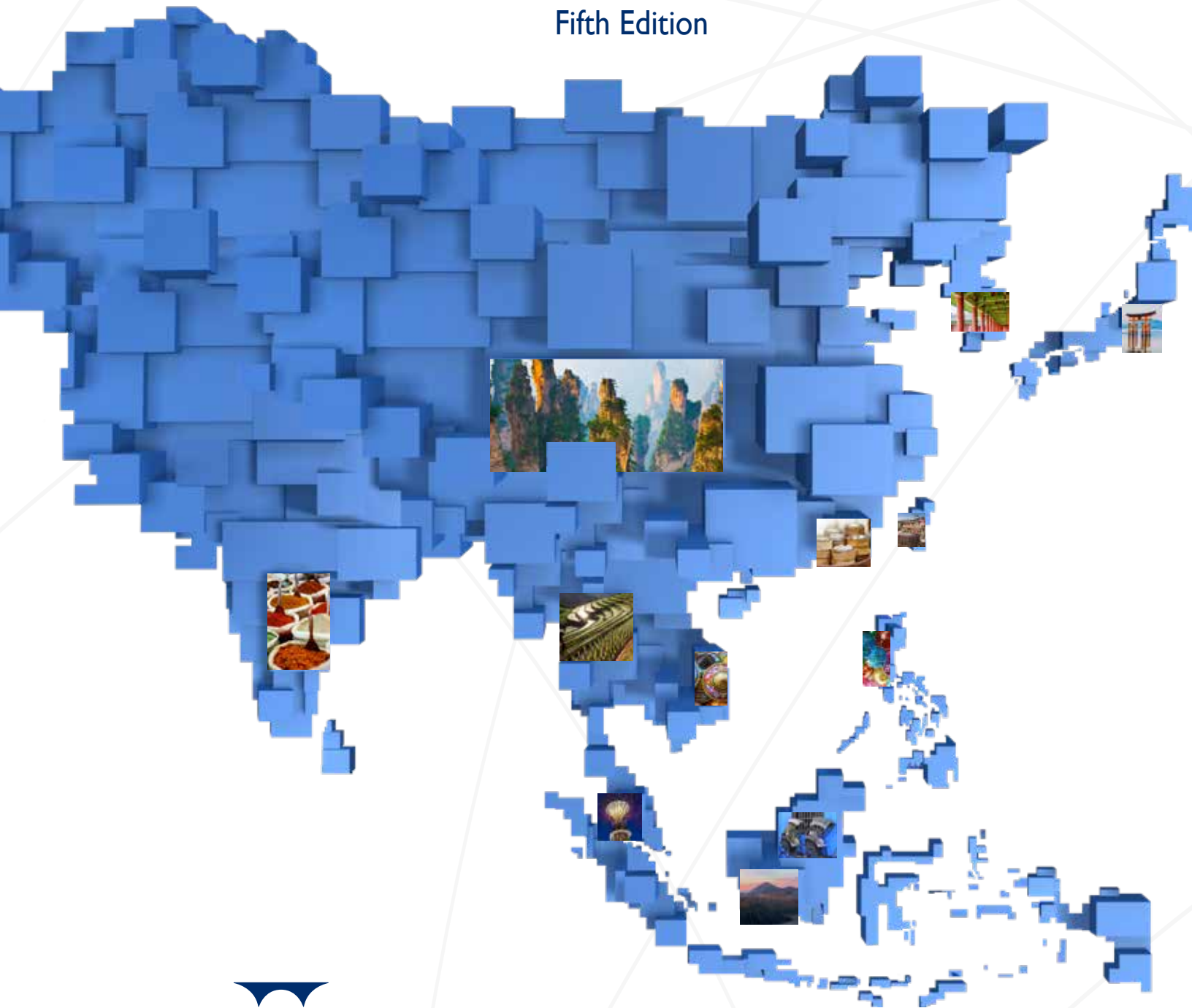


ASIA

A Legal Guide for Business
Investment and Expansion

Fifth Edition



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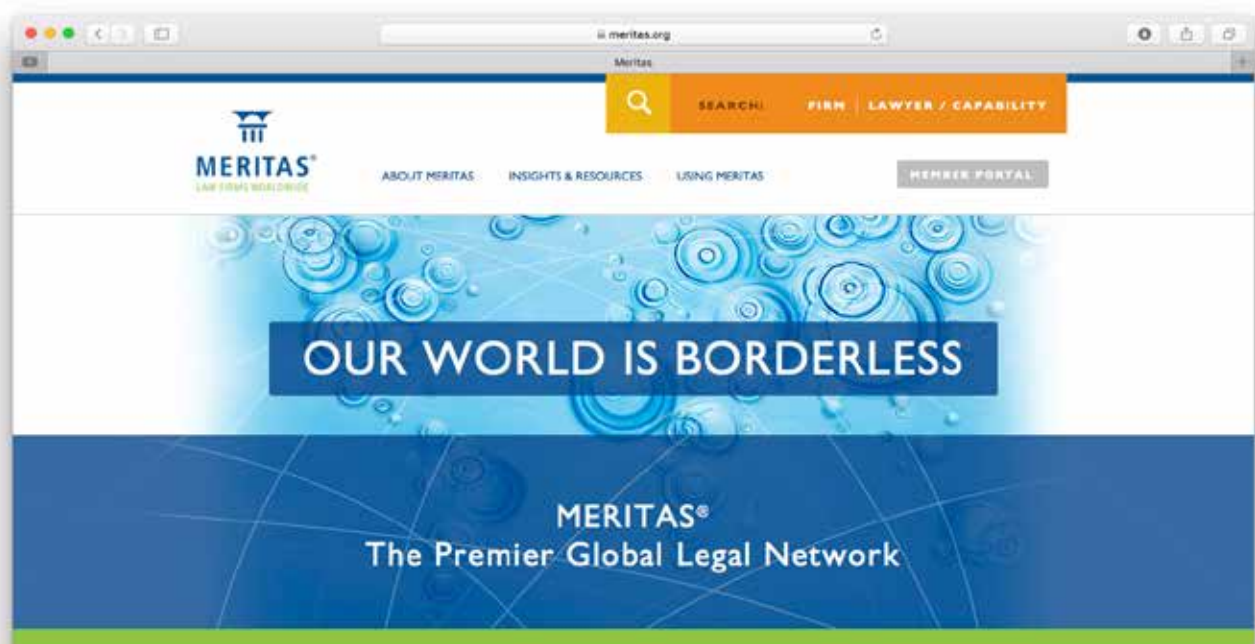
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The Law on Enterprises (“LoE 2014”) was passed by the National Assembly on 26 November 2014. It took effect on 1 July 2015, replacing the Law on Enterprises 2005. Together with the Investment Law 2014, also effective 1 July 2015, the LoE 2014 introduced a comprehensive legal framework for establishing, organizing and operating companies in Vietnam.

1. What role will the government of Vietnam play in approving and regulating foreign direct investment?

The Ministry of Planning and Investment (“MPI”) is the central administrative body that oversees all investment activities, including foreign investment. The MPI is responsible for drafting legislation, developing policies, providing guidance and consultation, and coordinating with other authorities. The MPI also serves as the contact point for foreign invested enterprises (“FIEs”) should problems or questions arise.

However, it is important to understand that the Department of Planning and Investment (“DPI”), under provincial/ city People’s Committees directly administers foreign investment activities and issues investment registration certificates (IRCs) for almost every type of foreign investment within their province/city. An IRC is required for every foreign-invested investment project. Some projects, especially those that are termed “conditional,” important projects or projects that are very

large, require in-principle approval, sometimes by the National Assembly, sometimes by the Prime Minister, or more often by the provincial/ city People’s Committees, prior to issuance of an IRC.

The Prime Minister establishes management boards to administer FIEs that are located in an industrial zone, high-tech zones, economic zones, or export processing zones (generally “IZ”). An FIE in an IZ is subject to the IZ’s rules on import/export, environment, labor, etc., in addition to the general rules of the government and the MPI. An IZ management board is authorized to issue an IRC for a project within its administrative area.

After the IRC is issued, the foreign investor will apply for and obtain an Enterprise Registration Certificate (“ERC”) from the DPI. The IRC approves the investment project that the foreign investor is permitted to conduct in Vietnam. Meanwhile, the ERC permits the foreign investor to establish and operate the company. The foreign investor can conduct business only after obtaining both the IRC and the ERC.

Other more specialized ministries may be involved in foreign investment. For example, in high-tech projects, the Ministry of Science and Technology has an administrative role. It develops industry-specific policies for foreign investment and assures that the application of foreign investment regulations is in harmony with the industry’s own rules.

2. Is it possible for foreign investors to conduct business in Vietnam without a local partner? What corporate structure is most commonly used and best for foreign investors?

