) Be exempted from corporate income tax imposed on incomes derived from the activities of capital contribution, joint venture or partnership with domestic companies, after the concerned enterprises have paid corporate income tax;
- (v) Be granted with single entry or multiple entries visas of DT category, of which the duration of validity shall not exceed 5 years, residence certification and temporary residential cards to for entry and exit of, and residence in Vietnam; and
- (vi) Enjoy the equal rights and benefits as given to local stakeholders.

12.4 Procedures for Purchase of Shares or Portion of Capital Contribution

Much simpler than it was in the past when any buying/ selling capital by local companies to foreign investors was subject to the prevailing laws of Vietnam, the recent regulations allow the owners or top management team of the local companies or cooperatives to have the right to decide in accordance with the company charters or regulations. With respect to the equitized SOEs having the demand of selling capital to foreign investors, the State agencies who decide the equitization shall be the decision makers.

An investor shall carry out the procedures for registration of its capital contribution or of purchase of shares or portion of capital contribution to a local company in the following circumstances:

- (i) Foreign investors contribute capital to, purchase the shares or portion of capital contribution in a local company operating in the industries or trades in which business investment is conditional in respect of foreign investors;
- (ii) The capital contribution or purchase of shares or portion of capital contribution shall result in the fact that the foreign investor or economic organization that foreign investors have control over more than 51% of its charter capital holds 51% or more of the charter capital of a local company.

Foreign investors will submit file for registration of capital contribution or purchase of shares or portion of capital contribution at the Department of Planning and Investment (“DPI”) of the province or centrally-run city where the local company is headquartered. Where the capital contribution or purchase of shares or portion of capital contribution by the foreign investor satisfies the conditions prescribed, the DPI shall, within a period of 15 days from the date of receipt of the complete file, notify in writing the investor for the latter to carry out the procedures for change of a shareholder or member in accordance with law.

Investors not within the cases required to carry out procedures for registration of its capital contribution or of purchase of shares or portion of capital contribution to a local company shall carry out the procedures for change of a shareholder or member in accordance with law upon capital contribution or purchase of shares or portion of capital contribution to the local company.

12.5 Taxation

No further withholding tax shall be applicable to any abroad remittance of legal income by foreign investors in Vietnam, provided that all tax and financial obligations related thereto have been cleared off by foreign investors, in accordance with the laws of Vietnam. For other taxes, please refer to **Section 16** hereunder.

13. EXPORT PROCESSING ZONES, INDUSTRIAL ZONES, ECONOMIC ZONES AND HIGH-TECH ZONES

13.1 Legislation

The LI and the LE constitute the principal legal base for the establishment and operation of EPZs, IZs and EZs. Guiding the laws is Decree No.29/2008/ND-CP dated 14 March 2008 of the Government issuing regulations on EPZs, IZs and EZs, as amended and supplemented by Decree No.164/2013/ND-CP dated 12 November 2013, and Decree No.114/2015/ND-CP dated 9 November 2015; and several implementing circulars in connection to environment, construction, labour, taxation, customs procedures, etc. in these zones.

For HTZs alone, the Government recently issued Decree No.99/2003/ND-CP on 28 August 2003, providing the regulations of the HTZs (“Decree 99”), which replaces the regulations on HTZs in Decree No.36/CP dated 24 April 1997 of the Government.

13.2 Features of EPZs, IZs, EZs and HTZs

EPZs and IZs mean the zones with specific boundaries and without any inhabitant, being established by the Government or the Premier, and containing EPZ and IZ enterprises. EZs mean zones having a separate economic space with an investment and business environment, which is specially favourable for investors, and fixed geographical boundaries; being organized into functional areas including: non-tariff areas, bonded warehouse areas, export processing zones, industrial zones, entertainment areas, resorts, urban areas, residential areas, administrative areas and others. Having the same features, HTZs as defined in Decree 99 however is a multi-functional economic and technical zone to be established to carry out research and development

(R&D) and application of high technology, training of highly technical personnel, and to manufacture and trade in high-tech products. It is noted that EPZs, bonded warehouses, tax suspension warehouses and dwelling buildings may be located in an HTZ.

Under the LI, EPZs, IZs, EZs and HTZs are not typical vehicles for foreign investment, however, the EPZs and IZs play an important role in attracting foreign investment in Vietnam. That is why they are described herein. The purpose of EPZs and IZs is to provide an efficient and single base for manufacturing, processing and assembling products (for export only in the case of EPZs). Foreign capital projects are encouraged to locate in the zones by the assurance of modern infrastructure, such as good transportation and utility services, as well as the availability of necessary services.

In principle, an investment in development of an EPZ, IZ, EZ or HTZ must follow the same procedures and be governing by the same regulations as applicable to foreign investment in the zones as well as in rest of the country. To attract more investments in infrastructures, a number of preferential treatments and/or incentives are provided to foreigners who invest in developing EPZs and IZs, among them the easier licensing, longer duration and tax incentives.

13.3 Advantages of Locating in EPZs, IZs, EZs and HTZs

The application procedures for a new enterprise inside EPZs, IZs, EZs or even HTZs are similar to the same applicable to the rest of the country, but quite easier in consideration and licensing.

According to Decree 118, EZs, HTZs (including concentrated information technology zones established under the provisions of the Government) are considered as areas with extremely difficult socio-economic conditions, and EPZs established under the provisions of the Government fall on the list of areas with difficult socio-economic conditions to be entitled to investment incentives. Investors in EPZs, IZs, EZs and HTZs enjoy incentives related to corporate income tax, import tax and value-added tax, which are more favourable than those offered to investors outside.

10% corporate income tax rate with four-year holiday commencing from the date taxable income are first making and nine-year 50% reduction will be applicable to enterprises newly established from investment projects in IZs or EPZs located in areas with extremely difficult socio – economic conditions, EZs and HTZs for fifteen (15) years from the first year of project revenues. 17% corporate income tax rate with two-year holiday and four-year 50% reduction will be applicable to enterprises newly established in IZs located in areas with difficult socio - economic conditions and EPZs for ten (10) years.

Investors in EPZs, IZs, EZs and HTZs enjoy also the modern infrastructure and the availability of utility services and others. But, instead of these, they bear a higher price for the use of land and infrastructures, and are often required to pay the land and infrastructure rental for the entire duration. This reflects the other side of the EPZs, IZs, EZs and HTZs. However, except for mining projects; production and trading of goods and services subject to special sales tax other than automobile manufacturing; land investment projects in IZs or EPZs located in the areas with extremely difficult socio-economic conditions, EZs, and HTZs are exempt from non-agricultural land use tax; and the land of investment projects in IZs located in areas with difficult socio - economic conditions, and EPZs are entitled to 50% reduction of payable tax amount.

Enterprises newly established from investment projects (except for mining projects; production and trading of goods and services subject to special sales tax other than automobile manufacturing) in IZs or EPZs located in areas with extremely difficult socio – economic conditions, EZs, HTZs; or IZs located in areas with difficult socio – economic conditions and EPZs that goods imported to create their fixed assets are exempted from import tax, including:

- (i) Equipment and machinery;
- (ii) Special-use means of transport included in technological lines which cannot be domestically manufactured yet; worker-transporting vehicles including cars of 24 seats or more and waterway crafts;
- (iii) Components, details, knocked down parts, spare parts, fittings, moulds and accessories accompanying machinery, equipment and special-use means of transport stated at Points (i) and (ii) above for assembly into complete units;
- (iv) Raw materials and supplies which cannot be domestically produced yet. to be used for manufacturing equipment and machinery included in technological lines or for manufacturing components, details, knocked down parts, spare parts, fittings, moulds and accessories accompanying equipment and machinery stated at Point (i) for assembly into complete units;
- (v) Building materials which cannot be domestically produced yet.

Raw materials, supplies and components which cannot be domestically manufactured and are imported for production of investment projects (except for the mining projects; projects on production and trading of goods and services subject to special sales tax, projects on production and assembly of automobiles, motorcycles, air conditioners, electric heaters, refrigerators, washing machines, electric fans, dishwashers, DVD players, stereo receivers, electric irons, kettles, hair dryers, drying hands and other items as decided by the Prime Minister) in IZs or EPZs located in areas with extremely difficult socio - economic conditions, EZs, and HTZs are exempt from import duties for a period of 5 years.

Furthermore, goods exported from non-tariff zones (*including EPZs, export processing enterprises, warehouses and storing zones of goods pending duty payment, bonded warehouses, special economic-trade zones, trade-industrial zones, and other EZs which are established under Prime Minister decisions*) to foreign countries; goods imported from foreign countries into non-tariff zones for use in non-tariff zones only; goods transported from one non-tariff zone to another are not subject to import tax or export tax.

For the enterprises in EPZs, CEPT/AFTA tariff will be applicable in case they export the products to domestic market provided that the products contain at least 40% elements originating from ASEAN countries.

Goods temporarily imported and re-exported and goods temporarily exported and re-imported; raw materials imported for manufacture or processing of goods for export in accordance with manufacturing or processing for export contracts with foreign parties; goods and services purchased and sold as between foreign parties and non-tariff zones, and purchased and sold as between non-tariff zones; are not subject to value-added tax.

