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Business Law Practitioners



VIETNAM

Legal Guide

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Contents

A Brief Introduction to Vietnam	3
Economic Growth.....	3
Population Size and Language	3
Business Hours/Time Zone	4
Culture and Religion in Vietnam	5
A Brief History.....	5
Vietnamese Names	6
Some Hints for Customs and Practices	7
Festivities.....	7
The National Assembly	8
The Government	8
The Judiciary	8
Legal System	9
Regulatory Framework	10
Investment Treatment and Protection.....	11
Foreign Investment Entry	11
Government Approval and Registration.....	12
Forms of Investment.....	13
Establishing An EO	13
Branches and Representative Offices	13
Investing in An Existing Enterprise.....	14
Investing via Contractual Arrangements.....	14
Corporate Forms	16
Banking & Finance	17
Management Forms of Credit Institutions.....	17
Restrictions on Foreign Ownership.....	18
Capital Markets	19
Conditions for A Public Offer of Securities.....	19
Restrictions on Foreign Ownership.....	20
Land & Housing	21
Land Allocation.....	22
Land Lease and Other Forms of Land Acquisition in Vietnam	22
Foreign Housing/Property Ownership.....	23
Labour Law	24
Labour Contract.....	24
Probation	25
Minimum Wage.....	25
Employment of Foreign Expatriates	25
Taxes	27
Corporate Income Tax.....	27
Value-Added Tax.....	28
Import and Export Duties.....	28
Foreign Contractor Tax.....	28

Personal Income Tax.....	29
Intellectual Property	31
Selected Sector Regulations	35
Healthcare	35
Telecommunications	35
Trading Activities	36
Dispute Resolution	37
Dispute Settlement by Vietnamese Courts	37
Foreign and International Arbitration and Court.....	37
Dispute Settlement by Vietnamese Arbitration	38
About Indochine Counsel	39
Contact Us	40

A Brief Introduction to Vietnam

Economic Growth

The Socialist Republic of Vietnam or her short name “Vietnam” is a country in Southeast Asia, that borders the Gulf of Thailand, Gulf of Tonkin and the East Sea, alongside China, Laos and Cambodia. Vietnam has an ever-increasing open and growing economy and was ranked the 36th-largest in the world in terms of gross domestic product (GDP) and the 26th in terms of the purchasing power parity (PPP) in 2022. Over the past thirty years, Vietnam has been shifting its economic policies and thanks to it, Vietnam’s economy has enjoyed fairly rapid economic growth. Vietnam is not only integrating into the world’s economy but also trying to be part of the global supply chain as a manufacturing hub and agricultural exporter.

In fact, Vietnam is an active player in international trade. Vietnam joined the Association of Southeast Asian Nations (ASEAN) in 1995 and became a party to the ASEAN Free Trade Agreement in 1996. Vietnam became a member state of the World Trade Organization (WTO) on 11 January 2007. Besides, it was a contracting party to the Vietnam - Eurasian Economic Union Free Trade Agreement (Vietnam - EAEU FTA) which came into force on 5 October 2016, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which came into force on 30 December 2018, and the Regional Comprehensive Economic Partnership (RCEP) on 1 January 2022. On 30 June 2019 Vietnam entered into the European Union-Vietnam Free Trade Agreement (EVFTA) with the European Union which came into force on 1 August 2020. In addition to those multilateral trade agreements, Vietnam has signed bilateral trade agreements with all major economies such as the Vietnam - United States Bilateral Trade Agreement (BTA) signed between Vietnam and the United States of America with its effect in 2001, the Vietnam - Japan Economic Partnership Agreement (VJEPA) between Vietnam and Japan in 2009, the Vietnam - Australia Free Trade Agreement (VAFTA) between Vietnam and Australia in 2015, the Vietnam - South Korea Free Trade Agreement (VKFTA) in 2015 and many more.

Agriculture represents approximately 12% of Vietnam’s GDP and employs 30% of the total workforce. The main crops harvested in Vietnam include rice, coffee, cashew nuts, corn, pepper, sweet potatoes, peanuts, cotton, rubber and tea as well as aquaculture. Industry represents 38% of GDP and employs 33% of the workforce. The energy sector has boomed in recent years with renewable energy sources. Vietnam has also invested in high value-added industries such as cars, electronics and computer technologies (software). Services represent 41% of GDP and employ 38% of the workforce. The main services include tourism.

Vietnam’s labour force is one of its competitive advantages and accounts for an important part of Vietnam’s future economic growth. Compared with many developing countries, Vietnam is famous for its young, hardworking, highly literate and easy-to-train labour force. The labour force aged 15 and older in the fourth quarter of 2022 was 52.1 million, of which 51 million people are employed.

Population Size and Language

The total population in Vietnam is about 100 million people. Vietnamese is the official language.

Vietnamese is a tonal language in which the rise and fall of the voice can change the meaning of the words. In written form, Vietnamese uses the Roman alphabet and accent marks to show tones. There are other languages spoken as well: English, Chinese, French, Japanese, Khmer, Cham and other minority languages spoken by tribes inhabiting the mountainous regions. English is the most popular foreign language and widely spoken in some urban areas. Moreover, English study is obligatory in most schools.

Business Hours/Time Zone

A normal working day in Vietnam starts between 7:00 am and 8:30 am and ends between 4:00 pm and 6:00 pm, from Monday to Friday and until noon on Saturday, leaving the afternoon and Sunday off. Lunch is taken very seriously and virtually everything shuts down between noon and 1:30 pm. Government workers tend to take longer breaks between 11:30 am and 2:00 pm.

The Time zone is (UTC+07:00).



Culture and Religion in Vietnam

A Brief History

Vietnamese scholars argue that the history of Vietnam began in the mists of time with a legendary line of Kings called the Hung. These kings reigned before written records existed and it wasn't until Chinese imperial authorities expanded their rule to the area of present-day northern Vietnam that the history of what would eventually become what we now know as the country of Vietnam truly began.

From the early 2nd Century CE Chinese administrators controlled the Red River valley and the mountainous regions of northern Vietnam. They established forts, imposed taxes and corvées, and forced the indigenous peoples to learn Chinese. It wasn't until the 10th Century that Vietnamese forces would rise up and defeat their Chinese masters to become the independent kingdom of Dai Co Viet.

At first the new kingdom struggled to maintain consistency in its ruling family. Three separate dynasties came to power in the first 70 years of its existence. But then the Ly Dynasty rose to dominance and consolidated its power. The Ly emperors founded the city of Thang Long—what would become Hanoi—and began to establish an administration that quickly expanded throughout the rural territories. Women were given key roles and minor skirmishes were fought with both the

Chinese and the Khmer Empire to the south and west.

The Tran Dynasty followed and modified written Chinese to become something unique to Dai Co Viet, a writing method known as '*chu nom*' that would be retained as the primary alphabet for Vietnamese until the French occupation of the 19th and 20th Centuries. Three times the Mongols invaded Dai Co Viet and three times the Vietnamese fought them off. Also at this time, the kingdom began what would become an expansion to the south slowly taking over territory that had belonged to the Kingdom of Champa—a one-time important maritime trading nation that would eventually be consumed by the expanding country.

Disputes between powerful families eventually led to infighting in the capital and supporters of the declining Tran called in Chinese aid to maintain power. For a brief time, the Chinese oversaw Dai Viet as part of its empire. Le Loi and his generals, however, in 1428 cast out the Chinese invaders and established the Le Dynasty. They called the country Dai Viet. At the height of their powers, the Le established an administration based on Chinese Confucian philosophy, enacted a revolutionary law code, and expanded the territory of the kingdom even farther south. But as with all dynasties, the Le fell into disrepute and the leading families fractured again.

The split led to the establishment of competing dynasties and for years the north and south fought over the legitimacy of their claims to control the kingdom. Two families eventually came to dominate and essentially split the kingdom into two. It wasn't until the Tay Son Rebellion in the late 18th Century that this situation changed.

The Tay Son movement was a peasant rebellion that expanded both north and south and eventually controlled the territory from Hanoi in the north to Gia Dinh in the south. Despite their final demise at the hands of the southern Nguyen Dynasty—with support from an alliance of Khmer, Thai, and French soldiers—the country would now be united.

In 1802, Prince Nguyen Anh united the northern, central and southern regions of the country and called it Vietnam. The prince and the emperors who followed established programs to build new bridges and castles and restore old structures. The French military launched their first major attack against Vietnam in 1847. They fired upon the Vietnamese at the port of Da Nang, a city in central Vietnam. France took control of Vietnam, and in 1887 Vietnam became a French colony. They introduced the Vietnamese to European schooling and customs.

