
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 98,945,400 persons on 27 June 2022 (not including about 5,3 million Vietnamese living and working in 130 countries and territories) with average age of 33.3 years old, presenting 1.24% of the world's population; Vietnam is ranked at 15th in the world, 8th in Asia and 3rd in Southeast Asia in term of population size. It is also the country with the highest population density in the region with 319 people/km² with 37.1%

of the population living in urban areas. Total life expectancy (for both genders) in Vietnam is 75.6 years old. The population is composed of 54 ethnic groups, of which the Viet (Kinh) accounts for about 85.4% and lives in the deltas and coastal areas.

Distribution of population is uneven, with rural population accounting for about 62.9% of the total. Also, the population is not evenly distributed within the regions, Red River and Mekong River Deltas, for instance, accounting for 17.5% of the total land area but are home to over 41.39% 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 20.14% of the total population. As for urban areas, Hanoi and HCMC, for instance, are the two largest population-density cities, with above 8.5 million and about 10 million, respectively (However, the actual number of people living there may be more due to the number of people coming to work from other localities but not yet registered for temporary or permanent residence in the area; for example, the actual population of Ho Chi Minh City is nearly 14 million people).

The average population growth rate now is about 10.95% 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 labour 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 (“NA”) at the central level and the People's Councils at different local levels.

The NA is the supreme representative and legislative body and determines both domestic and foreign policy. It is elected by universal suffrage. The NA in turn elects and may remove from office the President, Vice-President, Chairperson of the NA, Vice-chairperson of NA, members of

the Standing Committee of the NA, the Prime Minister of Government (“PM”), the Chief Justice of the Supreme People’s Court, and the Head of the Supreme People’s Procuracy. In addition, the NA has the responsibility of sanctioning the PM’s selection of Deputy Prime Ministers and Ministers.

The NA is also responsible for approving the organization of the Government of Vietnam (“GoV”) and its agencies, and is the supreme law-making body. The duration of the NA 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 NA 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 NA.

The Head of State is the President, who is elected by the NA and represents the Nation internally and externally.

The highest executive body in Vietnam is the GoV, 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 PM, Deputy Prime Ministers, Ministers and the Chairpersons of the various State Committees and the Governor of the State Bank. Individual ministries and organizations equivalent to ministries aid the PM 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 PM but must be approved by the NA. With the exception of the PM, the members of the GoV do not have to be members of the NA. Decisions on major issues must be taken on a majority basis.

Below the GoV 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 or 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 NA for the term of the NA. The Supreme People’s Procuracy has the highest power on prosecution in Vietnam and the Head is also elected by the NA for the term of the NA. In local levels, these bodies occur at the levels of region, 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 of Vietnam	NGUYEN Phu Trong
President of the State	NGUYEN Xuan Phuc
Chairperson of the National Assembly	VUONG Dinh Hue
Government	
Prime Minister	PHAM Minh Chinh
Deputy Prime Ministers (5)	TRUONG Hoa Binh LE Minh Khai LE Van Thanh VU Duc Dam PHAM Binh Minh
Ministries and ministerial-level agencies	
Ministry of Planning and Investment	NGUYEN Chi Dzung

Ministry of Industry and Commerce	NGUYEN Hong Dien
Ministry of Finance	HO Duc Phoc
Ministry of Science and Technology	HUYNH Thanh Dat
Ministry of National Resources and Environment	TRAN Hong Ha
Ministry of Construction	NGUYEN Thanh Nghi
Ministry of Agriculture and Rural Development	LE Minh Hoan
Ministry of Labour, War Invalids and Social Affairs	DAO Ngoc Dzung
Ministry of Transport	NGUYEN Van Thang
Ministry of Education and Training	NGUYEN Kim Son
Ministry of Health	DAO Hong Lan
Ministry of Information and Communications	NGUYEN Manh Hung
Ministry of Defense	PHAN Van Giang
Ministry of Public Security	TO Lam
Ministry of Foreign Affairs	BUI Thanh Son
Ministry of Justice	LE Thanh Long
Ministry of Culture, Sports and Tourism	NGUYEN Van Hung
Ministry of Home Affairs	PHAM Thi Thanh Tra
Government Inspectorate	DOAN Hong Phong
State Bank of Vietnam	NGUYEN Thi Hong
Government Office	TRAN Van Son
Committee for Ethnic Affairs	HAU A Lenh
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 NA is referred to as such.

Ordinances are issued by the NA's Standing Committee, commonly to regulate on an area where a law is not yet promulgated and/or regulated. On matters that the NA entrusted to the GoV, the GoV 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 and slow down caused by increasing protectionism and then lasting trade war. In such a context, Vietnam registered

quite a high growth, with 5.25%-7.02% varied between 2010-2019 and a slowdown with 2.91% in 2020 and 2.58% in 2021 (because of the affection by the COVID-19 pandemic), and is expected to recover strongly at 5.8-6.5% for 2022, is the only country whose growth forecast has been raised by the World Bank in the context that the pandemic is under control, the vaccination rate is widely covered and the new variant Omicron does not cause much damage to its economy while the room for Vietnam's fiscal policy is still in place, creating conditions for the government's actions to restore the economy. With this growth rate, Vietnam is considered one of the highest growing countries in the region and in the world, thanks to internal resources and, making good use of the opportunities and ability to diversify and adapt flexible practice although our economy is heavily affected by the COVID-19 pandemic. Vietnam's medium- and long-term economic prospects are very positively forecasted, enhancing by its participation in new bilateral and multilateral trade agreements, and benefiting from the current shift in supply chains to lower cost countries.

Besides the results achieved, Vietnam is still facing many difficulties and challenges. Specifically:

- (a) The global long-lasting COVID-19 pandemic will be the greatest risk; global trade tensions, leading to increased trade protectionism and financial risks that could be exacerbated by a prolonged pandemic. Domestic consumption continued to be at a low level because household and business incomes decreased, unemployment increased and more businesses stopped their operations. Investment prospects are uneven, private investment remains weak and trade-related foreign investment continues to decline.
- (b) In 2022, the world economy will continue to face 4 main risks and challenges: (i) epidemic situation is complicated, unpredictable, always has potential risks of outbreak the next wave; (ii) Trade and technology tensions between the US and China and among other major countries; (iii) Geopolitical risks in countries and regions such as conflict between Russia and Ukraine; (iv) Global financial instability risk. Vietnam is also not out of this general impact because our economy is now deeply integrated and has a large openness.
- (c) The problem of the current economy lies in the lack of demand for loans in the context of economic instability, not interest rates, so it is difficult to cut interest rates to support the economy. Furthermore, trying to squeeze credit into the economy is likely to cause overinvestment which leads to systemic risk.
- (d) The heavy reliance on import and export makes our economy vulnerable to external shocks. Facing this fact requires Vietnam to further diversify its trading partners, thereby mitigating the shocks of a particular trading partner.

Year	2017	2018	2019	2020	2021	2022 (Est.)
GDP Growth	6.81%	7.08%	7.02%	2.91%	2.58%	6.5%

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	2017	2018	2019	2020	2021
Agriculture, Forestry & Fishery	2.9%	3.9%	2.01%	2.68%	2.9%
Industry & Construction	8%	8.65%	8.9%	3.98%	4.05%
Services	7.4%	7.61%	7.3%	2.6%	1.22%

3.3 Foreign Direct Investment (FDI) Flow

Up to 20 May 2022, as many as 34,989 foreign-invested projects from 139 countries and territories with a total registered capital of about USD426.14 billion, had been licensed in Vietnam, in which around USD259.31 billion, equal to 60.9%, has been disbursed. Up to 20 June 2022, there were 752 new foreign-invested projects with a total capital registered of above USD4.49 billion were issued with Investment Registration Certificates (“IRCs”), decreasing by 48.2% compared to the same period of 2021. In addition, there are 487 projects adjusting their investment capital with a total increased capital registered of around USD6.82 billion, increasing by 65.64% compared to the same period in 2021; 1,707 capital contributions and equity acquisitions by foreign investors with the total capital contribution value of above USD 2.27 billion, increasing by 41.4% compared to the same period of 2021. For the whole of new & additional funds and capital contribution & equity acquisition, from 1 January to 20 June 2022, foreign investors have registered to invest above USD14.3 billion in Vietnam, equivalent to 91.1% compared to the same period in 2021. Total capital disbursed in the first five months of 2022 has reached approx. USD 7.71 billion, increasing by 7.8% compared to the same period of 2021. This steadily confirms active signs of Vietnam’s FDI inbound stream even heavily affected by the global long lasting COVID-19 pandemic and consequential international economic crisis and domestic economic downturn.

Foreign investors have invested in 19/21 sectors in the national system of economic sectors. By sectors, the Processing and Manufacturing sector absorbs the largest quantity of foreign capital into Vietnam, with registered capital of above USD252 billion presenting 59.1% of total investment capital and 15,672 projects. The Property & Construction sector stands behind with the registered capital of over USD65.3 billion presenting 15.3% of total investment capital and 2,801 projects; the Electricity, Gas & Water Production and Distribution with the registered capital of above USD36.46 billion presenting 8.6% of total investment capital and 180 projects; the Accommodation & Food services with the registered capital of around USD12.73 billion and 898 projects; and the Wholesale, Retail and Automobile & Motorcycles repair sector with the registered capital of around USD9.68 billion and 5,720 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, Dong Nai and Ba Ria – Vung Tau; and Hanoi in the North. Among the principal cities and provinces, HCMC is still the leading locality in attracting foreign investment with 10,614 projects valued at about USD54.3 billion, followed by Binh Duong invested with 4,047 projects valued at around USD39.6 billion, and Hanoi registering 6,811 projects valued at above USD37.7 billion are the most attractive ones, which accounted for about 12.7%, 9.3% and 8.9% of the total registered capital in Vietnam. Dong Nai receiving 1,777 projects valued at above USD34 billion and Ba Ria – Vung Tau receiving 523 projects valued at over USD33.11 billion stand behind, with the registered capital accounted for above 8.33% and 8.1% of the total registered capital respectively.

By nationality, 139 different countries and territories have so far invested in Vietnam. The Republic of Korea now is the biggest foreign investor with 9,288 projects and registered capital of around USD79.1 billion presenting 18.6% of total registered capital, followed by Singapore investing in 2,899 projects with registered capital of above USD68.68 billion presenting 16.1% of total registered capital, Japan investing in 4,852 projects with registered capital of over USD64.91 billion, Taiwan investing in 2,857 projects with registered capital of above USD36.02 billion, Hong Kong investing in 2,073 projects with registered capital of over USD28.62 billion, etc. These top five economies have invested in 21,969 projects (accounting for about 62.79% of the total licensed projects) with total registered capital of around USD277.3 billion (accounting for around 65.07% of the total registered capital). Other countries and territories like China, British Virgin Islands, the Netherlands, Thailand and Malaysia, which have given impetus to get a steady foothold in Vietnam, and are now among the top ten. The “top ten” investors account for over 79.9% of the total licensed projects and over 84.77% of the total registered capital in Vietnam.