In addition, value-added tax rate of zero per cent (0%) is applicable to (i) goods sold, and (ii) services directly provided to organizations and individuals in non-tariff zones (meaning any such entity who has registered business or other cases as stipulated in regulations of the Prime Minister of the Government) and consumed therein, which are considered as exported goods and services.

Besides, persons with taxable income, including Vietnamese and foreign employees working in EZs, shall be entitled to a fifty (50) per cent reduction of personal income tax.

14. ECONOMIC CONTRACTS

14.1 Legislation

Except for some specific trading contracts regulated by the Commercial Law dated 14 June 2005, all the contracts shall be subject to the general provisions of the Civil Code of the same date.

(Both mentioned principal laws became effective from 1 January 2006). This is regarded as a great change in the business environment in Vietnam, in the way that synchronizing the contract regime in Vietnam.

14.2 Features of the Contract

Although this is not a true vehicle for doing business in Vietnam, it is advised that foreign businessmen who wish to do business in Vietnam, should pay a due attention toward this kind of contract because of its relevance to their business and/or undertakings in Vietnam.

Business contract should be in writing, with or without public notification, subject to the nature of the transactions, and signed by the legal representatives of the contractual sides, whose name must be clearly recorded in the enterprise registration certificate/ investment registration certificate and the charter in case the signatory is a legal person.

A business contract must contain principal matters such as the description of products or services, with defined quantity and quality, the fixed price, the proposed time and mode of payment, and the conditions for delivery of goods and services, penalties and indemnity, etc. Subject to the negotiations of the contractual parties, the terms and conditions on guarantee, the duration and the settlement of disputes should be also included therein.

15. BANKING AND FINANCE

15.1 Legislation

It is practical that the current banking law system has firmly been set up since 12 December 1997 when the two basic laws, the Law on State Bank of Vietnam and the Law on Credit Institutions, in substitution of the former Ordinances, all of 23 May 1990, have been introduced, which were amended and supplemented on 17 June 2003 and 1 October 2004 respectively. These Laws have been replaced by new ones adopted on 16 June 2010 and effective since 1 January 2011.

15.2 Banking System

The local banking sector has two tiers. The first tier is SBV being responsible for conducting monetary policy; inspection, supervision and State management on monetary, banking and foreign exchange activities; and the function of the central bank on the issuance of currency, bank of credit institutions, and provision of monetary services to the Government. The second tier includes commercial banks, cooperative banks, policy banks, people's credit funds, micro-finance institutions, financial leasing companies and insurance companies. This Section focuses only on the commercial banks which consist of State-owned commercial banks, joint stock commercial banks, joint venture commercial banks, wholly foreign-owned commercial banks, foreign bank branches, and foreign bank ROs.

Amongst all, foreign banks wishing to establish a presence in Vietnam has a choice of the last four types, i.e. wholly foreign-owned commercial banks, joint venture commercial banks, foreign bank branches and foreign bank ROs. Joint venture commercial bank is established with capital contributed by Vietnamese bank(s) and foreign bank(s) on the basis of a joint venture contract in the form of a limited liability company with two members or more; and wholly foreign-owned commercial bank is established with 100% charter capital owned by foreigners, which must have at least a foreign bank owning more than 50% of charter capital (the parent bank) in the form of a limited liability company with two members or more. Management organization structure of wholly foreign-owned commercial banks and joint venture commercial banks includes: the Board of Management, Supervisory Board, General Director and the assisting apparatus.

All the application procedures and files related to the issuance of License for establishment and operation to wholly foreign-owned commercial banks and joint venture commercial banks, License for opening a Branch to a foreign bank branch, License for opening a foreign bank RO must comply with Law on Credit Institutions and its guiding documents.

In addition to the general conditions applicable to domestic banks, the joint venture commercial banks, wholly foreign-owned commercial banks, foreign bank branches, foreign bank ROs are required to meet specific conditions separately applicable to each type of these organizations in order to be licensed. After being licensed, wholly foreign-owned commercial banks, joint venture commercial banks and foreign bank branches must conduct business registration procedures under the provisions of the LI and LE, as described in Section 5 of this document; foreign bank ROs will register their activities as prescribed by law; and all of them have to publish information on the SBV's media and on a printed daily newspaper in 3 consecutive issues or Vietnamese electronic newspaper for at least 30 days prior to the intended date of operation commencement.

Subject to specific licenses issued by the SBV, joint venture commercial banks and wholly foreign-owned commercial banks can offer a wide range of banking services and other services in Vietnam. The local partner to a joint venture commercial bank must be an existing commercial bank. The minimum legal capital level for joint venture commercial banks and wholly foreign-owned commercial banks is VND3,000 billion, equal to around US\$150 million (effective 2010).

Foreign bank branches are entitled to provide the permitted banking services in Vietnam as specified in the license of that branch and the laws; excluding capital contribution, purchase of shares/ portion of capital contribution, and activities which parent banks are not allowed to perform in countries where they are headquartered. The minimum legal capital level for a branch is US\$15 million. Like foreign economic organizations' ROs which are described in Section 6 above, foreign credit institutions and other foreign organizations conducting banking activities may establish only one RO in each province or centrally-run city. Foreign bank ROs are only allowed to perform the following activities according to the contents of the licenses granted by the SBV: (i) functions of a liaison office, (ii) market studies, (iii) promotion of investment projects of parent banks in Vietnam, (iv) promotion and monitoring of the implementation of the contracts and agreements signed between the parent banks with Vietnamese banks and enterprises, and projects financed by the foreign bank in Vietnam, and (v) other activities consistent with Vietnamese laws.

Generally, joint venture commercial banks, wholly foreign-invested commercial banks, and foreign bank branches are subject to the same taxes applicable to other businesses herein, which are well described in Section 16 below.

15.3 Foreign Exchange and Transfer

The State management on this matter is shared amongst several State agencies. Amongst all, the Government charges with overall policy on foreign exchange management, based on the recommendation submitted to by MPI. MOF is responsible for making plans for implementing such overall policy, and SBV is liable for the day-to-day management and supervision of MOF's plans.

(i) Bank Accounts

Under the prevailing regulations, foreign-invested enterprises and foreign investors can open bank accounts with banks licensed and operating in Vietnam. All the receipts and expenditures including capital contributions, in principle, must be made through such bank accounts.

Subject to the using purposes, bank accounts which a foreign-invested enterprise or foreign investor can open comprise the following:

- (a) Foreign investor's payment account in Vietnamese Dong or foreign currency at a credit institution licensed to operate in Vietnam in order to transfer investment capital meeting lawful expenses during the stage of investment preparation in Vietnam according to written agreements among relevant parties; transfer investment capital abroad in case of failing to obtain an IRC or discontinues the implementation of investment project in Vietnam; conduct transactions on purchase of foreign currency, transfer of investment capital and lawful revenues abroad in the event the foreign-invested enterprise has to close its direct investment account due to its dissolution or operational termination, or assignment of investment capital changing the initial legal status of the FIE. Payment account in foreign currency may be foreign investor's account for borrowing and repaying foreign loans;
- (b) (Direct or indirect) investment accounts in Vietnamese Dong or foreign currency selected by the FIE, foreign investor conducting capital contribution to, purchase of shares/ portion of capital contribution or participating in PPP or BCC contract. In principle, all the revenues and expenses related to investment activities, including capital contributions, must be made through this account. Direct investment account may be also the FIE's account for borrowing and repaying foreign loans. In case where borrowing currency of a foreign loan does not correspond to that used by the FIE to open direct investment account, the FIE is permitted to open another direct investment account in the borrowing currency at the licensed bank where the 1st direct investment account is opened to implement the revenue and expenditure transactions relating to legitimate foreign loans and those relating to investment activities.
- (c) deposit bank account, and
- (d) off-shore foreign currency bank account, which includes:
 - Account of the FIE or foreign investor to implement money remittance transactions relating to foreign loans (capital withdrawal, repayment of the principal, payment of interest) according to agreements with foreign lenders. Each of foreign loans is only remitted through 1 (one) bank providing bank account service. The borrower may use 1 (one) bank account for 1 (one) or more foreign loan(s).
 - Account of the FIE to satisfy conditions for licensing the establishment of operations of its branches and ROs as prescribed by the laws of foreign countries; to serve operations of its overseas branches and ROs; to carry out its commitments under the PPP contract with foreign party.Practically, not every FIE is entitled to open off-shore foreign currency bank account because this requires to meet several criteria and be subject to a license from SBV.

(ii) Foreign Exchange Balancing

The State does not require investors to balance their foreign currency from exports to meet demand for imports. Based on socio - economic development orientations, foreign exchange control policies and the ability of foreign currency balance in each period, the Prime Minister shall decide to guarantee the satisfaction of demands for foreign currency of investment projects subject to investment policy decision of the National Assembly and Prime Minister as well as projects on investment in important infrastructure development. This assurance shall be extended for the entire duration of those projects.

When implementing the revenue and expenditure transactions relating to investment activities in Vietnam of FIEs and foreign investors, licensed credit institutions are

responsible for selling foreign currencies to foreign investors to be transferred abroad on the basis of foreign currency balance of their organization and in accordance with the provisions of law.