At the end of World War II the Japanese military took over Vietnam and France tried to regain control of Vietnam. Ho Chi Minh, a Vietnamese Communist, led an independence movement, called the Vietminh, against the French. The Vietminh subsequently defeated the French military and Vietnam was divided into two zones: the Communist-ruled north and a republic in the south. The country was united in 1975 after the war against the US and its regime in the south.

Vietnamese Names

An example of a Vietnamese name is Nguyen Van Nam, where Nguyen is the surname, Van is the middle name and Nam is the first name. Vietnamese names are normally spoken and written in this order. The Vietnamese always call someone his or her first name, e.g., if I want to ask for someone's

help whose name is Nguyen Duc Hung, I will say "Hung, could you help me, please!"

The most popular surname used in Vietnam is Nguyen. According to a statistical study conducted in 2005, Nguyen accounts for nearly 38% of the population.

The most popular and traditional middle names used in Vietnam are "Van" for males and "Thi" for females. Hence, if you see a name of someone in a list who you have never met before, you may know the sex of this person by the middle name. Nevertheless, these traditional middle names are getting less popular among young generations.

Some Hints for Customs and Practices

- When inviting a friend on an outing, the bill is paid for by the person offering the invitation. Nevertheless, the younger generations now prefer equal division among the participants.
- Vietnamese may not take appointment times literally and will often arrive late so as not to appear overly enthusiastic.
- Summoning a person with a hand or finger in an upright position is reserved only for animals or inferior people. Between two equal people it is a provocation. To summon a person, the entire hand with the fingers facing down is the only appropriate hand signal.
- Modesty and humility are emphasized in the culture of the Vietnamese and deeply ingrained into their natural behaviour. Therefore, bragging is often criticized and avoided. When being praised for something, a Vietnamese often declines to accept praise by humbly claiming that he does not warrant such esteem. The Vietnamese do not customarily demonstrate their knowledge, skills, or possessions without being asked to do so. Nevertheless, these traits have become less common today.

Festivities

Celebrated across the country, the Tet Festival is the Vietnamese Lunar New Year and is a time for family and friends to get together. It takes place in the first few days of the Chinese Lunar Calendar.

According to Buddhist sutras, the first and the fifteenth days (*Ngay Ram*) of every lunar month are Buddha's Days, when acts of worship are performed in Buddhist shrines and before family altars. Joss-sticks are lit and trays of fruit and other offerings are laid out.

Women in Vietnam have two days for celebration a year, on 8 March (International Women's Day) and 20 October (Vietnamese Women's Day), respectively. On these days, many women dress up, some of them may wear *ao dai*, a traditional costume of Vietnamese women. On these days, Vietnamese men often send their wishes or flowers and/or invite lunch or dinner to their female family members, friends or colleagues.

The National Assembly

The National Assembly is the highest representative body of the Vietnamese people and the highest state power body of the Socialist Republic of Vietnam. The National Assembly exercises constitutional and legislative powers, decides on important issues for the country, and conducts supreme oversight over the activities of the State. The National Assembly has about 500 members, representing 63 cities and provinces in Vietnam, elected by popular vote to serve a five-year term.

The National Assembly has the main powers and duties as follows: (i) to make and amend the Constitution; to make and amend laws; (ii) oversight over the observance of the Constitution, laws and resolutions of the National Assembly by the governmental agencies; (iii) to decide on the country's major goals, targets, policies and tasks for socio-economic development; (iv) to decide on fundamental national financial and monetary policies; to introduce, change or abolish taxes; to decide on the division of revenues and expenditures between the central and local budgets; to decide on the safe limits for national, public and government debts; to decide on state budget estimates and the allocation of the central budget; and to approve the final accounts of the state budget; and (v) to elect, relieve from duty or remove from office the key executive and judiciary officials.

The Government

The politics of the Socialist Republic of Vietnam are defined by a single-party socialist republic framework, where the President of Vietnam is the head of State and the Prime Minister of Vietnam is the head of government, in a one-party system led by the Communist Party.

The President of the Socialist Republic is elected by the National Assembly for a five-year term and acts as the commander-in-chief of the Vietnam People's Armed Forces and Chairman of the Council for Defence and Security. The government as the main executive state power of Vietnam comprises the Prime Minister, the Deputy Prime Ministers and Ministers heading ministries and ministerial equivalent bodies. Executive power is exercised by the government and the President of Vietnam. The executive branch is responsible for the implementation of political, economic, cultural, social, defence, security and external activities of the State.

The Judiciary

The Vietnamese court system includes the Supreme People's Court, the Superior People's Court (introduced by the Law on Organization of People's Court of 2014), the Provincial People's Courts in cities and provinces, and the District People's Courts.

A dispute which is brought before court for settlement is tried at two levels, first instance and appellate levels. An appellate court may either uphold or reverse the ruling from the court of first instance. Most cases begin at the district or provincial court level with the possibility of appeal to the high/superior courts. In certain cases, a judgment from an inferior court can be challenged before a

Superior People's Court or the Supreme People's Court.

All Courts (except for the Supreme People's Court and District People's Courts) are divided into six divisions: criminal, civil, administrative, economic, labour, and family & juvenile. Such divisions at the District People's Court are not compulsory. Under the Civil Procedure Code, all disputes, whether civil, commercial or labour, are subject to the same set of procedural rules. A dispute may, depending on the type and the value of the dispute, either be heard at the district court or the provincial court at the first instance. The recognition of foreign court judgments and foreign arbitral awards falls under the jurisdiction of the provincial court.

Legal System

Vietnam follows the civil law tradition so its sources of law traditionally comprised only written legislation commonly referred to as legal instruments. These are laws and regulations enacted by legislative making bodies which are binding on citizens and enforceable by the State. Until recently, court judgments are normally not officially considered a source of law as judges do not have the power to interpret the law and court judgments are not binding in subsequent cases. However, since 2016, recognizing the benefits and necessity of court precedents, the Supreme People's Court has been selecting and announcing court precedents for inferior courts to follow. Until early 2023, 63 court precedents in civil, criminal, administrative and commercial areas have been adopted.

The legal system is organized in a hierarchy in which higher-ranking legal instruments set out general rules and lower-ranking legal instruments provide the details. The Constitution stands at the top of this legal hierarchy and forms the foundation of the entire legal system. Under the Constitution are laws, ordinances, decrees, decisions, circulars and other subordinate legal documents dealing with different aspects of social life.

- *Constitution* and *laws* are passed by the National Assembly and are the highest form of legal direction in Vietnam;
- *Ordinances* and *resolutions* are issued by the Standing Committee of the National Assembly when the National Assembly is not in session;
- *Decrees* are adopted by the Government for the implementation of laws and ordinances;
- *Decisions* are issued by the Prime Minister for the implementation of regulations;
- *Circulars* and *Joint Circulars* are issued by ministries, Supreme People's Court and Supreme Procuracy Office for the implementation of laws and other superior legal documents (e.g., decrees);
- *Resolutions* issued by the People's Council of all levels (province, district, and ward/commune) for the implementation of superior legal documents (e.g., ordinances or decrees); and
- *Decisions* issued by the People's Committee of all levels (province, district, and ward/commune) for the implementation of the resolutions of the People's Council of the same level or other superior legal documents.



Regulatory Framework

Vietnam has embarked on a vast program to reform its legal and regulatory framework for investment to make it consistent with a market economy. A number of reforms were undertaken as prerequisite conditions for Vietnam's formal accession to the WTO. Recent improvements in the legal and regulatory framework have affected numerous areas, including taxation, intellectual property, trade, price controls, accounting and foreign exchange controls. As far as foreign investors are concerned, a fundamental shift occurred in 2005, when Vietnam adopted a new Law on Investment (the "2005 Investment Law") and Law on Enterprises (the "2005 Enterprise Law"). One of the key purposes of these two laws is to put all investors, regardless of their nationality, on a more equal footing. Breaking away from past practice, all investors are now subject to the same key laws, even though in practice differences in treatment remain.

With the aim of creating a breakthrough for the business environment in the country and improving the administration process for investors, on 25 November 2014, the National Assembly of Vietnam adopted the new Law on Investment (the "2014 Investment Law") and Law on Enterprises (the "2014 Enterprise Law"), which came into force on 1 July 2015. After five years of these laws, and to make Vietnam a more attractive investment destination, on 17 June 2020 the National Assembly passed Law No. 61/2020/QH14 on Investment (the "2020 Investment Law") and Law No. 59/2020/QH14 on Enterprises (the "2020 Enterprise Law"), replacing the 2014 Investment Law and the 2014 Enterprise Law respectively.

