

Guide to Doing Business in Vietnam



5	Introduction
6	Forms of Doing Business
8	Government Approvals
9	Business Scope and Authority
10	Capital Structure
12	Retail and Distribution
12	Taxation
14	The Right to Purchase Foreign Currency and Remit Profits
15	WTO and Foreign Investment in Vietnam
16	Imports/Exports
16	Lending and Borrowing
18	Projects and Infrastructure
22	Dispute Resolution
25	Real Estate
26	Electronic Commerce
27	Labour
29	Environmental Protection
30	Restructuring, Bankruptcy, and Insolvency
33	Intellectual Property
34	Technology Transfer
35	Government of Vietnam and Charts of Major State Agencies

List of Abbreviations

ADR	Alternative dispute resolution
AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Agreement
BCC	Business Cooperation Contract
BOT	Build-Operate-Transfer
BRC	Business registration certificate
BT	Build-Transfer
BTO	Build-Transfer-Operate
CEPT	Common Effective Preferential Tariff
CIT	Corporate income tax
DONRE	Department of Natural Resources and Environment
DPI	Department of Planning and Investment
DTAA	Double Taxation Avoidance Agreement
EIA report	Environmental Impact Assessment Report
ENT	Economic Needs Test
EPU	Environmental protection undertaking
FIE	Foreign invested enterprises
IC	Investment certificate
JSC	Joint stock company
JV	Joint venture
LLC	Limited liability company
LUR	Right to use land
MIC	Ministry of Information and Communications
MLLC	LLC with two or more members
MPI	Ministry of Planning and Investment
MOIT	Ministry of Industry and Trade

MONRE	Ministry of Natural Resources and Environment
MOST	Ministry of Science and Technology
MOT	Ministry of Transportation
PC	People's Committee
PIT	Personal income tax
PSC	Production sharing contract
SBV	State Bank of Vietnam
SLLC	Single-member limited liability company
TPP	Trans-Pacific Partnership
VAT	Value added tax
WFOE	Wholly foreign-owned enterprises
WTO	World Trade Organisation

The information in this publication is current to March 2014

Introduction

In preparation for its accession to the World Trade Organisation (WTO) in 2007, Vietnam took active steps to revamp its legal framework for business and investment in Vietnam. The two cornerstones of the current legal framework governing foreign investment in Vietnam are the Investment Law, which regulates investments in Vietnam, and the Law on Enterprises, which sets out the types of corporate vehicle investors may establish to carry out their investment projects, both of which took effect on 1 January 2006. The overarching goals of the Investment Law and the Enterprise Law are to harmonise the legal regime applicable to foreign and domestic investors and to create a level playing field.

Together with the adoption of the Enterprise Law and the Investment Law, the National Assembly has passed numerous laws and governmental authorities have promulgated a significant number of regulations to implement Vietnam's WTO commitments and strengthen the basic framework crafted by the Investment Law and the Enterprise Law. As anticipated, this has not always been a linear path forward, as conflicting interpretations between local regulators in different provinces, and between different ministries, have created confusion over key issues, such as requirements of foreign investors to obtain an investment certificate when making minority investments in existing Vietnamese enterprises. In recognition of these shortcomings, Vietnam is planning to introduce new investment and enterprise laws – perhaps during 2014.

Outside of the WTO context, other legal changes have taken effect and still others are on the horizon. This publication discusses a new labour law, which took effect in 2013, and a new land law, which will become effective in 2014 and will require guiding decrees and regulations to fully implement its changes. In recognition of the value of facilitating foreign capital flowing into the banking sector, foreign ownership restrictions on foreign investments in local banks were loosened in January 2014 by the first government decree of the new year. Vietnam's National Assembly is reviewing a new bankruptcy law to streamline a bankruptcy process criticised as inefficient and therefore seldom used. Vietnam is also currently negotiating the Trans-Pacific Partnership (TPP) accords with other nations across the Pacific basin in Asia, Oceania, and the Americas. If Vietnam were to become party to the TPP, this would result in additional changes to further open the Vietnamese legal framework to foreign investors. ♦

Forms of Doing Business

1.1 DIRECT AND INDIRECT INVESTMENT

Whether a foreign investor invests directly or indirectly in Vietnam, the applicable law is the Investment Law, which contains a significant number of investment guarantees and provides a roadmap for the conditions and procedures for investment in Vietnam.

- a. “Direct” investment is defined to include the following:
 - Establishing wholly foreign-owned enterprises (WFOE)
 - Establishing joint ventures between local and foreign investor(s) (JV)
 - Investing pursuant to a contract: Business Cooperation Contract (BCC), Build-Transfer-Operate (BTO), Build-Operate-Transfer (BOT) or Build-Transfer (BT) contract
 - Investing in developing a business (to expand the size or improve the capacity of a project or to introduce new technologies, increase the quality of products or reduce pollution to the environment)
 - Purchasing shares of, or contributing capital to, companies or branches in Vietnam to participate in management
 - Investing in a merger or acquisition of a company or branch, and
 - Other forms of direct investment (to be set out in subsequent legislation)
- b. “Indirect” investment is defined to include the following:
 - Purchasing of shares, bonds and other valuable papers
 - Investing through securities investment funds, and
 - Investing through other intermediary financial institutions

The Investment Law requires an investor who invests directly to obtain approval for the relevant project. Approval is given via the issuance of an investment certificate (IC). In respect of indirect investments, the Investment Law stipulates that the investor needs to comply with the Securities Law and other relevant laws.

If a foreign entity does not wish, or is not ready, to invest in Vietnam, but desires to have a presence in Vietnam, it may set up a representative office.

1.2 WHAT ARE THE MOST COMMON BUSINESS FORMS FOR DIRECT INVESTMENT IN VIETNAM?

Most foreign investors will utilise either a WFOE or JV to carry out a project in Vietnam.

A WFOE and a JV are both Vietnamese corporate legal entities and therefore, in each case, a Vietnamese corporate vehicle to carry out investment in these forms must be established.

1.3 IN ORDER TO CARRY OUT A DIRECT INVESTMENT PROJECT IN VIETNAM IN WFOE OR JV FORM, MUST AN INVESTOR SET UP A VIETNAMESE LEGAL ENTITY?

Yes, to carry out a business or an investment project in WFOE or JV form, an investor must set up a Vietnamese legal entity.

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

1.4 WHAT TYPES OF VIETNAMESE LEGAL ENTITIES ARE AVAILABLE?

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

- A limited liability company (LLC) being either a single-member LLC (SLLC) or an LLC with two or more (up to a maximum of 50) members (MLLC)
- A shareholding or joint stock company (JSC) which is a company with at least three shareholders but no maximum number of shareholders
- A general partnership or a limited liability partnership
- A private enterprise (akin to a sole proprietorship)

1.5 WHAT ARE SOME IMPORTANT DIFFERENCES BETWEEN AN LLC AND A JSC?

The key difference is the ability of a JSC to mobilise capital by the sale of shares and securities. Only a JSC can issue bonds and preference shares. Furthermore, a company that wishes to list on a securities exchange in Vietnam must be a JSC. Capital contribution in an LLC is more flexible than in a JSC, as discussed later in this guide.

In general, shareholders of a JSC have the right to freely assign their shares. In contrast, in an LLC, the assignment of charter capital (equity) is subject to the right of first refusal by the members. Finally, the corporate governance structure of a JSC is more complex than that of an LLC.

1.6 WHAT FACTORS SHOULD A FOREIGN INVESTOR CONSIDER IN DECIDING WHETHER TO CHOOSE A JV?

The two main factors that lead a foreign investor to choose a JV are: (i) some business sectors in Vietnam require a JV to establish a commercial presence in Vietnam; and (ii) the Vietnamese party has a key asset, local know-how and knowledge, or other factors that make the JV the necessary choice. For example, in real estate development projects, the Vietnamese party usually has the land use rights, which by law cannot be directly transferred to a foreign investor, but may be contributed into a JV.

1.7 WHAT IS A REPRESENTATIVE OFFICE PERMITTED TO DO?

A representative office is often the first step in establishing a commercial presence in Vietnam. A foreign company that wishes to establish a representative office in Vietnam must have been duly established for at least one year in its home jurisdiction.

Representative offices have limited rights. They are permitted to engage only in certain activities, including business development, and cannot engage in activities that generate profit in Vietnam. The head of the representative office is permitted to sign economic or commercial contracts with Vietnamese businesses on behalf of the offshore company only if he or she has specific legal authority for each contract from the offshore company (i.e., a general authorisation is not permitted). Despite the limitations, a representative office may play an important role in facilitating operations and business objectives on behalf of the offshore company. ◆

Government Approvals

2.1 WHAT IS THE APPROVAL PROCESS FOR ESTABLISHING A JV OR WFOE?

Whether foreign direct investment is in the form of a WFOE, JV, BCC or any other permitted form, an IC must be obtained from the relevant licence issuing body.

