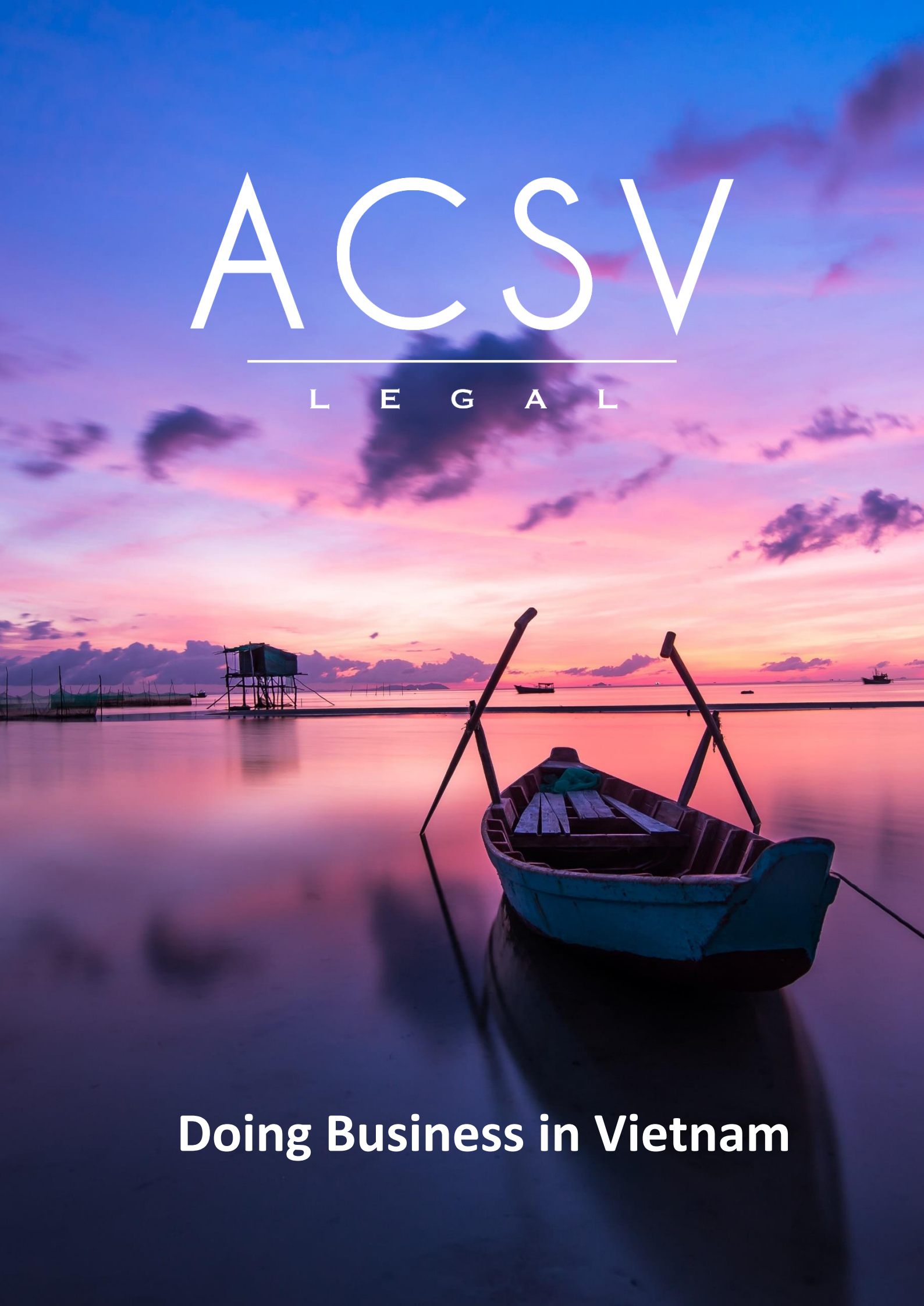

Doing Business in Vietnam

Doing Business in Vietnam

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Introduction

INTRODUCTION

Vietnam is a dynamic country with an economy that continues to grow and modernise. Since Vietnam has joined the WTO in 2007, investment opportunities in Vietnam have developed immensely, as the country opened up gradually to previously restricted industries and sectors to meet WTO commitments.
Vietnam has a lot to offer, but there are undoubtedly many challenges in doing business here. It is a unique country and provides extensive opportunities if you are willing to spend the time to understand the market and the people living and working in it.
Nevertheless, various problems remain to deal with when investing in Vietnam; some of which we will touch upon the main points in this guide.

We hope this guide helps you in learning about and understanding business in Vietnam. Should you require professional assistance please contact us and we could meet you, to see if we can help.

…'has reliable advisers possessing outstanding expertise in private equity and cross-border transactions, combined with strong negotiation skills.'
Legal 500 Asia Pacific 2017

…'a strong firm for M&A, which excels in transactions', with a strong presence in consumer-facing sectors such as retail and leisure.
Legal 500 Asia Pacific 2018

…"Very quick responses and deep knowledge on M&A."
ILFR1000 2019

…"Mark and his team are perfect partners for us. I would not hesitate to recommend ACSV to any of my friends or colleagues. Mark's team is particularly knowledgeable on cross-border private equity structuring and transactions."
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LEGAL NOTICE

This guide contains only brief information and includes legislation in force as of 1 December 2018. It does not cover exhaustively the various topics in it This guide is prepared for general information only and is not intended to be a full analysis of the points discussed. This guide is also not intended to constitute, and should not be taken as, legal, tax or financial advice by ACSV Legal lawyers. The information in this guide may not be applicable or suitable for your specific circumstances or needs and you should seek separate advice for your specific situation. Any reference to any specific law or practice has been compiled or arrived at from sources believed to be reliable and ACSV Legal lawyers do not make any representation as to the accuracy, reliability or completeness of such information. Even though we endeavour to provide accurate and timely information, we cannot guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.

2. Quick Facts about Vietnam

1. QUICK FACTS ABOUT VIETNAM

Did you know that…
…according to an ancient myth the Vietnamese people descend from a dragon and a fairy?

1.1 Geography

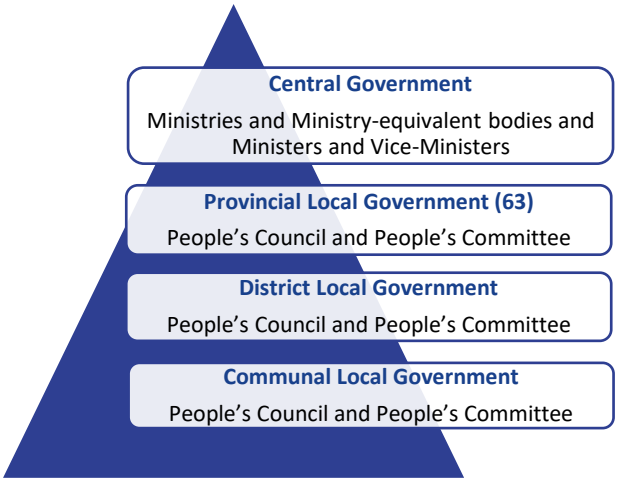
Vietnam is located in Southeast Asia and borders China in the north, and Cambodia and Laos in the west. From north to south it is about 1,650 kilometres and about 50 kilometres at the narrowest point in the centre.
The S-shaped country boasts numerous mountains, plains, islands, and a coastline of about 3,444 kilometres long. Vietnam borders the Gulf of Thailand, and the Gulf of Tonkin

The capital of Vietnam is Hanoi which is located in the north. Ho Chi Minh City (**HCMC**), also referred to as Saigon, is located in the south. It is the largest city and is the primary economic hub of the country.
Other large cities are Haiphong in the north and Danang in the centre. Vietnam has 63 provinces, some of which merely consist of a single city, such as Danang, Can Tho, Haiphong, Hanoi and HCMC.

Did you know that…
…artifacts of human habitation of more than 22,000 years ago have been found in Vietnam?

1.2 National Assembly and Government

The Communist Party of Vietnam is the only political party in Vietnam. Every five years, 150 members of the Central Committee are elected at its National Congress. The Central Committee in turn elects the 19 members of the Politburo. The Communist Party sets out the economic and social policy of the country in its Resolutions and has great influence over the control of the country.
The Constitution recognises the National Assembly as Vietnam's legislative body. It is a unicameral body with up to 500 members who are elected for a five-year term by the Vietnamese people (14th National Assembly from 2016-2021). The members of the National Assembly are part-time deputies and commonly hold jobs outside of the Assembly. The head of state is the President who is elected by the National Assembly and represents Vietnam in internal and foreign affairs.
The National Assembly meets twice a year, generally in May and November. Economic and social development plans, financial and monetary policies and the national budget are approved, and the Government's activities are questioned during these thirty days sessions. In general, there is not a lot of time for legal debate and approval of laws. Between the sessions, the Standing Committee of the National Assembly ensures conformity with the Constitution and the law by supervising the activities of the Government, the People's Court and the People's Prosecutor.
The highest executive body in Vietnam is the Government and it is in charge of the general management of the economy and the State. The Central Government is headed by the Prime Minister and consists of Ministers who can be supported by two to twelve Vice-Ministers.



Currently, Vietnam has the following eighteen Ministries:

- Ministry of Finance
- Ministry of Education and Training
- Ministry of National Defense
- Ministry of Agriculture and Rural Development
- Ministry of Public Security
- Ministry of Industry and Trade
- Ministry of Foreign Affairs
- Ministry of Planning and Investment
- Ministry of Justice
- Ministry of Health
- Ministry of Transport
- Ministry of Science and Technology
- Ministry of Construction
- Ministry of Natural Resources and Environment
- Ministry of Culture, Sports and Tourism
- Ministry of Infomation and Communications,
- Ministry of Home Affairs
- Ministry of Labour, War Invalids and Social Affairs

There are also several bodies equivalent to a ministry that play an important role in governing the country:

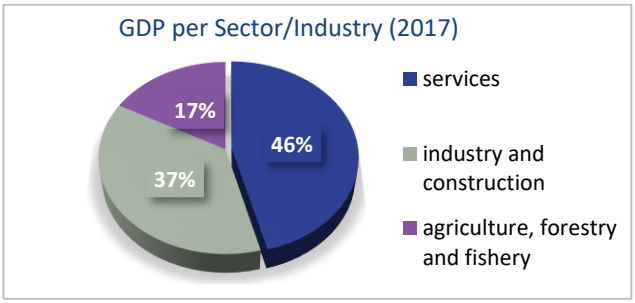
- Government Inspectorate
- Committee on Ethnic Minority Affairs
- State Bank of Vietnam
- Government Office

Note that the National Assembly, the Government, Ministries and equivalent bodies are all located in Hanoi. There are also three levels of local government with their own legislative or executive powers. This adds to the challenge of government consistency as they are sometimes located far from Hanoi.

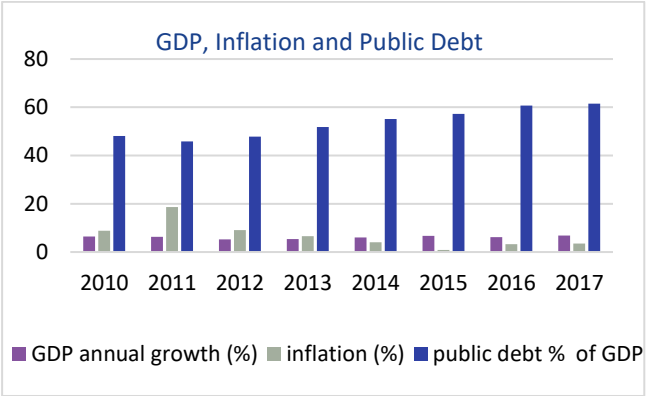
Did you know that…
…Vietnam is expected to have the 17th largest economy by 2025 and 70% of UK's economy by 2050?

1.3 Economy

Since political and economic reforms (*đổi mới*) were launched in 1986, the economy has shifted from a centrally-planned economy to a 'socialist market' economy, using both directive and indicative planning through 5-year plans. This has resulted in increased foreign direct investment, the emergence of the private sector, and a more globalised approach to business. Vietnam has had an average annual GDP growth rate of 6.1% over the last years. Inflation is well under control after a spike in 2011.



The economy, still highly agrarian, remains vulnerable as climate changes cause increased salination, drought, and excessive rainfall, thus impacting agricultural output. The decrease in oil prices also negatively impacted the economy, bcause Vietnam is a net refined oil importer and crude oil exporter.



Currently, Vietnam ranks 68 out of 190 countries in the World Bank's Doing Business Index, which is 14 places higher than in 2017.

Vietnam recently reached lower-middle income status and the number of people living in poverty has decreased impressively, all within only 25 years.

The fact that Vietnam no longer qualifies for preferential interest rates, or ODA from the World Bank or the Asian Development Bank, makes borrowing money more difficult and costly. This is money that is much needed to finalise large infrastructure projects, such as roads, airports, and power plants.

The country will therefore likely have to rely more on private-public partnerships (**PPPs**) for these investments.

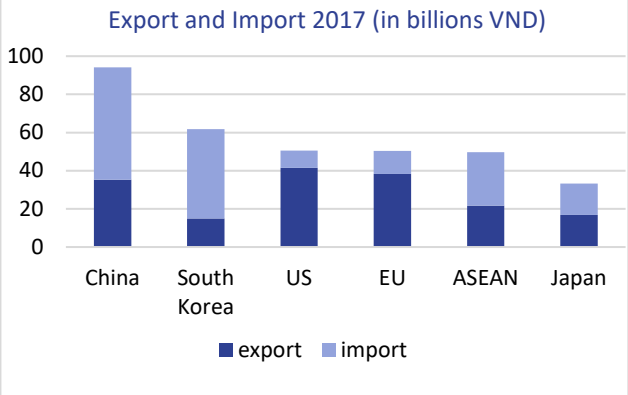
Some issues impacting the economy and further development of the country relate to the fact that almost all Vietnamese enterprises are small and medium enterprises (**SMEs**). Private companies struggle in the open market and find it difficult to access capital and technology resources; the existence of a large numbers of state-owned enterprises (**SOEs**), and bad bank debt, compounds this issue.

However, low wages, strategic geographic location, increased purchasing power, various financial incentives, and upcoming free trade agreements (**FTAs**) make Vietnam an attractive production and investment location.

Did you know that…
…Vietnam is working to become a cashless economy by 2020?

1.4 Trade, Import and Export

Total trade in 2017 was an estimated USD 425 billion, with export value of USD 213.77 billion; a year-on-year increase of 21%. Vietnam's trade with China was the highest of any other country, at a value of USD 93.8 billion which is an increase of 16.9% year-on-year. It led to the 2nd largest trade deficit of USD 23.2 billion. The largest trade deficit of USD 31.8 billion was with South Korea, with a year-on-year increase of 53.4%.



Trade with US ranked third with value of USD 50.7 billion, the EU ranked fourth with USD 50.4 billion and trade with ASEAN ranked fifth with a value of USD 49.7 billion.
The FDI sector earned USD 155.2 billion from exports, an increase of 23% year-on-year, while the domestic invested sector earned USD 58.5 billion, an increase of 16.2%.
Export products included telephones and components, textiles and garments, computers and components, and fruits and vegetables.
Import products included phones and components, computer and components, as well as machinery, equipment and spare parts, tools, and spare electronic products and components.

Did you know that…
…Vietnam is a member of 63 international organisations (such as WTO, ASEAN and the UN) and part of 650 non-governmental organisations?

1.5 Trade Organisations and Free Trade Agreements

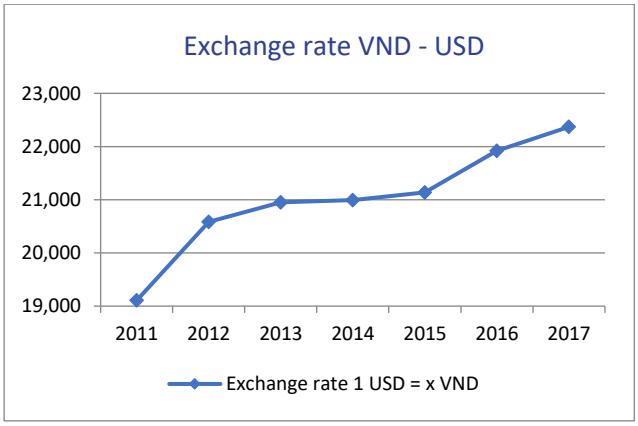
In 2007, Vietnam became a member of the World Trade Organisation (**WTO**) after several legal and economic reforms had been implemented. This fueled economic growth even more as it opened up the market for foreign investment across a number of sectors. Under the WTO, Vietnam has made commitments in eleven service sectors, while a limited number of sectors have been excluded, such as secondary education, machinery, and equipment renting or leasing. Some other restricted sectors include banking and electronic games business.

Vietnam is also a member of the Asia Pacific Economic Cooperation (**APEC**) and the Association of Southeast Asian Nations (**ASEAN**).

Vietnam has signed free trade agreements (**FTAs**) and economic agreements with for example the United States, the EurAsian Economic Union, Japan, Chile, and South Korea. In the near future more are expected to enter into force, including the European-Vietnam Free Trade Agreement (**EVFTA**) between the EU and Vietnam and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam (**CPTPP**). The EVFTA will eliminate 99% of all tariffs over a ten year period.
ASEAN members have signed the ASEAN Trade in Goods Agreement (**ATIGA**) which aims to achieve free flow of goods in the region, resulting in less trade barriers and deeper economic links among Member States, lower business costs, increased trade, and a larger market and economies of scale for businesses.
ASEAN has also signed agreements with other countries such as China, Australia, New Zealand, India, South Korea, and Japan.

1.6 Currency

The official Vietnamese currency is called the Vietnamese Dong (**VND**), often abbreviated as Dong or VND. Notes exist for 200, 500, 1,000, 2,000, 5,000, 10,000, 20,000, 50,000, 100,000, 200,000 and 500,000 VND; and coins for: 200, 500, 1,000, 2,000 and 5,000 VND. Coins are used less nowadays.



It is important to know that regulations require businesses to advertise prices or mention amounts in contracts, for domestic use, in VND only. It is possible to apply for the right to be flexible in the use of other currencies.

Did you know that…
…it is cheaper and faster to deposit money in someone's bank account than to transfer via internet banking?

Salaries for Vietnamese staff can only be paid in Vietnam Dong, but for foreigners this can be in United States Dollar (**USD**). It is prohibited to transfer or deposit USD if you do not have the necessary related documents showing where that money comes from. Even transferring USD from an existing USD bank account in Vietnam to another USD bank account in Vietnam is not possible without underlying documents.
Automated Teller Machines (**ATM's**) are available everywhere, sometimes several from different banks, lined up next to each other. However, when you visit more remote areas it is wise not to depend solely on ATM's.

Did you know that…
…you can see piles of cash money being sent from one person to another via the extensive coach network?

1.7 Cost of Living

According to the 2017 Mercer survey spanning over 209 cities across five continents, Vietnam's two major cities, HCMC and Hanoi, were ranked 97th and 100th respectively in terms of the cost of living, compared with 88th and 100th respectively in 2016.
Living in HCMC and Hanoi is more expensive than living in Phnom Penh and Kuala Lumpur (ranked 115th and 165st respectively) but not as expensive as Manila, Jakarta, Bangkok or Singapore.

1.8 Population

Vietnam has an estimated population of 96 million; 1.26% of the world's population. It has the 3rd largest population in South-East Asia after Indonesia and the Philippines, and ranks 13th in population, globally.
Hanoi has a registered population of about 8 million and HCMC, about 9.2 million. However, the actual population of both cities is most likely significantly higher due to unrecorded migration from rural areas.