In general, foreign investors and domestic investors are treated equally in the choice of direct investment forms and in the percentage of ownership. Conditions on certain forms of investment apply to every investor. However, there are some conditions that are imposed only on foreign investors. For example, in certain fields and industries a cap is placed on the percentage of foreign shareholding. Investment conditions are now more relaxed. Currently, the cap on foreign capital contribution is as follows:

- In commercial services, the cap is determined in accordance with Vietnam’s international undertakings. For example, under Vietnam’s WTO commitments:
 - In telecommunications services, the cap is 49% for facilities-based, 50% for internet access services, 70% for certain virtual private networks and value-added services, and 65% for other non-facilities-based telecommunications services;
 - In container-handling services (except services provided at airports) the cap is 50%.
- The cap may be different in certain specialized regulations, such as the legislation on civil aviation, the legislation on publications and the press.

In fields and industries that are not subject to any cap (which includes most fields and industries), foreign investors can conduct business without a local partner. The corporate structures available for a wholly foreign-owned enterprise are as follows:

- For a single investor, sole proprietorship or a one-member limited liability company;
- For two or more investors, two to 50 member limited liability company, partnership, or joint stock company.

The limited liability company is the corporate structure most commonly used by foreign investors.

3. How does the Vietnamese government regulate commercial joint ventures composed of foreign investors and local companies or individuals?

Foreign investors are entitled to enter into joint venture contracts (“JVC”) with local firms. Parties to a JVC include:

- Foreign party, comprised of all foreign founding investors/ shareholders, and
- Vietnamese party, comprised of all Vietnamese founding investors/ shareholders.

The JVC must address the corporate form, business lines, charter capital, schedule to implement the project, term of the project, investment location, rights and obligations of the parties, rules of financial management.

A joint venture is licensed for a specific project and term. The maximum term of a project is generally 50 years, with minor exceptions. A joint venture enterprise may concurrently carry out a number of separate projects.

In a few fields and industries, such as banking, securities, and tourism, the Vietnamese party to a joint venture must itself be licensed to engage in the proposed business. In some fields and industries (e.g., maritime transport services, logistics, etc.), both the foreign investors and local investors (to a joint venture) must be separately licensed to carry out the proposed business.

The LoE 2014 provides detailed rules on the governance of each corporate form.

4. What specific laws will influence the commercial relationship between local agents/distributors and foreign companies?

All civil transactions, including trading and business activities, are generally governed by the Civil Code (“CC”). The relationship between a local agent and a foreign company is mainly governed by the Commercial Law (“CL”) and its implementing regulations.

There are no specific regulations that govern the relationship between a local distributor and a foreign company.

Generally, “distribution” and “trading” by an FIE are permitted, except for a list of specific products which are restricted to foreign investors (e.g., tobacco, pharmaceutical products, books, rice). The process for obtaining a distribution license does not always go smoothly, because the government’s concern is that foreign companies will only set up distribution companies in Vietnam rather than develop or invest in manufacturing activities which bring more economic and social benefit to the country.

5. In what manner does the Vietnamese government regulate proposed merger and acquisition activities by foreign investors? Are there any specific areas or industries that are heavily restricted or completely prohibited to foreign investors?

Generally, a foreign investor may acquire up to 100% of a domestic company except for industries that are subject to foreign ownership caps as noted in Question 2, and for those state-owned enterprises in which the government wants control, as mentioned below.

An acquisition involving a foreign buyer must be registered and approved by the licensing authorities. A foreign investor must apply for prior approval from the licensing authorities with respect to a proposed acquisition of a Vietnamese company if: (i) the target company engages in a business that is conditional for foreign investors, or (ii) as a result of the proposed acquisition, the total foreign ownership accounts for 51% or more of the target’s total charter capital. After the foreign investor has obtained approval for the acquisition from the licensing authorities, the target company will be able to register for amendment of its corporate documents to reflect the new ownership structure.

Decision 58/2016/QĐ-TTg of the Prime Minister, dated 28 December 2016, identifies certain state-owned enterprises (“SOE”) in which the State will retain 100% interest. These include SOEs in the following sectors:

- Manufacturing and supplying industrial explosives;
- Transmitting, dispatching the national power system, multi-purpose hydropower and nuclear

- power particularly important to the economy and society and if associated with national defense and security;
- Managing, operating the infrastructure system of national and urban railways; controlling national and urban railway transportation;
 - Air traffic services, aeronautical information services, search and rescue services;
 - Assurance of maritime safety;
 - Providing public postal services;
 - Lottery business;
 - Publishing (excluding printing and publishing);
 - Printing and manufacture of banknotes and gold bars, golden souvenirs;
 - Map measurement serving national defense and security; and
 - Credit extension that serves economic and social development, safety of the banking system.