To receive an IC, an investor must complete either a registration or an evaluation procedure based on the size and type of project.

- a. Registration procedures apply to projects:
 - Under VND 300 billion (approximately US\$15,000,000¹) in value, and
 - Not operating within a business sector on the list of “conditional” sectors

The time limit for issuance of an IC is 15 business days.

- b. Evaluation procedures apply to projects:
 - Over VND 300 billion in value, or
 - Operating within a business sector on the list of “conditional” sectors

The time limit for issuance of an IC is 43 business days.

- c. “Conditional” sectors are business sectors designated by law to which special investment conditions apply, and include the following sectors:
 - Radio and television broadcasting
 - Establishment of infrastructure for telecommunications network, transmission and broadcasting, and provision of Internet and telecommunications services
 - Hospitals and clinics
 - Production, publishing and distribution of cultural products
 - Establishment of public postal networks and provision of postal services and delivery services
 - Construction and operation of river ports, sea ports, air terminals and airports
 - Transportation of goods and passengers by railway, air, road, sea and inland waterways
 - Catching of sea products
 - Production of tobacco
 - Importation, exportation and distribution
 - Real estate
 - Exploitation and processing of minerals
 - Development of education and training
 - Other sectors as set out by law

2.2 WHAT LEVEL OF THE VIETNAMESE GOVERNMENT MUST APPROVE A PARTICULAR PROJECT?

Decree No. 108/2006/ND-CP dated 22 September 2006, which guides the Investment Law, delegates the authority to issue ICs to the local provincial People’s Committees (PC) for most types of projects (including real estate) regardless of size. Certain limited types of “sensitive” projects require approval directly from the Prime Minister (e.g., casino projects or the production of cigarettes).

¹ VND 20,000/US\$1

However, even with respect to these “sensitive” projects, if the Prime Minister has already approved investment policies for investing in these sectors, the local PCs are authorised to issue the IC. ♦

Business Scope and Authority

3.1 WHAT IS THE SIGNIFICANCE OF A COMPANY’S BUSINESS REGISTRATION CERTIFICATE OR IC?

All validly existing private business enterprises in Vietnam must have either a business registration certificate (BRC) or an IC. For foreign investors, the IC is not only the approval to undertake the investment project, but also the BRC. Foreign-invested enterprises (FIE), which include WFOEs and JVs, always need to obtain an IC. ICs are usually issued by the local PC with jurisdiction over the matter. The IC states the legal name of the company, the nature of the company (LLC or JSC), its business lines, its legal representative, business address, the amount of registered capital, and the details of any authorised project. Without a valid IC, foreign business enterprises cannot legally do business in Vietnam.

3.2 WHAT IS A “LEGAL REPRESENTATIVE” OF A VIETNAMESE COMPANY?

The legal representative is an officer of a Vietnamese company who has the primary responsibility and power to act on behalf of the company in its dealings with the state and other counter parties. Pursuant to the Law on Enterprises, either the chairman of the company (in the case of some SLLCs) or the chairman of the members council (in the case of some SLLCs and all MLLCs), chairman of the board of management (in the case of a JSC), or the general director (regardless of corporate form) must be designated as the legal representative.

Legal representatives have the authority to bind the company in contracts and are personally liable for the commission or omission of certain acts. For example, in the context of an LLC, the legal representative of the company must notify the business registration body in writing of the progress of capital contribution within 15 days from the date undertaken for capital contribution, and must bear personal liability for any damage to the company and to other persons due to late notification or inaccurate, untruthful or incomplete notification. The legal representative must reside in Vietnam.

3.3 WHAT IS THE SIGNIFICANCE OF A VIETNAMESE COMPANY’S “BUSINESS LINES”?

Unlike most common law countries, a company in Vietnam is only permitted to conduct business activities that are narrowly defined and mostly codified into a state-recognised and published list of business activities called “business lines”. Generally, for FIEs, the permitted business lines must be closely tied to what is considered necessary for that particular project. Furthermore, to obtain an IC, the investor needs tangible plans, which may include a feasibility study for some particularly large-size projects (for example BOT, BTO, or BT projects), detailing precisely what the investor will do. Broadly drafted business lines such as “doing any lawful business permitted by law” are not permitted. One important practical consequence of this is that it is difficult for FIEs to be established as holding companies.

3.4 WHEN DO CONTRACTS IN VIETNAM NEED TO BE NOTARISED?

Generally, all property-related documents in Vietnam need to be notarised, including long-term leases, and documents related to improvements upon land such as the construction of buildings and houses. Most other contracts, including civil and commercial contracts, need not be notarised. ♦

Capital Structure

4.1 WHAT IS THE CAPITAL STRUCTURE OF AN FIE?

Generally, for FIEs, there is no per se net worth or capital structure requirement. However, companies must have enough capital resources to successfully realise the business goals set out in their IC. The capital structure is stated in the IC, including the charter capital and the investment capital.

Charter capital means the amount of equity contributed or undertaken to be contributed by investors in a certain period.

Investment capital means the total capital amount including charter capital as well as monies, loans and other lawful assets to carry out the investment project. It is important to note that an FIE cannot incur medium- or long-term debt in excess of its stated loan capital. An exception exists for short-term debt (12 months or less) provided that the project is no longer in its construction phase, if applicable.

4.2 WHAT ARE THE TIME LIMITS FOR CONTRIBUTION OF CAPITAL?

Under the Law on Investment, investors must contribute their capital contribution according to a schedule set in their IC.

Members and owners of LLCs must pay in full the capital registered for contribution within a maximum of 36 months from the date of issuance of the IC of the company.

The founding shareholders of a JSC are required to register to subscribe for at least a combined 20 percent of the number of ordinary shares offered for sale and must pay in full for the shares registered for subscription within 90 days from the date of issuance of the IC of the company.

At the time of establishment of a JSC, its charter capital is equal to the total value of the issued shares that the founding shareholders and other shareholders have subscribed and recorded in the charter of the JSC. Accordingly, if shareholders have subscribed to purchase all shares that can be issued, the charter capital would be equal to the total nominal value of all shares that can be issued. However, in case the shareholders have committed to purchase only a portion of the shares that can be issued, the charter capital would be the total nominal value of subscribed shares and, in this case, a JSC may further offer for sale the remaining shares within three years after obtaining the IC. The charter capital of a JSC is the total par value of the number of issued shares being the number of shares fully paid up to the company by the shareholders.

4.3 CAN THE CAPITAL CONTRIBUTION IN AN FIE BE REDUCED?

Yes, but there is a qualified waiting or a “lock-in” period. In an MLLC, investors may reduce their capital contribution if business operations have been carried out for more than two years from the date of business registration; and, at the same time, ensure that the company is able to pay in full all of its debts and other property obligations after such capital reduction.

Note that this is not applicable to an SLLC, which is not legally permitted to reduce its charter capital.

A JSC can redeem no more than 30 percent of the total number of ordinary shares sold and part or all of the dividend preference shares sold.

4.4 ARE THERE LIMITATIONS ON THE AMOUNT OF EQUITY A FOREIGNER CAN PURCHASE IN A DOMESTIC ENTERPRISE?

Not generally but there are the following notable exceptions:

- For publicly listed companies, the cap on foreign ownership is currently 49 percent
- The permitted ownership ratio in the following sectors is restricted: banking, civil aviation, publishing and press
- The permitted ownership ratio for state-owned enterprises undergoing equitisation or otherwise converting their form is restricted
- The ownership ratio for those sectors restricted in Vietnam's WTO commitments must follow the limits set out therein

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

4.5 WHAT ARE PERMITTED FOREIGN OWNERSHIP LEVELS IN LOCAL BANKS?

Recent changes to foreign ownership levels in banks effective as of February 2014 will facilitate foreign investment in this strategic sector. A foreign strategic investor may now buy up to 20 percent of equity in a credit institution without having to obtain approval from the Prime Minister. This is increased from the 15 percent ceiling under the prior law. Moreover, there is now no distinction with respect to ownership caps between a foreign credit institution and a foreign institutional investor that is not a credit institution. In each case, such an entity may hold up to 15 percent of a credit institution (or 20 percent together with its related parties). The total foreign ownership cap remains at 30 percent.

