DOING BUSINESS IN VIETMAN

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This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Vietnam.

1 GENERAL INFORMATION

1.1 Country Overview

1.1.1 Geography

Location*:* South-eastern Asia bordering the Gulf of Thailand, Gulf of Tonkin, South China, South China Sea, Laos and Cambodia.

Area*:* total: 331,210 sq km, land: 310,070 sq km, water: 21,140 sq km

Climate: tropical in south; monsoonal in north with hot, rainy season (mid-May to mid-September) and warm, dry season (Mid-October to mid-March).

Religions: Buddhist, Catholic, Hoa Hao, Cao Dai, Protestant, Muslim, none

1.1.2 People

Ethnicities: 54 ethnic groups of which Kinh (ethnic Vietnamese) 86.2%, Tay 1.9%, Thai 1.7%, Muong 1.5%, Khome 1.4%, Hoa 1.1%, Nun 1.1%, Hmong 1%, others 4.1% (1999 census)

Population*:* 88.57 million (July 2009 EST.). The median age is 26 and 57% of the population is below the age of 30.

Annual growth rate (2009): 1.2%.

Languages*:* Vietnamese (official); English (increasingly favored as a second language); some French, Chinese.

Education (2009): Literacy--94%.

Health (2010 est.): *Birth rate:* 17.29 births/1,000 population - *Infant mortality rate:* 21.57 deaths/1,000 live births - *Life expectancy at birth:* 71.94 yrs*. Death rate:* 5.97 deaths/1,000 population.

1.1.3 Government

Government Type: Socialist Republic

Capital City*:* Hanoi

Administrative subdivisions: 59 provinces, 5 municipalities (Can Tho, Hai Phong, Da Nang, Hanoi, and Ho Chi Minh).

Branches: *Executive*--president (head of state and chair of National Defense and Security Council) and prime minister (heads cabinet of ministries and commissions). *Legislative*--National Assembly. *Judicial*--Supreme People's Court; Prosecutorial Supreme People's Procuracy.

Political party: Communist Party of Vietnam (CPV) with over 3 million members, formerly (1951-76)

1.1.4 Principal Government Officials

- President--Nguyen Minh Triet
- Prime Minister--Nguyen Tan Dung
- National Assembly Chairman--Nguyen Phu Trong
- Deputy Prime Minister and Minister of Foreign Affairs--Pham Gia Khiem
- Ambassador to the United States--Le Cong Phung
- Ambassador to the United Nations--Le Luong Minh

1.2 Economic Overview

1.2.1 Vietnam Economic Data

(Source: http://www.cia.gov/library/publications)

Vietnam is a densely-populated developing country that has been transitioning from the rigidities of a centrally-planned economy since 1986. Vietnamese authorities have reaffirmed their commitment to economic modernization in recent years. Vietnam joined the World Trade Organization in January 2007, which has promoted more competitive, export-driven industries. Vietnam became an official negotiating partner in the Trans-Pacific Partnership trade agreement in 2010. Agriculture's share of economic output has continued to shrink from about 25% in 2000 to less than 22% in 2012, while industry's share increased from 36% to nearly 41% in the same period. State-owned enterprises account for roughly 40% of GDP. Poverty has declined significantly, and Vietnam is working to create jobs to meet the challenge of a labour force that is growing by more than one million people every year. The global recession hurt Vietnam's export-oriented economy, with GDP in 2009-12 growing less than the 7% per annum average achieved during the previous decade. In 2012, however, exports increased by more than 12%, year-on-year; several administrative actions brought the trade deficit back into balance. Between 2008 and 2011, Vietnam's managed currency, the dong, was devalued in excess of 20%, but its value remained stable in 2012. Foreign direct investment inflows fell 4.5% to $10.5 billion in 2012. Foreign donors have pledged $6.5 billion in new development assistance for 2013. Hanoi has oscillated between promoting growth and emphasizing macroeconomic stability in recent years. In February 2011, the Government shifted policy away from policies aimed at achieving a high rate of economic growth, which had stoked inflation, to those aimed at stabilizing the economy, through tighter monetary and fiscal control. In early 2012 Vietnam unveiled a broad, "three pillar" economic reform program, proposing the restructuring of public investment, state-owned enterprises, and the banking sector. Vietnam's economy continues to face challenges from an undercapitalized banking sector. Non-performing loans weigh heavily on banks and businesses. In September 2012, the official bad debt ratio climbed to 8.8%, though some financial analysts believe it could be as high as 15%.