Banking and insurance businesses are heavily regulated with respect to foreign investment. The acquisition of shares of an entity in the banking or the insurance sector by a foreign investor is subject to prior approval by the State Bank of Vietnam (“SBV”) or the Ministry of Finance, as the case may be. There are certain conditions that a foreign investor must meet in order to obtain such approvals.

The following businesses are completely prohibited to foreign investors:

- Trading drugs;
- Trading chemicals or minerals of types prescribed in laws;
- Trading specimens of wild fauna or flora included in schedule I of the Convention on International Trade

- in Endangered Species and specimens of wild fauna or flora prescribed in laws;
- Prostitution;
- Trading human, tissues or parts of human body; and
- Asexual reproduction activities.

6. How do local labor statutes regulate the treatment of employees and expatriate workers?

The Labor Code sets forth rules for the employment of both Vietnamese and expatriate employees who are working in Vietnam. In general, working conditions under the law and rights and obligations under a labor contract are the same for both Vietnamese and expatriate employees. There is an unresolved issue concerning whether Vietnamese labor rules apply to an expatriate who is working in Vietnam but is employed by a foreign company located offshore.

There are several distinctions between the employment of an expatriate and the employment of a Vietnamese citizen.

Work Permits for Expatriate Employees

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

- S/he is a contributing member or owner of a limited liability company in Vietnam
- S/he is a member of a board of directors of a joint stock company in Vietnam
- S/he is either the head of a representative office or of a project office of an international organization or

nongovernmental organization in Vietnam (On a related note, a chief representative of a foreign trader’s representative office is not included in this category and is required to obtain a work permit)

- S/he enters into and stays in Vietnam for a period less than three consecutive months in order to offer services
- S/he enters into and stays in Vietnam for less than three consecutive months to handle an emergency situation or is involved in a complicated technical or technological issue that affects production/business activities and cannot be adequately addressed within Vietnam
- S/he is a foreign lawyer having a certificate issued by the Ministry of Justice to practice law in Vietnam
- S/he is a foreign pupil/student who is studying in Vietnam (the employer must give seven days advance notice to the provincial labor authorities in such situations)
- S/he is seconded to Vietnam as permitted under Vietnam’s WTO commitments
- S/he provides expert and technical consultancy services or undertakes other tasks with respect to research, formulation, evaluation, monitoring and assessment, management and implementation of a program or project using official development aid (“ODA”)
- S/he obtains a media license issued by the Ministry of Foreign Affairs
- S/he is appointed by a competent authority in a foreign country to teach at an international school which is managed by a foreign diplomatic office or an international organization in Vietnam

- S/he is a volunteer working in Vietnam on a voluntary basis and without entitlement to a salary in order to implement an international treaty to which Vietnam is a signatory
- S/he is an expert, manager, executive or technical worker, and works in Vietnam for a period not exceeding 30 days and the accumulated time not exceeding 90 days per annum
- S/he performs an international treaty to which Vietnam is a signatory
- S/he is a foreign pupil/student who is studying in a school/training institution in a foreign country having an internship arrangement with bodies, organizations, or enterprises in Vietnam
- S/he is a relative of a member of a foreign consular body licensed by the Ministry of Foreign Affairs
- S/he has an official passport to work for state bodies, political organizations, or socio-political organizations
- S/he is exempt from a work permit and the exemption is recognized by the Prime Minister pursuant to a proposal by the Ministry of Labor, Invalids and Social Affairs.

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

In order for an expatriate to be issued a work permit in Vietnam, an employer must first prepare a plan to recruit expatriates for each job for which Vietnamese do not qualify, and file such plan 30 calendar days or more prior to the proposed recruitment. The plan must be filed and approved by the Chairman of the provincial People’s Committee.

To receive a work permit, an expatriate employee is required to present a health certificate, police record, certificates of professional expertise, and education certificate, among other documents.

The maximum duration of a work permit is two years, and a work permit is no longer extendable. Once a work permit expires, a new dossier for a new work permit must be made.

Compulsory Social and Unemployment Insurance for Vietnamese Employees

Social insurance is compulsory for any Vietnamese employee who works pursuant to a labor contract of indefinite term or a term of one month or more. Both the employer and the employee are required to contribute to the state social security fund. Contributions are based on the gross monthly salary that is actually payable to the employee. It is capped at 20 times the basic minimum salary. Currently, the employer contributes 18% and the employee contributes 8% of the employee’s salary. Now, social insurance is also compulsory for expatriate employees who work under a valid work permit or professional certificate/permit.