3.4 Official Development Aid (ODA) and Preferential Loan Commitments

Vietnam first received USD1.8 billion of ODA from international donors in 1993. The figure has been increased year by year and during the period from 1993 to June 2019, the total value of ODA commitments to Vietnam amounted to USD89.5 billion, total capital of signed ODA commitments and concessional loans reaching above USD86.66 billion in which about USD7.67 billion is non-refundable (accounting for 8% of total ODA commitments and concessional loans), more than USD70 billion of loans with interest rates below 2% (equivalent to 90% of total ODA commitments and concessional loans) and USD1.7 billion of loans at lesser preferential rates but still lower than interest rates applied by commercial loans (accounting for 2%); USD3.5 billion/year on average, has been provided by the community of 51 global donors (28 bilateral donors and 23 multilateral donors); of which, about 80% of Vietnam's ODA was mobilized from 6 banks, including: the World Bank (WB), Asian Development Bank (ADB), Japan International Cooperation Agency (JICA), Export-Import Bank of Korea (KEXIM), French Development Agency (AFD) and German Reconstruction Bank (KfW). ODA in Vietnam is implemented in three main forms, consisted of: non-refundable aid, accounting for about 10-12%; concessional loans accounting for about 80% with low interest rates, withdrawal period from 10-40 years and grace period of 5-10 years (non-refundable element is at least 25%); and mixed ODA accounting for about 8-10%, of which a part is non-refundable aid and a part is concessional loan. 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 and are predicted to be terminated in next 5 years. Particularly, in the 2011 – 2015 period alone, the total amount of signed ODA commitments and concessional loans reached about USD26.4 billion, making a large contribution to infrastructure investment; but in the 2016-2020 period, the total signed ODA commitments and concessional loans were only USD 12.99 billion, decreasing by 51% compared to the 2011-2015 period, due to many countries stop or reduce provision of ODA to Vietnam when Vietnam became a lower middle-income country since 2010 and ODA inflows into Vietnam become less preferential when the country "graduated" from the official aid of the International Development Association - IDA (2017) and from the Asian Development Fund - ADF (2019) in going line with the country's policy on mobilization of ODA and concessional loans focusing on the quality and efficiency of ODA capital and concessional loans to ensure public debt sustainability. Facing that fact, Vietnam has set up a national plan to prioritize the areas in need of ODAs. ODA commitments and concessional loans from foreign donors are still one of the important resources for investment in key socio-economic infrastructure projects, which are highly pervasive and important. According to the Ministry of Planning and Investment, the scale of ODA commitments and concessional loans that can be provided by foreign donors to Vietnam would reach USD25.82 billion in the 2021-2025 period (or about USD5.13 billion per annum); In 2022 alone, it is expected to mobilize a capital amount of USD2.5 billion from concessional loans. Of which, ODA commitments account for about 30.9%, concessional loans from foreign donors account for about 64.8%, and non-refundable ODA grants account for about 4.3%. If adding the amount of transitional capital from the previous period, the ODA commitments and concessional loans from foreign donors for Vietnam in the period of 2021 - 2025 will be probably higher. However, the disbursed amount fell to more than USD0.44 billion in 2021, compared to about USD3.5 billion in 2010 and USD1.64 billion in 2020. In the first six months of 2022, disbursement of projects using ODAs and concessional loans from foreign donors have just reached over USD0.13 billion, equivalent to 0.91% of the plan assigned by the Prime Minister due to a number of newly-initiated projects that are in the process of completing bid procedures and negotiating contracts while being impacted by the COVID-19 pandemic, leading to disbursement delay because there is no volume, or the volume is also slow to be confirmed (because management personnel, experts or foreign donors cannot come to Vietnam) as explained by the Ministry of Finance; inflationary pressures, rocket rising prices of supplies and construction materials being iron and steel, sand, stone, and cement that have slowed down the progress of ODA projects.

3.5 Regional and Global Integration

Regionally, in the position of an official member country of ASEAN since 1995, Vietnam is a party to several intra-ASEAN free trade agreements concluded and signed with the end goal of creating a single market and production base, characterized by free flow of goods, services, and investment, as well as freer flow of capital and labour. These include the following, among others:

- (a) ASEAN Trade in Goods Agreement (“**ATIGA**”), which aims to achieve free flow of goods in the region resulting to less trade barriers and deeper economic linkages among Member States, lower business costs, increased trade, and a larger market and economies of scale for businesses;
- (b) ASEAN Framework Agreement on Services (“**AFAS**”), which is to work towards free flow of trade in services within the region. It aimed to substantially eliminate restrictions to trade in services among ASEAN countries in order to improve the efficiency and competitiveness of ASEAN services suppliers. AFAS has been replaced by the ASEAN Trade in Services Agreement (ATISA) signed by ASEAN economic ministers on 23 April with more new content towards opening up, more liberalization of services and took effect on 20 October 2019. It is hoped that ATISA will lay a new foundation for promoting trade in services in the region and improving the competitiveness of service exporting enterprises in ASEAN;
- (c) ASEAN Comprehensive Investment Agreement (“**ACIA**”), which is ASEAN’s main economic instrument to realize a free and open investment regime. The ACIA, as one of the economic instruments for realizing regional economic integration, aims to create a liberal, facilitative, transparent and competitive investment environment in ASEAN;
- (d) ASEAN Agreement on the Movement of Natural Persons (“**AAMNP**”), which streamlines and makes transparent the procedures for immigration applications for the temporary entry or entry of stay of natural persons. It covers business visitors, intra-corporate transferees, contractual service suppliers, and other categories of natural persons as may be specified by ASEAN Member States;
- (e) Mutual Recognition Arrangements (“**MRAs**”), which are framework arrangements established in support of liberalizing and facilitating trade in services.

Globally, 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 supplemented by a separate one between Vietnam and the Republic of Korea taking effect in 2015, 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 – India FTA and an ASEAN-Australia-New Zealand FTA in 2010, added by a FTA between Vietnam and Chile becoming effective since 2014.

The negotiations for a FTA between Vietnam and 28 Member States of the EU were initiated in June 2012 and basically ended in December 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. The FTA with the EU, together with the Trans-Pacific Partnership Agreement (“**TPP**”) renamed later as CPTPP, are the two new-generation FTAs, i.e. with the widest range and highest level of commitments from Vietnam so far. In June 2018, FTA with the EU was divided into two Agreements, one is the EU – Vietnam Free Trade Agreement (“**EVFTA**”) and the other is the EU - Vietnam Investment Protection Agreement (“**EVIPA**”). Upon completion of legal review process, the two Agreements were signed on 30 June 2019, and EVFTA officially took effect on 1 August 2020 while the EVIPA will come into effect after being ratified by the EU member states.

Additionally, on 29 December 2020, the UK – Vietnam Free Trade Agreement (“**UKVFTA**”) was officially signed in London and came into force on 31 December 2020. The UKVFTA was

negotiated based on the principle of inheriting the commitments made in the EVFTA with necessary amendments to ensure compliance with the bilateral trade framework between Vietnam and the UK.

The coming into effect of a FTA between Vietnam and Eurasian Economic Union (EAEU), including Russia, Belarus, Armenia, Kazakhstan and Kyrgyzstan, in 2016 connects the former ally with ex-URSS space. Concurrently, on 4 February 2016, 12 countries contracting the TPP, including Vietnam, attended the signing ceremony for authentication of TPP wordings in Auckland, New Zealand. With the authorization of the PM, the Minister of Industry and Trade VU Huy Hoang Vietnam on behalf of the GoV 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 were expected to take effect at the same time with TPP in 2018. However, in January 2017, the US's retreat from the TPP invalidated this Agreement; but 11 remaining member states of TPP decided to continue performance of such Agreement in appropriate form without the US in May 2017, issued their joint declaration to change the name of this Agreement to Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“**CPTPP**”) and to amend some contents of TPP under the CPTPP in November 2017, and officially signed the CPTPP in Santiago City, Chile on 8 March 2018, which was effective for Vietnam since 14 January 2019.

Furthermore, on 12 November 2017, ASEAN and Hong Kong (China) officially signed a Free Trade Agreement (“**AHKFTA**”) and a Bilateral Investment Agreement (“**AHKIA**”). AHKFTA officially came into effect with Hong Kong and 5 ASEAN member countries (including Laos, Myanmar, Singapore, Thailand and Vietnam) from 11 June 2019, similar to AHKIA from 17 June 2019.

Recently, the Regional Comprehensive Economic Partnership (“**RCEP**”) Agreement among ASEAN and the six partners who have signed FTAs with ASEAN, including China, the Republic of Korea, Japan, India (withdrew from this agreement), Australia and New Zealand negotiated from May 2013 was executed by 15 countries on 15 November 2020 and took effect on 1 January 2022; this shall establish the largest free trade area in the world.

Besides, several FTAs are being prepared, e.g. the negotiations on a FTA between Vietnam and European Free Trade Area (EFTA) consisted of Switzerland, Norway, Iceland and Liechtenstein initiated in May 2012; the same on a FTA between Vietnam and Israel took place from December 2015.

4. SOCIAL ENVIRONMENT

4.1 Education

Vietnamese are most well-educated, with a literacy rate of over 97.85% for people aged 15 and older. Nationally, about 91.7% of the population of secondary school age are currently attending school. As for higher education alone, there are in total about 460 universities, colleges and junior colleges throughout the country, attracting more than two 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, Pacific Airlines, Vietjet Air, VASCO, Vietstar Airlines, Hai Au (Albatros) Aviation, Bamboo Airways, Vietravel Airlines and Sun Air are the nine operating players; in addition, Kite Air has applied for establishment. All these airlines use French, American or Brazilian 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. As from 2021 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 and French-language Le Courier du Vietnam newspaper. 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 neighbouring countries, are also available.

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

5. FOREIGN DIRECT INVESTMENT

5.1 Legislation

From 1 January 2021, the Law on Enterprises 2020 (“LE”) and Law on Investment 2020 (“LI”) replace the previous Laws of 2014 and generally govern investment activities, establishment and

operation of enterprises in Vietnam. At present, the GoV has issued Decree No. 01/2021/ND-CP, dated 4 January 2021, on Enterprise Registration (“**Decree 01/2021**”), Decree No. 31/2021/ND-CP dated 26 March 2021, detailing and guiding implementation of some articles of the LI (“**Decree 31/2021**”), and Decree No.47/2021/ND-CP, dated 1 April 2021, detailing some articles of the LE (“**Decree 47/2021**”), and 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 LE and LI, 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 Investment Registration Certificates (“**IRC**”) of investment projects and application for the issuance of Enterprise Registration Certificates (“**ERC**”) of the newly-established economic organization.

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 LEs and LIs since 2005 and 2014 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 Members’ 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 Members' 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 shareholders' meeting, which decides all the most principal matters of the company. JSCs are allowed 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 above 50% 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 above 50% 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 Members' Council 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, which was previously defined as a form of investment stipulated in the old LI, based on the provisions of previous laws on the BOT, BTO and BT contracts, is currently regulated by the Law on Private Partnership Investment enacted on 18 June 2020 by the NA, as amended by Law No. 64/2020/QH14 dated 18 June 2020 (“**PPP Law**”).

PPP contracts may take any of 5 forms specified by the GoV, including: Build - Operate - Transfer (“**BOT**”) contracts; Build - Transfer - Operate contracts (“**BTO**”); 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 three 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 *Third*, a mixed contract combining the types of contract prescribed above.

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 establishment of a project company under the form of a LLC or a JSC.

(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

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 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:

- (i) Written application for implementation of the investment project, including a commitment to bear all expenses and risks if the project is not approved;
- (ii) Personal papers for individual investors, the documents certifying the legal status of institutional investors;
- (iii) Proposal for investment project;
- (iv) Written confirmation of investor's financial capacity;
- (v) 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;
- (vi) Explanatory statement on technology to be used in respect of the projects, which requires evaluation and collection of opinions on technology in accordance with the laws on technology transfer;
- (vii) BCC contract in the case of investment projects in the form of a BCC contract; and
- (viii) 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 are required to get IRCs. The licensing procedures and timing for obtaining the certificates are in the same and described hereunder:

- (i) 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.
- (ii) 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 GoV'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 07/2016**").

To implement Decree 07/2016, 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 11/2016/TT-BCT**").