1.2.2 Vietnam Economic Indicators

(Source: http://www.cia.gov/library/publications)

GDP Growth Rate	5.1% (2012 est.- country comparison to the world: 53)
GDP (purchasing power parity):	$320.5 billion (2012 est.- country comparison to the world: 42)
GDP (official exchange rate)	$137.7 billion (2012 est.)
Contribution to GDP growth rate by sector (%) according to GDP growth rate	agriculture: 21.5% industry: 40.7% services: 37.7% (2012 est.)
GDP per capita	

Reserves of foreign exchange and gold:	$20.9 billion (31 December 2012 est.) country comparison to the world: 57 $14.05 billion (31 December 2011 est.)
Inflation rate	9.2% (2012 est.) country comparison to the world: 194 18.7% (2011 est.)
Labour force by occupation	agriculture: 48% industry: 22.4% services: 29.6% (2011)
Unemployment rate	4.3% (2012 est.) country comparison to the world: 38 3.6% (2011 est.)
Industrial production:	Products: food processing, garments, shoes, machine building, mining, cement, chemical fertilizer, glass, tires, oil, coal, steel, paper Growth rate: 6% (2011 est.) country comparison to the world: 54
Public debt:	48.2% of GDP (2012 est.) country comparison to the world: 66 48.3% of GDP (2011 est.) Note: data cover general government debt, and excludes debt instruments issued (or owned) by government entities other than the treasury; the data include treasury debt held by foreign entities; the data include debt issued by subnational entities, as well as intra-governmental debt; intra-governmental debt consists of treasury borrowings from surpluses in the social funds, such as for retirement, medical care, and unemployment; debt instruments for the social funds are not sold at public auctions
Natural resources:	Coal, crude oil, zinc, copper, silver, gold, manganese, iron
Industrial production growth rate:	6% (2011 est.) country comparison to the world: 54
Export:	$109.4 billion (2012 est.) country comparison to the world: 37 $96.91 billion (2011 est.) Export commodities: clothes, shoes, marine products, crude oil, electronics, wooden products, rice, machinery
Import:	$109.6 billion (2012 est.) country comparison to the world: 33 $97.36 billion (2011 est.) Import commodities: machinery and equipment, petroleum products, steel products, raw materials for the clothing and shoe industries, electronics, plastics, automobiles.
Exchange rates:	dong (VND) per US dollar - 20,858.3 (2012 est.) 20,649 (2011 est.) 18,612.92 (2010 est.) 17,799.6 (2009) 16,548.3 (2008)
Fiscal year:	calendar year

1.3 Opening up to Foreign Investment

Vietnam has been remarkably successful over the last decades or so in attracting substantial foreign direct investment (“FDI”) inflows. The foreign-invested sector is now an important element of the corporate community in Vietnam, and an equally important engine of economic growth for the country.

1.3.1 Foreign direct investment projects licensed in period 1988 - 2011

	Number of projects	Total registered capital *(Mill. USD)* (*)	Implementation capital *(Mill. USD)*
Total	**14998**	**229913,7**	**88945,5**
1988	37	341,7	-
1989	67	525,5	-
1990	107	735,0	-
1991	152	1291,5	328,8
1992	196	2208,5	574,9
1993	274	3037,4	1017,5
1994	372	4188,4	2040,6
1995	415	6937,2	2556,0
1996	372	10164,1	2714,0
1997	349	5590,7	3115,0
1998	285	5099,9	2367,4
1999	327	2565,4	2334,9
2000	391	2838,9	2413,5
2001	555	3142,8	2450,5
2002	808	2998,8	2591,0
2003	791	3191,2	2650,0
2004	811	4547,6	2852,5
2005	970	6839,8	3308,8
2006	987	12004,0	4100,1
2007	1544	21347,8	8030,0
2008	1557	71726,0	11500,0
2009	1208	23107,3	10000,0
2010	1237	19886,1	11000,0
Prel. 2011	1186	15598,1	11000,0

(*) *Including supplementary capital to licensed projects in previous years.*
(Sources: General Statistics Office of Vietnam, http://www.gso.gov.vn.)