The table below sets out key differences in shareholding ceilings between the current legal framework introduced under Decree 01 (Decree 01/2014/ND-CP, dated 3 January 2014 on purchase of shares of Vietnamese credit institutions by foreign investors) and prior law, Decree 69 (Decree 69/2007/ND-CP, dated 20 April 2007 on purchase of shares of Vietnamese commercial banks by foreign investors):

Decree 01	Decree 69
Any foreign individual: 5%	Any foreign non credit institution investor and its related parties: 5%
Any foreign organisation: 15%	Any foreign credit institution investor and its related parties: 10%
Any foreign strategic investor: 20%	Any strategic investor and its related parties: 15% (or up to 20% with Prime Ministerial approval)
Any foreign investor and its related parties: 20%	
Total shareholding of all foreign investors and their related parties: 30% (exceptions may be given by the Prime Minister to weak credit institutions for restructuring purposes on a case-by-case basis)	Total shareholding of all foreign investors and their related parties: 30% (no exception)

4.6 SHAREHOLDING LIMIT

Decree 01 omits the express requirements that a foreign credit institution may only be a foreign strategic investor in one bank and that a foreign credit institution may only participate in the boards of management of a maximum of two banks under Decree 69. Instead, Decree 01 stipulates that a foreign strategic investor in one credit institution cannot hold 10 percent or more of the charter capital at any other Vietnamese credit institution. This opens the door to the possibility that a foreign investor could theoretically be a strategic investor in more than one local credit institution, though the 10 percent ceiling on ownership in the second entity may make this unattractive commercially. ♦

Retail and Distribution

5.1 ARE THERE ANY FOREIGN OWNERSHIP LIMITATIONS IN THE RETAIL AND DISTRIBUTION BUSINESS IN VIETNAM?

Since 1 January 2009, WFOEs are allowed to engage in trading and distribution in Vietnam, thereby eliminating the last restriction on foreign investment in this sector. Foreign investors engaging in direct investment in this business sector will still need to apply for and obtain an IC, and are still limited in the ability to freely establish retail outlets.

5.2 WHAT ARE THE REQUIREMENTS FOR ESTABLISHING A RETAIL OUTLET?

Vietnam's accession to the WTO included a commitment on wholesale trade and retailing services. Its commitment in this sector permits foreign investors to establish one retail outlet when they obtain an IC for a company engaged in distribution. Establishment of additional retail outlets beyond the first one is allowed only upon satisfaction of an Economic Needs Test (ENT). The intention in the WTO commitment is that ENT criteria include the number of existing service suppliers in the geographic area, the stability and needs of the local market and geographic scale. In practice, the licensing of an FIE's retail stores beyond the first one is at the discretion of the Vietnamese authorities.

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

5.3 ARE THERE ANY RESTRICTIONS ON WHAT PRODUCTS MAY BE TRADED?

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

Taxation

6.1 WHAT ARE THE CORPORATE INCOME TAX (CIT) RATES?

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

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

- Newly established businesses that have investment projects in (i) geographical areas with "especially difficult socio-economic conditions", (ii) economic zones and (iii) high-tech zones

- Newly established businesses with investment projects in high technology, scientific research and technological development, development of especially important infrastructure facilities of the state, and production of software products
- Incomes of hi-tech enterprises and agricultural enterprises that apply high technologies, and
- Incomes of enterprises from the execution of new projects of investment in production, which meet one of the two criteria below:
 - » any project of which the capital is at least VND 6,000 billion that is released within three years from the day on which the IC is issued, and the total revenue reaches at least VND 10,000 billion within three years from the first year in which revenue is earned, or
 - » any project of which the capital is at least VND 6,000 billion that is released within three years from the day on which the IC is issued, and which employs more than 3,000 workers

The tax rate of 10 percent is applicable to the following investment projects during their operation term:

- Incomes of private enterprises from investment in education, vocational training, health, culture, sports, and the environment
- Incomes of enterprises from the investments in social housing that are for sale, for lease, or for hire purchase
- Incomes from press agencies from printing newspapers, including advertisements on printed newspapers and incomes of publishers from publishing
- Incomes of enterprises from planting, cultivating, and protecting forests; from agriculture, forestry, and aquaculture in localities facing socio-economic difficulties; from the production, multiplication, and cross-breeding of plants and animals; from the production, extraction, and refinement of salt; from investment in post-harvest preservation of agriculture products, aquaculture products and food

6.2 WHAT ARE THE VALUE ADDED TAX (VAT) RATES?

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

The tax rate of zero percent applies to exported goods and services, international transportation and goods and services not liable to value-added; offshore reinsurance services; credit provision, capital transfer and derivative financial services; post and telecommunications services; and exported products which are unprocessed mined resources and minerals.

6.3 WHO IS SUBJECT TO PERSONAL INCOME TAX (PIT) AND WHAT ARE THE RATES?

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

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

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

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

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

Monthly Income	PIT Rate in %
Up to US\$250	5
From US\$250 to US\$500	10
From US\$500 to US\$900	15
From US\$900 to US\$1,600	20
From US\$1,600 to US\$2,600	25
From US\$2,600 to US\$4,000	30
Over US\$4,000	35

Tax on incomes of non-resident individuals is set out as follows:

Income	PIT Rate in %
Salaries or wages	20
Prizes, inheritances or gifts	10
Capital investment; Copyright or franchising	5
Doing business in production, construction and transportation	2
Real estate transfer	2
Capital transfer	30

The Right to Purchase Foreign Currency and Remit Profits

7.1 MAY A FOREIGN INVESTOR PURCHASE FOREIGN CURRENCY IN VIETNAM?

Yes. The current Investment Law and other foreign exchange regulations of Vietnam set out specific provisions on the remittance of foreign currencies gained by foreign investors during their investment in Vietnam to overseas as an investment protection. Accordingly, foreign investors, subject to meeting their tax and other financial obligations to the Vietnamese government, are allowed to purchase foreign currencies from licensed credit institutions in order to meet their “non-capital” transactions and other permitted transactions (such as repayment of offshore loans, and remittance of dividends abroad). The law sets out a broad range of permitted transactions. The banks are in charge of foreign exchange compliance and will guide their customers accordingly. As long as the proper documentation is provided to the bank, including proof of the source of the fund, remittance offshore is not a problem. There is no profits remittance tax.

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

7.2 IS IT POSSIBLE TO REPATRIATE INVESTMENTS FROM VIETNAM?

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

- Profits derived from business activities (profits may be remitted on an annual basis)
- Payments received from the provision of technology and services and from intellectual property
- Invested capital and proceeds from the liquidation of investments
- Other sums of money and assets legally owned by the investor ♦

WTO and Foreign Investment in Vietnam

8.1 HOW HAS VIETNAM BEEN COMPLYING WITH ITS WTO COMMITMENTS?

Vietnam's accession to the WTO in 2007 undoubtedly offers foreign investors greater access to various local business sectors. Vietnam has made commitments in 11 service sectors (110 sub-sectors). Except for a limited number of sectors designated as unbound (such as secondary education or machinery and equipment renting/leasing) or restricted (such as the banking sector or electronic games business), most service sectors are currently open to full foreign investment.

Establishment of a branch by a foreign company is still limited. Foreign banks, law firms, franchising service companies, construction and related engineering service companies and non-life insurers are permitted to set up branches, but rarely do so in practice.

The implementation of the WTO commitments also presents various practical challenges. For instance, licensing authorities are often reluctant to apply commitments that are not yet clearly supported by comprehensive domestic legislation.

8.2 DO FOREIGN INVESTORS FROM NON-WTO MEMBER STATES ENJOY THE SAME TREATMENT AS THOSE FROM WTO MEMBER STATES?

The short answer is no. Vietnam's WTO commitments benefit only investors from WTO member nations. This means that a proposed investment by investors from non-WTO members, such as the British Virgin Islands, is subject to the approval of the licensing authorities.

8.3 IS VIETNAM PARTY TO ANY OTHER NOTABLE TRADE AGREEMENTS?

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

In addition, Vietnam has also entered into certain bilateral and regional free trade agreements (FTAs) with Japan, Korea and China, under which restrictions on foreign investment are mostly the same as those under Vietnam's WTO commitments.

Last but not least, Vietnam is now a negotiating party to the Trans-Pacific Partnership and the bilateral FTA with the European Union, both significant trade agreements for foreign investors in Vietnam. ♦

Imports/Exports

9.1 MAY A FOREIGN INVESTED COMPANY FREELY IMPORT ITS GOODS INTO VIETNAM?

A foreign-invested company holding a valid import permit may freely import its goods into Vietnam. Generally, most goods may be imported into Vietnam. Some goods are prohibited, some are restricted and require special permission from the MOIT, and others (such as health products and foods) must meet health and safety requirements.

