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VIETNAM
INVESTMENT GUIDE 2021

VIETNAM

Investment Guide

Vietnam's economic development has been remarkable in the last 30 years, transforming it from one of the world's poorest countries into a lower-middle-income state. Vietnam's Gross Domestic Product, USD106.01 billion in 2009, grew more than two and a half times to USD271.16 billion by 2020. Vietnam's real GDP growth rate has ranged between 5% to 10% in the past 15 years, and in 2019 it was 7.2%. Even with the current Covid-19 pandemic, Vietnam's GDP growth rate was 2.9% in 2020. With a boost from the US-China trade war, direct foreign investment reached USD38.02 billion in 2019. In 2020, it suffered a retracement of 25% to US$28.53 billion due to Covid-19. The factors fueling Vietnam's economic growth are its young, inexpensive, skilled workforce and political stability. In the past three years, manufacturing has attracted the most foreign investment, followed by real estate.

Vietnam's recent economic growth has been undeniably strong. However, it still suffers from poor infrastructure, weak financial structures, a complex business environment, labor laws that strongly favor employees, a non-transparent legal system, and a high level of corruption. These factors create significant challenges for foreign investors conducting business in Vietnam.

The Vietnamese government has systematically introduced amendments to crucial legislation during the last five years to improve Vietnam's legal environment. These include the Law on Enterprises, Law on Investment, Civil Code, Criminal Code, Law on Social Insurance, Law on Competition, Law on Pharma, Cybersecurity Law, Law on Accounting, Law on Anti-Corruption, and the Labor Code.

This 2021 edition of the Vietnam Investment Guide draws upon our experience and expertise to present an overview of Vietnam's legal environment for foreign investors.

Dilinh Legal

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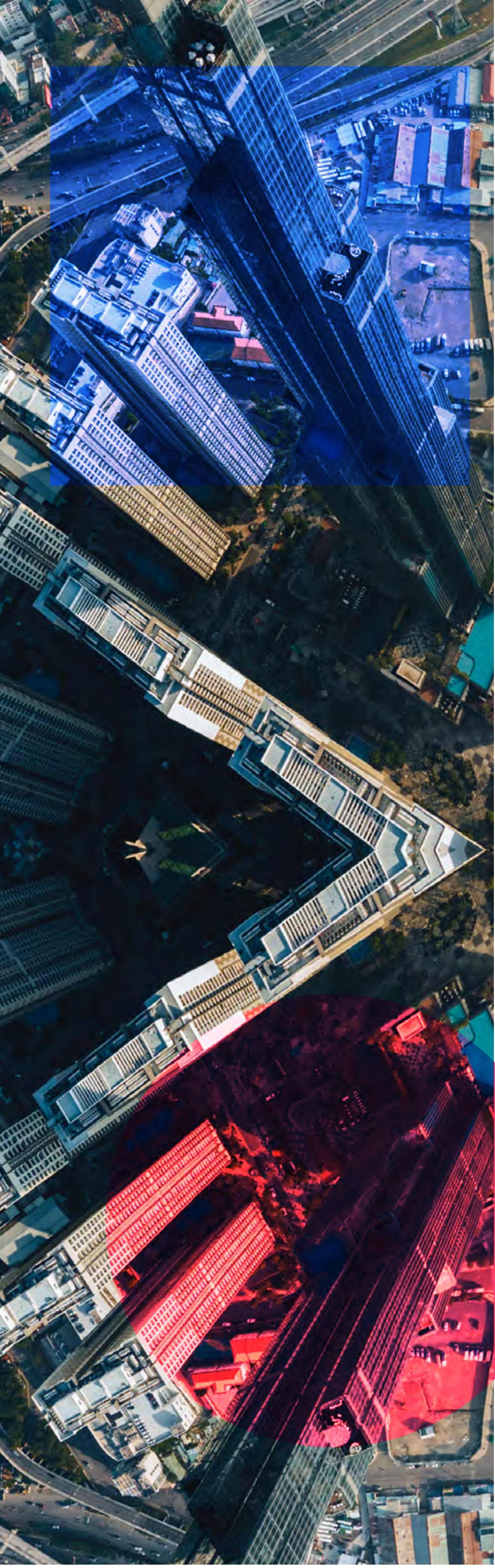

ABOUT
Dilinh Legal

Dilinh Legal is a boutique corporate law firm based in Ho Chi Minh City with a focus on serving clients in the manufacturing, technology, and life science sectors. Diep Hoang founded the firm in 2010. In September 2017, Michael Lee joined the firm as a partner, bringing with him over 10 years of experience at two international law firms in Vietnam.

At Dilinh Legal, Diep and Michael combine their extensive experience and formidable legal talent in a wide range of legal sectors to bring their clients a compelling value proposition: elite law firm quality at highly competitive rates.

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ABBREVIATIONS
Applied

ABBR.	MEANING
APA	Advanced Pricing Agreement
BEPS	Base Erosion and Profit Shifting
BCC	Business Co-operation Contract
BOM	Board of Management
CIT	Corporate Income Tax
DICA	Direct Investment Capital Account
DIP	Decision on Investment Policy
DOLISA	Department of Labor, Invalids, and Social Affairs
DPI	Department of Planning and Investment
DTA	Double Tax Agreement
EBITDA	Earnings Before Interest Taxes Depreciation, and Amortization
EU	Europe Union
FCT	Foreign Contractor Tax
FIEs	Foreign Invested Enterprises
GDP	Gross Domestic Product
GMS	General Meeting of Shareholders
IICA	Indirect Investment Capital Account
IRC	Investment Registration Certificate
JSC	Joint Stock Company
JVEs	Joint Venture Enterprises
LLC	Limited Liability Company
LURs	Land Use Rights
ND-CP	A portion of a Decree name in the Vietnamese law system, standing for “Nghị Định – Chính Phủ” in Vietnamese
OECD	Organization for Economic Cooperation and Development
PE	Permanent Establishment
PIT	Personal Income Tax
TT-BTC	A portion of a Circular name in the Vietnamese law system, standing for “Thông Tư – Bộ Tài Chính” in Vietnamese
VAS	Vietnamese Accounting System
VAT	Value-Added Tax
WFOE	Wholly Foreign-Owned Enterprise
WTO	World Trade Organization

VIETNAM
At a Glance

POPULATION

As of 2020, Vietnam has a population of more than 97 million. Nearly 65% of the population live in rural areas, and more than half are under 25.
The principal cities in Vietnam are Hanoi, the capital, Ho Chi Minh City, Dan Nang City, and Hai Phong City.

CURRENCY

The legal currency of Vietnam is the Dong, abbreviated as VND, and consists of only one type of banknote with twelve denominations:

VND500,000	VND5,000
VND200,000	VND2,000
VND100,000	VND1,000
VND50,000	VND500
VND20,000	VND200
VND10,000	VND100

POLITICAL STRUCTURE

Viet Nam is a socialist country operating under the leadership of the Communist Party. A national congress of Vietnam's Communist Party (the "**National Congress**") is held every five years, determining its orientation and strategies and adopting its central policies on solutions for socio-economic development. The National Congress elects the Central Committee, which in turn elects the Politburo.

The State Agency is organized under the Vietnamese constitution of 2013 (the "**Constitution**"). The Constitution divides Vietnam into 63 provinces and five municipalities (Hanoi, Ho Chi Minh City, Hai Phong, Da Nang, and Can Tho) under the central government's direct jurisdiction. The four levels of government administration are the central, provincial, district, and communal levels (the provincial, district, and communal levels collectively being referred to as the "**local level**"). The highest-ranking organization of the State is the National Assembly. The other principal state institutions at the central level are the President, the Government, the Supreme People's Court, and the Supreme People's Procuracy. The primary state institutions at the local level are People's Councils, People's Committees, People's Courts, and People's Procuracy.

NATIONAL ASSEMBLY

The National Assembly is the highest organ of State power of the Socialist Republic of Vietnam and is Vietnam's most upper legislative body. It has the authority to draft or amend the laws at the highest level. Legal documents promulgated by the National Assembly are the Constitution, codes, laws, and resolutions. The National Assembly elects the President and the Vice President, the Chairman, and Vice-Chairmen and members of the Standing Committee of the National Assembly. The National Assembly also appoints and removes the Prime Minister, the Supreme People's Court President, and the Procurator-General of the Supreme People's Procuracy upon the President's nomination. It also appoints and removes Deputy Prime Ministers, Government ministers, and other Government members based on the submissions of the Prime Minister.

THE PEOPLE'S COURT

The People's Courts are responsible for administering justice for civil, criminal, administrative, economic, and labor cases. The Supreme People's Court is the highest judicial body in Vietnam and supervises the administration of justice by the local People's Courts and military courts. The Supreme People's Court also considers appeals from verdicts and decisions by local and military courts. The President of the Supreme People's Court reports to the National Assembly and, when the National Assembly is not in session, to the Standing Committee and the President.

THE PEOPLE'S PROCURACY

The People's Procuracy is responsible for the exercise of prosecutorial power and the supervision of judicial activities. The Supreme People's Procuracy directs the work of the People's Procuracy at the local level. The Procurator-General reports to the National Assembly and, when the National Assembly is not in session, to the Standing Committee and the President. The People's Procuracy is empowered to protest against judgments or decisions of the People's Courts, which are contrary to law, and bring such protest to higher courts. The People's Procuracy may also cancel decisions of public investigative agencies in criminal matters if they believe such decisions are illegal.

2 | LEGAL **System**

From 1975 to 1985, the Vietnam Communist Party had instituted a planned economy system. From 1986, free-market economy principles replaced planned economy principles, jump-starting Vietnam's rapid economic growth. To support the changes in Vietnam's economic system, its corporate and commercial laws were developed almost from scratch.

A DEVELOPING LEGAL SYSTEM

In 1986, publicly available laws and regulations were few, and administrative discretion was paramount. Although the legal system has developed significantly over the last 30 years, its development was ad hoc in many respects. Consequently, some laws do not fit well together or even clash with other laws, and some laws have a retrospective effect. However, the laws are becoming more comprehensive and cohesive. Vietnam enacted its first versions of the current civil, land, corporate, commercial, and investment laws between 2003 and 2005. Except for the Commercial Law, these laws were overhauled in 2013 and 2014. Vietnam's central corporate and investment legislations were revised again in 2020.

The following are key legislation relevant to foreign investors in Vietnam:

- Civil Code (2015)
- Commercial Law (2005)
- Law on Enterprises (2020)
- Law on Investment (2020)
- Law on Intellectual Property (2005, amended in 2009 and 2019)
- Land Law (2013)
- Law on Real Estate Business (2014)
- Labor Code (2019)
- Law on Credit Institution (2010, amended in 2017)
- Law on Bankruptcy (2014)
- Law on Accounting (2015)
- Law on Value Added Tax (2008, amended in 2013 and 2016)
- Law on Personal Income Tax (2007, amended in 2012)
- Law on Corporate Income Tax (2008, amended in 2013)
- Law on Social Insurance (2014)

WTO

Vietnam joined WTO in 2007. The main consequences of Vietnam's WTO accession include:

- The opening of many sectors to foreign investment, including distribution of goods (i.e., import, wholesale, and retail), logistics, business services, construction and related engineering, education, banking and finance, health, tourism, environmental, and telecommunications services.
- The gradual reduction of tariffs for many imported goods and the removal of certain export quotas.
- Vietnam's commitment to reform its legal system concerning trade in goods and services, and intellectual property. The focus of the reform effort is on administration, transparency, and juridical review. Vietnam has made considerable progress in these areas.

OTHER TRADE AGREEMENTS

Vietnam, together with other ASEAN members, is committed to establishing a single market in the region. In furtherance of this aim, its members ratified the Common Effective Preferential Tariff under the ASEAN Free Trade Agreement and the ASEAN Framework Agreement on Services. Vietnam is also a party of important EU-Vietnam Free Trade Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Vietnam also signed the Free Trade Agreements with the UK, Japan, and Korea. These crucial bilateral and multilateral FTAs have the broadest range of trade commitments from Vietnam so far outside Vietnam's WTO commitments.

ISSUES

Vietnam has transitioned from a centrally planned economy to a market economy. Many of the problems that foreign investors encounter in Vietnam can be traced to this transition. The Vietnam government recognizes that the following areas require ongoing reform:

- Intellectual property rights – Despite substantial WTO - related improvements in Vietnam's intellectual property laws, many foreign companies continue to report significant difficulties with enforcing intellectual property rights. Counterfeiting, piracy, and theft of know-how are concerns.
- Regionalism – Economic and political differences exist between central and local authorities and between local authorities in different areas. Inconsistent national and local regulations are not uncommon.
- Judicial and arbitral processes – The enforcement of court judgments and arbitral awards, both foreign and Vietnamese, remains challenging. The Supreme People's Court is giving increasing attention to improving procedures and implementation.
- Corruption – Vietnam currently ranks 96 out of 180 countries in its 2019 Corruption Perceptions Index. The National Assembly is paying more attention to upgrading the anti-corruption legislation system.

3 | YOUR OPTIONS in Vietnam

Vietnam's foreign investment regime recognizes several forms of investments for foreign investors. Foreign investors may set up Foreign Invested Enterprises ("FIEs") or conduct investment in the form of capital contribution, purchase of shares, or a portion of capital. Other standard business arrangements are also available. The various alternatives are summarized below.

