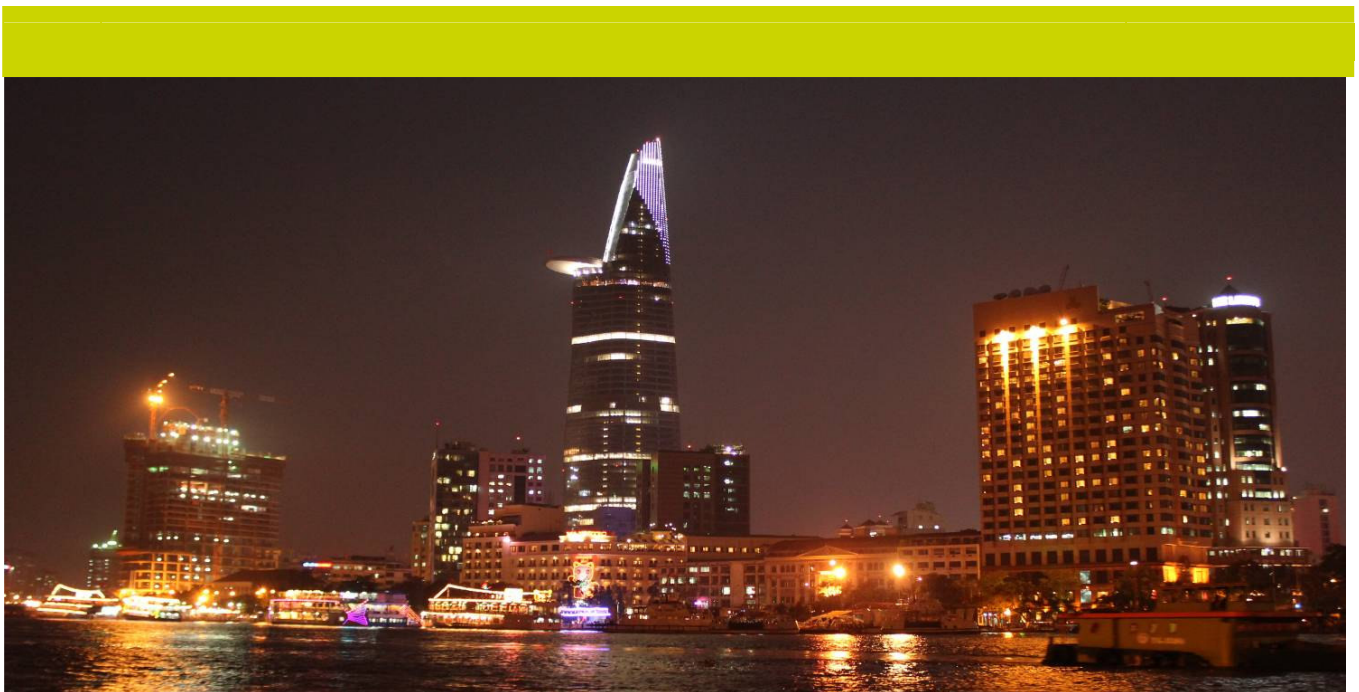


Doing Business in Vietnam



Further information

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January 2011

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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Doing Business in Vietnam

INTRODUCTION

The last decade has seen the Vietnamese economy enjoy sustained, strong growth with historic highs in foreign direct investment and trade.

Foreign investor optimism was buttressed by Vietnam's accession to the WTO in January 2007. Meanwhile, significant ongoing legal and regulatory reforms have liberalised the Vietnamese economy resulting in a more pro business environment for both domestic and foreign investors. Steps have been taken to open Vietnam's capital markets and implement the "equitisation" of State-owned enterprises.

Vietnam's fundamentals are also supported by its demographics as the country's young, reasonably well educated population looks to enjoy the advantages of Vietnam's shift to a more market oriented economy.

Notwithstanding the rapid legal, economic and social changes that have occurred since Vietnam opened its doors to foreign investment and trade, Vietnam is not without its problems. The country's still evolving legal and regulatory framework has not adequately addressed a number of important legal and practical issues, while bureaucratic and administrative red tape continues to delay and complicate the approval and implementation of investment projects, as well as such programs as the equitisation of State-owned enterprises. Meanwhile, insufficient infrastructure in the areas of power generation, ports and transport threatens to fetter economic growth and offset Vietnam's competitive advantage in other areas.

At the same time, these challenges represent significant opportunities for both the domestic and foreign investors.

This client note is intended to provide an overview of the legal framework and regulatory procedures most likely to be relevant to foreign investors considering establishing a business in Vietnam. It also identifies certain legal and practical issues and risks that should be considered by companies planning to invest in or do business with Vietnam. It is a general introductory guide only and not intended to provide legal advice. The laws and regulations addressed herein are those current as of January 2011.

Nasir PKM Abdul and Gregory Buhyoff

Ho Chi Minh City / Hanoi

January 2011

Vietnam: Country Snapshot

Official name: Socialist Republic of Vietnam

Population: 89,571,130 million (July 2010 est.)

Capital: Hanoi

Largest city: Ho Chi Minh City

Area: 329,247 sq km (127,123 sq miles)

Major language: Vietnamese

Government type: One-party Communist state

Secretary General of the Communist Party: Mr. Nguyễn Phú Trọng (officially appointed on 19 January 2011 to replace Mr. Nông Đức Mạnh)

President: Mr. Nguyễn Minh Triết (the National Assembly will elect a new President in the next meeting, which is expected to be held in May 2011)

Religions: Buddhist 9.3%, Catholic 6.7%, Hoa Hao 1.5%, Cao Dai 1.1%, Protestant 0.5%, Muslim 0.1%, none 80.8% (1999 census)

Ethnic groups: Kinh (Viet) 86.2%, Tay 1.9%, Thai 1.7%, Muong 1.5%, Khome 1.4%, Hoa 1.1%, Nun 1.1%, Hmong 1% (1999 census)

Median age: 26.4 years (male); 28.5 years (female) (2010 est.)

Population growth rate: 1.096% (2010 est.)

Age structure: (2010 est.), 0-14 years: 26.1%; 15-64 years: 68.3%; 65 years and over: 5.6%

Literacy (age 15 and over and can read and write): 90.3% (2002 est.)

Monetary unit: Vietnam Dong (VND) (1 US Dollar is approximately 20,000 VND)

GDP real growth rate: 6.8% (2010 est.); 5.3% (2009 est.); 6.3% (2008 est.)

GDP (purchasing power parity): US\$278.1 billion (2010 est.); US\$260.3 billion (2009 est.); US\$247.2 billion (2008 est.)

Exports: US\$70.76 billion (2010 est.) (41st country in comparison to the world); US\$57.1 billion 2009 est.)

Main exports: rice (world's second-largest exporter), coffee (world's second-largest exporter), clothing, petroleum, rubber, tea, shoes and marine products

Export partners: United States (21.43%), Japan (11.44%), China (7.27%), Australia (4.43%), Germany (4.27%) (2009)

Imports: US\$81.73 billion (2010 est.) (35th country in comparison to the world); US\$65.4 billion (2009 est.)

Main imports: machinery and equipment, petroleum products, fertilizer, steel products, raw cotton, grain, cement and motorcycles

Import partners: China (16.42%), Singapore (9.61%), Japan (8.96%), Taiwan (8.23%), South Korea (7.72%), Thailand (6.41%), Hong Kong (4.45%) and the United States (4.27%) (2009)

Climate: weather varies from the sub-tropics in the North to the tropics in the South

Terrain: low, flat delta in south and north; central highlands; hilly mountainous in the far north and northwest with the highest mountain, Fan Si Pan, at a height of 3142m above sea level.

International Organization Membership:

- Association of Southeast Asian Nations (ASEAN) (1995)
- Asia-Europe Meeting (ASEM) (1996)
- Asia Pacific Economic Cooperation (APEC) (1998)
- World Trade Organization (WTO) (2007)
- United Nations (1977)



Image and information source: CIA Factbook

Legal system

BACKGROUND TO REFORM

In 1986, prompted in part by the collapse of the Soviet Union, the Vietnamese government instituted the “Doi Moi” (“Renovation”) reform programme, intended to revitalise the Vietnamese economy by reorienting the State planned economy towards a market economy, with a gradual opening of the country to foreign investment. The foreign investment law (“Law on Foreign Investment”) was introduced in 1987.

The Vietnamese Government has continued on a path toward creating a “socialist-oriented market-based” economy. State subsidies have been cut, price controls have been lifted, private enterprise has been permitted, State enterprises are gradually being equitised, and foreign investment policies have been adopted to attract foreign capital. The international community has been supportive of Vietnam’s continued reforms and economic successes. Vietnam is being increasingly integrated into normal global trade relations.

Key international developments affecting Vietnam’s economic development include:

- the lifting of the US economic embargo in February 1994
- Vietnam joining of ASEAN in July 1995
- a Bilateral Trade Agreement between Vietnam and the US that took effect from December 2001 and
- Vietnam’s accession to the WTO with effect from 11 January 2007.

Vietnam’s recent accession to the WTO is the most important of these milestones. Vietnam’s commitments to reduce and phase out tariffs under the GATT regime, further open its markets to foreign investment and adhere to WTO standards in the areas of rule of law, intellectual property protection and international commercial relations have marked a significant step in integrating Vietnam into the global economy. This has been viewed by many foreign investors as an indicator that Vietnam’s legal and investment environment is improving and maturing.

NEW INVESTMENT REGIME

The principal legislation for foreign investment in Vietnam is now the Law on Enterprises and the Law on Investment, both of which took effect on 1 July 2006. This unified body of legislation is applicable to all newly-established foreign invested and domestic-invested enterprises and, in principle, provides for equal treatment in most sectors of the economy. This legislation paved the way for Vietnam’s membership in the WTO. Vietnam became the 150th member of WTO on 11 January 2007.

The Law on Enterprises and Law on Investment replace the Law on Foreign Investment, which had been in effect, although with substantial amendments, since 1987. The past

experience and practices of Vietnamese licensing and local authorities’ under the Law on Foreign Investment necessarily inform their approach to the new laws so certain established practices and procedures may still be followed. In some cases entrenched practices may be inconsistent with the words and scope of the new legislation, thereby causing some confusion and frustration.

The current investment regime provides that foreign investors are entitled to:

- establish a physical commercial presence through branches and representative offices of overseas organisations
- establish a private limited liability company, shareholding company, partnership, or sole proprietorship, as a legal form of doing business in Vietnam, either with 100% foreign invested capital or as a joint venture with domestic investors
- invest through one of several contractual forms which include Business Cooperation Contracts, Build-Operate-Transfer, Build-Transfer-Operate, Build-Transfer, and Build-Own-Operate arrangements
- purchase shares in, contribute capital to, or otherwise merge with and acquire an existing business entity in Vietnam, including a local domestic entity.



New laws and regulations have also recently come into force concerning intellectual property, tax, foreign exchange, securities, arbitration, labour, construction, environmental protection, land use, banking, insurance and bankruptcy. These areas are discussed further within this note.

Some of these laws await the issuance of implementing regulations, as well as interpretation and application in practice. It is sometimes difficult to predict how local authorities will interpret and apply new laws. However, together these laws provide a new and improved legal regime for foreign investment.

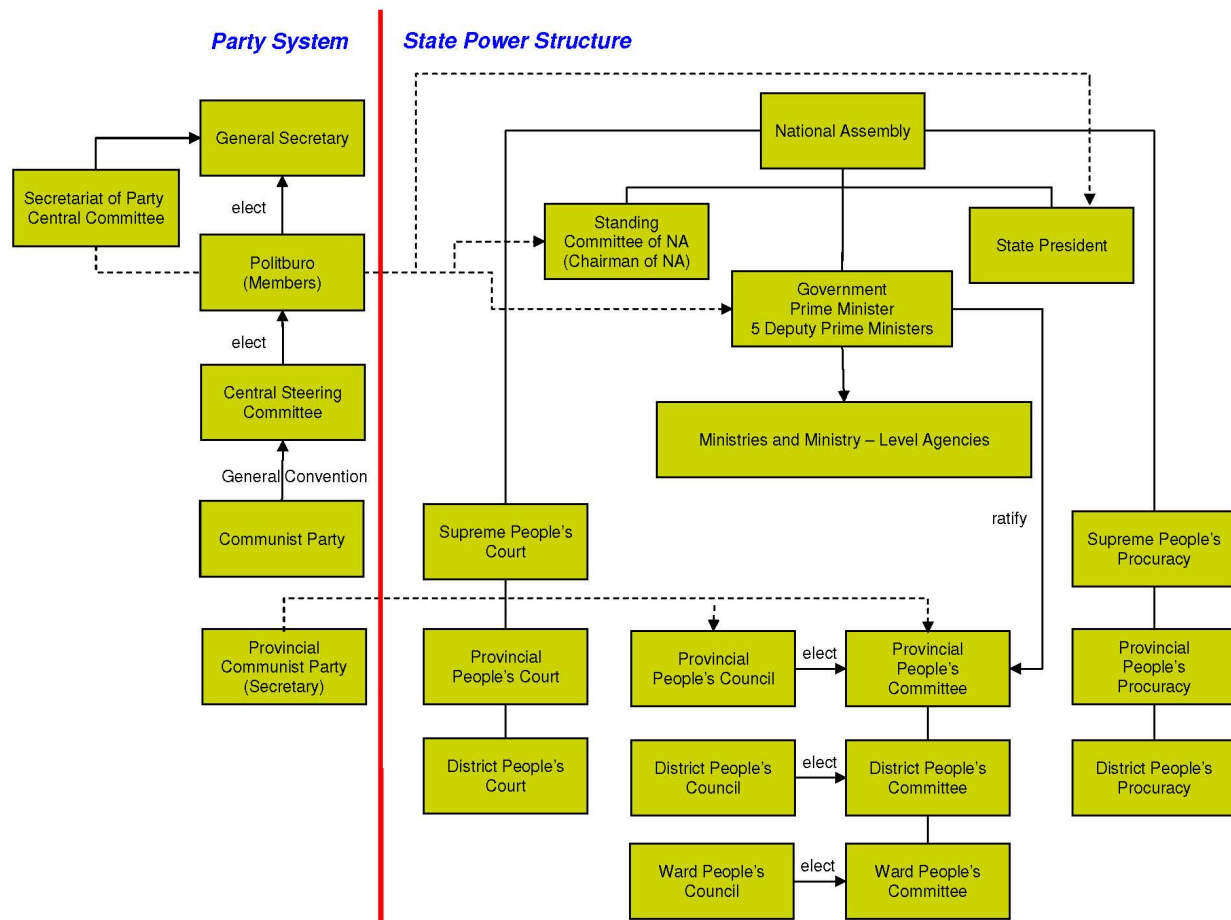
Patience and flexibility are required to successfully navigate through the legal and regulatory framework in Vietnam. In this regard, Government officials have generally shown openness, flexibility and a willingness to try to accommodate the needs and expectations of foreign businesses.

Political structure

Vietnam is a one-party State headed by the Communist Party of Vietnam (“CPV”). All major decisions for the State are made by the CPV Central Committee and its Political Bureau (Politburo) headed by current General Secretary Mr. Nguyen Phu Trong.

- The CPV is headed by a General Secretary.
- The CPV Congress is held every four to five years.

- The CPV Party Congress decides policies relating to Vietnam’s economic and political direction. Delegates to each Congress are elected or nominated from all levels of the CPV (district, municipal and provincial).



Notes:

- Members of Politburo serve as State President, Chairman of the National Assembly, Prime Minister, as well as Ministers
- At the provincial level, the secretary of the provincial Party usually serves as of the Chairman of provincial People's Council, while the Deputy Secretary serves as the Chairman of provincial People's Committee

In a major move towards reform, Vietnam's 1992 Constitution provides that the CPV is subject to the rule of law.

The National Assembly, Vietnam's highest legislative authority under the Constitution, is elected by the people through contested elections. At its head is a Chairman with administrative powers.

The Government (akin to cabinet) is headed by the Prime Minister and is overseen by the National Assembly.

INSTITUTIONS OF STATE

Under the 1992 Constitution, the main political and administrative institutions in Vietnam are:

- the Communist Party of Vietnam, headed by the General Secretary of the Communist Party;
- the National Assembly, headed by the Chairman;
- the Government, Prime Minister, Ministries and ministry-equivalent State bodies;
- the People's Courts (supreme and local);
- the People's Procuracy (supreme and local); and
- the People's Councils and People's Committees in 63¹ provinces and cities.

NATIONAL ASSEMBLY AND THE GOVERNMENT

Vietnam's legislative, executive and judicial functions partially overlap and are under the overall authority of the National Assembly.

The National Assembly has supreme power and appoints the President, Prime Minister, Chief Justice of the People's Supreme Court, and Chief of the People's Procuracy. The National Assembly is the only institution that has both constitutional and legislative powers. The members of the National Assembly hold office for a term of five years and meet twice a year.

The Standing Committee of the National Assembly is in session for the remainder of the year. In addition to other powers, the Standing Committee issues ordinances and presents draft laws to the National Assembly.

The President is Vietnam's Head of State and acts on a variety of domestic and foreign matters. The President is elected by the National Assembly and his term of office is concurrent with that of the National Assembly.

The Government is a cabinet-style body comprised of the Prime Minister, five Deputy Prime Ministers, Ministers and

heads of other ministry-level State bodies. The Prime Minister is accountable to the National Assembly and the President.



THE MINISTRIES AND MINISTRY-LEVEL AGENCIES

Vietnam currently has 18 ministries and 4 ministry-level agencies each of which has specific administrative authority over specific economic sectors. In some case, more than one ministry may have authority over a specific matter. This can sometimes complicate the process of obtaining governmental approvals for a particular project.

While an application for a particular investment project is pending, the project will not only be subject to applicable laws, but may also be subject to specific rules and instructions of relevant government ministries. Depending on the nature of the specific matter, a project may also be subject to approval by local (provincial) authorities and may be required to follow the guidance and policies of such local authorities.

In respect of investment matters, the Ministry of Planning and Investment ("MPI") is the most significant ministry. The MPI oversees the implementation of the Law on Investment and provides guidance to local authorities in connection with the licensing of large-scale foreign investment projects. The MPI also monitors foreign investment activities and serves as the coordinating body for investment projects that require the approval of more than one ministry or ministry-level agency.