9.2 WHICH ITEMS ARE PROHIBITED FROM BEING IMPORTED?

Currently, the list of prohibited goods includes: weapons, assorted firecrackers, certain types of second-hand consumer goods, prohibited cultural products, right-hand-drive motor vehicles, refrigeration equipment using CFCs, chemicals stipulated under Annex III of the Rotterdam Convention, plant protection agents prohibited from use in Vietnam, products containing asbestos of the amphibole group, and certain toxic chemicals. This list is subject to revision from time to time. ♦

Lending and Borrowing

Although the Vietnamese government has made significant efforts to upgrade Vietnam's legal framework (as a whole) in recent years, the regulations on lending and borrowing in Vietnam continue to develop. Pursuant to a recent report issued by the State Bank of Vietnam (SBV), the banking system currently consists of 5 state-owned commercial banks, 37 joint stock commercial banks, 1 policy bank, 1 development bank, 50 branches of foreign banks (including sub-branches), 5 wholly foreign-owned banks, 4 joint venture banks, 50 representative offices, 18 financial companies, 12 financial leasing companies, 1 central people's credit fund and more than 1,000 local people's credit funds. The network of credit institutions covers not only the domestic market but also has taken big strides in expanding to some international markets.

- Who can borrow loans from credit institutions?

Vietnam-based credit institutions may grant onshore loans in local and foreign currencies to qualified Vietnamese and foreign organisations and individuals. Circular 29/2003/TT-NHNN dated 6 December 2013 regulates lending in foreign currencies by Vietnam-based credit institutions and borrowing the same by residents in Vietnam.

Vietnamese and foreign-owned entities can also access offshore loans by obtaining credit lines from foreign credit institutions or from their foreign shareholders, subject to some conditions set forth in the relevant regulations. Decree 219/2013/ND-CP dated 26 December 2013 on the management and repayment of offshore loans that are not guaranteed by the government (Decree 219) provides that offshore loans that fall under Decree 219 include loans from non-residents under loan agreements, deferred payment commodities sale and purchase agreements, entrusted loan agreements, and debt

instruments issuance agreements that are not guaranteed by the government. Under Decree 219, a borrower must comply with the borrowing and repayment conditions as agreed with the offshore lender. The borrower must also register the offshore loan with the SBV. However, Decree 219 does not clarify what types of offshore loans must be registered or what the registration procedures involve. It is expected that these issues will be addressed by further guidelines from the SBV.

Currently, there is no guidance on lending to Vietnamese individuals by offshore lenders. As a result, and until such guidance is issued, Vietnamese individuals are not allowed to access offshore loans at all.

- Tenor of the loans

Generally, there are three different types of loans: (i) short-term loans, with a tenor of less than 12 months; (ii) medium-term loans, with a tenor ranging from 12 months to 36 months; and (iii) long-term loans, with a tenor of more than 36 months. Subject to the purpose of use of the loans proposed by the borrower, which is normally reviewed by the credit institutions, the credit institution can offer the borrower a loan(s) with an appropriate tenor.

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

- Limitations on borrowing

Under current Vietnamese law, the balance of medium- and long-term loans (including domestic loans) of a foreign-owned entity must not exceed applicable loan limits or the total investment capital amount registered on its IC. Short-term loans are generally exempt unless the borrower is developing a project in the construction stage.

- Refinancing

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

- Registration of an offshore loan with the SBV

A medium-/long-term offshore loan must be registered with the SBV before utilisation of the loan. The registration application dossier must include: (i) a registration application in a form issued by the SBV; (ii) a duly certified copy of the borrower's BRC or IC; and (iii) duly certified copies of the executed loan agreement, security documents and other finance documents, and their Vietnamese translations.

- Taking a borrower's assets as security

While a Vietnam-based credit institution can take security over either movable assets (shares/equity interest, equipment and machinery, cars, stocks and goods in circulation, deposits, accounts, receivables, insurance proceeds, etc.) or immovable assets (land use rights and assets attached to land), an offshore lender can only take security over movable assets.

- Tax applicable to interest payment in relation to an offshore loan

Interest payments received from Vietnam by an offshore lender may be subject to foreign contractor tax, which is deducted at the source. This means that the borrower has a duty to withhold and pay the tax due to the state of Vietnam.

However, this foreign contractor tax may be exempted or reduced if an offshore lender registers its head office in a jurisdiction that has signed a Double Taxation Avoidance Agreement (DTAA) with Vietnam. Currently, Vietnam has entered into DTAA's with more than 50 jurisdictions. ♦

Projects and Infrastructure

11.1 WHAT ARE THE INVESTMENT PROCEDURES APPLICABLE TO FOREIGN INVESTMENT IN OR OWNERSHIP OF A PROJECT AND RELATED COMPANIES?

The equity ownership of a foreign investor in a Vietnamese project or company must be registered in an IC granted to the company. A foreign investor investing in a project is required to apply for an IC from the licensing authority, which is usually the Department of Planning and Investment of the province where the project is located (DPI). (See section 2, “Government Approvals”, of this guide for a detailed discussion.)

In rare cases, the licensing authority may be the Ministry of Planning and Investment (MPI), and for most investments in the oil and gas sector, the licensing authority is the MOIT. The IC sets out the identities of the equity holders in the project company, its capital structure, and key information about the project. It also will set out investment incentives and tax holidays to which the project may be entitled. Depending on the size and importance of the project, the licensing authority may need to consult with higher-ranking government agencies before issuing an IC for the project.

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

- **In-principle Approvals of the National Assembly**
Certain projects of national importance require approval of the National Assembly, such as (i) projects valued at VND 35 trillion or more (approximately US\$1.67 billion) of which the state capital is VND 11 trillion or more (approximately US\$529.80 million); (ii) nuclear power projects; (iii) projects which use land from 50 hectares to 1,000 hectares, depending on the type, location and the proposed use of such land; (iv) projects which involve re-locating 25,000 people in mountainous areas or 50,000 people in other areas; and (v) projects in locations of special importance to the country for security or national defence purposes, or cultural heritage reasons.
- **In-principle Approval by the Prime Minister**
This approval is required for (i) projects in sectors such as airports, national ports, oil and gas exploration and production, mineral exploration and mining, industrial zones and export processing zones, the casino business, or the productions of cigarettes; (ii) projects with foreign investment in sea transportation, and certain investments in postal, telecommunications, Internet and network services; and (iii) projects with an investment amount exceeding VND 1,500 billion (approximately US\$71.40 million) in power, mineral production and metallurgy, construction of railways, roads and internal waterways, and alcoholic beverage production.
- **Conditional sectors**
Projects in sectors designated as “conditional sectors” for foreign investment (such as banking and finance, mining, publishing, real estate, entertainment) must meet specific conditions applicable to the relevant sector before a foreign investor may invest in that sector. (See section 2, “Government Approvals”, of this guide for more details.)

- Appraised projects

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

An assignment of equity interests in an offshore holding company for the project company's equity generally will not trigger compliance with any onshore requirements in Vietnam.

Any transfer at the ownership level in Vietnam will require amendment of the IC. This will trigger a new appraisal process. In most cases, a capital assignment will also require the approval of the relevant government authority that initially approved the project.

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

If foreign creditors enforce security over equity interests by taking ownership of equity, or if they sell equity to another foreign investor, the regulatory and appraisal requirements described above apply to whoever takes over the equity interest in the relevant project company. The BOT regulations allow for step-in rights by lenders in BOT projects; however, these step-in rights will still require additional approvals in order for the lenders to exercise them.

11.2 WHAT ARE THE RELEVANT GOVERNMENT AGENCIES OR DEPARTMENTS WITH AUTHORITY OVER PROJECTS IN THE TYPICAL PROJECT SECTORS? WHAT IS THE NATURE AND EXTENT OF THEIR AUTHORITY?

The National Assembly and Prime Minister must approve certain projects of national importance. (See opening of this section, above, for more details.)

MOIT is responsible for power, oil and gas, energy, and other important infrastructure projects, and the Ministry of Transportation (MOT) is responsible for roads, airports and other transportation projects. The Ministry of Natural Resources and Environment (MONRE) is in charge of land, water, mineral resources, other natural resources, and environmental matters. MONRE often acts through the local Department of Natural Resources and Environment (DONRE).

Local people's committees and other government authorities have the authority to issue the IC (and amendments) for most projects, including those which have been approved by the Prime Minister. The boards of management of industrial zones and export processing zones are responsible for issuing ICs and amendments to projects located in an industrial zone or an export processing zone.

11.3 WHAT GOVERNMENT APPROVALS ARE REQUIRED IN RELATION TO ENVIRONMENTAL CONCERNS FOR TYPICAL PROJECT FINANCE TRANSACTIONS? WHAT FEES AND OTHER CHARGES APPLY?

In a typical project finance transaction, the investors must prepare an EIA report and obtain the approval of MONRE (or the relevant DONRE). A fee is payable to MONRE or the relevant DONRE for review of the EIA report. These fees range from VND 6 million to VND 96 million, depending on the project type and size.

11.4 WHO HAS TITLE TO NATURAL RESOURCES? WHAT RIGHTS MAY PRIVATE PARTIES ACQUIRE TO THESE RESOURCES AND WHAT OBLIGATIONS DOES THE HOLDER HAVE? MAY FOREIGN PARTIES ACQUIRE SUCH RIGHTS?