6.2 Requirements

Under Article 7 of the Decree 07/2016, 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 RO is consistent with that in Vietnam's Commitments to treaties to which Vietnam is a signatory;
- (v) Where the scope of operation of the RO 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 RO can be established only if relevant Ministers, Heads of ministerial agencies (hereinafter referred to as "relevant Ministers") have given approval for establishment of the RO.

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 fulfilment 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 RO; and
- (vi) A certified copy and Vietnamese translation of Chief Representative's passport.

6.4 Licensing Timing

A license for establishment of a RO 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/license for a license for establishment of a new RO and VND1.5 million/license for re-issuance, amendment, supplementation or extension. The license fee would be paid upon the approval of the application file.

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

6.5 Permitted Activities

According to Decree 07/2016, 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 People's Committee, once a year, the RO's operations.

6.6 Term of Licence

The license for establishment of a RO 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 license for establishment of a RO will also expire. In other words, the term of the RO cannot exceed any term of existence of its parent company. The license for establishment of a RO 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 RO 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 RO 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 GoV 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 GoV'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 07/2016**").

To implement Decree 07/2016, 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 11/2016/TT-BCT**").

7.2 Requirements

Under Decree 07/2016, 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 fulfilment 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 NA 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 NA on 19 June 2017 ("**Technology Transfer Law**"), and its implementing Decree No. 76/2018/ND-CP issued by the GoV, on 15 May 2018 ("**Decree 76/2018**").

8.2 Scope of Technology Transfer

The scope of technology transfer is quite broad. Technology to be transferred must not fall within the list of technologies of which transfer is prohibited as stipulated in Articles 10 and 11 of the Technology Transfer Law and specified in Article 3 of Decree 76/2018. Transfer of technology falling within the list of technologies of which transfer is restricted as specified in the same Articles of the Technology Transfer Law and Decree 76/2018 shall be subject to a technology transfer permit.

One or more of the following technology objects are eligible for transfer:

- (i) Technical know-how and technological know-how;
- (ii) Technological plans, technological processes, technical solutions, parameters, drawings and diagrams; formulae, computer software, and data information;

- (iii) Solutions for rationalizing manufacture and for renewing technology; and
- (iv) Machinery and equipment to which any one of the objects prescribed in (i), (ii) or (iii) above is attached.

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

Forms of technology transfer include:

- (i) An independent technology transfer.
- (ii) A section on technology transfer in the following cases:
 - (a) Investment project;
 - (b) Capital contribution in the form of technology;
 - (c) Commercial franchise;
 - (d) Transfer of intellectual property rights;
 - (e) Purchase and sale of the machinery and equipment.
- (iii) Other forms of technology transfer as stipulated by law.

Technology may be transferred by the following method(s):

- (i) Transfer of data about the technology.
- (ii) Training the technology transferee to properly understand and master the technology within an agreed period.
- (iii) Sending a technical consultancy expert to the technology transferee to apply the technology and put it into operation in order to achieve the product quality standards and schedule agreed by the parties.
- (iv) Transferring the machinery or equipment to which technology is attached by the prescribed methods.
- (v) Other forms of transfer as agreed by the parties.

8.3 Technology Transfer Contract (TTC)

Parties entering into a TTC may reach agreement on inclusion of the following particulars:

- (i) Name of the transferred technology;
- (ii) The technology object which is being transferred, the products created from the technology, and product standards and quality;
- (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) Term and date of effectiveness of the contract;
- (viii) Concepts and terms (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) Dispute resolution tribunal; and
- (xiv) Other contents as agreed by the parties.

It is required that a TTC 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 written

contract must be signed and sealed by the parties (if they have a seal); and each page of the contract and any appendix must be signed and sealed with an overlapping seal (if they have a seal). 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, applicable law for dispute resolution, etc.

The term of performance and the date of effectiveness of a TTC shall be as agreed by the parties; if the parties are unable to agree thereon, then the date of effectiveness shall be the date on which the contract was entered into, except:

- (i) A contract for the transfer of a technology the transfer of which is restricted shall be effective as from the issuance date of the technology transfer permit.
- (ii) A TTC required to be registered shall be effective as from the time of issuance of the certificate of registration of the technology transfer; any extended, amended or supplemented contract shall be effective as from the time on which the competent State agency issues a certificate of registration of such extended, amended or supplemented TTC.

8.4 Registration and Timing

Compared to the old regulations, the existing regulations permit the parties to a TTC to register at their own discretion only for obtaining incentives under applicable laws instead of required registration as in the past; unless TTCs for and technology transfer part of:

- (i) Technology transfers from other countries into Vietnam;
- (ii) Technology transfers from Vietnam to other countries; and
- (iii) Technology transfers within Vietnam domestically using State capital or the State budget, except where a certificate of registration of the results of performing scientific and technological tasks has been issued.

According to Decree 76/2018, the competent levels of certifying the registration of technology transfer contracts, are:

- (i) As for the technology transfer through carrying out investment project:
 - (a) At the central level, the MOST shall issue a technology transfer contract registration certificate to an investment project in Vietnam which is under the decision on policy of investment of the NA, PM, ministries and central government authorities as prescribed in the regulations of the law on investment, of the law on public investment and the law on outward investment projects; and
 - (b) At the local level, the DOST shall issue a technology transfer contract registration certificate to an investment project within the areas managed in accordance with the decision on policy of investment of the People's Councils, People's Committees, Manage Boards of industrial parks, of export processing zones, of hi-tech parks and of economics zones as prescribed in the law on investment and the law on public investment; to the project required to register for Technology Transfer Registration Certificate but is not required to obtain a decision on policy of investment of the regulatory agency; to the cases where the applicants choose to register.
- (ii) As for the independent technology transfer and other forms as prescribed by laws:

- (a) The MOST shall issue a Technology Transfer Registration Certificate to the applicant who transfers technology from a foreign country to Vietnam or from Vietnam to a foreign country.
- (b) The DOST shall issue a Technology Transfer Registration Certificate to the applicant who transfers technology within Vietnam by using state fund or state budget, and to the applicant who is not required, but selects to register the TTC.
- (iii) The Ministry of National Defense (“**MOND**”) shall issue the Technology Transfer Registration Certificate to the cases where the technology transfer is on the list of national defense secrets or on the list of properties procured by using national defense’s special budget.

It is required that the TTCs 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 5 days from the receipt of the satisfactory file.

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

- (i) Written registration request;
- (ii) The original or a certified copy of the transaction documents on technology transfer. If there is no such document in Vietnamese, then there must be a translation into Vietnamese which has been notarized or certified.

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.15/2021/ND-CP dated 3 March 2021 of the GoV, on the management of construction investment projects (“**Decree 15/2021**”); Circular No.06/2021/TT-BXD dated 30 June 2021 of the Ministry of Construction (“**MOC**”), providing for classification of building works and guidance on application in management of construction investment activities (“**Circular 06/2021/TT-BXD**”); and Circular No. 103/2014/TT-BTC dated 6 August 2014 of MOF, providing guidelines for fulfilment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam (“**Circular 103/2014/TT-BTC**”), 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, a foreign applicant must satisfy the following criteria:

- (i) Having been granted with a license for construction activities when there is a contract award or contractor selection made by the owner, main contractor or sub-contractor; and
- (ii) 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. When entering into a partnership with or using a Vietnamese contractor, the contents, volume and value of the work(s) performed by the Vietnamese contractor in the partnership or Vietnamese subcontractor(s) must be clearly defined; and
- (iii) Committing to fully comply with the provisions of Vietnamese law related to contracting activities in Vietnam.

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 an electronic copy of a report on bidding results or decision on lawful contract award;
- (iii) A certified copy or an electronic copy of the Establishment license or the Business registration certificate of organizations, which has been consularly legalized (except for cases entitled to exemption from consular legalization as prescribed by international treaties to which Vietnam and relevant countries are members) and the professional practice certificate (if any) granted by the country of which the foreign contractor bears the nationality;
- (iv) A report on experiences in activities related to the contracted jobs and a certified copy or an electronic copy of the synthesis report on financial auditing for the latest three years (for cases not subject to the application of the provisions of Vietnamese bidding legislation);
- (v) A certified copy or an electronic copy of the partnership contract with a Vietnamese contractor or an official contract or an in principle contract with Vietnamese sub-contractor to perform the contracting (already included in the bids or bidding dossiers);
- (vi) Lawful authorization letter, for persons other than the contractor's legal representative; and
- (vii) A certified copy or electronic copy of the decision approving the project or the investment decision or the investment certificate of the project/ building works.

If papers and documents specified at Points (ii), (iii), (v) and (vi) are in a foreign language, they must be translated into Vietnamese and the translations must be notarized and authenticated according to regulations of Vietnamese laws.

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

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 colour 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 consularly legalized copy or a digital file containing a colour 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, and a notarized/certified copy and Vietnamese translation of passport;

- (iv) A digital file containing a colour copy of the original, which is an image or other format (*.pdf) of the decision on investment in the project or the investment certificate or the written approval for the investment policy.

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 days from the full receipt of the application file.

Foreign construction contractor shall pay a fee of VND2 million/license 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 at the localities where the projects are implemented after being granted with a construction operation license; 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 building works construction design, the foreign contractor may establish an Executive office at the place where the office of the project owner is headquartered or establish no executive office in Vietnam. Regarding the contract on construction and supervision over construction of the building works that will be constructed in multiple localities, the foreign contractor may establish an Executive office in any locality where the building works will be constructed. The Executive office only exists during the contract performance period and dissolves when the contract terminates.

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 set up, 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 and cancel specimens of seals as well as to return seals of their Executive offices at the Police Offices of the provinces and centrally-run cities where building works are located when the contract is terminated in accordance with the laws. Foreign contractors shall only use these seals for affairs in service of contract performance in Vietnam according to the provisions of their construction operation licenses;
- (iii) To register and pay taxes according to provisions of Vietnamese laws; 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 management 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 awarded contracts in Vietnam according to provisions of Vietnamese laws;
- (vi) To perform partnership contracts already signed with Vietnamese contractors or use Vietnamese subcontractors already determined in the application file for the issuance of a construction licence;

- (vii) To purchase insurance according to provisions of Vietnamese laws 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 provisions of Vietnamese laws;
- (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 means of transport related to business activities of foreign contractors according to provisions of Vietnamese laws;
- (x) To observe the regulations on norms, standards, management of quality of building works, labour safety and environmental protection as well as other relevant Vietnamese law provisions;
- (xi) To implement reporting regimes as prescribed in the construction operation license; and
- (xii) Upon the completion of building works, to compile dossiers on completion of building works; provide warranty for building works; make the settlement of imported supplies and equipment; handle unused supplies and equipment under contracts for construction of building works 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

A foreign-invested enterprise that already has the right to export may export goods processed according to such enterprise's order in Vietnam to a foreign country and to a separate customs area, subject to the following conditions:

- (i) Exported goods are not on the list of goods banned from export; the list of goods temporarily suspended from export; the list of goods not entitled to export in international treaties to which Vietnam is a contracting party;
- (ii) For exported goods on the list of goods exported under permits or conditions, foreign-invested enterprises must obtain a licence or fully satisfy the conditions prescribed by law.

Local companies and foreign-invested companies may process or do transition process (*i.e. the processed product of this processing contract is used as a processing material for another processing contract in Vietnam, the processed product of the previous processing contract is deliver to traders designated by the ordering party for the next processing contract*) of lawful goods of all kinds for foreign business entities as well as foreign-invested enterprises satisfying the above-mentioned conditions; and may not process goods on the lists of goods the export or import of which is prohibited or temporarily suspended, except for sales in foreign countries and with a permit from the PM. With respect to goods on the lists of goods of which the import and export are subject to issuance of a permit, business entities may only enter into processing contracts after they have been issued with a permit by the MOIT. 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.

Vice versa, Vietnamese traders can order goods to be processed abroad for legal circulation.