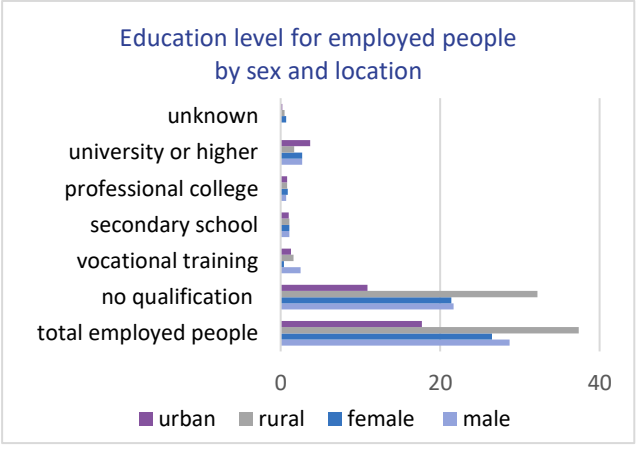
Did you know that…
…in August 2017 HCMC was estimated to have 13 million inhabitants with 130,000 new immigrants arriving every day and an average population density of 6,200 while the country's average is 300 and the global average 57?

The rural population accounts for approximately 67% of the total population.
The median age is thirty and a half years and 70% of the population is younger than thirty five years. The population is aging quickly and therefore Vietnam is facing challenges related to employment, health care, and social security, in order to improve quality of life for the elderly. This offers opportunities for investors active in those sectors.

Did you know that…
…Vietnamese students perform above OECD average in math and science, and ranked 8 out of 72 for science in PISA 2015.

1.9 Education and Training

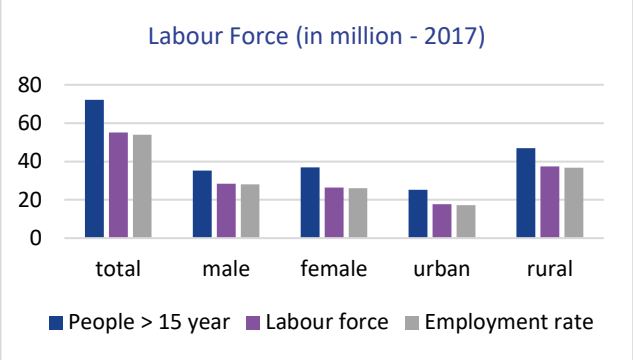
Vietnam has a literacy rate of roughly 95%. Most people go to primary school (no qualification), but many do not continue education.



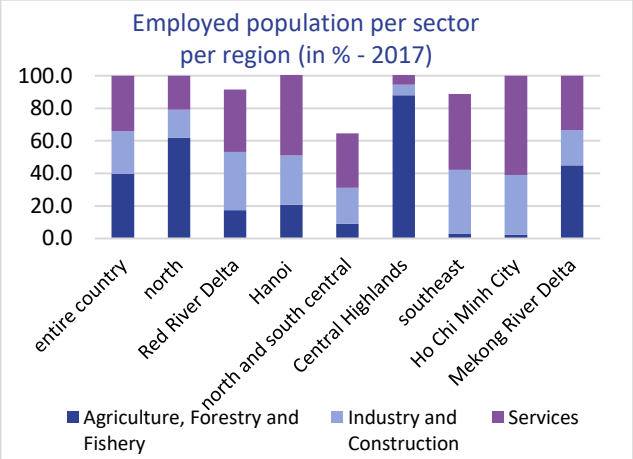
In the school year 2017-2018, there were 15,241 kindergarten schools, 14,937 primary schools, 10,091 lower secondary schools, and 2,398 upper secondary school with 4.6 million children in kindergartens, 8 million children in primary schools, and 7.9 million children in secondary schools.
There were 235 universities: 170 public and 65 private, with 1.7 million students attending; and more than 3,000

vocational training establishments with almost 1.1 million students enrolled. Additionally, 688,500 candidates registered for admission to universities.

1.10 Labour Force



According to the General Office of Statistics, as of quarter 4, Vietnam counted 72.2 million people over fifteen years old, with a labour force of 52.2 million of which approximately 66.8% was concentrated in rural areas.
The unemployment rate in 2017 was about 2%. The division of employed people per sector and region differs considerably as can be seen from the graph on the page before.



Did you know that…
…Vietnamese New Year is celebrated at a different time each year?

1.11 Business Hours

Government offices and banks are in general, open from as early as 7.30-11 a.m. and from 1-4.30 p.m., and sometimes on Saturday morning. In principle, shops and restaurants in the large cities, such as Hanoi and HCMC, stay open till late; up to 9 p.m. and even to 10 p.m. Some shops and banks are open the whole day, while some close for a lunch break. Even when they do not close, you can occasionally see people sleeping, seated or lying on a sofa or on the floor of shops and markets. In the rural areas and smaller cities, this is different.

1.12 Public Holidays

Employees who have been employed for twelve months are provided with a minimum of twelve days of paid annual leave per year, in addition to the ten public holidays. In case a public holiday falls on a weekend, it will be observed afterwards.

Did you know that…
…Vietnamese people clean their house, buy new clothes, pay off debts before the Lunar New Year or Tet to get a clean and fresh start?

National Holiday	nr	National Holiday	nr
New Year's Day (western)	1	Reunification Day 30/4	1
Tet or Lunar New Year	5	Labour Day 1/5	1
Hung King's Day	1	Independence Day 2/9	1

1.13 Transport and Logistics

Transport, or maybe we should say traffic, can be a challenge in Vietnam. Not only as a driver, but also as a pedestrian as sidewalks are used as roads, parking spaces and selling areas.
Not so long ago the bicycle was the main means of transport. With increasing purchase power, first more motorbikes appeared on the streets, and now cars. Contemporarily, this is alongside numerous taxis.
However, infrastructure has not kept up with the growth.

Moreover, the roads are shared with trucks, which are commonly used to move goods within the country.

Did you know that…
…it is illegal to be with more than 2 persons on a motorbike, even though you can often see up to 5 on 1 bike?

In 2017, almost 20,000 traffic accidents occurred nationwide with 8,300 fatalities and 17,000 persons injured. It is an overall decrease compared to 2016.

Did you know that…
…Vietnam jumped 25 spots in the Logistics Performance Index 2018 of the World Bank and now ranks 39th among 160 countries?

There is an extensive bus network, and there are trains, but the railway system has a limited capacity, and does not cover the country. Vietnam has eleven international airports, with domestic and international routes, concurrently with twelve national airports. Some routes are highly congested and cause regular delays.

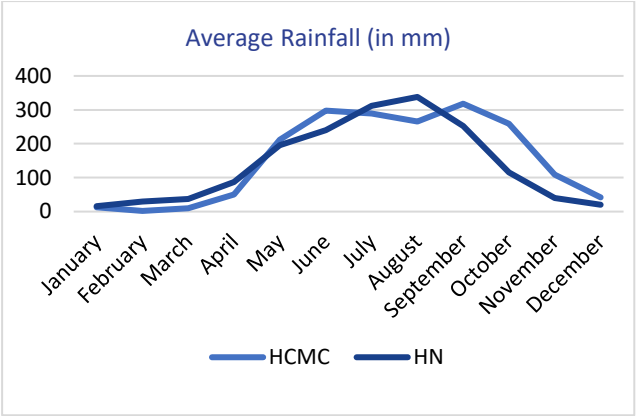
Did you know that…
…you can only buy a car in the province where you live?

Both in Hanoi and HCMC, metro lines are being constructed and are expected to be up and running in several years. Besides taxis, you can use a motorbike taxi. Be careful which company to use as it could become a costly trip, in general Mai Linh and Vinasun are reliable companies.

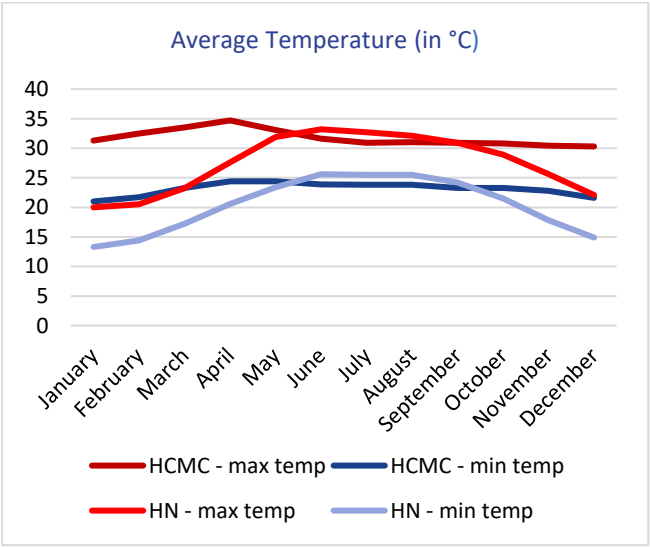
Did you know that…
…if your banknote does not look perfect it might be refused as payment?

1.14 Weather

Vietnam is a long country with varying landscapes which influence the weather. The centre and the north are prone to typhoons during the rainy season, while they rarely occur in the south. When it does rain, it can rain heavily, and streets can be flooded.



Hanoi does have 4 seasons, while HCMC only has two seasons, namely the dry and the rainy season.



Did you know that…
…the origins of the traditional Vietnamese outfit, *áo dài* (=long top), date back to 1744 and that it is worn by both men and women?

1.15 Business Attire

The climate in Vietnam can be quite hot and humid all year round, so you need to take this into consideration when selecting your business wardrobe.
For men, wearing a tie is not always mandatory and neither is a jacket. It depends on the kind of meeting and people you will meet. In order to avoid being under or over-dressed, it is best – if possible – to enquire about this.

1.16 Handshakes

Handshakes are used upon meeting and departing, even though less between men and women. When a foreign

male greets a woman, you should wait for her to extend her hand first. If she does not, you can bow your head slightly. Some Vietnamese use a two-handed shake, with the left hand on top of the right wrist.

Did you know that…
…Vietnamese is the only language in East Asia that uses the Latin alphabet; until the 13th century it was written in Chinese characters when its own set of characters was developed, which in the 16-17th century was transferred by Portuguese missionaries and a French priest into what we currently know as Vietnamese, one of the most difficult languages to master?

1.17 Language

Did you know that…
…*xin chào* means hello?

Vietnamese is the official language. Nowadays, English is by far the most widespread foreign language and is used alongside Vietnamese for legal documents relevant to foreign trade and foreign direct investment.
Other languages such as French, Russian, Chinese, and Japanese are also used. It is important to keep in mind that many Vietnamese have only learnt English at high school or university and may not necessarily have had any particular contact with native English speakers.

Did you know that…
…*áo dài*, *phở* and *bánh mì* are listed in the Oxford dictionary without being translated?

This will impact communication when doing business in Vietnam. It could be helpful to have business material available in both English and Vietnamese and use an interpreter. Be aware though that it is considered impolite to undermine the authority of a more senior Vietnamese person by directing questions or responding to a more junior person whose English skills may be better. When using an interpreter, it is polite to talk directly to the person you are dealing with and maintain eye contact. Also note that documents necessary for investing in Vietnam always will need to be submitted in Vietnamese.
For more complex meetings and negotiations, it is advisable to have bilingual sales literature, including business cards and product guides. The literature should be translated into Vietnamese prior to the meeting to help both sides be clear on what they would like to discuss.

Did you know that…
…there are about 14 family names used for 90% of the population and Nguyễn is the most common Vietnamese family name?

1.18 Names

The order for a name in Vietnam is family name, middle name and given name. However, nowadays you will also notice that they use the western order and sometimes leave out the middle name. This can make it difficult to know what someone's given name is.

Did you know that…
…in Vietnamese you do not use pronouns such as you, I, and we, but pronouns meaning nephew, niece, child, older or younger brother or sister, aunt, uncle, grandfather, or grandmother?

1.19 Business Cards

Like in the rest of Asia, exchanging business cards is also important in Vietnam. Therefore, always carry them when you visit Vietnam and distribute them at every business meeting. It is polite to offer your card with both hands when you meet someone for the first time in Vietnam.

Did you know that…
…you can find a company's tax number (MST) on many business cards?

Do not put it into your pocket or bag when you are handed the card, but take a minute to look at the person's card. Try to pronounce their name correctly and acknowledge their title to show your counterpart that you value the opportunity to meet them.

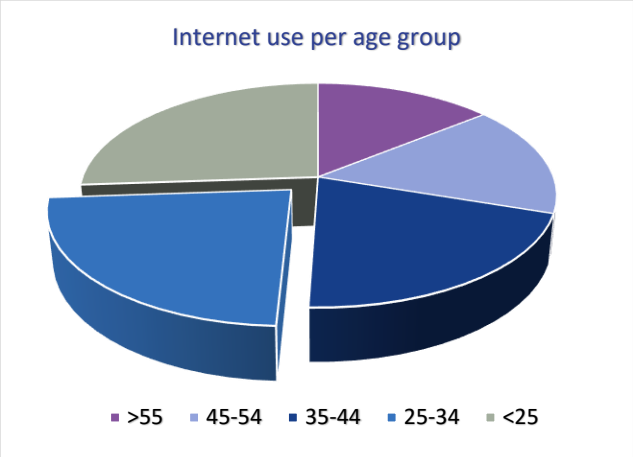
Did you know that…
…you will be asked about your age and marital status so they know how to address you as pronouns differ per age and status?

1.20 Business Meetings

Relationships are critical to successful business partnerships. It is important to invest time in building a good relationship based on both personal and business lines.
Any initial meeting should be used solely as a '*getting to*

know you' meeting, so do not expect to do business at the outset. It may take longer than in your home country. It is also important to take into consideration the hierarchy and face in a company. They manifest themselves in different ways at business meetings: the most senior person in general always enters the room first; and silence is common when someone disagrees with another, so as not to cause a loss of face.

Vietnamese are polite and will often smile and agree with you when in fact they may not have fully understood what you have said. The smile and nod are usually to acknowledge that you have spoken, and may not always mean agreement nor that they have understood what you said.



Eating and drinking is a major part of doing business in Vietnam. Toasting is a common activity during dinner and returning a toast is standard practice. Common toasts are '*một trăm phần trăm*' (100% bottoms up) and '*chúc sức khỏe*' (good health), and you might also hear '*một, hai, ba, vô!*' (1, 2, 3, up).

Did you know that…
…it could be considered bad luck to give knives, scissors, scarfs, cups; yellow or white flowers, and blue, white, and black packaging, but you can use yellow and white wrapping?

1.21 Gifts

Gifts are not commonly exchanged when you meet for the first time. However, a small token over dinner or at an appropriate moment is always appreciated. The gift is not as important as the sentiment sent with it.

Note that under the Penal Code the threshold for a gift to public officials is VND2 million. This amount applies to material interest while it is important to note that this threshold does not apply to non-material interest. Non-material interests are not defined; however, it is generally and commonly understood to be in connection with sexual relationship, promotion, privileged information, etc.

Under Decision 64, government officials are allowed to receive gifts with a value of maximum VND500,000 under certain conditions in case of sickness, Tet, wedding or funeral.

1.22 Mobile Phone and Internet

In 2017, about 64 million persons used internet in Vietnam and this number is increasing. 70.3 million persons used mobile phones.

The use of internet for personal use is high and the average time people spent on the internet was 6.52 hours per day, while 94% of the population uses internet every day.

Did you know that…
…there are about 120 million mobile phone subscriptions while the country has about 96 million inhabitants?

The pre-paid option is the most used. Most hotels and restaurants offer free wifi. You need to register yourself in order to be able to buy a sim card. Social media networks are used daily by a majority of the population. In more remote areas, the internet and mobile phone network is less accessible.

1.23 Customs

Visitors to Vietnam can bring with them unlimited amounts of foreign currency, objects made of precious metals and gemstones or plated with silver or gold. However, these must be declared in detail on the customs form. It is not necessary to declare foreign and Vietnamese currency equivalent to under USD5,000 and VND15 million respectively. There is no restriction on importing books or other printed material apart from pornographic or politically sensitive material. Books and electronic media may be screened to ensure compliance with the laws. It is illegal to bring letters, packages or correspondence for others into or out of the country. All luggage used to be x-rayed on international arrival, but this seems to have been abolished.

Also remember to keep your baggage claim tag, as it is often requested when collecting baggage when travelling domestically.

Did you know that…
…relatives or friends need to buy food, medicine and provide basic support to a patient in a hospital?

1.24 Healthcare

In 2017, life expectancy at birth was about 74 years, while infant mortality was about 15%. In 2016, about 14% of children under five were malnourished which limits mental and physical development for children. Agent Orange, which was used during the war that ended in 1975, is still impacting the health of the Vietnamese people.

Did you know that…
…doctors at public hospitals earn on average, between VND7-8 million (USD300-350) and VND12-20 million (USD525-875) per month and in private hospitals twice as much?

Vietnam has public and private hospitals, some of which are foreign invested and employ foreign trained or foreign doctors and nurses. Vietnam does not know the concept of general practitioner outside a hospital, so people always go to hospital, even for the smallest health issue. The healthcare system combines aspects of traditional or eastern with western medicine.

Did you know that…
…for 2017, Vietnam's healthcare expenditure was estimated at 16.1 billion USD, being 7.5% of the country's GDP?

Working people and children who go to school or university have a public health insurance which covers a large part of the costs if you go to the hospital of choice.

1.25 Tourism

Vietnam has eight UNESCO world heritage sites, thirty one national parks and eight zones that are world biosphere reserves. Vietnam is known for its natural beauty, but also rich history and ancient traditions visible in museums, memorials, temples.

Did you know that…
…the world's largest cave is situated in Vietnam and that a Boeing 747 can fly through it, and that it is so big that it has its own river, jungle, and climate?

In 2017, about 13 million foreign visitors came to Vietnam. Most tourists who come to Vietnam visit the usual sites such as Halong Bay, Sapa, Hanoi, Hoi An, Hue, Dalat, Nha Trang, Mui Ne, Phu Quoc and Mekong Delta. However, there is much more to see. Off the 'beaten' track, you can experience a different Vietnam.

Did you know that…
…HCMC is a very safe city to live in, even though it ranks only 56 out of 60 in the Safe Cities Index 2017 mainly because the index takes digital, health, infrastructure and personal security into consideration?

1.26 Visa

A valid visa is required for entry into Vietnam. Tourist visas are not valid for business visits or working in Vietnam despite that it happens. In practice, enforcement seems to become stricter. There are bilateral agreements with most ASEAN countries to exempt entry visas for ASEAN citizens visiting other ASEAN countries for a pre-determined period of time. Citizens of the United Kingdom, United States, Germany, France, Italy, Spain Denmark, Finland, Sweden, Japan, South Korea, Norway, Belarus and Russia are also exempted for a certain period of time.
In order to obtain a business visa, a business person needs to be sponsored by an organisation or company in Vietnam. It is also possible to request a visa-on-arrival with an approval letter. This letter needs to be requested some days in advance and with it, the visa can be collected after paying the appropriate amount at Hanoi or HCMC airports. Vietnam recently introduced a system for e-visas for visitors from 40 countries who can now apply online for a thirty days single entry visa.

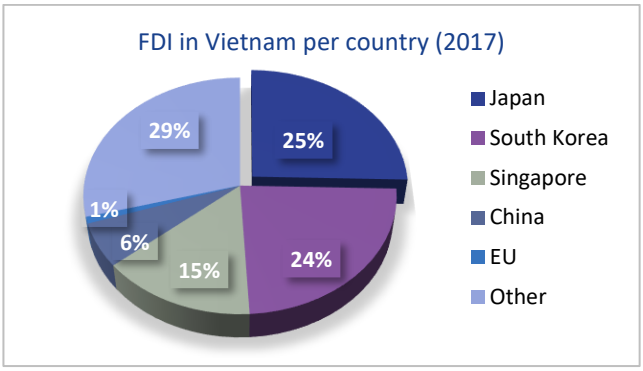
Did you know that…
…you and people staying with you always have to register with the local police?

2. Investing in Vietnam

2. INVESTING IN VIETNAM

2.1 Introduction

In 2017, the total amount of Foreign Direct Investment (**FDI**) in Vietnam was about 35 billion USD. This is 44.4% higher than in 2016. Almost half of this amount was invested in 2,591 new projects, and the other half in 1,188 existing projects. A small part came from foreign investors contributing capital to businesses or buying shares of Vietnamese businesses. The largest investor was Japan, mainly because of investments in 3 power-plant projects.