Investment Treatment and Protection

As detailed in its investment laws, Vietnam provides equal treatment before the law to all investors from all economic sectors, and as between domestic and foreign investment. The Government recognizes and protects the ownership of assets, invested capital and revenue and other lawful rights and interests of investors. The Government also guarantees to open the investment market in compliance with schedules committed in international treaties to which Vietnam is a member.

As part of its accession to the WTO, Vietnam ratified TRIMs. In order to comply with TRIMs requirements, the investment laws specify that the State will not impose any of the following requirements on foreign investors:

- Priority purchase of domestic goods or services;
- Export requirements or export limitations;
- Foreign exchange balancing;
- Localization ratios of goods produced;
- Minimum level of research and development activities in Vietnam;
- Obligation to supply goods or services in a particular location; and/or
- Obligation to establish head offices in a particular location.

Vietnam started negotiating bilateral investment treaties (“BIT”) only in the 1990s and until now it has signed more than 80 BITs, including those with most of its important trade and investment partners. All BITs typically provide for:

- National treatment, with certain exceptions;
- Fair and equitable treatment;
- The Most Favoured Nation treatment;
- Protection against nationalization or expropriation (allowed for a public purpose only on a non-arbitrary and non-discriminatory basis) and the obligation to provide prompt (without undue delay and including interests), adequate (typically the market value before the expropriation decision was made public) and effective compensation (realizable and freely transferable);
- The right to repatriate returns and assets; and
- Recourse to international arbitration.

Foreign Investment Entry

There are three main legal sources that define the specific restrictions to foreign investment entry: (i) the 2020 Investment Law and its guiding subordinate regulations; (ii) sectoral laws and regulations; and (iii) specific commitments of Vietnam in multilateral and bilateral treaties.

Under the 2020 Investment Law, major investment conditions for foreign investors are separated into two groups: (i) business investment conditions which apply to any investor (regardless of whether such investor is a local individual or entity or a foreign individual or entity) engaging in certain conditional business lines; and (ii) market access conditions which foreign investors must satisfy to invest in certain restricted sectors (the “List of Restricted Sectors”).

The List of Restricted Sectors comprises: (i) the list of industries and trades for which there has not yet been a market entry for foreign investors; and (ii) the list of industries and trades for which market entry is conditional. The 2020 Investment Law provides a new approach to market access conditions, what has been called the “negative-list” approach. Particularly, for business sectors which are not included in the List of Restricted Sectors, the market access conditions applicable to foreign investors are the same as those applicable to domestic investors. This “negative-list” approach demonstrates efforts made by local authorities that should help resolve the conflicting interpretations of previous laws and create a consistent legal framework for market entry.

The precise nature and extent of foreign direct investment entry restrictions in conditional sectors are stipulated in sectoral laws and regulations and international treaties of which Vietnam is a member. Typical restrictions include ceilings on foreign ownership, joint venture requirements, and restraints on operations.

Government Approval and Registration

The 2020 Investment Law and the 2020 Enterprise Law provide for two separate registration procedures namely investment registration and enterprise registration. The investment registration is required only for investment projects owned by foreign investors or foreign-invested enterprises with over 50% foreign ownership (“over-50% FIE”). Under Article 23.1 of the 2020 Investment Law, over-50% FIEs will be subject to the same conditions and investment procedures applicable to foreign investors if: (a) over 50% of its charter capital is held by foreign investors; (b) over 50% of its charter capital is held by an enterprise under Item (a); or (c) over 50% of its charter capital is held by foreign investors and enterprises under Item (b).

In cases where the investors being foreign investors or over-50% FIEs want to set up an enterprise in Vietnam, they normally go through the following two steps:

- First, the investors must apply for an Investment Registration Certificate (“IRC”) which certifies, among other things, the intended investment project of a foreign investor (i.e., setting up a company in Vietnam to own/run a project or provide services, etc.). An IRC is issued either by the local department of planning and investment (“DPI”) or by the Management Committee if the foreign-invested enterprise is located in a special purpose zone (industrial zone, export processing zone, high-tech zone or economic zone). Statutorily, an IRC would be granted within 15 days. Nevertheless, this timeline might be delayed due to the workload of the authority or the complexity of the project; and
- After receiving the IRC, the investor is required to apply for the issuance of the Enterprise Registration Certificate (“ERC”) which certifies the incorporation of the investor’s company in Vietnam. The ERC is issued by the provincial DPI where the registered office of the company is located and can be issued within three working days.

Under the 2020 Investment Law, M&A transactions (e.g., purchase of shares in a local company) are not required to obtain an IRC. Nevertheless, acquisition of shares in a local company is required to obtain an approval from the local DPI if: (i) the target company operates in a sector without

restrictions on market entry; or (ii) as a consequence, the foreign investor or over-50% FIE hold 50% or more of the charter capital of the target company. Thus, a foreign investor is not required to register with and obtain approvals from the local DPI for his/her/its share acquisition if the share acquisition does not lead to foreign ownership in the local company of up to 50% and the company does not operate in a sector with market access restrictions.

Forms of Investment

The 2020 Investment Law provides for the following investment forms:

- to establish an economic organization (“EO”) to implement an investment project;
- to contribute capital, purchase shares or capital contribution into an EO; and
- to invest by way of a contractual arrangement, including investment contracts in the form of a business co-operation contract (“BCC”) and a public private partnership (“PPP”).

Establishing An EO

An EO is an organization established and operating in accordance with the laws of Vietnam. EOs include enterprises, co-operatives and unions of co-operatives and other organizations conducting business investment activities. Before the establishment of an EO, a foreign investor must have an investment project, carry out the procedures for registration of an investment project by way of obtaining an IRC and must satisfy certain market access conditions on ownership and any other conditions prescribed in international treaties. Subject to the market access restrictions in certain economic sectors, foreign investors may choose to establish a wholly foreign-invested enterprise (“WFIE”) or a joint venture with a Vietnamese partner(s) (“JV”). In practice, the sectors which require the corporate form of JV are very limited.

WFIE is an independent legal entity owned and established by a foreign investor(s). A WFIE may cooperate with another existing WFIE and/or foreign investor(s) to establish another new WFIE. A WFIE allows an investor to have independence and full management control over business operations, yet they assume full responsibility for its debt and liabilities.

The WTO Commitments and other international treaties to which Vietnam is a member permitted the establishment of WFIEs in a great number but not all sectors in Vietnam. In a few exceptions, a foreign investor is required to have a Vietnamese JV partner if the market access restriction is so regulated in international treaties to which Vietnam is a member. In this case, a foreign investor must set up a JV with a Vietnamese partner(s). The maximum ownership of a foreign investor in a JV depends on the business sector. Usually, the foreign investor may hold a majority share, except for certain business sectors which place a cap on foreign ownership (e.g., in purchasing shares in a local bank in which the foreign ownership ratio can only be up to 30%).

Branches and Representative Offices

The laws of Vietnam allow certain foreign business entities to establish two other forms of commercial presence in Vietnam: a branch or a representative office. Both must be licensed by the relevant authorities.

A foreign company that wishes to establish a representative office in Vietnam must be duly established for at least one year in accordance with the laws of its home jurisdiction. Representative offices are not independent legal entities and cannot directly conduct profit-making activities in Vietnam.

Foreign businesses can establish their branch(es) in Vietnam in accordance with the WTO Commitments and other international treaties to which Vietnam is a member. Under the WTO Commitments, a branch may be established in Vietnam by a foreign business entity in certain areas subject to certain phasing (e.g., non-life insurance, securities, computer and related services, management consulting services, construction, and franchising).

Branches of foreign companies are different from representative offices in the way that a branch is permitted to conduct revenue-generating activities in Vietnam. To be permitted to open a branch, a foreign company must be duly established for at least five years in accordance with the laws of its home jurisdiction.

Investing in An Existing Enterprise

Foreign investors may also choose to invest directly in Vietnam by making capital contribution to an EO or purchasing shares or portion of capital contribution in an existing EO (i.e., M&A transactions), subject to the following restrictions:

- The cap on foreign ownership in public companies is regulated by the laws on securities;
- The caps on foreign ownership in companies engaged in conditional business sectors are provided for in the laws and regulations governing those sectors; and
- The cap on foreign ownership can also be provided for in international treaties to which Vietnam is a member.