10.1 Legislation

Local processing for foreigners are being governed by the Commercial Law dated 14 June 2005; Law on Foreign Trade Management dated 12 June 2017 (“**Foreign Trade Management Law**”); Decree No. 09/2018/ND-CP, detailing the Commercial Law and the Law on Foreign Trade Management on goods purchase and sale activities and activities directly related to the purchase and sale of goods by foreign investors and foreign-invested economic organizations in Vietnam (“**Decree 09/2018**”); Decree No. 69/2018/ND-CP dated 15 May 2018 of the GoV, detailing a number of articles of Law on Foreign Trade Management (“**Decree 69/2018/ND-CP**”); and Circular No.12/2018/TT-BCT dated 15 June 2018 of the MOIT, detailing a number of articles of the Law on Foreign Trade Management and GoV’s Decree No. 69/2018/ND-CP dated 15 May 2018, detailing a number of articles of the Law on Foreign Trade Management, as amended by Circular No. 42/2019/TT-BCT dated 18 December 2019 of the Minister of Industry and Trade, amending a number of regulations on the periodical reporting regime in the Circulars separately or jointly issued by the Minister of Industry and Trade (“**Circular 12/2018/TT-BCT**”).

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.

Before performing the processing contract, the organization or individual shall notify the processing contract to the customs authority. When the processing contract is terminated or the processing contract expires, the parties to the processing contract must liquidate the contract and send a finalization report on the use of raw materials, supplies and periodically exported products to the customs authority.

10.3 Permitted Activities

Foreign suppliers are entitled to receive and remit abroad finished products, machineries and equipment leased or borrowed to the processors; raw materials, auxiliary materials and supplies not yet used up; waste products and scraps after liquidation of processing contracts, except for

cases where they are allowed to be exported on the spot, destroyed, presented or donated according to regulations. To supervise the local processing activities and guide on production technical issues and check the quality of processed products as agreed in the processing contracts, foreign experts can be seconded to Vietnam by foreign suppliers.

Vietnamese traders which are suppliers ordering goods to be processed abroad may (i) temporarily export machinery, equipment, raw materials, auxiliary materials and supplies, or transfer machinery, equipment, raw materials, auxiliary materials and supplies from a third country to the processors to perform the processing contracts; (ii) re-import processed products. At the end of the processing contract, they may re-import redundant machinery, equipment, raw materials, auxiliary materials and supplies; (iii) sell processed products and exported machinery and equipment, raw materials, auxiliary materials and supplies to perform the processing contract in the market of the processing country or another market; and (iv) send experts and technical workers abroad to inspect and take over processed products.

10.4 Taxation

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

Vietnamese traders that order goods to be processed abroad are exempt from export tax and import tax in accordance with the tax laws on goods exported for processing and processed products imported under processing contracts; must pay tax according to current regulations when selling processed products and exported machinery and equipment, raw materials, auxiliary materials and supplies for the performance of a processing contract in the market of the processing country or another market; and have to fulfil tax obligations for processed products imported for domestic consumption.

11. AGENT ACTIVITIES

Foreign traders 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. Goods under an agency agreement for the foreign trader performed in Vietnam, if cannot be sold in Vietnam, shall be re-exported. The tax refund is regulated by the MOF.

Vice versa, a Vietnamese trader may engage a foreign trader to act as sales agent to sell goods abroad, except for the goods under the list of prohibited exports and imports or suspended imports. The exported goods under the agency agreement shall be re-imported to Vietnam if they cannot be sold abroad and shall be eligible for import duty exemption and export duty refund (if any) in accordance with instructions of the MOF.

11.1 Legislation

The same legal basis applicable for the processing for foreigners is effective to the agent activities for foreigners and foreign-invested enterprises 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

Traders acting as purchasing agents must request foreign traders to transfer fund in freely convertible foreign currencies through banks in order to purchase goods under agency contracts.

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.

In case goods under a sales agency contract in Vietnam for foreign traders must be re-exported if they cannot be sold in Vietnam, the tax refund shall comply with regulations.

On the contrary, goods exported under sales agency contracts in foreign countries must be imported back into Vietnam because they cannot be sold in foreign countries will be not subject to import tax and will be refunded export tax (if any) under the guidance from the MOF.

12. HOLDING COMPANY STAKES

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. Generally, the current laws recognize and treat the foreign-invested companies (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of 50% or less of the charter capital, or a partnership has not a majority of partners being foreign individuals, similar to entirely Vietnamese-invested companies, when they establish new subsidiary/ affiliate companies or acquiring shares in other companies in Vietnam.

12.1 Legislation

The Law on Enterprises ("**LE**") and the Law on Investment ("**LI**"), both dated 17 June 2020 and effective from 1 January 2021, 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. 47/2021/ND-CP, dated 1 April 2021, detailing a number of articles of the LE ("**Decree 47/2021**"); Decree No. 31/2021/ND-CP, dated 26 March 2021, guiding the LI ("**Decree 31/2021**"); Circular No. 05/2014/TT-NHNN dated 12 March 2014 of the State Bank of Vietnam,

providing guidelines for the opening and use of indirectly-invested capital accounts for implementation of foreign indirect investment activities in Vietnam (“**Circular 05/2014/TT-NHNN**”); Circular No. 06/2019/TT-NHNN dated 26 June 2019 of the State Bank of Vietnam, providing guidelines on the foreign exchange control for foreign direct investments in Vietnam (“**Circular 06/2019/TT-NHNN**”); etc. 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 State-owned enterprises (“**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 capital accounts (“**IICA**”) at banks licensed to operate in Vietnam, except where Vietnamese company was granted by competent authorities with investment registration certificate or foreign-invested company (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of more than 50% of the charter capital, such company must open a direct investment capital account (“**DICA**”), which is a payment account denominated in foreign currencies or Vietnamese Dong, 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 DT1 category (issued to foreign investors in Vietnam and to representatives of foreign organizations investing in Vietnam with capital contribution with a value from VND 100 billion or more, or investing in an investment incentive industry and trade or an investment incentive geographical area as decided by the GoV), DT2 category (issued to foreign investors in Vietnam and to representatives of foreign organizations investing in Vietnam with capital contribution with a value from VND 50 billion up to below VND100 billion, or investing in an industry or trade in which investment in development is encouraged as decided by the GoV) and DT3 category (issued to foreign investors in Vietnam and to representatives of foreign

organizations investing in Vietnam with capital contribution with a value from VND3 billion up to below VND50 billion), or DT4 category (issued to foreign investors in Vietnam and to representatives of foreign organizations investing in Vietnam with capital contribution with a value less than VND3 billion), of which the duration of validity shall not exceed 5 years for DT1 visas and DT2 visas, 3 years for DT3 visas and up to 12 months for DT4 visas, 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) The capital contribution or purchase of shareholding or purchase of a capital contribution portion by the foreign investor results in an increase in foreign investor ownership in the economic organization or the target does business in the market approach industry or trade subject to conditions applicable to foreign investors;
- (ii) The capital contribution or purchase of shareholding or capital contribution portion results in the foreign investor/s and/or economic organization(s) of which more than 50% of its charter capital is held by:
- a foreign investor(s), or a partnership has a majority of partners being foreign individuals;
 - an economic organization(s) of which more than 50% of its charter capital is held by a foreign investor(s), or a partnership has a majority of partners being foreign individuals;
 - a foreign investor(s) and an economic organization(s) of which more than 50% of its charter capital is held by a foreign investor(s), or a partnership has a majority of partners being foreign individuals;

holding more than 50% of the charter capital of the economic organization in the following cases: increasing the ratio of charter capital ownership of foreign investors from 50% or below 50% to more than 50%, or increasing the charter capital ownership of foreign investors who already owned more than 50% of the charter capital in the economic organization;

- (iii) The foreign investor contributes capital to or purchases shareholding or purchases a capital contribution portion in an economic organization which has a land use right certificate for land on an island or on a coastal or border commune, ward or town or in another area which affects national defence and security.

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 for the cases (i) and (ii), while cases (iii) will need 10 more days to obtain opinions of the MOND and MOPS thereon.

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.

Enterprises participating in economic concentration in the following forms: (a) Merger of enterprises, (b) Consolidation of enterprises, (c) Acquisition of enterprises, (d) Joint venture between enterprises, (e) Other forms of economic concentration as prescribed by the laws must submit an economic concentration notification dossier to the National Competition Commission (“**NCC**”) before conducting an economic concentration if it falls within the economic concentration notification threshold. After the end of the official assessment and appraisal of the economic concentration, based on the contents of such assessment and appraisal, the NCC shall issue a decision containing one of the following contents: (a) The economic concentration shall be implemented, (b) The economic concentration is conditional, (c) The economic concentration is prohibited and sent to the enterprises participating in the economic concentration within 5 working days from the date of issuance of the decision.

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

13.1 Legislation

The LI, the Law on Export and Import Duties 2016 (“**Law on Export and Import Duties**”) constitute the principal legal base for the establishment and operation of Industrial Zones (“**IZs**”), Export Processing Zones (“**EPZs**”) and Economic Zones (“**EZs**”). High-tech Zones (“**HTZs**”) alone are governed by Law on High Technologies 2008, as amended by the Law on Corporation Income Tax amended in 2013 and the LI (“**Hi-tech Law**”).

Guiding the laws is Decree No. 31/2021/ND-CP dated 26 March 2021 of the GoV (“**Decree 31/2021**”), detailing process of and procedures for investment registration, investment incentives and supports applicable to investment projects as well as investors’ activities carried out in such zones; Decree No. 82/2018/ND-CP dated 22 May 2018 of the GoV, as amended by Decree 31/2021 (“**Decree 82/2018**”), which will be largely replaced from 15 July 2022 by Decree No.35/2022/ND-CP dated 28 May 2022 (“**Decree 35/2022**”), providing for IZs (which include IZs, EPZs, auxiliary IZs, specialized IZs, eco-industrial parks and hi-tech IZs), and EZs (which include coastal EZs, border-gate EZs and special EZs); Decree No. 99/2003/ND-CP dated 28 August 2003 of the GoV, as amended by Decree 31/2021 (“**Decree 99/2003**”), providing the Regulation on the HTZs; Decision No.53/2004/QD-TTg dated 5 April 2004 of the PM (“**Decision 53/2004/QD-TTg**”), on a number of policies to encourage investment in HTZs; Decision No. 10/2021/QD-TTg dated 16 March 2021 of the PM, on eligibility of hi-tech enterprises (“**Decision 10/2021/QD-TTg**”); Decision No.29/2021/QD-TTg dated 6 October 2021 of the Prime Minister, providing for special investment incentives (“**Decision 29/2021/QD-TTg**”); and several implementing Circulars in connection to environment, construction, labour, taxation, customs procedures, etc. in these zones.

13.2 Features of IZs, EPZs, EZs and HTZs

IZs mean the zones being defined by geographic boundaries, being specialized in production of industrial goods and provision of services satisfying the industrial production needs, established by the GoV or the PM's decision, and containing IZ enterprises and export processing enterprises ("EPEs"). Unless each type is otherwise subject to particular regulations, IZs are classified into different types such as:

- (i) EPZ: means an IZ specially intended for manufacture of exported goods, supply of services meeting the needs of production of exported goods and export activities; and separated from outside in accordance with regulations so applied to free trade zones prescribed in laws on import and export duties;
- (ii) Auxiliary IZ: means an IZ specializing in manufacture of auxiliary industrial products and supply of services satisfying the needs of manufacture of these products; and having at least 60% of the IZ's total industrial land area used for attracting investment projects to produce supporting industry products in accordance with the laws on development of supporting industries;
- (iii) Specialized IZ: means an IZ specializing in the manufacture and provision of services for the manufacture of products of a particular industry or trade; and having at least 60% of the IZ's industrial land area used to attract investment projects in this industry or trade;
- (iv) Eco-industrial park means an IZ in which enterprises get involved in cleaner production make effective use of natural resources and enter into manufacturing cooperation and affiliation in order to tighten industrial symbiosis; and the criteria specified in Decree 35/2022 are satisfied;
- (v) High-tech IZ: means an IZ attracting high-tech and information technology investment projects on the list of industries and trades with special investment incentives in accordance with the laws on investment, projects involving technology transfer on the list of technologies encouraged for transfer in accordance with the laws on technology transfer, technology incubators, science and technology business incubators under the provisions of laws on high technology, laws on science and technology, investment projects on creative start-ups, innovation, research and development, education and training; and having at least 30% of the IZ's industrial land area used to attract these investment projects.