The manufacturing processing industry accounted for 44.2% of the total registered FDI, the electricity production and distribution sector ranked 2nd with 23.3%, and the real estate sector was in 3rd place with 8.5%.

Did you know that…
…to start a business in Vietnam you would, in general, need at least USD10,000 as paid up capital?

HCMC received most FDI, followed by the northern province of Bac Ninh and the central province of Thanh Hoa. Other major FDI destinations include Nam Dinh, Binh Duong, Kien Giang, and Hanoi.
The Ministry of Planning and Investment (**MPI**) is drafting a foreign direct investment strategy for 2018-2023 with assistance from the World Bank. According to the draft strategy, Vietnam should set out priority sectors for attracting FDI. It suggests a focus should be on those sectors that need increased value and competitiveness.

sector/industry	focus on
manufacturing	high grade metals, minerals, chemicals, plastics, and high-tech and electronic components
service	logistics and maintenance, repair and overhaul
agriculture	innovative and high value agricultural products such as rice, coffee, seafood, fruits
travel	high value tourism services

It is not easy to do business in Vietnam and even though there have been improvements, Vietnam still ranks low compared to other countries.

Did you know that…
…when a company is successful new companies with similar names will pop up?

2.2 Investor

The Law on Investment does not make a distinction between *direct* and *indirect* investment anymore, as was done before the current Law on Investment entered into force in 2015.
However, the law does make a distinction between a *foreign* and a *Vietnamese* investor. Often different procedures apply to foreign investors and Vietnamese investors. A foreign investor is required to register his/her investment or to obtain certain documents before he/she can start with the investment project.
According to the law, a foreign investor is:

- an individual with a foreign nationality; or
- an organisation incorporated in a foreign jurisdiction conducting investment business in Vietnam.

A Vietnamese citizen who has more than one nationality can opt for procedures applying to a Vietnamese investor or ones that apply to a foreign investor.

Did you know that…
…you need to invest time in building a good relationship and therefore doing business in Vietnam takes time?

Another point to take into consideration before deciding to invest in Vietnam is whether the activity you would like to perform, or product you would like to make is subject to additional requirements or approvals because it belongs to

a *conditional sector*.[1] Before you can start with the investment project, often an investment registration certification (**IRC**) is needed.[2]

2.3 Forms of Investment

For the purposes of this guide, we will focus on foreign investors. A foreign investor can invest in the following ways:

- Incorporate an economic organisation[3];
- Invest in the form of capital contribution or through acquisition of part or all of the capital of an incorporated economic organisation;
- Conclude a private-public partnership contract (**PPP contract**); or
- Conclude a business cooperation contract (**BCC**).

2.3.1 *Incorporation*

An economic organisation needs to be established and operate under the laws of Vietnam. It is comprised of various kinds of companies that have business or investment activities.[4]

A foreign investor must apply for an investment registration certificate (**IRC**)[5], which is issued by the competent Department of Planning and Investment (**DPI**) before an economic organisation can be incorporated.

Did you know that…
…you have to finalise your capital contribution within 90 days of the establishment of the company?

2.3.2 *Approval for Capital Contribution or Acquisition*

A foreign investor sometimes needs to obtain the approval of the DPI before capital can be contributed or acquired in an incorporated organisation. This is the case if the investor contributes or acquires at least 51% of the charter capital of an incorporated economic organisation; or the incorporated economic organisation is active in a conditional sector.

Did you know that…
…Vietnam has 73 power plants (hydro, thermal, gas, wind) and many more are planned to be built including solar power plants?

2.3.3 *PPP Contract*

A PPP contract is used for construction, upgrading, renovation, expansion or management and operation of infrastructure facilities or provision of public services, such as roads, airports or public services such as power plants.

For a PPP contract, the foreign investors will sign a PPP contract with the relevant national state agency. This engagement is subject to the demand and consideration of the competent authorities.

2.3.4 *BCC*

In the case of a BCC, a foreign investor does not need to establish an economic organisation. Instead, the investor concludes a BCC with a Vietnamese or foreign investor and establishes a steering board for implementation of the investment project. The parties agree to the functions, tasks, and powers of the steering board and must register the office of the steering board with the DPI. The objective of a BCC is to cooperate and distribute profits and products.

Did you know that…
…the pink book is the common name used for building ownership?

2.4 Banned Business Lines

There are several business lines in which foreign, and sometimes also local investment, is impossible. The so-called banned business lines include for example trade in certain types of chemicals, as well as trade in specimens of wild flora and fauna.

Did you know that…
…it takes about 105 hours for border and documentary compliance with a total cost of USD429 before you can export?

2.5 Conditional Sectors or Business Lines

Besides the banned business lines, there are also so-called conditional business lines or conditional sectors. This means that an investor must meet additional requirements before being allowed to invest in such sector. There used to be 268 conditional business lines in the original Law on Investment. As of 1 January 2017, the Law on Investment was amended, and several conditional business lines were removed from the relevant annex. Now 243 conditional business lines divided into fifteen categories remain, amongst which include: accounting services, insurance services, securities trading, businesses related to gambling and lottery, oil and gas, healthcare related businesses, logistics, businesses related to transport (train/air), real estate businesses, educational businesses, banking and finance related businesses, and agriculture related businesses.

Conditions that the foreign investors have to meet when investing in conditional business could be related to the forms of the investment, the nationality of foreign investors, the professional expertise of the investor, the scale of the investment project, the type of goods and services, and the implementation time of an investment

[1] More details on conditional sectors or business lines can be found in paragraph 3.5.
[2] More information on the IRC can be found in paragraph 12.2.
[3] In Vietnam an enterprise or company is called an economic organisation.
[4] More informatino on the various legal entities can be found in Chapter 4.
[5] More information on the IRC can be found paragraph 12.2

project. The relevant requirements are set out in separate guiding documents such as decrees and circulars.

2.6 Restrictions

2.6.1 *Introduction*

Vietnam has committed to open its market to investors of other countries under various free trade agreements (**FTA**) and when it became a member of the World Trade Organisation (**WTO**). Certain sectors were opened completely without restrictions. For other sectors, however, a foreign investor may be faced with notable restrictions regarding:

- Foreign ownership in a company;
- Forms of investment; or
- Minimum investment capital.

The possibility of restrictions is one of the major points a foreign investor should be aware of and take into consideration when choosing the suitable form to invest into Vietnam. Moreover, it is not easy to find the relevant information as it is scattered over a number of legal documents.

2.6.2 *Foreign Ownership*

The Law on Investment has defined when the ownership of an economic organisation is considered foreign. It is important to know this distinction as investment procedures are, in general, different in the case of foreign ownership and some investments are limited or forbidden. There is foreign ownership in the following cases:

- 51% or more of the charter capital is held by one or more foreign investor(s), or for partnerships when a majority of the general partners is a foreign individual;
- 51% or more of the charter capital is held by one or more economic organisation(s) as set out under 1; and
- 51% or more of the charter capital is held by one or more foreign investor(s) and an economic organisation(s) as set out under 1.

Did you know that…
…it takes about 132 hours for border and documentary compliance with a total cost of USD556 before you can import?

2.6.3 *Restrictions in Foreign Ownership*

In principle, a foreign investor is permitted to own an unlimited proportion of charter capital of an economic organisation, except in the banking, civil aviation, logistics, publishing and press sectors, a securities business organisation and State-owned enterprises which conduct equitisation or convert their ownership into another form.

Did you know that…
…yes does not always mean agreement in Vietnamese, it can just merely mean "Yes, I heard what you said"?

2.7 Investment Policy Decision

Some investment projects require approval from either the National Assembly, the Prime Minister, or the Provincial People's Committee.

2.7.1 *National Assembly*

The following projects must obtain approval from the National Assembly:

- Projects that (potentially) have a significant impact on the environment, such as a nuclear power plant, or a project that requires conversion of the land use purpose, such as a national park, a national conservation zone, a landscape protection zone, a forest for scientific research or experiment of 50 hectares or more, or reclamation of the sea;
- Projects that require conversion of the land use purpose for wet rice cultivation of two harvests in an area of at least 500 hectares;
- Projects that will relocate 20,000 people or more in mountainous areas or 50,000 people or more in other areas; and
- Projects that require an application of a special mechanism or policy to be decided by the National Assembly.

Did you know that…
…the red book is the common name used for the land use right certificate and that every household member is listed in it?

2.7.2 *Prime Minister*

The Prime Minister is the competent authority to approve the following investment projects:

- Projects regardless of capital sources that meet one of the following criteria:
  - Relocation of 10,000 people or more in mountainous areas, 20,000 people or more in other areas;
  - Construction and commercial operation of airports and air transportation;
  - Construction and commercial operation of national seaports;
  - Development of infrastructure of industrial parks, export-processing zones, and functional areas in economic zones;
  - Construction and commercial operation of golf courses;
  - Exploration, extraction and refining of petroleum;
  - Casino or other betting businesses; or
  - Cigarette production.
- Projects that are not listed above but have investment capital scale of VND 5,000 billion or more; and
- Projects related to sea transportation; telecommunications services with network infrastructure; afforestation, publication and press, and establishment of a science and technology

organisation or science and technology enterprise with 100% foreign-owned capital.

2.7.3 *Provincial People's Committee*

The following projects must obtain approval from the Provincial People's Committee:

- Projects for which the government authority allocates or leases out land without auction, or tendering;
- Projects that require the conversion of the land use purpose; and
- Projects that use technologies mentioned in the list of technologies that are restricted from transfer.

Did you know that…
…10 procedures and 166 days are needed to get a construction permit for a warehouse?

2.8 Environmental Protection

Subject to the nature, scale and environmental impact level of the investment project, authorities and investors are required to prepare strategic environment assessment reports as well as an environmental impact assessment reports (**EIAR**) or an environment protection plan (**EPP**) as conditions for the establishment and operation of certain projects in Vietnam. The EIAR must be prepared in the early stages of the project, by the project owner.

2.9 Transfer of Investment Project

An investor can transfer part or all of the project to another investor when specific conditions are satisfied:

- The project is not terminated as prescribed in Article 48(1) of the Law on Investment;
- Investment conditions applicable to foreign investors are satisfied in case the project is in a conditional business line;
- Compliance with the Law on Real Estate if the project transfer concerns the transfer of land; and
- Compliance with conditions in the IRC or relevant regulations.

When these criteria are met, the procedure to transfer the investment project can begin by submitting a file with necessary documents.

2.10 Termination of Investment Project

In the following circumstances the operation of an investment project will be terminated:

- The investor fails to implement or is unable to implement the project in accordance with the schedule registered with the investment registration agency within 12 months; and
- The implementation of the investment project cannot be postponed furthermore.

Subsequently, the investor needs to liquidate the investment project in accordance with the Law on Liquidation of Assets.

Did you know that…
…according to the City Momentum Index both HCMC (2/3) and Hanoi (8/6) ranked in the top 10 of the most dynamic cities in 2017 and 2018 as destination for global capital, commerce and innovation?

3. Legal Entities

3. LEGAL ENTITIES

3.1 Introduction

A foreign investor can choose from a variety of legal entities to carry out a project, in the same way a local investor can. There can be limitations with regard to ownership or additional requirements for a foreign investor.

The various options are:

- A limited liability company (**LLC**) in the form of either single member limited liability company or a multiple member limited liability company; and
- A shareholding or joint stock company.

In the rest of this chapter we will set out the differences for the various legal entities.

Did you know that…
…Vietnam ranks 60 out of 163 countries on the Global Peace Index?

3.2 Definitions

- A Single-member Limited Liability Company (**Single-member LLC**) is an enterprise under the ownership of an organisation or individual;
- A Multiple-member Limited Liability Company (**Multiple-member LLC**) is an enterprise under the ownership of two to fifty Single-member LLCs or individuals; and
- A Joint Stock Company (**JSC**) is an enterprise with at least 3 shareholders. There is no restriction on the maximum number of shareholders. Shareholders may be organisations or individuals.

3.3 Liability

The liability for the various legal entities is as follows:

- The Single-member LLC's owner is liable for debts and other liabilities up to the Single-member LLC's charter capital;
- The members of a Multiple-member LLC are liable to debts and other liabilities to the extent of their contributed capital; and
- The shareholders of a JSC are liable for the debts and other liabilities of the JSC to the extent of their own contributed capital.

3.4 Enterprise Registration Certificate

An enterprise registration certificate (**ERC**) is required for all economic organisations. The ERC is granted by the competent authority and contains information about a company. In order to obtain the ERC, various documents need to be submitted.[6]

3.5 Management Structure[7]

The law has set out different management structures for the various legal entities. The following positions exist in some or all of the management structures:

- The *general director*[8] is the person who manages the day-to-day business operations of the company;
- The *general meeting of shareholders (**GMS**)* includes all shareholders entitled to vote and is the highest decision-making authority of a shareholding company;
- The *board of management (**BOM**)* is the body managing the company and has full authority to make decisions in the name of the company and perform the obligations of the company which do not fall under the authority of GMS; and
- The *inspector (controller) or inspection committee* has several tasks, such as checking the lawfulness of decisions, evaluating the actions of managerial persons, and making recommendations on certain company documents, etc.

Did you know that…
…you have to chop official documents with the company seal, if you have one, but not always on the signature?

3.6 Members' Meeting, BOM's Meeting or GMS

The procedure with regard to convening the members' or shareholders' meeting is as follows:

- For a Single-member LLC and a Multiple-member LLC it will be at the request of the chairperson of the members' council, a member or a group of members; and
- For a JSC, the BOM will meet once per quarter and the GMS once per year.

3.7 Quorum

To meet the legal requirement for a Members' Meeting, BOM's Meeting or GMS, the required quorum is as follows:

- For a Single-member LLC at least two thirds of the members are required;
- For a Multiple-member LLC at least 65% of the charter capital is required; and
- For a JSC at least three quarters of the members are required for a *BOM* and at least 51% of the total number of shareholders' voting slips of the *GSM*.

The specific percentage for the Multiple-member LLC and the JSC will be stipulated in the charter of the company.

3.8 Resolution

3.8.1 *Required Number to Approve Resolution*

The law requires a minimum number of members or shareholders to agree with a certain resolution in order for it be approved:

[6] More information on the ERC can be found in paragraph 12.1.
[7] A more detailed overview of the structure per legal entity can be found in the Annex in Chapter 20.
[8] The Vietnamese law does not set out the differences between a Director and General Director, thus it is up to a company's decision and management structure. Hereafter we will only mention General Director.

- More than half of the members of a Single-member LLC;
- The number of votes representing at least 65% (sometimes even 75%) of the aggregated capital of the attending members of a Multiple-member LLC; and
- The majority of attending members, except when higher percentage in the company's; in case of a tied vote, the chairperson of the BOM has the final decision, and the number of votes representing at least 65% (sometimes 75%) of the aggregated capital of the attending shareholders of a JSC.

The specific percentage for the Multiple-member LLC and the JSC will be stipulated in the charter of the company.

3.8.2 *Effective Date*

The law prescribes when a resolution, or a decision of the Members' Council or GSM is effective:

- From the date of passing or from the effective date stated in such resolution, unless otherwise stipulated in the charter of the company for a Single-member LLC and a Multiple-member LLC;
- From the date of passing or as from the date stated in the resolution for a JSC.

A member or a group of members and a shareholder or group of shareholders can request a court or an arbitrator to cancel a passed resolution. However, the resolution remains effective until a decision issued by the court or the arbitrator takes effect.

Did you know that…
…a legal reprentative can be prevented from leaving Vietnam if the company is being sued or in the process of being dissolved?

3.9 Legal Representative

3.9.1 *General*

A company must have at least one legal representative, and it should be an individual who:

- represents the company to exercise the rights and perform the obligations arising out of company transactions;
- acts as the plaintiff, defendant, and person with related interests and obligations in arbitration proceedings or court; and
- exercises other rights and performs other obligations under the laws of Vietnam.

It is possible to have more than one legal representative, which could be convenient in case a lot of travelling is necessary. This is the case especially as the law requires that if the legal representative is out of the country for thirty days or longer, someone needs to be authorised to act on behalf of him/her. The rights and obligations of the respective legal representatives should be laid down in the company's charter to avoid confusion.

3.9.2 *Who can be the Legal Representative*

- The president or the chairperson of the members' council of a Single-member LLC is the legal representative of the company, unless otherwise prescribed by the Charter.
- For a Multiple-member LLC it is subject to the charter of the company.
- The chairperson of the BOM or the general director can be the legal representative of the JSC when there is only one legal representative subject to charter of the company; and if the charter does not specify, the chairperson of the BOM shall be the legal representative. The chairperson of the BOM and the general director shall automatically be the legal representatives of the company when there is more than one legal representative.

Did you know that…
…if one or both legal representatives is/are out of Vietnam for more than 30 days, someone else needs to be appointed in this role?

The role of the legal representative differs in general from the general Director whose powers are limited to those listed in the Law on Enterprises and more about daily management of the company. The legal representative has, in principle, unlimited power to act on behalf of the company and is exclusively authorised to deal with regulatory matters and major company decisions. The legal representative's signature is required on numerous documents, such as:

- Company creation (application for an ERC);
- Establishment of branches or representative offices;
- Company dissolution;
- Changes in the ERC;
- Record asset contribution to the company's registered capital;
- Adjustments to the registered capital;
- Registration of an offshore loan;
- Application for licenses;
- Tax returns; and
- Opening a company bank account.

3.10 Capital Contribution

3.10.1 *Charter Capital*

- The charter capital of a Single-member LLC and a Multi-member LLC shall be the total value of capital contributed by the member(s) to the company.
- The charter capital of a JSC consists of the total aggregated par value of shares of all classes sold by the company. The charter capital of a JSC at the time of the registration of establishment is the total aggregate par value of shares of all classes which have been registered for subscription and stated in the charter of the company.

Did you know that…
…you cannot own land in Vietnam, but you can own a house (sometimes)?

3.10.2 *Nature of Capital Contribution*

Capital contribution can be in VND, freely convertible foreign currency, gold, land use rights, intellectual property rights (**IPR**), technology, technical know-how, or other assets on the condition that the charter sets out what will be contributed by which member.

3.10.3 *Time Limit for Capital Contribution*

- The owner of a Single-member LLC and the members of a Multi-member LLC must contribute assets or capital as registered with the relevant authorities within 90 days from the date of issuance of the ERC.
- The shareholders of a JSC must pay, in full, the number of shares registered for subscription within 90 days from the issuance date of the ERC *unless* the company's charter or share subscription agreement stipulates a shorter time limit.

3.10.4 *Failure to Contribute Capital within Required Period*

In case the capital is not contributed within the required period of 90 days or as agreed, the following needs to be done:

- The owner of a Single-member LLC must register an adjustment of the charter capital equal to the actual value of the contributed capital within 30 days from the last day on which the charter capital should have been fully contributed. The owner is responsible to the extent of all assets owned by him/her for financial obligations of the company.
- The member of a Multiple-member LLC who fails to contribute capital as undertaken automatically ceases to be a member of the company; the member of a Multiple-member LLC who fails to pay, in full, the contributed capital as undertaken shall have the rights corresponding to the capital already paid. The capital of a Multi-member LLC that has not been contributed will be offered for sale pursuant to the decision of the member's council.
- The shareholder of a JSC who fails to contribute capital for the number of shares registered, automatically ceases to be a shareholder of the company; and the shareholder of a JSC who fails to pay in full for the number of shares registered subscription will have rights in proportion to the number of shares paid.
  In case shares have not been paid fully or partially, the shareholder of a JSC who did not pay in full cannot assign the right to purchase the number of unpaid shares to someone else, the shares of a JSC that have not been paid for, are deemed unsold shares and the BOM has the right to sell such shares; and a JSC must adjust the charter capital in aforesaid cases within the required period.