Other Ministries may be more directly involved with the MPI in the foreign investment approval process depending on the sector. For example:

- the Ministry of Science and Technology considers the suitability of any technology to be applied in projects and any matters related to the development of high-tech zones
- the State Bank of Vietnam considers applications for licences in the banking and financial sectors and exercises credit and foreign exchange control in respect of investment activities

¹ In August 2008, Ha Tay province was merged into Hanoi Capital

- the Ministry of Finance determines policies on investment support and investment incentives, in particular tax incentives, and receives applications from foreign-invested insurance providers
- the State Securities Commission, under the Ministry of Finance, considers applications for licences in the securities sector (such as securities companies and fund management companies) and supervises Vietnam's Stock Exchange and Securities Trading Centre
- the Ministry of Industry and Trade (recently created by merger of the Ministry of Trade and Ministry of Industry) considers applications for import/export licences and domestic distribution rights and co-ordinates input from relevant ministries and others concerning large industrial and infrastructure projects, such as projects in the power sector
- the Ministry of Natural Resources and Environment guides the implementation of regulations on land management (including regulations on land-use rights), site clearance and compensation, and manages natural resources and the environment in relation to investment activities
- the Ministry of Health provides guidelines on the pharmaceutical industry, cosmetics and medical devices and issues product visas and other certificates for projects in the pharmaceutical and health care sector
- the Ministry of Construction provides guidelines for implementing regulations on construction.

With respect to important projects having national significance, the National Assembly decides relevant policies and provides regulations for the licensing criteria for these projects. The Prime Minister may approve such projects and other selected investment projects of special importance.

CONSTITUTIONAL PROTECTION OF FOREIGN INVESTMENT

The 1992 Constitution (as amended in 2001) enshrines certain principles and provides certain guarantees for foreign investors. Specifically, the Constitution provides that:

- private sector entities may engage in business and production and may establish enterprises without restriction as to size and scope (Constitution, Article 21)
- all business enterprises are equal before the law. The legal ownership of capital and assets is protected by the State. Enterprises in all economic sectors are permitted to enter into joint ventures or cooperate with local or foreign individuals and organisations (Constitution, Article 22)
- the lawful assets of individuals and organisations will not be nationalised. However, the State may purchase or requisition assets for compensation if necessary in the national interest. (Constitution, Article 23)
- the State encourages foreign organisations and individuals to invest funds and transfer technology to Vietnam in accordance with Vietnamese law and international law and practice. Business enterprises with foreign invested capital may not be nationalised (Constitution, Article 25)
- citizens enjoy freedom to engage in enterprise in accordance with the law (Constitution, Article 57) and the law recognises the right of ownership of lawful income, savings, housing, chattels, means of production, funds and other assets of enterprises or other economic organisations. The State protects the citizen's right of lawful ownership and inheritance (Constitution, Article 58).

A number of the above guarantees and principles are subject to more specific guidance (and in practice, restrictions).



Establishing a business

REPRESENTATIVE AND BRANCH OFFICES

The Law on Commerce and its implementing legislation permit foreign businesses and others to establish representative offices and – in some cases – branches in Vietnam. Foreign businesses intending to operate a representative or branch office in certain sectors such as banking, finance, legal services, culture, education, and tourism should note that the establishment and operation of these entities is regulated by specific legislation and not the Law on Commerce and its general provisions on representative offices and branches.

REPRESENTATIVE OFFICE (“RO”)

Representative offices are one of the most popular vehicles for foreign companies to establish a business presence in Vietnam. The main function of an RO is to seek business opportunities for the parent company and to monitor the performance of contracts that the parent company has entered into in Vietnam.

ROs are *not* permitted to generate profits from operations in Vietnam, execute contracts in their own name, make or receive payments directly, purchase local goods directly for export, or distribute imported products on behalf of their head offices. ROs may, however, lease office space in Vietnam, employ Vietnamese and foreign staff and enter into contracts in connection with their permitted operations.

Generally, ROs of foreign trading or service companies are allowed to operate for a five year term which may be extended.

BRANCH OFFICE

Branch offices of foreign companies have the right to conduct business activities for their own account, execute contracts in their own name, and carry out all other commercial activities for which they are licensed. Of note, the right to conduct commercial activities in respect of restricted goods and services will only be available as scheduled in Vietnam’s international undertakings.

The Ministry of Industry and Trade is authorised to grant, amend or withdraw licenses for branch offices that engage in trading activities and most other services.

PERMITTED INVESTMENT VEHICLES UNDER THE LAW ON ENTERPRISES

Legal forms permitted under the Law on Enterprises include limited liability companies, joint stock companies, partnerships and private enterprises. Most foreign invested enterprises are established as limited liability companies or joint stock

companies (a joint stock company could not be established under the former Law on Foreign Investment).

Foreign invested enterprises with a single investor may only be established as a limited liability company. A joint stock company must have at least three shareholders. Different considerations should be taken into account in selecting the entity to be established, as the governance regime, financing options, disclosure requirements and other operational aspects of the entities differ depending on whether the investment is carried out by a limited liability company or a joint stock company.



LIMITED LIABILITY COMPANY

The Law on Enterprises provides for two types of limited liability companies, namely, a single-member limited liability company and a multi-member limited liability company.

Multi-Member Limited Liability Company (“MMLLC”)

An MMLLC is a company in which an investor (referred to as “member”) is liable for the debts and other commercial obligations of the company up to the amount of capital that the member has undertaken to contribute to the company. Members of an MMLLC may be organisations or individuals.

An MMLLC must have at least two members and not more than 50. The company attains legal entity status from the date of issuance of its business registration certificate (which is issued in the form of an investment certificate to foreign investors). 100% foreign-owned enterprises with more than one foreign investor, as well as foreign invested joint venture enterprises, may be established as an MMLLC.

An MMLLC is managed by a members’ council which includes all of the members (who may be individuals or representatives of corporate members), a chairman of the members’ council and a general director. A limited liability company with eleven members or more must have an inspection committee. The members of an MMLLC may choose either the chairman of the members’ council or the general director as the legal

representative of the company, who is vested with the power to represent and bind the company.

Single-member Limited Liability Company (“SMLLC”)

An SMLLC is a limited liability company with a single investor, such as a 100% foreign-owned enterprise with only one parent company. The single investor in an SMLLC is defined as the owner of the SMLLC. The owner may appoint a single authorised representative to represent its equity interest and act as the chairman of the SMLLC. Alternatively, the owner may appoint more than one authorised representative to represent its equity interest and all of the authorised representatives constitute the members’ council of the SMLLC. The owner also appoints one individual among the authorised representative to act as the chairman.

The legal representative of an SMLLC may be either the chairman of the company or the general director as decided by the owner.

Each SMLLC is required to appoint from one to three supervisors. The supervisor has a role that is similar to that of an audit committee, although the supervisor’s reports are submitted directly to the members.

The legal representative of the company must permanently reside in Vietnam. If he or she is absent from Vietnam for more than 30 days, another person must be authorised to act on his or her behalf in accordance with the provisions of the company’s charter.



JOINT STOCK COMPANY (“JSC”)

A JSC (or shareholding company) is a company whose charter capital is divided into shares and shareholders are liable for the debts and other property obligations of the company up to the amount of capital they have contributed or are liable to contribute to the company.

Shareholders may be corporate entities or individuals. The minimum number of shareholders is three and there is no restriction on the maximum number of shareholders. A JSC may issue securities to the public to raise capital in accordance with Vietnam’s securities laws.

A JSC obtains legal entity status from the date of issuance of its business registration certificate. Foreign investors may establish a JSC, provided that the number of foreign and/or domestic investors in the company is at least three.

The highest decision-making body of a JSC is the general meeting of shareholders. A JSC is managed by a board of management and a general director. JSCs with more than 11 individual shareholders, or one shareholder who owns more than 50% of the total number of shares, are required to have an inspection committee.

The chairman of the board of management or the general director – as determined by the company’s charter – is the legal representative of the company. The legal representative must permanently reside in Vietnam. If he or she is absent from Vietnam for more than 30 days, another person must be authorised to act on his or her behalf.

A JSC must issue ordinary shares and may also issue preferred shares which may include:

- voting preferred shares (that are non-transferable)
- dividend preferred shares
- redeemable preferred shares and
- other preferred shares as specified in the company’s charter.

PARTNERSHIP

A partnership is an enterprise with no fewer than two individual partners (if only two partners, both must be general partners) who are joint owners of the enterprise and who carry out business under a common name. General partners of a partnership have unlimited liability for the obligations of the partnership.

A partnership under Vietnamese law is a separate legal entity (despite the general partners' unlimited liability) and obtains its status from the date its business registration certificate is issued.

In addition to having at least two general partners, a partnership may have one or more limited partners. Limited partners are liable for the debts of the partnership only to the extent of the amount of capital they have committed to contribute to the partnership.

The overall management of the partnership is carried out by the partners' council which includes all partners, including limited partners. However, limited partners are not permitted to participate in the day-to-day management of the partnership or carry out business activities in the name of the partnership.



ISSUANCE OF AN INVESTMENT CERTIFICATE

A foreign investor investing in Vietnam is required to obtain an investment certificate for its investment project. The investment certificate also serves as the business registration certificate of the enterprise. The investment certificate sets out the total invested capital as well as charter capital of the enterprise and investment project, as well as the scope of activities for which the enterprise and the investment project are licensed. A foreign invested enterprise may only carry out the activities for which it is licensed in Vietnam.

Under the Law on Enterprises and the Law on Investment, a foreign invested enterprise may be licensed to carry out more

than one investment project and, therefore, may operate as a multi-purpose investment vehicle.

Registration and evaluation procedures for the issuance of an investment certificate

Whether a foreign invested project is subject only to registration procedures or is also required to be "evaluated" depends on the amount of its invested capital and the nature of the investment project. Foreign invested projects with investment capital below VND300 billion (about US\$15 million) and which are not on the list of "conditional" investment projects are only required to undergo registration procedures to receive an investment certificate. Projects with investment capital of VND300 billion (about US\$15 million) or more and projects categorised as "conditional" are subject to evaluation procedures, regardless of whether they are to be carried out by domestic or foreign investors.

Encouraged and especially-encouraged investment projects

The Vietnamese Government specifically encourages foreign investment in a number of sectors as well as in certain geographic areas. Investment incentives, typically in the form of tax holidays, exemption from land-use fees and other incentives, may be available to varying degrees for encouraged and especially encouraged investment projects. Generally, investment projects in the following sectors are eligible for incentives:

- manufacturing new materials; energy production; manufacturing high-tech products; bio-technology; information technology; mechanical manufacturing
- breeding, rearing, growing and processing agricultural, forestry and aquaculture products; salt production; breeding and growing new plant and animal varieties
- use of high-technology and advanced technology; environmental protection; research, development and creation of high-technology
- labour-intensive industries
- construction and development of infrastructure facilities and important large scale industrial projects
- professional development, education, training, health, sports, physical education and Vietnamese culture
- development of traditional crafts and industries and
- other manufacturing and service sectors as determined from time to time.

In addition, investment projects located in certain disadvantaged geographical locations, primarily in remote or under-developed areas, as determined by the Government from time to time, are entitled to investment incentives.

INVESTMENT INCENTIVES

For investment projects on the list of encouraged and especially encouraged investment projects, a range of investment preferences and incentives may be available. Depending on the nature of the project, these can include:

- temporary corporate income tax exemption and temporary corporate income tax reduction from the first profit making year
- a preferential corporate income tax rate of 10% to 20%
- the right, subject to approval, to open off-shore bank accounts for borrowing and debt service
- the right to convert Vietnamese currency earnings into foreign currency to repay loans and pay the foreign investor's share of profits
- free or reduced land rent
- exemption from import duties on a number of products including but not limited to equipment and machinery, specialised means of transport, components, spare parts, fuel, and raw materials
- loss carry forward
- depreciation of immovable assets.

Approval authorities

Certain important national projects (such as the construction and operation of airports, national sea ports and other projects) and certain other infrastructure projects with investment capital of VND1.5 trillion (about US\$75 million) or more must be approved by the Prime Minister's office. If the investment capital is less than VND1.5 trillion (about US\$75 million), the provincial People's Committees are authorised to grant an investment certificate for the project. If the investment is in an industrial zone, export processing zone or high-tech zone, the zone's Board of Management has the authority to grant an investment certificate.

CONTRACTUAL FORMS OF INVESTMENT

Build-Operate-Transfer contracts in Vietnam

For infrastructure projects, the Build-Operate-Transfer ("BOT") structure is the primary investment form for foreign investors in Vietnam. The BOT form of investment is discussed in more detail below.

Business Cooperation Contract

A business cooperation contract is defined as a contractual relationship between two or more companies which does not establish a separate legal entity. The parties to a business cooperation contract are licensed to operate and implement a specific project in Vietnam.

The main disadvantage of a business cooperation contract is that the parties have unlimited liability for the debts of the commercial activities of the parties. To reduce such exposure, a foreign party could consider setting up an offshore investment vehicle which then enters into a business cooperation contract with the local party(ies).



Special trade zones

INDUSTRIAL ZONES (“IZ”) / EXPORT PROCESSING ZONES (“EPZ”)

IZs focus on attracting enterprises that specialise in the production of industrial goods and the provision of industrial manufacturing support services.

EPZs focus on attracting enterprises that are classified as “export processing enterprises” and which specialise in manufacturing or processing goods for export or the supply of export related services. An export processing enterprise may also be established in an IZ or Economic Zone (see below). Exchanges of goods between export processing zones, export processing enterprises and other areas in Vietnamese territory, except for non-tariff areas, constitute import / export transactions.

An IZ/EPZ must conform to the Master Plan for the development of IZs/EPZs (“Master Plan”) which is formulated by the Ministry of Planning and Investment and approved by the Prime Minister. Conditions for setting up an IZ /EPZ include: (i) the proposed IZ/EPZ must be in accordance with the Master Plan and (ii) at least 60% of the total industrial land of established IZs and EPZs in the locality (centrally run province/city) where the proposed IZ/EPZ will be located has been leased or subleased. Once established an IZ /EPZ is managed by the Management Committee, an agency under the provincial People’s Committee.

Both Vietnamese and foreign invested enterprises are permitted to operate within IZs/EPZs. Enterprises within IZs may receive preferential tax treatment.

In the past, “export processing enterprises” received preferential tax treatment. However, under Vietnam’s WTO commitments, Vietnam is prohibited from providing export or export-related subsidies to investors and preferential tax treatment is no longer available to EPZ enterprises.

By September 2010, there were about 228 IZs and EPZs in Vietnam with total land area of 58,220 hectares.

HIGH-TECH ZONES (“HTZ”)

An HTZ is a multi-function economic-technical zone for the purpose of conducting high-tech research and developing applications, fostering high-tech enterprises, training of high-tech human resources, and producing high-tech products. Export processing zones, customs bond warehouses, bonded warehouses and residential areas may be located in HTZs. HTZ enterprises can have preferential tax treatment.

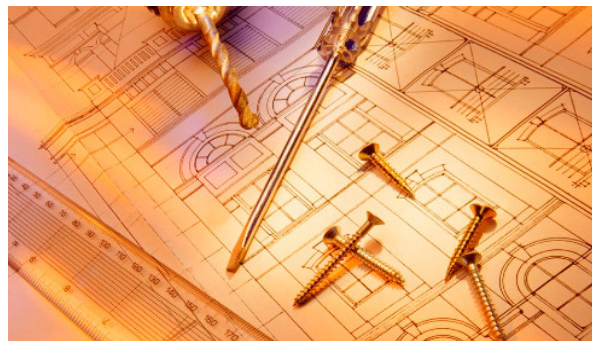
Investment sectors in HTZs include: (a) construction and operation of technical infrastructure facilities; (b) production and business of high-tech products; (c) scientific research, technological development and training of high-tech human resources; (d) fostering high technology and high-tech enterprises and promotion of high-tech commerce; (e) provision of services.

The following businesses are encouraged in HTZs:

- Information technology, communications and computer software technology;
- Bio-technology serving agricultural, aquaculture and medical sectors;
- Microelectronic, fine mechanical, mechanical-electronic, optical-electronic and automatic technologies;
- New material technology and nanotechnology;
- Environmental technology and new energy technology;

The establishment of an HTZ requires approval of the Prime Minister. Once approved, an HTZ is managed by a Management Committee in the same way as an IZ and EPZ.

The first HTZ in Vietnam was established in 1998 in Hoa Lac, Hanoi and has attracted 47 projects with the total investment capital of US\$1.2 billion. The second HTZ, Saigon Hi-Tech Park, was established near Ho Chi Minh City in 2002 and has attracted more than US\$1.8 billion with 44 projects. In November 2010, the Prime Minister issued a decision on the establishment of a third HTZ in Da Nang City which will cover an area of 1,010 hectares.



ECONOMIC ZONES (“EZ”)

An EZ is a separate commercial locale with an investment and business environment which is especially favorable to investors. EZs are organised into functional areas including: non-tariff areas, bonded warehouse areas, export processing zones, industrial zones, entertainment areas, resorts, urban areas, residential areas, administrative areas and other functional areas consistent with the characteristics of each EZ.

The establishment of an EZ must conform to the Master Plan and be approved by the Prime Minister. Investors in EZs can have preferential tax treatment. A 50% reduction of personal income tax is applicable to people working in EZs (including expatriates). An EZ is managed by a Management Committee in the same way as an IZ/EPZ. In 2009, Vietnam had 13 EZs and 30 border gate EZs.

M&A and equitisation

MERGERS AND ACQUISITIONS

Under current Vietnamese law, the purchase of shares by foreign investors in Vietnam-incorporated companies is subject to:

- securities laws (for example, the 49% cap on public companies, public investment funds and public securities investment companies);
- specialised branch laws (for example, a single foreign investor may only acquire up to 15% of the issued shares of a joint stock commercial bank in Vietnam (up to 20% with the approval of the Prime Minister); the total foreign shareholding may not exceed 30% of the issued shares of the bank);
- international treaties (for example limits on various services sectors per Vietnam's WTO commitments); and
- State-owned enterprise equitisation plans (with respect to equities State-owned companies);

Otherwise, foreign investors are not limited in their purchase of shares in Vietnam-incorporated enterprises.

Vietnam's WTO schedule permits continued restrictions on foreign ownership of media, certain logistics services, industrial maintenance services and several other service sectors. The specific foreign ownership limit in these sectors corresponds with Vietnam's market opening commitments as agreed in its bilateral and international undertakings (for example, currently 49% to 51% foreign ownership for logistics services; business cooperation contract or joint venture with 51% foreign ownership for media). Most of these restrictions will be phased-out over a period of time in accordance with Vietnam's treaty commitments.

EQUITISATION

Vietnam's privatisation process commenced in the late 1980s. In recent years, Vietnam has actively pursued the privatisation (or "equitisation" as the privatisation process is called in Vietnam) of its "crown jewels", and is currently testing the market for private participation in a number of the largest state-owned commercial banks, insurance companies and state corporations.

The regulatory framework for the equitisation of Vietnam's state-owned enterprises is Decree 109/2009/ND-CP dated 26 June 2007, which contains guidelines for equitisation and permits, *inter alia*, foreign investors to take the role of a "strategic investor" in an equitised company.