EZ means an area which is defined by geographical boundaries; includes several functional zones such as: non-tariff areas, bonded warehouse areas, EPZs, IZs, entertainment areas, resorts, urban areas, residential areas, administrative areas and others; is established to serve the purpose of calling for investments, promoting socio-economic development and maintaining national defence and security; includes EZ enterprises and EPEs; and is established by the Prime Minister's decision. EZs encompass different types as follows:

- (i) Coastal EZ: means an EZ established in a coastal area and in the vicinity of the coastal area;
- (ii) Border-gate EZ: means an EZ established in a land border area and the area adjacent to the land border area; and
- (iii) Special EZ: means an EZ established in a key economic zone, development corridor, development driving area or area with a similar role, identified in the regional planning.

Having the same features, HTZs as defined in Hi-tech Law and Decree 99/2003 however is a multi-functional economic and technical zone to be established to concentrate and connect hi-tech research and development (R&D) and application, hi-tech incubation or hi-tech enterprise incubation, high-tech human resource training, manufacture of and trade in high-tech products, and high-tech service provision activities. It is noted that EPZs, bonded warehouses, tax suspension warehouses and dwelling buildings may be located in an HTZ. HTZ enterprises are those set up under the laws and operating within the HTZs, including infrastructure development

enterprises, hi-tech enterprises, high-tech service enterprises, HTZ development companies, catering service enterprises, and export processing enterprises.

Under the LI, IZs, EPZs, EZs and HTZs are not typical vehicles for foreign investment, however, the IZs and EPZs play an important role in attracting foreign investment in Vietnam. That is why they are described herein. The purpose of IZs and EPZs 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 IZ, EPZ, 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 IZs and EPZs, among them the easier licensing, longer duration (up to 70 years) and tax incentives.

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

The application procedures for a new enterprise inside IZs, EPZs, EZs or even HTZs are similar to the same applicable to the rest of the country, but quite easier in consideration and licensing. For example, regarding investment projects performed in an IZ or HTZ, the investment licensing authority shall consider granting approval for both investment policy and investors without holding a land use right auction or bidding to select investors. Additionally, investors with investment projects in IZs, EPZs, EZs or HTZs are supported by competent State agencies in carrying out administrative procedures on investment, enterprises, land, construction, environment, labour and trade under the "on-site one-stop shop" mechanism, providing support for labour recruitment and other related issues during implementation of their projects.

For the investment project performed in an IZ, EPZ, EZ or HTZ, the investor is entitled to carry out the following activities:

- (i) Leasing or purchasing warehouses and depots to serve their business operation;
- (ii) Using and paying for the use of technical infrastructure and service facilities, including systems of roads, electricity supply, water supply and drainage, communications, wastewater treatment, waste treatment and other public facilities ("**infrastructure use charges**");
- (iii) Transferring and receiving the land use rights, leasing out and subleasing out land on which technical infrastructure has been constructed to construct buildings, offices and other works serving their business operation in accordance with regulations of law on land and real estate business;
- (iv) Leasing out or subleasing out their buildings, offices and other works to serve their business operation in accordance with regulations of law on land and real estate business;
- (v) Carrying out other activities specified in the LI, Decree 31/2021, GoV's regulations on IZs, EPZs, EZs and HTZs, and relevant regulations of law.

According to Decree 82/2018, Decree 31/2021 and Decree 35/2022, EZs and HTZs (including concentrated information technology zones established under the provisions of the GoV) are considered as areas with extremely difficult socio-economic conditions; IZs, EPZs and industrial clusters established under the provisions of the GoV fall on the list of areas with difficult socio-economic conditions to be entitled to investment incentives, and IZs and EPZs established in locations falling on the List of areas with extremely difficult socio-economic conditions shall enjoy investment incentive applicable to those areas. Investors in IZs, EPZs, EZs and HTZs enjoy

incentives related to Corporate Income Tax (“CIT”), import tax and Value-Added Tax (“VAT”), which are more favourable than those offered to investors outside.

10% CIT 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, including a centralized information technology zone established under the Prime Minister's decision, 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 and EPZs for ten (10) years *(except for IZs located in areas with favourable socio-economic conditions, that means urban districts of special-class urban centres, grade-I centrally-run cities and grade-I provincial cities, including districts of special grade urban centres, grade-I centrally-run urban centres and grade-I provincial urban centres newly established from districts since 1 January 2009); in case the IZ is located in both favourable and unfavourable areas, the determination of tax incentives for the IZ shall be based on the actual location of the investment project in the field.*

Investors in IZs, EPZs, 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 IZs, EPZs, 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 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 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 directly used for manufacturing activities of the project;
- (iii) Components, parts, separate parts and spare parts for synchronized assembly or synchronized operation of machinery and equipment;
- (iv) Raw materials used for manufacture of machinery and equipment, or manufacture of components, parts, separate parts and spare parts of machinery and equipment;
- (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 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 from their manufacturing commencement date.

Furthermore, goods exported from non-tariff zones, including EPZs and EPEs *(i.e. those established and operating within an EPZ or those specializing in manufacturing exported products within an IZ or EZ)*, tax-suspension warehouses, bonded warehouses, tax-suspension zones, special economic-trade zones, trade-industrial zones, and zones with other names established under PM decisions in EZs and border-gate EZs for exports 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 EPEs and enterprises in other non-tariff zones, 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; and will be exempt from import tax when they import products manufactured, processed, recycled or assembled in a non-tariff zone without using imported raw materials or components into the domestic market.

Goods temporarily imported and re-exported and goods temporarily exported and re-imported; raw materials and supplies 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 VAT.

In addition, value-added tax rate of zero per cent (0%) is applicable to (i) construction and installation activities in non-tariff zones; (ii) goods sold and 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 PM) and consumed therein, which are considered as exported goods and services.

In case where an IZ or EPZ already established under the Government's regulations is removed from the planning by a competent authority or approved to be converted to another use purpose or an investment project on construction and business of the infrastructures of IZs and EPZs ceases to operate in accordance with the provisions of the laws on investment, investment projects implemented in IZs and EPZs may continue to enjoy investment incentives in accordance with the provisions of the Investment License, Business License, Certificate of Investment Incentives, Investment Certificate, Investment Registration Certificate, Decision on Investment Policy, Decision on Approval of Investment Policy or other documents of competent State authority, which have regulations on investment incentives (if any of those papers are available) or according to the provisions of the laws in force at the time of investment in the IZ or EPZ (in the absence of such documents).

In addition, investment projects on construction of homes, service works and public utilities for employees working in IZs and EZs are entitled to incentives in accordance with the laws on construction of social housing and other provisions of relevant laws.

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, which was adopted by the NA on 24 November 2015 and became effective from 1 January 2017. 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 notarization, 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; and must be stamped by the seal of a

contracting party being a legal entity according to the regulations on management and use of the seal or the charter of that party.

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 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 in which the new Law on Credit Institutions was amended in 2017.

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 GoV. 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 USD150 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 USD15 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 GoV 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 falling 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) DICA in Vietnamese Dong or foreign currency selected by the FIE, IICA in Vietnamese Dong; foreign investor conducting capital contribution to, purchase of shares/ portion of capital contribution in, local companies; or participating in PPP or BCC contracts. In principle, all the revenues and expenses related to investment activities, including capital contributions, must be made through this account. DICA may be also the FIE's account for borrowing and repaying foreign loans.
- (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 PM shall decide to guarantee the satisfaction of demands for foreign currency of investment projects subject to investment policy decision of the NA and PM 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 GoV 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 GoV 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/ HSX), and the smaller one in 2004, in Hanoi, called Hanoi Securities Trading Center or HASTC (now called Hanoi Stocks Exchange or HNX). Additionally, a Unlisted Public Company (UpCom) Market is organized in HNX. For more simplified procedures for listing by enterprises and more efficient management by State agencies, the GoV has conducted a project on converting these two stock exchanges into two subsidiaries wholly owned by Vietnam Exchange ("**VNX**"), a State-owned company with the Ministry of Finance acting as the owner's representative and holding 100% of charter capital.

In terms of trading scale, the Vietnamese stock markets have now surpassed Singapore, ranking second in ASEAN after Thailand, with an average trading value of VND 30,845 billion per session, increasing by 15.9% compared to the average of the previous year. The scale of listing and registered transactions of the market reached VND 8,327,460 billion at the end of May 2022, equivalent to 99.15% of Vietnam's GDP. Up to the end of 31 May 2022, there are 5,653,695 securities transaction accounts owned by local investors and 41,118 securities transaction accounts owned by foreign investors of which 36,904 accounts are owned by foreign individual investors and 4,178 accounts are owned by foreign institutional investors; 43 fund management companies, 70 securities investment funds, and 90 securities companies licensed by SSC are still active after 9 years of restructure on both HOSE/ HSX and HNX including UpCom market, and then restructure of the stock market and insurance market to 2020, with orientations to 2025.

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. Three kinds of goods are well available for sale in the securities market. They are: (i) shares listed by around 404 enterprises on HSX, 348 enterprises on HNX and 863 enterprises on UpCom market in which many are enterprises equitized from the SOEs; (ii) bonds issued by the GoV (377), issuing banks and enterprises (5 listed on HSX and 45 listed on HNX); (iii) fund certificate (2 listed on HSX), Exchange Traded Fund - ETF (9 listed on HSX) and Covered Warrant – CW (102 listed on HSX) and (iv) derivative securities, which are financial instruments whose value depends on the price of an underlying asset. Those are permissible for being transacted on Vietnamese market include: futures contract, listing option contracts based on underlying assets being securities, stock indices or other assets as prescribed by the Government, which are taken as the basis for determining the value of derivative securities; (ii) forward contracts, put-through trading options contracts based on underlying assets being securities, stock indices on the Stock Exchange; and (iii) swap contracts, mainly involving in foreign currency swaps and interest rate swaps.

Applying for the registration of securities trading code at former Vietnam Securities Depository Center ("**VSD**") and now Vietnam Securities Depository and Clearing Corporation ("**VSDC**"), opening the securities trading account with a securities company in Vietnam, opening an indirect investment account in Vietnamese Dong 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 VSDC 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 (replaced by new one of 2019, which took effect on 1 July 2020), 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, 2014 and 2020; 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, 2016 and 2022; the Law on Personal Income Tax passed in 2007, as amended and supplemented in 2012 and 2014; the Law on Royalties passed in 2009 and amended in 2014; the Law on Non-Agricultural Land Use Tax passed in 2010; and the Law on Export Tax and Import Tax adopted in 2016.

There are also hundreds of decrees, circulars and other regulations being issued by the GoV, various ministries and agencies, from time to time, with a view to provide guidelines for the implementation of those laws; e.g. Circular No. 103/2014/TT-BTC, dated 6 August 2014, of the MoF, providing guidelines for fulfilment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam (“**Circular 103/2014/TT-BTC**”).

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 PM shall decide on the tax rate consistently with each project and business establishment at the request of the Minister of MoF.
- (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 PM; 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.