Unemployment insurance only applies to a Vietnamese employee who has a labor contract either of indefinite term or a term of three months or more. The employer and the employee each contribute 1% of the employee’s gross monthly salary calculated up to the salary cap mentioned above. Contributions are based on the employee’s gross monthly salary and are also capped at 20 times the regional minimum salary. Expatriate employees are not subject to unemployment insurance.

Both expatriate and Vietnamese employees are subject to mandatory health insurance coverage if they work under a labor contract of indefinite term or a term of three months or more. Contributions are based on the employee’s gross monthly salary and are also capped at 20 times the basic minimum salary. The employee contributes 1.5% while the employer contributes 3% of the employee’s salary.

The Labor Code sets forth rules for the employment of both Vietnamese and expatriate employees who are working in Vietnam. In general, working conditions under the law and rights and obligations under a labor contract are the same for both Vietnamese and expatriate employees. There is an unresolved issue concerning whether Vietnamese labor rules apply to an expatriate who is working in Vietnam but is employed by a foreign company located offshore.

There are several distinctions between the employment of an expatriate and the employment of a Vietnamese citizen.

7. What role do local banks and government agencies play in regulating the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Opening Bank Accounts

A foreign investor can transfer capital or foreign currencies into Vietnam via foreign currency accounts opened at licensed credit institutions, and then it can convert such foreign currency into Vietnamese dong. Depending on the investment purpose, a foreign investor is required to open an indirect investment capital account (“IICA”) or a direct investment capital account (“DICA”) at a licensed bank in Vietnam.

The IICA must be a VND-account and it can be used only for indirect investment purposes: (i) capital injection, purchase and sale of shares, stakes in Vietnamese companies without involvement in administration and operation of such Vietnamese companies; (ii) purchase and sale of bonds and other type of securities on the Vietnamese securities markets; (iii) purchase of VND-valuable papers issued by Vietnamese entities; (iv) entrustment of investment in VND via a fund management company, securities company or other entities that are licensed to conduct investment entrustment; (v) capital injection or transfer of stakes in securities management fund or a fund management company where the foreign investor is not involved in administration and operation of such funds or companies; (vi) other indirect investment forms permitted by law.

If a foreign investor is involved in the management of a foreign invested enterprise (“FIE”) and if the foreign investor is a shareholder of such FIE, the FIE (not the foreign investor) is required to open DICA (not the IICA) either in US\$ or in both US\$ and VND. The DICA in US\$ can be used for the following purposes:

- Receiving an amount of direct invested capital in foreign currency from foreign and Vietnamese investors contributing to FIEs;
- Receiving drawdown and loans in foreign currency from domestic and overseas term loans of an FIE;
- Receiving proceeds generated from the transfer of the value of invested capital and investment projects;
- Receiving amounts of foreign currency from foreign currency payment accounts of FIEs and foreign investors, opened at licensed banks;
- Receiving other lawful amounts in foreign currency generated from the foreign direct investment activities in Vietnam;
- Repaying principal, paying interest and charges for FIEs’ term loans in foreign currency;
- Transmission of foreign currency amounts to foreign currency payment accounts of FIEs and foreign investors, opened at licensed banks;
- Selling foreign currency amounts to licensed banks in order to deposit into VND-accounts of FIEs and foreign investors;
- Paying for the transfer of invested capital and investment projects;

- Paying for the remittance of profits and other legal receipts in foreign currency, generated from their foreign direct investment activities, out of Vietnam;
- Paying for the transfer of foreign investors’ direct invested capital in foreign currency out of Vietnam in case of FIEs’ dissolution or termination; transfer of the ownership of invested capital and investment projects; reduction in invested capital or completion, liquidation and termination of investment projects as stipulated by investment laws; and
- Other legal receipts paid in foreign currency regarding foreign direct investment activities in Vietnam.

Remittance of Profits/Loans

Profits that may be remitted abroad include (i) profits distributed or received in a fiscal year as recorded in the audited financial statement and in annual tax return, and (ii) retained earnings minus investment capital which the foreign investor has used or which the foreign investor has committed to reinvest in Vietnam. The law imposes an obligation on the foreign investor to inform the local tax authority of its intention to remit profits abroad at least seven (7) working days prior to the proposed date of remittance. Below are notable conditions and requirements to remit profits abroad:

- A foreign investor is entitled to remit its profits abroad once the fiscal year ends and after the FIE has fulfilled its financial and tax obligations to the government of Vietnam. This occurs after the FIE has filed its audited financial statement and its annual tax return with the tax authorities.