Some on-going major equitisation plans include:

- Vietnam National Petroleum Corporation (Petrolimex): approved by the Prime Minister in January 2010; the State to hold 75% majority shares;

- Vietnam Steel Corporation (Vinasteel): approved by the Prime Minister in January 2010; the State to hold 51-65% majority shares; equitisation plan to be submitted to the Prime Minister in September 2010; expected offering in Q1/2011;
- EVN Telecom: with a maximum of 30% shares to be sold to non-State investors and a minimum of 20% shares sold to foreign strategic partners;
- Mekong Housing Bank (MHB): expected to launch in 2010;
- Electrical Equipment Corporation: approved by the Prime Minister in August 2010; the State to hold a 85% stake, 3% stake to be sold to trade unions and 12% stake to be sold via auction at Hanoi Stock Exchange;
- Vietnam Industrial Construction Corporation (Vinaincon): approved by the Prime Minister in August 2010; the State to hold 75% stake, 8.49% to be sold to employees, 0.5% to be sold to trade unions and 16.01% to be sold via public auction at Hanoi Stock Exchange;
- PV Gas (a subsidiary of PetroVietnam): the State to hold a 75% stake, 0.065% stake to go to employees, 10% to be offered to the public and around 15% stake to be sold to strategic partners.

In addition, although the equitisation of some enterprises has not gone forward as scheduled, for example, Bank for Investment and Development of Vietnam (BIDV) and Vietnam Bank for Agriculture and Rural Development (Agribank), the equitisation plans are still being pursued and will provide specific opportunities for funds and private equity fund investors.

Business-related laws

ENTERPRISE LAW AND THE INVESTMENT LAW

The Law on Enterprises and the Law on Investment took effect on 1 July 2006. These laws provide a level playing field for all newly established foreign invested and domestic enterprises in Vietnam.

Law on Enterprises

The Law on Enterprises provides the framework for Vietnam's corporate law. The Law on Enterprises contains provisions for the establishment, management organisation, governance and operation of limited liability companies, joint stock companies, partnerships and private enterprises in all economic sectors. Foreign investors are no longer limited to establishing limited liability enterprises, and are generally entitled to equal treatment with domestic investors in establishing an enterprise in Vietnam.

However, foreign investors are still subject to the market opening roadmap associated with Vietnam's WTO accession schedule (and other bilateral investment agreements) in a number of business sectors. For example, foreign investors may not currently establish an enterprise with 100% foreign-owned capital in the media sector, certain logistics businesses or any securities business in Vietnam. These restrictions will be phased out in accordance with Vietnam's WTO roadmap.

Foreign invested enterprises licensed under the old Law on Foreign Investment can re-register their operations under the Law on Enterprises until 30 June 2011. Whilst there was no legal requirement for these enterprises to re-register, foreign invested enterprises that chose not to re-register face certain restrictions regarding expansion of their scope of activities and their licensed term in the future.

The Law on Investment

Replacing the 1996 Law on Foreign Investment (as amended in 2000), and the Law on Promotion of Domestic Investment, the Law on Investment provides the legal framework for investment projects to be carried out by enterprises under the Law on Enterprises or pursuant to specific types of contracts (such as BOT contracts). The Law on Investment also regulates, among other matters, the licensing of investment projects, investment activities, the rights and obligations of investors, the protection of the investors' legal rights and investment incentives.

Under the Law on Investment, an investment certificate is issued to an investor to implement an investment project. Under the Law on Investment, an investor may also be licensed to carry out multiple investment projects through only one enterprise in Vietnam. The Law on Investment requires the State to create favorable conditions for investors to invest and engage in lawful business activities in Vietnam. According to the Law on Investment, licensed investments may not be nationalised and certain investment incentives and support policies apply to investors in certain sectors or geographical areas.

The State also encourages foreign investment in areas with difficult socio-economic conditions by establishing IZs, EPZs, HTZs and EZs.

VIETNAM'S CIVIL CODE AND COMMERCIAL LAW

Civil Code

In June 2005, the National Assembly passed the Civil Code which replaced the 1995 Civil Code. The new Civil Code took effect on 1 January 2006.

As a basic law, the Civil Code governs not only civil relations but also certain trade, business and labour relations.

The Civil Code covers a wide range of subjects, including, general guidance on protection of personal freedoms, statutes of limitation, principles of ownership and protection of property rights; civil liability, the taking of security interests (e.g. pledges, mortgages, guarantees and other forms of security), performance of civil contracts, the transfer, exchange, mortgage and inheritance of land use rights, intellectual property rights and technology transfer. Most of these matters are addressed in more detail in specific legislation and implementing regulations applicable to certain areas of the law. This legislation may prevail over the general provisions of the Civil Code.

The Law on Commerce

A new Law on Commerce also took effect on 1 January 2006.

The Law on Commerce governs a wide range of commercial activities, including transactions involving the sale and purchase of goods and related activities and activities relating to the commercial provision of services, investment, trade promotion and other commercial activities. The concept of goods is extended to cover all types of movable assets, including future assets and all assets attached to land. The concept of commercial services has been extended to include all services that are not prohibited by law.

ACCOUNTING AND AUDITING

Accounting

According to the Law on Accounting and related implementing legislation, all foreign invested enterprises must use the Vietnamese accounting system and accounts must be kept in the Vietnamese language. This is presently a cause of some concern to foreign investors given the present state of the Vietnamese accounting industry and the fact that this system is unfamiliar and does not always conform to generally accepted international accounting principles. If there are legitimate reasons for an enterprise to apply common foreign accounting practices and account in foreign currency, an exemption may be obtained from the Ministry of Finance. Also, a foreign language may be used for accounting

purposes in addition to the Vietnamese language. All foreign invested enterprises are required to employ a Vietnam-qualified chief accountant to maintain their books of account.

Auditing

According to Decree 105 on Accounting, the following enterprises, amongst others, are required to undergo an annual audit of their accounts:

- foreign invested enterprises
- listed companies
- banks and certain other financial institutions
- insurance companies and
- state-owned enterprises.



ANTI-CORRUPTION LAWS

Vietnam has introduced a number of regulations and initiatives to join the global fight against money laundering and terrorist financing. The main piece of legislation is Decree 74/2005/ND-CP dated 7 June 2005 (“Decree 74”) on anti-money laundering, which came into effect on 1 August 2005 and provides the basis for the regime. Effective since 1 January 2010, Circular 22/2009/TT-NHNN dated 17 November 2009 (“Circular 22”) issued by the State Bank of Vietnam (“SBV”), provides guidelines for the implementation of Decree 74 with respect to credit institutions and other institutions with banking operations. More recently, the Ministry of Finance (“MoF”) enacted Circular 148/2010/TT-BTC dated 24 September 2010 (“Circular 148”), which took effect on 8 November 2010, to provide further details on anti-money laundering in the insurance, securities and gambling sectors. Decree 74, Circular 22 and Circular 148 are collectively referred to as “AML Regulations”.

Money laundering is defined as conduct of an individual or organisation that seeks to legalise money or assets obtained as a result of crime. AML Regulations apply to Vietnamese and foreign individuals and entities residing or operating in the territory of Vietnam and foreign individuals and entities not residing or operating in the territory of Vietnam, who conduct transactions with or provide services to customers which involve monetary or other asset transactions in Vietnam. These individuals and entities are required by law to take measures to prevent money laundering, including, for example, recording customer identification information and reporting suspicious transactions.

Entities and individuals doing business in Vietnam, which are also subject to anti-corruption legislation in other jurisdictions, should ensure that their actions in Vietnam do not violate the laws of those other jurisdictions. For example, the Foreign Corrupt Practices Act of 1977 (“FCPA”) is the principal anti-corruption legislation in the United States. The FCPA applies to U.S. citizens, nationals and residents as well as corporations which are required to report to the U.S. Securities Exchange Commission, have a class of securities registered under the Securities and Exchange Act, are incorporated under U.S. laws or have their principal place of business in the U.S. The FCPA prohibits bribes to foreign government officials to obtain or retain business. Recently, the U.S. Government has become increasingly diligent in enforcing the FCPA’s provisions against covered individuals and entities which have bribed foreign officials in Vietnam. For example, in *United States v. Nexus Technologies Inc. et al.*, an enforcement action that concluded in September 2010, a Pennsylvania-based export company and several of the company’s officers were convicted of violating the FCPA by making payments to employees of various Vietnamese ministries, including the Ministry of Transport, Ministry of Industry, and Ministry of Public Safety, in order to obtain contracts. Besides the FCPA, companies need to be mindful of the OECD Anti-Bribery Convention, the new UK Anti-Bribery Act and similar national laws to the extent they may be subject to such laws.

The crime of money laundering is a serious global problem which continues to command the attention of the international community. Any individual or entity conducting business activities in Vietnam must be familiar with Vietnam’s AML Regulations as well as the anti-corruption laws of other relevant jurisdictions.

SECURED TRANSACTIONS AND SECURITY ISSUES

Relevant provisions of the Civil Code, Decree 163/2006/ND-CP dated 29 December 2006 and the BOT regulations generally provide the basis on which lenders, including foreign lenders, may take security in connection with loans to foreign invested enterprises in Vietnam.

This legislation allows both current and future assets to be used as security. Future assets include movable and immovable property and assets purchased with loan capital. Assets include manufacturing facilities, equipment, machinery, raw materials, Vietnamese and foreign currency, insurance proceeds, contributions to the charter capital of enterprises, buildings and immovable property. In the case of BOT companies, land use rights may also be mortgaged with any bank that has a legal presence in Vietnam (including foreign bank branches).

An issue that has been the subject of speculation for some time is whether or not legislation will be introduced that allows foreign lenders (without a foreign bank branch in Vietnam) to take mortgages in land use rights of foreign invested enterprises in Vietnam.



BANKRUPTCY

Under the previous system of centralised State planning, when all industrial assets were owned by the State, no concept of bankruptcy or liquidation of State-owned enterprises existed. Accordingly, no bankruptcy or insolvency laws were necessary. The move towards a market economy has necessitated the adoption of a bankruptcy law, if only to deal with the insolvency of many inefficient and uncompetitive State-owned enterprises.

Prior to October 2004, the legal framework for bankruptcy in Vietnam was generally considered inadequate and remained largely untested. Pursuant to Vietnam's ongoing legal reforms, the former bankruptcy law was replaced by the Law on Bankruptcy No. 21/2004/QH11 which took effect on 15 October 2004 and Resolution No. 03/2005/NQ-HDTP of the Judges' Council of the Supreme People's Court guiding the

implementation of the Law on Bankruptcy (the foregoing collectively referred to as the "Bankruptcy Law").

Under the Bankruptcy Law, any enterprise established under Vietnamese law (whether State-owned, domestic or foreign invested) may be declared insolvent. An application for a declaration of bankruptcy may be filed by a creditor, union or labour representative, or by the company owner. Jurisdiction lies with the courts of the province or city where the company's head office is located. If a conciliation or reorganisation plan cannot be agreed upon, or if the plan fails, then the judge will declare the company insolvent and order the assets (or the proceeds from their sale) distributed among the company's creditors. The People's Court of Provinces or Cities directly under the Central Government (i.e. Hanoi, Hai Phong, Da Nang, Can Tho and Ho Chi Minh City) will receive and dispose of bankruptcy petitions.

REPATRIATION OF CAPITAL

After a foreign investor has fully discharged its financial obligations to the State of Vietnam, it shall be permitted to remit overseas: (a) its profits derived from business activities; (b) payments received from the provision of technology and services and from intellectual property; (c) principal and any interest on foreign loans; (d) invested capital and proceeds from liquidation of its investments; and (e) other monies and assets lawfully owned by the investor.

The above remittances can be made in a freely convertible currency at the trading exchange rate published by the commercial bank selected by the investor. However, procedures for such remittances are subject to the local law on foreign exchange control.

In the event of a voluntary liquidation of a solvent foreign invested enterprise, the foreign investor is entitled to repatriate its invested capital only after all of its obligations (such as to the State, employees, and other creditors) have been satisfied.

During the term of operation of an investment project, repatriation of invested capital depends on whether foreign investors are entitled to reduce or withdraw capital, except in cases where capital shares are legally transferred to another existing shareholder(s) or a new investor(s). Whilst this was not possible under the former Law on Foreign Investment, the possibility to reduce invested capital under the Law on Enterprises depends on the type of business entity that is established and operated in Vietnam.

According Article 42 of the Law on Enterprises, members of MMLLCs and shareholders of a JSC may, under certain circumstances, request the MMLLC or JSC to buy back their capital contribution or shares. Owners of SMLLCs, however, are not permitted to withdraw contributed capital from the company in any form.

Financial Institutions

BANKING

The National Assembly of Vietnam recently passed a new Law on Credit Institutions on 16 June 2010 ("Law on Credit Institutions") to repeal and replace the Law No. 02/1997/QH10 dated 12 December 1997 on the same subject.

The Law on Credit Institutions regulates (i) the establishment, organisation, operation, special control, restructuring and dissolution of credit institutions and (ii) the establishment, organisation and operation of foreign bank branches and foreign credit institutions and organisations' representative offices conducting banking operations.

Foreign banks, both banking and non-banking credit institutions, are entitled to operate in Vietnam in any of the following forms:

- representative office
- branch of a foreign commercial bank
- commercial joint venture bank with foreign capital contribution currently not exceeding 50% of the chartered capital (higher rates permitted with the approval of the Prime Minister)
- joint venture finance leasing company
- 100% foreign invested finance leasing company
- joint venture finance company
- 100% foreign invested finance company and
- 100% foreign-owned banks.

There is a list of legal capital requirements that foreign banks must meet.

Foreign finance companies, including finance lease companies are permitted to have a presence in Vietnam in the form of a representative office, joint venture finance leasing company or 100% foreign invested finance leasing company.

Ownership in credit institutions

Under the Law on Credit Institutions, the maximum permissible ownership of charter capital in a shareholding credit institution is 5% for an individual shareholder and 15% for an institutional shareholder. Moreover, a shareholder and its related persons may only hold a maximum of 20% of charter capital of a shareholding credit institution.

Notwithstanding the foregoing, exceptions to the ownership limit for institutional shareholders include (i) state ownership in equitised credit institutions, (ii) foreign ownership as stipulated by the government and (iii) where a credit institution is facing difficulties or increased ownership would ensure the safety of the credit institution system.

Decree 69/2007/ND-CP dated 20 April 2007 ("Decree 69"), regulations of the Government specifically applicable to

investment by foreign investors in Vietnamese-incorporated shareholding commercial banks, provides an aggregate foreign ownership cap of 30% of the shares of any one credit institution. Decree 69 also limits shareholding of a single foreign credit institution to 10% of charter capital and a strategic foreign investor to 15% ownership of charter capital, which may be extended to 20 per cent with permission of the prime minister.

Foreign bank branch

A branch is prohibited from making capital contributions to and establishing enterprises engaged in activities involving insurance, securities and finance leasing. The Law on Credit Institutions restricts a foreign bank branch from extending loans totaling in excess of 15 per cent of its equity to a single client.

Investment by credit institutions

Under the Law on Credit Institutions, a commercial bank may only use its charter capital or other reserve funds when making capital contributions to enterprises and no capital contribution shall exceed 40% of the bank's (including its subsidiaries and affiliates) equity capital and reserve funds. A bank must establish or acquire subsidiaries or affiliates to carry out any activities involving securities (e.g. brokerage, underwriting, and investment portfolio management), insurance or finance leasing on behalf of the bank. Further, a commercial bank (including its subsidiaries and affiliates) may not own more than 11% of the equity capital of an enterprise operating in the insurance, securities, foreign exchange, gold or consumer credit sectors. A finance company is permitted to contribute capital to enterprises and investment funds. The total ownership by a finance company (including its subsidiaries and affiliates) must not exceed 11% of the charter capital of a target company. In addition, the total capital contribution by a finance company (including its subsidiaries and affiliates) to other enterprises shall not exceed 60% of its equity capital and reserve funds.

The Law on Credit Institutions provides that a credit institution may not extend credit to (i) management officers or their relatives (ii) institutional shareholders whose representative is member of the board of directors or supervisory board (for shareholding credit institutions), and (iii) institutional members or owners (for limited liability credit institutions). Moreover, a credit institution is not permitted to extend credit to enterprises engaged in securities activities and under its control. It also cannot extend credit where the underlying security is shares owned by the credit institution or its subsidiary, or provide a loan for a capital contribution to another credit institution based on the receipt of security in the form of shares of the credit institution that is the recipient of the capital contribution.

A credit institution may not provide loans on preferential conditions or without security to (i) auditing firms, auditors or

inspectors currently conducting an audit/inspection at the credit institutions or foreign bank branch, (ii) chief accountant, (iii) major shareholders or founding shareholders, (iv) those conducting appraisal and approval of loans or (v) subsidiaries and affiliates.



CAPITAL MARKETS

Vietnam's capital markets are still in a relatively nascent stage. To date, two securities trading centres have been established in Ho Chi Minh City (in 2000) and Hanoi (in 2005). In August 2007, the Ho Chi Minh City Securities Trading Centre was renamed the Ho Chi Minh City Stock Exchange, and the Hanoi Securities Trading Centre was reconstituted as the Hanoi Stock Exchange in January 2009. The Ho Chi Minh City Stock Exchange is to serve as the country's primary stock exchange. A market for securities of unlisted public companies (UpCOM) was opened in the Hanoi Stock Exchange in June 2009.

Under the Law on Securities (as amended on 24 November 2010), in order to offer securities to the public, an enterprise must meet certain conditions regarding its charter capital, financial standing and its plan to use the capital raised. To offer shares to the public (a concept that is different from "listing" in Vietnam), enterprises must have charter capital of at least VND10 billion (about US\$500,000) at the time of registration. If fund certificates are offered to the public, the total value of fund registered certificates must be at least VND50 billion (about US\$2.5 million).

Foreign organisations and individuals must obtain a securities trading code to sell and purchase securities in Vietnam's securities market and may hold:

- a maximum of 49% of the total shares listed or registered for trading by any one organisation which has been listed or has registered for trading on a Stock Exchange
- a maximum of 49% of the total investment fund certificates which have been listed or registered for trading of a securities investment fund

- an unlimited percentage of bonds issued by any issuing organisation.

Specific limitations apply to joint stock commercial banks which have been listed or have registered for trading on a Stock Exchange.

Foreign securities service suppliers are permitted to establish representative offices and may enter into joint ventures with Vietnamese partners, but the foreign capital contribution may not exceed 49% of the charter capital of the joint venture.

INSURANCE

At the end of June 2010, there were 50 companies operating in the Vietnamese market, specifically, 28 non-life insurers, 11 life insurers, 10 insurance brokers and 1 re-insurance company. The non-life insurance market is still dominated by domestic insurers. There are only 10 foreign invested non-life insurers among the total of 28. With respect to life insurance, there are 10 foreign invested insurers among the total of 11.

The Law on Insurance Business in 2000 (as amended on 24 November 2010) is the main legislation providing the framework for the insurance industry in Vietnam. It includes a prescriptive list of the types of policies permitted, the terms of the policies, the liability of parties to insurance contracts, the authority of the Ministry of Finance to regulate the industry, the implications of insolvency of insurers and regulations on the assignment of policies.