ESTABLISHMENT OF FIEs

The two main types of FIEs available to foreign investors are:

- Wholly Foreign-owned Enterprise (WFOE) – A company with 100% foreign ownership (see Section [7] "Wholly foreign-owned enterprises (WFOEs)").
- Foreign Joint Venture Enterprise (JVE) – A company with both foreign and Vietnamese investors (see Section [8] "Joint Venture Enterprises (JVEs)").

BUYING EQUITY IN VIETNAM

An investment in the form of the purchase of ownership in an existing Vietnamese entity (see Section [9] "Buying equity in Vietnam").

OTHER ARRANGEMENTS

The following arrangements may also be suitable for foreign companies wishing to carry out business in Vietnam:

- Business Cooperation Contract – A contractual agreement between one or more Vietnamese and foreign investors to conduct business operations in Vietnam for one or several projects (see Section [10] "Business Cooperation Contract (BCC)").
- Public-Private Partnership – The contracts signed between the competent Vietnam state authorities and foreign investors to implement infrastructure construction projects in Vietnam (see Section [11] "Public-Private Partnership (PPP) Project."
- Representative Office – These are set up in Vietnam to act as liaison offices for foreign companies. A representative office is not a company, and therefore it is limited in its scope of operation. Significantly, representative offices are not permitted to engage in profit-making activities (see Section [12] "Representative Office").
- Branches – A branch is not a company. Unlike the Representative Office, a branch can conduct business in Vietnam as outlined in its license (see Section [13] "Branches").

4 | SELECTING Your Corporate Structure

A single foreign investor can operate through a one-member limited liability company ("LLC").

Two or more investors may set up a multi-member LLC, a partnership, or a joint-stock company ("JSC"), otherwise known as a shareholding company.

LLC

There are two types of LLCs, a single-member LLC or a multiple-member LLC. The members of an LLC can be organizations or individuals, with the total number of members not exceeding 50. A member's liabilities are limited to the amount of capital contribution that the member has paid to purchase equity in the LLC. An LLC can issue bonds but cannot issue shares.

JSC

A JSC is an enterprise with its charter capital divided into equal portions known as shares, including ordinary shares (voting), voting preference shares (voting), dividend preference shares (non-voting), and redeemable preference shares (non-voting). JSC may issue securities to mobilize capital (including bonds). The shareholders of a JSC may be organizations or individuals, and there must be at least three shareholders. There is no limit to the number of shareholders a JSC may have. A shareholder's liabilities are limited to the amount of money the shareholder has paid to purchase shares in the JSC.

BUYING EQUITY IN VIETNAM

An investment in the form of the purchase of ownership in an existing Vietnamese entity (see Section [9] "Buying equity in Vietnam").

PARTNERSHIP

A partnership must have at least two natural persons who are jointly conducting business under one common name and subject to personal liability for the debts and obligations of the partnership (after this referred to as "general partners"). In addition to general partners, a partnership may have limited-liability partners who are only liable to the extent of their capital contribution to the partnership. Limited-liability partners may be natural persons or corporations. Partnerships are not entitled to issue securities of any type.

GRANTS OR INCENTIVES
Available to Investors

POPULATION

Foreign investment projects in Vietnam may benefit from tax incentives (including CIT, import tax, and non-agriculture land use tax), land rent reduction, or exemption if they fall into one of the following categories:

- New investment projects in "encouraged sectors." Encouraged sectors are subclassified into (i) highly encouraged sectors and (ii) encouraged sectors. New investment projects in highly encouraged sectors shall be entitled to more attractive incentives. (see Part 1 "Encouraged Sectors" of Section [6].
- New investment projects in "encouraged geographical areas." Encouraged geographical areas include (i) highly disadvantaged provinces and (ii) Industrial parks, export-processing zones, hi-tech zones, and economic zones. They include communes, districts, cities, or provinces with natural and economic difficulties or distant areas. The encouraged geographical provinces include Bac Kan, Cao Bang, Ha Giang, Lai Chau, Son La, Dien Bien, Lao Cai, Soc Trang, Ninh Thuan, Dak Lak, Kon Tum, Dak Nong, Lam Dong, Hau Giang, Bac Lieu, Ca Mau and Kien Giang. New investment projects in highly disadvantaged areas are entitled to more attractive incentives.

- New investment projects with registered investment capital of at least VND6,000 billion (approximately USD260 million) and the investment capital is disbursed within three years from the registration date with the total revenue is at least VND10,000 billion per year within 03 years from the year in which the revenue is earned or.
- New investment projects with registered investment capital of at least VND 6,000 billion (approximately USD260 million) and the investment capital is disbursed within three years from the registration date with more than 3,000 employees.
- New investment projects in rural areas using no less than 500 workers.
- New investment projects in high technology, information technology, and ancillary industries.
- Start-up projects, national innovation centers, and research and development centers.
- New investment in small and medium-sized enterprises' product distribution chain.
- New investment in technical establishments supporting small and medium-sized enterprises, small and medium-sized enterprise incubators.
- New investment in co-working spaces serving small and medium-sized enterprises and startups

NO.	CRITERIA	CIT RATE	APPLICABLE PERIOD	CIT EXEMPTION PERIOD	50% CIT REDUCTION PERIOD	IMPORT TAX	NON- AGRI-CULTURAL LAND USE TAX PERIOD
1	New investment projects in high-tech, information technology (including software), production of renewable energy, composite material.	10%	15 years	4 years from the generation of taxable income	9 years from the end of the ex-emption period	Exempt (*)	
2	New investment projects in environment protection.	10%	15 years	4 years from the generation of taxable income	9 years from the end of the ex-emption period	Exempt (*)	
3	New investment projects in infrastructure.	10%	15 years	4 years from the generation of taxable income	9 years from the end of the ex-emption period	Exempt (*)	
4	New investment projects in healthcare, sport, education, occupational training, social housing.	10%	Entire operation period	N/A	N/A	Exempt (*)	
5	New investment projects in agriculture in difficult geography areas.	10%	Entire operation period	N/A	N/A	Exempt (*)	
6	New investment projects with registered investment capital of USD260 million and to be disbursed within 3 years.	10%	15 years	4 years from the generation of taxable income	9 years from the end of the ex-emption period	Exempt (*)	Exempt

NO.	CRITERIA	CIT RATE	APPLICABLE PERIOD	CIT EXEMPTION PERIOD	50% CIT REDUCTION PERIOD	IMPORT TAX	NON- AGRICULTURAL LAND USE TAX PERIOD
7	People's Credit Fund	17%	Entire operation period	4 years from the generation of taxable income	9 years from the end of the exemption period	Exempt (*)	
8	New investment projects in rural areas using no less than 500 workers	N/A	N/A	N/A	N/A	Exempt (*)	
9	New investment projects in highly disadvantaged provinces.	10%	15 years	4 years from the generation of taxable income	9 years from the end of the exemption period	Exempt (*)	Exempt
10	New investment projects in disadvantaged provinces.	17%	10 years	2 years from the generation of taxable income	4 years from the end of the exemption period	Exempt (*)	Exempt
11	New investment projects in industrial zones (excluding those located in advantaged provinces such as Ho Chi Minh City, Hanoi, Da Nang, Can Tho, Hai Phong)	17%	10 years	2 years from the generation of taxable income	4 years from the end of the exemption period	Exempt (*)	Exempt

(*) Exemption for imported goods to create fixed assets.

(**) Exemption applied to projects in encouraged sectors.

6 | OPEN And Prohibited Sectors

Foreign investment projects in Vietnam are classified for approval and incentive purposes as "encouraged," "conditional," "prohibited," or "permitted." The Vietnamese government revises these classification lists from time to time. Projects that are encouraged benefit from tax incentives and can also benefit from land rent reduction or exemption. Conditional sectors require more extended and more complicated procedures. Consequently, approvals for these sectors are harder to obtain.

ENCOURAGED SECTORS

Activities or sectors which are highly encouraged with special investment incentives include:

- High-tech applications are on the list of high technologies prioritized for development investment.
- Production of software products, digital information content products, key information technology products, software services, and information security troubleshooting services, protecting information safety in accordance with regulations of law on information technology.
- Production of renewable energy, clean energy, and energy from waste disposal.
- Planting, tending, nurturing, protecting, and developing forests; Farming, processing, and preservation of agriculture, forestry, and fishery products; Production, multiplication, and crossbreeding of plant varieties, animal breeds, forest tree varieties, and aquatic breeds; Producing, exploiting, and refining salt.

- Collection, treatment, recycling, and reuse of concentrated waste.
- Construction and commercial operation of infrastructure of industrial parks, export processing zones, hi-tech parks, and functional areas in economic zones.
- Investment in developing water plants, power plants, water supply, and drainage systems; bridges, roads and railways; airports, seaports, river ports; airports, railway stations, and other critical infrastructure projects decided by the Prime Minister.
- Production of medicinal materials; application of advanced technologies and biotechnology to manufacture medicines for human use up to international GMP standards; Producing packaging in direct contact with the drug.
- Other sections as provided by law.

Activities or sectors which are encouraged with investment incentives:

- Production of medical equipment, construction of warehouses to preserve pharmaceuticals, the reserve of curative medicines for human beings to prevent natural disasters, disasters, and dangerous epidemics.
- Production of raw materials for making medicines and plant protection drugs, insecticides, and prevention and treatment of animals and aquatic animals.
- Development of education and training.
- Health care, physical training, and sports.
- Business investment in public libraries.
- Operation of people's credit funds and microfinance institutions.
- Other sectors as provided by law.

CONDITIONAL SECTORS

Two hundred and twenty-seven (227) "conditional" business sectors are subject to additional requirements and regulations, such as minimum capital requirements and professional qualifications for company employees.

Significant conditional sectors include:

- Business activities of banks, non-banking credit institutions.
- Securities trading.
- Trading in insurance, insurance broker and agent.
- E-commerce activities.
- Activities relating to labor and employment.
- Manufacturing, assembling, and importing cars and its maintenance, warranty services.
- Transport services.
- Educational services.
- Tax agent services.
- Real estate businesses.
- Medicine trading.
- Other sectors as provided by law.

PROHIBITED SECTORS

Activities and sectors prohibited to foreign investment are principally those that may endanger national security, harm the public interest, cause harmful pollution, damage natural resources, or threaten military installations.

Prohibited activities and sectors include:

- Trading in narcotics found in Appendix 1 of the Law on Investment.
- Trading chemicals or minerals found in Appendix 2 of the Law on Investment.
- Trading in specimens of wild fauna or flora included in Schedule 1 of the Convention on International Trade in Endangered Species and Specimens of Species of Endangered and Rare Wild Fauna or Flora in Category 1 with natural origin, as prescribed in Appendix 3 of the Law on Investment.
- Prostitution business.
- Purchase or sale of humans, tissues, human body parts, or human fetuses.
- Activities relating to human cloning.
- Firecrackers trading.
- Debt collection service.

PERMITTED SECTORS

Permitted sectors are activities or sectors not included in encouraged, conditional, and prohibited activities sectors.

7 | WHOLLY FOREIGN - Owned Enterprises (WFOEs)

KEY FEATURES OF WFOEs

- WFOEs are Vietnamese companies with 100% foreign ownership. Multiple foreign investors are permitted. Investors may establish WFOEs under the form of an LLC or a JSC (see Section [4] "Selecting your corporate structure").
- Although WFOEs can engage in a wide range of sectors, some restrictions still exist. These restrictions generally track Vietnam's WTO service commits and are updated by the Vietnamese government from time to time (see Section [6] "Open and prohibited sectors").

BUSINESS SCOPES

Generally, a WFOE may only engage in activities that are within its business scope as set out in its foreign investment and business licenses (see Section [14] "Business Scope" and Section [15] "Foreign Investment Approval").

SETTING UP

Before incorporating a WFOE, a foreign investor must obtain foreign investment approval by applying for an Investment Registration Certificate ("IRC"). The specific procedures for getting foreign investment approval and incorporating a WFOE depend on the size of its capital investment and its business plans (see Section [15] "Foreign Investment Approval").

8 | FOREIGN JOINT - VENTURE ENTERPRISES (JVEs)

KEY FEATURES OF JVEs

- JVEs are Vietnamese companies with at least one foreign owner.
- JVEs, like other types of business arrangements, have their advantages and disadvantages. On the one hand, a Vietnamese partner may contribute its relationships with government officials and clients, local know-how, and access to qualified staff. In contrast, a foreign partner may bring advanced management skills and technology to benefit the joint venture. On the other hand, the differences in cultures, traditions, customs, and management styles may cause friction, slow management decisions, and cause unexpected disputes between equity stakeholders.
- Subject to foreign ownership restrictions (if any), the parties to a JVEs agree to the ratio of equity holdings. Unless otherwise agreed, the parties shall share their profit and risks in proportion to their equity holdings in the JVE.
- The parties to a JVE should explicitly agree on critical corporate governance decisions and each party's rights and responsibilities. The parties typically place these agreements into joint venture agreements, shareholder agreements, and the JVE's company charter.
- A JVEs may take the form of a multi-member LLC or a JSC.

BUSINESS SCOPES

Generally, a JVE may only engage in activities that are within its business scope as set out in its foreign investment and business licenses (see Section [14] "Business Scope" and Section [15] "Foreign Investment Approval").

SETTING UP

Before incorporating a JVE, a foreign investor must obtain foreign investment approval by applying for an IRC. The specific procedures for obtaining foreign investment approval and incorporating a JVE depend on the size of its capital investment and its business plans (see Section [15] "Foreign Investment Approval").

9 | BUYING EQUITY
In Vietnam

Under the Law on Investment, foreign investors can take an equity stake in existing domestic companies or entities.