3.10.5 *Increase of Charter Capital*

- A Single-member LLC can increase its charter capital by making additional investments, or by converting to a Multi-member LLC and raise capital from new members.
- A Multi-member LLC can increase its charter capital by increasing the capital of its members, or by raising capital from new members.
- A JSC can increase its charter capital by issuing new shares.

3.10.6 *Decrease in Charter Capital*

- A Single-member LLC can decrease its charter capital by returning part of the contributed capital in its charter capital if it has carried out business activities continuously for more than two years from the date the company was registered, and guarantees payment of all its debts and other liabilities after it repays the owner (so-called lock-in period); or in case of failure to pay the capital contribution in full for the charter capital by the owner within 90 days.
- A Multi-member LLC can decrease its charter capital by returning part of the contributed capital in its charter capital if it has carried out business activities continuously for more than two years from the date the company was registered, and guarantees payment of all its debts and other liabilities after it repays the owner, by redeeming contributed capital from its members; or in case of failure to pay the capital contribution in full for the charter capital by its members within 90 days.
- A JSC can decrease its charter capital following a decision of the GMS, and shall return part of the contributed capital to the shareholders in proportion to their ratio of ownership of shares in the JSC, if the JSC has conducted business activities for two consecutive years from the date of company registration. The JSC shall ensure its payment capacity of all debts and other liabilities upon return to the shareholders, by redeeming issued shares for no more than 30% of the total number of ordinary shares sold and part or all of the dividend preference shares sold; or in case of failure to pay in full for the charter capital by the shareholders within 90 days.

3.11 Shares

- A Single-member LLC and a Multi-member LLC cannot issue shares.
- A JSC can issue shares which can be bought and sold by shareholders.

After a member has contributed capital, the company can issue a certification to the member(s) corresponding to their value of contributed capital.

Did you know that…
…it takes 9 procedures and 22 days to start a business, but practically, it will take longer?

3.12 Listing

- A Single-member LLC and a Multi-member LLC cannot list its contributed capital; and
- A JSC can list its shares provided listing conditions are satisfied.

3.13 Other Commercial Presences

3.13.1 *General*

There are two other commercial presences that could be established to do business in Vietnam: the representative office and the branch. The activities these presences can perform depend on treaties between Vietnam and the country where the head office is. For business activities that are outside the scope of a treaty or no treaty exists, an authorisation from the competent Vietnamese authorities is needed.
Considering that these are not independent legal entities, the parent company is liable for various aspects, such as debts and obligations. Legal claims can be brought against the parent company.

Did you know that…
…the head of a representative office cannot use a general power of attorney but needs a specific one for each contract that will be signed by the head?

3.13.2 *Representative Office*

If a foreign investor desires to have a presence in Vietnam, but does not wish, or is not ready yet, to invest in Vietnam, it may set up a representative office if certain conditions are met. In general, setting up a representative office is quicker and less complicated than acquiring an ERC and IRC. One of the conditions is that, the business of the foreign investor must have been in operation for at least one year before the foreign investor can submit an application.
Vietnamese law prohibits a representative office to perform activities that generate profit. it cannot conclude agreements or sell products, but it can for example, conduct business development or marketing activities such as displaying goods or services at its office. A representative office can also play an important role in facilitating operations and business objectives on behalf of the offshore company by liaising with the authorities.
The head of the representative office can sign economic or commercial contracts with businesses in Vietnam on behalf of the offshore company on the condition that there is a specific power of attorney from the offshore company for each contract.
A representative office can employ foreign and Vietnamese staff.

3.13.3 *Branch*

Certain business sectors, such as banks, professional services or traders, could set up a branch as an alternative to establishing a new company. However, certain requirements need to be met. A foreign investor must have operated its offshore business for at least five years before the foreign investor can establish a branch in Vietnam.
Branches are permitted to conduct a wide range of commercial activities including purchase and sale of goods, unless this is specifically prohibited in the license or under the Commercial Law

4. Tax

5. Tax Incentives

4. Tax

4.1 Introduction

Like many other countries, Vietnam has various taxes, some of which are applicable to businesses, such as corporate income tax and value added tax, and others to individuals. Tax planning is one of the most important factors when managing a company, especially when in a new market.
If certain conditions are met, reductions can be granted in order to incentivise investment in certain areas or sectors.

Did you know that…
…a foreign enterprise should pay CIT on income earned in Vietnam with or without a resident establishment in Vietnam?

4.2 Corporate Income Tax

4.2.1 *Scope*

The Corporate Income Tax (**CIT**) Law applies to a company that is a tax resident in Vietnam. That is the case if the company is incorporated in Vietnam or has a permanent establishment in Vietnam. In these cases, the foreign company must pay tax on its worldwide income. However, the CIT Law also applies to companies without a permanent establishment. If this is the case, the company is only required to pay tax on income raised in Vietnam. CIT is imposed on earnings obtained through the trading of goods or services, or from other activities such as capital transfers[9], or real estate transactions.

Did you know that…
…a company needs to pay corporate tax 32 times a year and that it takes an average of 872 company hours to complete relevant forms?

4.2.2 *Tax Rates*

The general tax rate is 20% and applies to all companies, except for those exploring and extracting oil and other rare resources in Vietnam, or exploring and exploiting mineral resources (e.g. silver, gold, gemstones), which are subject to higher tax rates. For companies with a total revenue of less than VND20 billion, a 17% CIT rate will be applied.

Did you know that…
…you often need to keep your boarding pass if you would like to deduct the costs?

4.2.3 *Calculation*

CIT is calculated based on the taxable profit of a company. The elements needed for this calculation are: total revenue, taxable income that is domestic or foreign sourced, deductible expenses, carry-forward losses and assessable income.

For expenses to be deductible, two criteria need to be satisfied:

- the expenses actually arose and are related to the activities of production and business of the enterprise, and
- the expenses are supported by complete invoices and source vouchers as stipulated by law.

Note that fines, penalties, and taxes are not deductible. Under certain conditions, and sometimes limited to a maximum duration, start-up expenses, charitable contributions, payments to foreign affiliates (royalties, loan interest, and service fees), depreciation and amortisation of tangible and non-tangible assets, and interest expenses can be deducted; net operating losses can be carried forward for a certain amount of time.

Did you know that…
…the VAT invoice is also called the red invoice?

4.3 Capital Gains Tax

4.3.1 *General*

It is important to realise that the under Vietnamese law, gains on disposal of capital or securities in a Vietnamese entity, such as an LLC or JSC, are subject to CIT. The law distinguishes between a corporate entity and an individual with different regimes for a tax resident and a non-tax resident. Vietnamese entities and individuals are considered tax residents while foreign entities and individuals are considered non-tax residents.

4.3.2 *Corporate Entity*

For a *tax resident* corporate entity disposing of capital or securities in a Vietnamese entity, the gain is treated as other income and will be taxed at the standard rate of 20%. For a *non-tax resident* corporate entity disposing of securities of a JSC, the CIT tax rate is 0.1% of the proceeds and when capital of an LLC is disposed, CIT on gains from transfers of capital will be levied at a rate of 20% on the gain.

4.3.3 *Individual*

If an *individual* being a *tax resident* disposes securities of a JSC the gain will be subject to PIT, at a rate of 0.1% of the proceeds. When capital of an LLC is disposed, PIT is levied on capital transfer gains at a rate of 20%.
If the individual is a *non-tax resident* and disposes of capital or securities in a Vietnamese entity, gain is subject to PIT at a rate of 0.1% of the proceeds.

4.4 Value-added Tax

Value-added tax (**VAT**) applies to goods and services used for manufacturing, business, and consumption in Vietnam. For input VAT to be creditable, the company must obtain a proper VAT invoice from the supplier. In general, the VAT

[9] More information on capital gains tax in paragraph 5.3 of this chapter.

invoice needs to be requested on the same day the service or good is purchased.

4.4.1 *Tax Rates*

The standard VAT rate is 10% and is applicable to most goods and products. There are two other rates: 0% and 5%, with the first applying mainly to exported products and services and the latter appplying, generally on essential goods and services. In addition, a VAT exemption applies to medical or veterinary services, certain insurance services, and certain financial operations.

Did you know that…
…for deduction of business travel costs a decision by the General Director approving this trip is needed?

4.4.2 *Calculation*

There are two methods to calculate the payable amount: the tax credit method or by calculating tax directly based on added value.

4.4.3 *VAT Invoices*

Companies can use pre-printed invoices, self-printed invoices or electronic invoices. The tax invoice template must contain stipulated items and be registered with the local tax authorities. Note that there cannot be corrections and mistakes in either of the invoices. In case a mistake is made, the invoice needs to be cancelled.
In Vietnam, it is also quite difficult to amend an invoice. You would need a document, called a minute, signed by relevant people to amend an invoice.

Did you know that…
…you can be a tax resident in Vietnam even if you stay in a hotel?

4.5 Personal Income Tax

4.5.1 *Scope*

The Law on Personal Income Tax (**PIT**) applies, in principle, to both Vietnamese and foreign individuals working in Vietnam, or having income sourced from Vietnam, and who is a resident in Vietnam. An individual is considered a resident if he or she:

- is present in Vietnam for 183 days or more in a calendar year or during a period of 12 consecutive months from the date of entry into Vietnam (can be checked from entry/exit stamps in passport);
- holds a temporary or permanent resident card; or
- has a regular residential location in Vietnam including a registered residence such as a hotel room or leased house in Vietnam with a term of 183 days or more in a tax year.

If these criteria are not met, you will be considered a non-resident.

4.5.2 *Taxable Income*

Generally, taxable income comprises ten main types: income from employment, business, capital investments, capital transfers, real property transfers, winnings or prizes, royalties, franchises, inheritances, and gifts.

Did you know that…
…if you do not register promptly for taxes, you will not be able to receive VAT refunds or credits and you can get a penalty?

4.5.3 *Tax Rates*

For residents, a progressive system applies ranging from 5% to 35% depending on the annual or monthly taxable income. For non-residents, a flat rate of 20% shall be imposed on the income derived from Vietnam. For non-employment related income, the rates vary from 0.1% to 20% depending on the type of income; the way PIT is calculated also depends on the type of income.
If you perform services but do not have a labour contract, in general, 10% will be withheld and paid directly to the tax authorities. However, this does not mean that you do not have to finalise your annual tax.

Did you know that…
…you have to pay taxes over income earned before you came to Vietnam?

4.5.4 *Tax Allowances*

The monthly taxable PIT income will be reduced by 9 million VND for personal allowance and an additional 3.6 million VND for each dependant, parent or child.
Note that the dependent allowance is not automatically granted, and the taxpayer needs to register dependents and provide supporting documents to the competent tax office.
Contributions to mandatory social, health and unemployment insurance schemes and local voluntary pension schemes can also be deducted but are subject to a cap. Contributions to certain approved charities can also be deducted.

4.5.5 *Tax Codes*

Everyone with taxable income is required to obtain a tax code.

4.6 Other Taxes

4.6.1 *Foreign Contractor Tax*

Foreign organisations and individuals carrying out business in Vietnam without establishment of a legal entity are subject to Foreign Contractor Tax (**FCT**). Generally, FCT is comprised of CIT and VAT. The FCT tax rates vary depending on the transaction and taxpayers' tax filing status. The foreign contractors may benefit from double tax agreements between Vietnam and their home country.

Did you know that…
…you cannot import many second-hand products such as electrical or electronic household appliances or clothes?

4.6.2 *Import and Export Duty*

Basically, all goods entering into Vietnam are subject to import duties which are classified into three categories: ordinary rates, preferential rates and special preferential rates. Which rate applies depends on the trading relationship between Vietnam and the exporting country. Apart from being subject to import tax, in certain situations Vietnam also imposes an anti-dumping tax, anti-subsidy tax and anti-discrimination tax or safeguard tax. Export duties with rates from 0 to 25% are levied on only some goods such as agricultural products such as rice, forest products, fish, and natural minerals.

4.6.3 *Special Consumption Tax*

The production or import of certain goods such as cigarettes, alcoholic drinks, passenger vehicles, aircrafts and playing cards, as well as the provision of certain services, in particular those related to karaoke parlours, casinos and golf lanes are subject to Special Consumption Tax (**SCT**). In other jurisdictions, this is also called excise tax. The SCT rates differ depending on each type of goods and services, but can be as high as 65%. Taxpayers producing SCT taxable goods using SCT inputs are entitled to claim a credit for the amount of SCT paid on the materials imported or purchased from local suppliers.

4.6.4 *Natural Resources Tax*

Natural Resources Tax is levied on the exploitation of mining resources such as petroleum, mineral products, forest products, seafood and natural water. Tax rates vary from 1 to 40% depending on the specific type of exploited natural resources. Progressive tax rates apply to the production output of petroleum, natural gas and coal gas.

4.6.5 *Property Tax*

There is one form of property tax in Vietnam: non-agricultural land-use tax. In terms of non-agricultural land-use tax, owners of houses and apartments have to pay such tax with rates ranging between 0.03 and 0.15% per square meter.

4.6.6 *Environmental Protection Tax*

Environmental protection tax is levied on the production and importation of products that are considered 'non-environmentally friendly' and which could have a negative impact on the environment: petrol, oil, grease, coal, hydrochlorofluorocarbons, plastic or nylon bags; and some chemicals (pesticides). Tax rates are based on specific tax levels per unit of product, such as litre, kilo or tonne.

Did you know that…
…payment of the first Business Licence Tax is due immediately after the company is established and non-payment can result in a fine and delay?

4.6.7 *Business License Tax*

All companies have to pay a business license tax annually. The amount depends on the registered capital.

4.6.8 *Non-agricultural Land-use Tax*

This tax is imposed on residential land in rural and urban areas, on land used for non-agricultural production and business such as the:

- the construction of industrial parks;
- the construction of production and business establishments;
- mineral exploitation and processing; and
- the production of construction materials and pottery articles.

Areas such as land of investment projects in domains eligible for investment promotion or land in areas with socio-economic difficulties may be exempted or qualify for reduction. There are also objects on which no tax will be imposed, such as for example land used for public purposes (roads, bridges, schools, hospitals).

Did you know that…
…you are legally required to employ a Chief Accountant and that this person is required to perform many relevant business-related activities?

4.7 Tax Reporting

4.7.1 *Quarterly Tax Report*

Companies have to submit quarterly reports to the regional tax office for VAT return, PIT return and a report of using the VAT outcome, being the difference between VAT received and paid. After the report has been submitted, the company has to pay VAT and PIT. If the reporting is not done before the deadline, a fine can be imposed.

Did you know that…
…a company can be fined if tax declarations are signed with the wrong colour pen and signatures differ too much from one another?

4.7.2 *Annual Tax Report*

The company's financial statement, statement of return for PIT and the statement of return for CIT all have to be submitted to the regional tax office on an annual basis.

4.7.3 *PIT Declaration and Payment*

An employer must declare and pay PIT either on a monthly basis by the 20th day of the following month or on a quarterly basis by the 30th day following the reporting

quarter. The amounts paid are reconciled at the the end of the year to determine the total tax liability.

4.7.4 *Capital Gains Declaration and Payment*

The responsibility for declaring capital gains to the tax authorities depends on the nature of the party (corporate entity or an individual), and on the residency of the entity (offshore / Vietnamese or tax resident / non-tax resident);

seller	buyer	obligation to declare and pay
Vietnamese entity	any	seller
offshore entity	Vietnamese entity	buyer
offshore entity	offshore entity	Vietnamese target company
non-tax resident individual	Vietnamese entity / tax resident individual	Buyer
tax resident individual	any	seller

4.8 Tax Finalisation

4.8.1 *PIT Finalisation*

Normally, the employer will submit the tax declaration to the Vietnamese authorities at the end of the year. If an employee works for two employers under a labour contract or another kind of agreement, neither company can finalise the tax over a calendar year, unless the amount paid by one of the companies is less than 10 million VND. In that case, the employee can authorise the company to submit on his or her behalf. Otherwise, the employee has to submit the tax declaration her or himself.

An annual final tax return must be submitted, and any additional tax must be paid within 90 days from the year's end.

4.8.2 *CIT Finalisation*

The annual CIT return must be filed and submitted no later than 90 days from the calendar year's end. If the annual CIT submission is filed too late, a company can be fined, and the same applies if a wrong declaration is made.

4.8.3 *VAT Finalisation*

VAT return forms must be filed on a monthly basis by the 20th day of the subsequent month, or on a quarterly basis by the 30th day of the subsequent quarter (for companies with an annual revenue of VND50 billion or less for the prior year).

4.8.4 *Capital Gains Finalisation*

Capital gains need to be declared. However, the moment when this needs to happen, again, depends on the nature and residency of the party. Below is a summary of the main timelines that apply depending on the kind and nationality of buyer and seller.

seller	buyer	time to declare
Vietnamese entity	any	year-end CIT finalisation
offshore entity	Vietnamese entity	on occurrence of transaction
offshore entity	offshore entity	on occurrence of transaction
non-tax resident individual	Vietnamese entity / tax resident individual	monthly or quarterly
tax resident individual	any	on occurrence of transaction

Did you know that…
…a legal representative can be prevented from leaving Vietnam if there is an arrear in tax payments?

4.9 Audit

Foreign-owned entities, financial institutions and listed companies must be audited at least once a year; and the audit must be completed within 90 days from the end of the calendar year. All auditing activities will follow the Vietnam Accounting Standards which differ from the International Financial Reporting Standards (**IRFS**). These Vietnam standards are issued by the Ministry of Finance and International Standards on Auditing.

Vietnam is expected to adopt the IRFS by 2020 which will likely impact the current way of doing business in Vietnam.

Did you know that…
…a legal representative can go to jail and a company can be fined if company taxes are evaded?

4.10 Double Taxation Avoidance Treaties

What is interesting to note is that Vietnam has concluded agreements with almost 80 countries to prevent their nationals being taxed double. Double Taxation Avoidance Treaties (**DTA**) can apply to individuals and to companies. The content of a DTA differs per country and it is therefore good to ask advice on the applicability of a DTA in an individual case.

5. INCENTIVES

5.1 Introduction

Currently, Vietnam has about 325 industrial parks (**IP**) (industrial zones or export processing zones) and 16 coastal economic zones established.

In 2017, IP and economic zones attracted 473 newly-registered foreign investment projects (new capital and additional capital at existing projects) for almost USD7.3 billion. The leading provinces in attracting foreign investment are Bac Ninh, Binh Duong, Dong Nai, HCMC and

Thanh Hoa, mainly due to better transportation infrastructure.
Besides the traditional IPs, some of the newer parks have been set up as a township outside larger cities, being an integrated work, live, play and learn area. You can find shopping malls, offices, supermarkets, schools, hospitals, hotels, apartments, and townhouses in these townships.
Because of attractive incentives, companies now also set up their business in other areas outside HCMC, Hanoi, and Danang.
Per 1 July 2018 two new concepts have been introduced for IPs: the auxiliary industrial zone (**AIZ**), or supporting industry zone, and the eco-industrial zone (**EIZ**). An AIZ is an IP specialising in manufacturing auxiliary industrial products and rendering services satisfying the needs to manufacture these products. An EIZ is an IP in which enterprises are required to engage in cleaner production, make effective use of natural resources, and enter into manufacturing cooperation and affiliation to tighten industrial symbiosis to promote economic, environmental and social efficiency in these enterprises.

Did you know that…
…a Law on Special Economic Administrative Zones is drafted and pending approval?

5.2 Choice of Location

When you are unsure of where you want to establish your new business or investment project, it is important to take into consideration a number of factors. You can either choose an area outside an industrial park or within. In both cases you will need to consider the following points depending on the business or factory you would like to establish:

- the infrastructure and connectivity with the global supply chain;
- access to suitable staff;
- complicated procedures for site clearance and infrastructure construction;
- import duties when importing raw materials if the end products are exported;
- access to distributors; and
- incentives.