With respect to investment projects with large socio-economic impact comprising:

- (i) Investment projects for new establishment (including expansion of such newly established projects) of research and development (R&D) centres and creative renovation centres with the total investment capital of VND3,000 billion or more and disbursing at least VND1,000 billion within three (3) years as from the date of issuance of the IRC or investment policy approval; and national creative renovation centres established pursuant to a decision of the PM;
- (ii) Investment projects in specially preferential investment industries and trades with the amount of investment capital of VND30,000 billion or more, disbursing at least VND10,000 billion within three (3) years as from the date of issuance of the IRC or investment policy approval;

the PM may decide to apply:

- (a) A preferential tax rate reduced up to 5%. The term of application of such preferential tax rate shall not exceed 22.5 years and may be extended for no more than 15 years and must not exceed the term of the investment project; and
- (b) A tax exemption for no more than 6 years and a reduction of 50% of the maximum of tax payable for no more than the 13 subsequent 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);
 - (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; and
 - (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 PM.

- (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 (reduced to 8% in 2022, excluding some groups of 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. For electric cars from 1 March 2022 to the end of 1 March 2027, the tax rate will be reduced from 10-25% to 1-11%. 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 Section 16.3 above and Section 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 fulfil the international commitments to cut down import duties and remove non-tariff barriers in line with Vietnam's commitments to join the WTO, 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, ASEAN – Hong Kong, China FTA, Vietnam – EAEU FTA, Vietnam – Chile FTA, Vietnam – EU FTA, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Vietnam – UK FTA, Vietnam – Chile FTA, Regional Comprehensive Economic Partnership (RCEP) 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 GoV.
- (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 GoV 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 PM.

Import duties 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.

Incentives in terms of this tax include:

- (i) Investment projects belonging to the approved list of particular sectors or professions qualifying for investment incentives or being developed in areas faced with special economic - social difficulty as prescribed shall be exempted from non-agricultural land use tax.
- (ii) Investment projects belonging to the approved list of sectors or professions qualifying for investment incentives or being developed in areas faced with special economic - social difficulty as prescribed shall be entitled to get 50% reduction in non-agricultural land use tax.
- (iii) The investment project that has total investment of at least VND 6,000 billion, and disburses an amount of at least VND 6,000 billion within 03 years from the date upon which either the IRC or investment policy decision is obtained:
 - (a) shall be entitled to non-agricultural land use tax incentives which are the same as those applied to investment projects located within areas faced with special economic – social difficulty mentioned above.
 - (b) within 03 years from the date upon which either the IRC or investment policy decision is obtained, shall be granted non-agricultural land use tax incentives referred to in Point (i) on the basis of the project owner's tax declaration; which, however, may be revoked if having not disbursed a minimum amount of VND6,000 billion after this 3-year period.
- (iv) Investment projects located within rural areas that hire the minimum number of 500 employees (excluding those who are not working full time and those who sign under-12-month labour contracts):
 - (a) shall be entitled to non-agricultural land use tax incentives which are the same as those applied to investment projects located within areas faced with special economic – social difficulty mentioned in Point (b).
 - (b) The investment projects that have more than 500 employees and are developed in areas which are both rural and non-rural shall be entitled to respective import tax incentives.

Non-agricultural land use tax incentives shall not be granted to investment projects such as mineral production, production and trading of goods or services subject to the special consumption tax, except motor vehicle production.

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 NA'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) solutions, including those of HCFC-containing mixtures; 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 NA’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 (except ethanol) is VND4,000/litter, to jet fuel is VND2,100/litter from 1 January to the end of 31 December 2021 and VND3,000/litter from 1 January 2022 onwards, to diesel oil, fuel oil (FO) and lubricant oil is VND2,000/litter and to lubricant grease is VND2,000/kg, and to kerosene is VND1,000/litter; to lignite, black coals and other coals is VND15,000/kg, and to anthracite coal is VND30,000/ton; to HCFC solutions, including those of HCFC-containing mixtures, is VND5,000/kg; to taxable nylon bag is VND50,000/kg; to herbicides is VND500; and to insecticides, forest product preservatives and warehouse disinfectants, which are restricted from use, is VND 1,000/kg.

From 1 April 2022 to the end of 31 December 2022, the environmental protection tax rate for gasoline (except ethanol), diesel oil, fuel oil, and lubricant oils and grease are reduced by 50%; for kerosene is reduced by 70%.

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, personal income 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.	<i>Business lines</i>	<i>VAT Rate as % of taxable revenues</i>
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.	<i>Business lines</i>	<i>CIT rates as % of taxable turnover</i>
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

16.12 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 11 million/ month (VND 132 million/ year) for taxpayers, and reduction of VND 4.4 million/ month for each dependent.

17. LABOUR MATTERS

17.1 Legislation

In replacement of the former Labour Codes of 2012, the current Labour Code which was passed by the NA on 20 November 2019 and took effect on 1 January 2021 (“**Labour Code 2019**”), currently serves as the principal legal base for all the labour matters in Vietnam. The Labour Code 2019 applies to both employee and employer including foreign organizations that employ local and foreign staff working in Vietnam.

Since November 2019, a number of decrees, decisions, circulars, directions and other regulations have been issued from time to time, by the GoV and various ministries and agencies, to replace those guiding for the implementation of the former Code and bring the provisions of the Labour Code 2019 into practice.

17.2 Recruitment

Formerly, foreign invested enterprises must recruit employees first from individuals recommended by the local labour supplier(s). Now, foreign invested enterprises, and foreign traders’ representative offices and branches when the time-limit of 15 working days is expired but the Vietnamese employee recruiting agencies cannot select and introduce any Vietnamese employee at their request, can do direct recruitment.

Employees must be at least full 15 years old, except for certain jobs provided for by the MOLISA. Employee who is a foreigner entering Vietnam to work must satisfy the following conditions:

- (i) The worker is a full 18 years of age and has full legal capacity for civil acts;
- (ii) The worker has professional qualifications, technical and other skills, work experience and good health as stipulated in regulations of the MOH;
- (iii) The worker is a manager, chief executive officer, expert or technician;
- (iv) The worker is not a person currently serving a sentence or with a criminal conviction which has not yet been absolved/removed from the record, and not subject to prosecution for criminal liability in accordance with the law of the foreign country or the law of Vietnam;
- (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 on explanation of such demand to the MOLISA or 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 written approval for the recruitment of foreign worker for every job position.

It is worthy of note that according to Decree No.152/2020/ND-CP dated 30 December 2020 of the GoV, on foreign workers working in Vietnam, and recruitment and management of Vietnamese workers working for foreign employers in Vietnam ("**Decree 152/2020**"), the foreign workers are exempt from work permits in the following cases:

- (i) Capital contributing member or owner of a limited liability company with a value of his or her capital contribution of at least VND3 billion;
- (ii) Chairperson or member of the board of management of a joint stock company with a value of his or her capital contribution of at least VND3 billion;
- (iii) Head of a representative office or of a project or person mainly responsible for the operation of an international organization or foreign 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) Other cases in accordance with an international treaty of which Vietnam is a member;
- (viii) Foreigners married to Vietnamese and living in the territory of Vietnam;
- (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 the United Nations; or of a facility established under an agreement to which Vietnam is a signatory;
- (xiii) The workers are volunteers who are unpaid foreign workers who voluntarily work in Vietnam to implement an international treaty to which Vietnam is a signatory and 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 up to 3 times a 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) A student studying in Vietnam at a foreign school or training institution which has a probation agreement with an agency, organization or enterprise in Vietnam; or a probationer or apprentice on a Vietnam sea-going ship;
- (xvii) Relatives of members executing their functions in foreign missions in Vietnam, who are exempt from work permits under 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) Workers are responsible for establishing the commercial presence;
- (xx) Foreigners certified by the Ministry of Education and Training (“**MOET**”) as a foreign worker entering Vietnam for teaching and research purpose.

At least 30 days before the planned use of foreign workers, the employer (except for contractors) is responsible for determining the need to employ foreign workers for each job position of which the requirements are not met by Vietnamese workers and report to the Ministry of Labour, War Invalids and Social Affairs (“**MOLISA**”) or the People’s Committees of provinces and centrally-run cities (“**provincial-level People’s Committees**”) where the foreign worker is planned to work. During the implementation process, if there is a change in the need to use foreign workers, the employer must report according to the standard form to the MOLISA or the provincial-level People’s Committee at least 30 days before the planned employment of foreign workers. If the foreign workers fall into the following categories (i), (ii), (iii), (iv), (v), (xiv), (xv), (xvi), (xvii) or (xviii), employers are not required to determine the need to employ foreign workers.

The employer shall request the MOLISA or 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 “**State management authority on labour**”) to certify that such foreign workers are eligible for exemption from work permits at least 10 working days before the day on which they start to work. Within 5 working days from the day on which the sufficient application is received, the State management authority on labour shall send a written certification to the employer, which is valid for up to 2 years but coincides with the validity period of any relevant contract, agreement, document, license, etc. in the cases mentioned above; and may be re-issued for up to 2 years more.

However, for any of cases stated in (i), (ii), (iv), (vi), (viii), (xiv) and (xvii) above, the employer is not required to apply for the certification of exemption from work permit for foreign employee but it must report the State management authority on labour at least 3 days before such foreign worker starts to work in Vietnam as planned, on the following: full name, age, nationality, passport number, name of employer, starting date and completion date.

For remaining cases, at least 15 days before the day on which the foreign worker starts his/her work in Vietnam as planned, the employer shall submit the application for the work permit to the State management authority on labour. Within 5 working days from the day on which the sufficient application is received, the State management authority on labour shall issue the work permit to the foreign worker. The duration of a work permit coincides with the validity period of any relevant contract, agreement, document, license, etc. in the cases mentioned above but 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. For foreign workers performing a labour contract, after the foreign worker is granted with a work permit, the employer and the foreign worker must enter into a written labour contract in accordance with Vietnamese labour laws prior to the planned commencement date of employment for the employer and the employer must send the original or a certified copy of the signed labour contract to the 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 employment which will last less than one month the parties may conclude verbal contracts in eligible circumstances. A labour contract entered into by electronic means in the form of data messages in accordance with the law on electronic transactions has

the same value as a written labour contract. A labour contract entered into via electronic means in the form of a data message in accordance with the laws on electronic transactions has the same value as a written labour contract.

The entering into the labour contract must obtain a written consent from his/her legal representative if the worker is from full 15 years up to under 18 years of age; and signatures of the worker under 15 years old of age and his/her legal representatives.

A group of workers who are full 18 years of age may authorize one of the workers in their group to enter into a written labour contract for a seasonal work or specific job with a duration of less than 12 months and in this case, the labour contract has the same validity as if it was signed with each worker.

A labour contract must be entered into in either of the following types: Definite term labour contract being a contract in which the two parties fix the term and the time of termination of the validity of the contract which must not exceed thirty six (36) months from the effective date of the contract; or Indefinite term labour contract being a contract in which the two parties do not fix the term nor the time of termination of validity of the contract. The term of the labour contract signed with the foreign worker working in Vietnam must not exceed the term of the work permit.

A labour contract must be in conformity with the Vietnamese laws and labour collective agreements (if any), with maximal two definitive term contracts to be first permitted, then indefinite term contract to be applied, except for the cases of (i) labour contracts with persons hired as directors in State-owned enterprises, elderly employees, foreign workers working in Vietnam, and (ii) extension of expired term of labour contracts to the end of the office term for employees who are members of the leadership of the organization representing workers at the grassroots level during his/her office term.