Under Vietnamese law, natural resources belong to the people. Private parties may acquire the right to use the same and pay relevant use fees or taxes to the government, unless an exemption applies.

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

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

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

11.5 WHAT ROYALTIES AND TAXES ARE PAYABLE ON THE EXTRACTION OF NATURAL RESOURCES, AND ARE THEY REVENUE- OR PROFIT-BASED?

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

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

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

11.6 WHAT RESTRICTIONS, FEES OR TAXES EXIST ON THE EXPORT OF NATURAL RESOURCES?

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

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

11.7 CAN PRIVATE PARTIES GRANT SECURITY OVER ANY SUCH RIGHTS IN NATURAL RESOURCES, AND IN THE EVENT OF ENFORCEMENT OF THAT SECURITY WOULD THE LOCAL GRANTING BODY BE BOUND BY THAT SECURITY? WOULD CHANGE OF CONTROL IN THE BORROWER (FOR EXAMPLE, UPON EXERCISE OF SHARE SECURITY) TRIGGER A FORFEIT OF THOSE RIGHTS?

Private parties may grant security over their mining rights. (See opening of section 11, “Projects and Infrastructure”, for more details.) Prospective creditors should address this issue in a direct agreement with the government authority.

11.8 MAY PROJECT COMPANIES ESTABLISH AND MAINTAIN FOREIGN CURRENCY ACCOUNTS IN OTHER JURISDICTIONS AND LOCALLY?

A project company is permitted to open foreign currency accounts onshore provided that the funds are used for legal purposes under Vietnamese law. The circumstances in which foreign currency may be used in Vietnam are limited and the most common permissible uses for a project company would be payment for imported goods, services, or equipment, and salary for foreign employees. Vietnamese legal entities (including foreign-invested project companies) would need special permission from the SBV to open offshore accounts, such as a debt service reserve account. The SBV has generally authorised the opening of offshore debt service accounts, subject to certain restrictions. For instance, the SBV has been reluctant to authorise an offshore debt service reserve account in which more than six months of scheduled debt service is on deposit, and has objected to provisions in the account documentation permitting the offshore collateral agent to invest funds in the account in term deposits and typical low-risk investments. Moreover, the approval process can take several months, so it may not be feasible for funding an offshore debt service reserve account to be a condition precedent.

The complexity of the flow of funds and account structures of major projects typically will go further than a strict reading of Vietnamese law would permit. Consequently, the project company may seek additional legal comfort on the enforceability of these structures in the form of a government guarantee and/or a legal opinion from the Ministry of Justice (MOJ).

11.9 WHAT, IF ANY, TAX INCENTIVES OR OTHER INCENTIVES ARE PROVIDED PREFERENTIALLY TO FOREIGN INVESTORS OR CREDITORS? WHAT, IF ANY, TAXES APPLY TO FOREIGN INVESTMENTS, LOANS, MORTGAGES OR OTHER SECURITY DOCUMENTS, EITHER FOR THE PURPOSES OF EFFECTIVENESS OR REGISTRATION?

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

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

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

The government is considering new legislation that would expand the scope of benefits offered to BOT and BTO projects to those that operate according to a public private partnership model. ◆

Dispute Resolution

A. Litigation at Court

12.1 WHAT IS THE STRUCTURE OF THE COURT SYSTEM IN VIETNAM?

The court system of Vietnam has three tiers: at the top is the Supreme Court, then the provincial courts, and then the district courts.

The Supreme Court is composed of one Council of Supreme Court Judges and separate special courts, namely the Central Military Court, the Criminal Court, the Civil Court, the Economic Court, the Labour Court, the Administrative Court and respective appellate courts.

A provincial court is composed of one Committee of Provincial Court Judges and separate special courts, namely the criminal court, the civil court, the economic court, the labour court, and the administrative court.

12.2 HOW IS JURISDICTION DIVIDED IN THE COURT SYSTEM?

The Supreme Court has the power to supervise the hearings conducted by the lower courts. The Law on Organisation of the People's Courts also empowers the Supreme Court to hold supervisory and/or review trials of cases with judgments which have already taken legal effect but have been protested.

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

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

12.3 HOW DOES THE COURT CONDUCT A HEARING?

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

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

12.4 HOW CAN A JUDGEMENT BE ENFORCED?

A court judgment or decision, if not voluntarily enforced by the losing party, may be referred to the civil judgment enforcement agency. Enforcement of a judgment is normally time consuming in Vietnam due to the overload of cases that need to be enforced.

Although a private bailiff system has been introduced on a pilot basis since 2009 to support the civil judgment enforcement system, its effectiveness remains restrictive.

12.5 WHAT CHANGES ARE EXPECTED IN THE COURT SYSTEM?

It should be stressed that as a result of judicial reforms being carried out in the country, there are attempts to restructure the court system to make it more independent including the setting up of regional courts. It is expected that there will be substantial changes if the new Law on Court Organisation is passed.

B. Alternative Dispute Resolution

i. Commercial arbitration

12.6 WHAT IS THE ARBITRATION SYSTEM IN VIETNAM?

Commercial arbitration centres were set up in Vietnam by the end of the 1990s as a result of the restructuring of economic arbitration centres. Currently, there are seven commercial arbitration centres in Vietnam with about 300 arbitrators. Although Vietnamese law allows both ad hoc and institutional arbitration, ad hoc arbitration is very rare due to its lack of a formal presence and restricted decision enforcement.

12.7 WHAT TYPES OF DISPUTES ARE SETTLED BY COMMERCIAL ARBITRATION?

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

12.8 WHAT CHANGES HAVE BEEN BROUGHT ABOUT BY THE LAW ON COMMERCIAL ARBITRATION?

The enactment of the Law on Commercial Arbitration, replacing the 2003 Ordinance on Commercial Arbitration, has improved the terms of commercial arbitration. One benefit of the Law on Commercial Arbitration is that, for disputes that fall within its scope, an arbitral award arising pursuant to it may be brought directly to an enforcement agency for enforcement unless such award is cancelled by a Vietnamese court.

The following are the salient points set forth under the Law on Commercial Arbitration which address defects of the 2003 Ordinance on Commercial Arbitration:

- A foreign arbitrator may now be appointed to comprise an arbitration tribunal in Vietnam.
- There is no limitation with respect to the qualifications of an arbitrator as regards the possession of a bachelor's degree.
- An arbitration tribunal now has the power to impose interim relief measures to prevent changes in the status quo ante.
- The use of Vietnamese language is no longer required and the parties to arbitration can choose to use the most convenient language during proceedings.

12.9 IS ARBITRATION A PREFERABLE METHOD OF DISPUTE RESOLUTION?

Although it may be a preferable method of dispute resolution in other countries, arbitration is not popular in Vietnam. The Vietnam International Arbitration Centre, which consists of both local and foreign arbitrators and is the busiest arbitration centre, only handles some tens of cases per year. This may be because arbitration is not well known among businesses and there are still enforcement problems. Although enforcement of an arbitration decision is treated in the same way as a court judgment, in practice, enforcement of an arbitration award is more difficult due to the attitude of the enforcement agency towards arbitration. There is also a risk that an arbitration may be nullified by a court decision for various reasons. All these matters make arbitration less attractive, although this form of alternative dispute resolution (ADR) has strong potential in Vietnam.

ii. Commercial mediation

12.10 DOES COMMERCIAL MEDIATION EXIST IN VIETNAM?

Commercial mediation does not exist in Vietnam. As an attempt to set up an ADR along with commercial arbitration, a decree on commercial mediation is being drafted. It is expected that the decree will be passed in 2014 and a new system of commercial mediation will be brought into play to give businesses more options for dispute settlement.

iii. Enforcement of foreign arbitration awards and foreign judgments

12.11 CAN A FOREIGN COURT JUDGEMENT/ARBITRAL AWARD BE ENFORCED IN VIETNAM?

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

12.12 WHAT ARE THE OBSTACLES TO THE ENFORCEMENT OF A FOREIGN JUDGEMENT/ AWARD?

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

As a matter of Vietnamese law, a Vietnamese court is not empowered to re-hear the case but only to review the documents to ensure that they are in compliance with Vietnamese law and/ or the relevant treaty. However, since there is no established rule of interpretation on what constitutes the “basic principles” of the laws of Vietnam, in practice there is a risk that a court may use this as a basis to refuse to recognise a foreign court judgment. This risk increases if the foreign award/judgment would adversely impact on the interests of the state. To date, there is no official or public record of the number of foreign awards/judgments that have been recognised as enforceable in Vietnam. ♦

Real Estate

13.1 IS IT POSSIBLE FOR FIEs TO OWN LAND IN VIETNAM?

Technically, no. In Vietnam, land belongs to the people and the right to use the land is administered by the state for the people. Ownership is referred to as a “right to use land” (LUR) and evidence of such right is a land use rights certificate, akin to a title deed, which sets out the duration and the purpose of the land use. LURs can be granted on a long-term basis (i.e., without a specific duration of use) or for a limited duration. In general, “long-term use” LURs are only granted for a number of very limited purposes such as for residential, personal use, for households and individuals that have already been granted long-term LURs to use for the family’s production, business purposes, residential purposes, etc.