If you opt for an industrial park, you need to strategically decide the location, as you will have easier access to staff if you locate the business where similar companies are already located. Additionally, customs warehouse keepers can support with customs clearance, provide transportation services and act as distributors for the goods deposited.
As mentioned already, an additional factor to consider is whether certain incentives are granted in the area you invest in. However, note that Vietnam's tax incentive regime is relatively complex, as the incentives are listed in various documents, making it very difficult to obtain all relevant information.

5.3 Tax Incentives

5.3.1 *Industries and Sectors*

Tax incentives can be granted to new investment projects in 'encouraged' business sectors, such as education, health care, high technology, scientific research, environmental protection, infrastructural development, or manufacturing projects of more than 6 trillion VND (about 260 million USD).
Incentives are also given to producers of high priority products, which include accessories, components, and spare parts used for assembling goods in the textile and garment industry, footwear and leather industry, electronics industry, automobile industry, mechanical fabrication sector and supporting products used in high-tech industries.

5.3.2 *AIZ*

Projects on the infrastructure development of an AIZ, including subzones, can be entitled to tax exemption and reduction of land rent, a land lease term of up to 70 years, and priority access to loans from the Vietnamese State, ODA funds, foreign loans under Government's guarantees and other kind of loans.
Investment projects related to *manufacturing supporting industry products* as listed in Decree No. 111/2015/ND-CP of 3 November 2015 might enjoy certain tax incentives relating to CIT, export and import duties. Additionally, these projects may have priority to participate in training or assistance programs for start-ups, small and medium enterprises, and relevant other programs of competent authorities.

5.3.3 *EIZ*

Eco-enterprises in EIZs can enjoy preferential loans from the Vietnam Environment Protection Fund, Vietnam Development Bank, and/or other financial sources related to clean industry. They will have priority to participatein technical support or investment enhancement programs. Finally, they shall be given priority in providing information related to the technology market and the possibility of cooperating in effecting industrial symbioses in the scope of production and business activities of these enterprises.

5.3.4 *Specific Areas*

Investors who invest in areas with bad socio-economic conditions, such as areas which have poor infrastructure, lack of experienced labour force, or are situated in remote rural areas, can qualify for tax reduction and exemption.

5.3.5 *Tax Holidays*

Tax holidays can consist of tax rate reduction of 10% and 17% for fifteen years and ten years respectively, starting from the commencement of the operation. It can also consist of a 50% reduction during two to nine years; or consist of a tax exemption during two to four years, followed by a tax rate reduction.

5.4 Other Incentives

If they meet the relevant criteria, enterprises may qualify for participation in training or assistance programs, and other programs organised by the competent authorities. Qualifying enterprises may also receive preferential loans, participation in technical support or investment enhancement programs, receive information on the technology market and cooperation opportunities, exemption from import duty on goods imported, and exemption from and reduction of land rental fees and non-agricultural land-use tax.

6. Competition
7. Insolvency, Bankruptcy and Dissolution

6. COMPETITION

6.1 Introduction

Competition is deemed necessary to give consumers a choice of products for reasonable prices. However, companies try to obtain as much profit as possible and thus, try to limit competition. In Vietnam, the Competition Law contains similar provisions and definitions as other countries. The Vietnamese Competition Law from 2004 provides for competition-restricting acts, unfair competition acts, orders and procedures for settling competition cases, and measures for how to handle violations of competition legislation. The Competition Law applies to business organisations, individuals and enterprises producing or supplying products, providing public utility services, enterprises operating in state-monopolised industries and sectors, foreign enterprises and professional associations operating in Vietnam. Note that recently, an amended Competition Law was approved which will enter into force as of 1 July 2019.

6.2 Application

Like with many other laws, the Competition Law is sometimes difficult to interpret as there is no formal clarification and guidance of all concepts. One of the most crucial points is the scope of the law. The Competition Law provides that the law applies to "overseas enterprises *operating* in Vietnam". However, no definition is given as to what operating means. Therefore, it has caused confusion in determining what level of activity is necessary to qualify as *operating*. In general, it is considered that foreign businesses without direct operations and a physical or legal presence in Vietnam are likely to fall within the scope of the Competition Law when they have a local subsidiary or sales into Vietnam.

It currently is also more complicated for participants in foreign economic concentrations to determine whether they are subject to the Competition Law's merger control regime. This is especially the case when one or more of the participants have a subsidiary or physical operation in Vietnam, but is not directly involved in the proposed transaction; it is unclear if the Law applies. The new Competition Law is clearer on this point as it provides that the Law applies if agreements or concentrations *have or potentially have the effect of significantly restricting competition in the (Vietnamese) market*.

6.3 Anti-competitive Agreements and Other Conduct

There are a number of agreements that restrict competition, and therefore risk illegality. To determine whether an agreement is legal, it is important to look at the market share of the parties.

- Regardless of the parties' market share, prohibited agreements are those that:
  - prevent, restrain, disallow other enterprises to enter the market or develop business;
  - abolish from the market enterprises other than the parties of the agreements; and
  - connive in biddings.
- If the parties have a combined market share of 30% or more, prohibited agreements are those that:
  - directly or indirectly fix prices;
  - distribute outlets, sources of supply of goods, or provision of services;
  - restrict or control produced, purchased or sold quantities or volumes of goods or services;
  - restrict technical or technological development and investments; or
  - impose conditions or unrelated obligations on the signing of purchase / sale contracts for goods / services.

In case certain criteria are met, such as reduction of costs and other benefits for consumers, an exception may be granted.

6.4 Dominant Position

If an enterprise or a group of enterprises has a dominant position or a monopoly, certain acts by that enterprise are prohibited.

- A dominant market position is deemed to exist if an enterprise has a market share of 30% or more, or if it is capable of causing a considerable restriction of competition;
- A dominant market position is deemed to exist if enterprises or a group of enterprises act together to restrict competition, and
  - two of them have a combined market share of 50% or more;
  - three of them have a combined market share of 65% or more; or
  - four of them have a combined market share of 75% or more.

An enterprise is deemed to hold a monopoly position if it does not have any competitors.

6.5 Abuse of Dominant Position

An enterprise with a dominant or monopoly position in the market is prohibited to perform the following acts:

- sell goods or services at prices below the total cost price to eliminate competitors;
- impose unreasonable purchase or sale prices of goods or services, or fix minimum resale prices, causing damage to customers;
- restrict production or distribution, limiting the market, or hindering technical or technological development, causing damage to customers;
- apply different commercial terms on identical transactions for the purpose of creating inequality in competition;
- impose conditions or unrelated obligations on the signing of contracts; or
- prevent competitors from entering the market.

Further to this, an enterprise with a monopoly position is prohibited from imposing adverse conditions on consumers or taking advantage of the monopolistic position to unilaterally change or cancel an executed contract without legitimate reasons.

6.6 Mergers & Acquisitions

The Competition Law defines the concept of economic concentration which covers mergers, consolidations, acquisitions and joint ventures.

An economic concentration is prohibited if the combined market share of enterprises participating in the economic concentration represents more than 50% in the relevant market. For an economic concentration with a combined market share from 30-50% in the relevant market, the Vietnam Competition Authority (**VCA**) must be informed of the proposed concentration.

It is important to note that the procedures to register the business or amendment of a business license related to the economic concentration can only be carried out after the VCA's confirmation has been obtained stating that the economic concentration is not prohibited under the Competition Law. Exemptions may be granted to prohibited economic concentrations if certain criteria are satisfied.

6.7 Penalties and Liabilities

The main penalties for a violation of the Competition Law consist of warnings, or monetary fines of up to 10% of the total annual revenue. There are also supplementary penalties such as revocation of a license, confiscation of materials and facilities used to commit the breach.

In addition, violators may also be subject to remedial measures such as restructuring of the enterprise that abuses its dominant position, division or split of the enterprise that has merged or consolidated, or compulsory sale back of the acquired enterprise.

6.8 Leniency

There is no leniency or immunity regime available under the Competition Law.

6.9 Enforcement and Administration

The VCA, an organisation under the Ministry of Trade and Industry, can investigate anti-competitive behaviours, control mergers, consolidations, acquisitions and joint ventures between enterprises, the economic concentration process, and handle unfair competition practices. After completing the investigation, the report and case file will be handed to the Competition Council, an independent agency, for further handling and a panel will be formed that will review the investigation report and decide whether to conduct a hearing on the case.

The Competition Law includes a number of provisions regarding the functions of the VCA, the Competition Council, investigation and handling procedures of competition cases, competition-related proceedings, and procedures for seeking exemption from the above-mentioned prohibitions.

6.10 New Competition Law

As of 1 January 2019, a new Competition Law will enter into force. Based on this new law, anti-competitive activities performed abroad that *have or potentially have the effect of significantly restricting competition in the (Vietnamese) market* will also be governed by the Vietnamese Competition Law. So, there could be an impact on M&A deals between offshore entities and indirect equity interests in a Vietnam-based entity as these deals will fall under the oversight of the Vietnamese competition authorities. This criterion also applies to competition restricting agreements.

Some other significant changes are that the criteria to determine a dominant position will change and a leniency policy will be introduced. Furthermore, horizontal, vertical and mixed transactions will be covered by the Competition Law. Finally, requirements with regard to notification of an economic concentration will change.

Did you know that…
…it can take up to 5 years before an insolvency has been resolved?

7. Insolvency, Bankruptcy and Dissolution

7.1 Insolvency

The primary controlling law regarding insolvency of companies established in Vietnam, is the Law on Bankruptcy. An enterprise will be considered insolvent if it fails to repay an unsecured or partially secured, undisputed mature debt within 3 months following the due date of such debt. A claim for repayment of the debt is not required for a company to be considered insolvent.

Although the new Bankruptcy Law does not grant specific types of companies any exclusions from insolvency proceedings, its predecessor did provide exceptions, including those for special enterprises directly servicing national defence and security, finance companies, and banking and insurance companies operating in sectors that regularly and directly provide essential public utility services. It is important to note that the old law has not been appealed, and therefore courts could still apply such regulations and provide exceptions for those classified as special companies.

The Bankruptcy Law 2014 does impose special requirements for credit institutions in the insolvency process. Specifically, before the court accepts a bankruptcy petition, an insolvent credit institution must undergo 'special control' imposed by the State Bank of Vietnam (SBV).

Outside of insolvency proceedings, there is no court involvement in the reorganisation or liquidation of companies established in Vietnam.

Did you know that…
…Vietnam ranks 129 out of 169 for resolving insolvencies according to the Doing Business Guide of the World Bank?

7.2 Bankruptcy

7.2.1 *Introduction*

An enterprise is bankrupt when it is declared so by the People's Court in the province or district where the company is headquartered, after a petition is filed to commence bankruptcy proceedings. The competent court is determined based on the complexity and nature of the case.

Under the Bankruptcy Law, the following persons are required to file a bankruptcy petition when the company has become insolvent:

- the owner of a private enterprise or one-member LLC;
- the chairperson of the BOM of a JSC;
- the chairperson of the members' council of an LLC;
- a partner of a partnership; or
- the Legal Representative of a company in any form.

If a person specified above fails to make a bankruptcy filing upon becoming aware that the company has become 'insolvent', he or she will be subject to a monetary fine of VND1-3 million (USD43-129).

Further to this, unsecured creditors or partially secured creditors, a union representative or an elected representative of the company's employees, or the shareholders of the company have the right, but are not required, to file a bankruptcy petition upon observing that the company has become insolvent.

Acceptance of the bankruptcy petition triggers a 6-month look-back period, known as a preference period. A court may rule some transactions aimed at dissolving assets of the company invalid. In such a case, any recovered assets must be included in the total assets of the debtor company. For transactions involving a related party to the debtor, a preference period of 18 months will apply.

7.2.2 *Bankruptcy Stay*

Once a bankruptcy order is entered, secured creditors may enforce a claim against a debtor's assets. Generally, secured loans are repaid with the relevant secured assets, unless those assets are designated under the business recovery plan for the company.

The court may permit immediate enforcement of secured assets if there is a risk of destruction or a substantial decrease in value. Transactions subject to review may include asset transfer under market price, conversion of an unsecured debt into a debt secured or partly secured by the debtor's assets, the transaction is outside the company's normal business operations, and donating assets.

7.2.3 *Stages of a Bankruptcy Proceeding*

A bankruptcy proceeding knows various stages with the possibility of appeal at Stage 1 and Stage 2.

Step 1
Bankruptcy petition is filed, and the court accepts jurisdiction over the bankruptcy petition.

Appeal at Stage 1 is available.

Step 2
The court issues a decision within 30 days after the filing of the petition which stipulates either:

- starting bankruptcy proceedings, or
- rejecting the petition.

Appeal at Stage 2 is available.

Step 3
The court convenes a meeting with creditors who will decide on:

- instruction of the company to prepare a recovery plan; or
- requesting the court to issue an immediate decision of bankruptcy.

Step 4
If the meeting of creditors instructs the company to prepare a recovery plan, the company must prepare and circulate a plan within 30 days or the court will enter a decision of bankruptcy.

Step 5
The legalised copy is sent to Vietnam where it needs to be translated into Vietnamese and certified according to Vietnamese law.

Step 6
After steps 1 to 5 have been finalised, the document is ready for submission to the relevant authorities.

7.2.4 *Steps*

Under certain circumstances, an immediate order of bankruptcy may be issued, followed by the liquidation of the company and settlement of its obligations. This may arise where the company lacks the assets to pay the basic bankruptcy fees, the court or creditors determine that the company cannot be rehabilitated, the company is unable to

prepare a recovery plan, or the recovery plan is not approved or followed.

Once the court accepts the bankruptcy petition, the judge will appoint an asset management officer or an asset management and liquidation company. The role of the asset manager is to oversee the business operations and liquidate the company assets. These tasks include preparing the asset inventory, preparing the list of creditors and list of debtors of the company, taking steps to protect assets, preventing unauthorised sale or transfer of assets, selling assets in accordance with decisions of the court, and organising the valuation and liquidation of assets.

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

7.2.5 *Amendments to Credit Agreements*

Amendments to credit agreements can range from technical amendments to restructuring financial covenants, payment terms and security packages. If the credit agreement has been registered with the SBV, and the changes to the credit agreement are material, the SBV registration must be amended.

Approvals may be necessary from other regulatory bodies as well; for instance, if the amendments entail modifications to a corporate charter, the business registration authority must register the revised charter.

7.2.6 *Debt-for-Equity Swaps and Capital Cures*

Due to caps on many key investment sectors, these tools may not be practical solutions in Vietnam. In addition, because such remedies fundamentally alter the borrower's capital structure, burdensome regulatory steps may be involved. This is particularly relevant where the borrower is already a foreign invested entity. When a company is restructured, all revised foreign ownership must be permissible under Vietnamese law. In most cases, amendments to the corporate charter and ERC or IRC will likely be required as well.

7.2.7 *Voluntary Dissolution*

The voluntary dissolution procedures of a company include the following steps with relevant parties and regulatory authorities:

Step 1
Resolution on dissolution to be passed by investors, disclosed to relevant stakeholders and announced publicly in the newspaper.

Step 2
Terminating contracts (with customers, suppliers, landlord, etc.) and liquidating assets.

Step 3
Settling liabilities in accordance with the statutory order: salaries, severance allowance, social insurance, other benefits owned to the employees; tax and obligations owned to the state; debts to creditors.

Step 4
Submission of regulatory dossiers to the authorities after having fulfilled the obligatory liabilities; return of the company's seal and certificates; closure of tax code.

7.2.8 *Consequences*

If the business registration body does not receive all requisite dissolution documents within the allotted six-month period, the enterprise will be deemed to have been dissolved, and the business registration body will remove the enterprise's name from its business registry.

Consequently, the legal representatives, the members (in the case of an LLC), the company owner (in the case of a one-member LLC), the members of the BOM (in the case of an JSC) and any unlimited liability partners (in the case of a partnership) will be jointly responsible for the debts and any other outstanding property obligations.

7.2.9 *Closing a Business in Vietnam*

In order to lawfully close a business in Vietnam, the following documents must be submitted to the licensing authority and tax authority in Vietnam:

- Liquidation notice of enterprise;
- Minutes of the meeting of BOM decided on the dissolution of the enterprise;
- The company's decision on liquidation;

In addition, the licencing authorities require the following documents:

- Report on enterprise asset liquidation;
- The list of creditors and the paid debt;
- Documents evidencing that enterprise has fulfilled all of its tax obligations;
- Confirmation on social insurance for employees after the dissolution decision; and
- The seal and certificate of seal sample registration.

Additionally, the tax authority requires:

- Audit reports and tax settlements;
- The financial statements for the year to date of the decision on dissolution;
- The company's tax liabilities audited by the tax authority; and
- Verification of tax obligations of the enterprise.

7.2.10 *Taxes*

At dissolution, an enterprise must apply for a tax code closure announcement at the Tax Department. Any company entering a voluntary solvent dissolution in

Vietnam will be subject to a final tax audit. Tax clearance with the tax authorities is both exhaustive and costly. Bearing in mind the excessive pressure that the Vietnamese government in under to reduce the fiscal deficit over the last several years, the target of re-collected tax liabilities through an audit and inspection are planned for by local tax authorities. As a result, a tax audit upon liquidation is likely to result in tax claw-back, penalties, and interest on late payment for the dissolving entity.

For the foregoing, an entity should be diligent in the course of their business to stay compliant with tax requirements, as well as stay up to date with common tax liabilities which may arise during the tax audit process at dissolution.

7.2.11 *Risks*

Common tax risks to be aware of include, but are not limited to:

VAT

- Under payment or under declaration of VAT payable;
- Failure to provide proof of non-cash payment for goods and services purchased (valued at VND20 million or more).

CIT

- Insufficient recognition of income;
- Failure to provide supporting documentation of benefits-in-kind for employees;
- Interest-free loans, likely to be considered interest income bv tax authorities.

PIT

- Incorrect tax residency status determination of expatriate employees;
- Failure to include benefits-in-kind in taxable income.

FCT

- Under payment or failure to pay tax imposed on payments of service charged to offshore companies;
- Incorrect exchange rates used for converting payment in foreign currencies.

7.2.12 *Consequences for Employment*

Under the Labour Code of Vietnam, an employer may unilaterally terminate the employment of an employee because of 'organisational restructuring' or other 'economic reasons'. The Labour Code does set out specific procedures for such termination.

In the event of a company restructure, the succeeding employer is responsible for continuing the employment of the existing workforce and making amendments and supplementations to the employment contracts. In case there is not enough work for the existing workforce, the new employer must develop and implement a labour utilisation plan.

Where the employer dismisses employees for reasons discussed under this section, the employer must pay job-loss allowance to employees. The job-loss allowance will depend on the length of employment; for employees having worked on a regular basis for at least twelve months, the employer must pay one month's wage for each year of employment, and it shall not be lower than two months' wages.

7.2.13 *Employee Rights*

In case an employee does not pay salary or other debts to employees within three months after they are due, employees and the grassroots trade union have the right to request the bankruptcy of the company they work for.

Did you know that…
…it is typically easier to start a company than to close it?

7.3 Dissolution

Under Vietnamese law, an enterprise will be dissolved in the following cases:

- The operation duration stated in the company's charter expires without any decision on extension;
- The dissolution is decided by the owner of a sole enterprise; by all general partners of the partnership; by the Members' Council or the company owner of a limited liability company; or by a Shareholders' Meeting for joint-stock companies;
- A company no longer has the minimum number of members as provided for by the Law for six consecutive months; and
- The Certificate of Business registration is withdrawn.

An enterprise will only be dissolved if all debts and liabilities are resolved and the company is not currently involved in a dispute at court or arbitral tribunal.

Did you know that…
…normally tax authorities can check five years back, but in the event of the dissolution of a company, they can check back to the establishment of the company and check if mistakes have been made, resulting in additional payments?