Under the law, foreign investment approval is required if after the acquisition:

- The target entity would be 50% or more foreign-owned.
- The target entity will engage in commercial activities that are categorized as "conditional" to foreign investors.
- The target entity has land use right certificates in border islands, communes, wards, and towns; coastal communes, wards, and towns.
- The target entity is in a location affecting national defense and security.

However, the current practice is to require foreign investment approval in all cases where a foreign investor takes an equity stake in existing domestic companies or entities.

Accordingly, the investor must submit an application dossier for foreign investment approval to the relevant licensing authority, typically the Department of Planning and Investment, that has jurisdiction over the location of the investment project ("**DPI Approval**"). The legal requirements and processing times are like those for the IRC (see Section [15] "Foreign Investment Approval"). After getting DPI Approval, the investor may register its equity interest in the target entity by applying to amend the target entity's Enterprise Registration Certificate. The investor need not obtain a separate IRC in addition to the DPI Approval.

BUSINESS COOPERATION
Contract (BBC)

10

KEY FEATURES OF A BCC

- A BCC is a contractual agreement between one or more Vietnamese and foreign parties to conduct business operations in Vietnam for one or several projects.
- The contract must be for the mutual allocation of responsibilities and the sharing of profits and losses.
- There is no separate legal entity in a BCC. It is an unincorporated joint venture with similarities to a common-law partnership. Unlike LLCs or JSCs, the parties to a BCC remain individually liable. Accordingly, the BCC itself is not a taxable entity; instead, the government will tax each party to the BCC separately.

MANAGEMENT OFFICE OF THE FOREIGN PARTY

The foreign parties to a BCC may establish a management office in Vietnam in its name and benefit. The management office is not considered a separate legal entity. However, it may have a seal. It is entitled to open a bank account, employ both foreign and local staff, and execute commercial contracts within the activities outlined in its investment license and the BCC.

The parties to a BCC may establish a management body called the "coordination board," which consists of representatives appointed by the parties.

BUSINESS SCOPES

Generally, a BCC may only engage in activities outlined in its foreign investment license.

SETTING UP

Parties to a BCC must get approval for the project they plan to implement in Vietnam with the competent authority by applying for an IRC (see Section [15] "Foreign Investment Approval").

11 | PUBLIC-PRIVATE Partnership (PPP) Projects

Foreign investors may sign BOT, BTO, BOO, O&M, BTL, BLT contracts with competent state authorities to implement infrastructure construction projects in Vietnam, mainly in transportation, electricity production, water supply, and waste treatment.

BOT CONTRACTS

Under a BOT contract, the foreign investor is responsible for the construction of the project. The foreign investor can operate the project for a specific time to recover capital and profit. When such time expires, the project is transferred to the State unconditionally

BTO CONTRACTS

Under the BTO contract, the ownership of the project is transferred to the State upon the completion of construction. However, foreign investors can run the project to recover capital and profit for a specified period.

BOO CONTRACTS

Under the BOO contract form, the foreign investor is responsible for building infrastructure work. The foreign investor can own, operate the project for a specific time to recover capital and profit. When such time expires, the foreign investor terminates the BOO contract.

O&M CONTRACTS

Under the O&M contract, the foreign investor can trade and manage a part or entire infrastructure work for a specific time. When such time expires, the foreign investor terminates the O&M contract.

BTL CONTRACTS

Under the BTL contract, the foreign investor is responsible for building infrastructure work and transfers to the State upon the completion of construction. The foreign investor can supply public products and services based on operating and exploiting such infrastructure work for a specific time.

BLT CONTRACTS

Under the BLT contract, the foreign investor is responsible for building infrastructure work and supplies public products and services based on operating and exploiting such infrastructure work for a specific time. When such time expires, the project is transferred to the State unconditionally.

12 | REPRESENTATIVE **Offices**

A representative office is generally quick and easy to establish but is limited in the scope of activities it may engage. A representative office may rent office space, employ local and expatriate staff, and conduct a limited range of business operations.

PERMITTED ACTIVITIES

Permitted activities include functioning as a liaison office, conducting market research, and pursuing business opportunities for the foreign entity it represents. The representative office's primary function is to act as a liaison office. As such, they may not engage in any revenue-generating activities such as engaging in trade, conducting sales, rendering professional services, issuing invoices, revenue collection, receiving sales proceeds, and most types of marketing activity.

INCOME TAX CONSIDERATIONS

A representative office is exempt from corporate income tax and auditing requirements. Its Vietnamese and expatriate employees are subject to personal income tax.

SETTING UP

The Department of Industry and Trade on the provincial level issues most representative office licenses. For some highly regulated industries, the representative office licenses are issued by the ministry or other competent authority for the industry in question. For example, the Ministry of Finance issues representative office licenses for insurance companies, and the State Bank of Vietnam issues representative office licenses for banks.

The foreign parent entity seeking to establish a representative office must have been actively operating in its home jurisdiction for at least one year to qualify for a representative office in Vietnam.

13 | BRANCHES

A "branch" of a foreign parent entity in Vietnam directly extends from the parent entity. Unlike a subsidiary, it does not have a separate legal entity. However, it may engage in some core business activities of the parent, such as conducting sales and engaging in contracts. Branch licenses are allowed in designated sectors that are highly regulated and closely monitored by the Vietnamese government, including banking, law, aviation, and insurance. As branches do not have legal status, its parent company is fully responsible for its obligations and commitments.

SCOPE OF BUSINESS

Even though branches engage in commercial activities, their lawful range of activities is typically more restrictive than a WFOE, as described in Section 7. The parent entity must have been in operation for at least five years to qualify for a branch.

TAX CONSIDERATIONS

Branches are subject to corporate income tax.

SETTING UP

Applications for branch licenses are submitted to the ministry or other competent authority for the industry in question. For example, a bank would apply to the State Bank of Vietnam, an insurance company would apply to the Ministry of Finance, a law firm would apply to the Ministry of Justice, and an airline would apply to the Ministry of Transportation. Consequently, the specific requirements for establishing a branch are highly dependent on the industry.

14 | BUSINESS Scope

Unlike many other jurisdictions, FIEs in Vietnam may only engage in activities within their authorized business scope. The permitted business scope of an FIE is stated in its foreign investment license and expressed by way of a company's "business lines." FIEs typically base their business lines on the Provisional Central Product Classification issued by the United Nations (and used in Vietnam's WTO services commitments) or the Vietnam National System of Economic Lines. For those activities that fall outside the mentioned classification systems, investors can request ad hoc business lines.

Acts outside a company's permitted business scope are deemed invalid or may result in monetary penalties or administrative sanctions.

LIMITED ACTIVITIES

Although local practice can vary, business scopes must generally be limited to defined activities at a specified location.

By way of example:

- An FIE that is permitted to manufacture motor vehicle engines could not produce gearboxes unless it obtains permission to manufacture gearboxes.
- An FIE real estate developer may only build in the specified location authorized by the relevant authorities. If it wants to develop at another site or expand its current project, it must seek additional foreign investment approval.

- If an FIE with a factory in Hanoi wants to operate an additional factory in Ho Chi Minh City, it must seek further foreign investment approval.
- The human resources department of a manufacturing FIE would not provide recruitment services to another FIE within the same group or to third parties unless the FIE registers the provision of human resource services as a separate business line.

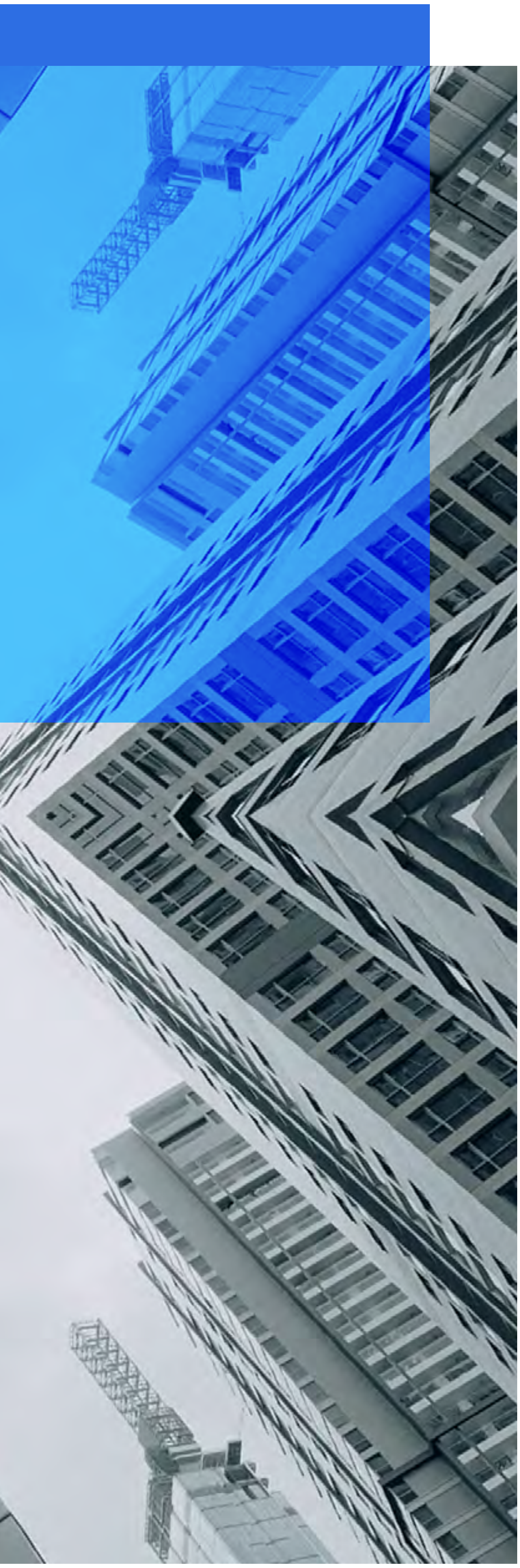
Business scopes might not be approved if they are too broad. At the same time, however, a too narrow scope may unnecessarily restrict future business opportunities. Thus, investors should carefully assess their business scope. Preliminary discussions with licensing authorities may help to identify an appropriate business scope.

ACTING OUTSIDE YOUR BUSINESS SCOPE

Suppose an FIE conducts activities outside its business scope. In that case, the competent authority may issue warnings, impose fines, confiscate illegal income, order suspension of business, or even revoke the FIE's investment certificate. Also, FIEs acting outside of permissible business scopes may be grounds for invalidating commercial contracts.

FOREIGN INVESTMENT
Approval

15



Before establishing an FIE, foreign investors must apply for an IRC from the relevant Vietnamese licensing authority with jurisdiction over the investment project. Projects with significant environmental or social impact, or in particular sectors, must first secure approval from the National Assembly, Prime Minister, or Provincial People's Committee of Vietnam.

APPLICATION FOR INVESTMENT REGISTRATION CERTIFICATE

Vietnam became a member of the WTO in 2007 and, in acceding to the WTO, has agreed to open specific sectors of the economy to foreign investment. The ability to invest in industries that were not committed to the WTO will depend on domestic law.

Obtaining an IRC involves submitting a business plan or feasibility study with the legal basis for the foreign investment. The licensing authorities will assess the IRC application dossier for foreign investment limitations, the adequacy of capital contributions, and the feasibility of the proposed business plan and require the investor to provide considerable detail and justification. The licensing authorities often require multiple correspondences with counsel and revisions to the application dossier, which prolongs the process.

Under the Law on Investment, the first step in investment registration is to determine whether a Decision on Investment Policy ("DIP") is needed and identify the government body with authority to issue a DIP.

An investor must obtain a DIP in the following circumstances:

- **National Assembly** – Projects which have a significant impact on the environment, e.g., nuclear power plants and conversion of land use purpose of a national park of 50 hectares or more; and projects involving the relocation of 20,000 or more people in mountainous areas, or 50,000 or more in other areas.
- **Prime Minister** – Projects which (i) involve the relocation of 10,000 or more people in mountainous regions, or 20,000 or more in other areas; (ii) investment for new construction of airports and aerodromes, runways of airports and aerodromes, international passenger terminals; (iii) cargo terminals of airports and aerodromes with a capacity of at least 1 million tons per year; (iv) new investment projects on passenger air transport business; (v) investment for new construction of ports and wharves of special seaports, ports and wharves in which investment is at least VND2,300 billion within the category of Class I seaports; (vi) processing of petroleum; (vii) casinos and other businesses involving gambling (excluding business in prize-winning electronic games for foreigners); (viii) investment projects on construction of residential housing (for sale, lease or lease purchase) and urban areas with land use of at least 50 hectares or less than 50 hectares but with a population of at least 15,000 people in an urban area; (ix) investment projects on construction of residential housing (for sale, lease or lease purchase) and urban areas with at least 100 hectares of land or less than 100 hectares of land but with a population of at least 10,000 people in a non-urban area; (x) investment projects on construction of residential housing (for sale, lease or lease purchase) and urban areas regardless of the area of land used or population within the safety perimeter of relics recognized by the competent authority as the national and special national relics; (xi) development of infrastructure in industrial zones, export processing zones; (xii) telecommunications involving the building of network infrastructure; (xiii) afforestation; (xiv) publication, press; (xv) investment projects which at the same time fall within the power of at least two provincial People's Committees to grant approval for investment.

- **People's Committee** – Projects in which the state allocates or leases land without auction, tender, or transfer; projects involving conversion of land-use purposes; and projects utilizing technology on the technology transfer restricted list.

The lists above are not exhaustive.