Companies that are permitted to engage in the insurance sector in Vietnam include shareholding insurance companies; limited-liability insurance companies; insurance co-operatives; mutual insurance organisations; joint venture insurance enterprises and 100% foreign owned insurance enterprises. The actual ability of insurers to obtain licences, however, is subject to many practical issues, the main one being the reluctance of the Ministry of Finance to open up the market and its eagerness to protect local insurers. Representative offices of foreign insurers may be established but they are not permitted to engage in any profit making activities. Some foreign insurers establish a representative office and develop a market presence and good rapport with the authorities by carrying out extensive philanthropic programs. Since 1 July 2011, foreign insurers may provide cross-border services into the Vietnamese market. In addition, non-life foreign insurers are permitted to set up branches in Vietnam.

Registered (and approved) insurers may engage in the following activities: insurance business, reinsurance business; risk management, prevention and limitation of loss; loss assessment; loss assessment agency, agency for consideration and resolution of indemnity, agency for third party recovery claims; management of funds and investments. From 1 January 2008, 100% foreign-invested general insurers may engage in statutory insurance business, including motor vehicle third party liability, insurance in construction and

installation, insurance for oil and gas projects, and insurance for projects and construction works of high danger to public security and the environment. Life insurers are now permitted to offer unit linked products.

Now that premium income is increasing for foreign participants, insurers are looking to diversify their domestic investment options. Article 98 of the Law on Insurance Business provides that insurers may only invest in the following:

- purchase of Government bonds;
- purchase of shares and bonds of enterprises;
- real estate business;
- capital contribution in other enterprises;
- lending under the Law on Credit Institutions;
- deposits with credit institutions.

Land and real estate

Ownership and use of land are governed by the Law on Land, which took effect on 1 July 2004, and related implementing regulations. Reflecting the sensitivities surrounding land ownership in Vietnam, the Law on Land is not entirely clear on several issues regarding land ownership and the use of land. Whilst a number of aspects of the Law on Land have been clarified in implementing legislation, uncertainty remains regarding a number of crucial issues pertaining to land transactions and the certification and registration of land-ownership rights and the right to own buildings and structures situated on the land.

LAND USE RIGHTS AND LAND USE RIGHT CERTIFICATES

The State is the owner of all land in Vietnam and private ownership of land is not permitted. However, the local Departments of Natural Resources and the Environment may allocate or lease land to individuals, organisations and businesses through the granting of so-called land use rights ("LUR") and the issuance of LUR Certificates ("LURC"). In principle, a LURC does not pass land ownership from the State to the holder as it is merely a certificate of title to the rights to use the land. The term of a LURC issued to foreign invested enterprises is normally limited to a maximum of 50 years, although in certain circumstances the term may be for as long as 70 years. Only Vietnamese enterprises and individuals may be granted a LURC in perpetuity, such title being similar to complete land ownership.

Foreign invested enterprises in Vietnam may obtain LUR by way of (i) contribution to capital in the form of LUR by the local party to a joint venture company or (ii) entering into a land lease directly with certain permitted lessors. In a recent development, foreign invested enterprises may also enter into a lease directly with Vietnamese organisations holding LURs. Only domestic enterprises may be allocated land directly from the local land authorities.

In practice, this situation gives Vietnamese companies an advantage in obtaining land use rights.

JOINT VENTURE COMPANY ("JVC") TO DEVELOP A REAL ESTATE PROJECT

To secure land in desirable locations foreign investors often opt to enter into a joint venture in which the local party contributes its share of capital in the form of the value of certain LURs. The domestic party should obtain the LUR through an "allocation" of land from the State by way of an administrative decision and the allocation fees should be paid in full.

However, under Article 111.1(dd) of the Law on Land, a Vietnamese party who "leases" land from the State may make

its capital contribution to a JVC in the form of LUR if the following two conditions are met:

- the Vietnamese Party leased the relevant land before the effective date of the new Law on Land, i.e. 1 July 2004 and
- the land rent has been prepaid in full for the whole lease term or a significant portion thereof, and at least to 1 July 2004, with the remaining term of the prepaid lease being at least five years.

After the JVC is incorporated and its investment certificate has been issued by the licensing authority, the LURC will be issued to and in the name of the foreign invested JVC.



LAND LEASE

Instead of obtaining the LURs through a contribution of capital to a joint venture company, foreign invested enterprises may consider leasing land directly from the State.

Foreign invested enterprises in Vietnam may also sub-lease land from an infrastructure developer. In addition to these conventional lessors, Article 93.3 of the Law on Land now allows foreign invested enterprises to lease land from:

- Vietnamese economic organisations, including State-owned companies, private joint stock companies and limited liability companies or
- an existing foreign invested enterprise that leases land from the Government and develops infrastructure facilities on the land, provided that this existing foreign invested enterprise has paid land rent for the whole land lease term.

Although the Law on Land allows foreign invested enterprises to lease land from private lessors (such as private joint stock or limited liability companies), the authorities have been willing to consider this on a case-by-case basis only.

LEASE TERM

The lease term must be consistent with the duration of the approved project provided that it must not exceed 50 years or, in special circumstances, 70 years. The competent authorities may approve an extension of the lease term upon its expiration if:

- the lessee has complied with the land regulations during its land use period and
- the use of land is consistent with the approved land plan.

Foreign invested enterprises wishing to extend the term of their land lease must get approval for their supplemental projects under Decree 181. The extension of the LUR is subject to discretion of competent authority. It is not clear what would happen to the assets owned by a land user in the event the lease term is not extended.

LEASE PAYMENT AND RIGHTS ENJOYED

The rights of foreign invested enterprises in respect of LURs may vary depending on the way lease payments are made. Under certain conditions, investors who make a “one-time payment” may have the right to transfer their LUR and assets attached thereto, sub-lease the land and attached assets, contribute their LUR and attached assets to a JVC and may use their LUR as security for loans from Vietnamese financial institutions (including branches of foreign banks in Vietnam). Those making annual lease payments may sell or assign their assets, but may not mortgage, sub-lease or transfer their LUR to third parties.

LEASE OF COMMERCIAL PROPERTY

Rather than lease a parcel of land, foreign investors may consider leasing office space in a commercial office building. The office lease is not subject to any approval by Vietnamese authorities although an office lease with a term of more than six months must be notarised.

NOTARISATION OF LAND CONTRACTS

All documents related to land must be notarised. In the past, this delayed and increased the complexity of some land transactions due to time-consuming process of notarisation in Vietnam. However, with the issuance of new legislation on notarisation procedures, this requirement is no longer cumbersome.

WITHDRAWAL OF LAND FROM FOREIGN INVESTORS

Under the Law on Land, the State authority has the power to reclaim land leased or allocated to parties, including foreign investors. Land might be withdrawn from foreign investors if:

- the land is used in an inefficient way or for any improper purpose
- the land user intentionally destroys the land
- the land user intentionally fails to meet its financial obligations to the Government
- the land has not been used for 12 consecutive months from the date of handover of the land or
- the land use schedule for the project has been delayed for more than 24 months beyond the date to which the investor originally committed in the project documentation.

If the State authority reclaims property for any of the reasons stated above, the remaining value of capital invested in the land and of the attached assets will be determined by the appropriate authority.



MORTGAGES

Vietnamese law permits mortgages over LUR, but only to Vietnamese financial institutions, including foreign bank branches in Vietnam. The laws are silent on the taking of security interests in land or LURs by offshore entities. Therefore, at present LURs cannot be mortgaged to offshore financial institutions.

Vietnamese law is not clear on whether an onshore agent of an offshore lender is able to take a mortgage over LURs for and on behalf of the offshore lender.

To be eligible to give a mortgage over LURs, a foreign invested lessee is required to pay land rent in advance for the full term of the land lease. A mortgage over LURs is also permitted if the lease was entered into before 1 July 2004 and

the land rent has been prepaid in full for the full lease term or for a significant portion of the term if the remaining unpaid portion of the term is less than five years.

In practice, there are limits to the value of a mortgage as security due to the absence of reliable mortgage enforcement procedures.



FOREIGNERS AND RESIDENTIAL HOUSING

The inability of foreigners to purchase and own residential housing in Vietnam has been debated for some time. A resolution implementing a pilot project permitting foreign individuals and organisations to purchase and own residential housing was passed on 3 June 2008. The pilot project took effect on 1 January 2009 and will be in place for five years.

Under the resolution, five categories of foreign individuals and organisations will be eligible to purchase and own residential apartments (foreigners will still not be permitted to own residential houses) on the condition that individuals reside and have the right to remain in Vietnam for at least one year and that organisations have an investment certificate. There are certain restrictions on the number of apartments that can be owned, the ownership period and the date of resale of the apartment(s). Foreigners who have purchased residential apartment(s) under the pilot project shall, after the pilot project expires, be permitted to continue to own such apartment(s) for the duration of their ownership certificate(s).

Notwithstanding the foregoing, foreigners of Vietnamese origin may in some circumstances be entitled to own residential houses or apartments in Vietnam under Law on Residential Housing Law and Law on Land (as amended by Law 34/2009/QH12 dated 18 June 2009).

Infrastructure

Vietnam is keenly aware of the need for investment in infrastructure to sustain the high rates of economic growth the country has experienced since the introduction of economic reforms.

The recent period has seen relatively rapid developments in respect of the concessionary laws for build-operate-transfer, build-transfer or build-transfer-operate projects (collectively "BOT") and in the area of public private partnerships ("PPP"). The current key legislation is Decree 108/2009/ND-CP (the "BOT Decree"). In addition, the Prime Minister has recently issued the much anticipated legal framework for PPP. These recent developments in Vietnam's infrastructure laws are steps toward making Vietnam a more attractive environment for investment in large scale infrastructure projects compared to past legislation such as the former Decree 78 (for BOT projects) and related policies.

CONCESSION TO DEVELOP INFRASTRUCTURE PROJECTS

The BOT Decree sets out the concessionaire rights and obligations relating to investments in large scale infrastructure projects, such as ports, rail and road transportation, power, water and waste and other projects in Vietnam.

The BOT Decree encourages the implementation of large scale infrastructure projects to support the requirements of Vietnam's economic development. The Government's current policy is to have such infrastructure projects developed by private sector investment through granting concessions, generally on a tender basis (subject to some exceptions), in the form of BOT. Most projects under the BOT Decree would be implemented on a BOT basis.

The scope of the BOT Decree provides significant investment opportunities for project developers entering Vietnam, across a broad range of sectors including, roads, rail, air and sea ports, water and waste treatment plants, power plants and power transmission facilities. There are no restrictions on the infrastructure sectors open to a foreign investor.

The BOT Decree provides that the competent authorities (e.g. Ministries, provincial People's Committees) will issue a list of approved projects for which BOT investments are invited. The Vietnamese Government has identified a large number of construction projects that it wishes to complete in the coming years, and lists of projects seeking foreign investment are published regularly. Some projects are dependent on financing from international institutions such as the World Bank and Asian Development Bank.

It is possible for projects not on such published lists to be approved on an ad hoc basis. Under former Decree 78, a foreign investor could directly approach the relevant authorities to obtain approval for a BOT project. However, under the existing BOT Decree, tendering is still required in

cases where other investors express an interest in developing the project.

If a project is approved as a BOT project, investors are responsible for the construction and operation/management of the project for the fixed term of the BOT contract, following which the investors are required to transfer the project to the Vietnamese Government without compensation.

The parties to a BOT contract may agree to establish a coordination board (similar to a board of management) for the implementation and management of the BOT project. The functions, tasks and powers of the coordination board may be determined by the parties to the BOT contract. A foreign party to the BOT contract may lease office space in Vietnam to implement the performance of the BOT contract.

BTO AND BT INVESTMENT CONTRACTS

In a typical BTO project, the foreign investor constructs the project and transfers it to the Government upon completion. The Government then allows the investor to operate the project for a fixed period of time so that the investor can recover its investment plus an agreed rate of return on investment.

A BT project also entails the immediate transfer of the facility to the Government upon completion but does not include the right to operate it. Instead, the investor may be awarded another project to allow it to recover its investment and receive a return on its investment.

BOO INVESTMENT CONTRACTS

A BOO is a contractual form of investment specifically permitted in the power sector where a private investor funds construction of a public infrastructure project then is allowed to own and operate the facility at its own risk for the term of the investment certificate (normally 50 years and in exceptional cases 70 years).

Although the BOT Decree seeks to improve the regulatory environment for infrastructure investment, investors should be aware of certain issues before committing resources to a BOT investment, including restrictions on the ability of certain lenders to take security in project assets.



AWARD OF PROJECTS

The Government has historically tended to award BOT contracts on a negotiated basis, rather than through competitive tendering. Under the BOT Decree, the preferred method of selecting an investor for a BOT contract is international or domestic tender. However, the direct appointment of an investor is still permitted in certain circumstances, including where there is only one investor who registers to invest in the project or where a project needs to be implemented on an urgent basis.

Projects under the BOT Decree are implemented by the "Authorised State Body" ("ASB"), which is a Government ministry or provincial People's Committee empowered to represent the Government to enter into and implement the project contracts in respect of each project. The ASB negotiates directly with the investors and has authority to commit the Government to all obligations specified in the BOT/BTO/BT contract.

The nature and size of a project determines who shall act as the ASB. In general, the following parties act as the ASB in the sectors listed below:

- **roads, bridges, tunnels and road ferry landings:** Ministry of Transportation ("MoT")
- **railways, rail bridges and tunnels:** MoT
- **airports, seaports and river-ports:** MoT
- **water plants, drainage systems and waste and sewage treatment systems:** provincial People's Committee
- **power plants and transmission lines:** Ministry of Industry and Trade ("MoIT")

It is important to note that the ASB seeks approval from other ministries in the Government during project negotiations on specific issues relevant to such ministries. Therefore, investors may find that points previously agreed during negotiation are sometimes revisited or reopened as a result of review and comment from other ministries. Prior to the

enactment of the BOT Decree, participation and review by ministries other than the ASB was somewhat ad hoc and on an as-needed basis. The BOT Decree attempts to bring more structure to the role of other ministries by strengthening the provisions of the "Inter-branch Working Group" whose role is to provide formalised input and assistance from relevant ministries.

Typically, the investor should expect the ASB to seek second opinions from the Ministry of Justice and Ministry of Finance on issues such as the enforcement of security and guarantee provisions, change of law provisions, minimum performance security, etc. In past transactions, these issues were presented to the relevant ministries as requests for comment in a rather unclear and time consuming process. The BOT Decree seeks to streamline this process by providing for an Inter-branch Working Group for each project comprised of members of the ASB, members of relevant ministries and local committees and independent legal, technical and/or financial experts (as determined by the ASB).

TENDERING LAWS

Detailed bidding provisions govern the participation of foreign and Vietnamese contractors in the project tendering process in Vietnam. Preference is often given to those applicants who intend to employ local employees or utilize local materials in addition to applicants who anticipate introducing advanced technology. Whilst the recent overhaul of Vietnam's tendering regulations and, in particular, the adoption of the Law on Tendering in 2005 (effective from 1 April 2006) and Law No.38/2009/QH12 (effective from 1 August 2009) have helped to improve the legal framework for tenders, recourse for bidders who feel they have been treated unfairly remains problematic and it is difficult in practice to challenge the results of the tender process.

INVESTMENT CERTIFICATES AND THE INVESTMENT VEHICLE

An investment certificate is required to implement a foreign investment project of any nature in Vietnam, including BOTs and other infrastructure projects.

The BOT Decree distinguishes between an investor (the company or individual investing capital in the project) and a project enterprise (the vehicle set up by the investor to manage the project). The investment certificate issued for the BOT project will serve as the incorporation certificate of a project enterprise with foreign participation.

It is the investor who is appointed to enter into contract negotiations for a BOT project and, in the first instance, it is the investor who must sign the BOT contract. Therefore, prior to the establishment of the project enterprise, the obligations under the BOT contract remain exclusively with the investor.

This system leaves open for negotiation the level of risk and surety that an investor may face despite the establishment of the project enterprise - a proposition that current investors strongly resist.

An investor will ordinarily want to establish a project enterprise. Under the BOT Decree, any form of project enterprise permitted under the Law on Investment and the Law on Enterprises may be used for BOT projects, including a limited liability company, a joint stock company, a private company or a partnership. However, experience suggests that joint ventures with a local partner are preferred by the Vietnamese authorities.

As the signatory to the BOT contract, an investor can potentially be exposed to risks that it would ordinarily want borne by the project enterprise. In practice, it is better for an investor to limit its risk by negotiating a BOT contract which expressly provides that the obligations will be assumed by the project enterprise.



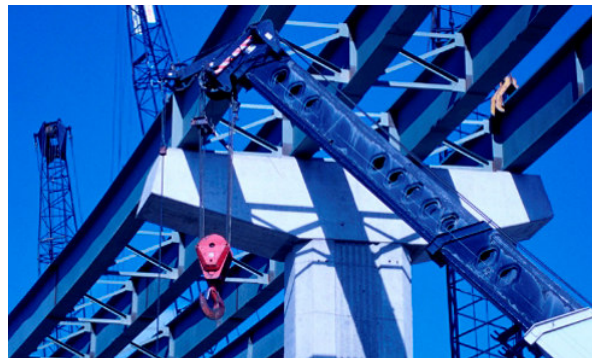
CAPITAL REQUIREMENTS AND CONSTRUCTION SECURITY

Investors may raise funds themselves for a BOT project or the project may be supported by capital contributions from the State. Under the BOT Decree, capital contributions by SOEs cannot total more than 49% of the total capital.

Like Decree 78, the BOT Decree requires investors to provide a minimum proportion of equity to the project enterprise, but the BOT Decree amends the threshold as follows:

- if the total investment capital is up to VND1,500 billion (about US\$75 million), the proportion of equity is required to be not less than 15% equity
- if the total investment capital is over VND 1,500 billion, the portion of equity is required to be not less than the aggregate of 15% of VND 1,500 billion plus 10% of the portion of investment capital above VND 1,500 billion.

The BOT Decree further requires that investors provide security performance bonds to guarantee implementation of the project.



INVESTMENT INCENTIVES

There are various incentives available to investors who undertake a BOT project. These include exemptions from applicable land use fees or land rent, exemption from duties on goods imported to implement the project, as well as significantly reduced corporate income tax rates and tax holidays. It may be possible for investors to negotiate additional incentives for a particular project.

LENDER'S SECURITY AND STEP-IN RIGHTS

Under Vietnamese law, a foreign lender cannot take security interests in land use rights or structures built on the land unless the lender has established a foreign bank branch in Vietnam. Whilst there are examples of lending syndicates (comprised of local and foreign banks) taking security in project assets, the enforcement of such security remains untested. A number of BOT projects have failed to go forward because of this restriction.

Lenders can negotiate step-in rights in cases where the project company defaults in a BOT context, a lender's step in rights must be pre-approved by the relevant ASB counterparty. However, in practice, it may be difficult for lenders to obtain sufficiently broad consent to cover all of the circumstances in which a lender might wish to step into a distressed project.

PUBLIC-PRIVATE PARTNERSHIP

The framework for PPP promulgated as Decision No. 71/2010QD-TTg (*Regulation on pilot investment using Public-Private Partnership model*) ("PPP Framework") took effect on 15 January 2011 and is expected to promote the development of PPP projects in Vietnam for the next three to five years.