Investing via Contractual Arrangements

In addition to investment forms of setting up companies in Vietnam or purchasing shares in Vietnam-based companies, Vietnamese investment laws also allow foreign investors to invest via the form of contractual arrangements, normally for large or special projects. The forms of contracts are listed below.

A Business Cooperation Contract (“BCC”) is an agreement between investors in which the parties agree to cooperate to undertake certain business activities in Vietnam (e.g., cooperation in telecommunications or oil production projects) and to share the revenue or profits therefrom. The investment form of a BCC establishes a partnership which does not create a new legal entity in Vietnam.

Public Private Partnership (PPP) investment form is a contract between a State agency and an investor (either local or foreign) or the project enterprise (which is set up by the foreign investor) in order to develop, manage and operate an infrastructure project (e.g., roads and electricity systems) or to provide public services (e.g., health care). PPP investments are allowed in transportation,

lighting systems, water supply systems, drainage systems, waste and wastewater collection and treatment systems, power plants and transmission, and infrastructure facilities for healthcare, education, culture, sport, industry and agriculture, etc.

The main legislation governing PPP projects are Law on Investment in the Form of Public and Private Partnership of 2020 (“2020 PPP Law”) and Decree No. 35/2021/ND-CP of the Government dated 29 March 2021 (“new PPP Decree”). The 2020 PPP Law caps the State’s capital contribution to a project of up to 50% of the total investment of the project.

An investor may select various types of PPP investments/contracts which include Build-Operate-Transfer (“BOT”), Build-Transfer-Operate (“BTO”), Build-Operate-Own (“BOO”), Build-Transfer-Lease (“BTL”), Build-Lease-Transfer (“BLT”) and Operate-Manage (“O&M”). In essence, BOT, BTO, BOO and O&M contracts permit the investor to charge fees to end users for delivering services, while the remaining (i.e., BTL and BLT) permit the investor to received periodic fixed payments by the authority as agreed in the contract.

A *BOT contract* is a contract between a governmental agency and an investor in order to construct and operate a facility for a fixed duration. Upon expiry of the contract’s duration, the investor will transfer the facility to the State of Vietnam without compensation.

A *BTO contract* is a contract between a governmental agency and an investor for the construction of a facility. Upon completion of construction, the investor transfers the facility to the State of Vietnam without compensation. In exchange, the government will grant the investor the right to commercially operate the facility for a fixed duration in order to recover the invested capital and obtain profits.

A *BOO contract* is a contract between a governmental agency and an investor for the construction of a facility (e.g., an energy project). Upon the completion of construction, the investor owns and has the right to commercially operate the facility for a fixed term.

A *BTL contract* is a contract between a governmental agency and an investor for the construction of a facility. Upon the completion of construction, the investor transfers such facility to the State. Nevertheless, the investor is granted the right to provide services on the basis of operating and exploiting the facility for a fixed term on a lease basis.

A *BLT contract* is a contract between a governmental agency and an investor for the construction of a facility, and upon the completion of construction, the investor is granted the right to provide services on the basis of operating and exploiting such facility for a fixed term on a lease basis. When the term of the lease expires, the investor will transfer the facility to the State.

An *O&M contract* is a contract under which an investor is hired to operate and manage part or the whole of an existing infrastructure project for an agreed term.

The 2020 PPP Law also allows an arrangement which is a combination of the contracts mentioned above.

Corporate Forms

Investors who decide to establish a legal entity in Vietnam may select one of the following types of enterprise structures:

- Limited liability companies (“LLC”) that may have a single member/shareholder (“SM-LLC”) or multiple members (up to a maximum of 50) (“MM-LLC”). A single investor can only set up an SM-LLC. If there are two or more owners, an MM-LLC must be chosen;
- Shareholding (joint stock) companies (“JSC”) must have a minimum of three shareholders. The company is allowed to issue shares (including common and preference shares). The management structure follows international standards and is based on a general meeting of shareholders, a board of management, a general director, and for certain cases, an inspection committee;
- Unlimited or limited liability partnerships. A partnership requires at least two individuals to act as general partners (i.e., partners who are liable with their private assets for debts incurred by the partnership). This usually rules a partnership out as a suitable investment vehicle; and
- Private enterprises (i.e., sole proprietorship).

A WFIE in the form of an LLC or a JSC is the most common corporate form of foreign investors in Vietnam. Both LLC and JSC forms shield their owners from liabilities incurred by the LLC or JSC. This means that owners may lose the capital that they contributed to the LLC or JSC but are not liable for the debts of the LLC or JSC.



Banking & Finance

The banking and financial system in Vietnam is made of various credit and financial institutions, including banks, non-bank credit institutions, microfinance institutions and people's credit funds. Non-banking credit institutions include finance companies, finance-leasing companies and other non-banking credit institutions. The scope and contents of permitted activities of each credit institution are subject to the form of the credit institution and specified in the license granted to it.

Banking activities in Vietnam is governed by the Law on the State Bank of Vietnam and the Law on Credit Institutions both passed on 16 June 2010 and their implementing decrees, circulars and decisions issued by the Government and the State Bank of Vietnam ("SBV").

Generally viewed, banking and financial business are highly regulated in Vietnam. Banking and financial institutions are only permitted to engage in transactions and provide the services specifically named in their licenses. Derivative, forex, and cryptocurrency products are either not allowed or strictly regulated.

Management Forms of Credit Institutions

Banks established in Vietnam operate under one of the following permitted forms:

- State-owned banks established and organized in the form of a SM-LLC where 100% of the charter capital is owned by the State;
- Joint stock commercial banks;
- JV bank established and organized in the form of a LLC; or
- Foreign-owned banks established and organized in the form of a WFIE.

Restrictions on Foreign Ownership

Acquisition by foreign entities of a shareholding in a Vietnamese commercial joint stock bank is subject to the approval of the SBV.

As a rule, the total shareholding of any foreign organization must not exceed 15%, and the shareholding of any foreign individual may not exceed 5% of the charter capital (i.e., share capital) of a Vietnamese bank. However, the law permits (i) a “strategic foreign investor” or (ii) a foreign investor and its affiliated persons to acquire up to 20% of the charter capital of a Vietnamese bank. The total aggregate shareholding of foreign investors in a Vietnamese bank may not exceed 30% of its charter capital (exceptions may be given by the Prime Minister to weak credit institutions for restructuring purposes on a case-by-case basis).

Foreign-owned banks, in which one of the foreign shareholders is a parent bank holding a majority equity interest, can be established in Vietnam. Among other requirements, the parent bank must have total assets of more than USD10 billion at the end of the year prior to application.

Foreign banks may also open a branch(es) which has no independent legal status. The parent bank must satisfy, among other things, the conditions that it has total assets of more than USD20 billion at the end of the year prior to its application for the establishment of a branch. A foreign bank branch may not open transaction offices outside the branch office.

A foreign bank may also set up its representative office in Vietnam in which the representative office acts as a liaison office, conducts market research and the promotion of the parent bank’s business in Vietnam. A representative office is not permitted to engage in revenue-generating activities.

Capital Markets

Vietnamese capital markets are divided into two categories: the primary market, where newly issued securities are traded, and the secondary market, where securities are traded subsequent to the sale in the primary market.

Currently, there are two securities trading centers for listed companies in the country namely the Ho Chi Minh City Stock Exchange (“HOSE”), which was the first to open in July 2000, and the Hanoi Stock Exchange (“HNX”), which was opened in March 2005. The types of securities that are currently traded on the two exchanges are limited to ordinary/common shares, fund certificates, covered warrants, and bonds only.

Only JSCs can become a public company and a listed company. A public company means a company which has successfully completed an initial public offering (IPO) after meeting certain statutory conditions such as minimum capital and number of investors, etc. Thereafter, a public company may list its shares at HOSE or HNX (to become a listed company) if it meets the listing conditions of a particular exchange. All securities of unlisted public companies must be registered at the Vietnam Securities Depository and transacted through securities firms. All public companies are responsible for making disclosures as required by law.

The State Securities Commission (“SSC”) under the Ministry of Finance, established in November 1996, is the primary supervisory body over the capital markets and their participants. The SSC is the body that licenses securities firms, approves IPOs, oversees the financial markets and market players, and enforces the securities laws.

The key legislation for the securities market operation is the Law on Securities of 2019 (“2019 Securities Law”), which came into effect on 1 January 2021, and its guiding legislation.