Once a DIP is issued, the IRC is issued within five working days by the relevant foreign investment authorities with jurisdiction over the economic sector. If a project is not subject to a DIP, the relevant foreign investment authority will process the dossier within 15 calendar days of applying an IRC.

The Department of Planning and Investment ("DPI") with jurisdiction over the location processes IRCs unless the project is in an industrial zone, in which case, the relevant industrial zone authorities conduct the processing. However, when an investment activity falls within the jurisdiction of specific ministries (government bodies at a national level), such as trade, communication, or health ministries, the foreign investment body processing the IRC (such as the DPI) will usually contact those ministries for their input and opinion. It is not uncommon for a case to require the consultation of multiple ministries. These consultations are often time-consuming because they involve submitting formal requests from the local foreign investment authority to relevant ministries. Due mainly to this reason, the actual processing times often go beyond the legally prescribed time frames as a matter of practice.

APPLICATION FOR ENTERPRISE REGISTRATION CERTIFICATE

Once the IRC is issued, the foreign investor must apply for an Enterprise Registration Certificate to establish the FIE that will implement the investment project. The processing time is typically one to two weeks from the date of submission.

16 | POST-LICENSING Procedures

After obtaining the IRC and ERC, investors must complete the following post-licensing tasks:

- **Corporate seals** – An FIE may use a physical seal or seal under a digital signature. Registration of the company seal to authorities is no longer required.
- **Bank account** – An FIE is required to open a corporate bank account with a commercial bank in Vietnam, including at least one Direct Investment Capital Account if the FIE has 51% or more foreign ownership (see Section [19] "Foreign Exchange Control").
- **Necessary licenses for foreign employees** – A foreign employee working for an FIE must apply for a work permit at the Department of Labor, Invalids and Social Affairs, and a residence card at the Department of Immigration. Investors in LLCs who are natural persons and members of the Board of Management of JSCs with a charter capital minimum of VND3 billion (approximately USD130,000) may request an exemption from work permits.
- **Registration with Social Insurance Authority** – An FIE must register with the Social Insurance Authority to comply with its employees' health insurance, unemployment insurance, and social insurance contribution requirements.

17 | CORPORATE Governance

MANAGEMENT STRUCTURE

Single-member LLC (SLLC)

An SLLC may have a Members' Council (consisting of 03 to 07 members), which functions much like a board of directors, or elect one person as the Company Chairman to act as the highest governing body in the SLLC. If the investor chooses to have a Members' Council, its members must elect a Chairman of the Members' Council.

A General Director, appointed or hired by Members' Council or Company Chairman, is responsible for the company's day-to-day operations. The SLLC must also select a Legal Representative whose duties include performing the rights and exercising obligations arising from company transactions with third parties and representing the company in court and arbitration. The company may have multiple Legal Representatives, provided that at least one resides in Vietnam. Typically, a company's General Director concurrently holds the title of Legal Representative. Vietnamese tax and accounting laws also require the SLLC to appoint a chief accountant. The chief accountant, legal representative, or both must sign all financial statements, accounting books, and tax filings.

Multi-member LLC (MLLC)

The management structure of the MLLC is like those of an SLLC. It consists of a Members' Council, a chairman of Members' Council, and a General Director, but it does not have the option of electing a Company Chairman. The establishment of an Inspection Committee in the MLLC is voluntary. The Inspection Committee functions as an independent auditor and watchdog for the MLLC.

MLLC shall have at least one Legal Representative who is concurrently the Chairman of the Members' Council or General Director.

JSC

A JSC typically has the following organizational structure:

- **General Meeting of Shareholders ("GMS")** – GMS is the highest management body of a JSC and includes all shareholders with voting rights. The GMS has the authority to make high-level strategic decisions such as the broad direction of the JSC's business, amendments to the JSC's charter, or significant disposals of company assets.
- **Board of Management ("BOM")** – BOM members are elected by the GMS, which has the authority to make management decisions for the JSC, except for matters within the jurisdiction of GMS. The BOM may have between three and eleven members. The BOM must elect a Chairman of the BOM from its members. Resolutions of the BOM are passed by a simple majority, with the Chairman holding power to cast the tie-breaking vote.
- **Supervisory Board** – This body is optional if the JSC has fewer than 11 shareholders and corporate shareholders own less than 50% of the total shares. Like the Inspection Committee for an MLLC, the Supervisory Board functions as an independent auditor and watchdog for the JSC. Its members must not be managers or close relatives of managers of the JSC. The Supervisory Board must have between three and five members, with more than half of the members residing in Vietnam. Its chair must be a professional accountant or auditor.
- **General Director** – The General Director, appointed by the BOM, oversees the company's daily operations.

A JSC may have more than one Legal Representative who is not required to be Vietnamese, but at least one Legal Representative must reside in Vietnam. If the JSC has only one Legal Representative, it must be either the Chairman of the BOM or the General Director. If the JSC has more than one Legal Representative, both the Chairman of the BOM and the General Director must concurrently hold Legal Representative positions.

PERSONAL LIABILITY OF CORPORATE OFFICERS

The General Director, Chairman of the BOM, Legal Representative, supervisor, and other company managers can incur personal liability for dereliction of corporate duties.

The duties responsibilities of corporate officers include:

- Complying with the law, the charter, and decisions of the owner(s) in implementing delegated rights and duties.
- Performing delegated rights and duties honestly, diligently, and to their best ability to ensure the maximum lawful interest of the company and the owner(s).
- Not using information, secrets, business opportunities of the company, not abusing the position, and using the company's asset for self-seeking purposes or serving the interest of other organizations and individuals.
- Other rights and obligations prescribed by law and the company's charter. The company's Legal Representatives are personally liable to it for the damage caused by the dereliction of their corporate duties.

RELATED PARTY TRANSACTIONS

Transactions between a company and its executives (and the close relatives of executives) require special board-level approval. Failure to obtain such permission can render the transaction void, and the parties can incur liability.

PARENT COMPANY LIABILITY

A parent company's liability for its subsidiaries is limited to the amount of its registered capital contribution. Also, there is no difference between domestic and foreign investors concerning parent company liability.

18 | COMPULSORY Reporting and Filing

FIEs must submit a report on their investment activities to the local investment registration and statistics authorities.

- Quarterly report: Each quarterly report must be submitted by the 15th day of the quarter's first month, succeeding in the previous quarter. The quarterly report should address capital, net revenue, export, and import activity, human resources, taxes, amounts payable to the state budget, and the use of land and water surface areas.
- Annual report: Each yearly report must be submitted by 10 April of the subsequent year. The annual report should address information on the quarterly reports, profits, employee income, company expenditures and investment in research and development, environmental protection, and the origins of technologies used.

In addition to the above, FIEs are required to submit reports which are specific to their industry.

19 | FOREIGN EXCHANGE Control

Vietnam has strict foreign exchange controls, and it must be conducted through credit institutions, organizations, or duly licensed persons. Also, within the territory of Vietnam, all organizations and individuals, whether foreign or Vietnamese, are prohibited from selling, buying, or lending foreign currency and making a payment or quoting in foreign currency except where the law expressly permits them to do so.

DIRECT INVESTMENT CAPITAL ACCOUNT

FIEs which have IRCs or where the combined foreign ownership is 51 percent or more are required to open a Direct Investment Capital Account ("DICA") to carry out the following transactions:

- Receipt of capital contributions from foreign investors, the assignment/ transfer of capital contributions, and receipt of foreign loans.
- Disbursement outside Vietnam of principle, interest, and fees on foreign medium or long-term loans.
- Disbursement outside Vietnam of capital, profit, and other legal revenue from a foreign investment.
- Other revenue and disbursement transactions relating to foreign direct investment activities.

A DICA is a current account in either foreign currency or Vietnamese Dong. A DICA is typically held in the name of the FIE, the foreign investor in a business cooperation contract, or a private partnership contract.

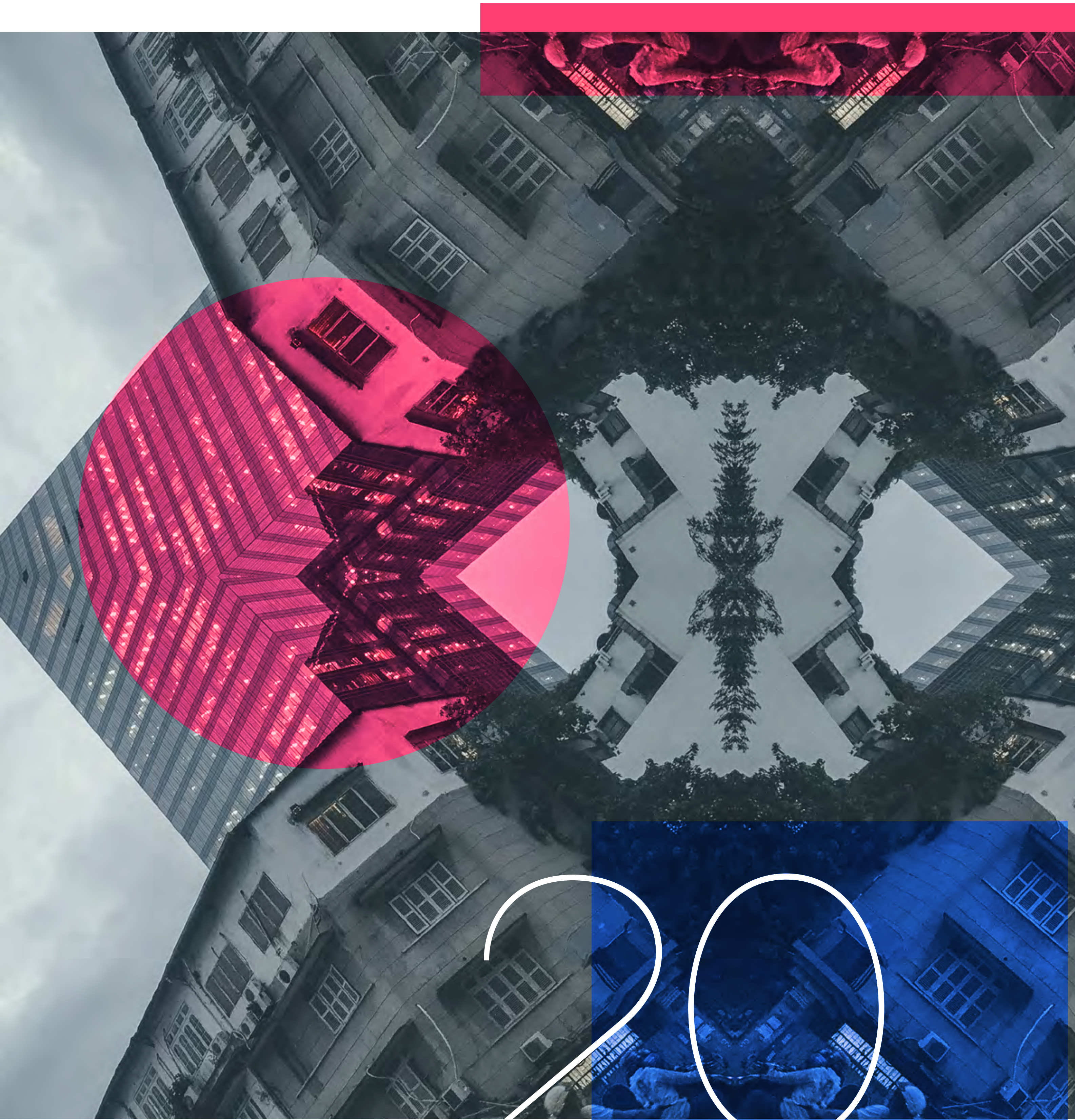
INDIRECT INVESTMENT CAPITAL ACCOUNT

Foreign investors investing in less than 51% equity in a Vietnamese enterprise or investment funds and without direct participation in the management of investment activities ("indirect investments") must open an Indirect Investment Capital Account ("IICA") in Vietnamese Dong at a licensed Vietnamese bank.

An IICA will be used to carry out the following transactions:

- To receive funds from the assignment of capital contribution, from the sale of securities, dividends, and other items of revenue arising from indirect investment activities.
- To make disbursements to purchase capital contribution, securities, or payment of other expenses relating to indirect investment activities.
- Other revenue and disbursement transactions relating to the indirect investment in Vietnam.

DEBT
Funding



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VND AND FOREIGN CURRENCY LOANS

FIEs may take out loans in either Vietnamese Dong or foreign currency.

However, foreign currency loans are limited to:

- Implementing business plans or investment projects.
- Restructuring foreign debts incurred by an FIE.

TYPES OF FACILITIES

Banking regulations provide for nine types of loan facilities that are available to a borrower. These are (i) single term loans; (ii) credit line facilities; (iii) loans for crop season intervals; (iv) syndicated loans; (v) revolving loans; (vi) stand-by credit line facilities; (vii) rollover loans; (viii) overdraft facilities; and (ix) other facilities not prohibited by law.

TERM OF THE LOAN

A loan must have a fixed term, which may be short (up to 12 months), medium (from 12 months to 60 months), or long term (over 60 months). The loan duration will commence from the date of the first drawdown and end at the time of the final payment of all outstanding interest and principal amounts. A loan may be extended for another term but not longer than (i) 12 months (if it is a short-term loan); or (ii) half of its current term (if it is a medium or long-term loan).

REGISTRATION OF FOREIGN LOANS

The State Bank of Vietnam requires the following types of foreign loans to be registered:

- Mid-term and long-term foreign loans (i.e., loans terms exceeding one year).
- Renewed short-term loans which have a maturity term of exceeding one year.
- Short-term loans that are not covered by any loan renewal contract and have outstanding principal owed on the anniversary of the first drawdown date within the initial full calendar year.