8. Foreign Currency Exchange and Remit Profits

9. Borrowing and Lending

8. FOREIGN CURRENCY EXCHANGE AND PROFITS REMIT

8.1 Foreign Currency Exchange

8.1.1 *General*

The VND is not freely convertible and payment and remittance of foreign currencies whether inbound, outbound, and even within Vietnam are subject to controls by the SBV, and the banking system in general.

Did you know that…
…in 2017, Vietnam ranked in the global top 10 of countries receiving overseas remittances worth USD13.8 billion?

8.1.2 *Prices in VND*

Under the laws of Vietnam, transactions, price listing, payments, advertisements, quotations, price determination and prices reflected in contracts must be in VND. Only in a few cases it is permitted to trade in foreign currency, such as residents' capital contribution to foreign investment projects in Vietnam, certain internal transfers of capital, certain activities of domestic or foreign contractors, sale of certain goods or provision of services between residents and non-residents. The SBV can decide to exempt other activities.

Did you know that…
…90% of all domestic transactions are done in cash?

8.1.3 *Foreign Investments*

For the implementation of foreign investments in Vietnam other than indirect investments, foreign investors can transfer capital in foreign currency before the IRC is granted to the investor. This transfer can be conducted when the following conditions are met: the purpose is related to the pre-investment stage, there is an agreement between relevant parties and transfer is completed via a capital account opened at a permitted credit institution.

The strict control of foreign currency exchange also affects the payment and closing arrangements for M&A transactions which therefore may be more complicated than in countries with less foreign exchange control.

Did you know that…
…Vietnam has about 40 domestic and 9 foreign banks, and about 100 rep offices or branches of foreign banks?

8.2 Profit Remittance

Vietnam guarantees that foreign investors can transfer certain assets offshore if they fulfill their financial obligations and submit proper documentation to relevant parties. It applies to the following assets:

- Invested capitals and proceeds from liquidation of investments in case the foreign-invested company is terminated or dissolved, investment capital is reduced, or the investment project or BCC is liquidated or terminated;
- Profits derived from investment activities which; can be transferred annually or at the expiry of an investment project where the transfers have been declared to competent tax authorities; and
- Other monies and assets lawfully owned by the investor.

In case such assets include VND, foreign investors can purchase foreign currency at a permitted credit institution for remittance purpose.

Did you know that…
…lending cash to a company by an investor might result in difficulties depositing monies back in an account in a foreign currency, upon repayment?

9. BORROWING AND LENDING

A foreign investor can borrow money to carry out an investment by way of onshore or offshore loans provided they comply with legal requirements such as the purpose of the loan and registration of the loan with the SBV.

In case of an offshore loan, the borrower may receive money from a non-resident through executing an offshore loan agreement in the form of a loan contract, a contract of goods, a purchase and sale on deferred payment, a loan provision entrustment contract, a financial leasing contract, or issuance by the borrower of debt instruments.

Did you know that…
…loans that are not documented with proper loan agreements can be regarded as revenue and taxed accordingly?

9.1 General Structure of a Loan

There are three forms of onshore loans: a short-term loan with a maximum loan term of one year, a medium-term loan with a term between one to five years, and a long-term loan with a term of more than five years.

For offshore loans, there are two main groups: a short-term loan with a term up to one year; and a mid and long-term loan with a term of more than one year.

Did you know that…
…depending on the type of loan you have, you may have to register it with the SBV or get its approval?

9.2 Conditions to Access a Loan

9.2.1 *Onshore Loans*

Onshore loans may be granted if a borrower has civil capacity in accordance with the laws of Vietnam, there is a

lawful need for the loan, the borrower's plan of using loan is feasible, and the borrower has financial capacity to repay the loan.

Currency used for onshore loans can be agreed by the parties. However, it is worth noting that foreign currency loans can only be granted by permitted credit institutions to residents in certain situations such as payments of imported goods or services, and short-term loans for short-term capital needed to export goods. In other situations, approval of the SBV needs to be obtained.

Did you know that…
…it is important that you use a loan for which it is granted, otherwise you can get fined by the SBV?

9.2.2 *Offshore Loans*

There are several conditions a borrower must satisfy in order to obtain a loan, such as using the loan for its agreed purpose, executing an offshore loan agreement and securing credit lines of the loan (if any) in order to be able to access an offshore loan. Depending on the purpose of the offshore loan, the currency of the loan can be in VND or in a foreign currency. In certain cases, it is required to register the loan with the SBV.

The borrower can be a company, a cooperative, a credit institution, or a branch of a foreign bank established and operating in Vietnam, and must not have received a Government guarantee for its offshore loans.

Vietnamese law is vague on offshore loans to an individual, thus if the foreign investor is an individual residing in Vietnam and intends to access offshore loans, his / her loan will be subject to the approval of SBV.

Did you know that…
…not registering offshore loans registered with the SBV can result in not being able to repatriate the loan and becoming taxable revenue?

9.3 Secured Assets

A *Vietnam-based* credit institution can take security over both movable assets such as shares and equity interests, equipment and machinery, cars, stocks and goods in circulation, deposits, accounts, receivables, insurance proceeds and immobile assets such as land use rights and assets attached to land. However, an *offshore* lender can only take security over movable assets due to the Vietnamese laws of regulations on real estate for foreign entities/individuals.

10. Notarisation, Authentication and Legalisation

11. IRC and ERC

10. NOTARISATION, AUTHENTICATION AND LEGALISATION

The authorities will not accept a foreign document used for the purpose of incorporating (or restructuring) a foreign-invested company in Vietnam nor for a work permit unless that document is legalised, notarised and translated into Vietnamese. The process will be as follows:

Step 1 - Copy
Copy the original foreign document.

Step 2 - Notarisation
Take the original and the copy to a (public) notary in the foreign country; the notary stamps the copy authenticating the copy as a certified true copy of the original (**Certified Copy**).

Step 3 - Authentication
Take the Certified Copy to the official body in the foreign country, such as the Ministry of Foreign Affairs, or another official body having similar functions.
The official body will stamp the Certified Copy authenticating that the (public) notary's stamp is true and that (public) notary is in good standing (**Authenticated Copy**).

Step 4 - Legalisation
Take the Authenticated Copy to the Vietnamese Embassy in the foreign country. The Embassy will stamp verifying that the official body has the power to authenticate the Certified Copy and you will have a **Legalised Copy**.

Step 5 – Translation
The legalised copy is sent to Vietnam where it will need to be translated into Vietnamese and certified according to Vietnamese laws.

Step 6 – Submission
After steps 1 to 5 have been finalised, the document is ready for submission to the relevant authorities.

Note that depending on the foreign country, additional steps may be needed. Sometimes some of the steps can also be done in Vietnam, such as translation, authentication or legalisation, but it depends on the country.

11. IRC AND ERC

All private business enterprises in Vietnam must have an ERC, and some also require an IRC. More specifically, domestic investors or enterprises where foreign investors hold 51% or less of equity only need an ERC. Foreign investors and companies in which foreign investors hold more than 51% of equity, in addition to the ERC, may be required to obtain an IRC.

11.1 ERC

The ERC is issued by the licensing authority. It contains information about the company registration, such as the name of the enterprise and enterprise code number[10], address of the head office of the enterprise, full name, permanent residential address, nationality and identity card or passport number of relevant persons, and charter capital.

11.2 IRC

The IRC is also issued by the licensing authority. The IRC is required in case a foreign investor implements an investment project by establishing a company in Vietnam. When investors apply for an ERC, the IRC must be included in the application file. It contains information registered by the investors about an investment project, such as information of the investor, place of implementation of the investment project, scale and objective of the project.

11.3 Timeline and Required Documents

11.3.1 *IRC*

The preparation, including the translation and execution of all documents, of the application dossier for an IRC might take two to four months to prepare and submit the file.
You will need a variety of documents translated, legalised and notarised to be included in the application file. Documents such as copy of passport, financial documents, and investment proposal, need to be notorised also.
Once the file has been submitted, the IRC should, in principle, be issued within fifteen days of the submission of the complete file. Practically, it might take longer.

11.3.2 *ERC*

In general, it takes about three days to obtain an ERC. In practice, it might take longer.

11.3.3 *Post-Establishment Formalities*

Once the ERC has been obtained several administrative formalities need to be fulfilled within the respective time limits, such as tax registration, payment of licence tax, and publication on the national enterprise registration information portal.

[10] Enterprise code number is a numerical code created by the National System of Information on Enterprise Registration, issued to an enterprise upon establishment and stated in the enterprise registration certificate. Each enterprise has a unique code number.

12. Employment and Labour Law

12. EMPLOYMENT AND LABOUR LAW

12.1 Scope

The Labour Code applies to all individuals – foreign and Vietnamese – working for Vietnam-based organisations or Vietnamese individuals, but also to Vietnamese nationals working overseas. Exceptions to this rule exist where an international treaty to which Vietnam is a party to, states otherwise.

12.2 Labour Contract

The Labour Code sets out the provisions to protect the rights of employees and employers. One of the provisions is related to the labour contract.

A labour contract is a *written* contract between an employee and an employer on a paid job, that details the working conditions and the rights and obligations of each party.

Although it is no longer compulsory, it is recommended that the contract is in Vietnamese. If the employee is not a Vietnamese national, the contract may be in dual language with the Vietnamese version prevailing in the case of any inconsistency.

The minimum age to sign a labour contract is, in principle, fifteen years, and a female or male employee can retire at the age of fifty five or sixty years, respectively.

Someone may enter into employment contracts with more than one employer. This impacts the PIT finalisation and the payment of social and health insurance schemes, though.

Did you know that…
…an employee's place of work must be stated in the labour contract?

In the event of various places of work, the primary place(s) shall be mentioned in the labour contract. When employees are required to travel to other temporary locations, in general, employers reimburse all reasonable travel expenses.

12.3 Contract Types

There are three types of labour contract

- Seasonal or work-specific labour contract (term less than one year);
- Definite term labour contract (term from one to three years); and
- Indefinite term labour contract (no duration defined).

12.4 Probation

Appicable probation periods are based on the nature and complexity of the associated job. A probation period is allowed up to the period of sixty days for jobs requiring professional or technical qualifications of college or higher level, thirty days for jobs with intermediate-level specialised or technical expertise, technical workers and professional staff members, and 6 working days for other jobs.

The salary during the probationary period cannot be lower than 85% of the full wage. During the probationary period, each party has the right to cancel the contract without giving prior notice and paying compensation. A separate probation contract may be entered into prior to entry into the labour contract.

12.5 Additional Clauses

Covenants on confidentiality and protection of intellectual property and business secrets are allowed via provisions in the labour contract or separate agreements. The legality of non-solicitation and non-competition covenants is not directly addressed under the Labour Code or other labour legislation. Instead, the Civil Code may be applicable.

Recently, the HCMC People's Court upheld an arbitral award of Vietnam International Arbitration Centre. In the arbitral award an amount of VND205 million (~USD9,070) was awarded to the employer because the employee had violated a non-compete clause in a non-disclosure agreement.

Besides, there are some specific regulations for female and teenage workers in term of salaries, working time, days off, and type of workplaces for the full protection of their benefits.

12.6 Renewal of Contracts

It is possible to renew contracts with a definite or fixed term. It is important to stay alert as the law contains some provisions to protect the employee.

When a definite contract or a specific-job contract expires, parties can sign a new fixed-term contract. If they fail to do so but the employee continues working, the contract will automatically be converted into an indefinite-term contract (for a definite-term contract) or a definite-term contract of 24 months (for a specific-job contract).

Be also aware that only a fixed-term contract can be renewed once. When the second term has expired and the contract is not terminated, an indefinite-term contract must be entered into. In case the the employee continues working after the expiry of two fixed terms, the contract will automatically be converted into an indefinite-term contract.

12.7 Minimum Salary

The Labour Code defines two kinds of minimum salary used to calculate the minimum salaries for employees:

- Common minimum salary for employees in state-owned organisations and enterprises; and
- Regional minimum salary for employees in all non-state owned enterprises.

There are various regional minimum salary levels as it depends on the region where the person works. These

regions are defined by the Governement.

Did you know that…
…legally even a CEO, in principle, cannot work more than 48 hours a week?

12.8 Overtime

The regular working time is maximum eight hours a day and forty eight hours a week. However, often employees work only forty hours a week.For employees working in heavy or hazardous conditions, the maximum regular working time is six hours a day.

Employers are entitled to require employees to work overtime under the following conditions:

- The employee agrees; and
- Overtime hours will not exceed 50% of the normal working hours; with a maximum of thirty hours per month and two hundred hours per year.

In some special sectors and industries, such as textile and garment, leather, aquaculture processing, and telecommunications, overtime is higher and capped at three hundred hours per year.

An employer is required to obtain persmission from the relevant Department of Labour, Invalids and Social Affairs (**DOLISA**) to implement an overtime policy exceeding two hundred hours per year.

12.9 Maternity and Paternity Leave

A female employee is entitled to six months maternity leave. When she gives birth to more than one child at the same time, she will be entitled to additional leave. During the maternity leave, Vietnamese employees receive a montly renumeration that is the average of the latest six months' salary or remuneration on which the social insurance premium was based. However, there is a maximum salary capped at twenty times the base salary.

Note that there is no mandatory time specified when the employee will have to stop working and that if the employee would like to start working earlier, she will be entitled to her salary as well as the next installments of their social insurance.

A male employee is entitled to five days of paternity leave if the child is born naturally, otherwise it will seven days. The number of days increase if more than one child is born at the same time.

When an employee is nursing a child under one year, she is entitled to a break of sixty minutes per day.

12.10 Leave

An employee is entitled to a minimum of twelve days paid annual leave, exclusive of public holidays if the employee has worked 12 months or more. In practice, companies often allow employees to take pro-rata leave.

An employee will be given an additional annual leave day for every five years of consecutive service for an employer.

Besides this, an employee is entitled to take leave on the (ten) public holidays. If any of the public holidays falls on a weekend, the next weekday will be off.

An expatriate employee is also entitled to a day off for the traditional new year, if different from 1 January, and another day for the national day of his or her country.

Additionally, an employee could be entitled to paid leave for occasions as well such as weddings, or funerals.

12.11 Sick Leave

A Vietnamese employee is entitled to paid sick leave. The maximum number of paid sick leave days within a year is between thirty and sixty, and is based on the number of years the premium has been paid for social insurance. It can be different depeninding on the kind of job though.

In case of a sick child, a parent is entitled to paid leave to care for his/her sick child. A parent is entitled to maximum twenty days within a year if the sick child is younger than three years old, and maximum fifteen days if the child is between three and seven years old. Payment during this leave is calculated in the same way as their own sick pay and is covered by the social insurance fund.

12.12 Unilateral Termination by Employer

12.12.1 *Allowed*

An employer is entitled to unilaterally terminate a labour contract in the following circumstances:

- The employee repeatedly fails to perform work in accordance with the terms of the labour contract;
- The employee is ill or injured and remains unable to work after having received treatment for a period of twelve consecutive months (*indefinite* term contract) or six consecutive months (*definite* term contract), and more than half of duration (*seasonal* contract);
- The employer has to reduce production and the number of jobs due to natural disasters, fire or other force majeure reasons; or
- The employee fails to attend the workplace within fifteen days from expiry of suspension of the labour contract.

The employer must send the employee a written notice of termination as detailed below; at least

- Forty five days for indefinite term contracts;
- Thirty days for definite term contracts;
- Three working days for work-specific or seasonal employment contracts less than twelve months; or
- Three working days for termination of the contract due to illness or injury of the employee.

12.12.2 *Not allowed*

There are also circumstances when the Employer *cannot* unilaterally terminate the labour contract:

- The employee is suffering from an illness, work accident, or occupational disease and is being treated or nursed under the decision of a competent health institution, except for the reasons set out in the paragraph above;

- The employee is on annual leave, personal leave, or any other type of leave permitted by the employer; or
- The employee is pregnant, on maternity leave, or nursing a child younger than twelve months.

Did you know that…
…the legal representative could go to jail and the company could be fined in case an employee is fired contrary to the Labour Code provisions?

12.13 Unilateral Termination by Employee

An employee working under a definite-term labour contract, a seasonal labor contract or performing a certain job of less than a year may unilaterally terminate the labour contract prior to its expiry in the following cases:

- The employee is not assigned to the job or workplace, or is not given the working conditions as agreed on, in the labour contract;
- The employee is not paid in full or on time as agreed in the labour contract;
- The employee is maltreated, sexually harassed or is subject to forced labour;
- The employee is unable to continue performing the labour contract due to personal or family difficulties;
- The employee is elected to perform a full-time duty in a people-elected office or is appointed to hold a position in the state apparatus;
- A female employee is pregnant and must take leave as prescribed by a competent health establishment;
- The employee suffers illness or injury and remains unable to work after having received treatment for ninety consecutive days, in case the employee works under a *definite term* labour contract, or for a one quarter of the contract's term for a *seasonal* job or a *specific* job of less than a year.

Prior notice of unilateral termination by the employee must be given to the employer. The length, between three and 45 days, depends on the reason for the termination and the type of contract (definite or indefinite).

12.14 Consequences of Illegal Unilateral Terminaton

12.14.1 *By Employer*

In case of unlawful unilateral termination of employment, the following consequences shall be imposed on the employer:

- If the employee agrees to return to work, an employer needs to pay a compensation of at least two months' salary and the salary, social insurance and health insurance for the period in which the employee was not allowed to work;
- If the employee refuses to return to work, an employer is required to compensate the employee and in addition pay a severance allowance of half a month's salary for each year of employment;
- If both employer and employee agree to discontinue the employment relationship, an employer is required to compensate the employee and an additional compensation of at least two months' salary can be agreed by the parties;
- In case the position is no longer vacant and the employee still wishes to work, the employer will compensate the employee and both parties will negotiate to modify and supplement the labour contract;
- If an employer violates the notice period requirements, the employer must compensate the employee with an amount that is pro rata for the working days without prior notice.

12.14.2 *By Employee*

In case of unlawful unilateral termination of employment, the following consequences shall be imposed on the employee:

- The employee is not entitled to severance allowance and must compensate the employer with half a month's salary in accordance with the labour contract;
- If the prior notice term is violated, the employee must compensate the employer with an amount pro rata to his/her salary for the working days absent without prior notice;
- The employee shall be obliged to return the training costs to the employer in case there is a training contract with the employer.

12.15 Other Reasons for Termination

12.15.1 *Redundancy*

Termination on the grounds of redundancy (structural and technical changes or economic reasons) is also possible. Employers seeking to make redundancies of two or more employees are required to draft a labour usage plan, consult with the trade union (if any) on the plan, and file the plan with DOLISA. Note that an employer must also draft a labour usage plan when the changes in company structure or technology would affect the employment of more than one employee.

In case new vacancies cannot be allocated to employees, employers shall have the right to terminate labour contracts. Each redundant employee who has worked for the employer for twelve months or more is entitled to a redundancy allowance. This would be one month salary for each year of employment with a minimum of two months' salary.

12.15.2 *Retirement*

When an employee reaches the age of pension entitlement (sixty for male employees; fifty five for female employees), such employee's employment may be terminated due to retirement.

12.15.3 *Death or Incapacity*

The employment may be terminated when the employee is deceased or a court declares that the employee has lost legal capacity for civil acts or is missing or deceased.

12.15.4 *Incarceration*

When the employee is sentenced to a jail term or the death penalty, or is prohibited from performing the job prescribed in the labour contract by a legally enforceable decision of a court, the employment may also be terminated.

12.16 Severance Allowance

In case an employee has worked for the company for twelve months or more and is not covered[11] by the unemployment insurance scheme, the employee is entitled to a severance allowance equal to the aggregate amount of half a month's salary for each year of employment.

The severance allowance depends on the average monthly salary during the six months prior to termination for each year of employment. The working period used for calculating the severance allowance will be as follows:

- Period of under one month will not be counted;
- Period of over one month but less than six months will be counted as six months; and
- Period of from six full months but less than twelve months will be counted as a full year.