(iii) Cash Transactions

In principle, all payments and receipts in Vietnam must be made in Vietnamese dong, except for some particular circumstances as permitted by the prevailing laws and depending upon SBV's approvals, which include commercial banks and financial institutions, foreign exchange bureaus, etc. Foreign investors to BCCs and JVCs are permitted to withdraw cash in foreign currency from bank accounts for paying salary and other allowances to their expatriates, or paying travel allowance to local employees for work-related overseas trips.

To keep an international balance, the Government actively seeks to channel foreign currency inflows whilst strictly monitoring the outflows. There appears no restriction upon inward remittances, which however must be either converted into Vietnamese dong or deposited into a foreign currency bank account. With respect to outward remittances, they are allowable to some special circumstances which include:

- (a) Payment for imported goods and services;
- (b) Abroad remittance by foreign investors, of: invested and reinvested capital, earning profits from undertakings in Vietnam, principals and interests of off-shore loans and credits, and other legal benefits;
- (c) Payment for travel allowances to employees traveling abroad, payments of salary to the executives of foreign capital enterprises and Vietnamese employees working in a foreign country; and
- (d) Abroad remittance of salaries and other legal incomes of foreigners.

To limit cash transactions, prevailing Vietnamese laws require invoices worth VND20 million or more to have a certificate of non-cash payment for goods and services purchased (including those imported) of which the value is VND20 million or more, except for the cases where value of goods or services imported each time worth less than VND20 million; goods and services purchased each time worth less than VND20 million according to invoices at current prices inclusive of value-added tax and the cases where businesses imported goods which are gifts or donated things of organizations and individuals abroad, in order that the costs of purchase of goods and services according to the invoices will be considered as reasonable costs for calculation of corporate income tax.

(iv) Exchange Rates

Any conversion will be based on the exchange rates of the authorized bank affecting the conversion, which will be referred to the rates announced by SBV at the time of transaction.

15.4 Capital and Financial Market

The efforts made by the Government and State Securities Commission ("SSC") has been responded by the first opening of the Securities Transaction Center ("STC") in HCMC in 2000 (now called Ho Chi Minh City Stocks Exchange or HOSE), and the smaller one in 2004, in Hanoi, called Hanoi Securities Trading Center or HASTC (now called Hanoi Stocks Exchange or HNX). For more simplified procedures for listing by enterprises and more efficient management by State agencies, the Government is considering a project on combining these two stock exchanges into one in the near future.

To date, 80 among over 100 securities companies licensed by SSC are still active after 4 years of restructure. These companies provide a full range of services relating to securities business. They all have either head offices or branch/ liaison offices in Hanoi or HCMC. Two kinds of goods are well available for sale in the securities market. They are stocks listed by around 1,853 enterprises, in which many are enterprises equitized from the SOEs, and bonds issued by the Government and banks.

Applying for the registration of securities trading code at Vietnam Securities Depository Center ("VSD"), opening the securities trading account with a securities company in Vietnam, opening an indirect investment account with a licensed bank in Vietnam, and opening the securities depository account with a commercial bank or securities company granted by the SSC with depository activity registration certificate and registered as member of VSD are compulsory with respect to foreign individuals and organizations who wish to buy listed securities in the Vietnamese securities market, while the simpler requirements are made to a purchase of unlisted securities by foreign individuals and organizations in the Vietnamese securities market. With respect to listed stocks, foreign investors can hold up to 100% of the total of stocks in circulation of an issuer, except for some special cases such as investments in specific industries (e.g. banks) or in public companies operating with business lines where investment is conditional applicable to foreign investors but there is no specific regulations on foreign ownership (up to 49%) or the charter of a public or listed company limits foreign ownership and the SSC has been reported thereon. With respect to listed bonds, foreign individuals and organizations can hold up to 100% of the total of bonds in circulation of an issuer, of which a private individual can hold up to 5% and an organization can hold up to 10%. With respect to unlisted stocks, foreign ownership limits are different (which in theory may go up to 100%), varying from business sector to business sector, and in accordance with the Vietnam's commitments to the WTO, other international treaties to which Vietnam is a party, and the relevant specific provisions of domestic laws. If companies operate with multiple business lines subject to different rules on foreign ownership ratio, the foreign ownership ratio shall not exceed the lowest of foreign ownership ratios applicable to these business lines (which are being conducted by the company), unless otherwise provided for by an international treaty.

16. TAXATION

16.1 Legislation

The backbone of the taxation system is set up by:

- (i) the Law on Tax Administration 2006, as amended and supplemented in 2012, 2014 and 2016, which provide general regulations on:
 - (a) Tax registration, tax declaration, tax payment and fixing amounts of tax payable;
 - (b) Conduct of procedures for tax refund, tax exemption and tax reduction;
 - (c) Cancellation of outstanding tax payable and of fines;
 - (d) Management of information about tax payers;
 - (e) Tax checks and inspections;
 - (f) Compulsory enforcement of administrative decisions about tax;
 - (g) Dealing with breaches of the law on tax;
 - (h) Resolution of complaints and denunciations about tax; and
- (ii) other tax laws, which detail taxable and non-taxable objects, basis for calculation of tax and tariffs, exemption from and reduction of tax, declaration and payment of tax, complaints and dealing with breaches for each specific kind of tax, etc. For instance, they include the Law on Corporate Income Tax adopted in 2008, as amended and supplemented in 2013 and 2014; the Law on Value-Added Tax, passed in 2008, as

amended and supplemented in 2013, 2014 and 2016; the Law on Special Sales Tax adopted in 2008, as amended and supplemented in 2014 and 2016; the Law on Personal Income Tax passed in 2008, as amended and supplemented in 2012 and 2014; and the new Law on Export Tax and Import Tax adopted in 2016.

There are also hundreds of decrees, circulars and other regulations being issued by the Government, various ministries and agencies, from time to time, with a view to provide guidelines for the implementation of those laws.

16.2 Types of Taxes

According to the prevailing tax law system, at least, the following taxes should be aware of by foreign investors when doing business in Vietnam:

- (i) Corporate income tax;
- (ii) Value-added tax;
- (iii) Special sales taxes;
- (iv) Withholding tax;
- (v) Import/export tax;
- (vi) Non-agricultural land use tax;
- (vii) Royalties;
- (viii) Environmental protection tax;
- (ix) Foreign contractor tax; and
- (x) Personal income tax.

Details about each type of taxes are described herein.

16.3 Corporate Income Tax

The standard corporate income tax ("CIT") rate is now 20% as from 1 January 2016, decreased from 32%, 28%, 25% and 22% in the past, thanks to the issuance of the Law on CIT as amended and supplemented, and applicable to all legal entities; except for:

- (i) The CIT rate for search, exploration and extraction activities of oil and gas and other rare natural resources in Vietnam from 32% to 50%. For the search, exploration and extraction of oil and gas, based on the location and conditions for extraction and mine reserve, the Prime Minister shall decide on the tax rate consistently with each project and business establishment at the request of the Minister of Finance.
- (ii) For the platinum, gold, silver, tin, wolfram, antimony, precious stones, rare earth mines, the tax rate is 50%. Where the mines having an assigned area 70% or more in the areas with extremely difficult socio - economic conditions in the list of areas entitled to the preferential of CIT, these areas shall be subject to the CIT rate of 40%.

Below are the incentives including preferential tax rates, tax holiday and tax reductions:

- (i) The tax rate of 10% is applicable to:
 - (a) Incomes of private enterprises from investment in education, vocational training, health, culture, sports, environment, and judicial expertise;
 - (b) Incomes of enterprises from the investments in social housing that are for sale, for lease, or for hire purchase according to Law on Residential Housing;
 - (c) Incomes from press agencies from printing newspapers, including advertisements on printed newspapers according to the Law on Press; incomes of publishers from publishing according to the Law on Publishing;

- (d) Incomes of enterprises from planting, cultivating, and protecting forests; from agriculture, forestry, and aquaculture in localities facing socio-economic difficulties; from the production, multiplication, and cross-breeding plants and animals; from the production, extraction, and refinement of salt except for the production of salt; from investment in post-harvest preservation of agriculture products, aquaculture products, and food.
- (ii) The tax rate of 10% for 15 years is applicable to:
- (a) Incomes of enterprises from the execution of new projects of investment in localities facing extreme socio-economic difficulties, economic zones, and hi-tech zones;
- (b) Incomes of enterprises from the execution of new projects of investment, including: scientific research and technology development; application of high technologies in the list of prioritized high technologies according to the Law on High Technologies; cultivation of high technologies, cultivation of hi-tech enterprises; high-risk investment in the development of high technologies in the list of prioritized high technologies according to the Law on High Technologies; investment in construction, operation of facilities for cultivation of high technologies, cultivation of high-tech enterprises; investment in development of water plants, power plants, water supply and drainage system; bridges, roads, railroads, airports, seaports, air terminals, train stations, and other particularly important infrastructural works decided by the Prime Minister; software production; manufacture of composite materials, light building materials, rare and valuable materials; production of renewable energy, clean energy, waste-to-energy process; development of biological technology; and environment protection;
- (c) Incomes of hi-tech enterprises and agricultural enterprises that apply high technologies according to the Law on High Technologies;
- (d) Incomes of enterprises from the execution of new projects of investment in production (except for the production of articles subject to special excise duties and mineral extraction projects), which meet one of the two criteria as below.
- Any project of which the capital is at least VND6,000 billion that is released within 3 years from the day on which the IRC is issued, and the total revenue reaches at least VND10,000 billion within 3 years from the first year in which revenue is earned;
 - Any project of which the capital is at least VND6,000 billion that is released within 3 years from the day on which the IRC is issued, and employ more than 3,000 workers within 3 years from the first year in which revenue is earned.
- (iii) The tax rate of 15% is applicable to incomes of enterprises from farming, breeding, and agro-processing and fish processing that are not in localities facing socio-economic difficulties and localities facing extreme socio-economic difficulties.
- (iv) The tax rate of 17% is applicable to incomes of people's credit funds and microfinance institutions.
- (v) The tax rate of 17% for 10 years is applicable to:
- (a) Incomes of enterprises from the execution of new projects of investment in localities facing socio-economic difficulties;
- (b) Incomes of enterprises from the execution of new projects of investment, including: production of high-grade steel; production of energy-saving products; production of machinery and equipment serving agriculture, forestry, aquaculture, salt production; production of irrigation equipment; production and refinement of

feed for livestock, poultry, and aquatic organism; development of traditional trades.