While an LUR certificate is similar to a deed in most countries, there are some key differences and uncertainties. For example, the LUR may be used only for the specific purpose for which it was granted. Failure to observe this can lead to withdrawal of the LUR. In general, the state is required to provide compensation if it withdraws or reclaims the land. However, there are certain circumstances when no compensation is required.

The term or duration of the LUR for foreign investors is usually 50 years, and may be up to 70 years (in the case of residential land or in special circumstances), but not in perpetuity.

An FIE may obtain land and have the LUR by way of (i) receiving a lease from the state with payment of land rental on an annual basis or in one lump-sum payment, (ii) receiving land allocation from the state (from 1 July 2014) with payment of a land use fee, (iii) obtaining land use rights as capital contribution by a Vietnamese party into a JV with a foreign company, or (iv) obtaining land use rights by way of acquiring a project (attached to land) from other investors.

13.2 CAN AN FIE OWN IMPROVEMENTS AND OTHER ASSETS ON LAND IN VIETNAM?

Yes, when an FIE builds assets on land for which it has an LUR, it has an ownership interest in the assets provided that it registers the assets. However, with regard to purchasing existing assets on land, the answer is more complex.

Generally, the law does not allow an FIE to directly purchase real properties for the sole purpose of buying, selling, or leasing. It does, however, allow FIEs to invest in existing real properties to improve them. To date, the extent of the improvement needed to satisfy this requirement remains unclear.

13.3 HOW IS THE LAND USE FEE AND LAND RENTAL CALCULATED AND WHEN IS IT PAYABLE?

The land use fee and land rental are based on the published land price list issued by the People’s Committee of each city or province setting out the value of land, taking into account matters such as the use of the land and its location. If at the time of the allocation or lease, the published price list is not considered to reflect the land’s market value then the land use fee or land rental will be based on what the People’s Committee considers to be the actual market value.

The land use fee is payable at the time the land is allocated. Land rental is payable annually or in one lump-sum payment. If paid annually, the rental is generally 1.5 percent of the land value, but a higher rate of not more than 3 percent may be applied for high yield land, and a lower rate of not less than 0.75 percent may be applied for low yield or agricultural land. Where the rental is paid in one lump-sum, the amount is generally the same as it would have been if the land had been allocated rather than leased.

13.4 MAY LAND USE RIGHTS BE MORTGAGED AND IS REGISTRATION OF A MORTGAGE REQUIRED?

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

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

Enforcement of a mortgage is based on the agreed terms in the relevant security contract. If enforcement cannot be carried out in accordance with the relevant security contract, the mortgagee may transfer the land use rights to a third party or request a state body to transfer the land use rights by auction and commence legal proceedings at the relevant court. ♦

Electronic Commerce

14.1 DOES VIETNAM HAVE LAWS RELATING TO ELECTRONIC TRANSACTIONS?

Vietnam has specific laws and regulations which govern the formation and performance of contracts by electronic means, although these laws and regulations need to be interpreted in line with the comprehensive legal framework that applies to commercial transactions in general (i.e., the Commercial Law and the Civil Code). The current law and regulations govern the legal validity of data messages and electronic signatures, execution and performance of electronic contracts, and security, safety, protection and confidentiality of electronic transactions. The MOIT and the Ministry of Information and Communications (MIC) are responsible for regulating electronic transaction activities.

14.2 DO E-DOCUMENTS IN COMMERCIAL TRANSACTIONS HAVE LEGAL VALIDITY?

An e-document in a commercial transaction is legally valid if the following two conditions are fully satisfied:

- i. There is reliable assurance of the integrity of the information contained in the e-document from the time that the information is first generated in the form of an e-document.
- ii. Information contained in the e-document is accessible and usable in its complete form when necessary.

14.3 IS INFORMATION IN AN E-TRANSACTION KEPT CONFIDENTIAL?

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

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

No organisation or individual is allowed to use, provide or disclose any private information or information of another organisation or individual which the former has accessed or controlled in an e-transaction without the consent of the latter. ♦

Labour

15.1 DO THE LABOUR LAWS OF VIETNAM FAVOUR THE EMPLOYEES?

The current Labour Code came into force on 1 May 2013 and replaced the 1994 Labour Code. Together with an extensive body of law comprising a number of separate decrees and circulars, the Labour Code creates a uniform legal framework for employment. Vietnamese labour laws contain very detailed provisions on a wide range of issues relating to the relationship between an employee and an employer. In general, employment relationships are highly regulated to protect the interests of employees.

Vietnamese labour laws apply to both local Vietnamese and expatriates working in Vietnam (unless an expatriate is hired by the parent offshore company and seconded to work in its subsidiary in Vietnam under an employment contract governed by a foreign law). Most importantly, while employers are encouraged to grant more favourable treatment to employees than is required by the law, it is not possible to contract out of the terms of the employment legislation.

15.2 WHAT ARE THE HIRING REQUIREMENTS?

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

15.3 WHAT ARE THE TERMS OF AN EMPLOYMENT CONTRACT?

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

The employment contract must include certain details, such as the job specification, working and rest time, salary, place of work, term of the contract, labour safety and hygiene, and social security. Apart from these compulsory items, employers can provide for additional items based on their particular needs, such as a requirement to protect the trade secrets of the employer.

An employment contract is to be signed directly between the employee and the employer. An employee may enter into employment contracts with multiple employers provided that he or she is able to fully perform the work specified in each contract. Care should be taken in drafting an employment contract to ensure that the employer is protected, to the extent possible, from the employee's multiple employment relationships. Depending on the nature of the work, the employment contract may need to include a non-competition clause, although its enforceability is still unclear (see section 15.7 for more details).

15.4 WHAT ARE THE TYPES OF LABOUR CONTRACT?

The labour laws of Vietnam provide for three types of employment contract:

- Indefinite term contracts have no fixed duration. We note that an indefinite term contract does not create an "at will" labour relationship.
- Definite term contracts have a fixed term of between 12 months to 36 months.
- Seasonal contracts or contracts for short-term replacement of absent employees have a term of less than 12 months.

If an employee continues to work after the expiration of a definite term contract or a seasonal contract, but the parties do not sign a new labour contract within 30 days after the expiration, the law provides that the expired contract will automatically convert into an indefinite term contract, with the same terms and conditions set out in the expired contract. Further, the law only permits one renewal of a definite term contract. After expiration of the renewed contract, if the employee will remain employed, the parties must enter into an indefinite term contract. This means that an employer is permitted to enter into, at most, two consecutive definite term or seasonal contracts with an employee.

These provisions protect the interests of employees and restrict the use of definite term contracts in circumstances where an employee will work for an employer on a long-term basis.

In practice, employers commonly prefer to sign definite term contracts. In the event they do not wish to retain the employee, the expiration of the definite term contract will avoid termination of the employee. It is difficult for the employer to terminate an employment contract unilaterally, unless such termination is specifically allowed under the labour laws. See discussion under section 15.5 below.

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

15.5 ARE INTERNAL LABOUR REGULATIONS MANDATORY?

Written internal labour regulations (the "Regulations", also commonly referred to as the "Employee Handbook" or the "Employee Code of Conduct") are compulsory for companies with more than 10 employees. The Regulations must be registered with the local Department of Labour, Invalids, and Social Affairs (DOLISA) and must include mandatory issues required by the Labour Code.

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

15.6 DO EXPATRIATE EMPLOYEES NEED WORK PERMITS TO WORK IN VIETNAM?

Yes, expatriate employees must obtain a work permit. There are some limited exceptions to the work permit requirement, for example, members of the board of management of joint stock companies, lawyers who have been licensed by the Ministry of Justice, individuals who come to Vietnam to handle emergency incidents, and those who are seconded to Vietnam, as long as the company is operating in one of the certain service sectors provided for under Vietnam's WTO commitments. As a practical matter, however, the exceptions are quite limited.

15.7 ARE CLAUSES ON CONFIDENTIALITY AND NON-COMPETITION ENFORCEABLE IN VIETNAM?

The labour laws of Vietnam are undeveloped with regards to confidentiality and non-competition in connection with an employee.

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

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

Non-competition, on the other hand, is not addressed at all by the labour laws of Vietnam. Employers may include a non-competition clause in the Internal Labour Regulations and/or the relevant employment contract.