Conditions for A Public Offer of Securities

Under securities law, issuing companies must comply with certain requirements for a public offer of securities. The requirements differ subject to the types of securities. Particularly, at the time of registration of an offer an issuing company must have at least VND30 billion in paid-up charter capital



(for a public offer of shares or bonds) and VND50 billion (for a public offer of fund certificates). Except for certain specific cases, business operation in the year before the offer must have been profitable and no accumulated losses accrued up to the year of registration of the offer. In addition, an issuer must have a plan for issuance and another plan for utilization of the proceeds earned from the offer. Both plans must be approved by the general meeting of shareholders (for a public offer of shares or bonds of a JSC) or by the board of management, the members' council (i.e., the corporate body which is comprised of the members/shareholders of a LLC) or the company owner (for a public offer of bonds of a LLC).

Restrictions on Foreign Ownership

Within the first five years from the date of Vietnam's accession to the WTO, foreign securities firms were allowed to establish a commercial presence which include representative offices and JVs with foreign ownership of up to 49%. From January 2012 (five years after the date of accession to the WTO), foreign securities firms with 100% foreign-invested capital have been permitted.

Foreign investors trading securities on the securities markets of Vietnam are permitted to hold:

- 100% of the total number of shares in a public company, except for the following cases:
 - If the public company engages in business activity in respect of which foreign ownership percentages has been specified in an international treaty to which Vietnam is a party, then the specified foreign ownership thresholds will be applied;
 - If the public company engages in economic sectors and/or business lines which are subject to a foreign ownership cap as specified in the Investment Law or a specific sector law, such foreign ownership cap will be applied;
 - If the public company engages in sectors and/or business lines subject to conditions applicable to foreign investors but there is no specific law regulating the foreign ownership cap for such sectors and/or business lines, then the maximum ratio of foreign ownership is 50%; and
 - If the public company engages in multiple business sectors, where the foreign ownership caps may vary according to each different sectors, then the most restrictive cap will be applied.
- A maximum of 49% of the charter capital of (i) any securities investment fund management company, and (ii) any public securities investment company. However, this threshold may be lifted in special cases where a foreign investor satisfies certain conditions as specified in the 2019 Securities Law (e.g., being a professional firm and where there is a cooperation agreement between the regulator of the investor and the SSC, etc.).
- Regarding bonds, the issuing organization may specify the limits on percentage ownership of foreign investors (if any).

Foreign investors wishing to invest in securities via trading in the stock exchanges must first obtain a securities trading code from the Vietnam Securities Depository and open an indirect investment capital account at an appropriately authorized bank in Vietnam. In addition, a foreign investor may trade through a securities firm, representative or local fund manager, depending on the investor's desire.



Land & Housing

In Vietnam, land belongs to the people and is managed by the Government. Private ownership over land is not permitted. Organizations and individuals only have land use rights (“LUR”) which include the rights to transfer, exchange, lease, donate, mortgage, contribute as capital, etc. Depending on the type of a land plot (e.g., agricultural, commercial or residential land) and its financial condition (e.g., is given by the local government on a free-of-charge basis, payment of rents on an annual or lumpsum basis, or land use fee, etc.), a land user may exercise those rights over his/her/its land plot and the attached asset or over its asset only. A lawful land user is issued an LUR Certificate (akin to title deeds in other jurisdictions) by the local government (more specifically, the local Department of Natural Resources and Environment). A land plot may be used only for the specific purpose for which it was leased or allocated (e.g., for the development of a project). Failure to meet the purported purpose may lead to the withdrawal of the land plot (for example, land is left unused for a long period of time).

The local governments grant the LUR to individuals and organizations via the form of land allocation of land (mostly for residential land), land lease (for commercial land, etc.), and recognition of LUR for persons who are currently using the land (i.e., similar to land allocation but the land user does not have the obligation to pay the land use fee).

The term of a LUR Certificate issued is unlimited (for residential land), and normally limited to a

maximum of 50 years, although in certain circumstances (e.g., if the investment project involves large amounts of capital or it is located in an area having difficult socio-economic conditions), then the term may be for as long as 70 years, for other types of land.

Land Allocation

Local governments allocate land to land users and may collect land use fee for such allocation, depending on the purpose of land use. Types of allocated land plots with the collection of land use fees include the following:

- to family households and individuals for residential purposes;
- to economic organizations for implementing investment projects for construction of residential housing for purposes of sale or for sale and lease;
- to Vietnamese residing overseas and foreign-invested enterprises for implementing investment projects for construction of residential housing for purposes of sale or for sale and lease; and
- to economic organizations for implementing projects on investment in infrastructure of cemeteries and graves and for the purposes of transfer of the land use rights attached to the infrastructure.

Land plots obtained by way of allocation with the collection of land use fees can be transferred, donated, leased, mortgaged, guaranteed or used as a capital contribution, etc. In addition, land users are entitled to compensation for land when the State resumes possession of the land.

Land Lease and Other Forms of Land Acquisition in Vietnam

Another form of land acquisition available to land users (including Vietnamese residing overseas and foreign-invested enterprises), is land lease from the local government (i.e., the People's Committee and/or the Department of Natural Resources and Environment). In this form, land users pay for the rents which are either in the form of one-off/upfront payment or annual payment basis. The land user who pays the rents on the one-off basis is allowed to transfer, sublease or mortgage the land plot/LURs. An user making an annual rent payment is only allowed to assign, sublease or mortgage the assets attached to the land owned by him/her/it.

Land plots can also be acquired via leasing from developers of industrial or economic zones. Generally, the rights of a lessee/tenant are similar to those of lease from the local government. In addition, land can also be acquired via capital contribution by the Vietnamese partner in a JV. It is worth noting, however, that foreign investors and foreign-invested enterprises are not allowed to directly lease/sublease land from individuals or family households.

Land rents are normally based on negotiation between a foreign-invested enterprise and an industrial zone developer. Land-related transactions between a foreign-invested enterprise and a local government such as rents, taxes and fees, can be based on the land prices as pre-determined by the local government.

Foreign Housing/Property Ownership

Currently, Vietnam allows foreign companies that develop residential projects in Vietnam, foreign-invested enterprises, representative offices and branches of foreign companies, foreign investment funds, branches of foreign banks operating in Vietnam and foreigners who have a visa to enter Vietnam to own selected properties in Vietnam. The ownership rights generally include the right to transfer, sell, lease out, donate, bequeath, mortgage, contribute as capital, etc.

Foreigners are allowed to own residential houses (including apartments and individual residential houses) in a new residential/commercial project. The total number of units owned by foreigners may not exceed 30% of the total units in one apartment building and not exceed 250 landed property units (i.e., houses) in one ward/commune. There is no limit on the number of apartments or houses for a foreigner.

Foreigners are permitted to own apartments for a maximum term of 50 years (with a renewal possibility upon expiration) and foreign companies are permitted to own apartments for a term equal to the term recorded in its IRC. The owner may sell his/her/its apartments/houses to those who are permitted to own real properties in Vietnam.

It is worth noting that foreigners cannot directly buy or sell houses from or to Vietnamese individuals or companies.



Labour Law

In comparison to some other countries in the region, Vietnamese employees seem to be better protected under Vietnam's labour laws and regulations. Vietnamese labour law is mandatory in the way that an employer and employee may not agree on terms that are less favourable to the employee than the conditions set out in labour legislation. On the contrary, they may agree on terms that are more favourable to the employee. The primary legislation governing employment in Vietnam is the labour code with the current one is the Labour Code of 2019 ("Labour Code"). With a pro-employee principle in mind, the Labour Code provides various legal measures and tools to protect employees. Regardless, the Labour Code provides circumstances in which an employer may dismiss or lay off one or multiple employees.

Labour Contract

With the exception of short-term labour contracts (i.e., with the term of less than one month), labour contracts are required to be made in writing. A labour contract must include statutory items including work type, working hours and rest breaks, wages, location, term, conditions on safety and hygiene, and social insurance contribution for the employee. In addition to the compulsory items, an employer may include other clauses such as intellectual property, confidentiality, protection of trade secrets, non-compete and non-solicitation, etc.

The term of a labour contract can be indefinite or definite. The maximum term of a definite labour contract is 36 months. An employer may only sign up to two definite-term labour contracts with an employee. Thereafter, the employer is required to sign an indefinite-term labour contract with the employee.

An employer may only early terminate a labour contract in circumstances listed under the Labour Code and the related labour contract (e.g., poor performance, breach of the labour rules, etc.). At will termination by the employer is not allowed. On the contrary, an employee may unilaterally terminate his/her labour contract at any time without reason by sending a prior notice as prescribed under law (e.g., 45 days for indefinite labour contracts or 30 days for definite labour contracts).

Probation

An employer and an employee may reach agreement on a probationary (trial) period of work and the rights and obligations of the two parties within that period.