For special projects that need to attract a lot of investment and high technologies, the period of preferential tax rates may be extended, but the extension shall not exceed 15 years.

The duration of application of preferential tax rates shall be counted consecutively from the first year in which revenue is earned. For hi-tech enterprises and agricultural enterprises applying high technologies, this duration shall be counted from the year when they are recognized as hi-tech enterprises or agricultural enterprises applying high technologies. For projects applying high technologies, this duration shall be counted from the year when they are granted certificates of projects applying high technologies.

In case where an enterprise has not derived taxable income during 3 years as per the generating year of first turnover, the tax holiday or reduction shall apply from the fourth year.

16.4 Value-Added Tax

Value-Added Tax (“VAT”) is levied on the added value of most goods and services generated during the process from the production, circulation to consumption (With respect to some categories, they are also subject to Special Sales Tax, as described in Section 16.5 hereunder). According to the Amended Law on VAT 2008, there are three (instead of four as previously) VAT rates as follows:

- (i) The tax rate of 0% is applicable to exported goods and services (i.e. that are consumed outside Vietnam or in free trade zones, or sold to foreign customers), international transportation, and to goods and services which are not subject to VAT and which are exported, except for the following:
 - (a) Technology transfers and intellectual property transfers to foreign countries;
 - (b) Services being reinsurance offshore, overseas securities investment;
 - (c) Assignment of capital, credit services;
 - (d) Derivative financial services;
 - (e) Outbound postal and telecommunications services (including those provided for the entities in free trade zones; prepaid cards sold overseas or in free trade zones); and
 - (f) Export products being exploited natural resources and mined minerals which have not yet been processed into other products, export products being commodities processed from natural resources and minerals with the total value of natural resources and minerals plus energy costs accounting for 51% or more of the cost of products;
 - (g) Cigarettes, alcohol, and beers imported then exported;
 - (h) Goods and services provided to individuals in the non-tariff area who have not registered their business, except in other cases prescribed by the Prime Minister.

- (ii) The tax rate of 5% is applicable to:
 - (a) Clean water for manufacturing and for living purposes, except for bottled water and other soft drinks.
 - (b) Ore used for production of fertilizers; pesticides and growth stimulants for animals and crops.
 - (c) Services of digging and ploughing, and dredging canals, ditches, ponds and lakes for agricultural production; planting, raising and pest control of crops; semi-processing and preserving agricultural products.
 - (d) Products of cultivation, husbandry and aquaculture which have not yet been processed, except for products of cultivation, husbandry, aquaculture, seafood

and fisheries which have not yet been processed into other products or which have only been subject to conventional preliminary treatment by organizations and individuals in the stages of production, catching, sale and import.

- (e) Semi-processed latex; semi-processed resin; and netting, cord and fibre used for weaving into fishing nets.
- (f) Fresh food produce; and forestry products which have not yet been processed except for wood, bamboo shoots and the products which have not yet been processed into other products or which have only been subject to conventional preliminary treatment by organizations and individuals in the stages of production, catching, sale and import.
- (g) Sugar; and by-products obtained in manufacture of sugar comprising sugar-cane dregs, bagasse and sugar dregs.
- (h) Products made from jute, sedge, bamboo, rattan, coconut husks and shell, water hyacinth, and other handmade products produced by using agricultural raw materials; semi-processed cotton; and newsprint.
- (i) Medical equipment and instruments; medical sanitary cotton and bandages; preventive and curative medicines; and pharmaceutical products and pharmaceutical materials which are the raw materials for producing preventive and curative medicines.
- (j) Teaching and study aids used for teaching and studying including various types of models, drawings, blackboards, chalk, rulers, compasses and various types of specialized equipment and tools for teaching, research and scientific experiments.
- (k) Cultural activities; exhibitions; physical training and sports activities; artistic performances; film production; and importation, distribution and screening of films.
- (l) Children's games; books of all types, except for the books which have not yet been processed into other products or which have only been subject to conventional preliminary treatment by organizations and individuals in the stages of production, catching, sale and import.
- (m) Scientific and technological services as stipulated in the Law on Science and Technology.
- (n) Selling/Leasing/Hire purchase social housing as specified in Law on Residential Housing.

(iii) The standard tax rate of 10% is applicable to other goods and services.

16.5 Special Sales Tax

Other than those subject to VAT, the following are being subject to the Special Sales Tax with the rates ranging from 5% to 150%, which are:

- (i) Cigarettes, cigars and other products processed from tobacco and used to inhale, sniff, chew, smell or swallow;
- (ii) Spirits;
- (iii) Beer;
- (iv) Passenger vehicles of less than 24 seats, including vehicles for carrying both passengers and cargo with two or more rows of seats, designed with a fixed partition between the passenger and cargo compartments;
- (v) Two-wheel and three-wheel motor vehicles with cylinder capacity above 125 cm³;
- (vi) Aircraft and yachts;
- (vii) Various types of petrol;
- (viii) Air conditioners with a capacity of 90,000 BTU or less;
- (ix) Playing cards;
- (x) Votive paper;
- (xi) Business of operating dancehalls;
- (xii) Business of operating massage lounges and karaoke parlours;

- (xiii) Business of operating casinos and of operating electronic games with prizes including jackpot machines, slot machines and other similar types of machines;
- (xiv) Betting business;
- (xv) Golf business including selling membership cards and tickets to play golf; and
- (xvi) Business of operating lotteries.

These tax rates were applied from 1 January 2016. In addition, for some products, including cigarettes, cigars and other manufactured tobacco products; alcohols and beers, tax rates will be adjusted gradually to increase according to their own roadmaps.

Contrary to previous regulations providing that the goods and services subject to VAT were not subject to special sales tax, and vice versa according to the VAT Law, these two taxes may be concurrently applied on the same goods or service.

16.6 Withholding Tax

Since 1 January 2009, foreign capital projects and investors are free from paying the withholding tax. However, they are subject to corporate income tax or personal income tax as described in Sections 16.3 above and 16.9 hereunder as the case may be.

16.7 Export Tax, Import Tax

Vietnam is now adjusting its import and export tariffs in order to promote export and to fulfill the international commitments to cut down import duties and remove non-tariff barriers in line with ASEAN economic agreements, ASEAN - China economic agreements, ASEAN – Japan and Vietnam - Japan comprehensive economic partnership agreements, ASEAN – Korea economic agreement and Vietnam - Korea FTA, agreement establishing ASEAN - Australia - New Zealand free trade area, ASEAN – India economic agreements, Vietnam – EAEU FTA, Vietnam – EU FTA, Trans-Pacific Partnership Agreement, and agreements with other international trade organizations.

According to the LI and the Law on Import/Export Tax, foreign capital projects and foreign investors to PPP contracts or BCCs are exempted from duties imposed on the goods which they import to create their fixed assets, including:

- (i) Goods temporarily imported for re-export or temporarily exported for re-import to participate in fairs, exhibitions, product introduction; machinery, equipment and professional tools that are temporarily imported and re-exported, or temporarily exported and reimported in order to service work within a certain specified period.
- (ii) Goods which are moveable assets of foreign organizations or individuals brought in Vietnam or overseas to the extent prescribed by law.
- (iii) Goods which are imported in service of processing for a foreign party and then exported, or goods that are exported overseas in service of processing for a Vietnamese party and then re-imported pursuant to a processing contract.
- (iv) Imports and exports in duty-free luggage quotas for people on exit or entry stipulated by the Government.
- (v) Goods which are imported in order to form fixed assets of a project that is an encouraged investment or of a project funded by ODA, comprising:
 - (a) Equipment and machinery;
 - (b) Specialized means of transportation of a technological line and means of transportation used for transporting employees; means of transportation for

- transporting workers, including automobiles with 24 seats or more and means of waterways transportation;
- (c) Components, details, separate sections, spare parts, fittings, moulds and accessories accompanying the equipment, machinery and specialized means of transportation;
 - (d) Raw materials and materials used to manufacture equipment and machinery in technological lines or to manufacture components, details, separate sections, spare parts, fittings, moulds and accessories accompanying the equipment and machinery;
 - (e) Construction materials which are not yet domestically produced; and
 - (f) Raw materials and other materials imported for performing BOT, BTO and BT projects;

The said tax exemptions will also apply to cases of expanding the scale of a project and of replacing and renewing technology.