INTEREST RATE

The interest rate to be charged on loans was previously subject to several restrictions but is presently deregulated. Accordingly, a bank has a measure of flexibility in deciding whether to offer a fixed or floating rate to its customers. However, the applicable interest rate when there is a default on a loan may not be set higher than 150% of the prevailing interest rate as agreed between a bank and a borrower in the loan agreement.

SECURITY

The following securities are available and recognized in Vietnam: mortgage, pledge, third party guarantee, deposit, collateral security, and an escrow account. The first three types are the most widely accepted by credit institutions in Vietnam.

- **Mortgages** – A mortgage under Vietnamese law is a type of security whereby a debtor or a third party uses the property as security for an obligation without the transfer of possession or title of such property. A mortgage over a specific property, including land use rights and buildings, must be notarized and is valid only upon registration with the relevant government authority. Floating charges over raw material, inventory, and equipment are also possible.
- **Pledges** – a pledge is a type of security whereby the debtor or a third party uses their personal property as collateral for an obligation by the transfer of possession of such property to the secured party. The main distinction between a mortgage and a pledge is that the possession of the pledged property changes hands.
- **Guarantees** – A guarantee under Vietnamese law is an act whereby a guarantor and a creditor agree that the guarantor will discharge a debtor's obligation should the debtor fail to do so.

21 | FOREIGN **Employees**

FIEs may employ foreign nationals for managerial or technical roles if there are no suitable Vietnamese citizens.

In addition to the issues discussed below, foreign employees may be subject to Vietnam labor law. See Section [22] "Labor Law" for an outline of Vietnam labor law.

WORK PERMIT

Foreign nationals working in Vietnam for more than three months must obtain a work permit from the relevant Department of Labor, Invalids, and Social Affairs ("DOLISA") except for those who qualify for an exemption. The work permit can be based on a Vietnamese labor contract or a secondment from the employer's offshore parent entity. The term of the work permit cannot exceed the end date of the applicant's labor contract or secondment agreement or two years, whichever period is shorter. The work permit is subject to a one-time renewal with a maximum period of 2 additional years.

Persons exempted from work permits include FIE owners, certain persons in management positions JSCs, and foreign lawyers. Persons qualifying for a work permit waiver must still apply for it and usually register their employment with DOLISA seven days before their first working day.

SPLIT CONTRACTS

Foreign investors contemplating splitting employment contracts for foreign personnel should ensure that they have a substantive reason for doing so. The tax authorities may challenge splitting between two countries to reduce personal income tax exposure in Vietnam. The tax authorities operate under the principle that income generated or earned in Vietnam is subject to taxation in Vietnam.

183 DAYS RULE

Foreign residents who stay in Vietnam for at least 183 days within 12 consecutive months are subject to personal income tax on all income earned in Vietnam and regular income earned abroad. Vietnam uses a progressive tax scale when calculating personal income tax, with the highest rate being 35%. Foreigners who stay in Vietnam for less than 183 days within 12 months are subject to personal income tax on regular and irregular income sourced in Vietnam during their residence. Foreign tax non-residents are subject to a 20% flat rate for PIT.

Vietnam has signed double tax agreements (DTA) with many countries that contain tax exemptions in specified circumstances. As the language of each agreement differs to some extent, each country's DTA with Vietnam must be considered separately. Any applicable tax exemptions under the DTAs will not apply automatically. Foreigners must apply for an exemption to the Ministry of Finance.

22 | LABOR Law

The Vietnamese labor law applies to Vietnamese nationals and foreign nationals (with Vietnamese labor contracts).

WRITTEN CONTRACTS

Each employee should have a written labor contract. The labor contract will typically set out the terms of employment, nature of the job, work location, remuneration, working hours, safety and working conditions, social insurance, health insurance, unemployment insurance, training provisions.

Also, an employer and an employee organization can enter into collective bargaining agreements. See Section [24] "Labor Union."

LABOR CONTRACT TERMS

For labor contracts, the following periods are available:

- Indefinite term. Indefinite term contracts have no fixed date of termination. They will continue until mutually terminated by the parties, terminated by operation of law (e.g., retirement, incarceration, etc.), or released on other lawful grounds.
- Definite term. Definite term contracts must terminate on a specific date but cannot be more than 36 months in length.

PROBATION

The maximum probationary periods are as follows:

- 180 days for management positions.
- 60 days for positions that require professional and technical qualifications of a collegial or higher level.
- 30 days for jobs requiring professional and technical qualifications of intermediate vocational level, professional secondary level, or technical workers and skilled employees.
- 6 working days at maximum for other employees.

Probationary wages must be at least 85% of official salaries. During the probationary period, either employee or employer may unilaterally terminate the contract without any prior notice or compensation to the other party.

WORKING HOURS AND OVERTIME

The standard working week is five days at eight hours per day. The average working hours may not exceed 8 hours a day or 48 hours a week. Overtime may not generally exceed 4 hours a day and 200 hours a year. Under exceptional circumstances, and with the consent of the trade union and the employees, overtime hours may be extended up to 300 hours a year. Overtime compensation must be paid if an employee works overtime.

PAID LEAVES

Public holidays

At present, there are a total of eleven public holidays in Vietnam. If any public holidays fall on a weekend, the employees are entitled to take the next weekday off.

The chart below sets out Vietnam's national holidays.

PUBLIC HODIDAY	DAYS
New Year	01 day (1 January)
Lunar New Year (Tet)	05 days
Hung King Day	01 day (10 March of each Lunar Year)
Victory Day	01 day (30 April)
Labor Day	01 day (1 May)
Independence Day	02 days (2 September and 01 immediately preceding or the following day)

In addition to Vietnamese national holidays, foreign employees may take paid leave on their country's national day.

Annual leave

The minimum statutory paid yearly leave applicable for employees working under normal conditions is 12 days per year, with one more day for every five years of service. Employees working under hazardous conditions or employees under 18 years are entitled to 14 days of annual leave. An employee who has been working for an employer for less than 12 months shall be entitled to annual leave days equal to the number of months the employee has worked. Employers may schedule an employee's annual leave according to their business needs. Annual leave is additional to public holidays.

Other leave entitlements

In addition to annual leave, employees may take paid leave on special occasions.

These include:

- Matrimonial leave: an employee who marries is entitled to three days' leave, and an employee whose children marry is entitled to one day of leave.
- Funeral leave: an employee is entitled to three days off for the death of their parent, a parent-in-law, spouse, or child.
- Maternity leave: female employees are entitled to leave following childbirth for at least six months.
- Paternity leave: male employees are entitled to 5 to 14 days leave, depending on circumstances.

The social insurance fund compensates employees during maternity and paternity leaves.

WAGES AND SALARIES

Minimum wage standards are set each year at the provincial or municipal level. The average increase in the minimum wage in 2018, 2019, and 2020 was 6.5 percent, 5.3 percent, and 5.2 percent, respectively. Minimum wages for Vietnamese employees working in FIEs from 1 January 2020 are as below:

REGION(*)	2020 MONTHLY MINIMUM WAGE
Region I	VND4,420,000 (USD188)
Region II	VND3,920,000 (USD166)
Region III	VND3,430,000 (USD146)
Region IV	VND3,070,000 (USD130)

- Region I covers the urban areas of Hanoi and Ho Chi Minh City.
- Region II covers Hanoi and Ho Chi Minh City's rural areas and urban areas of Can Tho, Da Nang, and Hai Phong.
- Region III includes provincial cities and the districts of Bac Ninh, Bac Giang, Hai Duong, and Vinh Phuc provinces.
- Region IV covers the remaining localities.

Of course, professional and skilled workers command wages and salaries at significantly higher rates. Salaries must be paid at least once a month.

SOCIAL INSURANCE

Compulsory contribution to the social insurance scheme is required for employees with labor contracts with a duration of more than one month. Employers and employees must pay the contributions to the State Social Insurance Fund equal to 21.5% of gross income by the employer and 10.5% by the employee, with a statutory cap. The employer must pay 6.5% for foreign employees, and the foreign employee must pay 1.5%, with a statutory cap. The Fund covers the employees' benefits during sick leave, maternity leave, retirement, and allowances for work-related accidents, occupational disease, and unemployment.

UNEMPLOYMENT INSURANCE

The unemployed are entitled to three months of unemployment allowance if they paid between 12 and 36 months of unemployment insurance contribution. After that, the employees get an additional month of allowance for each year of additional contribution, with a maximum allowance of 12 months. The unemployment allowance is up to 60% of the employee's previous monthly salary or 60% of the statutory cap, whichever is less. As of August 2020, the statutory cap for payment to the Unemployment Insurance Fund for Region I was VND88,400,000 per month.

23 | LABOR CONTRACT
Termination

Vietnam does not have at-will employment. Instead, termination of employment can only take place on specific grounds. An employee may be dismissed through a labor discipline hearing for violation of work rules or other grounds specified under the labor law. Employees are also subject to notice termination under particular circumstances.

SEPARATION VIA A LABOR DISCIPLINE HEARING

The employers may dismiss employees from their employment if:

- The employee commits an act of theft, embezzlement, gambling, deliberate violence causing physical injury, use of narcotics or illegal drugs at the workplace, disclosure of technological or business secrets.
- The employee commits sexual harassment at the workplace.
- The employee commits another offense while under a demotion or deferred salary increase disciplinary measures.
- The employee was absent without appropriate reasons for five days or more within 30 days or 20 days or more in 365 days.

Before dismissing employees on the grounds above, employers must hold a labor discipline hearing for the affected employee; thereby, providing the employee an opportunity to respond to the employer's allegations. The hearing must follow the procedural formalities required by law. The hearing is an intra-company affair held and conducted by the employer's officers. However, the employer must invite a member of the trade union (if any) to attend the hearing.

SEPARATION VIA WRITTEN NOTICE

An employer may terminate labor relations, without a discipline hearing and based on written notice, under the following circumstances:

- An employee repeatedly fails to perform his/her duties.
- An employee is sick or injured and is incapable of performing his/ her job after 12 consecutive months for an indefinite term contract, six months for a contract with 12-36 months, or half of the contract term with the period under 12 months.
- Employers are forced to down-size and reduce their production and employment due to natural disasters, fire, or other events of force majeure.
- The employers terminate their operation in Vietnam.

The period of advance notice required is three days in advance for contracts under 12 months, 30 days for contracts with 12-36 months, or 45 days for indefinite term contracts.

For an employer to terminate an employee on the grounds of repeated failure to perform their duties, the employee must have failed to perform on at least two occasions in one calendar month, was provided a warning letter by their employer regarding both failures, and subsequently was unable to perform again within the same calendar month. Because of the stringent requirement for the performance-based ground for termination and the pro-labor bias of the Vietnamese judiciary, separations based upon this ground should be used with caution.

CONSEQUENCES OF WRONGFUL TERMINATION

If an employer is judged to have wrongfully terminated an employee, the employer must:

- Re-employ the employee per his/her labor contract.
- To pay compensation equal to the total amount of his/her salary or wages and allowances (if any) for the period of wrongful dismissal plus an additional two months' salary and allowances (if any).

If the employee does not want to return to work, the employee will be entitled to the statutory job-loss allowance in addition to the above compensation. If the employer refuses to re-employ the employee, the two parties may agree on an additional payment amount with at least two months' salary. If parties cannot agree on the amount, the court may determine the amount.

SEVERANCE ALLOWANCE

Severance allowance may be payable by the employer upon the termination of employment, including in situations in which an employer does not offer to renew a fixed-term labor contract or when the parties agree to a separation. Severance pay accrues at the rate of half month salary for each year of employment, except where the employee participated in the government's unemployment insurance fund, which started in January of 2009.

MASS REDUNDANCY

An employer can make employees redundant due to technological changes, changes in organizational structure, in cases of a merger, consolidation, or cessation of operation of one or several departments or units, or where the employer faces severe economic conditions. If such changes lead to the termination of two or more employees, the employer is required to devise and submit a "Labor Usage Plan" ("LUP") to the People's Committee of the provincial level before conducting the mass redundancy. Before submitting the LUP, the employer must consult with the grassroots trade union, if any. If within 30 days of filing the LUP dossier, no objection is lodged by the labor authority, the employer may proceed with the mass redundancy. Employees affected by the mass redundancy are entitled to their unpaid salary, other required compensation, and statutory job-loss allowances.