1.3.2 Foreign direct investment projects licensed by kinds of economic activity (Accumulation of projects having effect as of 31/12/2011):

	Number of projects	Total registered capital *(Mill. USD)* (*)
TOTAL	**13440**	**199078,9**
Agriculture, forestry and fishing	495	3264,5
Mining and quarrying	71	3015,5
Manufacturing	7661	94675,8
Electricity, gas, stream and air conditioning supply	72	7391,6
Water supply, sewerage, waste management and remediation activities	27	2401,9
Construction	852	10324,1
Wholesale and retail trade; Repair of motor vehicles and motorcycles	690	2119,1
Transportation and storage	321	3256,8
Accommodation and food service activities	319	10523,3
Information and communication	736	5709,5
Financial, banking and insurance activities	75	1321,6
Real estate activities	377	48155,9
Professional, scientific and technical activities	1162	976,1
Administrative and support service activities	107	188,0
Education and training	154	359,2
Human health and social work activities	76	1081,9
Arts, entertainment and recreation	131	3602,6
Other activities	114	711,5

(*) *Including supplementary capital to licensed projects in previous years.*
(Sources: General Statistics Office of Vietnam, http://www.gso.gov.vn.)

1.4 Transport Infrastructure

Enormous progress in infrastructure development has been accomplished in Vietnam in recent years. The country is by now investing more than 1/3 of its GDP; about 9% goes into infrastructure. As a result, Vietnam is rapidly catching up with its neighbours in terms of transport infrastructure. Nevertheless, most of investors and enterprises in Vietnam still complain about insufficient transport infrastructure, and excessively expensive electricity and telephone services.

1.4.1 Airport in VN

- **International Airports:** Noi Bai - HAN (Ha Noi - Capital), Tan Son Nhat - SGN (Ho Chi Minh City), Da Nang - DAD (Central Vietnam)

- **Domestic Airports**: Phu Bai - HUI (Hue City), Cam Ranh - CXR (Nha Trang City), Duong Dong - PQC (Phu Quoc), Pleiku - PXU (Pleiku City), Phu Cat - UIH (Qui Nhon) Lien Khuong - DLI (DaLat City), Buon Me Thuot - BMV, Ca Mau - CAH, Tra Noc (Can Tho City) - VCA, Rach Gia - VKG (Rach Gia Province), Co Ong - VCS (Con Dao) , Dien Bien Phu - DIN, Cat Bi - HPH (Hai Phong City), Na San - SQH (Son La), Dong Tac - TBB (Tuy Hoa City), Vinh - VII (Vinh City), Vung Tau - VTG (Vung Tau City).

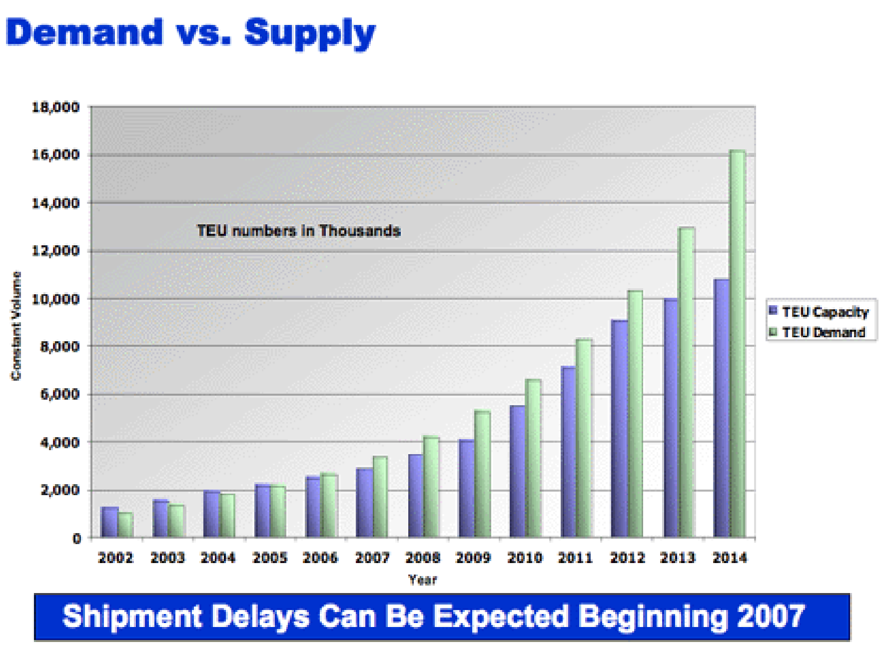
- **Proposed Airport**: **Long Thanh International Airport** will replace Tan Son Nhat International Airport as the country's leading international airport. The Master Plan for this new airport was approved in April 2006. The new airport will be built in Long Thanh county, Dong Nai province, about 50 km North-East Ho Chi Minh City and 70 km South-West petroleum city of Vung Tau, by the Highway 51A. The Pre-Feasibility Study for this project is under way. The Long Thanh International Airport will be constructed on an area of 50 km². It will have 4 runways (4,000 km x 60 m) and is capable to receive all jumbo-jet (A380). The project is scheduled to start in 2007 and will be divided in 2 stages. Once the Stage 1 is completed, this airport will have 2 parallel runways (4,000 km x 60 m) and a Terminal with the capacity of 20 million passengers per annum. This stage will be finished in 2010. The 2nd stage is planned to be completed in 2015, then this airport will have 3 passenger terminals and a cargo terminal designed to receive 80 to 100 million passengers and 5 million metric tons of cargo per year. The total invested capital of this project is estimated $8 billion. Upon completion of Long Thanh International Airport, Tan Son Nhat Airport will serve domestic passengers only. Long Thanh International Airport is expected to be the leading airport in Indochina Peninsula, and one of the busiest air transportation hubs in the South-East Asian Region.