Vietnam's Ministry of Planning and Investment ("MPI") leads the development of the PPP Framework with the goal of improving the legal basis for investments in Vietnam's infrastructure on a PPP basis. The PPP Framework is intended to promote pilot projects across a wide range of infrastructure sectors, including:

- roads, bridges, tunnels, ferries;
- railways, railway bridges, railway tunnels;
- urban transport;
- airports, seaports, river ports;
- fresh water supply systems;
- power plants;
- healthcare (hospitals in particular);
- environment (waste treatment plants in particular); and
- other infrastructure needs identified by the Prime Minister.

The PPP Framework covers pilot projects and is itself *pilot* legislation which introduces the PPP model as the form of investment by which the State and investors coordinate to implement projects for infrastructure development or the provision of public services on the basis of a project contract. A project contract grants the investors the right to invest in and exploit infrastructure facilities or to provide public services for a fixed period. Likewise, the PPP Framework provides for the State's involvement in a PPP project. The State's contribution toward a PPP project may take several forms, such as State capital, investment preferences and specific financial policies (collectively, "State Contribution") to be further discussed below.

PPP Project criteria

The following sectors are covered by the PPP Framework: (i) roads, bridges, tunnels, ferries; (ii) railways, railway bridges, railway tunnels; (iii) urban transport; (iv) airports, seaports, river ports; (v) fresh water supply systems; (vi) power plants; (vii) healthcare (hospitals); (viii) environmental projects (waste treatment plants); and (ix) other infrastructure needs as decided by the Prime Minister.

To be selected as a pilot project under the PPP Framework, the project must satisfy one of the following criteria:

- The project is of great significance, large scale and/or is of urgent demand taking into account economic development needs as stipulated under the previous Decision No. 412/QĐ-TTg dated 11 April 2007 of the Prime Minister ("Decision 412");
- The project is capable of returning investment capital to the investor from reasonable revenue collected from consumers;

- The project is capable of taking advantage of the private sector's technology, management and operations experience and effective use of financial capacity; or
- The project meets other criteria as decided by the Prime Minister.

Capital requirements

Capital requirements are described as (i) those that may be contributed by the State ("State Contribution"), and (ii) the contribution to the project by the investor and its lenders.

State Contribution. The State Contribution to a particular project is to be determined by the Prime Minister on the basis of a proposal from the Authorised State Body and evaluation by the MPI. The PPP Framework limits State Contribution to no more than 30% of the total project investment except as otherwise decided by the Prime Minister. State Contribution may take the following forms:

- State capital in the form of monies from the State budget, official development aid, government bonds, credit capital guaranteed by the State, State development investment credited capital, investment by State-owned enterprises and other forms of public debt;
- investment preferences such as tax incentives and land rental exemption; and
- specific financial policies,

all of which are deemed included in the calculation of the total investment of a PPP project. The PPP Framework prohibits State Contribution from taking an equity stake in the project company. Rather, State Contribution may be used to:

- cover part of the costs of the project;
- fund the building of auxiliary construction work;
- fund site clearance and resettlement (and compensation relating thereto); and
- cover such other costs as determined by the State.

The State does not commit itself to providing any project related guarantees, such as viability gap guarantees, but such commitments can be made on a case-by-case basis.

Investor Equity Capital. At least 70% of the total investment capital of a PPP project must be provided by the investor. The investor's contribution ("Privately Owned Capital") to the total investment may be made through a combination of equity, debt and other forms that do not require State Contribution. Specifically, the investor must contribute as equity no less than 30% of the Privately Owned Capital in a PPP project.

Oil and gas

VIETNAM'S OIL & GAS RESERVES

Vietnam's oil and gas industry has been a major driver for the country's economic growth, accounting for 18-20% of Vietnam's export revenues and a major share of the country's GDP. In 2008, taxes paid by the national oil and gas group, PetroVietnam, accounted for 31% of Vietnam's state budget.

Currently, Vietnam is the fourth largest oil and gas producer in Southeast Asia and ranks sixth out of 15 Asia-Pacific countries (after China, Indonesia, Malaysia, India and Australia).

At present, the global annual fuel consumption per capita is five barrels. By comparison, per capita consumption in Vietnam is currently about one barrel. Between now and 2020, when Vietnam expects to be fully industrialised and its population is 100 million, annual domestic fuel demand per capita is expected to increase considerably.

Though estimates of the size of Vietnam's fossil fuel deposits vary considerably, Vietnam's eight sedimentary basins are believed to hold substantial deposits of oil and natural gas. Vietnam reportedly has proved oil reserves of 600 million bbl and substantial amounts of proved natural gas reserves.

It is estimated that Vietnam will need US\$28 billion to US\$31 billion in capital investment to meet its goal of developing the country's oil and gas sector by 2025.

Vietnam is presently a net exporter of oil. However, Vietnam will most likely become a net importer in the near future due to the rise in domestic demand and forecasted decline in production of crude oil.

Meanwhile, natural gas production is expected to rise considerably when a number of gas fields enter into operation in the near future. In fact, natural gas is already fuelling Vietnam's largest electrical power generation plants and natural gas is slated to play a key role in electrical power generation going forward.



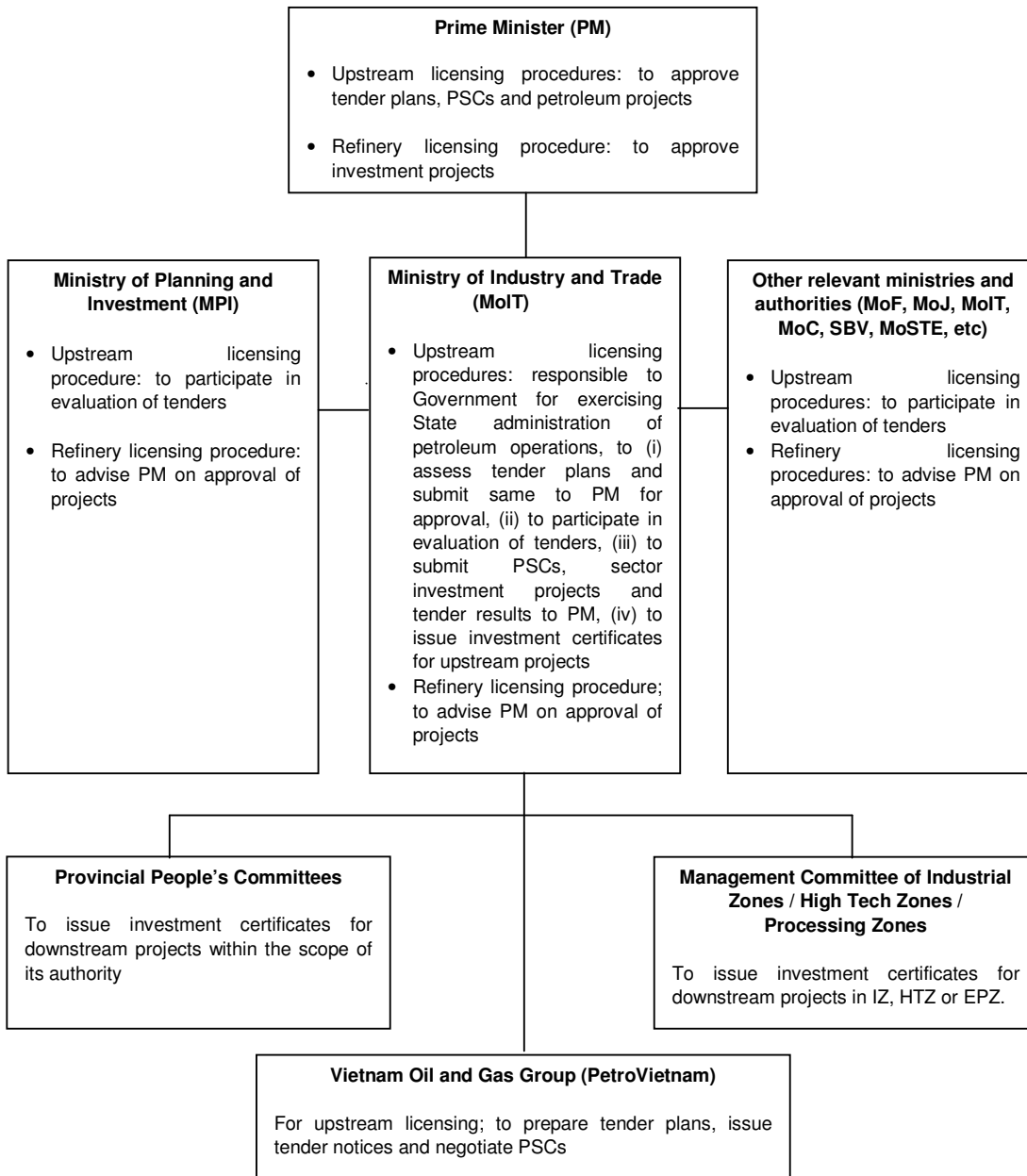
STATE AUTHORITY OVER OIL & GAS SECTOR

The oil and gas industry is dominated by Vietnam Oil and Gas Group (PetroVietnam), the national oil gas group which reports directly to the Prime Minister and is under management of the Ministry of Industry and Trade (MoIT). PetroVietnam has exclusive rights to engage in upstream activities and is also involved in downstream activities together with Petrolimex (see discussion below). In particular, all oil drilling and recovery is carried out by PetroVietnam itself or pursuant to production sharing contracts ("PSCs") or joint ventures with domestic and foreign oil companies.

Foreign investment in oil and gas exploration, production and processing is "conditional" meaning that the Prime Minister of Vietnam must approve all oil and gas projects.

The following is an overview of the structure of Vietnamese government authority over the oil and gas sector and the respective licensing procedures for upstream and downstream oil and gas projects in Vietnam.

Government Authority Over the Oil and Gas Sector



OUTLINE OF WAYS FOREIGN COMPANIES MAY DO BUSINESS IN THE OIL & GAS SECTOR IN VIETNAM

Upstream Business - PSC or Joint Venture

Foreign and domestic investors are required to enter into a contract with PetroVietnam in one of the permitted forms to engage in the exploration and production of oil and gas in Vietnam. Such contracts are negotiated after a particular company has won the tender for a particular project.

Petroleum contracts can take the form of (i) a production sharing contract ("PSC") or (ii) a joint venture agreement on the basis of which a joint venture enterprise will be established as a legal entity in one of the permitted corporation forms, (i.e., limited liability company or joint stock company). Under certain circumstances, such as where the foreign party will be sole operator of the project, the parties to a PSC may enter into a Joint Operating Agreement as an extension of the original PSC.

Vietnamese law also allows foreign investors and PetroVietnam to enter into petroleum contracts in other forms and it is possible for an upstream investor to negotiate a concession contract which gives the host country compensation (in the form of royalties at prescribed rates) and the foreign investor the right to the oil/gas recovered.

Historically, almost all investments in oil and gas exploration in Vietnam have been carried out pursuant to PSCs.

In 2005, a standard PSC was issued as part of Decree 139 On Standard Petroleum Production Sharing Contracts. The terms of this standard PSC must be used unless the Prime Minister approves otherwise.

All petroleum contracts must be approved by the Prime Minister and will take effect in accordance with the provisions of the investment certificate that must be issued for the project. A detailed discussion of the investment certificate application process is beyond the scope of this Note, but the process involves the submission of an investment application, the PSC or joint venture agreement (as the case may be), corporate documents of the investor, a feasibility study (which must address the environmental impact of the project), a report substantiating the financial capability of the investor(s) and other documents.

The standard PSC contract provides that upon discovery of petroleum, the contractor shall so notify PetroVietnam and conduct field research to estimate the commercial viability of proceeding with extraction and production. PetroVietnam then has a statutory option to take a participating interest pursuant to the PSC. PetroVietnam typically has no financial obligations under a PSC. If no commercially viable discovery is made, the contractor will then bear all the costs of exploration and production.

The term of a petroleum contract may not exceed 25 years and the exploration period can not exceed 5 years, except in

the case of encouraged projects and projects for exploration and production of natural gas, where the term can be up to 30 years and exploration up to 7 years. The duration of a contract may be extended for up to 5 years and the exploration period may be extended for up to 2 years.

The parties may establish a joint venture company to carry out petroleum exploration and exploitation. In such case, after paying taxes to the government, the parties to the joint venture company will share the profits of the business, not the petroleum itself.

Downstream Business – Wholly Foreign-Owned Enterprise or Joint Venture

With requisite approvals and subject to certain restrictions, a foreign investor may establish a wholly-owned Vietnamese company or establish a joint venture company with one or more Vietnamese parties to engage in downstream activities, including the refinery business.

Distribution of oil and gas, including certain processed fossil fuel products and petrochemicals is reserved to State trading enterprises. However, foreign-invested enterprises are allowed to *import* petroleum products and additives for purposes of producing finished products, such as lubricants, then sell these products in the local market through their own distribution systems and/or through other licensed oil and gas trading companies.

Each of the above-referenced upstream and downstream activities is subject to the issuance of an investment certificate pursuant to the Law on Investment and if a legal entity is formed (e.g., a wholly foreign-owned entity or joint venture in one of the permitted corporate forms), the entity will also be governed by the Law on Enterprises.

In principal, all foreign enterprises that involve the establishment of a legal entity are subject to Corporate Income Tax (CIT). The standard CIT rate became 25% as of 1 January 2009. Tax incentives are available for encouraged projects and specially encouraged projects and, in some cases, enterprises may qualify for a tax holiday, tax reduction or preferential tax rate.

However, tax rates applicable to upstream oil and gas activities are subject to different rates ranging from 32% to 50%. The specific rate is assigned at the discretion of the Prime Minister, who may also grant an exemption from corporate income tax for a maximum of two years and a 50% reduction of corporate income tax for two more years thereafter.

In addition, the joint venture or the foreign party to a PSC is required to pay royalties based on amount of crude oil or natural gas recovered. For example, the applicable royalty for up to 20,000 bbl per day of crude oil is 6%-8% while the royalty applicable to over 150,000 bbl per day is 22%-27%. For natural gas, the royalty is 0% for up to 5 million m³ per

day, 3%-5% for between 5 million and 10 million m³ per day and 6%-10% for more than 10 million m³ per day.

Subject to applicable bilateral treaties and any exemptions that might be granted in connection with the importation of equipment and materials, enterprises in Vietnam's oil and gas sector may be subject to import tariffs. There are also withholding taxes on royalties paid in connection with technology transfer and intellectual property licenses.



Provisions of Services to the Oil and Gas Sector-Foreign Contractors

Subject to certain restrictions, foreign contractors may provide services to companies engaged in the oil and gas sector in Vietnam. If the contract is "cross border" in nature (i.e., does not involve the establishment of an entity in Vietnam), no special restrictions apply other than compliance with laws applicable to such activities. In such cases, the foreign contractor will be subject to foreign contractor tax at prescribed rates.

However, if a foreign company wishes to establish an entity in Vietnam for the purpose of providing services to companies engaged in the oil and gas sector, it currently may not do so except in the form of a joint venture with a Vietnamese party in which the foreign company's interest must be limited. Between 11 January 2010 and 11 January 2012, the foreign party may own a 51% interest in the joint venture and after 11 January 2012, wholly foreign-owned service companies will be permitted pursuant to Vietnam's WTO obligations.

However, it should be noted that these commitments do not apply to the following services: supply of equipment, materials and chemicals, the supply of base services, offshore/marine support vessels, accommodations and catering. Vietnam may impose further restrictions or conditions on the provision of certain services relevant to the oil and gas industry. Notwithstanding the foregoing, the Law on Petroleum authorises a joint venture to provide helicopter services to its upstream project.

It should also be noted that any foreign person who is physically present in Vietnam for an aggregate of 183 days during a one year period is considered a resident of Vietnam for tax purposes subject to Vietnam Personal Income Tax (PIT) on his/her worldwide income. Non-resident foreigners are subject to 25% PIT on their income earned in Vietnam.

LEGAL FRAMEWORK

The legal framework governing investments in Vietnam's oil and gas sector is relatively comprehensive but still evolving. The principal laws governing investment in the oil and gas sector in Vietnam are the Law on Petroleum, the Law on Tendering, the Law on Investment, the Law on Enterprises and a number of related implementing regulations, including various circulars that address specific legal issues relevant to the oil and gas sector. In addition, there is a body of law governing the activities of foreign contractors who provide support services to the oil and gas industry in Vietnam.

The Law on Petroleum, which was enacted in 1993, codified large parts of petroleum industry practice that was current at the time. The legal framework was considerably changed in July 2000 when the Law on Petroleum was amended and an updated Petroleum Decree was issued. Further amendments were recently made to the Law on Petroleum with effect from 1 January 2009.

Depending on the type of investment, other laws, including the Law on Land and the Law on Construction, may apply to a particular project.

FOREIGN INVOLVEMENT IN THE OIL & GAS SECTOR IN VIETNAM

Although State-owned companies dominate both the upstream and downstream sectors, a number of foreign companies are currently doing business in these sectors in cooperation with PetroVietnam. Among them is Vietsovpetro, a joint venture between PetroVietnam and Russian Zarubezhneft, which is operating the Bach Ho oil field. Some of the key foreign upstream operators engaged in PSCs with PetroVietnam are Petronas, Chevron, Talisman Energy and Conoco Phillips. PetroVietnam has signed over 50 oil and gas agreements with international companies and organisations in the form of PSCs, business cooperation contracts, joint operating contracts and joint ventures.

As investment in the oil and gas sector is costly, the Vietnamese government is expected to continue encouraging foreign investors to participate in development of the sector.

FIELDS AND REFINERIES

To maintain the current output of oil and gas, new discoveries and investments in techniques for extraction of more of

Vietnam's reserves will have to be made. At the same time, Vietnam currently only has one operating refinery.

As noted above, studies have shown that Vietnam needs investment capital of between US\$28-31 billion to develop its oil and gas sector between 2006-2025. As part of this growth plan, a number of investment projects in the oil and gas sector are being considered in which the participation of foreign parties is being encouraged.

Oil and Gas Fields and Drilling Concessions/Pipelines

Vietnam has a continental shelf of almost 1km². From 1974 when Vietnam started drilling for oil until 2007, 24 oil fields with projected commercial capacity of 402 million tons have been discovered. Bach Ho (White Tiger) oil field, located in Cuu Long Basin is the largest reservoir in Vietnam with a projected volume of 190 million tons.

The second phase of a 371 km pipeline that transports gas from the Nam Con Son Basin to an onshore gas processing terminal in Ba Ria-Vung Tau entered was completed in 2008. The gas is being used to fuel an electricity-petrochemical complex in the area.

In early 2009, PetroVietnam announced that a second pipeline will be built that will connect the Lot B field near Phu Quoc Island to the Mekong Delta. This second pipeline will feed a gas-fuelled electricity fertilizer complex in Can Tho City.