12.17 Collective Labour Agreements

Vietnam also knows the concept of collective labour agreements. These are agreements which have been agreed between the employer and the labour collective following a collective bargaining session. The labour collective only needs a simple majority to vote in favour of the collective labour agreement. It is binding and employers must implement it, and comply with it, when it has been signed by the employer and a representative of the labour collective. In Vietnam, sector specific agreements, known as industry collective labour agreements exist. Companies in an industry for which such agreement exists are are encouraged to implement such an agreement.

Did you know that…
…if a foreigner wishes to obtain a temporary residence card, but comes to Vietnam with a tourist visa or visa sponsored by another company, he/she has to leave Vietnam to come back with the correct visa?

12.18 Work permit

12.18.1 *General*

In principle, a foreigner would need a work permit to work in Vietnam unless they belong to the exempted group, such as a foreign lawyer, a foreign student working as an intern, an intra-corporate transferee, or an owner of in Vietnam registered LLC.

With a business visa you can perform certain activities while with a tourist visa you cannot work at all. The consequences of not having a work permit while working in Vietnam are a fine for the company and expulsion of the foreigner.

The validity of the work permit is a maximum of twenty four months and can be renewed if all criteria are met. Employers are still obliged to notify DOLISA about employees being exempt from obtaining a work permit. If foreign employees do not fall within the cases above, they need to obtain a work permit from the local DOLISA to do their job in Vietnam.

12.18.2 *Requirements to Obtain a Work Permit*

Foreign workers who want to work in Vietnam must satify the following conditions:

- Have full civil capacity;
- Be in good health, corresponding with work requirements;
- Be a manager, executive director, expert or technical worker; and
- Have not undertaken any criminal offenses;

In order to be able to hire a foreigner, a company needs to obtain approval from the People's Committee. Once this approval has been obtained, all relevant documents, such as a health certificate from a recognised hospital, criminal records from your home country and Vietnam, your degree, and proof of your experience, need to be submitted to obtain a work permit. Many of these documents need to be notarised, legalised, and translated.

12.19 Mandatory Insurance

Employees and employers are required to contribute to social insurance (**SI**), health care insurance (**HI**) and unemployment insurance (**UI**). If a foreign employee has obtained a work permit, a practicing certificate or license issued in Vietnam, has a labour contract of at least one year, is not an intra-company transferee[12]; and has not reached the retirement age the contributions for the various insurances are as follows.

As of 1 December 2018, the rates of SI, HI and UI contributions are:

	SI	HI	UI	Total
Employee	-	1.5%	1%	2.5%
Employer	3.5%	3%	1%	6.5%

[11] For example, the employee worked with the company before the introduction of the unemployment insurance in 2009.

[12] An intra-company transferee is a manager, executive director, expert or technician of a foreign enterprise with a commercial presence in Vietnam and who is temporarily transferred internally within the enterprise to the commercial presence in Vietnam, and who was recruited or employed by the foreign enterprise at least twelve months prior to such transfer.

As of 1 January 2022, the rates of SI, HI and UI contributions will be:

	SI	HI	UI	Total
Employee	8%	1.5%	1%	10.5%
Employer	17.5%	3%	1%	21.5%

The salary used for calculation contributions consists of the basic salary and allowances prescribed in the labour contract. However, the amount is capped.

12.20 Trade Unions

According to the Law on Trade Unions, a trade union is formed of representatives of cadres and civil servants, public employees, workers and other labourers (**labourers**), and together with state agencies, economic and social organisations, care and protect the labourers' legitimate and legal rights and interests. Trade unions are part of Vietnam's society and monitor compliance with labour regulations. All employees can form a trade union and the employer is required to acknowledge the status of a legally established trade union, and on request, to assist with the formation and provide facilities in order for the trade union to function.

Both a public and private sector organisation is required to contribute to a fund for the trade union with a contribution that is equal to two percent of the organisation's salary fund, based on that SI for its employees.

The lack of clarity with regard to social insurance also affects the contribution to the trade union fund.

12.21 Internal Labour Rules

12.21.1 *General*

Employers with ten or more employees must have written internal labour rules (**ILRs**) and register them with DOLISA. Prior to issuing the ILRs the employer must consult the trade union. If a company does not have a trade union, the employer must consult a trade union at the district level.

12.21.2 *Content*

The ILRs must contain:

- Working hours and rest breaks;
- Rules and regulations applicable;
- Labour safety and hygiene rules;
- Protection of assets, business secrets, and confidentiality of technology and intellectual property of the company;
- Conduct by employees which constitutes a breach of labour rules;
- Penalties imposed for breaches of the ILRs; and
- Liability in case of damages.

12.22 Disciplinary Actions

The Labour Code sets out disciplinary actions and details procedure about how this can be done. The following disciplinary actions can be imposed:

- Reprimand (oral or written);
- Deferral of wage increase for a maximum of 6 months or demotion; and
- Dismissal.

An employee who breaches the ILRs may, depending on the seriousness of the breach, be disciplined. The kind of disciplinary measure needs to be in accordance with the disciplinary measures set out in the ILRs. If a conduct is not explicitly listed in the ILRs as a conduct that can result in a disciplinary measure, an employer will not be able to do so on an ad hoc basis. So in case of a dispute, the ILRs not only provide established procedures to address issues, but also provide a legal platform for the employer to enforce the procedures contained within the law. For instance, dismissal of an employee is permitted only for reasons provided both at law and under the employer's registered ILRs.

12.23 Work Safety

An employer is required to implement safety measures in the workplace. An employer is liable in case of work-related accidents causing injuries or casualties to employees in the course of employment. The employer is required to pay compensation to the employee or his/her beneficiary in case an employee is not covered by social insurance. The quantum of the compensation is based upon evaluation of the employee's fault. Regardless, the employer will be required to pay compensation.

Did you know that…
…non-compliance with EU regulation on data protection could cost a company in Vietnam up to 20 million Euro?

12.24 Employees' Data Protection

Vietnam does not have a law specifically regulating the personal data of employees nor protecting employee privacy. In general, the law requires consent from an individual if their personal information is collected, processed, used or stored in any way. In May 2018, the general data protection regulation (**GDPR**) of the European Union (**EU**) entered into force. Even though this is a regulation of the EU it can still apply to companies in Vietnam as it protects the rights of EU citizens outside the EU. The fines imposed can be as high as EUR20 million or up to four percent of the annual worldwide turnover.

12.25 Discrimination and Harassment

Discrimination on the basis of gender, race, skin colour, social class, beliefs, religion, HIV infection, disability and/or sexual harassment are prohibited under the Labour Code. The same applies to establishing and joining trade unions along with participating in trade union activities.

However, the law does not provide any specific guidelines on what protection an employee has from discrimination or sexual harassment. In 2015, the Industrial Relations Committee of Vietnam issued a code of conduct on sexual

harassment at the workplace. This code of conduct can be used as a basis and guidance for companies to develop and adopt their own version of policy on sexual harassment. When there are grounds to assume that an employer's decision or behaviour breached labour law, the employee can make a claim or deposit a "denunciation" to the employer or the labour inspectors to protect his/her rights and interests.

12.26 Labour Dispute Resolution

In general, the Vietnamese Labour Code is very employee friendly and makes it quite difficult to fire someone. Emphasis is also placed on negotiation and conciliation in order to resolve labour-related disputes. If this fails, a court action may be instituted with the appropriate court. Often a mutual agreement to terminate the working relation is the easiest and fastest way.

12.27 Impact of Merger, Consolidation, Division, or Separation of Enterprise or Cooperative

In case of a merger, consolidation, division or separation of an enterprise or a cooperative, the succeeding employer is responsible for continuing the employment of the existing workforce. The employer also needs to make amendments and supplements to the labour contracts.

If there is insufficient work for the existing workforce, the succeeding employer has the responsibility to develop and implement a labour utilisation plan. When employees are dismissed, they will be entitled to job-loss allowances.

12.28 Dissolved or Bankrupt Company

Where an enterprise is dissolved or declared bankrupt, there must be priority payment of wages, severance allowances, social and health insurance, job loss insurance and other interests of the employees in accordance with the collective labour agreement and signed employment contracts.

13. Intellectual Property Rights

14. Contracts

13. Intellectual Property Rights

Did you know that…
…you can find counterfeit garments, accessories, footwear, food and beverages, cosmetics, pharmaceuticals, automobile spare parts, computer software, engine lubricants, consumer electronics, music and video entertainment, motorbikes, and even fertilisers and gas, in Vietnam?

13.1 Introduction

The Civil Code and the Law on Intellectual Property contain the majority of relevant provisions related to intellectual property. Vietnam is also a signatory to various international agreements such as the Paris Convention, the Madrid Agreement, 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 Phonograms against Unauthorised Duplication of their Phonograms.

Did you know that…
…Geographical Indications belong to a country, the state and not to a producer or group of producers?

13.2 Registration

In order to be able to protect your intellectual property, registration is required. Registration of copyright will create prima facie evidence for protection. However, note that for other intellectual property rights, the rights are protected upon registration on a first-to-file priority basis.
It is therefore important to register your patent or trademark before introducing products or services to the Vietnamese market.

Did you know that…
…a well-known trademark in Vietnam means that a trademark needs to be widely known by consumers throughout the territory of Vietnam?

The first-to-file rule does not apply to trade secrets, geographic indicators, and trade names. These are entitled to legal protection upon fulfillment of certain conditions for formation and usage.

Did you know that…
…sometimes no patent protection is granted by Vietnam for an invention of a Vietnamese organisation or individual?

In case of a joint venture or merger, it is advisable to conduct due diligence on potential partners and to decide if the partner can register intellectual property rights on your behalf. In the latter case, you need to be sure that the registration is done on your behalf; or that the partner is willing to transfer the rights to you if the partnership ends.

Did you know that…
…in Vietnam the first-to-register principle applies when registering a trademark or industrial design?

13.3 Intellectual Property Rights' Protection

The time during which intellectual property rights, such as patents, copyrights, trademarks, industrial desigsn and trade names, are protected, depends on the type of right.

Did you know that…
…it can take up to 400 days and 34 procedures to enforce a contract?

14. Contracts

14.1 Source of Contract Law

The two laws that are most relevant when drafting a contract are the Civil Code and the Commercial Law, which form the basic framework for commercial contract law. The first applies to all types of contracts while the latter, in principle applies to commercial and profit-making contracts. Provisions in the Law on Commerce and industry specific laws, such as the Law on Construction and the Petroleum Law, have, in general, precedence over the general provisions established by the Civil Code.

14.2 Principles

In the Civil Code and Law on Commerce you will find provisions on certain basic principles, such as:

- *Freedom to contract:* parties to a contract are generally free to agree on the contents of their contract, as long as they do not contradict prohibitive provisions of law;
- *Formation of a contract*: the law provides rules of offer and acceptance; and
- *Contractual terms*: there are no specific rules to determine whether a statement does or does not constitute a contractual term.

14.3 Choice of Law

Parties may agree on a jurisdiction of their choice as governing law if a contract involves a 'foreign element' (one of the parties is foreign). The chosen law will only be applied if such foreign or international commercial laws are not contrary to the principles of Vietnamese law. If no law has been agreed, the contract will be governed by the law of the country to which it is closest connected to. However, Vietnamese law will apply if the contract involves real estate, employment or consumer matters.

14.4 Language

The law remains silent as to the language that can be used. Therefore, when foreign companies engage in a transaction with individuals and organisations in Vietnam, they often use Vietnamese contracts or bilingual contracts in English and Vietnamese. However, in the case of a dispute, the contract will be examined on the basis of the Vietnamese language. If the counterpart is a Vietnamese government agency, contracts need to be in Vietnamese as described by law. Some specific laws also prescribe that contracts are drafted in Vietnamese.

14.5 Formation

The Civil Code does not prescribe a specific form for a contract, so it can be a written or oral contract. A written contract has been entered into when at least one of the parties has signed the contract, and an oral contracts when parties have reached an agreement on the content.

14.6 Interpretation

For the interpretation of a contract, the following factors can be taken into account:

- the real intention of the parties at the time when the transaction was entered into (during the process prior to and after the time of establishment and performance of the contract);
- the objective of the transaction and the nature of the contract;
- the customary practice of the place where the transaction was entered into;
- the way which, when effective, the contract will best benefit the parties;
- the mutual intentions of the parties (in case of a conflict between the mutual intentions of the parties and the wording in the contract); or
- the weaker party, in case the stronger party inserts contents disadvantageous to the party in a weak position.

Did you know that…
…a handwritten signature is not always needed for a contract to be valid?

14.7 Invalidity

A contract may be deemed invalid for reasons of illegality, contradicting social ethics, falsification, lack of capacity, misunderstanding, deception, threat or compulsion, duress, if the subject of the contract lacks cognition and behavioural control. Also in case of non-compliance with the form the contract can be invalid, unless either party has undertaken at least 2/3 of its performance under the contract.

The law contains provisions as to the consequences of an invalid contract, the time limit within a party can request the court to declare a civil transaction invalid, and how third parties' interests can be protected.

14.8 Breach and Sanctions

The Commercial Law defines two types of breaches:

- *Contractual breach*: the failure of a party to fully or properly perform its obligations according to the agreement between the involved parties or the provisions of this Law.
- *Substantial breach*: a contractual breach by a party, which causes damage to the other party to an extent that the other party cannot achieve the purpose behind their entry into the contract.

14.9 Exemption from Liability

A party that breaches a contract shall be exempted from liability in the following cases:

- Exemption agreed upon by the parties;
- Force majeure;
- One party is entirely at fault caused by the other party; or
- Implementation of a decision of a competent state management agency which the party could not have known, at the time the contract is entered into.

14.10 Remedies

The Commercial Law defines several remedies, such as specific performance of contracts; fines, forcible payment of damages; suspension or stoppage of performance of contracts or cancellation of contracts. Unless otherwise agreed, aggrieved parties are not entitled to apply the remedy of suspension of performance of contracts, stoppage of performance of contracts or cancellation of contracts against *insubstantial* breaches.

14.11 Complaint and Legal Proceedings

The Commercial Law requires a party to lodge a complaint with the other party before starting legal proceedings before a court. If you do not submit a complaint within a certain time, it is assumed that neither party has issues with the goods or services delivered. For the statute of limitation for lodging a complaint, a distinction is made with regards to the quantity or quality of goods delivered and other contractual obligations. The statute of limititation for initiating legal proceedings is two years from the date of infringement or interest. The Civil Code provides for a statute of limitation of three years with regards to contractual issues though.

14.12 Dispute Resolution Clause

Parties to commercial transactions may agree to use arbitration, either in Vietnam or overseas, instead of a court procedure. However, it is important to be aware that it is not always easy to have a foreign arbitral award recognised in Vietnam.[13]

[13] More information on arbitrational awards can be found in Chapter 19.

14.13 Convention on Contracts for the International Sale of Goods

As of 1 January 2017, the United Nations Convention on Contracts for the International Sale of Goods (**CISG**) applies in Vietnam. Over 80 countries are parties to the CISG and it provides a unified legal framework for the sale of goods between member countries. The CISG is expected to support the commercial activities of traders with regards to customers and counterparts abroad by providing a legal framework that improves efficiency and minimises costs and uncertainties that previously hampered trading, in particular with regard to disputes.

Unless parties agree differently, the CISG will automatically govern all international sales contracts between companies based in Vietnam and those in signatory countries. The CISG might also apply to contracts between other Vietnam based companies and companies in non-signatory countries.

Did you know that…
…data messages are considered as valid as documents and as evidence?

14.14 Electronic Signature and Contract

In Vietnam, electronic signatures can be in the form of words, letters, numerals, symbols, sounds or other forms by electronic means, logically attached or associated with a data message and is capable of certifying the person who has signed the data message, approves the content of the signed data message. A handwritten signature is not always needed for a contract to be considered valid, and a contract cannot be refused because it is electronic.

Where the law requires information to be in writing, a data message meets this condition if the information is accessible and usable for reference when necessary. Parties can agree to use (certified) e-signatures to sign a data message in the transaction process.

15. Corruption and Bribery
16. Money Laundering
17. Corporate Criminal Liability

15. Corruption and Bribery

Corruption remains pervasive in Vietnam's business environment. Companies are likely to experience bribery, political interference and facilitation payments in all sectors. The land administration, construction sector, and public administration are especially prone to corruption.

Transparency International, a non-profit organisation, ranked Vietnam as 113th out of 176 countries and regions on the corruption index, the same place as in 2016. According to Transparancy International about two thirds of Vietnamese people had to pay to attain access to governmental services in 2017.

The Law on Anti-Corruption and Anti-Bribery dates from 2005 and is currently being reviewed. The law is quite vague, and more information is detailed in the guidelines of Decision 64.

The Vietnamese Penal Code and the Law on Anti-Corruption criminalise both public sector and private corruption, in the form of attempted corruption, facilitation payments, extortion, abuse of office, fraud, money laundering, and active and passive bribery. Punitive measures range from fines to capital punishment, depending on the severity of the corruption case. Enforcement of the anti-corruption framework is lacking, even though occasionally a case is brought before the court. Recently, several defendants have been convicted in high-level bribery court cases, however, the overall impact of corruption is still high.

Note that under the Penal Code, the threshold for a gift to public officials is VND2 million. This amount applies to material interests, while it is important to note that this threshold does not apply to non-material interests. Non-material interests are not defined; however, it is generally understood to be related to sexual relationships, promotions, privileged information, etc.

Under Decision 64, government officials are allowed to receive gifts with a value of maximum VND500,000 under certain conditions in case of sickness, Tet, weddings or funerals.

The privatisation of SOEs, also called equitisation, helps to reduce corruption and increase efficiency at the same time. Those companies often have a no-profit mentality, which invites corruption, and obviously makes a company less competitive in a market economy.

16. Money Laundering

The current Law on Anti-Money Laundering has been effective from 1 January 2013. It requires businesses to report transactions over a certain threshold and suspicious transactions to the financial intelligence unit. In addition to this, certain businesses need to check the identity of clients in case of certain transactions. Failure to comply with the legal provisions may result in a number of sanctions, from a monetary fine to a prison term, and sometimes, a ban on holding certain professional positions for a certain amount of time. Note that violation of this law by an employee could result in corporate criminal liability.

"Vietnam investigates anti-trust movie lawsuit"
Thanh Nien News, 2010

17. Corporate Criminal Liability

17.1 Introduction

As of 1 January 2018, a new Penal Code came into force bringing the Vietnamese law more in line with international standards. A broad range of Penal Code violations can lead to criminal liability for a business. Certain violations, particularly ones committed by individual employees, may not lead to criminal liability, however, may still damage the business' reputation. It is important to note that violations on tax, competition, environment, business and trading, which are not crimes, can be *administratively* sanctioned both for an individual and a corporate entity. The main difference between the two systems is that the statute of limitations under the administrative procedure is much shorter and the punishments are lower.

"Pharma firm ex-director sentenced 12 years for cancer medicine scam."
DTI News, 2017

17.2 Corporate Criminal Liability

Not all criminal offences by an individual being an employee will lead to criminal corporate liability. The Penal Code contains two articles that set out the offences, and each respective applicable article also includes the information on criminal corporate liability. For example, corporate criminal liability is introduced for offences such as insurance fraud, tax evasion, violation of competition regulations, terrorism financing, money laundering, pollution, manufacturing of counterfeit products, violation of IPR laws, violation of several food safety laws, and corruption is introduced. Note that bribery is excluded.

"Top executive of BMW dealer in Vietnam arrested on smuggling charges."
Vietnam Investment Review, 2017

17.3 Conditions

For a company to be criminally responsible, certain conditions need to be met. The first requirement is that only a corporate legal entity or commercial juridical person can be criminal responsible. According to the Civil Code; *"[a] commercial juridical person means a juridical person whose primary purpose is seeking profits and its profits shall be distributed to its members and include enterprises and other business entities"*. Therefore, only legal entities that make a profit can be criminally responsible, regardless of the business lines or nature of the company.