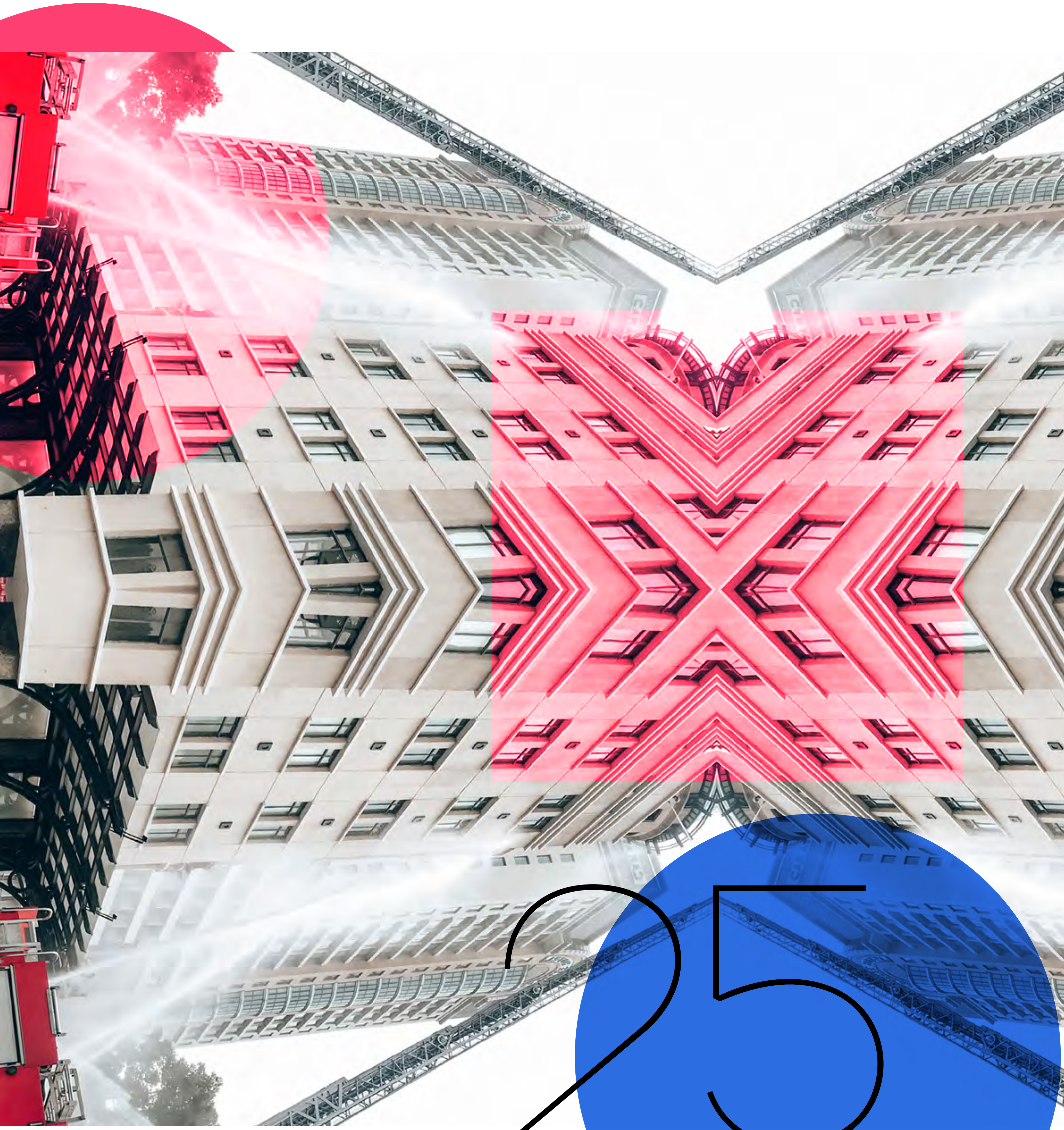
24 | LABOR Unions

Employees in Vietnam have the right to set up a workplace labor union. If the employees request the establishment of a labor union, the employer is required to assist. Companies with at least five employees wishing to establish a trade union may form a grassroots labor union. Labor unions have the right to participate in the drafting and passage of an employer's Internal Labor Rules and collective bargaining agreements (if any). Labor unions also must be notified of and participate in any labor discipline hearings.

At present, all companies in Vietnam must contribute monthly to a trade union fund at 2% of their total Social Insurance salary costs. If the company has a grassroots trade union, employees must contribute an additional 1% of their gross salary to it.

In addition, employees are entitled to establish, join, and participate in activities of internal employee organizations in the company. The internal employee organizations are permitted to operate after registering with the competent authorities.

CORPORATE INCOME
Tax and Incentives



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Business entities in Vietnam, including FIEs and domestic companies, are subject to corporate income tax. The standard CIT rate is 20% of "taxable income," as defined below. Various incentives for both FIEs and local companies are available.

TAX INCENTIVES

Companies engaged in encouraged investment sectors or located in selected geographical areas are generally entitled to tax incentives, including tax exemption, tax reduction, or preferential tax rates. (See Section [5] "Grants or incentives available to Investors").

TAX ASSESSMENTS

Assessable income is taxable income, less tax-exempt income, and minus losses carried forward from prior years. Taxable income is calculated as gross turnover, less deductible business expenses, plus other income. Income from real estate transfers must be separately determined to declare tax and is not eligible for CIT incentives.

ALLOWABLE DEDUCTION

Taxpayers can deduct from their taxable income such reasonable and valid business expenses provided under the law. In general, a business expense is deductible if it is not in the list of prohibited deductions and if it satisfies both of the following conditions:

- The expenses stem from the business of the enterprise.
- The expenses are accompanied by complete invoices and source vouchers (including bank transfer vouchers where the invoice value is VND20 million or above).

NON-DEDUCTIBLE EXPENSES

Examples of non-deductible expenses include:

- Depreciation of fixed assets which is not per the prevailing regulations.
- Employee remuneration expenses were not paid under a labor contract, collective labor agreements, or company policies.
- Staff welfare (including certain benefits provided to family members of staff) exceeding a cap of one month's average salary.
- Contributions to voluntary pension funds and life insurance for employees exceeding VND 3 million per month per person.
- Reserves for research and development are not made under the prevailing regulations.
- Payments for severance or job loss allowance above the prescribed amount outlined in the Labor Code.
- Overhead expenses allocated to a permanent establishment in Vietnam by the foreign company's head office exceeding the amount under a prescribed revenue-based allocation formula.
- Interest on loans corresponding to the portion of any charter capital not yet contributed.
- Interest on loans from non-economic and non-credit organizations exceeding 1.5 times the interest rate set by the State Bank of Vietnam.

- Provisions for stock devaluation, bad debts, financial investment losses, product warranties, or construction work are not per prevailing regulations.
- Unrealized foreign exchange losses due to the year-end revaluation of foreign currency items other than accounts payable.
- Donations except for specific contributions for education, health care, natural disaster or building charitable homes for the poor or scientific research.
- Administrative penalties, fines, late payment interest.

LOSSES

Businesses that incur losses after tax finalization are entitled to carry forward those losses to be offset against assessable income for a maximum of five years. Enterprises that incur a loss from real estate transfers are only entitled to carry forward the loss to be offset against assessable income from similar activities.

TAX ADMINISTRATION

Corporate taxpayers must have a tax file number (tax code) except those paying taxes on a withholding basis. Unless granted special permission, all corporate entities must use the calendar year for accounting and tax purposes.

CIT is calculated and payable quarterly per an establishment's declaration of CIT or the amount fixed by the government tax office.

On an annual basis, companies must lodge a CIT finalization with the tax office within 90 days from the last day of a calendar year or fiscal year, if so permitted. If the amount of tax provisionally paid for the year is less than the total amount payable, the shortfall must be paid within ten days from the date of submitting the tax finalization. If the amount payable for the year is less than the amount provisionally paid, corporate taxpayers may deduct such excess from the amount of tax payable during the next tax period.

26 | TRANSFER Pricing

Vietnam's transfer pricing regulations are mainly governed by Decree No. 132/2020/ND-CP ("Decree 132") of the Government dated 05 November 2017.

Decree 132 is generally based on concepts and principles from the Transfer Pricing Guidelines of the Organization for Economic Cooperation and Development ("OECD") and Base Erosion and Profit Shifting Action Plan ("BEPS").

RELATED PARTIES

Parties are related if they hold directly or indirectly at least 25% of the equity or total property of the other business establishment.

TRANSFER PRICING DISCLOSURE FORMS

All enterprises in Vietnam with related-party transactions must submit Form 01 "Information about related-party relationships and transactions," to the tax authorities together with their annual tax returns. Therefore, they must disclose information about their related-party relationships and transactions, as well as transfer pricing methodologies used and the confirmation of the arm's length value of their transactions (or otherwise the making of voluntary adjustments).

TRANSFER PRICING DOCUMENTATION

Enterprises that do not fall into any of the exempted categories should prepare, retain, and, upon request of the tax authorities, submit contemporaneous documentation for each tax year. If an enterprise fails to provide contemporaneous documentation to substantiate its tax position, the tax authorities have the right to impose penalties, including fines, and to assess taxes based upon "deemed" taxable income, assigning profits based upon their own calculations and methods.

TRANSFER PRICING DOCUMENTATION EXEMPTION

Enterprises may be exempted from the contemporaneous transfer pricing documentation requirements if any of the following conditions are satisfied:

- Has a total revenue in a tax year of less than VND50 billion and the total value of related party transactions in the tax year of less than VND30 billion.
- Has entered into Advance Pricing Agreement ("APA") with Vietnamese authorities and submitted an annual APA report.
- Performing business activities with simple functions with total revenue of less than VND200 billion and achieve earnings before interest, taxes, and depreciation, and amortization ("EBITDA") ratio of at least 5% for "distribution," 10% for "manufacturing," and 15% for "processing."

30% OF EBITDA CAP ON INTEREST DEDUCTIBILITY

Decree 132 introduces a cap on interest deductions relating to borrowings at 30% of EBITA.

The portion of loan interest cost that is non-deductible is carried forward to the next taxable period to determine total loan interest cost deductible if the entire loan interest cost deductible in the following taxable period is lower than the above amount. The loan interest costs may be carried forward for a maximum consecutive period of 05 years, counting from the year following the year in which non-deductible loan interest costs arise

INTERCOMPANY SERVICE CHARGES

Decree 132 provides various criteria for the tax-deductibility of intercompany service charges.

Specifically:

- The services provide direct benefits for the taxpayers' business operation.
- Services provided by related parties are considered completed if and only if independent parties would be willing to pay for these services in the same circumstances.
- Services fees are calculated and settled on an "independent transactions" principle, provided that supporting documents are available for review.

A tax deduction will not be allowed for intercompany service charges where the taxpayer's direct benefit or add value cannot be determined, such as duplicated services and shareholder costs.

27 | VALUE ADDED Tax (VAT)

Organizations and individuals producing and trading VAT taxable goods and services in Vietnam or importing VAT taxable goods or services from foreign countries are liable to pay VAT.

VAT EXEMPT GOODS AND SERVICES

Primary categories of goods and services that are not subject to VAT include:

- Products of cultivation, husbandry, aquaculture, seafood, and unprocessed fisheries.
- Animal breeding stock and plant varieties, including breeding eggs, young animals, seedlings, seeds, sperm, embryos, and genetic materials.
- Salt products.
- Transfers of land use rights.
- Life insurance.
- Credit services.
- Securities business activities.
- Assignments of capital; derivative financial services.
- Medical health services and veterinary services, including medical examinations.
- Education and vocational training.
- Publication, importation, and distribution of newspapers, magazines, specialized newsletters, political books, textbooks, and teaching materials.

Other items that are exempt from VAT when imported include:

- Machinery, equipment, and materials that cannot be produced domestically and are required for direct use in scientific research and technological development activities.
- Machinery, equipment, replacement parts, specialized means of transportation, and materials which cannot be produced domestically and are required to be imported to carry out prospecting, exploration, and development of petroleum and natural gas fields.
- Aircraft, drilling platforms, and watercraft that cannot be produced domestically and which are required to be imported to form fixed assets of enterprises or are leased from foreign parties for use in production and business or to be sub-leased.

Business establishments are not entitled to a credit and refund of input VAT for goods and services used by businesses that are not subject to VAT.

VAT RATES

RATE	APPLICABLE TO
0%	• Exported goods and services. • Construction and installation operations of export processing enterprises. • Goods sold to duty-free shops. • International transportation, and to goods and services that are not subject to VAT and that are exported, except for the following: technology transfers and intellectual property transfers to foreign countries; services being reinsurance offshore; credit services, assignment of capital and derivative financial services; post and telecommunications services; and export products being exploited natural resources and mined minerals that have not yet been processed.
5%	• Economic areas are considered essential goods and services, including clean water for manufacturing and living purposes. • Fertilizers; ore used to produce fertilizers. • Pesticides and growth stimulants for animals and crops; • Feed for cattle, poultry, and other animals; fresh food produce. • Sugar and its by-products.

RATE	APPLICABLE TO
5%	• Products made from jute, sedge, bamboo, rattan, thatch, coconut fiber, coconut shell, water hyacinth, and other handmade products produced by using agricultural raw materials. • Semi-processed cotton. • Newsprint. • Medical equipment and instruments. • Medical sanitary cotton and bandages. • Preventive and curative medicines and pharmaceutical products and pharmaceutical materials which are the raw materials for producing preventive and therapeutic medicines. • Scientific and technological services as stipulated in the Law on • Science and Technology.
10%	All other goods and services which are subject to VAT but are not subject to 0% and 5% rates.

METHODS OF CALCULATING VAT

VAT payable is calculated either by the tax credit method or the value-added method. The tax credit method applies to business establishments that fully implement the regime on accounting, invoices, and source vouchers as stipulated by law and registered to pay VAT by the tax credit method.

The value-added method applies to foreign organizations and individuals conducting business without establishing residence in Vietnam, having income arising in Vietnam, and not implementing a regime on accounting, invoices, and source documents. And are not involved in the activities of purchasing and selling gold, silver, and precious stones.

CREDIT FOR INPUT VALUE-ADDED TAX

Business establishments that pay VAT under the tax credit method are permitted a credit for input VAT as follows:

- Input VAT levied on goods and services used by businesses subject to VAT is fully credited.
- For input VAT levied on goods and services used in a business that has elements subject to VAT and elements not subject to VAT, only the amount of input VAT charged on the goods and services used in elements subject to VAT will be credited. Input VAT levied on fixed assets used in both VAT businesses and non-taxable businesses will be fully credited.