- A foreign investor is not allowed to remit its profits abroad if there are any accumulated losses in the audited financial statements even if the FIE has profits in the relevant fiscal year, or makes any interim dividend payment.

Any offshore loans (long-term and medium-term) must be registered with the SBV. A drawdown of offshore loans can be conducted only after the borrower has registered such offshore loans with the Central Bank. Furthermore, the borrower is not allowed to repay its offshore loan if it fails to register it with the Central Bank.

Purchase of Foreign Currencies

Generally, access to foreign exchange is not difficult. Foreign investors have the right to purchase foreign currency. Foreign employees who have foreign currencies may make bank transfers or carry foreign currencies abroad. If foreign employees have lawful income in Vietnamese dong, they are entitled to convert Vietnamese dong into foreign currencies in order to transfer or carry them abroad. Proof of payment of tax may be required.

In the case of an indirect investment offshore, such as purchase of foreign shares, both Vietnamese and foreign investors must meet conditions set by the SBV. The SBV approves such indirect investment on a case-by-case basis.

8. What types of taxes, duties, and levies should a foreign investor expect to encounter in negotiating an inbound investment in Vietnam?

The main taxes that may affect a foreign-invested enterprise are:

- Corporate income tax
- Value added tax
- Personal income tax

- Import/export duties
- Foreign contractor tax
- Special consumption tax

We will not analyze each of them in detail. Briefly, Vietnam will gradually reduce import duties according to its international commitments and agreements. Vietnam applies the same VAT and CIT rates to both local and foreign entities.

Corporate Income Tax (“CIT”)

CIT rate. The common CIT rate for foreign invested enterprises and local enterprises is 20%. If a project meets specific conditions and criteria as set out in the Law on CIT and in the Investment Law, an investor may enjoy a lower tax rate (10%, 15%, or 17%). Subject to location, sectors and industries, the maximum period to enjoy the preferential CIT rate may vary.

The CIT rate applicable to exploration and exploitation activities of oil, gas and other rare natural resources ranges from 32% to 50%.

Tax holidays. Subject to the nature, location and scale of a project, an enterprise may be entitled to a full tax holiday ranging from two to four years commencing from the first year it has taxable income or from the date on which it receives a certificate of high-tech enterprise or a certificate of agricultural enterprise with high-tech application.

Tax reduction. A further 50% tax reduction applies to certain projects. The period of reduction can be from four years to nine years commencing from the year in which the full tax holiday ceases.

Value Added Tax (“VAT”)

There are three rates: 0%, 5% and 10%. In most cases, the rate is 10%. The 0% rate applies to exported products and services.

Personal Income Tax (“PIT”)

For tax purposes, a Vietnamese tax resident is a person who:

- Stays in Vietnam for 183 days or more in a calendar year or within a period of 12 consecutive months or has lease contract(s) with an aggregate term of 183 days or more within a tax assessable year; or
- Has registered his/her residential address in Vietnam; or
- Has a temporary residence card.

A Vietnamese tax resident must pay income tax on his/her worldwide income. The tax brackets are progressive and the top bracket, which applies to monthly income over vnd 80 million (usd 1.00=vnd22,700), is 35%.

If a person is not a Vietnamese tax resident as defined above, his/her income is taxed on the basis of gross income generated in Vietnam at the following flat rates:

Rate Income From

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

Import/Export Tariff

Vietnam applies both an ad valorem and a specific rate system. Depending on each kind of goods as identified in the HS code, the preferred tariff rate and the specific tax amount may vary. Import duties are subject to frequent change. In addition to the preferred tariff, Vietnam also accords a better tariff to certain goods that originate from a country that has a trade agreement with Vietnam (e.g., ASEAN Free Trade Agreement, China-ASEAN Agreement, Bilateral Trade Agreement with the U.S., etc.).

Under WTO, Vietnam committed to revise its duty rates. Generally speaking, Vietnam committed to reduce import duties within a phase-out period and has generally completed the phase-out.

Export duties are charged only on a few items, basically natural resources such as minerals, forest products, and scrap metal. Rates range from 0% to 45%.