The second requirement under the Penal Code provides that a corporate legal entity can be criminally responsible if it can be proven that the criminal offence is committed in the name *and* in the interests of the corporate legal entity; *and* is under instructions or approval of the corporate legal entity. The criminal prosecutor has to prove all these requirements before a corporate legal entity could be found criminally responsible. However, in the meantime interim measures could be applied.

17.4 Criminally Liable Entity

The Penal Code applies to both *foreign* and *Vietnamese* corporate legal entities. However, for a *subsidiary*, the parent company will *not* be responsible as it is an independent entity, but for a *Representative Office or branch*, the parent company could be responsible as they are not independent legal entities. In the Penal Code there is *no* provision on criminal offences committed in a *corporate group (parent and subsidiary)*. So, even though overseas corporate legal entities could be prosecuted, it is not clear yet under what conditions the foreign parent company could be held criminally responsible for offences committed by directors, managers or representatives of local Vietnamese entities.

If a convicted corporate legal entity is divided, separated, consolidated or merged, the succeeding corporate legal entity inherits rights and duties from the convicted corporate legal entity and will be responsible for any pecuniary penalties and damages.

The fact that a corporate legal entity is criminally liable does not exempt criminal liability of an individual.

"South Korean firm becomes first in HCMC to face criminal charges for social insurance evasion."
VNExpress, 2018

17.5 Territorial Scope

The Penal Code provides that any Vietnamese citizen or Vietnamese corporate legal entity may be held responsible for crimes defined under the code, committed either *inside* or *outside* of Vietnam. The New Penal Code also provides that a foreign corporate entity shall be subject to criminal responsibility for offences committed abroad if the offence infringes the lawful rights and interests of Vietnamese citizens, the interests of Vietnam, or interests under an international agreement to which Vietnam is a signatory.

17.6 Criminal Liability for Legal Representative

A legal representative may be charged with certain violations of the Labour Code regarding the dismissal or laying off of staff, forcing someone to resign, anti-competitive behaviour, or evasion of social, unemployment, or health insurance payments. Further to this, it is important to realise that in Vietnamese law there is no relevant provision dealing with the liability of directors or managers for not having adopted (intentionally or negligently) measures to prevent a crime. However, according to the Penal Code, any person (with some exceptions) who conceals a crime or who knows that a crime is being prepared, being carried out, or has been carried out but fails to report it could be criminally responsible.

"Vietnam inspects Coca-Cola, Metro Cash & Carry for alleged tax evasion."
Thanh Nien News, 2015

17.7 Punishment and Additional Measures

Depending on the offence and the person or entity having committed the offence, the punishment can be a monetary fine, restraining measures, a forced suspension or termination of business operations, or a ban to conduct certain business activities and/or to raise capital. In case of aggravating circumstances such as recidivism, committed in a professional way or by a group, in the case of abuse of power and position, committed in name of an agency or organisation, punishments can be higher.

Additional measures that can be applied include: compulsory dismantlement of works, compulsory removal from Vietnam's territory, destruction of goods., bans and confiscatory measures.

18. Legal System and Dispute Resolution

18. Legal System and Dispute Resolution

18.1 Legal System

The Vietnamese legal system consists of a Constitution, Codes, Laws, Ordinances, Decrees, Decisions, Circulars, Directives and Official Letters. It is interesting to note that while Codes, Laws and Ordinances are referred to by name, Decrees, Decisions, Circulars and Directives are usually referred to by the number, signing date, and the acronym of the name of the issuer. Legal texts are published on the Official Gazette. Decrees and Circulars contain guidelines to implement Laws, Codes and Ordinances.

Issuer	What
National Assembly	Constitution, Law, Code, Resolution
Standing Committee of the National Assembly	Ordinance, Resolution
President	Order, Decision
Government	Resolution, Decree
Prime Minister	Decision, Directive
Individual Ministries and other State Agencies	Decree, Decision and Circular
Justice Council of the Supreme People's Court	Resolution
Chief Justice of the Supreme People's Court and Head of the Supreme People's Prosecutor	Decision, Directive
People's Council	Resolution
People's Committee	Decision, Directive

However, even though the legislative system in principle is adequate, legislative uncertainty exists. This is due to imprecise, unclear and overlapping texts. Implementing guidelines of former laws often continue to apply after new laws have superseded their parent legislation. Further to this, the ranking of legal texts may not be observed in practice, with Circulars trumping Decrees and even Laws in some cases. Another aspect to take into consideration in the Vietnamese legal system is administrative discretion as authorities have significant interpretative authority, and "practice" can be as important as the literal reading of a text while there is relatively little transparency or accountability. Adding to this uncertainty is that while the regulations are mostly passed on a central level, the implementation, administration and enforcement is mainly decentralised. This means that in practice, the legal system is a heavy and costly administrative burden on foreign investors and remains one of the key deterrents.

18.2 Governing Law

Business investment activities in Vietnam must comply with Vietnamese law, particularly the Law on Investment and the Law on Enterprise. Parties can choose a different law to govern their contract provided that it is not inconsistent with the Vietnamese Law and at least one party is a foreign investor.

Did you know that…
…case law in Vietnam can only be a precedent if it has been selected and published as such?

18.3 Dispute Resolution

18.3.1 *Court system*

The Constitution of Vietnam governs the Vietnamese judicial system, together with the Law on the Organisation of People's Courts, and the Law on the Organisation of People's Procuracies.

Vietnam is a one-party socialist republic and the judiciary falls under the leadership of the Communist Party of Vietnam and is accountable to the National Assembly of Vietnam. Judges and procurators are all members of the Party.

The Supreme People's Court is the highest court and then there are three levels of courts: three Superior People's Courts, sixty three Provincial-level People's Courts, and District-level People's Courts. The superior courts in Hanoi, Da Nang, and HCMC are appellate courts and responsible for the Northern, Central, and Southern region of the country respectively. Provincial Courts are both trial and Appellate Courts, and District Courts are Trial Courts.

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.

Every People's Court has a People's Procuracy. The People's Procuracies are the prosecutorial authority, and have the responsibility to supervise and inspect judicial compliance by government agencies and officials.

It is important to note that case law is only binding after it has been selected and published as a precedent. The Courts remain relatively unpredictable in terms of the application of the law, although improvements have been reported.

18.3.2 *Enforcement*

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 time consuming as there is an overload of cases that need to be enforced.

Did you know that…
…in case of a labour dispute you need to go through mediation at the People's Committee in the District where the employer is established?

18.3.3 *Mediation*

Vietnam is not a litigious society and a large number of disputes are resolved outside of court. Vietnamese laws

also highly emphasise the role of mediation and sometimes it is a mandatory part of a litigation procedure, such as for civil, labour, marriage and family litigations. Civil and family disputes and violations of the law which do not amount to criminal offences are encouraged to be resolved by means of mediation. At a local level, groups of non-professional mediators are set up to carry out this mediation mandate.

Did you know that…
…52 requests for recognition of a foreign arbitral award were submitted between 2005 and 2014 but that only 28 had been accepted?

18.3.4 *Arbitration*

Arbitration is a possible alternative for dispute resolution in Vietnam but restricted for commercial disputes only. Arbitration by a Vietnamese arbitration tribunal is automatically enforceable, so parties do not have to bring the award to courts for a decision for its execution. The most well-known Vietnamese arbitration organisation is the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industries.

Foreign investors tend to refer to foreign arbitration due to lack of confidence in the capability and transparency of Vietnamese courts. However, there is another issue with arbitral awards both local and international ones. Courts should recognise and enforce foreign arbitral awards. In practice, however, Vietnamese courts may reject such enforcement on the grounds that the award is not in line with basic principles of Vietnamese law. This in return leads to reopening of cases which affects the foreign investor but also counterparties. In the case the arbitral award is accepted, it may take years to enforce.

19. Appendix

Position	Single-member LLC – Individual Owner	Single-member LLC – Organisational Owner	Multiple-member LLC	JSC
President, Members'Council, GMS, BOM	**President** - Appointed and discharged by the Owner; - Acts on behalf of the Owner.	**Chairman** - Appointed and fired by the Owner; - Acts on behalf of the Owner; - Can concurrently be the General Director. **Members' Council** - Consist of three to seven members with office term not exceeding five years; and **Chairman of Members' Council** - Appointed and fired by the owner or elected by the Members's Council via simple majority; - Office term does not exceed five years and can be re-elected unlimited number of terms. Rights & obligations of the Members' Council and the Chairman of the Members' Council, as well as the relationship between the Members' Council and the owner of the company will be regulated by the charter of the company and relevant laws.	**Members' Council** - Includes all company members; and - Is the highest decision-making authority. **President of Members' Council:** - Appointed and discharged by the Members' Council; - Acts on behalf of the Members' Council; - Can concurrently be the General Director.	**GMS** - Includes all shareholders entitled to vote; and - Is the highest decision-making authority. **BOM** - Elected and removed by the GMS; and - Has 3-11 (independent) members, unless otherwise stipulated in the charter of the company. **Chairman of the BOM** - Elected and removed by the BOM; - Rights and obligations stipulated in the charter of the company and Law on Enterprises. If more than 20% of the BOM members are independent members, there will be an Internal Auditing Committee under the BOM.
Rights & Obligations	Other rights, obligations, and the working regime of the President of the company shall be regulated by the charter of the company and relevant laws.		-	
General Director	Yes	- Appointed and fired by the President or Members' Council	- Appointed and fired by the Members' Council.	- Appointed / employed and discharged / fired by the BOM; - Can be concurrently be Chairman of the BOM;
Inspector or Controller, Inspection Committee		- Appointed and fired by the Owner; - Number is decided by the Owner; - Establishment of Inspection Committee is decided by the Owner.	Mandatory if a Multiple-member LLC has more than 11 members, otherwise subject to need and decision of a company.	If more than 11 shareholders or organisational shareholder hold more than 50% of total shares. - Appointed and discharged by the GMS; - Has 3-5 members.

20. Abbreviations

20. ABBREVIATIONS

AIZ	Auxiliary Industrial Zone
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
ATM	Automated Teller Machine
BCC	Business Cooperation Contract
BOM	Board of Management
CISG	United Nations Convention on Contracts for the International Sale of Goods
CIT	Corporate Income Tax
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DOLISA	Department of Labour, Invalids and Social Affairs
DPI	Department of Planning and Industry
EIAR	Environmental Impact Assessment Reports
EIZ	Eco-Industrial Zone
EPP	Environment Protection Plan
ERC	Enterprise Registration Certificat
EU	European Union
EVFTA	European Vietnam Free Trade Agreement
FCT	Foreign Contracter's Tax
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GDPR	General Data Protection Regulation
GMS	General Meeting of Shareholders
HCMC	Ho Chi Minh City
HI	Health Insurance
IRC	Investment Registration Certificate
IRFS	International Financial Reporting Standards
IRP	International Property Rights
JSC	Joint Stock Company
LLC	Limited Liability Company
MPI	Ministry of Planning and Industry
PIT	Personal Income Tax
PPP	Public-Private Partnership
SBV	State Bank of Vietnam
SI	Social Insurance
SME	Small- and Medium-sized Enterprises
SCT	Special Consumption Tax
UI	Unemployment Insurance
USD	United States Dollar
VAT	Value-added Tax
VND	Vietnam Dong
WTO	World Trade Organisation

21.What Clients Say

21. WHAT CLIENTS SAY

"ACSV has made a major contribution to the growth and success of CMG Asia, and their lawyers have advised us for more than 7 years on all aspects of our businesses. They have assisted us in obtaining more than 30 IRCs and ICs and played a crucial role in our USD15million capital raise from Mizuho.
ACSV's lawyers have a pragmatic and solution-oriented approach and they are quick to respond when we need them. They are highly effective in seeking solutions and creatively solving our problems.
ACSV's lawyers are notable not only for their legal skills, but also for the level of personal integrity and dedication.
The quality of representation ACSV offers is truly remarkable."

Dane Fort
CEO / CMG.ASIA and CFYC

"Thanks to ACSV's continuing support, we were able to secure industrial land and acquire manufacturing assets in Vietnam. ACSV assisted us at every stage of our market entry and their experience and expertise ensured that the investment process ran smoothly.
ACSV advises on all aspects of the investment from the initial regional structuring and tax planning of the investment to the relocation and expansion of factories ACSV.
We consider ACSV to be our go to partners in Vietnam, and we consult them before making any capital commitments. The team is always available to support us and help us to assess the best next steps. ACSV has always exceeded our expectations and has stepped up their efforts to realise our plans."

Denny Cowger
Chief Administration Officer and Legal Counsel / Ortholite

"Our company has been able to grow and expand successfully due to the advice, practical guidance and support of ACSV's team. ACSV's lawyers are knowledgeable and responsive.
They consistently achieve satisfying results using a combination of legal experience and creativity.
ACSV's lawyers provide an excellent service and I would recommend them without hesitation."

Christian Leitzinger
Chief Operations Officer / Pham Nguyen

"I launched my startup from scratch in 2018 in Vietnam and was looking for strong partners to support me in my endeavors. After having reached out to several law firms for drafting a legal study needed for our project on safe drinking water (with limited budget), we engaged ACSV Legal. During the initial contact we felt they understood the objectives of our project best, the communication was really easy from day 1 and ACSV team would think along with us and give us the advice needed for our project. The choice has proven to be right. The lawyers have given more than 100%, did more than just drafting and really understood our operational issues. Their advice and support in engaging with the authorities has been most effective to reach the current stage of the project.
We highly appreciate the professionalism and responsiveness of ACSV's lawyers. We intend to continue working with the ACSV team to make the project successful. I found in ACSV close advisors rather than legal services provider I can recommend ACSV Legal to other companies and organizations (either profit or non-profit)."

Romain Joly
Managing Director / 1001fontaines Vietnam

"The ACSV team consistently delivers excellent guidance, legal services and advice. Thanks to this we have been able to structure and expand our business in a way that would not have been possible without the support of the ACSV team.
The quality of legal advice we received and attention to our business' needs confirmed our decision that engaging ACSV was the right one."

Raghu Rai
Founder & Chief Executive Officer / Jio Health

"The lawyers of ACSV Legal have guided the company during the whole process from start to end.
Considering it is a new concept for Vietnam it is thanks to the pragmatic, legal and creative perseverance of the team that we have been able to finalise the project.
It would have taken much longer if it were not for the responsiveness and support of the legal team."

Alexander Burkhardt
CEO / Didioto

"My firm's UK-based client needed help with a corporate transaction in Vietnam. We approached a number of firms and selected ACSV Legal to help with the work.
Throughout the transaction ACSV were a pleasure to deal with - great communicators, highly responsive and efficient, very fair on costs and they came up with pragmatic solutions to address any challenges that we faced. They provided exactly the kind of service I look for in overseas Counsel.
I would highly recommend them."

Neil Williamson
Managing Director / Emerging Law Limited

22.About ACSV Legal

22. ABOUT ACSV LEGAL

ACSV Legal is a HCMC, Vietnam-based law firm with a team of lawyers who are qualified in Vietnam, the UK, the US and Malaysia in civil and common law jurisdictions.

ACSV Legal has a premier corporate/M&A practice in Vietnam and its approach is to understand the legal, commercial and political dynamics of every matter. We have extensive experience in private equity transactions with a focus on a strong commercial approach.

Our Clients

Our clients are comprised of both SEA businesses comprising rapid growth in Vietnam and foreign firms seeking to acquire or otherwise form businesses in Vietnam. They come from many sectors and industries including manufacturing, F&B, hospitality and leisure, education, pharma, health, beauty & fitness, IT, apparel and fashion, retail, and PR.

ACSV Legal's commitment to service excellence extends to the way in which we approach fees. We bring significant local and international experience, multi-jurisdictional legal knowledge and a sensitivity to clients' expectations, yet remain price sensitive.

Our Lawyers

ACSV Legal currently has a team of lawyers who are qualified in Vietnam and abroad in civil and common law jurisdictions. The languages spoken at ACSV Legal include Vietnamese, English, German, Japanese, Italian, Dutch, French and Malay.

Our lawyers' intimate understanding of Vietnam's rapidly changing regulatory framework coupled with extensive knowledge of the local business climate enables us to act as strategic partners to our clients. They are experienced in cross-border transactions covering a wide range of sectors and industries.

We are able to provide innovative, responsive legal solutions through an integrated team approach ensuring a consistently high level of service and the full benefit of our resources. Our lawyers are the key to providing the full range of service capabilities our clients need and act as a strategic partner to our clients. Our lawyers have many years of legal experience in Vietnam, as well as in other regions. They ensure that our clients benefit from their general legal knowledge as well as expertise derived from extensive commercial experience in Asia.

We aim to deliver speed, accessibility, and creative commercial and legal advice of the highest international standards provided.

Network

In 2016, ACSV Legal joined a network of Asian law firms operating in South East Asia and the Pacific Rim known as "One Asia Lawyers". One Asia Lawyers has partner offices in Tokyo, Singapore, Vietnam, Cambodia, Thailand, Laos, Malaysia, the Philippines and Myanmar, allowing us to serve our clients' cross border needs through one dedicated legal platform.

Please visit http://acsvlegal.com/ for more information.

23. About Domicile Corporate Services

23. ABOUT DOMICILE CORPORATE SERVICES

ACSV Legal's sister company, Domicile Corporate Services, provides professional compliance and corporate support services throughout Vietnam.

Through Domicile Corporate Services we can support our clients with their professional corporate services requirements, including accounting, payroll, tax, compliance support, management reporting, corporate establishment advisory and company secretarial activities.

With more than 45 staff across offices in HCMC, Hanoi and Danang, Domicile Corporate Services focuses on assisting foreign investors in Vietnam at an international standard.

For more information, call +84 2862 915 779, email: info@domicilecs.com or look on www.domicilecs.com.

24. More Interesting Facts about Vietnam

24. MORE INTERESTING FACTS ABOUT VIETNAM

Did you know that…
…marriage applicants must acquire a Certificate of Good Mental Health from a doctor, proving that they are "mentally sound for marriage", before a foreigner is being allowed to marry a Vietnamese?

Did you know that…
…when you see people holding up 2 fingers in V-form and waiving their hand it stands for hi (2 = *hai* is pronounced as hi)?

Did you know that…
…the first person coming to a house on the first day of the Lunar New Year is considered decisive for the luck of the inhabitants?

Did you know that…
…Vietnam is larger than Italy and nearly the same size as Germany, and has 2,360 rivers with a total length of about 41,900km?

Did you know that…
…football is the most popular sport in Vietnam?

Did you know that…
…there is as much as 27% (8 million m^2) water loss every day?

Did you know that…
…in Vietnam motorbikes can carry almost anything, from other motorbikes, fridges, ladders, glass windows and up to 5 persons?

Did you know that…
…it is often not allowed to bring durians into hotels, buses and airplanes because of its smell?

Did you know that…
…about 70% of the population has access to potable water?

Did you know that…
…even though Vietnam now accepts international driving licences it is still difficult to have it accepted by the authorities?

Did you know that…
…the Vietnamese language has six different tones and the meaning of a word changes with a different tone; it is not only pronounced differently in various parts of the country but there are also different words to express the same thing?

Did you know that…
…in Vietnam you can eat half-hatched eggs?

Did you know that…
…it is mandatory to wear a helmet when riding a motorbike, but not for children under 6 years?

Did you know that…
…there is no minimum legal drinking age?

Did you know that…
…by 2020 the electrical wire nests in HCMC will largely have disappeared as they are being put underground?

Did you know that…
…water puppetry is a popular art form in Vietnam which dates back to the 11th century?

Did you know that…
…the Vietnamese hold their teachers in high esteem and still pay respect to them every year on Teachers day (20/11)?

Did you know that…
…it is fairly common for extended families to live in one house, and typically grandparents, parents, and children live under the same roof?

Did you know that…
…Vietnamese mainly drink ice coffee either black (*cà phê đá*) or with sweetened condensed milk (*cà phê sữa đá*)?

Did you know that…
…lunch can be as early as 10.30 a.m.?

Did you know that…
…in general birthdays are not celebrated, but someone's death anniversary is?