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

15.8 WHAT TYPES OF MANDATORY INSURANCE ARE APPLICABLE?

Contribution to social, health insurance and unemployment is mandatory for both employer and employees.

As from 1 January 2014, the contributions made by the employer and employee to the social insurance fund are 18 percent and 8 percent respectively. For health insurance, these ratios are 3 percent and 1.5 percent respectively.

The salary used to calculate the social insurance contribution is the monthly salary of the employee stated in the labour contract. If such monthly salary is higher than 20 months' common minimum salary, then the monthly salary used to calculate the social insurance and health insurance contribution is equal to 20 times the minimum salary set by the government. As of February 2014, the common minimum salary is VND 1,050,000.

The unemployment insurance scheme applies to employers with more than 10 employees with either indefinite term employment contracts or definite term employment contracts of between 12 months and 36 months. Both the employer (1 percent of the total salary fund) and the employee (1 percent of monthly salary) must contribute to the unemployment fund. ♦

Environmental Protection

16.1 WHAT ENVIRONMENTAL REPORTS OR STUDIES MUST BE SUBMITTED FOR INVESTMENT PROJECTS IN VIETNAM?

Depending on the investment sector and/or the scope of the investment, an investor may need to submit either an environmental impact assessment report (EIA report) or an environmental protection undertaking (EPU).

The EIA report must include:

- Specifications of the project
- Operational technology of the project
- Measures to minimise any negative effects on the environment
- An undertaking to apply environmental protection measures during the construction and operation phases, and
- Opinions of the local PC and the community where the project is carried out

The EPU report must include:

- Specifications of the project site
- Details of the form and scale of production, trading and services, materials and raw materials used for the project
- Likely waste to be produced from the project, and
- An undertaking to apply measures to minimise and treat waste and comply with laws on the environment

The undertaking must be registered with the local district PC where the project is located before commencement of the project.

16.2 WHAT ARE SOME OF THE POSSIBLE ENVIRONMENT-RELATED FINANCIAL OBLIGATIONS AN INVESTOR MAY FACE IN VIETNAM?

An investor may face the following environment-related financial obligations:

- Environmental protection tax
On 1 January 2012, the Law on Environmental Protection Tax came into force. This law provides for a tax on a variety of products that have negative consequences for the environment and public health, such as gasoline, oil and grease and petroleum.
- Environmental protection fees
These must be paid by organisations or individuals discharging waste that could be harmful to the environment.
- Natural resource exploitation and restoration funds
An organisation or individual that exploits natural resources must make a deposit at a credit institution operating in Vietnam or at the environmental protection fund where the exploitation is taking place.
- Environmental protection funds
The state and each of its provinces have financial agencies funded by the government and charged with protecting the environment from further damage. ♦

Restructuring, Bankruptcy and Insolvency

17.1 WHO CAN INITIATE INSOLVENCY PROCEEDINGS?

Under Vietnam's 2004 Bankruptcy Law, the legal representative of a company is required to file a bankruptcy petition upon observing that the company has become insolvent. In addition, the following persons have the right, but are not required, to file a bankruptcy petition upon observing that the company has become insolvent:

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

There are two prongs to the definition of insolvency under Vietnamese law:

- The company has debts that are unsecured or partially secured (only the under-secured portion counts) which are due. There must be clear written evidence of the amounts confirmed by the parties and not subject to dispute.
- The creditor has demanded payment of the debts, but the enterprise is unable to satisfy such demand. The creditor must present evidence that it has demanded payment and that the enterprise has failed to repay the debt.

17.2 WHAT ARE THE EFFECTS OF COURT ACCEPTANCE OF A BANKRUPTCY PETITION?

- Bankruptcy stay

Enforcement of security against assets of the debtor is restricted until a liquidation order is entered. However, the court may allow enforcement of the secured assets at its discretion if:

- » the debts secured by such assets have matured
- » the enforcement does not significantly affect the company's operations, and
- » the reasons for enforcement are reasonable and necessary

- Preference period

Acceptance of a bankruptcy petition triggers a three-month look-back or "preference" period. Certain transactions aiming at dispersing assets of the enterprise may be ruled invalid by a court, and any recovered assets must be included in the total assets of the debtor. Transactions subject to review may include donating movable or immovable assets, liquidating bilateral contracts in which the obligations of the enterprise are larger than the obligations of the other party, repaying undue debts, granting security, and similar transactions conducted within three months prior to the date of acceptance of the bankruptcy application.

17.3 WHAT ARE THE STAGES OF AN INSOLVENCY PROCEEDING?

- Stage 1: filing of bankruptcy petition and court's acceptance of jurisdiction over the bankruptcy petition
- Stage 2: proposal of a recovery plan and business restoration of the debtor
- Stage 3: liquidation of assets and settlement of obligations, and
- Stage 4: entry of an order of bankruptcy

Where an entity has no assets to pay the basic bankruptcy fees, an immediate order of bankruptcy can be issued before moving to stages 3 or 4.

17.4 WHO MANAGES THE BANKRUPTCY PROCESS?

At the time the court accepts the bankruptcy petition, a bankruptcy committee is formed. This committee consists of a court officer, a representative of the creditors, a judgement enforcer, the company's legal representative and potentially an employee representative. The role of the committee is to prepare a list of the company's assets and creditors, propose that a judge declare certain transactions made during the preference period invalid, monitor the debtor's use of its assets, propose provisional emergency measures if necessary and execute decisions made during the proceedings.

17.5 WHAT CHANGES ARE EXPECTED TO VIETNAM'S BANKRUPTCY LEGAL REGIME?

Vietnam is currently considering a new bankruptcy law. Based on the draft that has been released for comment, the proposed revisions appear to improve the efficiency of the bankruptcy process and the legal framework for restructuring. In particular, the draft proposes that the bankruptcy proceedings will be managed by a bankruptcy executor with possible assistance of professional advisors, which should streamline the role of the bankruptcy committee. The new law would also strengthen the power of shareholders to file bankruptcy petitions. Current law provides that, absent a shareholder resolution, a group of shareholders holding 20 percent of shares may file a petition. The draft law would reduce this to 10 percent.

Another proposed change concerns the timing of the court's entry of a bankruptcy order. Currently, entry of an order of bankruptcy is the final stage of the proceedings. The draft proposes entry of a bankruptcy order prior to the liquidation of assets and settlement of obligations. This appears to be a positive change since, in practice, the liquidation of some assets may take a considerable period of time, or may be impracticable while the bankruptcy order is pending.

17.6 OUTSIDE THE FORMAL BANKRUPTCY PROCESS, WHAT REGULATORY ISSUES ARE ASSOCIATED WITH COMMON RESTRUCTURING TOOLS?

- Waiver or forbearance

Waivers and/or forbearance agreements do not require any regulatory registrations, approvals, or filings (such as registration with the SBV).

- Credit agreement amendments

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

- » Amendments to the registration of the credit agreement with the SBV will be necessary if the changes to the credit agreement include revisions regarding loan tenor, interest rate, repayment and interest payment schedule, security packages and identity of financing parties.
- » Approvals may be necessary from other regulatory bodies; for instance, if the amendments entail modifications to a corporate charter, the business registration authority must register the revised charter.

- Debt-for-equity swaps and capital cures

These tools may not be a practical solution in Vietnam because foreign investment ratios are capped in many key investment sectors, such as ports, airlines and logistics. In addition, because such remedies fundamentally alter the borrower's capital structure, onerous regulatory steps may be involved. This is particularly relevant where the borrower is already a foreign invested entity. The restructuring must ensure any revised foreign ownership stake is permissible under Vietnam laws. In most cases, amendments to the corporate charter and BRC or IC will likely be required.

17.7 CAN REORGANISATION SCHEMES IN OTHER JURISDICTIONS BE USED IN VIETNAM?

Vinashin, Vietnam's national shipbuilding company, successfully rescheduled US\$600 million in debt through an English Scheme of Arrangement. A scheme of arrangement is not an insolvency proceeding but a court sanctioned debt restructuring plan binding on all creditors. This represented the first offshore debt workout/restructuring of a Vietnamese entity. Mayer Brown JSM represented Vinashin in this watershed transaction. ♦

Intellectual Property

18.1 WHAT LAWS PROTECT INTELLECTUAL PROPERTY IN VIETNAM?

The Civil Code and the Law on Intellectual Property codify the bulk of the regulations on intellectual property. Vietnam is also a signatory to the Paris Convention, the Madrid Agreement and the Stockholm Convention of 1967, the Berne Convention for the Protection of Literary and Artistic Works, and the Geneva Convention for the Protection of Producers of Phonogrammes against Unauthorised Duplication of their Phonogrammes.