Foreign Contractor Tax (“FCT”)

The FCT applies to a foreign entity or individual (foreign contractor) that does business in or receives income from Vietnam on the basis of an agreement between the foreign contractor and a Vietnamese party or between the foreign contractor and a foreign subcontractor. The FCT liability is also imposed on:

- A foreign contractor that sells goods within Vietnam in the form of import-export at site (i.e. deemed import-export activities);
- A foreign contractor that distributes goods within Vietnam or which supplies goods under the Incoterms delivery clause whereby the supplier remains responsible for risks relating to goods within Vietnamese territory;

- A foreign contractor that partially or fully distributes goods or provides services in Vietnam where the foreign contractor remains an owner of such goods or remains responsible for the distribution, advertisement, marketing expenses and quality of goods or services, or that has the right to fix the selling prices;
- A foreign contractor, through a Vietnamese individual/entity, that carries out negotiation and execution of a contract in the name of a foreign entity/individual; and
- A foreign contractor that exercises the exporting, importing, distribution rights in Vietnamese market or which purchases goods, on behalf of Vietnamese traders, in order to export.

The rules on assessing taxes on a foreign contractor that is an entity are vastly different from the rules applicable to a foreign individual contractor. Briefly, VAT and CIT apply to an foreign institutional contractor. VAT and personal income tax rules applicable to a foreigner as discussed above also apply to a foreign individual contractor. A foreign institutional contractor can pay tax by one of three methods: declaration method, direct method, or the hybrid method.

If an entity foreign contractor fails to meet conditions to apply the declaration or the hybrid methods, it must apply the direct method. In such case, the Vietnamese party must withhold the FCT before paying the foreign institutional contractor. Depending on the nature of the transaction and services, each component of the FCT—VAT and CIT—may vary. However, generally, the combined rate is about 10%.

Special Consumption Tax (“SCT”)

There are eleven goods (e.g., cigarettes, beer, alcohol, automobiles, airplanes, yachts, etc.) and six services (dancing halls, karaoke bars and massage parlors, casinos and gaming with prizes, betting businesses, golf businesses, and lottery businesses) that are subject to SCT. The SCT rates range from 10% to 150%. With effect from 1 January 2018, the SCT rates imposed on large-scale engine vehicles (with cylinder capacity of 3,000 m³ or more) having fewer than 24 seats will be increased. The highest rate will still be 150%.

9. Do comprehensive intellectual property laws exist in Vietnam and do they provide the same levels of protection for foreign investors as local companies? Will local courts and tribunals enforce IP laws uniformly, regardless of the nationality of the parties?

Vietnamese law on the registration of intellectual property rights (“IPRs”) conforms to international norms.

The IPRs recognized in Vietnam are as follows:

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

Domestic Laws and International Agreements

Vietnam has a number of comprehensive and modern laws on the administration and regulation of IPRs. Vietnam is a member of most international conventions and treaties, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”).

Enforcement of IPRs in Vietnam

When the intellectual property rights of an entity are infringed, the entity can follow either administrative or judicial procedures in order to enforce its rights. However, Vietnam’s protection of IPRs may not satisfy the expectations of some manufacturers and IPR holders. Enforcement often needs to be conducted promptly; however, delays frequently occur because there are time-consuming procedures and a lack of human resources within enforcement bodies. Those factors interfere with the effort to stop counterfeiting, especially against small counterfeiters, ineffective.

One matter that remains unresolved is the lack of a mechanism to recognize well-known (or famous) marks in Vietnam. When an application for registration of a mark by the owner of a well-known trademark is rejected because it has already been applied for or registered, the owner may attempt to have its trademark recognized by filing a complaint with Vietnam’s National Office of Industrial Property (“NOIP”). The complaint must be accompanied by certain required documents and other evidence. If the complaint is successful, the owner’s mark will be recognized as well-known. In such cases, the prior

application or registration will be rejected or cancelled. However, there is no certificate granted to the owner to certify that its mark is a well known mark, which leaves the mark open to future challenge.

While there is no legal difference in the enforcement of IPRs on behalf of foreign or domestic holders, far more foreign IPR holders than domestic IPR holders seek enforcement of their IPRs. Regardless of the IPR holder’s nationality, enforcement is weak. However, greater numbers of domestic IPR holders are seeking to enforce their rights. Monetary fines have recently increased, but are still not adequate enough to prevent initial and recurring violations.

10. If a commercial dispute arises, given the choice between local courts or an international arbitration venue, which would offer a more beneficial forum for fair dispute resolution for foreign investors?

A dispute involving a foreign investor or an FIE can be settled by any one of the following methods:

- Vietnamese courts
- Foreign or international arbitration
- Vietnamese arbitration

Of note, only a Vietnamese court can settle a dispute involving real estate.