- (vi) Plant and animal seeds/ breeds, special agricultural products which are allowed to import to carry out agricultural, forestry and aquatic projects.

The said tax exemptions will also apply to cases of expanding the scale of a project and of replacing and renewing technology.

- (vii) Goods which are equipment and facilities imported for the first time pursuant to the list stipulated by the Government in order to create fixed assets of projects eligible for preferential import tax, or projects funded with ODA on investment in hotels, offices, apartments for lease, residential housing, commercial centres, technical services, supermarkets, golf courses, tourist resorts, sporting resorts, entertainment areas, medical diagnosis and treatment establishments, and entities that are training, cultural, financial, banking, insurance, auditing, and consultancy services establishments.

- (viii) Goods imported in order to support petroleum operations, comprising:

- (a) Equipment, machinery, and specialized means of transportation which are essential for petroleum operations; Means of transportation for transporting workers include cars of 24 seats or more and waterway means; Including components, details, spare parts, fittings, replacement parts, molds and accessories provided for synchronous assembly or synchronous use with equipment, machinery and specialized means of transportation; Means of transportation to pick up workers mentioned above;
- (b) Materials which are essential for petroleum operations and which are not yet able to be produced domestically;
- (c) Medical equipment and first aid medicines for use on drilling platforms and floating structures certified by the Ministry of Health ("MOH");
- (d) Office equipment in service of petroleum operations;
- (e) Goods temporarily imported for re-export in service of petroleum operations.

- (ix) Goods which are imported for direct use in scientific research and development of technology, including machinery, equipment, accessories, materials and means of transportation which are not yet able to be produced domestically, and technology which is not yet able to be created domestically; and scientific books and data.

- (x) Raw materials, materials and component parts imported for production of projects on the list of sectors where investment is specially encouraged or on the list of regions with special difficult socio-economic conditions will be exempted from import duty for a duration of 5 years from the commencement of production.

- (xi) Goods which are manufactured, processed, recycled or assembled in nontariff zones without using raw materials or component parts which are imported from abroad, upon import thereof into the domestic market; in the case where raw materials and component parts imported from abroad are used, upon import of goods into the domestic market, import duty must be paid on that part of the goods which is imported raw materials or component parts which form a constituent part of such goods.
- (xii) Other cases pursuant to a decision of the Prime Minister.

Import taxes imposed on imported goods for the production of goods exported to foreign countries or exported into non-tariff area shall be refunded corresponding to the proportion of actually exported products, and exported goods determined as being entirely processed from imported raw materials and materials shall not be subject to export tax.

16.8 Non-agricultural Land Use Tax

The tax rate of 0.03% shall apply to non-agricultural production and business land (e.g. land being rivers, streams, canals, drains or creeks, and specialized use water surfaces; land on which headquarters and building works are constructed; etc.) and non-agricultural land used for business purpose.

16.9 Royalties

Organizations, which exploit natural resources including: metallic minerals; non-metallic minerals; crude oil; natural gas, coal gas; natural forest products, except animals; natural seafood, including marine animals and plants; natural water, including surface water and groundwater, excluding natural water used for agriculture, forestry, fisheries and salt production; swallow's nest; and other natural resources prescribed by the National Assembly's Standing Committee, must pay royalty at rates ranging from 1 to 40%.

16.10 Environmental Protection Tax

This is a type of indirect tax imposed on products and goods that, when used, is detrimental to the environment, except for goods transported in transit or transshipment; goods temporarily imported for re-export; goods directly exported by the production establishments or by export business establishments entrusted by the production establishments, except for cases where organizations purchase goods subject to environmental protection tax for export.

Taxable objects include: gasoline (except ethanol), lubricant oils and grease; coal; hydrogen-chlorofluorocarbon (HCFC) liquid; plastic bags made of HDPE, LDPE or LLDPE plastic films, except for pre-packaged goods and plastic bags meeting the environmentally friendly criteria prescribed by the Ministry of Natural Resources and Environment ("MONRE"); herbicides, insecticides, forest product preservatives, and warehouse disinfectant which are restricted from use. The National Assembly's Standing Committee shall consider and supplement other taxable object(s) to suit each period when deeming it necessary.

Organizations and individuals that produce and/or import taxable goods shall have to pay the environmental protection tax calculated in the quantity of taxable units multiplied by the absolute tax rate prescribed per unit of goods. In which the absolute tax rate applicable to gasoline and oil is VND300-4,000/liter, to lubricant grease is VND300-2,000/kg; to coal is VND10,000-50,000/ton; to HCFC liquid is VND1,000-5,000/kg; to taxable nylon bag is VND30,000-50,000/kg; and to herbicides, insecticides, forest product preservatives, and warehouse disinfectants which are restricted from use, is VND 1,000-3,000/kg.

16.11 Foreign Contractor Tax

Foreign contractors who conduct production and business activities in Vietnam, not under the LI, Petroleum Law and Law on Credit institutions on the basis of signing contracts with Vietnamese legal entities, and sub-contractors who provide services to contractors in Vietnam, shall be liable for paying the same taxes and tax rates as applicable to the local enterprises. These taxes include VAT, CIT, import tax-export tax, PIT, and others if so required by the laws of Vietnam.

Foreign contractors and sub-contractors may choose one of three following ways to pay VAT and CIT:

- (i) Declaration Method (paying VAT using credit-invoice method, paying CIT according to declared revenue and expense):

This is applicable to foreign contractor/ subcontractor who has a permanent establishment in Vietnam or the contractor/subcontractor is a resident of Vietnam; whose the period of business operation on Vietnam under the main contract or subcontract is 183 days or longer from the effective date of the contract; who applies Vietnam’s accounting practice, has applied for tax registration and issued with a taxpayer ID number (TIN) by a tax authority. The tax payment will be done in the same way of local entities, at the VAT and CIT rates as described above.

- (ii) Direct Method (paying VAT and CIT according to fixed rates):

This method is applicable when foreign contractors or sub-contractors fails to meet any of the requirements mentioned in section (i) above and the Vietnamese parties will be responsible to deduct and pay tax on their behalf. In order to facilitate the assessment and payment of VAT and CIT, these two types of taxes are consolidated on the basis of taxable revenues.

- (a) Revenue subject to VAT is total revenue from provision of services and services attached to goods subject to VAT received by the foreign contractor or foreign sub-contractor inclusive of subtracting taxes payable and any costs (if any) paid by the Vietnamese party on behalf of the foreign contractor or foreign sub-contractor. VAT rates serving the calculation of VAT imposed on taxable revenues vary subject to business lines. VAT will be calculated by multiplying the taxable revenues with the respective VAT rates as described in the below table:

No.	Business lines	VAT Rate as % of taxable revenues
1	Services, rental of machinery and equipment, insurance; construction, installation exclusive of raw materials, machinery and equipment	5
2	Production, transportation, services attached to goods; construction, installation inclusive of raw materials, machinery and equipment	3
3	Other business activities	2

- (b) Revenue subject to CIT is the total revenue exclusive of VAT received by the foreign contractor or foreign sub-contractor, but inclusive of the costs paid by the Vietnamese entity on behalf of the foreign contractor or foreign sub-contractor (if any) and payable taxes. CIT rates serving the calculation of CIT imposed on taxable revenues vary subject to business lines. CIT will be calculated by multiplying the taxable revenues with the respective CIT rates as described in the below table:

No.	Business lines	CIT rates as % of taxable turnover
1	Trading: distribution, supply of commodities, raw materials, supplies, machinery and equipment; distribution, supply of commodities, raw materials, supplies, machinery and equipment associated with services in Vietnam (including those provided in the form of domestic exports, except for goods processed under processing contracts with foreign entities); supply of commodities in accordance with Incoterms	1
2	Services, equipment lease, insurance, oil and gas drilling platform	5
	Particularly:	
	- Casino, hotel and restaurant management services	10
	- Derivative securities services	2
3	Lease of airplane, airplane engine, airplane and sea vessel accessories	2
4	Construction with or without supply of materials, machinery or equipment	2
5	Other production, business activities; Transportation (including sea and air transportations)	2
6	Transfer of securities, certificates of deposit, offshore re-insurance, commission on re-insurance assignment	0.1
7	Loan interest	5
8	Income from royalties	10

16.9 Personal Income Tax

All foreigners having incomes in/ from Vietnam, regardless the length of time they live in Vietnam, are the payers of PIT. For resident individuals, their taxable incomes are incomes earned inside and outside the Vietnamese territory, regardless of where their incomes are paid. For non-resident individuals, their taxable incomes are incomes earned in Vietnam, regardless of where their incomes are paid.

With respect to whom being present in Vietnam for a period less than 183 days, calculated within one calendar year or within 12 consecutive months from the first date of his/her stay in Vietnam or without a regular residential location in Vietnam that is a residential location for which permanent residence has been registered or a property rented pursuant to a lease for a definite term for residential purposes (so called non-resident foreigners):

- (i) 1% to activities in the form of business in goods;
- (ii) 5% to activities in the form of business in services;
- (iii) 2% to activities in the form of production, construction, transportation and other business activities;
- (iv) 20% to income from salaries and wages;
- (v) 5% to income from capital investments;
- (vi) 0.1% to income from capital transfers, irrespective of whether the transfer was conducted in Vietnam or abroad;
- (vii) 2% to income from real property transfers;
- (viii) 5% to income in the form of royalties and to income from franchises exceeding VND 10 million/ contract;
- (ix) 10% to income from winnings, inheritance or gift exceeding VND 10 million/ occasion.