1.4.2 Port

Along her 3,200km-long coastline, Vietnam has a total of 114 seaports, 14 of which are relatively large and named as the keys to economic development. Vietnam's major ports are Haiphong (in the north), Da Nang (central region) and Ho Chi Minh City (in the south). However, most ports are relatively small with obsolete facilities and poor supporting services.

Port congestion is particularly acute in the Ho Chi Minh City area where FDI has been concentrated. As shown in the chart below, demand will begin to exceed terminal capacity in calendar year 2007. The situation would be worsen in 2008 and 2009 before the deep-water terminal at Cai Mep becomes operational in 2011.

Chart : Supply and Demand at HCM City Ports



With the shortage of container berths in the HCMC area, delays are inevitable, and the options to increase existing container lift capacity will have only a small impact on minimizing expected delays.

Nevertheless, the Vietnamese government deserves some credits towards their acknowledgement of the seaports' importance. More and more ports are being renovated and updated to meet international standards; plans are being materialized, not just on paper. In July 15, 2006, the construction of the largest new port in central Vietnam – Dung Quat – commenced. It is designed to accommodate ships of up to 30,000 DWT. The port will help many surrounding industrial parks as well as the central region's economy in general. Along with the new Saigon port complex, Dung Quat port is slated to handle some of the heavy traffic of the current Saigon port. In the north, a port complex – a major expansion of Quang Ninh port – is also being shaped. If approved, the new port will be able to host 100,000 DWT vessels with 4-times larger capacity than Hai Phong port. Vietnam's commitment to the deep-water port at Cai Mep, scheduled to come on-line in 2011, demonstrates both a commitment to development and a corresponding recognition of expected future growth. All of these actions and the expansion of the ports around Ho Chi Minh City are helping to improve shipping availability and will ultimately improve shipping prices

1.4.3 Road, Bridge and Tunnel Infrastructure

Getting containers to the ports in a timely manner from factories and consolidators' facilities is also a concern given the significant increase in passenger and freight traffic in and around the HCMC area. Container cut-off times at terminals will need to be strictly enforced to improve terminal productivity so reliability in road transport becomes more critical.

1.4.4 Additional Projects and Future Planning

The following are some of the longer-term transport infrastructure projects of most concern:

- Developing container terminal capacity in the Haiphong / Cai Lan ports for feeder vessels of at least 1,500 TEU;
- Additional deep-water terminals in the South beyond Cai Mep;
- More aggressive timeline for developing the new Long Thanh International Airport;
- Additional land-side infrastructure projects to assure timely delivery of containers to / from ports.