Upon determination of the tax payable for a month, creditable input VAT arising during such month will be declared and credited. Suppose a business establishment discovers an amount of VAT that was not deductible upon declaration due to the omission of an invoice or receipt for tax payment not declared for credit. In that case, it can make a declaration for additional credit. The maximum period for claiming an extra credit is six months from the month dated on the invoice or receipt omitted.

The following conditions must be satisfied to credit the input VAT:

- There is an added value invoice for the purchase of the goods and services or a receipt for payment of VAT at the import stage.
- There is evidence of payment via a bank for the purchased goods and services, except where the goods and services have a value below VND20 million.

VAT DECLARATIONS AND PAYMENT

The monthly value-added tax declarations must be submitted and paid no later than the 20th day of the following month.

28 | TAX FOR FOREIGN Contractors

SCOPE OF APPLICATION

Vietnam has Foreign Contractor Tax ("FCT"), which is not a special tax, but a system for calculating and paying Corporate Income Tax ("CIT") and Value Added Tax ("VAT"). FCT is governed by Circular 103. Under Circular 103, a "foreign contractor" is a foreign entity, with or without a permanent establishment ("PE") in Vietnam, that does business or generates income in Vietnam based on an agreement between the foreign contractor and a Vietnamese party (or between foreign contractors and foreign subcontractors to perform part of the main contract). Foreign contractors are subject to FCT.

FCT PAYMENT METHODS

A foreign contractor can pay tax in three ways: Declaration Method, Direct Method, or the "Hybrid" Method.

DECLARATION METHOD

The Declaration Method applies to a foreign contractor if (i) it has a PE or is a tax resident in Vietnam; (ii) the duration of the project in Vietnam is 183 days or more; and (ii) it adopts the entire Vietnam Accounting System ("VAS"), and files its tax registration with the tax authorities and obtains a tax code. Foreign contractors qualified for Declaration Method are to pay VAT under the tax credit method and CIT based on the declaration of turnover and expenses to calculate taxable income.

DIRECT METHOD

The Direct Method applies to foreign contractors and foreign sub-contractors that cannot meet the conditions for the Declaration Method. Foreign contractors adopting the Direct Method do not register for VAT purposes or file CIT or VAT returns. Instead, the law imposes an obligation on the Vietnamese counterparty to withhold the FCT. Before paying a foreign contractor, the Vietnamese counterparty must deduct the FCT from the payment. It then delivers the FCT to the authorities on behalf of the Foreign Contractor. The VAT withheld by the Vietnamese customer is generally an allowable input credit in its VAT return.

The FCT rates depend on the nature of the activities performed. The FCT rates under the Direct Method are summarized below:

BUSINESS ACTIVITIES	VAT RATE	CRIT RATE
Trading, distribution, provision of goods, material, machines, equipment; distribution, provision of goods, materials, machines, equipment accompanied with services in Vietnam (inclusive of in-country import-export and imports); supply of goods under Incoterms where the seller bears risks relating to the goods in Vietnam	Exempt (VAT is paid upon importation)	1%
Services	5%	5%
Services together with the supply of machinery and equipment where the contract does not separate the value of goods and services	3%	2%
Restaurant, hotel, and casino management services	5%	10%
Derivative financial services	Exempt	2%
Construction, assembly, and installation that include the supplying of materials, machinery, and equipment	5%	2%
Construction, assembly, and installation that do not include the supplying of materials, machinery, and equipment	3%	2%
Lease of machinery and equipment	5%	5%

BUSINESS ACTIVITIES	VAT RATE	CRIT RATE
Lease of aircraft, aircraft engines, and parts of aircraft and ships	Exempt for those that cannot be manufactured in Vietnam	2%
Transportation	3%	2%
Insurance	5% (Exempt for several types of insurance)	5%
Ceding reinsurance abroad and reinsurance commission	Exempt	0.1%
Transfer of securities and certificates of deposit	Exempt	0.1%
Loan interest	Exempt	5%
Income from royalties	Exempt	10%
Other businesses	2%	2%

HYBRID METHOD

Foreign Contractor may choose to apply the Hybrid Method if it meets all three of the following conditions: (i) it has a PE in Vietnam; (ii) the contract has a term of at least 183 days from the effective date of the contract; and (iii) it maintains accounting records per the accounting regulations and guidance of the Ministry of Finance of Vietnam.

The hybrid method allows foreign contractors to register for VAT and pay VAT based on the Declaration Method (i.e., output VAT less input VAT) but pay CIT under the Direct Method rates based on gross turnover.

TAX DECLARATIONS AND PAYMENT OF FCT

FCT declarations and payment is made using one of the following two methods: (i) monthly tax declarations and payment no later than the 20th day of the month following month that payment to the Foreign Contractor was made in many installations; or (ii) ad-hoc tax declarations and payment no later than the 10th days from the date of making payment to the Foreign Contractor.

29 | PERSONAL INCOME Tax

TAX RESIDENCY

Any individual is a resident for personal income tax ("PIT") purposes if they satisfy one of the following conditions:

- Being physically present in Vietnam for one hundred and eighty-three (183) days or more within one calendar year or twelve (12) consecutive months.
- Having a regular residence in Vietnam via one of the following cases: (i) permanent residence recorded in the residence card or temporary residence card, or (ii) having a residential lease contract with a term of ninety (90) days or more.

Tax residents are subject to Vietnamese PIT on their worldwide taxable income, wherever it is paid or received. Income from employment is taxed on progressive tax rates. Other types of income are taxed at several different flat rates.

A non-resident is an individual who does not satisfy the above conditions. Tax non-residents are subject to PIT at a flat tax rate of 20% on their Vietnam-related employment income and various other rates on their non-employment income. However, the tax rate for any non-resident will need to consider the provisions of any double taxation treaty that might apply.

TAX YEAR

The tax year for PIT purposes is from 1 January to 31 December.

TAXABLE INCOME

Taxable income comprises of ten main types of income: business income, salaries, and wages, income from capital investments, income from capital transfers, income from real property transfers, winnings or prizes, royalties, income from franchises, income from inheritances, and gifts.

TAX-EXEMPT INCOME

Income that is not subject to PIT includes:

- One-off regional transfer allowances for foreigners moving to reside in Vietnam.
- The cost of one return air ticket paid by the employer for a foreign employee to return home for a holiday once per year.
- Employee training fees paid to training centers.
- School fees of expatriate employees' children paid directly to schools in Vietnam.
- Employee housing allowance exceeding 15% of the total taxable income (excluding housing benefit from employers).
- Income from real property transfers between certain related parties.
- income from transfer of a single residential house or residential land use right in Vietnam.
- Receipt of an inheritance or gift of real property between certain related parties.
- Interest on money deposited at a bank or credit institution.
- Income from life insurance policies.
- Foreign currency remitted by overseas Vietnamese.
- That part of night shift or overtime salary payable that is higher than the day shift or regular working hours salary stipulated by the Labor Code.
- Scholarships.
- Compensation payments from life and non-life insurance contracts.
- Compensation for labor accidents.

FOREIGN TAX CREDITS

Regarding tax residents who have overseas income, PIT paid in a foreign country on the foreign income is creditable.

ASSESSABLE INCOME

Assessable income from salaries and wages is total taxable income less the following deductions:

- Insurance premiums for compulsory social insurance and medical insurance and premiums for other insurance that is compulsory under the law.
- Deductions for contributions to charitable, humanitarian, or study promotional funds.
- Deductions for family circumstances, comprising the following two components:
  - A deduction applicable to all taxpayers of VND11,000,000 per month.
  - A deduction for each dependent of VND4,400,000 per month.

The dependent allowance is not applied automatically, and the taxpayer needs to register qualifying dependents and provide supporting documents to the tax authority. The deduction level for dependents is determined on the principle that each dependent may only be assessed for a deduction on one occasion from the taxable income of one taxpayer.

PIT RATES

Residents – employment income

PORTION OF ANNUAL ACCESSIBLE INCOME	PORTION OF MONTHLY ACCESSIBLE INCOME	TAX RATE
Up to VND60 million	Up to VND5 million	5%
From VND60 to VND120 million	From VND5 to VND10 million	10%
From VND120 to VND216 million	From VND10 to VND18 million	15%
From VND216 to VND384 million	From VND18 to VND32 million	20%
From VND384 to VND624 million	From VND32 to VND52 million	25%
From VND624 to VND960 million	From VND52 to VND80 million	30%
Over VND960 million	Over VND80 million	35%

Residents – other income

TYPE OF TAXABLE INCOME	TAX RATE
Business income	0.5%- 5% (based on the type of business income)
Income from capital investments	5%
Sale of shares	0.1% of the sales proceeds
Capital assignment	20% of the net gain
Sale of real estate	2% of the sales proceeds
Income from copyright/ franchising / royalties	5%
Income from inheritance / gifts / winning prizes	10%

Non-residents

TYPE OF TAXABLE INCOME	TAX RATE
Employment income	20%
Business income	1% - 5% (based on the type of business income)
Income from capital investments	5%
Sale of shares/ Capital assignment	0.1% of the sales proceeds
Sale of real estate	2% of the sales proceeds
Income from royalties/franchising	5%
Income from inheritance / gifts / winning prizes	10%

TAX DECLARATIONS AND PAYMENT FOR INDIVIDUALS

The following individuals earning salary are required to submit a monthly declaration not later than the 20th day of the following month:

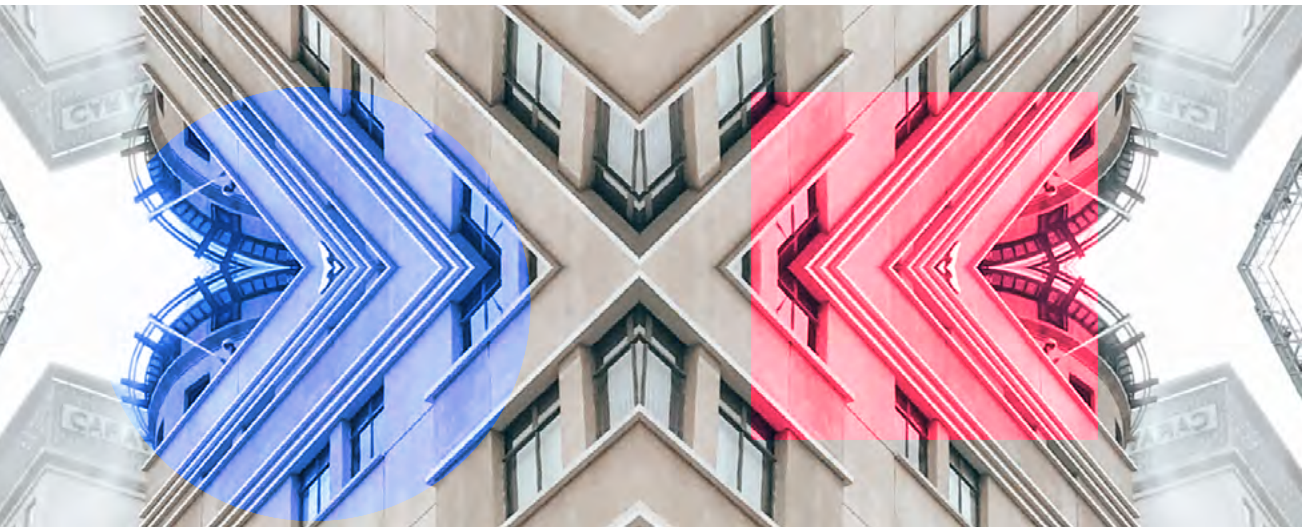
- An individual receiving salary paid by an entity located in a foreign country.
- A Vietnamese individual with salary paid by an international organization, embassy, or consulate in Vietnam.

Tax finalization is applicable to individuals with salary income in the following cases:

- The amount of tax payable in the year is greater than the amount already deducted or provisionally paid in the year, or there are tax obligations that arise throughout the year for which deductions or provisional payments have not yet been made.

- Where the taxpayer requests a tax refund or an offset of tax in the following period.
- Upon the termination of foreign individual's employment in Vietnam and before exiting Vietnam.

For non-employment income, an individual must declare and pay PIT concerning each type of taxable non-employment income. The PIT regulations require income to be reported and tax paid on a receipt basis (except rental income, which can be declared and paid annually).