With respect to whom living in Vietnam over 183 days, calculated within one calendar year or within 12 consecutive months from the first date of his/her stay in Vietnam, or having a regular residential location in Vietnam (so called locally-resident foreigners), they will pay PIT according to the progressive tax tariff, with the maximum rate of up to 35% of their monthly income. In this case, resident individuals irrespective of whether they are foreigners or Vietnamese will be subject to the same tax scales:

Tax Bracket	Portion of Annual Assessable Income (million VND)	Portion of Monthly Assessable Income (million VND)	Tax Rate (%)
1	Up to 60	Up to 5	5
2	Over 60 to 120	Over 5 to 10	10
3	Over 120 to 216	Over 10 to 18	15
4	Over 216 to 384	Over 18 to 32	20
5	Over 384 to 624	Over 32 to 52	25
6	Over 624 to 960	Over 52 to 80	30
7	Over 960	Over 80	35

Assessable Income		Tax Rate (%)
(a)	Income from capital investments:	5
(b)	Income from royalties, franchises:	5
(c)	Income from winnings:	10
(d)	Income from inheritances, gifts:	10
(e)	Income from equity transfers:	20
	Income from transfers of securities:	0.1
(f)	Income from real property transfers:	2

Resident individuals are entitled to reduction based on family circumstances (i.e. a sum of money deductible from pre-tax income from business, salary or wage of a resident taxpayer), which is consisted of: Reduction of VND 9 million/ month (VND 108 million/ year) for taxpayers, and reduction of VND 3.6 million/ month for each dependent.

17. LABOUR MATTERS

17.1 Legislation

In replacement of the former Labour Code of 1994, the current Labour Code which was passed by the National Assembly on 18 June 2012 and took effect on 1 May 2013, currently serves as the principal legal base for all the labour matters in Vietnam. The Labour Code 2012 applies to both employee and employer including foreign organizations that employ local and foreign staff working on regular basis in Vietnam.

Since June 2012, a number of decrees, decisions, circulars, directions and other regulations have been issued from time to time, by the Government and various ministries and agencies, to replace those guiding for the implementation of the former Code and bring the provisions of the Labour Code 2012 into practice.

17.2 Recruitment

Formerly, foreign capital enterprises must recruit employees first from individuals recommended by the local labour supplier(s). Now, foreign capital enterprises can do direct recruitment.

Employees must be at least 15 years old. Employee who is a foreigner entering Vietnam to work must satisfy the following conditions:

- (i) The worker is capable of civil acts as prescribed by law;

- (ii) The worker's health is fit for working;
- (iii) The worker is a manager, chief executive officer, expert or technician;
- (iv) The worker is not a criminal or liable to criminal prosecution in accordance with the Vietnam laws and the foreign country's laws;
- (v) The worker obtains a work permit issued by competent State authority of Vietnam, except for cases entitled to exemption from work permit.

Preference in employment should be given to Vietnamese citizens. However, if a Vietnamese person with appropriate qualifications is not found, foreign employees can be hired. The employer is responsible to determine the demand for foreign workers for every job position in which Vietnamese workers are incompetent and send reports to the Chairperson of the People's Committee of the province or centrally-run city where the planned working place of foreign workers is located in order to obtain the latter's approval for the recruitment of foreign worker for every job position.

It is worthy of note that according to Decree No.11/2016/ND-CP dated 3 February 2016 of the Government detailing the implementation of a number of articles of the Labour Code regarding foreign workers in Vietnam ("Decree 11), the foreign workers are exempt from work permits in the following cases:

- (i) Capital contributing member or owner of a limited liability company.
- (ii) Member of the board of management of a joint stock company.
- (iii) Head of a representative office or of a project of an international organization or non-governmental organization in Vietnam.
- (iv) Entering Vietnam for a period under 3 months in order to offer services.
- (v) Entering Vietnam for a period under 3 months in order to resolve an incident breakdown or technically or technologically complex situation arising and affecting, or with the risk of affecting production or business with which Vietnamese experts or foreign experts currently in Vietnam are unable to deal.
- (vi) A foreign lawyer issued with a certificate to practice law in Vietnam in accordance with the laws on lawyers.
- (vii) In accordance with provisions of an international treaty of which Vietnam is a member.
- (viii) A student studying in Vietnam is permitted to work in Vietnam, but the employer must provide 7 days' advance notice to the provincial-level Department of Labour, War Invalids and Social Affairs ("DOLISA").
- (ix) The workers are internally reassigned in the companies which engage in 11 service industries in the Vietnam's WTO commitments on services, including: business, communication, construction, distribution, education, environment, finance, health, tourism, culture, entertainment and transportation.
- (x) The workers enter Vietnam to provide professional and technical advisory services or perform other tasks serving the research, construction, appraisal, assessment, management and execution of programs and projects funded by ODA according to the International Treaties on ODA between the competent authorities of Vietnam and other countries.
- (xi) The workers are issued with the licenses for the practice of communications or journalism in Vietnam by the Ministry of Foreign Affairs ("MOFA").
- (xii) The workers are appointed by foreign agencies or organizations to teach or do research in international schools under the management of foreign diplomatic missions or international organizations in Vietnam or the workers are permitted to teach or do research in educational and training institutions in Vietnam by the Ministry of Education and Training ("MOET").
- (xiii) The workers are volunteers who have obtained the certification of the foreign diplomatic missions or international organizations in Vietnam.
- (xiv) The workers enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for a period of under 30 days and an accumulated working period of under 90 days per year.

- (xv) The workers enter Vietnam to implement international agreements to which central or provincial agencies and organizations are signatories in accordance with the law;
- (xvi) Students who are studying in schools or training institutions in foreign countries execute their practicum at agencies, organizations or companies in Vietnam upon agreements;
- (xvii) Relatives of members execute their functions in foreign missions in Vietnam upon the approval of the MOFA, unless otherwise stated in the international treaties to which Vietnam is a signatory.
- (xviii) Workers are holders of official passports for working in state agencies, political organizations or socio - political organizations.
- (xix) Other cases decided by the Prime Minister at the request of the Ministry of Labour, War Invalids and Social Affairs (“MOLISA”).

The employer shall request the DOLISA of the locality where the planned working place of foreign workers is located or the Management Board of IZs, EPZs, EZs and HTZs authorized by the DOLISA of the province or centrally-run city where the Board is located (collectively called “provincial-level State management authority on labour”) to certify that such foreign workers are eligible for exemption from work permits at least 7 working days before the day on which they start to work, except for the cases stated in (iv), (v) and (xiv) above. Within 3 working days from the day on which the sufficient application is received, the provincial-level State management authority on labour shall send a written certification to the employer.

While at least 15 working days before the day on which the foreign worker intends to start his employment, the employer shall submit the application for the work permit to the provincial-level State management authority on labour. Within 7 working days from the day on which the sufficient application is received, the provincial-level State management authority on labour shall issue the work permit to the foreign worker. The duration of a work permit shall not exceed 2 years. After the foreign worker is issued with the work permit, the employer and the foreign worker shall sign a written labour contract in accordance with the Vietnam law before the intended working day of such foreign worker. Within 5 working days from the day on which the labor contract is signed, the employer shall send a copy of the signed labor contract to the provincial-level State management authority that issued such work permit.

17.3 Labour Contracts

A labour contract must be in writing and directly signed in 2 originals between the employee and the employer's legal representative, the employee shall keep 1 original and the employer shall keep 1 original, except for the temporary employment will last less than three months the parties may conclude verbal contracts.

If the worker is from 15 years up to under 18 years of age, then the entering into the labour contract must obtain a consent from his/her legal representative.

A group of workers may authorize one of the workers in their group to enter into a written labour contract for a seasonal work or specific job and in this case, the labour contract has the same validity as if it was signed with each worker.

A labour contract must be in conformity with the Vietnamese laws and collective agreements (if any), with maximal two definitive term contracts to be first permitted, then indefinite term contract to be applied.

A labour contract must have main clauses relating to: Name and address of the enterprise or of the employer's lawful representative; Full name, date of birth, sex, residential address, and number of identity card or other legal document of the employee; Job and workplace; Term of the labour contract; Wage rate, method of and time of payment of wages, allowances and other additional payments; Regime for wage increases and promotion; Working hours and rest breaks;

Personal protective equipment of the employee; Social and health insurances for the employee; Training and skill improvement for the employee.

When an employee does a job, which is directly related to business or technological secrets as defined by law, the employer has the right to a written agreement with the employee on contents and term of confidentiality of business secrets and of technology, of interests or benefits and on payment of compensation if the employee breaches such agreement.

Probationary agreements may be separate from or included in the labour contracts. The probationary length varies, and subject to the nature and complexity of assigned jobs; but there may only be probation on one occasion for one job, and the probationary period must not exceed:

- (i) 60 days for working in a position requiring high level specialized or technical expertise;
- (ii) 30 days for working in a position requiring intermediate level specialized or technical expertise or for technical workers and professional staff; and
- (iii) 6 working days for other work.