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

18.2 IS REGISTRATION REQUIRED TO PROTECT INTELLECTUAL PROPERTY?

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

18.3 WHAT IS THE DURATION OF PROTECTION FOR PATENT, COPYRIGHT, TRADEMARK, INDUSTRIAL DESIGN AND TRADE NAME?

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

Technology Transfer

19.1 WHO HAS THE RIGHT TO TRANSFER TECHNOLOGY?

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

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

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

19.2 WHAT KIND OF TECHNOLOGY MAY BE TRANSFERRED?

The legal objects of technology transfer are:

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

If the technology is also subject to protected intellectual property rights, the transfer of such technology must be conducted together with the transfer of intellectual property rights in accordance with the Law on Intellectual Property.

19.3 WHAT TECHNOLOGY TRANSFERS ARE PROHIBITED?

The following technologies are not permitted to be transferred:

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

19.4 WHAT APPROVALS OR PROCEDURES SHOULD BE FOLLOWED IN ORDER TO TRANSFER TECHNOLOGY IN VIETNAM?

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

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

19.5 CAN A FOREIGN INVESTOR CONTRIBUTE CAPITAL BY WAY OF TECHNOLOGY TO AN INVESTMENT PROJECT?

Foreign investors can contribute capital to an investment project by transfer of technology. The value of such capital contribution will be agreed by the parties in the technology transfer contract. ♦

Government of Vietnam and Charts of Major State Agencies

20.1 OVERVIEW OF THE GOVERNMENT OF VIETNAM

The Socialist Republic of Vietnam is a single-party state. Only political organisations affiliated with or endorsed by the Communist Party are permitted to contest elections.

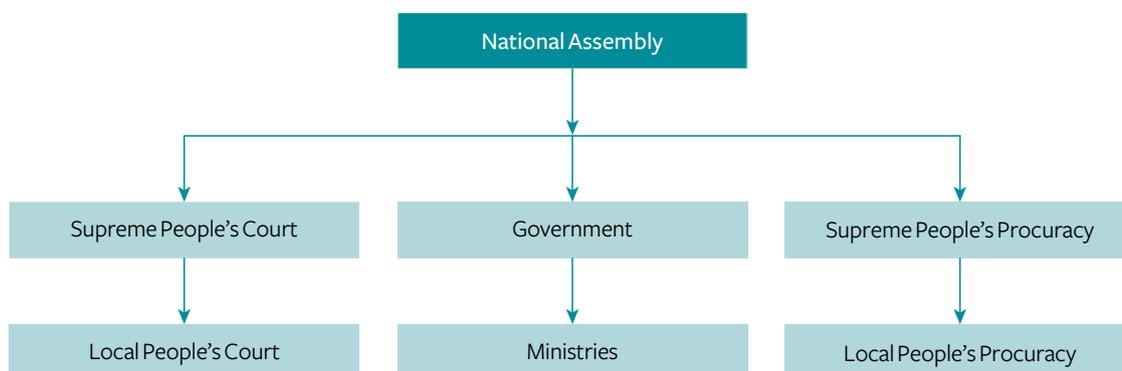
The President of Vietnam is the titular head of state and the nominal commander in chief of the military of Vietnam, chairing the Council on National Defence and Security. The Prime Minister of Vietnam is the head of government, presiding over a council of ministers.

The National Assembly of Vietnam is the unicameral legislature of the government, composed of 498 members. It is superior to both the executive and judicial branches. All members of the council of ministers are derived from the National Assembly. The Supreme People's Court of Vietnam, which is the highest court of appeal in the nation, is also answerable to the National Assembly.

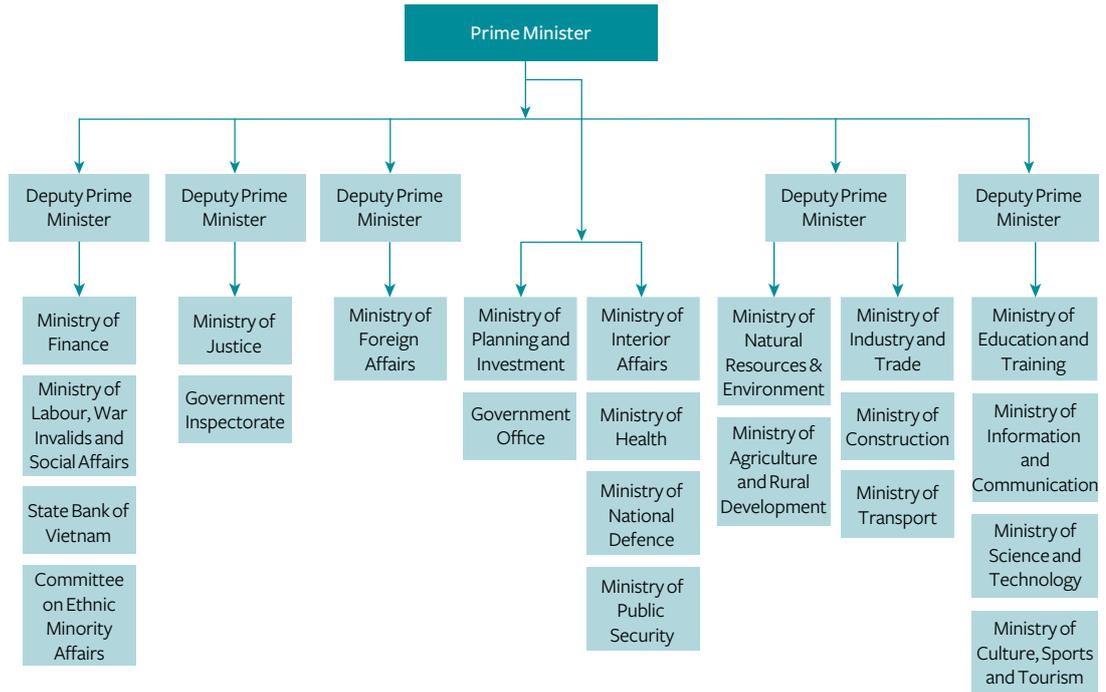
The General Secretary of the Communist Party is perhaps one of the most important political leaders in the nation, controlling the Party's national organisation and state appointments, as well as setting policy.

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

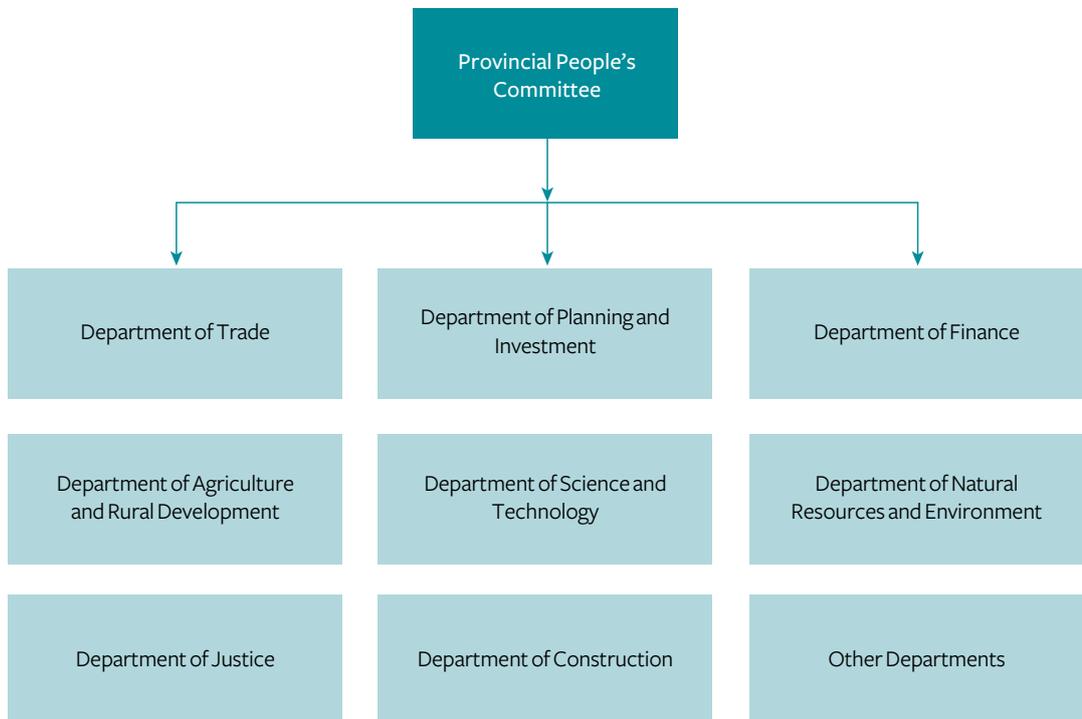
20.2 NATIONAL STRUCTURE



20.3 GOVERNMENT OF VIETNAM



20.4 LOCAL STRUCTURE



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