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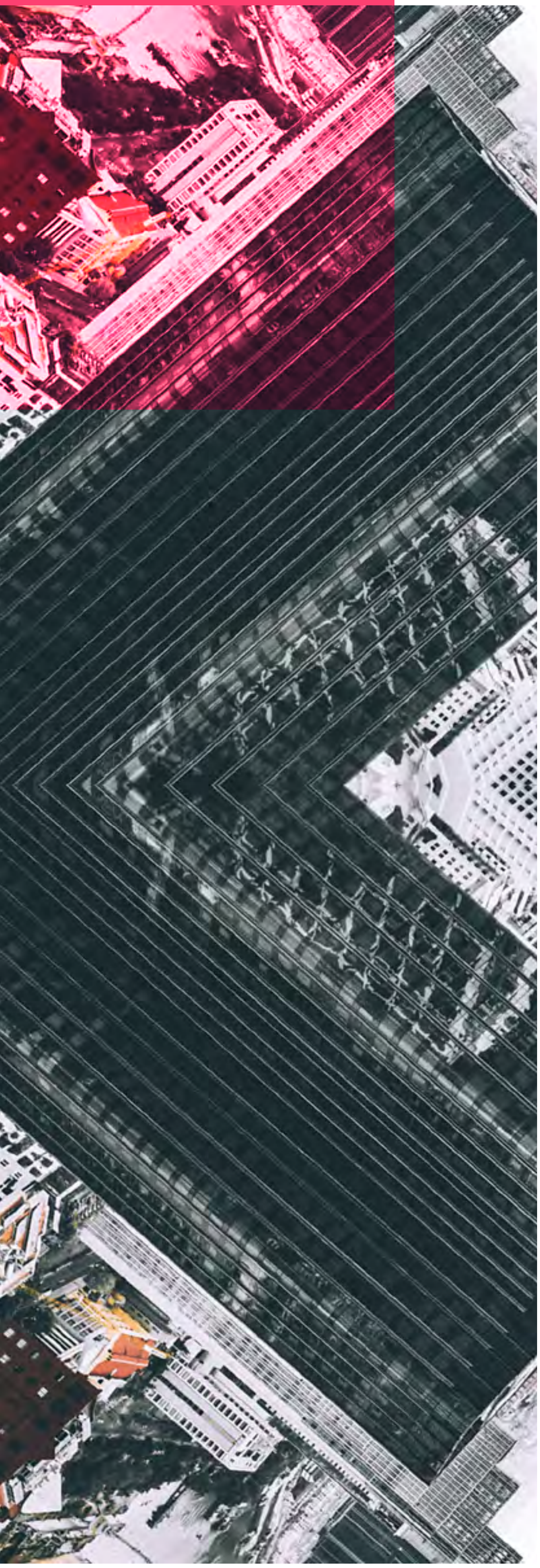

LAND USE RIGHTS ("LURs")

As a matter of State doctrine, "private ownership" of land is not allowed in Vietnam; all land belongs to the State. Neither companies nor individuals can "own" land, although they may hold LURs.

The State grants LURs to a land user by:

- An "allocation" of LURs with or without land use fee.
- A land lease with land rental payment made on an annual or a lump sum basis.

WAYS TO OBTAIN LURS

Foreign investors may obtain LURs in one of the following ways:

- Option 1: Receiving an allocation of land from the State to implement investment projects for construction for residential housing for purposes of sale or sale in association with leasing out.
- Option 2: Leasing the land from the State for implementing investment projects in agricultural production, forestry, aquaculture, or salt production; for non-agricultural business and production; and for construction of community buildings for business purposes and residential housing for leasing.

- Option 3: Sub-leasing land attached with infrastructure in an industrial zone, an industrial cluster, a processing zone, a high-tech zone, or an economic zone.
- Option 4: Accepting the contribution of a LUR as in-kind capital from Vietnamese partners whose land is allocated by or leased from the State with authority to contribute a LUR as a capital contribution to a joint venture entity.
- Option 5: By purchasing the equity of a Vietnamese entity that owns the LURs.

TERM OF LURS

LURs are granted on a "long-term use" basis or for a limited term. Long-term use means the holder of such LUR can use the land for an indefinite period. The most comment long-term use LURs those given to individuals for residential dwellings. Other long-term uses include land used for family businesses or national security purposes. The LURs given to economic organizations for commercial purposes are valid for up to 50 years unless exceptional circumstances apply, in which case, the term can be for up to 70 years.

PERMITTED REAL ESTATE BUSINESS ACTIVITIES FOR FOREIGN INVESTORS

Under the Investment Law, the "real estate business," i.e., the development and trade in real estate, is a "conditional sector," meaning a foreign investor must meet certain conditions set by the Government. Although Vietnam's WTO commitments did not extend to the real estate business, foreign investors may engage in it per Vietnam's Law on Real Estate Business.

Under the Law on Real Estate Business, foreign-invested companies may participate in the real estate business in the following forms:

- Rent houses and buildings for sublease.
- Build houses on the land leased by the State.
- Build houses or constructions other than houses on such land for sale, lease, or lease-purchase.
- Receive the transfer of total or a part of real estate project from investors to build buildings on it for sale, lease, or lease-purchase.
- Build houses on land which is allocated by the State for sale, for lease, or lease-purchase.
- Build buildings on land leased out or transferred in industrial parks, industrial complexes, export-processing zones, hi-tech zones, or economic zones for trading or other proper land use.

FOREIGN OWNERSHIP OF RESIDENTIAL UNITS

Foreign organizations and individuals entitled to own residential units in Vietnam include:

- Foreign organizations and individuals that are investing in house construction under projects in Vietnam.
- FIEs, branch, the representative office of a foreign enterprise, foreign investment fund, and a branch of foreign bank operating in Vietnam ("Foreign Organizations").
- Foreign individuals who can lawfully enter Vietnam and are not entitled to diplomatic or consular privileges and immunities according to the law.

Restrictions applicable to Foreign Organizations and foreign individuals for the ownership of residential units include:

- Collectively, they are limited to 30% of apartments in a building and 10% of residential houses in a project having 2500 houses.
- For foreign individuals, the term of ownership is limited to 50 years with one extension.
- For Foreign Organizations, the term of ownership is restricted to their foreign investment project term, including any extension thereof. Also, purchased residential units may only be used for housing their employees. The units may not be used for sublease to others, for commercial purposes, or any other purpose.
- Before the said terms' expiry, Foreign Organizations and foreign individuals may gift or sell their house(s) to or individuals or entities eligible for the homeownership in Vietnam; otherwise, the units shall escheat to the State.

31 | PROTECTING Your IP

In Vietnam, protecting intellectual property (IP) requires a multi-faceted approach, including registration, workplace security, employee contracts, commercial contracts, and enforcement.

REGISTERED AND UNREGISTERED OBJECTS

IP objects are classified into two groups:

- Objects that are required to be registered for protection ("registered objects").
- Objects that are automatically protected ("unregistered objects").

Registered objects include inventions, utility models, industrial designs, trademarks (except for well-known trademarks), geographical indication, new plant varieties, and layout designs of transistor integrated circuits. The IP rights to these objects will be established based on registration procedures stipulated by the Law on Intellectual Property or recognized under international treaties to which Vietnam is a contracting party.

Unregistered IP objects consist of trade secrets, trade names, well-known trademarks, and unfair competition rights.

COPYRIGHT

The length of protection of copyright is fifty years from the author's death. Copyright protection is extended to written works; works expressed orally, stage performances; films, video recording, television, and sound broadcasts or recordings; photographic works; musical works and live musical performances; sculptures and works of fine arts; architectural works; computer software and computer-related works; scientific projects and textbooks; geological maps; translations, adaptations or transformed works, anthologies, and encrypted program-carrying satellite signals.

ADMINISTRATIVE SANCTIONS

Administrative sanctions for intellectual property right infringement may be imposed for:

- Infringement of IP rights which causes damage to customers and society.
- Failure to terminate a violation of IP rights despite receiving written notice from the holder.
- Producing, importing, transporting, or trading counterfeit goods or a mark or a geographical indication that is identical or confusingly similar to a protected mark or geographical indication.

The administrative sanctions consist of warnings and fines amounting to one to five times the infringed products or IP rights value. Additional measures include suspension of business activities for a fixed term.

LITIGATION

Although administrative actions are typically preferred, court action can be helpful if injunctions are needed or if monetary damages can be recovered.

CRIMINAL PROSECUTION

Criminal sanctions, including imprisonment in severe cases, can be imposed for infringements. Individuals who produce or trade counterfeit goods with a turnover of up to VND100 million risk a fine of VND100 million to VND1 billion and/or one year to five years imprisonment. Five to ten years in prison can be imposed for an infringement involving a turnover of VND100 million to VND200 million. Any violation involving a turnover of more than VND200 million will expose the violator to seven to fifteen years imprisonment.

32 | LITIGATION

Vietnamese courts have a relatively brief history of dealing with complex international commercial disputes in a manner acceptable to foreign investors. Also, in the view of many, Vietnamese courts are not transparent and are politicized. Thus, foreign investors generally do not like to litigate in Vietnamese courts. Nevertheless, foreign investors may find themselves subject to a Vietnamese court in several instances despite their best efforts, such as when a lawsuit is filed against them.

THE PEOPLE'S COURT

The primary outside influence on Vietnamese civil procedure has been the continental European "civil law" tradition instead of the English-speaking "common law" tradition. Numerous unique features have also resulted from Vietnam's history and circumstances. Locally informed, up-to-date advice on an ad hoc basis is essential when managing a case in a Vietnamese court.

The Vietnamese court system consists of the District Court, Provincial Court, Collegial People's Court, and Supreme Court in Hanoi. Most matters involving foreign companies start at the District Court level with an appeal to the Provincial Court. However, matters concerning foreign investment, finance, banking, insurance, intellectual property rights, and technology transfer or involving issues with broad implications or complicated/technical may start at the Provincial Court. Appeals for these types of matters would be to the Collegial People's Court in Hanoi, Ho Chi Minh, Da Nang, and Can Tho.

STATUTE OF LIMITATIONS

The following is a list of the typical statute of limitations.

DISPUTES	STATUTE LIMITATION
Civil disputes	Two years from the date of the breach
Commercial disputes	Two years from the date of the breach
Inheritance	30 years for real estate and ten years for other types of immovable property
Labor disputes	Six months or one year depending on the type of dispute

EVIDENCE

Admissible evidence includes readable, audible, or visible materials; exhibits; testimonies/statements of the parties; testimonies/statements of witnesses; examiner's conclusions; on-site appraisal minutes; property evaluation and price appraisal results; written records of legal facts or acts that functional persons formulate; notarized/authenticated documents; and other sources prescribed by law.

Where the involved parties are unable to collect the evidence by themselves, they may petition the court for the following discovery measures:

- Taking the testimony of the parties or witnesses.
- Engaging expert witnesses or professional service providers to help resolve a matter at issue.
- Evaluation of a property.
- Making an on-site inspection or appraisal.
- Authorizing the collection of other evidence.
- Requesting individuals, agencies, or organizations to supply readable, audible and/or visible materials/evidence or other exhibits related to the resolution of civil cases or matters.

PRELIMINARY INJUNCTIONS

The court may grant a provisional remedy at the request of one of the parties to preserve evidence or ensure a judgment's enforceability. Thus, a Vietnamese court can issue an injunction to freeze assets or order a party to do or refrain from doing certain acts. However, injunction requests are rare in practice because the petitioner usually must post a substantial bond.

RECOGNITION AND ENFORCEMENT OF FOREIGN COURT JUDGMENTS

Vietnamese courts are not obligated to enforce any foreign court judgment barring a treaty obligation. Most treaties allowing for the mutual recognition and enforcement of court judgments entered by Vietnam are with current communist or formerly communist countries. A Vietnamese court can agree to recognize a foreign court judgment on comity and reciprocity grounds so long as accepting the award would not be "contradictory to primary principles of Vietnamese laws."

33 | ARBITRATION

Many foreign investors in Vietnam prefer arbitration over litigation in Vietnamese courts because of the ability of the parties to choose the arbitral panel, among other reasons.

The selection of arbitration as the method of dispute resolution is only possible if the parties expressly agree or had agreed to arbitrate. Additionally, a matter is subject to arbitration only if:

- **The dispute arises from a "commercial activity."**
- **At least one party to the dispute is engaged in commercial activities.**
- **Vietnamese law allows the dispute to be resolved through arbitration.**

Matters under the exclusive jurisdiction of the Vietnamese courts and thus not subject to arbitration include disputes over immovable property located within Vietnam, family law cases, and labor cases.

THE SELECTION OF AN ARBITRATION INSTITUTION

Vietnam has several licensed arbitration institutions, the most popular by a wide margin being the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (the "VIAC"). VIAC is based in Hanoi and has more than 120 arbitrators on its panel. One of the primary benefits of using a Vietnamese arbitration institution instead of a foreign one is that their awards are directly enforceable within Vietnam.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Vietnam is a New York Convention on the Enforcement of Foreign Arbitral Awards ("NY Convention") member. Thus, through the NY Convention, foreign arbitral awards are enforceable in Vietnam. However, there are some notable exceptions, the most important being: (1) where the dispute cannot be resolved by arbitration under Vietnamese law, and (2) where the recognition and enforcement of the arbitral award would be "against the fundamental principles of Vietnamese law." As noted above, only matters relating to commercial activity are subject to arbitration. "Commercial activity" is defined in the Commercial Code to mean "activity for profit-making purposes, comprising of the purchase and sale of goods, provision of services, investment, commercial enhancement, and other activities for profit-making purposes."

Unfortunately, the Vietnamese courts do not have a good track record for enforcing foreign arbitral awards. There are a few unofficially reported cases and no officially published cases in Vietnam. Of these few, an unofficially reported appellate case in 2003 (Tyco v. Leighton) and subsequent cases suggest that the Vietnamese courts broadly interpret the meaning of the phrase "against the fundamental principles of Vietnamese law" and narrowly interpret "commercial activity." These interpretations create significant risks to petitioners who want their foreign arbitration awards enforced. That said, the situation appears to be improving, and there have been successful recognition cases, although the percentage of successful petitions remains low.

The first step of the enforcement process is to submit a dossier to the Ministry of Justice, who will then direct it to an appropriate Vietnamese court for recognition proceedings. The process is relatively lengthy and involved, even without an active opposing party. The whole process is likely to take at least a year. On a related note, after recognition is obtained, the litigant must still contend with potentially uncooperative Vietnamese judgment enforcement bodies.

Therefore, when negotiating contractual terms regarding dispute resolution, the parties must balance the perceived predictability and fairness of a seeking foreign arbitral award (e.g., SIAC in Singapore) with the better ability to enforce a local award if the arbitration proceeds through VIAC.

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