It is difficult to recommend a specific forum to resolve disputes for all types of commercial transactions. No forum is particularly or obviously superior to another. The advantages and disadvantages of a particular dispute resolution forum will vary depending on the nature of the transaction and

the parties. The following matters relating to Vietnamese commercial arbitration are subject to the court’s jurisdiction:

- Appointment or change of arbitrators
- Application, change or cancellation of injunctive relief
- Cancellation of an arbitral award
- A claim against an arbitral award based on the validity or enforceability of the arbitration agreement, or the authority of the arbitration tribunal
- Admissibility of evidence
- Invitation of witnesses
- Registration of an arbitral award
- Other civil matters as stipulated by laws

Some legal commentators believe that arbitration proceedings offer foreign investors a better forum for dispute resolution. Arbitration can take place in Vietnam or abroad. Arbitration procedures are more simple and straightforward than litigation. The parties have a hand in selecting the arbitrators. The arbitral award is final and binding. The parties are entitled to select the applicable law, settlement procedures, language of arbitration, place of arbitration, etc. In addition, after a recognition process by a competent court, the arbitral award can be enforced. This means that an arbitral award can be enforced in the same way as a judgment of a court.

Judicial dispute resolution is more conventional, but it is not without problems. A judgment issued by a foreign court – except for courts in a few former Soviet-bloc countries – cannot easily be enforced. If the court is domestic, it may not be impartial, especially if one party is state-owned.

Whether an arbitral award or a court judgment, there is a low rate of enforcement in Vietnam. Enforcement remains a large hurdle to overcome.

11. What recommendations can you offer for how best to negotiate and conduct business in Vietnam?

It is difficult to provide general “one-size-fits-all” advice, as each business situation is unique. However, the following suggestions may be helpful.

- Research and learn the local market, its legal framework, tax system, and local partners. These are preliminary and necessary steps in developing a good and feasible business plan.
- Cooperation with a local partner is an option for foreign investors to gain access to the market, especially where the proposed business is conditional or is restricted to less than 100% foreign ownership.
- Participating in social events helps develop social connections. In Vietnam, trust is essential. Commercial deals are often done after a social relationship has been established.
- Being patient is a factor in successful negotiations. The negotiation will be long and take numerous turns if it involves a state-owned enterprise. Alternative proposals, based on realistic and mutually beneficial solutions, should be explored.

12. What practical advice can you share with investors who decide to do business in Vietnam?

Impatience is a factor in many unsuccessful deals. Foreign investors should take the time to find a compatible partner and to understand the local market and environment. This process can be time-consuming, but worthwhile in the long run. It may be desirable to set up a representative office in the country for purposes of facilitating initiatives, arranging logistics, promoting relationships with local partners and potential customers, and establishing connections with relevant governmental authorities.

The selection of a consultant or consulting firm is also important. For matters involving governmental agencies, it may be desirable to hire a consulting firm that has experience with those particular ministries. For technical matters, there are several international firms that provide technical assistance concerning the licensing process and other matters. Engaging a firm that has commercial expertise, experience in dealing with government agencies, technical knowledge, and deep insight into the industry should help investors in the longer term.

13. Does Vietnam currently have any data privacy laws or regulations? How do they affect business activities?

Vietnam does not have specific legislation governing data privacy. In principle, the right to privacy of individuals is protected under Article 38 of the Civil Code.¹ Individual personal information is also protected by some sectoral laws in some areas such as consumer protection legislation, banking or e-commerce regulations.

The law on Cyber Information Security provides protection for personal information transacted on the internet. It also requires individuals and organizations, including business entities, to protect personal information that they have collected for use in online transactions.

Generally speaking, even though Vietnam does not have any comprehensive legislation dealing exclusively with data privacy, current law requires that the collection, storage, use and publication of information that relates to the private life or personal privacy of an individual is subject to the consent of that individual, except in cases as stipulated by law.

14. Are there any recently passed laws or regulations in Vietnam that are expected to affect the activities of foreign investors in the future?

In an effort to reform the business environment, on September 20, 2017, the Ministry of Industry and Trade issued Decision no. 3610a/QĐ-BCT to abolish 675 business conditions in various business sectors which are under the MOIT’s administration, including several highlighted industries such as petrol and oil, gas, liquor, cigarettes, food, electricity, temporary import for re-export of frozen food, commercial franchises, logistics, multi-level marketing, e-commerce and industrial explosives (including also disposal activities). The number of abolished business conditions is equivalent to 55.5% of total conditions on business. This is by far the largest procedural reform ever in the history of the Ministry of Industry and Trade. As a result, many “sub-licenses” will be abolished.

¹ Law no. 91/2015/QH13, adopted by the National Assembly on 24 November 2015.

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