Refineries

Until recently, Vietnam has had to import its entire demand for refined oil products due to the lack of a domestic refining capacity. The country's first refinery in Dung Quat, invested by PetroVietnam, began commercial operations in February 2009. The Dung Quat refinery, which produces PP, LPG, kerosene, gasoline and jet fuel, has an annual capacity of 6.5 million tons.

A number of other refinery projects are already underway or planned, with the Nghi Son refinery in northern Vietnam and the Long Son Refinery in southern Vietnam expected to be operational between 2014-2017.

Intellectual property

Vietnam's intellectual property laws have evolved steadily since the Doi Moi policy of "renovation" was introduced in late 1986, and the adoption of legislation aimed at stimulating the domestic economy and attracting foreign investment. As Vietnam's commercial relations with foreign countries developed, Vietnam continued to improve its legal framework for protecting intellectual property rights. This process was accelerated in the early 2000s when Vietnam entered into negotiations to join the World Trade Organisation ("WTO"). On 1 January 2006, the amended *Civil Code of Vietnam* ("Civil Code") and amended *Law on Commerce* ("Commercial Law") both took effect. This legislation was followed by a new and comprehensive *Law on Intellectual Property* ("IP Law"), which took effect on 1 July 2006. The Civil Code, Commercial Law and IP Law and related implementing legislation provide a more comprehensive and detailed legal framework for the establishment and protection of intellectual property rights, including patents, marks, trade names, geographical indications, trade secrets, copyrights and "related rights", as well as plant varieties. The current legal framework also contains prohibitions against various forms of unfair competition.

It should also be noted that the new Law on Technology Transfer, which took effect on 1 July 2007, has eased previous rules governing the transfer of technology and know-how to Vietnamese entities and, in most cases, eliminated the requirement that such contracts be approved in advance.

INTERNATIONAL TREATIES AND CONVENTIONS

Vietnam has long been a party to such international treaties and conventions as the *Paris Convention for the Protection of Industrial Property* (since 1949), the *Madrid Agreement Concerning the International Registration of Marks* (since 1949), the *Convention Establishing the World Intellectual Property Organisation* (Stockholm Agreement) (since 1976) and the *Patent Cooperation Treaty* (since 1993).

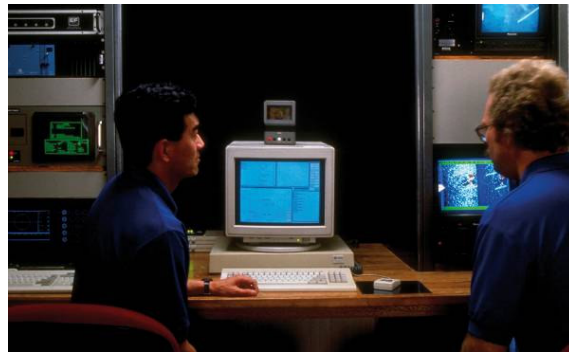
More recently, Vietnam joined the *Berne Convention for the Protection of Literary and Artistic Works* (2004), the *Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms* (2005); the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (Brussels Convention) (2006); the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (Madrid Protocol) (2006); the *International Convention for the Protection of New Varieties of Plants* (UPOV) (2006); and the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (2007).

On 11 January 2007, Vietnam became the 150th member of the World Trade Organisation (WTO). According to the terms of its accession to the WTO, Vietnam agreed to immediately comply with the terms of the *Agreement on Trade-Related*

Aspects of Intellectual Property Rights (TRIPs). Vietnam's domestic intellectual property legislation reflects the country's obligations under the foregoing international treaties and conventions.

In addition, Vietnam has entered into bilateral agreements relating to the protection of intellectual property rights, including the *Agreement Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam on the Establishment of Copyright Relations* (1998), a bilateral treaty for the protection of intellectual property rights with Switzerland (1999), as well as the *Agreement Between the United States of America and the Socialist Republic of Vietnam on Trade Relations*, which took effect on 10 December 2001.

Vietnam is not a party to the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* ("Nice Agreement"). However, Vietnam follows the international system of classifying goods and services prescribed in the Nice Agreement.



RECENT AMENDMENTS TO THE IP LAW

On 19 June 2009, Vietnam's National Assembly adopted amendments to the IP Law. These amendments, which take effect on 1 January 2010, are aimed at curing recognised problems with the current IP legal framework, as well as bringing the IP Law more in line with Vietnam's obligations under relevant international treaties and international practices.

Some of the key amendments to the IP Law are referenced below in sections of the text to which they apply.

PATENTS

Vietnamese law provides for the registration and protection of three types of patents, namely, "inventions", "utility solutions"

and “industrial designs.” An invention patents is valid from the date a title of protection is granted until 20 years after the filing date. A utility solution is valid from the grant date until 10 years after the filing date. An industrial design is valid from the grant date and may be renewed for two consecutive 5 year terms.

LAYOUT DESIGNS OF INTEGRATED CIRCUITS

Layout designs of semi-conductor integrated circuits are protectable in Vietnam and a certificate of registration for the same is valid for 10 years after the filing date, for 10 years after the date the layout design was first used commercially, or fifteen years after the date the layout design was created.

TRADE MARKS

Provided they are deemed distinctive and are otherwise registrable, trade marks and service marks are protected in Vietnam, as are certification marks and collective marks.

Upon the issuance of a title of protection (i.e. “registration), a mark is protected from the grant date until 10 years after the filing date and may be renewed indefinitely for consecutive 10 year terms.

Marks are subject to cancellation for non-use if they have not been used for a continuous period of 5 years without justification, unless use of the mark has been commenced or resumed at least 3 months before a request for termination of the registration for non use.

Oppositions Proceedings

At any time from the date an application for registration of a mark or other industrial property right is published in the Official Gazette up to (but not including) the date a decision is issued granting registration to the mark or industrial property right, any third party may oppose the same by filing a written opposition with the National Office of Industrial Property.

Cancellation Proceedings

A cancellation action may be filed against any registered trade mark or other industrial property right that did not meet the conditions for registration at the time the mark or industrial property right was registered, has not been used for the specified period of time, or on other prescribed grounds.

GEOGRAPHICAL INDICATIONS

A geographical indication is protectable in Vietnam if the product bearing the name comes from the location that corresponds to the geographical indication and the reputation, quality or characteristics of the product is principally attributable to the geographical conditions of that location.

Geographical indications are protectable indefinitely from the date a title of protection is granted.

TRADE NAMES

A trade name that is capable of distinguishing the business in connection with which it is used (i.e. that is not confusingly similar to another party’s mark or geographical indication which was protected before the date of first use of the trade name) is protected from the date it is first used in Vietnam.



TRADE DRESS

Though “trade dress” is not specifically defined or expressly protected in any provision of Vietnamese law, Article 130 of the IP Law provides a possible basis for parties to prevent others from imitating the distinctive “get up,” “look and feel” or configuration of their products.

TRADE SECRETS

A trade or business secret is protectable as such if it satisfies the criteria for protection, namely, that the trade secret is not commonly known or easily ascertainable, it gives its holder a commercial advantage over others, and the owner takes such steps as are necessary to keep the trade secret confidential and not easily accessible.

PLANT VARIETIES

Plant varieties are protected for a period of 25 years from the date a title of protection is granted in the case of timber trees and vines, and 20 years for other varieties of plants. The recent amendments to the IP Law include specific definitions for “reproductive materials” and “harvested materials” and Article 186 of the IP Law was amended to state that protected rights to a plant variety “shall also apply to harvested materials generated from unlawful use of reproductive

materials of the protected plant variety.” This amendment is intended to bring the IP Law into closer line with the UPOV.



ESTABLISHMENT OF INTELLECTUAL PROPERTY RIGHTS

To obtain protection for patents (invention patents, utility solution patents and industrial design patents), layout designs of semi-conductor integrated circuits, marks, geographical indications and plant varieties, an application must be filed with the State administrative body responsible for the intellectual property right in question. In the case of patents, layouts, marks and geographical indications, an application must be filed with the National Office of Intellectual Property (“NOIP”) under the Ministry of Science and Technology.

Applications for protection of plant varieties are submitted to the Office for the Protection of New Plant Varieties under the Ministry of Agriculture and Rural Development.

Subject to Vietnam’s obligations under applicable treaties, including its obligation to honor priority dates and protect well known marks, Vietnam follows the “first to file” principle in connection with granting titles of protection to patents, layout designs of semi-conductor integrated circuits, marks, geographical indications.

Foreign individuals and entities must retain a local Vietnamese agent to submit an application for protection of intellectual property rights and provide the Vietnamese agent with a power of attorney.

Examination of Applications

Applications for patents, trade marks, industrial designs and geographical indications are first examined as to form, published, then examined as to substance. The period for examination of an application for registration of industrial property as to form is one month. Recent amendments to the IP Law will extend the period for substantive examination of such applications as follows (i) for patents from 12 months to 18 month, (ii) for trade marks from 6 months to 9 months, and (iii) for industrial designs from 6 months to 7 months. The

period for substantive examination of applications for registration of geographical indications will remain 6 months.

COPYRIGHT

Under Vietnamese law, copyright subsists in original works of authorship from the moment of their creation, including literary, artistic and scientific works, including textbooks, lectures and speeches, works of the press, musical, theatrical and cinematographic works, works of applied art, photographic works, architectural works, maps, sketches and similar drawings, works of folklore and folk art, as well as computer programs. Derivative works may also be protected if this would not prejudice the copyright in the pre-existing work used to create the derivative work.

Pursuant to Vietnam’s obligations under international treaties and conventions and corresponding provisions of the IP Law, protection is also provided to “related rights”, including rights in *performances* of musical, choreographic, theatrical, literary and other artistic works, sound and video recordings, as well as broadcasts and satellite signals carrying coded programs.

Registration of copyright is not required for a work to be protected in Vietnam. However, registration relieves the registrant of the burden of proving copyright or a “related right” in some cases. Applications for registration of copyrights are submitted to the National Copyright Office under the Ministry of Culture, Sports and Tourism.

“Moral Rights” and “Economic Rights”

Under Vietnamese law, copyright consists of “moral rights” and “economic rights.”

Moral rights include the right of an author to assign a title to his/her work, to have their real names associated with the work or have their real names or pseudonyms acknowledged when their works are published or used, to publish or authorise others to publish their works, and to protect the integrity of the work by prohibiting others from modifying their works.

Economic rights, meanwhile, include the right to make a derivative work, to display their work in public, to reproduce the work, to distribute or import the original or copies of the work, to transmit the work to the public by electronic means, and to license the original or a copy of a cinematographic work or computer program.

An author owns the moral rights and economic rights in a work, unless the author has been assigned the task of creating the work by an organisation to which the author belongs, or the author enters into a contract with an organisation or individual pursuant to which the author creates the work. In cases which correspond to the “work for hire” concept in other legal systems, the “economic rights” in a work belong to the assigning organisation or individual, as the

case may be, but the moral rights associated with the work (except for the right to publish or authorise others to publish the work) are retained by the author and may not be assigned. Vietnamese law also recognises moral rights of directors, screenwriters, playwrights, composers, cameramen and others in respect of cinematographic and dramatic works. Persons who finance or materially support the production of a cinematographic or dramatic work own the economic rights associated with the work, but must pay a royalty or other compensation to directors, screenwriters, composers and others with moral rights to the work in question. In addition, performers have certain “moral rights” in their performances and may also have economic rights to the extent they have invested in the performance.

Moral rights (except for the moral right to publish or authorise others to publish the work) are protected definitely indefinitely.

Economic rights in copyrighted works (and the moral right to publish or authorise others to publish the work) are protected for the life of the author plus fifty (50) years, except for cinematographic, photographic, dramatic and other specified works which are protected for fifty (50) year from the date of first publication. The IP Law also provides specific terms of protection for owners of “related rights” such as performers, producers of audio and visual fixations and broadcasting organisations.

The recent amendments to the IP Law, which take effect on 1 January 2009, will extend the term of protection for photographic, cinematographic and stage works, as well as applied artworks and anonymous works to 75 years.

The IP Law lists the specific acts that constitute copyright infringement, as well as the specific acts that constitute infringement of “related rights.” At the same time, the IP Law contains provisions relating to “fair use” (i.e., instances in which a work may be used without having to seek permission or pay royalties) of literary, artistic and scientific works, as well as works that are the subject of “related rights.” The recent amendments to the IP Law include an amendment that will provide copyright owners the exclusive right to *import* sound and video recordings whereas previously the owner’s exclusive rights were limited to copying and distributing these works

In addition, new amendments to Article 26 of the IP Law provide that broadcasting organisations are not required to seek permission to use published works (except for cinematographic works) in connection with a sponsored broadcast, a broadcast with advertisements or to collect money, but must pay royalties in an amount agreed between the parties or as determined by the government or set by the court if the parties are unable to agree. If no sponsorship, advertising or collection of money is involved, permission to use a published work (except for cinematographic works) is also not required and the amount of payable royalties will be set in accordance with government regulations.

Similar amendments to the IP Law apply to “related rights” including the use of sound and video recordings.

Assignment of Copyright and Related Rights

Contracts for the assignment of copyright or “related rights” must be in writing and include certain mandatory provisions and comply in other respects with relevant provisions of the Civil Code. As noted above, the “moral rights” of authors referred to above (except for the right to publish or authorise others to publish) may not be assigned, neither may the “moral rights” of performers be assigned. The “moral rights” of performers including the right to have their name acknowledged while performing, or in connection with the distribution of an audio or visual recording, or broadcast of the performance, as well as the right to prevent others from modifying editing or corrupting the work in any way that is contrary to the honor and reputation of the performer.

Given the specific rights associated with copyrighted works and “related rights”, which can vary depending on the type of work involved and other circumstances, it is important that foreign parties and others involved in business matters involving such rights to seek the advice of counsel before entering into any transaction in relation thereto.



DOMAIN NAMES

New domain name dispute regulations took effect in February 2009 in the form of Circular No. 10/2008/TT-BTTTT (“Circular 10”) dated December 24, 2008 Providing for the Settlement of Disputes Involving Vietnam Country Code Domain Names “.vn” and Circular No. 9/2008/TT-BTTTT (“Circular 9”) Guiding the Management and Use of Internet Resources.

Circular 10 provides a basis for challenging another party’s ownership of a <.vn> domain name in terms that reflect the more widely recognised notion of “cyber squatting” found in the Uniform Domain Name Dispute Resolution Policy (UDRP). Under Circular 10, the plaintiff must show that (i) the disputed domain name is identical or confusingly similar to a trade name or trademark in which that party has lawful rights or

interests, (ii) the domain name owner has no lawful rights or interests in the domain name, and (iii), the domain name was registered and is being used in bad faith, i.e., with malicious intent.

Circular 9 provides that disputes involving domain names that arise in civil or commercial relationship between parties should be resolved in accordance with the Law on Technology and Information which states that domain name disputes shall be resolved through (i) informal negotiations or conciliation, (ii) arbitration or (iii) civil proceedings in Vietnamese court. Under the IP Law, it is also an act of unfair competition to register, possess or use a domain name that is identical or confusingly similar to a protected trade mark (including a well known mark), trade name or geographical indication of another.



ENFORCEMENT OF IPR

In cases of counterfeiting or other infringement of intellectual property rights (“IPR”), the IPR owner may pursue relief through administrative or civil proceedings. In certain serious cases, the infringer may be criminally prosecuted and subjected to fines, imprisonment and even the death penalty, depending on the severity of the infringement. Border measures are also available to victims of infringement under Decision No. 916/QĐ-TCHQ dated 31 March 2008 of the General Department of Customs Promulgating Regulations on Receiving Applications for Controlling Imported and Exported Goods in Relation to Intellectual Property. A recent amendment to Article 218 of the IP Law conforms the IP Law to Article 55 of TRIPS. According to this amendment, temporary suspension of customs procedures in respect of accused goods is 10 working days from the date the applicant is notified by customs of the temporary suspension of customs procedures.

In the case of administrative enforcement, the IPR owner typically enlists the assistance of the Market Management Bureau (“MMB”) and/or the Economic Police in the locale(s)

where the infringing activity is taking place. The infringer shall be compelled to cease the infringing acts and shall receive a warning or monetary fine at least equal to the value of the infringing goods, but no more than five times the value of the infringing goods. Counterfeit goods may also be confiscated, together with the raw materials, equipment and means used to produce them. In addition, counterfeit goods may be ordered destroyed, distributed through no-commercial channels, or transported or re-exported out of Vietnam after the infringing elements of the goods have been removed. As noted above, the IPR owner may also request the assistance of Vietnamese customs by providing information necessary for Vietnamese customs to identify and seize the infringing goods.

One of the recent amendments to the IP Law will make the imposition of administrative fines subject to the Ordinance on Handling Administrative Violation (“the Ordinance”). Under the Ordinance, the maximum fine that can be imposed for infringement of IP right is Vietnamese Dong (“VND”) 500 million (approximately US\$25,000). That is, once the amendments take effect on 1 January 2010, administrative fines based on the value of the infringing goods will no longer apply.

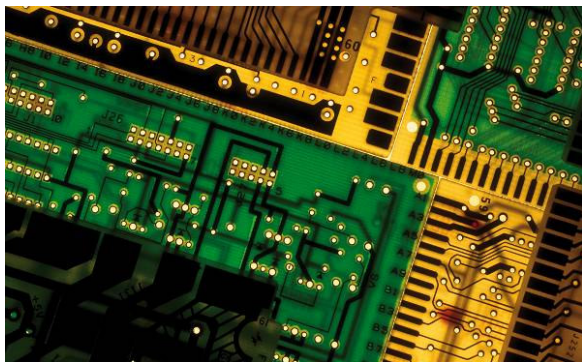
One problematic issue that arose after the IP Law took effect on 1 July 2006 related to which administrative authority could make a determination of trademark or copyright infringement. Prior to the IP Law, the NOIP or Vietnam Copyright Office (“Copyright Office”) could be requested to issue a decision of infringement on the basis of which a party could either send a cease and desist letter to the infringer (a pre-enforcement requirement under the current IP Law except in cases of counterfeiting, which requirement will be eliminated by a recent amendment to the IP Law) and/or enlist the assistance of the MMB or the Economic Police to enforce the party’s rights as described above. However, under the current IP Law, neither the NOIP nor Copyright Office has authority to determine whether an infringement has occurred. Without a decision of infringement from either the NOIP or the Copyright Office, it can be difficult to persuade the MMB or Economic Police (or in the case of border measures, the General Department of Customs and its regional offices) to act except in cases of obvious counterfeiting. On 30 June 2009, Notification No. 18/TB-TVGD was issued authorizing the Vietnam Intellectual Property Research Institute (“VIPRI”) to officially carry out intellectual property assessment, including determinations of infringement, in Vietnam. Since 15 July 2009, the VIPRI has been accepting application from organisations and individuals requesting determination that their intellectual property rights have been infringed.