A labour contract must have main clauses relating to: Name and address of the enterprise, and full name and title of the signatory on the employer's side; Full name, date of birth, sex, residential address, and number of identity card/ citizen's identification card/ passport of the signatory on the employee's side; Job and workplace; Term of the labour contract; Wage rate in accordance with the job or title/position, 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, health and unemployment insurances for the employee; Training and skill improvement for the employee.

An addendum to a labour contract may elaborate in detail or may amend or supplement some of the articles of the labour contract, but may not amend the term of the labour contract.

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 protection of technology, of interests or benefits and on payment of compensation if the employee breaches such agreement.

Employers and employees can agree on the contents of probation that can be included in the labour contract or enter into a probationary contract. The main contents of the probationary contract include: Name and address of the employer and the full name and title of the person entering into the labour contract on the employer's side; Full name, date of birth, gender, place of residence, number of citizen's identification card, identity card or passport of the person entering into the labour contract on the employee's side; Work and place of work; Probationary period; Salary according to job or title, form of salary payment, time limit for salary payment, salary allowances and other additional amounts; Working time, rest time; Labour protection equipment for workers.

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) 180 days in the case of the job being enterprise manager pursuant to the *Law on Enterprises*, and the *Law on Management and Use of State Capital Invested in Production and Business in Enterprises*;
- (ii) 60 days for working in a position requiring high level specialized or technical expertise;
- (iii) 30 days for working in a position requiring intermediate level specialized or technical expertise or for technical workers and professional staff; and
- (iv) 6 working days for other work.

The wage of an employee during a probationary period shall be as agreed by the two parties but must be at least 85% of the scale wage rate for the relevant working position/job.

An employee working pursuant to a labour contract with a term of less than 1 month 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 but must notify the employee thereof; 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 and rest breaks for workers who perform the works having special characteristics in some areas; seasonal production work, processing work according to orders; work must be on duty 24/24 hours; other works of special nature prescribed by the Government; shall be specified by the management ministries and branches after reaching agreement with the MOLISA.

Working hours may be extended by mutual agreements, but (i) total daily overtime shall not exceed 50% of the normal working hours in 01 days; (ii) in case of application of working regulation on weekly or part time basis, the total normal working hours and the overtime hours shall not exceed 12 hours in a day; (iii) the total overtime hours shall not exceed 12 hours in one day when working overtime on public holidays or weekly days off, 40 hours in 01 months, or 60 hours in case where the employer is allowed to use the employee to work overtime for a maximum of 300 hours/year; and 300 hours in 01 year, except for employees from full 15 years old to under 18 years old; the employee is a mildly disabled person with a working capacity decrease of 51% or more, a severe disability or a particularly severe disability; employees doing heavy, hazardous or dangerous occupations or jobs or particularly heavy, hazardous or dangerous jobs; female employees are pregnant from the 7th month or from the 6th month if working in highland, remote, border or island areas; female employees who are raising children under 12 months old.

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 occupations or 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.

An employee who have worked in the enterprise for less than 12 months is entitled to annual leave at the ratio corresponding to the number of months for which he or she worked.

For every full 5 years working for the employer, the number of annual leave days of the employee as mentioned above shall be increased by 1 day.

An employee may reach agreement with the employer on taking annual leave in instalments or combining leave for a maximum 3 years at one time.

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 Decree No.38/2022/ND-CP dated 12 June 2022 of the GoV, regulating minimum wage levels for labourers working under labour contracts ("**Decree 38/2022**"). According to which, there are currently four levels applicable to employees, which come down from

- (i) VND4,680,000 (about USD195) regarding enterprises, agencies and organizations operating in Region I, including: the inners and most of suburb of HCMC; the inners and the mains of suburb of Hanoi and Hai Phong; Ha Long city of Quang Ninh province; Bien Hoa City and some rural districts of Dong Nai Province; Thu Dau Mot, Thuan An and Di An cities, Ben Cat and Tan Uyen towns, and some rural districts of Binh Duong Province; and Vung Tau City and Phu My Town of Ba Ria – Vung Tau Province;
- (ii) VND4,160,000 (about USD173.3) regarding those operating in Region II, including: Can Gio district of HCMC, the remaining of suburb of Hanoi and Hai Phong, the inner and suburb of Da Nang; the inner of some smaller cities including Hai Duong, Hung Yen, Vinh Yen and Phuc Yen (Vinh Phuc province), Bac Ninh and Tu Son (Bac Ninh province), Cam Pha, Uong Bi and Mong Cai (Quang Ninh province), Thai Nguyen, Song Cong and Pho Yen (Thai Nguyen province); Hoa Binh, Viet Tri, Lao Cai, Nam Dinh, Ninh Binh, Vinh, Dong Hoi, Hue, Da Nang, Hoi An and Tam Ky (Quang Nam province), Nha Trang and Cam Ranh (Khanh Hoa province), Phan Thiet (Binh Thuan province), Da Lat and Bao Loc (Lam Dong province), Tay Ninh, Dong Xoai (Binh Phuoc province), Ba Ria, Tan An (Long An province), My Tho (Tien Giang province), Ben Tre, Vinh Long, Can Tho, Rach Gia, Ha Tien and Phu Quoc (Kien Giang province); Long Xuyen and Chau Doc (An Giang province); Tra Vinh; Bac Lieu; Ca Mau; and towns including My Hao (Hung Yen province), Quang Yen and Dong Trieu (Quang Ninh province), Cua Lo (Nghe An province), Trang Bang and Hoa Thanh (Tay Ninh province), Binh Minh (Vinh Long province); and some rural districts of Hung Yen, Vinh Phuc, Bac Ninh, Hoa Binh, Nam Dinh, Nghe An, Tay Ninh, Dong Nai, Binh Phuoc, Long An and Ben Tre provinces;
- (iii) VND3,640,000 (about USD151.7) regarding those operating in Region III, including: the other provincial cities and towns, and rural districts;
- (iv) to VND3,250,000 (about USD135.4) regarding those operating in Region IV: the rest.

Based on the production organization, labour organization, enterprises will formulate and decide:

- (i) the wage scale & payroll for labourers, meeting certain statutory requirements on the lowest wage level and gap between two consecutive wage grades;
- (ii) the labour norms formulated on the basis of the job or title ranks and in compatibility with the grades and trained qualifications of labourers, technological process, and technical standards of machines, equipment and ensuring the labour standards; notified to labourers at least 15 days before applying experimentally; applied experimentally for a duration of not more than 3 months before being officially promulgated;

The wage scale & payroll and labour norms must be provided to obtain opinions in favour from all the employees in the enterprise and organizations representing employees at grassroots level (if any) when being prepared or amended; and publicly published at the working places of labourers before implementation.

17.5 Collective Labour Agreement

Representatives of both employer and labour collective in a foreign-invested enterprise may negotiate and sign a collective labour agreement (“**CLA**”). 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 CLA must not contrary to the laws and be more favourable for the employees than the provisions of the laws. A CLA shall have the effective date depending on the parties' agreement recorded in the CLA. If the parties are unable to reach agreement, then the effective date of such CLA shall be the date of signing. Before being signed/entered into, the draft CLA negotiated by the parties must be provided to obtain opinions in favour from all the employees in the enterprise. An enterprise CLA may only be entered into when more than 50% of the employees of the enterprise vote in favour of it. The employer has to notify all employees of the signed CLA and send a copy of the CLA to the provincial-level State management authority on labour within 10 days from the date of signing. Employees are allowed to inspect and supervise the CLA implementation.

The term of the collective labour agreement is between one and three years. The parties may reach agreement on different effective terms for different contents of a CLA.

Within 90 days prior to the expiry of the CLA, both parties may negotiate to extend the term of such CLA or sign a new CLA. If the term is extended, then opinions in favour from the employees must be obtained as described above. When a CLA expires and the parties are continuing to negotiate, the old CLA shall continue to be implemented for a period not to exceed 90 days after the date of expiry of such CLA, unless otherwise agreed by the parties.

17.6 Internal Working Rules

Every employer must provide their own internal working rules issued or amended to obtain opinions in favour from all the employees in the enterprise and the organization representing the employees at the grassroots level in the cases of such an organization has been established in the enterprise.

Internal working rules must contain compulsory items such as working hours and rest breaks; rules and order in the work places; occupational safety and hygiene in the work places; prevention of sexual harassment in the workplace; and the sequence and procedures for dealing with a breach being an act of sexual harassment in the workplace; protection of assets and confidentiality of business secrets, technological secrets and intellectual property of the employer; cases in which an employee may be temporarily transferred to undertake work different from that specified in his or her labour contract; conducts which are in breach of labour rules, and penalties imposed for those breaches; liability for material damage; who is the person authorized to impose disciplinary penalties.

A foreign-invested enterprise employing 10 or more employees must have its written internal working rules registered with provincial-level State management authority on labour in the locality where the employer registers the business or the specialized labour agency of the district-level People's Committee authorized by the specialized labour agency of the provincial-level People's Committee within 10 days after the date of issuing such rules. An employer with a branch, unit or production and business establishment in a different locality shall send the registered internal

working rules to the provincial-level State management authority on labour in the locality of such branch, unit or establishment.

Within 7 working days after the date of receipt of the file for registration of the internal working rules, if such rules contain any provision contrary to law, the provincial-level State management authority on labour shall notify and guide the employer to amend or supplement such rules and re-register them.

The internal working rules will take effect 15 days after the competent State agency receives a complete dossier of registration of the internal working rules. In case where the employer employs less than 10 employees and promulgates the written internal working rules, the effectiveness shall be decided by the employer in such internal working rules.

After being issued, the internal working rules must be sent to each employee representative organization at the grassroots level (if any) and be notified to all employees and concurrently, 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.

Written regulations are not required if the employer has fewer than 10 employees but labour discipline and material responsibility must be included in the contents of the labour contracts.

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; medical examination and treatment expenses; and unemployment.

Foreign-invested enterprises are required to comply with the social insurance scheme. In general:

- (i) employers must pay 3% of total wages to the illness and pregnancy fund, 0.5% of total wages to the occupational accidents & diseases fund, and 14% of total wages to the retirement and death fund; and Vietnamese employees working under definite-term labour contracts with a term of full 1 month or more or indefinite-term labour contracts will make a payment of 8% of their monthly wages (including wages and salary allowances; and other allowances & subsidies) to the retirement and death fund; and
- (ii) employers must pay 3% of total wages to the illness and pregnancy fund, 0.5% of total wages to the occupational accidents & diseases fund, (and 14% of total wages to the retirement and death fund from 1 January 2022); and foreign employees working under definite-term labour contracts with a term of full 1 year or more as from 1 January 2022 make a payment of 8% of their monthly wages (including wages and salary allowances; and other allowances & subsidies) to the retirement & death fund.

With respect to health insurance, both sides of employer and employees (regardless of being Vietnamese or foreigners working under definite-term labour contracts with a term of full 3 months or more) 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 (reduced to 0% from 1 October 2021 to 30 September 2022) and 1% of monthly wage to be paid by the Vietnamese employee working under definite-term labour contracts with a term from full 12 months to 36 months or indefinite-term labour contract. 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. Before holding a strike, the organization representing the employees with the right to conduct collective bargaining, which is one of the parties to the collective labour dispute, shall be entitled to organize and lead the strike and shall be responsible to obtain opinions from all of the employees or from members of the leadership of the organizations representing employees participating in the collective bargaining. The organization representing the employees shall make a decision on the time, location and method for obtaining opinions on the strike, and must provide at least one day's advance notice thereof to the employer. When there are opinions in agreement from more than fifty per cent (50%) of the employees on the proposal to strike, then the organization representing the employees shall issue a written decision to strike.

With some exceptions, attempts must be made to settle labour disputes through conciliation between the employer and employee held by a labour conciliator or labour arbitration council.