The duration of a probationary period depends on the nature and complexity of the work and must not exceed 180 days for managers/executive; 60 days for jobs requiring professional or technical college qualification or above; 30 days for jobs requiring an intermediate-level qualification or for technicians or trained staff; and 6 days for other types of work.

During the probationary period, the employer must pay a salary that corresponds to at least 85% of the ordinary salary for the job. Either party may terminate the employment relationship during the probationary period without providing an advanced notice and without paying compensation unless the parties agree otherwise.

Minimum Wage

Vietnamese labour laws provide for two categories of minimum wage: basic wage (which is applicable to calculate compulsory social insurance contributions and salaries for civil servants, etc.) and regional minimum wage (applicable for other employers and employees to use as thresholds for salary negotiation).

Currently, the basic wage is VND1,490,000 and the minimum regional salary for region I is VND4,680,000 per month. These minimum salaries are subject to change from time to time as determined by the Government.

Based on the level of economic conditions, the Vietnamese Government divides the whole country into four regions (i.e., region I, II, III and IV). Region I includes Hanoi and Ho Chi Minh city. A region denominated with a higher number means it is less economically developed.

Employment of Foreign Expatriates

Employment of foreign expatriates is allowed but generally limited to managerial positions or experts who have expertise that Vietnamese workers are not yet able to satisfy.

Foreign employees, with some few exceptions, are normally required to obtain work permits before entering into Vietnam for work. A work permit is issued by the provincial Department of Labour, Invalid and Social Affairs where the employer is located. Work permits are issued for a maximum period of 24 months and may be renewed only one time for the same period as maximum. A work permit is tied to the specific employer who applied for the employee's work permit, and the foreigner may legally work for that employer only.

Annually, each employer who wishes to employ a foreign expatriate(s) is responsible to determine its needs to employ foreign expatriates and requests the same to the chairperson of the provincial People's Committee where the employer's head office is located. The chairperson will consider issuing an approval to the employer before the employment can be proceeded.

Employers who employ foreign employees without work permits or fail to comply with other requirements for foreign employment of foreign expatriates are subject to administrative fines. Foreign employees who work in Vietnam without a work permit may be deported.



Taxes

Vietnam has embarked on a process to harmonize taxation for both domestic and foreign companies and individuals. It has also initiated a number of institutional and administrative reforms in order to improve the administration of taxation. Below is the list of taxes and duties that foreign companies or individuals are generally subject to in Vietnam.

Corporate Income Tax

Vietnam-based companies and foreign companies which have a permanent establishment in Vietnam are required to pay corporate income tax ("CIT"). Foreign companies which do not have a permanent establishment in Vietnam only have to pay CIT on the income derived from Vietnam. A permanent establishment means a branch, representative, construction works or an agent, etc. in Vietnam of a foreign company.

Currently, the standard CIT is 20%. The CIT rates applicable to acts of prospecting, exploring and mining of petroleum and gas and other rare and precious natural resources in Vietnam are from 32% to 50% depending on a specific project.

Vietnamese tax laws also provide for CIT incentives (i.e., preferential tax rates and duration of tax exemption and reduction). The incentives are applicable to certain sectors (such as high tech, etc.)

and difficult (or special difficult) socio-economic regions. If a company is given the preferential tax rate then the rate of 10% or 17% for a certain period of time will be applied.

Value-Added Tax

Vietnam introduced value-added tax ("VAT") in 1999 to replace its previous turnover tax. All business establishments are subject to VAT, regardless of size or sales of taxable goods. Although the real VAT payer is the purchaser of the goods and services, it is the sellers responsibility to include VAT when they charge for the goods or services they supply. For imported goods, an importer must pay VAT to the customs office at the same time with the payment of import duties.

The rate of VAT payable will depend on the goods and services in question.

- *VAT rate of 0%* is applied to exported goods or services, including goods or services sold to enterprises without a permanent establishment in Vietnam, goods processed for export, goods sold to duty free shops, exported services and construction and installation carried out abroad or for export processing enterprises.
- *VAT rate of 5%* is applied generally to enterprises which provide essential goods and services, such as clean water, fertilizer production, teaching aids, books, foodstuffs, medicine and medical equipment, husbandry feed, various agricultural products and services, technical/scientific services, rubber latex, sugar and its by-products.
- *Standard VAT rate of 10%* applies to activities not specified as exempt or subject to the 0% or 5% rates above.

Import and Export Duties

Import and export duties rates are subject to frequent changes (usually at the end of a calendar year). If not exempted, goods imported to Vietnam are subject to import duty, which is calculated by multiplying the imported good's dutiable value with the relevant rate. The import duty rates are classified into three categories: ordinary rates, preferential rates and special preferential rates.

Preferential rates are applicable to imported goods from countries that have the Most Favoured Nation status with Vietnam. For example, with the accession to the WTO, the Most Favoured Nation rates are in accordance with the WTO Commitments and are applicable to goods imported from other member countries of the WTO.

Special preferential rates are applicable to imported goods from countries that have a special preferential trade agreement with Vietnam. Vietnam has entered into trade agreements with ASEAN member states, US, Japan, China, Korea, Australia, New Zealand, India, Chile, Hong Kong, Cuba and others.

Foreign Contractor Tax

While not a separate tax, foreign contractor tax ("FCT") is the tax scheme under which earnings of foreign companies or individuals (foreign contractors) from providing services to Vietnamese tax residents are taxed. FCT is a combination of VAT and CIT (applicable to companies) or PIT

(applicable to individuals). There are three methods by which a foreign contractor may choose to be taxed under the FCT regime. First is called “deduction method” which requires a foreign contractor to register and apply this tax method with the Ministry of Finance, conduct Vietnamese accounting, and pay taxes as if he/she/it is a Vietnamese tax resident. Second is called “direct method” which allows the Vietnamese purchaser of the goods or services to withhold the relevant taxes from its payment to the foreign contractor. The third one is called “hybrid” which allows the foreign contractor to act as a Vietnamese tax resident for the purposes of VAT but to have their CIT or PIT withheld by the Vietnamese purchaser. The applicable tax rates are published separately by the Ministry of Finance and vary depending on the nature of the goods or services sold in Vietnam.

Personal Income Tax

A tax resident who has income arising either within or outside the territory of Vietnam or a non-resident individual who has taxable income arising within Vietnam is generally subject to personal income tax (“PIT”) in Vietnam. Tax residents are those individuals residing in Vietnam for 183 days or more in a calendar year or in 12 consecutive months from the first date of arrival, or those having a permanent residence in Vietnam (including a registered residence, or a leased house in Vietnam with lease duration of 90 days or more in a tax year).

The PIT rates vary depending on whether the income in question is regular (e.g., salary) or irregular. Taxable income is the income after deducting personal allowance of VND11 million/month and dependent allowance of VND4.4 million/month/dependent under the law.

Below is the table which describes the amounts which are subject to PIT and the corresponding rates.

Level	Taxable regular income/year (VND million)	Taxable regular income/month (VND million)	Tax rate (%)
1	Up to 60	Up to 5	5
2	Above 60 to 120	Above 5 to 10	10
3	Above 120 to 216	Above 10 to 18	15
4	Above 216 to 384	Above 18 to 32	20
5	Above 384 to 624	Above 32 to 52	25
6	Above 624 to 960	Above 52 to 80	30
7	Above 960	Above 80	35

Non-regular income is subject to PIT at different tax rates as follows:

Level	Type of Incomes	Rates of resident individuals	Rates of non-resident individuals
1	Income from business (over VND100 million/year)	0.5%-5%, subject to business lines	1% for income from trading; 2% from production and the other; 5% from services
2	Income from investment of	5%	5%

Level	Type of Incomes	Rates of resident individuals	Rates of non-resident individuals
	capital		
3	Income from transfer of stocks	0.1% of the contract value (sell price)	0.1% of the contract value (sell price)
4	Income from capital transfer	20% of net income	0.1% of the contract value (sell price)
5	Income from transfer of properties	2% of the contract value (sell price)	2% of the contract value (sell price)
6	Income from copyrights technology transfers, franchising (over VND10 million/contract)	5%	5%
7	Income from winnings or prizes or inheritance or gifts (over VND10 million/time)	10%	10%



Intellectual Property

Vietnam has been a member of the World Intellectual Property Organization (“WIPO”) since 1976. It is a contracting party to a certain number of WIPO-related treaties or conventions, including the Bern, Brussels and Paris Conventions, the Madrid Agreement and the Patent Cooperation Treaty. The legal and regulatory framework for intellectual property rights (“IPRs”) of Vietnam was overhauled and greatly improved during its preparation for WTO accession. Most importantly, Vietnam adopted the first Law on Intellectual Property in 2005 (as initially amended in 2009). The adoption of the Law on Intellectual Property was necessary to make Vietnam compliant with the WTO’s TRIPS agreement, to which Vietnam is a party. It was also needed for Vietnam to fulfill its commitments under the bilateral trade agreement with the US.