An IPR owner may also seek relief by filing a civil action in Vietnamese court pursuant to the Civil Proceedings Code, which was adopted on 15 June 2004. The Vietnamese court may order the defendant to cease and desist from its infringing activity, issue a public apology, perform specified

civil obligations and compensate the IPR owner for economic and psychological damage. Upon showing that there is a risk of irreparable damage to the IPR owner or that suspected infringing goods or evidence may be destroyed or lost, the IPR owner may seek preliminary or provisional relief in the form of, amongst others, seizure or sealing of the infringing goods. In the event such relief is granted, the IPR owner must post security in an amount 20% of the value of the goods seized or detained, or at least VND20 million (about US\$1,000). The IPR owner will be required to compensate the defendant in the event the goods are found to be not infringing.

Improved Handling of Contentious IP Matters?

As noted above, while administrative procedures exist for opposing trademark applications and cancelling trademark registrations, the procedural framework in this regard is relatively incomplete. For example, there are no means, in the context of adversarial administrative proceedings, to discover documents, take the deposition of a party or witness or obtain other evidence that may be relevant to the opposition or cancellation proceeding. Moreover, the NOIP can still deny the opposition or cancellation petition even where the applicant or registrant does not respond to the opposition or cancellation petition.



TECHNOLOGY TRANSFER

In addition to provisions in the Civil Code and Commercial Law on technology transfer, Vietnam adopted a new *Law on Technology Transfer*, which took effect on 1 July 2007.

In an effort to promote the development, use and dissemination of advanced technology throughout Vietnam for the socio-economic development of the country, the *Law on Technology Transfer* and related legislation has substantially eased previous rules governing the transfer (by assignment, license or contribution to capital) of technology, know-how and proprietary rights by foreign parties to Vietnamese parties, while at the same time allowing the parties to a

technology transfer contract much greater freedom to determine the terms of their agreement, including the form and amount of payment for such technology transfer.

Technology subject to transfer includes technical know-how, technical information, such as technological plans, processes, solutions, formulae, specifications, drawings and computer programs, as well as methods for optimizing production and renovating technology. Technology to be transferred may be embodied or bundled with proprietary rights such as patents, trade marks, or trade secrets, whether or not such rights are protected in Vietnam.

Transfers of technology are encouraged if, for example, they create new and highly competitive products, new industries or services, save energy or raw materials or protect human health. Transfers of technology are restricted if directed at the protection of the national interest, human health, Vietnamese cultural values or protection of living organisms, natural resources or the environment. Transfers of technology are prohibited if they are inconsistent with laws on occupational safety, protection of human health or the environment, or if the technology transferred creates products that harm Vietnam's socio-economic development, national defense, security or safety, or if the technology is a State secret.

The *Law on Technology Transfer* permits technology to be transferred in the form of:

- a stand alone technology transfer contract;
- in connection with an investment project (e.g. as part of a party's contribution to capital, provided this is documented in writing,
- as part of a franchising agreement,
- as part of a contract transferring/licensing industrial property rights, or
- a contract for the sale of machinery with which a transfer of technology is associated.

A technology transfer contract must be in writing, which can include a telegram, telex, facsimile, message or other form authorised by law.

The law expressly distinguishes between transfers of ownership of technology and transfers of the right to use technology.

A contract for the transfer of restricted technology shall be effective only if first approved by the competent State body.

Vietnamese law previously restricted the amount of consideration a foreign party could receive for the transfer or license of technology, know-how and/or industrial property rights. The Law on Technology, at least in theory, provides the parties greater freedom in this regard. Payment may be made by one or a combination of the following: (i) a lump sum payment or installment payment in money or goods, (ii)

transfer of technology as a contribution to capital, or (iii) another method of payment as agreed by the parties.

A technology transfer contract must be registered with the “competent State body” in cases provided by law.

A Vietnamese and foreign party may agree to apply foreign law or international commercial practice to the technology transfer contract (provided this is not contrary to fundamental principles of Vietnamese law), and even provide for disputes to be resolved by a foreign arbitrator or court.

FRANCHISING

A common way to commercially exploit a trade mark and related intellectual property rights and know-how is through franchising. Though a number of global and regional franchise businesses entered the Vietnamese market, the legal framework for doing this has been sketchy at best.

However, with the adoption of the Commercial Law and related implementing legislation, the franchise form of doing business now has a specific legal basis. General provisions of the Commercial Law on franchising have been supplemented by *Decree No. 35-2006-ND-CP Implementing in Detail the Commercial Law With Respect of Franchising Activities* (“Decree 35”), which provides more specific legal provision governing franchising.

While providing the franchisor and franchisee a significant degree of freedom to contract, the legal framework for franchising in Vietnam, like in other countries, recognises the need for a certain amount of regulatory oversight of the franchising business. In this regard, Decree 35, among other things:

- Requires the franchisor to have operated its franchise system for a least one year before granting a franchise in Vietnam, and if the franchisor’s principal or primary is a Vietnamese business entity, this franchisee must operate the franchise for at least one year before sub-franchising the franchise system;
- Requires that the franchise system be registered with the Ministry of Trade;
- Requires the franchisor to provide the prospective franchisee with a disclosure document at least fifteen 15 days before the parties enter a franchise contract. (The Ministry of Trade has issued regulations regarding information that must be contained in the disclosure document and information that may be disclosed voluntarily.)

In addition to the foregoing, the Commercial Law and Decree 35, impose an affirmative obligation on franchisors to provide the franchisee with initial training and ongoing technical support, to design and layout the outlet at which the goods and/or services of the franchisee are sold (at the franchisee’s

expense), guarantee the intellectual property rights associated with the franchise, and treat all franchisees equally. A violation of any of the obligations provides the franchisee with a right to unilaterally terminate the franchise contract. The franchisor is also required to immediately notify all of its franchisees of important changes to the franchise system. If the franchisor has a primary franchisee, the franchisor is required to discharge other obligations in respect of such primary franchisee.

Franchisors must also be aware of the provisions of Decree 35 dealing with assignments of franchises. For example, if a franchisee provides a written request to assign the franchise, the franchisor must provide a written response within fifteen days approving or refusing assignment of the franchise and provide one of the reasons stipulated in Decree 35.

The Commercial Law also specifies the obligations of franchisees, which include, among other things, the obligation to pay royalties and other sums payable under the franchise agreement, to keep confidential business know-how received during the franchise agreement, even after the contract has expired or is terminated, to operate the franchise according to the franchisor’s system and not to sub-franchise without the franchisor’s consent.

While franchising is another way to do business in Vietnam, and a number of well known franchisors have granted franchises in Vietnam, a prospective franchisor must take care that they comply with the legal framework governing franchising in Vietnam.



Employment

The relationship between an employee and an employer in Vietnam is governed by the Labour Code and its implementing regulations. This legislation is fairly detailed and employers in Vietnam, including foreign invested enterprises, need to be familiar with these regulations and related procedures.

Enterprises are required to sign employment contracts with their employees, and employers with 10 or more employees shall adopt and register internal labour rules.

Labour contracts shall include at least the following terms: job description, place of work, working hours, salary, term of the labour contract, and provisions on social and health insurance.

The three main forms of labour contracts are; (i) an indefinite term contract; (ii) a definite term contract (term of 12 to 36 months); and (iii) a contract for a specific or seasonal job (term less than 12 months).

When a definite contract expires and the employee continues to work 30 days after the date of expiry, the employer and the employee must enter into a new labour contract. If no new labour contract is entered into, the signed contract will become an indefinite term labour contract. The employer and the employee may only enter into a new definite term labour contract for one additional term. If the employee continues to work after that, an indefinite term labour contract must be entered into.

The trade union may require that a collective labour agreement be negotiated with an employer. A company is required to facilitate the establishment of a trade union in the company within six months from the date of commencement of its operation. If a trade union cannot be established within this 6-month period, a provisional executive committee of the trade union of the company may be appointed.

WORKING HOURS AND ANNUAL LEAVE

Normal working hours are eight hours a day (or 48 hours a week based on a six-day work week). A number of government agencies and socio-political organisations have adopted a 40-hour working week, and foreign invested enterprises are encouraged to follow this example.

The employer and employee(s) may agree on overtime but overtime shall not exceed 4 hours a day or 200 hours per year, except in certain special cases. The conditions for such overtime are relatively strict and may require permission of the relevant ministerial or provincial authorities.

In addition to having fully paid days off on public holidays, an employee who has worked for an employer for 12 months is entitled to fully paid annual leave of at least 12 working days.



TERMINATION OF LABOUR CONTRACTS

An employer may terminate a labour contract unilaterally in the following circumstances:

- When the employee repeatedly fails to perform work in accordance with the contract;
- When the employee is dismissed under Article 85 of the Labour Code;
- When the employee suffers illness and remains unable to work after having received treatment for a period of 12 consecutive months (in the case of an indefinite term labour contract) or six consecutive months (in the case of a definite term contract of 12 – 36 months) or longer than half the term of the contract (in the case of a contract for a specific/seasonal job);
- When the employer is forced to reduce production and employment after trying all measures to recover from a natural disaster, a fire or other force majeure event (as stipulated by the Government); and
- When the enterprise or organisation ceases operation.

Prior to termination of a labour contract for any of the first three reasons listed above, the employer is obligated to discuss and reach an agreement with the executive committee of the trade union of the enterprise.

Except for termination due to dismissal, the employer is required to give the employee notice of termination as follows:

- No fewer than 45 working days for termination of indefinite term contracts;
- No fewer than 30 working days for termination of definite term contracts; and
- No fewer than 3 working days for termination of a specific or seasonal job.

An employer is not permitted to unilaterally terminate a labour contract in the following cases:

- When the employee is suffering from illness or injury caused by a work-related accident or occupational disease and is being treated or nursed on a doctor's advice (with a few exceptions);
- When the employee is on annual leave, personal leave of absence or any other type of leave with the agreement of the employer; and
- When a female employee takes marriage, pregnancy, or maternity leave or is raising a child under 12 months, except where the enterprise ceases its operations.

SEVERANCE AND RETRENCHMENT ALLOWANCE

Employees who have worked for an employer for 12 months or longer are, upon termination of their employment, entitled to receive severance payment equal to half a month's salary for each year the employee has been employed.

Note that both employees under indefinite term labour contracts and definite term labour contracts for a period of at least one year are entitled to receive severance payment irrespective of whether (i) the employee has terminated the contract; (ii) the employer has terminated the contract; or (iii) in the case of a definite term labour contract, the contract has expired without having been renewed.

However, an employer is not required to pay severance allowance to an employee where the employee is dismissed as a consequence of either (i) theft, embezzlement, disclosure of business or technical secrets or other acts detrimental to the interests of the employer or (ii) recommitting an offence after being disciplined in accordance with Article 85.1 (b) of the Labour Code.

Where severance allowance is payable under the Labour Code, it is calculated as follows:

Calculation of Severance Allowance

$$\text{Severance allowance} = \text{\# of years employed} \times \text{monthly base salary} \times 0.5$$

The total duration of employment is the total period of employment according to all labour contracts (including any oral labour contract pursuant to which the employee actually worked for the employer) less the period during which unemployment insurance is paid.

Base salary means the average salary without bonus and allowance for the six months immediately preceding termination of the labour contract.

Retrenchment allowance is payable to employees who have worked for the employer for 12 months or more and whose labour contracts have been terminated as a result of organisational restructuring or technological changes. Note, that such employees must be retained and assigned a new job, if possible. The right to retrenchment allowance supersedes any right to receive severance allowance. The retrenchment allowance is equal to one month's salary for each year of service but shall be no less than two months' salary.

NON-DISCLOSURE AND NON-COMPETITION AGREEMENTS

Non-disclosure agreements

The internal labour rules of a company must contain provisions on protection of technical and business secrets and files and data of the employer. Breach of such rules will be dealt with in accordance with the disciplinary provisions of the Labour Code, which provide for reprimand, demotion (position or wage) and dismissal but no monetary fine or salary cessation. If a breach of confidentiality causes damage to the employer, the employee will also be liable to pay compensation for any damages caused by the unlawful disclosure of business or confidential information of the employer.

Apart from general provisions on protection of assets and secrecy in the internal labour rules, the labour contracts may also include a confidentiality clause and such clause may remain binding as a civil obligation after the employment has ended. The employer and the employee may agree that breach of a non-disclosure obligation after the employment has ended shall result in liability in accordance with the provisions of the Civil Code.

Non-competition clauses

No provision of Vietnamese law specifically allows or prohibits employers and employees to enter into non-competition agreements. However, as a practical matter, it may be difficult to enforce a non-competition agreement as courts may be inclined to favor employees when interpreting the Labour Code.

Non-competition clauses should be drafted as fairly as possible, thereby increasing the chances that a court will accept and enforce them. Paying the employee consideration for the undertaking not to compete and limiting the period and geographic scope of the restriction are some ways of doing this. However, there are no precedents on the validity of non-competition clauses and it is not certain that even a fairly

drafted non-competition provision will be enforceable in Vietnam.



DATA PROTECTION AND PRIVACY

Protection of employee data

The collection, storage, use and transfer of personal information of an employee by an employer requires the consent of the employee, which could, for example, be provided in the labour contract. The employer shall keep the personal information of its employees safe and may not publish or disclose it without the consent of the employee, except where the publication or disclosure of information and data is required pursuant to a decision of an authorised State body.

Most employers must have procedures in place to enable an employee to correct and update personal information in the employer's files about the employee.

Employee privacy

Vietnamese law appears to prohibit an employer from opening, infiltrating, seizing or preventing any form of correspondence of its employees without the employee's consent, except where control of correspondence is conducted in accordance with the law or pursuant to a decision of an authorised State body. Violating an employee's privacy can be an offence under Vietnam's Criminal Code.

Due to the general and vague provisions of Vietnamese law with respect to employee privacy, employers are cautioned to try to obtain advance consent to the handling of all employee personal information

LABOUR COSTS

Salary

Vietnamese law provides minimum wage levels which depend on the geographical location of the place of employment. Under Decree 107/2010/ND-CP which took effect on 1 January 2011, the monthly minimum wage varies from VND1.1 million (about US\$55) up to VND1.55 million (about US\$77.5) for unskilled employees working for foreign-invested enterprises under normal conditions

The Ministry of Labor Invalids and Social Affairs revises the minimum wage levels from time to time based on inflation rates and the country's economic development.

For employees who have completed vocational training, the minimum salary is at least 7% above the statutory minimum wage for unskilled employees.

The salary payable during the probation period must be at least 70% of the salary payable upon expiration of the probation period.

The probation period must not exceed 60 days for work which requires specialised or highly technical skills (college level or higher), 30 days for work which requires secondary level skills or the skills of a technician or trades person, and six days in respect of other work.

Contribution to insurance schemes

Non-wage labour costs in Vietnam are relatively high for the Asia region. Social and health insurance contributions by employers are mandatory for all Vietnamese employees employed under labour contracts of a term of three months or more. Employers are also required to participate in the unemployment insurance scheme when employing ten or more employees.

The maximum salary on which insurance premiums (and benefits) are based will be capped at 20 times the minimum wage announced by the Vietnamese Government from time to time. From 1 May 2010, this minimum salary is VND730,000 (about US\$36.5) per month.

Table of contributions to insurance schemes from 1 January 2011

	(1) %	(2) %	(3) %	Total %
Employer	16	3	1	20
Employee	6	1.5	1	8.5
Total	22	4.5	2	28.5

(1) Social insurance

Before 2010, employers made contributions equal to 15% of their employees' salary to the Social Insurance Fund. From 2010, the employers' contributions will increase by 1% every two years until the payment reaches 18%. Meanwhile, employees contributed 5% of their base salaries before 2010, but the contribution from 2010 will increase by 1% every two years until it reaches 8%.

(2) Health Insurance

Under the health insurance scheme effective from 1 July 2009, the contributions will be a maximum of 6% of the base salary, of which the employers and employees contribute 2/3 and 1/3, respectively. This scheme applies to both Vietnamese and foreign employees. From 1 January 2010, the employer shall contribute 3% and the employees shall contribute 1.5% of their base salaries.

(3) Unemployment Insurance and/or severance allowances

On 1 January 2009, an unemployment fund was established and unemployment insurance has become compulsory for employers with ten or more Vietnamese employees and for Vietnamese employees with an indefinite term labour contract or a definite labour contract of between 12 to 36 months.

The regulations suggest that employment periods prior to 1 January 2009 will be dealt with in accordance with the Labour Code and employment periods from 1 January 2009 onwards will be dealt with in accordance with the regulations on unemployment insurance, at least for employees who are eligible to make contributions to the unemployment insurance fund. Further, it seems that the current system of severance payments under the Labour Code will continue to apply to employees who are not eligible to pay unemployment insurance.

Unemployment insurance contributions to be paid by each employer and employee are 1% of the base salary.

Employees who have paid unemployment insurance premiums for at least 12 months within a 24 months period prior to their unemployment will be eligible to receive unemployment payments from the unemployment insurance fund.

Personal income tax (PIT)

Payable personal income tax (PIT) indirectly affects the salary level and therefore the labour costs.

The new Law on PIT, which took effect on 1 January 2009, provides that foreign employees resident in Vietnam and Vietnamese employees shall be subject to the same PIT rates on not only their assessable income from salary but also on their worldwide income. The assessable income from salary is

equal to the taxable income less the contributions to insurance schemes and deductions.

Previously, a number of expatriates working in Vietnam have been employed under net contracts in which the employer is responsible to pay PIT on behalf of the employees. Under the new PIT law system all individuals are responsible for paying their own PIT and it is doubtful whether PIT paid by the employer is a deductible expense for calculation of the corporate income tax payable by the employer. For this reason, employees and employers are encouraged to enter into gross salary contracts.

Although the labour contract may denominate salary in a foreign currency, the salary must be paid in Vietnam dong at the exchange rate of the date of payment.

LABOUR DISPUTES

In the event of a labour dispute, the employer and employee(s) are required to try to settle the dispute by conciliation.

For individual labour disputes, if the parties are unable to resolve the labour dispute amicably, the dispute may be referred to a labour reconciliation council set up in the enterprise or to a labour conciliator appointed by the Chairman of People's Committee at district level. Failing resolution, disputes will then be referred to the labour division of the People's court. Some individual labour disputes can be directly handled by the courts without first being referred to a labour reconciliation council/labour conciliator including a dispute relating to disciplinary dismissal or arising from unilateral termination of a labour contract; a dispute relating to payment of compensation for loss and damage or payment of allowances upon termination of a labour contract; or a dispute between a domestic servant and the employer.

Collective labour disputes in respect of employees rights may be resolved through (i) conciliation by labour reconciliation council or labour conciliator; (ii) settlement by the Chairman of the People's Committee at the district level (in cases of unsuccessful conciliation); and (iii) settlement by court or a strike by the employees (if the decision of the People's Committee is not satisfactory).

Collective labour disputes in respect of benefits (e.g. a request of the employees to establish new labour conditions) may be resolved through (i) conciliation by the labour reconciliation council or labour conciliator; (ii) another conciliation by the labour arbitration council (set up by the Chairman of the People's Committee at the provincial level) (if

the first conciliation is unsuccessful); and (iii) a strike by the employees (if the second conciliation is unsuccessful).