For individual labour disputes and collective labour disputes about rights, they must pass through procedures for conciliation by a labour conciliator prior to a petition to the labour arbitration council or a court to resolve the dispute, except for certain cases. 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 time-limit of 5 working days after receipt of a party request for dispute resolution, the labour conciliator has not conducted a conciliation; then, the parties in dispute have the right to request on the basis of consensus a labour arbitration council or to petition a court to resolve the dispute. If such request is made, the parties are not permitted to also petition the court to resolve the matter, except in the following cases: (i) If the time-limit of 7 working days after receipt of a request to resolve a dispute expires without a tribunal being established or the time-limit of 30 days after a tribunal establishment expires without a decision on resolution, or (ii) If one of the parties fails to enforce [comply with] the decision resolving the dispute made by the labour arbitration tribunal, then the parties have the right to petition the court to resolve the dispute.

For collective labour disputes about interests, they must be resolved via conciliation procedures of a labour conciliator prior to requesting the labour arbitration council to resolve the matter or before conducting procedures to strike. If the conciliation is unsuccessful or if on expiry of the time-limit for conciliation within 5 working days after receipt of a party's request for dispute resolution, the conciliator has not conducted a conciliation or one of the parties has failed to implement the agreements set out in the minutes of successful conciliation, then the disputing parties may select either of the following methods to resolve the dispute: (i) Request on the basis of consensus a labour arbitration council to resolve the dispute; or (ii) The organization representing employees has the right to conduct procedures prescribed for holding a strike. Where the parties select dispute resolution via the labour arbitration council, the organization representing employees is not permitted to hold a strike while the labour arbitration council is resolving the dispute. If on expiry of the time-limit of 7 working days after receipt of a request the tribunal has not been established; or if on expiry of the time-limit of 30 days after its establishment, the tribunal has not issued a decision resolving the dispute; or the employer being a party to the dispute has failed to implement a decision resolving the dispute of the tribunal, then the organization representing employees being a party to the dispute has the right to conduct procedures to hold a strike as prescribed.

18. LAND MATTERS

18.1 Legislation

The Land Law adopted on 29 November 2013, which took effect on 1 July 2014 and was amended in 2018 (“**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 GoV 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 NA 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 taken as the basis for the issuance of a certificate of the land use rights, ownership of home and assets attached to land (hereinafter referred to as “**LURC**”).

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 of land rental or land use fee for the entire lease or allocation period, by multiplying the used land area (recorded in the LURC or the decision on land allocation or land lease by a competent state agency, the land lease contract in case where the LURC is not yet available. In case where the LURC or the decision on land allocation or land lease, land lease contract is not yet issued by a competent State agency, the land user shall base on the dossiers and documents related to the land use rights to determine the land area to be taken as a basis to determine the value of land use rights) with the applicable land rental or use fee rate(s) (determined according to the land price in the Land Price List issued by the provincial-level People’s Committee) multiplied by land price adjustment coefficient prescribed by the provincial-level People’s Committee at the time of determining the value of land use rights).

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.

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 implementation of investment projects, is exhausted in the area, except the projects in sectors or geographical areas where investment is encouraged;
- (iii) In case the economic organization receives capital contribution using the usage rights of agriculture land to implement a non-agriculture investment project, it must have a document made according to the standard form to be sent to the provincial-level Department of Natural Resources and Environment and obtain a written approval from the provincial-level People's Committee (to be implemented within 36 months from the date of signing);
- (iv) Where the land area for the implementation of investment project has a part of land where the current land user is not entitled to contribute capital using land use rights but has assets attached to the land, 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, allocate or lease the land to the investor without any auction of land use right or any bidding for implementation of land using project, convert the purpose of land use for implementing the investment project and determine specifically land prices for calculating land use fee and land rental as prescribed. 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 allocation of land to the property buyer;
- (v) Where the land area for the implementation of investment project has a part of land where the current land user is not entitled to contribute capital using land use rights and has no asset attached to the land, and this part of land is among the part of land, which has been already used for capital contribution, there are 02 cases as follows:
 - (a) if the land meets requirements to be split into an independent project, the competent People's Committee shall decide to recover the land to allocate or lease it, for implementation of that independent project, through an auction of land use rights to be implemented no later than 90 days from the date the State issues a decision on land recovery;
 - (b) if the land does not meet requirements to be split into an independent project, the provincial-level People's Committee shall base on the current land use status and local socio-economic conditions to organize review and specifically determine the project size, the investment location and decide to recover the land to allocate or lease land for implementation of the investment project without any auction of land use rights or any bidding for project using land, and must specifically determine land prices for calculating collected land use fee or land rental as prescribed.

- (vi) In case where land is used to implement an investment project in the form of capital contribution with land use rights and has different land use terms, the land use term shall be redefined according to the term of investment projects as follows:
- (a) Land allocation or land lease term for organizations to use land for (i) the purposes of agricultural production, forestry, aquaculture, salt making; (ii) commercial and service purposes, non-agricultural production facility; (iii) carrying out investment projects; overseas Vietnamese, foreign-invested enterprises to implement investment projects in Vietnam shall be considered and decided on the basis of investment projects or application forms for land allocation or lease but not more than 50 years;
 - (b) For projects with large investment capital but slow capital recovery, investment projects in areas with difficult socio-economic conditions, areas with extremely difficult socio-economic conditions, which require a longer term, the time-limit for land allocation or land lease shall not exceed 70 years;
 - (c) For projects on residential housing business for sale or for sale in combination with lease or for lease purchase, the time limit for land allocation to the investor is determined according to the term of the project. Upon the expiration of the land use term, if the land user wishes to continue using land, the State shall consider extending the land use term but not exceeding the time limit specified in this clause (vi).

In case not subject to investment procedures as prescribed by the laws on investment, the land use term shall be decided by the People's Committee of the level competent to allocate or lease land but must not exceed 50 years.

The following conditions ensure a realization of the land contribution by the local parties to a JVC, which include the existence of a LURC, 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 (“**DONRE**”) 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.

The capital contribution with land use rights shall terminate when:

- (i) The time limit for capital contribution with land use rights has expired;
- (ii) A party or parties has/have a request therefor as agreed in the capital contribution contract;
- (iii) Land has been recovered under the provisions of the Land Law;
- (iv) The party contributing capital with land use rights in the business cooperation contract or the joint-venture enterprise is declared bankrupt or dissolved;
- (v) The individual participating in the capital contribution contract dies; declared dead; loses capacity for civil acts or has limited capacity for civil acts; is prohibited from operating in the field of business cooperation in which the capital contribution contract must be performed by that individual;
- (vi) Operations of the legal entity participating in the capital contribution contract are terminated and the capital contribution contract must be performed by such legal entity.

The handling of land use rights upon termination of capital contribution shall be carried out as follows:

- (i) In case where the capital contribution term expires or the parties agree to terminate the capital contribution, the party contributing capital with land use rights may continue to use that land for the remaining term.

In case where the land use term has expired or the party contributing capital with land use rights no longer needs to continue using land, the State shall allow the party receiving capital contribution to continue renting land if there is a need;

- (ii) In case where the capital contribution is terminated under a decision of a competent State agency due to a violation of the laws on land, the State shall recover such land;
- (iii) If the party receiving capital contribution or the party contributing capital with land use rights is a bankrupt organization, the land use rights used for capital contribution shall be handled according to the bankruptcy declaration decision of the People's Court.

Recipients of land use rights and assets attached to land under decisions of the People's Courts may continue to use the land for the determined purposes for the remainder of the land use term and be granted with a LURC.

If there is no recipient of the land use rights and assets attached to land, the State shall recover such land and assets;

- (iv) In case where the individual participating in the capital contribution contract dies, the land use rights used for capital contribution shall be inherited according to the provisions of civil laws;
- (v) In the event an individual participating in a capital contribution contract is declared dead, has been dead or has limited capacity for civil acts, the handling shall follow provisions of the civil laws;
- (vi) In case where the joint venture enterprise is dissolved or the party contributing capital with land use rights is a dissolved organization, the land use rights used for capital contribution shall be handled according to the agreement between the parties in accordance with the provisions of the Land Law and other relevant provisions of the laws.

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.

The land user is obliged to submit the issued LURC before receiving compensation and support and the organization in charge of compensation and ground clearance shall collect the issued LURC and transfer it to the Land Registration Office to manage. The land has been recovered for socio-economic development for national and public interests such as implementation of national important projects decided on investment policies by the National Assembly; implementation of projects approved and decided by the Prime Minister; and implementation of projects approved by the provincial-level People's Council will be assigned to the investor for implementation of the investment project or to a public land service organization for management.

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 emphasize the needs for parties to attempt to settle their disputes by mediation and conciliation. 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 conciliations: Vietnamese ad-hoc conciliators and conciliation institutions, with place located inside Vietnam;
- (ii) Commercial arbitration: Vietnamese arbitration or foreign arbitration, with place located inside or outside Vietnam; and
- (iii) Economic court: Economic court directly under provincial-level People's Court, with place inside Vietnam.

Details about each hearing 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 conciliations, including ad-hoc conciliators, conciliation institutions consisted of conciliation centres, and licensed branches of foreign commercial conciliation institutions; and licensed arbitration centres;
- (ii) the commercial arbitrations, including ad-hoc arbitrations and arbitration centres ("**CACs**"); and
- (iii) the economic courts.

Commercial conciliation or arbitration shall have competence for resolving:

- (i) Disputes between parties arising from commercial activities;
- (ii) Disputes arising between parties at least one of whom is engaged in commercial activities; and

- (iii) Other disputes between parties which the law stipulates shall or may be resolved by commercial conciliation or arbitration.

A dispute shall be resolved through commercial conciliation or arbitration only if involved parties reach an agreement on dispute resolution through conciliation or arbitration, which may be in the form of a conciliation or arbitration clause in a contract or of a separate agreement, before or after a dispute arises or at any time in the process of dispute resolution. Other than those, disputes shall be resolved through court system, following different court proceedings.

A person (a) having full civil act capacity; having good moral qualities and prestige, and working in an independent, impartial and objective manner; (b) possessing a university or higher degree and having at least 2 years' working experience in the discipline he/she has studied; and (c) having conciliation skills and knowledge about laws, business and commercial practices and relevant issues; may act as a commercial conciliator. A commercial conciliator may conduct commercial conciliation in the capacity as (a) an *ad hoc* commercial conciliator after having registered with the provincial-level DOJ of the locality where he/she permanently resides for Vietnamese or where he/she temporarily resides for foreigner; or (b) a commercial conciliator of a commercial conciliation centre.

A Vietnamese citizen who fully satisfies the criteria for a commercial conciliator and wishes to establish a commercial conciliation centre, which must operate not for profit, shall send 1 set of application dossier to the MOJ, comprising, among others, a list of the centre's founders and the draft Conciliation Rule of the centre. The commercial conciliation centre' organizational structure is stated in its Charter; however, its chairperson must be a commercial conciliator.

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 ("**VCCI**"). They are all commercial arbitration centres 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 MOJ 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 centre 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 (“**New York Convention**”) 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 (“**Civil Proceedings Code**”).

Additionally, according to a legal case promulgated by the Supreme People’s Court to be applied in hearing as from 15 April 2021, even a model contract executed with consumers has terms to choose foreign arbitration to settle disputes, but when a dispute occurs, consumers still may sue in Vietnamese court; as in this case, the court should understand that consumers do not choose the arbitration and have the right to choose the Vietnamese court for resolution of the dispute.

19.4 Enforcement

Under applicable regulations, if a verdict 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 verdicts 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 conciliation agreement, it shall be binding upon the parties in accordance with the civil laws and shall be recognized at the request of either or both related parties in accordance with the Civil Proceedings Code. The Judge shall make decisions to recognize or to not recognize the successful conciliation result depending on the satisfaction of all conditions stipulated by law.

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.