Over more than 15 years of implementation, the Law on Intellectual Property has revealed certain deficiencies for the effective management and enforcement of IPRs. In addition, Vietnam has negotiated and signed numerous FTAs with their own specific IP commitments, especially the CPTPP, EVFTA, and RCEP. Moreover, Vietnam joined the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty at the beginning of 2022. Resultingly, the Law on Intellectual Property was revised again in 2019 and 2022 to overcome deficiencies and to ensure consistency with international standards. Herein below, a reference to the “IP Law” means the one to the 2005 Law on Intellectual Property as amended in 2009, 2019 and 2022.

Under the IP Law, IPRs which can be protected in Vietnam comprise:

Copyright and Copyright Related Rights protect literary, artistic and scientific works, including music, motion pictures, photography, books, stage works, computer programs, lectures or textbooks, fine art works and applied art works. Moral rights, except for the rights to publish works, are protected for an indefinite term, while economic rights and the publication rights for motion pictures, photography, applied art works and anonymous works are protected for 75 years from the first publication, or for the motion pictures, photography, applied art works, which have not yet been published within 25 years as from the date of formation thereof, for 100 years as from such formulation date, or for the whole life of the author *plus* 50 years after author's death for other works. Copyrights and related rights may be assigned or licensed freely, and acts constituting infringements are clearly defined by law.

Industrial Property Rights to inventions, industrial designs, layout designs of integrated circuits, marks, trade names, geographical indications, trade secrets, and the right to prevent unfair competition, wherein:

- Rights to an invention, industrial design, layout design or mark are established on the basis of a protection title granted by the Intellectual Property Office of Vietnam ("IP Vietnam") following the registration requirement, or of IP Vietnam's recognition of international registration under the Madrid System;
- Rights to a well-known mark are established on the basis of its use without reliance on registration and of compliance (through the relevant recognition) with prescribed criteria;
- Rights to a geographical indication are established on the basis of a decision of the IP Vietnam to grant a protection title following the registration requirement prescribed in the IP Law or under the international treaty of which Vietnam is a member;
- Rights to a trade name are established on the basis of its legal use;
- Rights to trade secrets are established on the basis of lawful acquirement of the trade secret and maintenance of the confidentiality thereof; and
- The right to prevent unfair competition is established on the basis of competitive activities in business.

For Industrial Property Rights established under the prescribed registration procedures or international recognition, Vietnam applies the "first to file" principle but priority can be invoked in a certain number of cases, such as missing the deadline for filing Vietnam application with claiming priority under the Paris Convention or a failure to submit the respective certified copy(ies) of the priority document(s).

An invention patent is granted for 20 years, utility solution patent for 10 years, industrial design patent for five years (renewable twice), and registered design for semi-conducting integrated circuits is valid for 10 or 15 years, subject to the sooner of termination of (a) 10-year period from the filing date; (b) 10-year period from the date of the first commercial exploitation; and (c) 15-year period from the creation date. A registered trademark is valid for 10 years and renewable for indefinite times, each of 10-year period.

The assignment of Industrial Property Rights shall be in accordance with the following conditions:

- The assignment of rights to geographical indications is not permitted;
- The assignment of rights to trade names must be accompanied with the assignment of the entire business establishment and business activities under such trade names;
- The assignment of rights to trademarks must not cause confusion as to properties or origins of goods or services bearing such trademarks; and
- The assignees of rights to trademarks must satisfy conditions for persons having the right to register such trademarks.

An Industrial Property Rights assignment agreement must be registered with the IP Vietnam for validity.

For Industrial Property Rights, license licensing agreements, except for trademark licensing agreements, are effective against a third party upon registration with the IP Vietnam. The validity of an IPRs licensing agreement will cease upon the termination of the respective licensor's IPRs.

Plant Varieties being reproductive materials and harvested materials may also be registered for protection on the condition that they are novel, distinct, uniform, stable and designated by proper denominations. The protection duration is 25 years for woody plant varieties and vines, and 20 years for other plant varieties. Vietnam became a member of the International Union for the Protection of New Varieties of Plants at the end of 2006.

The IP Law provides a number of tools to enforce a violation of IPRs of a holder. In particular:

Administrative remedies can be applied in 3 circumstances namely (i) acts that cause loss or damage to the author, IPR holders, consumers or society; (ii) acts of production, import, transport or trade of counterfeit goods and (iii) acts of production, import, transport, trade, possession of stamps, labels or other articles bearing counterfeit trademarks or geographical indications. Administrative remedies are the most practical for IPR holders, but they do not provide significant compensation. Sanctions include a warning, fines with the maximum level of VND250 million imposed on individual infringers (or VND500 million imposed on corporate infringers), confiscation and destruction of counterfeit goods, and/or suspension of business activity. Administrative sanctions can be imposed by inspectorates, market surveillance agencies, customs offices, police offices and People's Committees. Police offices handle cases of counterfeit goods which have signs of a crime prescribed in the current Criminal Code of 2015 as amended in 2017. In necessary cases, the authority can apply for interim injunctions in association with administrative measures comprising, *inter alia*, orders on temporary detention of suspected individuals; orders on temporary detention of the infringing goods or evidence; searches of the suspected individuals; or searches of the premises where infringing goods or evidence are concealed.

Civil remedies include compulsory termination of the infringements, compensation for damages, compulsory destruction of infringing goods, raw materials and materials, and facilities used principally for the production or trade of infringing goods, or distribution or use of the same for non-commercial purposes, and public apology and rectification. Damages or losses are defined as both material and spiritual. The People's Court at the district level or, for cases relating to commercial purposes or foreign elements, the People's Court at the provincial level, has the jurisdiction to settle

the claims. Compensation for damages is determined based on actual losses suffered by the IPR holder. In cases where it is impossible to determine the rate of compensation in accordance with prescribed formulas, the rate is fixed by the court depending on the loss level but not exceeding VND500 million. If an IPR holder succeeds in proving that the IPR infringement has caused the spiritual injury, he/she has the right to request compensation ranging from VND5 million to VND50 million, depending on the seriousness of the spiritual injury. On or after initiation of a civil lawsuit, an IPR holder has the right to request the court to apply an injunctive relief which includes injunctions on seizure, attachment, sealing, and/or prohibition from ownership transfer). Such IPR holder must make a monetary deposit with the value equivalent to 20% of the value of the suspected goods or at least VND20 million as guarantee.

Criminal remedies are applicable to cases involving infringing industrial property rights (with the subject matter being trademarks or geographical indications of which the infringing goods are counterfeits in significant quantities or values), and infringing copyrights and copyright-related rights. Under the Criminal Code, both individual and corporate infringers could be prosecuted and sentenced. The People's Court at the district level or, for cases relating to foreign or complicated elements, the People's Court at the provincial level (the functional criminal court) has the jurisdiction to hear the cases. Criminal penalties include a monetary fine of up to VND500 million or non-custodial imprisonment of up to 3 years (for sentenced individuals), or of up to VND2 billion (for sentenced corporates). In cases of serial violations or if it is an organized crime, then the penalties are increased to VND1 billion or 6 months to 3 years imprisonment (for sentenced individuals) or up to VND5 billion (for sentenced corporates). Penalties such as a fine of up to VND200 million and prohibition from holding certain positions, practicing certain occupations or doing certain jobs for 1 to 5 years could be added for sentenced individuals. Meanwhile, additional penalties for sentenced corporate comprise a fine of up to VND500 million and being banned from operating in certain sectors or raising capital for 1 to 3 years.

Remedies of border control measures of IP-related imports and exports are provided under the Law on Customs of 2014 and Articles 216 – 219 of the IP Law. Under these remedies, an IPR holder may request suspension of customs clearance procedures for suspected goods and the search and monitoring for the detection of goods in infringement of IPRs. The time limit for application of customs inspection and supervision measures is 2 years from the date of acceptance of the customs office. To apply border control measures, an IPR holder is required to make a deposit with the value equivalent to 20% of the value of the suspected goods (at least VND20 million) or a bank guarantee.