An employee working pursuant to a seasonal labour contract is not engaged in a probationary period of work.

17.4 Statutory Minimums

Normal working hours are limited to 8 hours per day and 48 hours per week. Employers have the right to stipulate that employees work on an hourly or daily or weekly basis; if on a weekly basis, then normal working hours must not exceed 10 hours in one day and must not exceed 48 hours in one week. Working hours shall not exceed 6 hours in one day for workers who perform extremely heavy, toxic or dangerous work as stipulated in the list issued by the MOLISA after presiding over coordination with the MOH.

Working hours may be extended by mutual agreements, but total daily overtime shall not exceed 50% of the normal working hours in 01 days; in case of application of working regulation on weekly basis, the total normal working hours and the overtime hours shall not exceed 12 hours in a day, 12 hours in one day when working overtime on public holidays or weekly days off, and 30 hours in 01 months; and the total of not more than 200 hours in 01 year, except for some special cases stipulated by the Government for the overtime working but shall not be more than 300 hours in 01 years, provided that the respective provincial-level State management authority on labour has been notified thereof.

Employees who have worked in the enterprise for 12 months in full are entitled to have a fully-paid annual leave in accordance with the wage stated in labour contract, which shall be:

- (ii) 12 working days for employees working in normal conditions,
- (iii) 14 working days for employees doing heavy, toxic or dangerous works, or those working in the places with harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH, and minor or handicapped labour, or
- (iv) 16 working days for employees doing extremely heavy, toxic or dangerous works, or those working in the places with specially harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH.

Female employees are entitled also to prenatal and postnatal leave of six months in which the maximum period of prenatal leave shall be 2 months, with an allowance funded by social insurance agency and equal to 100% of salary. If a female employee gives birth to more than one child at the one time, she is entitled to an additional 1 month's leave for each child counted from the second child.

Salary rates must conform to the collective labour agreement (if any) and must not be less than

the legally-regulated minimum regional wage rates in accordance with the new Decree No.1532/2016/ND-CP dated 14 November 2016 of the Government, stipulating region-based minimum wage levels for labourers working under labour contracts, which takes effect on 1 January 2017. According to which, there are currently four levels applicable to employees, which come down from VND3,750,000 (about US\$165) regarding enterprises, agencies and organizations operating in the inners and most of suburb of HCMC, the inners and the mains of suburb of Hanoi and Hai Phong, Bien Hoa City and some rural districts of Dong Nai Province, Thu Dau Mot City and some rural districts of Binh Duong Province, and Vung Tau City; VND3,320,000 (about US\$146) in Can Gio district of HCMC, the remaining of suburb of Hanoi and Hai Phong, the inner and suburb of Da Nang, and the inner of some smaller cities including Hai Duong, Hung Yen, Vinh Yen, Bac Ninh, Ha Long, Cam Pha, Uong Bi, Mong Cai, Thai Nguyen, Viet Tri, Lao Cai, Nam Dinh, Ninh Binh, Hue, Da Nang, Nha Trang, Cam Ranh, Da Lat, Bao Loc, Phan Thiet, Ba Ria, Tan An, My Tho, Can Tho, Rach Gia, Long Xuyen, Chau Doc, Ca Mau, and some towns including Phuc Yen, Tu Son, Long Khanh, Dong Xoai, Ha Tien, etc.; VND2,900,000 (about US\$127.2) in the other cities and towns, to VND2,580,000 (about US\$113.2) in the rest.

17.5 Collective Labour Agreement

Representatives of both employer and labour collective in a foreign-invested enterprise may negotiate and sign a collective agreement. The labour collective's representative at grassroots level is the executive committee of the enterprise's grass-roots trade union or of a direct superior trade union when the grassroots trade union is not yet established.

Contents of a collective labour agreement must not contrary to the laws and be more favourable for the employees than the provisions of the laws. A collective labour agreement shall have the validity depending on agreement between the employer and the labour collective's representative. In case where the collective labour agreement does not state its effective date, such agreement shall take effect on the date of signing by the legal representative of enterprise or head of organization/agency and by the chairperson of grassroots trade union/the trade union at the directly superior level to the grassroots level, or by their authorized representative(s). A collective labour agreement shall only be signed if the negotiated content of such agreement is approved by more than fifty (50) per cent of the members of the labour collective. The employer has to notify all employees of the signed collective labour agreement and send a copy of the collective labour agreement to the provincial-level State management authority on labour within 10 days from the signing date. Within 15 days as from the date of receipt, relevant State management authority has the responsibility to review the contents of the collective labour agreement, and if finding that any content is contrary to the laws or the signer is not competent to contract:

- (i) To request in writing the parties to the labour collective agreement, which is not yet effective, to negotiate the amendment and supplement to the agreement and send the agreement amended and supplemented as the result of the parties' negotiations to the provincial-level State management authority on labour; or
- (ii) To request in writing the People's Court to declare the effective labour collective agreement null and void, and at the same time to notify both parties to the labour collective agreement thereof.

The term of the collective labour agreement is between one and three years. When an enterprise signs a collective agreement for the first time, the term of the collective labour agreement may be less than one year. Within 3 months prior to the expiry of the collective labour agreement, both parties may negotiate to extend the term of such agreement or sign a new collective labour agreement.

17.6 Internal Working Rules

Foreign-invested enterprises employing ten (10) or more employees must have their written internal working rules registered with provincial-level State management authority on labour. Internal working rules must include compulsory items such as working hours and rest breaks; rules and order in the work places; occupational safety and hygiene in the work places; protection of assets and confidentiality of business secrets, technological secrets and intellectual property of the employer; conducts which are in breach of labour rules, and penalties imposed for those breaches and material responsibility for damage; etc.

Internal working rules must be notified to all employees and its main contents have to be displayed at necessary locations in the work places, and shall be the legal basis for employees to follow and for employer to apply disciplines in case of breaches by employees.

17.7 Social, Healthcare, Occupational Accidents & Diseases, and Unemployment Insurances, and Trade Union Expense and Fee

The compulsory insurances have recently been merged into one system being managed by Social insurance agency. These insurances cover illness, pregnancy, retirement, death, occupational accidents and diseases, and unemployment.

Foreign-invested enterprises are required to comply with the social insurance scheme, at least with respect to Vietnamese employees. In general, employers must pay to the social insurance fund and occupational accidents & diseases fund, now 18% and Vietnamese employees (and foreign employees as from 1 January 2018) will make a payment of 8% of their monthly wages (including wages and salary allowances; wages, salary allowances, and other allowances & subsidies as from 1 January 2018).

With respect to health insurance, both sides of employer and employees (regardless of being Vietnamese or foreigners) have to pay to the health insurance fund, of which 3% of total wages are paid by employers and 1.5% of the monthly wages are paid by employees.

Unemployment insurance is effective from 1 January 2009, which requires 1% of total wages to be paid by the employer and 1% of monthly wage to be paid by the employee. Having benefit from this type of insurance, the employee shall not be beneficial in terms of time for calculation of the job loss allowance or severance allowance when the employment relation is terminated.

Trade Union Expense payable by the employer would be 2% of the total payroll of the Vietnamese employees, and Trade Union Fee payable by the Vietnamese employees who are trade union members would be 1% of the monthly salary.

17.8 Labour Disputes

It should be first noted that Vietnamese laws allow employees to strike works against employers. With some exceptions, attempts must be made to settle labour disputes through conciliation between the employer and employee held by labour conciliators.

For individual labour disputes, if the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation, or if on expiry of the prescribed time-limit for conciliation the labour conciliator has not conducted a conciliation, either of the parties may refer the dispute to the competent court for final settlement.

For collective labour disputes:

- (i) If the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation, the parties may refer the dispute to:

- (a) Chairperson of the district-level People's Committee for resolution regarding collective labour disputes about rights; or
 - (b) Labour Arbitration Council for resolution regarding collective labour disputes about benefits.
- (ii) If on expiry of the prescribed time-limit for conciliation the Labour Conciliator has not conducted a conciliation, the parties may refer the dispute to the Chairperson of the district-level People's Committee for resolution, who shall be responsible to determine whether the dispute is one about rights or one about benefits, and then to directly resolve the dispute in the first case or to guide the parties to petition the Labour Arbitration Council to resolve the dispute in the second case.
- (iii) In the event that the parties disagree with the decision of the Chairperson of the district-level People's Committee, or if such Chairperson has not resolved the dispute on expiry of the time-limit, then the parties may refer the dispute to the competent court for final settlement regarding collective labour disputes about rights. If the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation prepared by the Labour Arbitration Council, then the labour collective has the right to conduct procedures in order to strike regarding collective labour disputes about benefits.

18. LAND MATTERS

18.1 Legislation

The Land Law adopted on 29 November 2013, which will take effect on 1 July 2014 ("Land Law"), covers all the land matters relating to the land, varying from the ownership, the State's power and liabilities, the land management and use regime to the land user's rights and obligations, and relevant transactions. Under the Law, there are dozens of regulations issued by the Government and various ministries and agencies.