The employees, the trade union or the employer can petition a court to consider the legality of a strike. If a strike is unlawful, the employees must return to work or be subject to disciplinary penalties in accordance with the law. The employer may claim compensation for damages caused by an unlawful strike from organisations and individuals who participate in an unlawful strike.

IMMIGRATION AND VISAS

Visas to enter Vietnam are granted to expatriates as follows:

(a) Single-entry visas or multiple-entry visas not exceeding 12 months may be issued to persons who enter Vietnam to implement projects under investment certificates or co-operation contracts with Vietnamese bodies or organisations; dependents of persons who enter Vietnam to work for foreign offices located in Vietnam;

(b) Single-entry visas or multiple-entry visas not exceeding six months may be issued to persons who are invited by a body, organisation or individual in Vietnam;

(c) Single-entry visas valid for 15 days may be issued to persons who apply for entry without any invitation from a body, organisation or individual in Vietnam.

A visa to enter Vietnam should normally be obtained from a Vietnamese diplomatic agency in the home country prior to arriving in Vietnam, but a visa on arrival may be arranged in some cases.

Vietnam has signed bilateral agreements providing for visa exemptions with a number of countries (e.g. Thailand, Malaysia, Singapore and Indonesia) and given unilateral visa exemptions to citizens of other countries (e.g. Denmark, Norway, Sweden, Finland, Japan and South Korea), but with different conditions and terms. Therefore, visa exemption details should be checked for each specific country.

To encourage Vietnamese residing overseas ("Viet Kieu") to return to Vietnam, a Viet Kieu and his/her spouse and children are exempt from the visa requirement, provided they have valid travel documents and obtain a visa exemption certificate. The exemption certificate is valid for up to 5 years.

For expatriates who hold a work permit or are exempt from applying for a work permit (as mentioned below), a temporary resident card (in lieu of a visa) is available for terms not exceeding 3 years.

WORK PERMITS

In accordance with the Labour Code and other relevant laws, expatriates working in Vietnam must, subject to certain exceptions, obtain a work permit. Foreign employees who satisfy the conditions provided by law may be employed in jobs for which qualified Vietnamese employees are not available.

A work permit is valid for up to 3 years and may be renewed, provided that the employer can demonstrate that there is no Vietnamese national available with the skills to fill the position at the end of the initial period.

The following groups are exempt from obtaining work permits (but notification to the labour authority is still required):

- foreign employees entering Vietnam to work for less than three months;
- members of members' councils or owners of a limited liability company;
- members of the board of management of a joint stock company;
- foreigners entering Vietnam to offer services;
- foreigners entering Vietnam for less than three months to deal with emergencies;
- foreign lawyers certified to practice in Vietnam.

FOREIGN EMPLOYEE LIMITS

Previously, the number of foreign employees permitted to work for an enterprise was capped at 3% of the enterprise's employees.

Under regulations that took effect on 12 April 2008, this limitation was abolished, but where foreign enterprises transfer foreign employees internally to their commercial operations in Vietnam, at least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals. However, each foreign enterprise shall be permitted to have a minimum of three or more managers, executive directors and experts who are not Vietnamese.

DRAFT LABOUR CODE

Currently, a new Labour Code is being drafted and is expected to be submitted to Vietnam's National Assembly for approval by the end of this year. The new Labour Code is expected to significantly overhaul the existing Labour Code which has been in effect since 1994 and is considered outdated.

Dispute Resolution

Vietnam's court system remains underdeveloped and it can be cumbersome and time-consuming to initiate a court action and obtain a court ruling in Vietnam. Moreover, Vietnamese law alternative dispute resolution is not formally recognised by Vietnamese law as a form of dispute resolution.

In 2003, arbitration became an official mechanism for resolving disputes arising from "commercial activities." In June 2010, the Vietnam National Assembly passed the Law on Commercial Arbitration, which took effect on 1 January 2011 ("Arbitration Law"). The Arbitration Law is aimed at encouraging the resolution of disputes by arbitration and facilitating the development of commercial arbitration activities in Vietnam in accordance with the country's ongoing socio-economic development.



CATEGORIES OF DISPUTES THAT MAY BE ARBITRATED

The Arbitration Law lists three categories of disputes that may be resolved through arbitration, including: (1) disputes arising from "commercial activities", defined as any "activity for profit-making purposes comprising purchase and sale of goods, provision of services, investment, commercial enhancement, and other activities for profit-making purposes"; (2) Disputes where at least one party is engaged in commercial activities; (3) Other disputes where the law stipulates that arbitration is a permissible means of resolution. For example, investment activities governed by the Law on Investment may be resolved by arbitration.

ARBITRATION AGREEMENT AND CENTRES

There must be a valid arbitration agreement in order for a dispute to be referred to arbitration. An arbitration agreement must be in writing, either as an arbitration clause in a contract or by way of a separate agreement. If a dispute falls within the scope of a valid arbitration agreement, but a party attempts to institute court proceedings, the court does not have jurisdiction over the matter.

The Arbitration Law allows the parties to resolve their disputes by an arbitration tribunal empanelled by an arbitration centre or by an arbitration tribunal established by the parties. There are seven arbitration centres in Vietnam. The most well-known institutional centre in Vietnam is the Vietnam International Arbitration Centre ("VIAC") based in Hanoi. VIAC has notably appointed a number of foreign arbitrators to its panel of arbitrators.

At present, there are no foreign arbitration centres in Vietnam. Although the Arbitration Law permits foreign arbitration centres to enter Vietnam's dispute resolution market by establishing branch or representative offices, there are currently no procedures for doing so. Thus, foreign arbitration centres must wait for the Government to issue detailed implementing regulations.

CHOICE OF LAW AND LANGUAGE OF PROCEEDINGS

If a dispute involves a foreign party or foreign law, the arbitral tribunal applies the law (whether Vietnamese law or the law of another jurisdiction) to the dispute resolution as agreed by the parties. If the parties do not agree on the applicable law, the arbitral tribunal applies the law that it considers most appropriate. On the other hand, in a dispute between purely domestic parties which does not involve a foreign element, the arbitration tribunal must apply Vietnamese law to resolve the dispute.

It should be noted, however, that where the arbitration tribunal or a competent court determines that the choice of foreign law is contrary to the fundamental principles of the law of Vietnam, such choice of law will be invalid. Further, foreign law may not be applied where such application would conflict with local regulations.

With respect to the language of arbitration proceedings, disputes not involving a foreign element must be conducted in Vietnamese, unless one party is an enterprise with foreign invested capital. For disputes involving a foreign element or in which one party is an enterprise with foreign invested capital, the parties may agree to the language to be used in the arbitration proceedings. If parties do not agree, the arbitral tribunal will determine the language.

ENFORCEMENT OF ARBITRAL AWARDS

With respect to domestic awards, if a party fails to comply with an arbitral award within thirty days of its issuance, the prevailing party may request the court's judgment enforcement agency to enforce compliance with the arbitral award.

For awards made in Vietnam, enforcement of such awards outside Vietnam will depend on the applicable arbitration law and whether there is reciprocity between Vietnam and the

country in which enforcement is sought. In September 1995, Vietnam became a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This requires the courts of a country that has ratified the New York Convention to recognise and enforce foreign arbitral awards as court judgments unless one or more of the limited exceptions apply. The Civil Proceedings Code of Vietnam allows for bilateral enforcement of arbitral awards in accordance with the principles of the New York Convention.

Regarding the enforcement of foreign arbitral awards in Vietnam, like foreign court judgments and decisions, foreign arbitral awards cannot be enforced in Vietnam until they are formally recognised by the local provincial People's Court. Foreign arbitral awards are arbitral awards made outside of Vietnam or within Vietnam by a foreign arbitrator mutually appointed by the parties. As indicated above, subject to certain exceptions, Vietnamese courts are required to recognise and enforce an arbitral award made in another New York Convention state as if it were a judgment of a Vietnamese court. However, to date, only a limited number of foreign arbitral awards have been submitted for enforcement in Vietnam.

Due to the uncertainty surrounding the enforcement of arbitral awards in Vietnam, foreign investors and foreign invested enterprises may prefer to refer disputes with their Vietnamese counterparts to arbitration in either Hong Kong or Singapore, which are geographically close and have developed legal systems.

The Arbitration regime in Vietnam is still developing and awaits the issuance of guidelines and regulations to implement the Arbitration Law.

Taxation

The principal taxes applicable to foreign invested enterprises are the Corporate Income Tax, Value-Added Tax, Personal Income Tax and Social and Health Insurance contributions. Other taxes and similar expenditures that may affect foreign invested enterprises and foreign investors include land rent, import and export tariffs, special sales taxes (excise taxes), natural resource tax (payable in respect of mining and petroleum projects), foreign contractor withholding and other withholding taxes, as well as capital assignment profits tax. In May 2008, the National Assembly passed new laws on corporate income tax, personal income tax and value added tax which took effect on 1 January 2009.

CORPORATE INCOME TAX

Foreign investors are subject to tax based on the form of legal presence in Vietnam. In principle, all foreign invested enterprises that are established as a legal entity in Vietnam and branches established in Vietnam are subject to Corporate Income Tax ("CIT") at the standard rate of 25% as of 1 January 2009.

Tax incentives are available for encouraged projects and especially encouraged projects (see discussion above) and lower tax rates of 20%, 15% and 10% may apply to enterprises assigned special tax treatment for a certain period. Enterprises may also be eligible for a tax holiday and a 50% reduction of CIT. Under the new law on corporate income tax, the preferential tax rates will be 20% and 10%.

The Ministry of Finance issues guidelines to clarify tax concessions and the period of time for which they will be available for different types of investments.

Generally, investments in underdeveloped areas and in priority industries will enjoy larger concessions for longer periods.

Enterprises may carry forward losses for a period of up to five years, provided that they have been registered with the tax authorities. Effective 1 January 2009, losses incurred in connection with the transfer of real property can only be deducted from income realised from such activities.

Provisional CIT is payable in quarterly installments during the year. The CIT obligation of the enterprise is finalised and paid at the end of the tax year.

Representative offices currently do not pay CIT as they are not permitted to generate profits in Vietnam. However, the RO's Chief Representative, and its Vietnamese and expatriate employees are required to pay Personal Income Tax and ROs are required to obtain a tax code and to pay personal income tax on behalf of their employees.

VALUE ADDED TAX

Although Value Added Tax ("VAT") is levied on direct consumption of goods and services, enterprises are required

to pay VAT on behalf of their customers. Provisional VAT returns are required to be filed monthly. The VAT payable is the difference between the output VAT charged by a business and any input VAT incurred by the enterprise. The standard VAT rate currently stands at 10%, although 0% VAT and 5% VAT apply to certain products and services. Other goods and services are exempt from VAT (such as certain medical services, training, credit services and others). Providers of tax exempt goods and services may not recover any input VAT paid by them. Provisional VAT returns are reconciled with the total VAT debt for any tax year at the end of the year.

PERSONAL INCOME TAX

Foreign individual investors, expatriate employees working in Vietnam and Vietnamese employees are subject to Personal Income Tax ("PIT").

Resident foreigners

Taxable individuals are residents as well as non-residents. PIT is applicable to the worldwide income of residents and to income earned within the territory of Vietnam of non-residents. Resident foreigners and Vietnamese employees are treated equally for PIT purposes.

A **resident individual** is any person who (i) is present in Vietnam for 183 days calculated within one calendar year or within 12 consecutive months from the date of entry into Vietnam; or (ii) has a regular residence in Vietnam, being a permanent residence or a residence rented pursuant to a lease for a term of 90 days or more.

Non-resident individuals are persons who do not satisfy one of the above conditions. For non-residents, a flat PIT rate of 20% applies on income from employment in Vietnam irrespective of where such income is paid.

The scale of progressive tax rates applicable to *resident* individuals is as follows:

Tax Bracket	Annual Income in Million VND (estimated US\$ Equivalent)	Monthly Income in Million VND (estimated US\$ Equivalent)	Tax rate -%
1	Up to 60 (\$3,000)	To 5 (\$250)	5
2	Over 60 to 120 (\$6,000)	Over 5 to 10 (\$500)	10
3	Over 120 to 216 (\$10,800)	Over 10 to 18 (\$900)	15
4	Over 216 to 384 (\$19,200)	Over 18 to 32 (\$1,600)	20
5	Over 384 to 624 (\$31,200)	Over 32 to 52 (\$2,600)	25
6	Over 624 to 960 (\$48,000)	Over 52 to 80 (\$4,000)	30
7	Over 960 (over \$48,000)	Over 80 (over \$4,000)	35

For the purpose of calculating PIT, taxable income received in foreign currency shall be converted into VND at the average exchange rate published by the State Bank of Vietnam on the date the income arises.

OTHER TAXES

A range of other taxes and other payments may apply to foreign investors and foreign invested enterprises in Vietnam, including withholding taxes on royalties from technology transfer and intellectual property licenses, as well as withholding on interest, import tariffs, land rent, and so forth.

NO PROFITS REMITTANCE TAX

Vietnam's profits remittance tax regulations were abolished by the Government in 2004. This means that foreign investors do not have to pay tax when they transfer dividends from investments in Vietnam overseas, provided that CIT has been paid on the enterprise's profits.

Hogan Lovells Vietnam Practice

HOGAN LOVELLS

Operating from over 40 offices in Europe, Asia, the Middle East and the Americas, Hogan Lovells is one of the world's leading international law firms. We advise many of the world's largest corporations, financial institutions and governmental organisations.

We regularly act on complex matters involving regulatory affairs, multi-jurisdictional transactions and business ventures as well as some of the most high-profile commercial disputes.

Hogan Lovells offers:

- a unique, high quality transatlantic capability, with extensive reach into the world's financial and commercial centres;
- particular and distinctive strengths in the areas of dispute resolution, regulation, antitrust, corporate, finance, intellectual property and real estate; and
- access to a significant depth of legal knowledge and resources in many key industry sectors, including energy, financial services, telecommunications media and technology, life sciences and pharmaceuticals, consumer goods, real estate, transport, natural resources and infrastructure.

The firm is committed to client service, commerciality and teamwork. We also have a long and established tradition of providing pro bono legal advice to those parts of society who are often the most disadvantaged and in greatest need.

HOGAN LOVELLS IN VIETNAM

Hogan Lovells' Vietnam offices have considerable experience in assisting clients with foreign investment and other business interests in Vietnam. Hogan Lovells was the first international law firm to open a representative office in Ho Chi Minh City, the country's economic hub, in 1994, and the first firm to obtain branch status in Ho Chi Minh City in 1996. We opened our Hanoi office in January 2009 to better meet the demands of our clients in the growing Vietnam market.

Hogan Lovells offers clients the experience of international lawyers with extensive knowledge of Vietnamese laws and considerable practical experience with transactions concerning Vietnam, including negotiating with Vietnamese parties, both private and governmental.

Hogan Lovells has helped clients in a wide range of matters such as oil and gas, real estate and construction, M&A and related transactions, intellectual property including trade mark and patent registration and enforcement, telecoms, technology transfer, banking, capital markets and insurance as well as foreign investment advice relating to all forms of foreign investment. Hogan Lovells has also worked with the

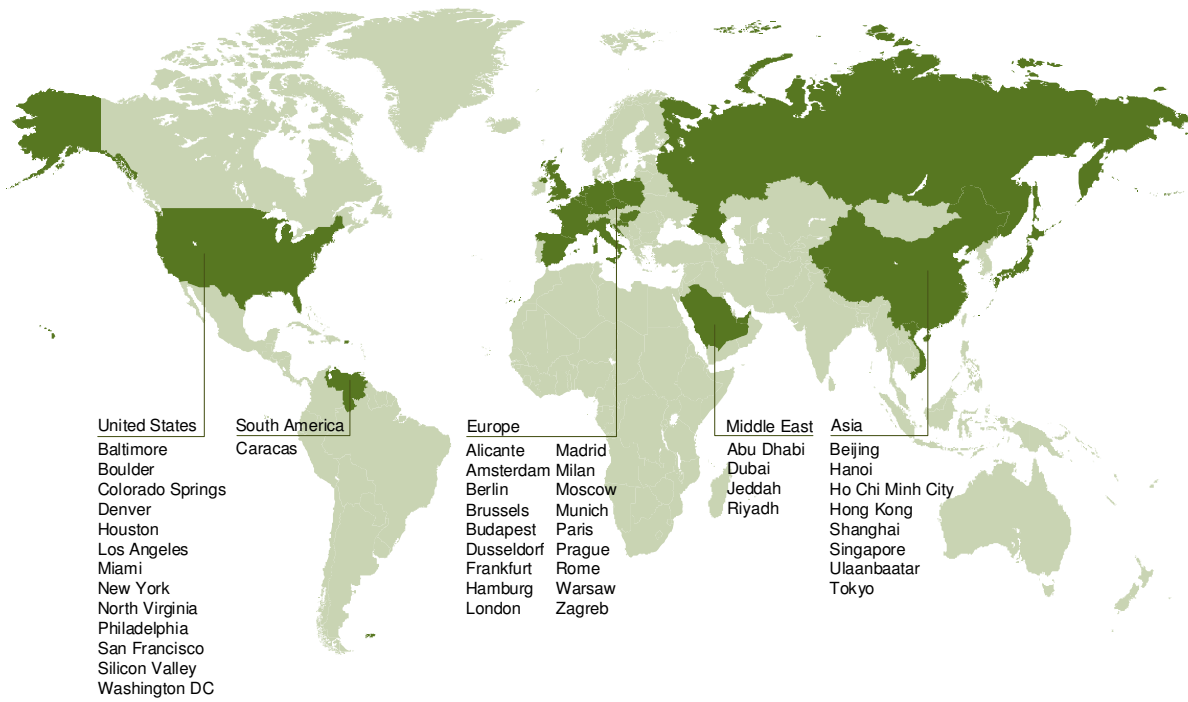
Government of Vietnam on bench mark documentation for a high profile water BOT project in Ho Chi Minh City.

From Hogan Lovells' offices in Ho Chi Minh City and Hanoi, we can assist clients throughout Vietnam and can also assist with matters relating to Cambodia and Laos, such as establishing foreign invested companies and protecting intellectual property rights in those countries.

Glossary of terms

BCC:	Business Cooperation Contracts
BOO:	Build-Own-Operate
BOT:	Build-Operate-Transfer
BT:	Build-Transfer
BTO:	Build-Transfer-Operate
EPZ:	Export Processing Zone
HTZ:	High Tech Zone
IP:	Intellectual Property
IPR:	Intellectual Property Right(s)
IZ:	Industrial Zone
JSC:	Joint Stock Company (Shareholding Company)
MMLLC:	Multi-member Limited Liability Company
MPI:	Ministry of Planning and Investment
NOIP:	National Office of Intellectual Property
SMLLC:	Single Member Limited Liability Company
VCP:	Vietnamese Communist Party
WTO:	World Trade Organisation

Our offices



Notes

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