Selected Sector Regulations

Healthcare

With its large population, Vietnam is a potential market which offers great opportunities for foreign investors in the health sector. However, in comparison with finance, securities and real estate, the health sector remains less lively in the panorama of foreign investment in Vietnam.

According to the WTO Commitments, foreign medical service suppliers are permitted to provide services through the establishment of 100% foreign-invested medical establishments, joint-ventures with Vietnamese partners, and through a business cooperation contract.

Also under the WTO Commitments, the minimum investment capital for a foreign-invested project in hospital services must not be less than:

- USD20 million for a hospital;
- USD2 million for a polyclinic unit; and
- USD200,000 for a specialty unit.

In addition to the requirements for an IRC and ERC, a foreign investor is required to obtain an operating license before providing health care services. The requirements for an operating license include, among other things:

- To meet national technical regulations on hospitals;
- To have sufficiently qualified practitioners; and
- The manager responsible for professional and technical operations of hospitals must have his/her experience of at least 36 months.

Telecommunications

Current laws on telecommunications dismantle the monopoly of State-owned enterprises over the telecommunication network infrastructure. However, the law establishes a distinction between non-facilities-based telecom services and facilities-based services. Non-facilities-based service suppliers are service suppliers which do not own transmission capacity but contract for such capacity including submarine cable capacity, from a facilities-based supplier.

The facilities-based vs. non-facilities-based distinction forms the basis of Vietnam's commitments under the WTO to liberalize its telecommunications market. As from January 2010, foreign investors are allowed to own up to 51% of the legal capital of JVs with non-facilities-based operators. Foreign ownership of facilities-based operators, in turn, is capped at 49%. The Government seems determined to keep control of facilities-based operators and there is no sign of laxity of this approach.

Trading Activities

Foreign-invested enterprises (e.g., WFIEs) in Vietnam that meet statutory conditions may engage in trading activities. In principle, trading activities or trading rights include: (i) export right; (ii) import right; and (iii) distribution rights.

Export right allows a foreign-invested enterprise to export the goods to be imported and purchased domestically by themselves. However, it is not permitted to establish any facilities or trading networks for exporting.

Import right allows a foreign-invested enterprises to import goods from overseas into Vietnam and sell such imported goods to Vietnamese business entities (i.e., wholesalers). It is not permitted to organize or participate in any distribution network of import goods in Vietnam.

Distribution rights include the rights of wholesaling, retailing and agency, and franchising.

Wholesaling right allows a foreign-invested enterprise to sell goods, including goods manufactured in Vietnam and goods imported to Vietnam, only to traders or other organizations (i.e., wholesalers) but not to end-consumers.

Retail right allows a foreign-invested enterprise to sell goods, including goods manufactured in Vietnam and goods imported to Vietnam, directly to end-consumers. Vietnam restricts the establishment of additional retail sales outlets after the first outlet. Further retail sales outlets are considered on a 'case-by-case' basis based on an economic needs test (ENT) of the locality and based on the following criteria: (i) number of retail outlets; (ii) market stability; (iii) population density; and (iv) size of the district where the retail outlet is proposed to be set up.

Franchising, as defined by the 2005 Commercial Law, means a commercial arrangement in which a franchisor grants the franchisee the right to carry out the business of selling its goods or supplying services in Vietnam under agreed conditions. Under the WTO Commitments, as from 1 January 2009, foreign investors are permitted to set up 100% foreign-owned companies or branches engaging in franchising activities.

Agency means the commercial act in which a foreign-invested enterprise is allowed to conduct the sale or purchase of goods, in its own name, in return for remuneration from its customer(s).

Dispute Resolution

Dispute Settlement by Vietnamese Courts

Dispute settlement by Vietnamese courts is popular among Vietnamese people for their civil cases. One of the reasons is the low court fees. The other reasons include their habits and arbitration proceedings are only available for commercial disputes. However, before selecting Vietnamese courts, the parties should take into account the potential time-consuming process for court proceedings. Although the proceeding laws set time limits for courts to settle a dispute (for example, two to four months for first instance proceedings), the possibility of a prolonged process, a lengthy appeal and court reviews make court proceedings in Vietnam a time consuming process. In practice, some disputes have been held for hearing and review for a period of several years.

Another note is that Vietnamese courts are reluctant to uphold the choice of a foreign law as the governing law by the parties. In fact, Vietnamese judges do not normally apply foreign laws, and they do not have the practice of calling foreign lawyers or legal experts for opinions.

Foreign and International Arbitration and Court

Parties of commercial transactions with foreign elements (e.g., where a party is a foreigner or the transaction or transacted property/asset is located outside of Vietnam) are allowed to choose foreign arbitration or court or international arbitration to settle their dispute. However, a foreign court's judgment or arbitral award cannot be enforced in Vietnam until it has undergone a process of recognition and enforcement conducted by a provincial court of Vietnam. The Vietnamese court's judgment regarding the recognition and enforcement of a foreign arbitral award is appealable.



In September 1995, Vietnam became a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Thus, subject to limited exceptions, foreign arbitral awards which are rendered in a country member of the convention can be recognized and enforced in Vietnam.

For a foreign court's judgment, such judgment can only be recognized and enforced in Vietnam if between the country where the judgment is issued and Vietnam has a judicial accord (for recognition of each country's court judgments) or Vietnamese courts accept the recognition and enforcement on a reciprocal basis.

In practice, the enforcement of foreign arbitral awards or foreign court's judgments seems to be more difficult than the enforcement of an award or judgment made in Vietnam. It is worth noting further that the process of seeking recognition and enforcement of a foreign arbitral award in Vietnam is fairly lengthy and stressful (mostly because of the unfavourable attitude of Vietnamese courts over foreign arbitral awards).

Dispute Settlement by Vietnamese Arbitration

The popularity of arbitration is ever increasing since Vietnam adopted the Law on Commercial Arbitration in 2010. Arbitration is available for commercial disputes which are broadly defined to include profit-making purposes or when a disputing party is a business company. Thus, disputes which can be settled via arbitration are various such as those involved with sale of goods, provision of services, construction, investment, and other commercial transactions leaving only few cases which are exclusively reserved for courts such as inheritance or land disputes.

Arbitral awards are final and binding, and may be challenged only in certain circumstances mainly involving procedural errors that arose during the process of arbitration or when the awards are contrary to the basic principles of Vietnamese law. A party of the dispute may request a domestic arbitral award to be set aside within 30 days from the date an award is issued. The court's decision on a petition to set aside an award may not be appealed and is final and valid for enforcement.

Vietnam currently has about 40 arbitration centers. Of these, the Vietnam International Arbitration Centre (VIAC) is most reputational in terms of its long tradition, panel of experts who are both foreign and Vietnamese known in their fields, and transparency in resolving disputes.

About Indochine Counsel

Established in October 2006, Indochine Counsel is a leading commercial law firm in Vietnam. Our firm is ideally positioned to assist international investors and foreign firms to navigate the legal landscape in one of Asia's most dynamic and challenging countries. We also take pride in our services offered to domestic clients in searching for opportunities abroad. With over 45 lawyers many of whom have been trained abroad and staffs in two offices, Ho Chi Minh City and Hanoi, Indochine Counsel offers expertise in a dozen practice areas and provides assistance throughout the entire life cycle of your business.

Indochine Counsel represents and advises clients on all legal aspects in the following major areas of expertise:

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Contact Us

For more information about investing in Vietnam, please contact the following Indochine professionals:



Dang The Duc
Managing Partner
E duc.dang@indochinecounsel.com



Pham Viet Tuan
Senior Associate | Head of Litigation & Dispute Resolution, Real Estate & Construction
E tuan.pham@indochinecounsel.com



Nguyen Thi Hong Anh
Partner | Co-Head of IP & TMT Practice Group
E anh.nguyen@indochinecounsel.com



Dang Hoan My
Senior Associate | Co-Head of Projects & Infrastructure
E my.dang@indochinecounsel.com



Phan Anh Vu
Partner | Co-Head of Corporate and M&A, Projects & Infrastructure
E vu.phan@indochinecounsel.com



Thai Gia Han
Associate | Co-Head of IP & TMT Practice Group
E han.thai@indochinecounsel.com



Pham Thi Thanh Lan
Partner | Co-Head of Corporate and M&A
E lan.pham@indochinecounsel.com



Nguyen Thi Thanh Truc
Associate | Head of Investment & Corporate Services
E truc.nguyen@indochinecounsel.com



Le Thi Khanh Hoan
Senior Associate | Head of Employment, Regulatory & Compliance
E hoan.le@indochinecounsel.com



Trinh Ngoc Ly
Associate
E ly.trinh@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

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