18.2 Principal Features

All lands in Vietnam are owned by people and the State, representative of the people, has the sole authority to administer it. In the central level, the National Assembly has the ultimate power to supervise and administer over the land. However, the day-to-day management is assigned to provincial-level People's Committees. Any use of land is evidenced by a certificate of the land use rights, ownership of house and other assets attached to land. MONRE, for its part, is responsible for determining and setting up the land price bracket commonly applicable to each of categories of land to be submitted to the GoV for issuance. Pursuant to the principles of and methods for valuation of land and land price brackets, the provincial-level People's Committees will set up and submit the localities' land price tables to the People's Councils at the same level for their approval before issuing.

Foreign-invested companies (including 100% foreign-owned enterprises; joint venture enterprises; Vietnamese enterprises which foreign investors purchase shares/ capital contribution portions in or merge with or acquire in accordance with the laws on investment), can obtain the land use rights through leasing with collection of annual rent or with one-off payment of land rental for the entire lease term (frequently in the case of FOCs), allocating with collection of land use fee (only applicable to projects on investment in construction of residential housing for sale or lease out or hire-purchase), acquiring it from the contributions by the local partners in the case of JVCs, or being assigned investment capital which is value of land use rights. In all cases, a decision on leasing or allocating land from relevant state agency together with a land lease

agreement signed between relevant state agency and the FIE in case of land lease, are compulsory for the certificate of the land use rights.

The value of the land use rights means monetary value of land use rights with respect to a fixed land area for a fixed duration of land use, which is generally arrived at by calculating the total value for the entire lease or allocation period, by multiplying the used area and the applicable land rental or use fee rate(s).

18.3 Capital Contributions using Land use rights

According to the Land Law, capital contribution using land use rights is one of the ways to transfer land use rights from a person to another. This Law also made it clear that the entity receiving such capital contribution is granted a certificate of land use rights and that such entity, which may be a FIE, will have the rights of a common land user. But unlike the old law, the new Land Law no longer provides for the cases of termination of capital contribution using the land use rights. This makes the Land Law closer to Law on Enterprises in relation to the capital contribution using land use rights.

In the context of JVCs, it is common that local parties use land use rights to make all or part of their contributions to the charter capital of the JVCs. As earlier said, such right will last throughout the duration of the investment registration certificate.

When receiving the capital contribution using land use rights, it is particular to verify the conditions for capital contribution using the land use rights. The use of land for production and business through capital contributions using land use rights must ensure the following principles:

- (i) In accordance with the annual land use plan of the urban or rural district already approved and published;
- (ii) Cleared land, which may be used for appropriate production and business purposes, is exhausted in the area, except the projects in sectors or geographical areas where investment is encouraged;
- (iii) In case the investor implements method of assignment of land use rights requiring change of the purpose of land use, the assignment shall be made only after the competent People's Committee issues written permission for changing the purpose of land use, allowing adjustment in land use term to be suitable with the use of land for production and business;
- (iv) Where the land area of the production and business project has a part of land where the land user is not entitled to contribute capital using land use rights, the investor is allowed to enter into an agreement on purchase of assets attached to land from the people who are using the land, the State shall recover the land, convert the purposes of land use and lease the land to the investor in order to implement the project. Contents of the agreement on purchase of assets attached to the land must clearly reflect the fact that the property seller voluntarily returns the land to the State for revocation of land and lease of land to the property buyer.

The following conditions ensure a realization of the land contribution by the local parties to a JVC, which include the existence of a certificate of land use rights, dispute-free land, land use rights not subject to seizure for enforcement of a judgment, land use term not yet expired, the possibility of land using change so as to be suitable to the new purposes, and the permission by the authority of the local parties to do so.

Capital contribution using land use rights must be registered with the Land Registration Office directly under the provincial-level Department of Natural Resources and Environment and shall take effect at the time of being recorded in the cadastral book.

As a part of the capital contribution, the payment of the land rental or use fee is destined for the local parties' responsibility, hence not falling within the responsibilities of the JVCs or foreign parties as well.

18.4 Compensation

Allocation or lease of land, which is having land users will be only decided by the State after the competent State decided on land revocation under the Land Law and have completed the compensation, support and resettlement in accordance with the laws for the case needing ground clearance. Pursuant to the Land Law, organizations in charge of compensation and ground clearance include land-related public service providers and Compensation, Support and Resettlement Councils.

If the FIE, which is allocated land by the State with collection of land use fees or rents land, voluntarily advances funds for compensation, support and resettlement; then, these funds will be reimbursed by the State budget by deducting from payable land use fee or rental amount. Deductible amount of these funds shall not exceed the payable land use fee or rental amount; and the balance, if any, shall be calculated to be included in investment capital of the project.

If the FIE, which is allocated land by the State with collection of land use fees or rents land and is exempt from land use fee or rental, voluntarily advances funds for compensation, support and resettlement under the plan approved by the competent State agencies; then, these funds will be calculated to be included in investment capital of the project.

Levels of funds for compensation, support and resettlement shall be determined in accordance with the plan of compensation, support and resettlement approved by competent State agencies of Vietnam.

19. RESOLUTIONS OF COMMERCIAL DISPUTES

19.1 Background

Vietnamese laws emphasis the needs for parties to attempt to settle their disputes by conciliation and mediation. In practice, both the foreign and local parties are encouraged to seek the assistance of a third party (mediator or conciliator) to find out an amicable solution to any conflict.

If any attempts for mediation and conciliation are not effective, the parties in various circumstances refer the matters to various arbitral bodies, inside and outside Vietnam, they include:

- (i) Commercial arbitration: Vietnamese arbitration or foreign arbitration, with arbitration place located inside or outside Vietnam; and
- (ii) Economic court: Civil court and administrative handling court directly under district-level People's Court and Civil court, administrative court, economic court and labour court directly under provincial-level People's Court.

Details about each arbitral body are described hereunder.

19.2 Bodies resolving disputes in Vietnam

The existing system of bodies, which resolve disputes arising out of or in connection to legal relationship in commercial activities in Vietnam, is comprised of:

- (i) the commercial arbitrations, including ad-hoc arbitrations and arbitration centers ("CACs"), and
- (ii) the economic courts.

It is worthy of note that since the issuance of the Ordinance on Commercial Arbitration (which was no longer valid) on 25 February 2003 ("Ordinance"), no discrimination has been found between the former economic arbitration system established under Decree No.116/CP dated 5 September 1994 and Vietnam International Arbitration Center ("VIAC") affiliated to the Vietnam Chamber of Commerce and Industry. They are all commercial arbitration centers newly registered under the Ordinance, being non-governmental organizations and having mandate of judging all commercial disputes in general. Until Law on Commercial Arbitrations of 2010, Vietnamese commercial arbitrations become more opened with foreign arbitrators and more powerful with injunction relieves and court support.

They are operating under the national governance by the Ministry of Justice and relevant state agencies. To establish one, at least five founding arbitrators are required, who are Vietnamese nationals residing in Vietnam with appropriate qualifications (having full capacity for civil acts, graduate level, 5 years of experience or more, etc.).

Unless otherwise agreed by the parties, the arbitration procedures shall be in Vietnamese and the law governing arbitral proceedings shall be decided by the Arbitration Council. Arbitral awards are delivered by a majority vote. In the event voting majority is not reached, the arbitration award shall be delivered in the opinion of the President of the Arbitration Council Within 30 days from the date of an arbitral award, if either party does not agree on arbitral decision, that party can request the court for cancellation of the arbitral award. The parties then can further forward the disputes to the court for settlement, unless otherwise agreed.

19.3 Bodies resolving disputes outside Vietnam

Parties to a dispute can submit their dispute to an international or foreign arbitration center to issue settlement award outside or inside Vietnam. This, however, may not always be a better solution than Vietnamese arbitration because of expensiveness, meanwhile the local enforcement is unlikely compared to arbitral awards made by Vietnamese arbitration although Vietnam has joined the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards and passed also the Ordinance on Recognition and Enforcement of Foreign Arbitral Awards in September 1995, which has been replaced by related regulations in the current Civil Proceedings Code adopted on 25 November 2015.

19.4 Enforcement

Under applicable regulations, if an award decided by economic court is not voluntarily respected, there are various procedures that can be used to enforce it, such as distraint of property. However, the procedures in practice, have not worked well because of unavailability of specific regulations. As a matter of fact, several regulations on enforcement of civil awards have been borrowed for use.

With respect to local arbitral awards, unlike in the past, the enforcement of the arbitral awards has been now identified quite clear and obviously improved in the Ordinance and then, Law respectively. If an arbitral award is not voluntarily respected by the losing party, after 30 days from the date of the arbitral award, the victorious can request the enforcement teams to force the implementation.

With respect to foreign arbitral awards and court verdicts, they can be applied for recognition and enforcement in Vietnam since the issuance of the two previous ordinances and a separately-dedicated part in the present Civil Proceedings Code, governing the recognition and enforcement

of foreign arbitral awards and court verdicts. However, at the current time, such recognition is rare. A Vietnamese court will only consider the recognition and enforcement of foreign arbitration awards: (a) where such awards have been made in, or by arbitrators of, a country which is a party to a relevant international treaty of which Vietnam is a participant or a signatory, or (b) on a reciprocal basis without the condition that Vietnam and the relevant country are a signatory or participant of a relevant international treaty.