1.4.5 Brief of Transportation in Vietnam

Airports

- 9 International Airports: Hanoi, Ho Chi Minh City, Hue, Nha Trang, Hai Phong (Cat Bi), Da Nang, Can Tho, Chu Lai, Da Lat (Lien Khuong).
- 15 Domestic Airports: Buon Ma Thuot, Ca Mau, Con Dao, Da Lat (Cam Ly), Dien Bien Phu, Dong Hoi, Hai Phong (Kien An), Phu Quoc, Pleiku, Quy Nhon, Rach Gia, Son La, Tuy Hoa, Vinh, Vung Tau.
- country comparison to the world: 99

Airports – with paved runways

- total: 37
- over 3,047 m: 9
- 2,438 to 3,047 m: 5
- 1,524 to 2,437 m: 14
- 914 to 1,523 m: 9 (2008)

Airports – with unpaved runways

- total: 7
- 1,524 to 2,437 m: 1
- 914 to 1,523 m: 3
- under 914 m: 3 (2008)

Heliport

- 1 Heliport at Halong

Pipelines

- condensate/gas 42 km; gas 66 km; refined products 206 km (2008)

Railways

- total: 2,347 km
- country comparison to the world: 67
- standard gauge: 178 km 1.435-m gauge
- narrow gauge: 2,169 km 1.000-m gauge (2008)

Roadways

- total: 222,179 km
- country comparison to the world: 24
- paved: 42,167 km
- unpaved: 180,012 km (2004)

Waterways

- 17,702 km (5,000 km navigable by vessels up to 1.8 m draft) (2008)
- country comparison to the world: 8

Merchant Marine

- total: 387
- country comparison to the world: 28
- by type: barge carrier 1, bulk carrier 36, cargo 280, chemical tanker 12, container 14, liquefied gas 6, passenger 1, passenger/cargo 1, petroleum tanker 32, refrigerated cargo 2, roll on/roll off 1, specialized tanker 1
- foreign-owned: 2 (Hong Kong 1, Japan 1)
- registered in other countries: 64 (Honduras 1, Liberia 4, Mongolia 23, Panama 30, Tuvalu 5, unknown 1) (2008)

Ports and Terminals

- Da Nang
- Hai Phong
- Ho Chi Minh City

Transportation Note: the International Maritime Bureau reports the territorial and offshore waters in the South China Sea as high risk for piracy and armed robbery against ships; numerous commercial vessels have been attacked and hijacked both at anchor and while underway; hijacked vessels are often disguised and cargo diverted to ports in East Asia; crews have been murdered or cast adrift.

2 CHOICE OF LEGAL FORM

2.1. Enterprises Law ("EL") and the Investment Law ("IL")

The legal framework for doing business in Vietnam changed significantly for foreign investors on July 1st, 2006. The prior system whereby there were different legal mechanisms for domestic and foreign investors has largely disappeared. The Enterprises Law ("EL") has created a unified legal framework for investment by providing similar business structures from which both domestic and foreign investors can choose. They are:

- Sole traders: a private enterprise, which is owned solely by an individual, and the owner has unlimited liability for the business of the enterprise;
- Partnership: 2 or more individuals can set up a partnership; partners are jointly and severally liable for obligations of the partnership;
- Limited liability company: there are 2 types; a one member limited liability company and a 2 to 50 member limited liability company; and
- Joint stock Company: this entity has shares and there is a minimum of 3 shareholders.

The Investment Law ("IL") provides details on procedures to carry out investment activities, the rights and obligations of investors, assurances of the legitimate rights and interests of investors, investment incentives, state management of investment in Vietnam and rules on offshore investment from Vietnam.

2.2. The Legal Framework for Business Structures in Vietnam

2.2.1. Private Enterprise (Sole Trader)

Definition	A private enterprise may be established and owned by an individual, but that individual can establish only one private enterprise.
Legal status	A private enterprise is not a legal entity separate from its owner; the owner is liable for all of its operations with his or her entire property. In other words, the owner of a private enterprise has unlimited liability for the private enterprise's obligations.
Capital contribution	The owner of a private enterprise is solely responsible for the whole investment capital of a private enterprise. The owner is not required to transfer ownership of his/its personal assets to the enterprise.
Transfer of capital	The owner of a private enterprise is entitled to sell the enterprise to another investor. The new owner of the enterprise must register his name as the owner of the enterprise.

2.2.2. Partnership

Definition	A partnership is an enterprise in which: • There are at least 2 partners who: are co-owners of the company jointly conduct business under one common name (general partners); in addition to general partners, there are also limited partners. • General partners must be individuals who are liable for all obligations of the partnership whereas limited partners are liable for debts of the partnership only to the extent of their capital contribution to the partnership. Limited partners can be individuals or organizations (ie. companies).
Legal status	A partnership has legal person status as from the date of receipt of the business registration certificate.
Capital contribution	• General and limited partners must establish a capital contribution schedule, and make payment as committed. • If a general partner fails to contribute capital in full and on time, thereby causing losses to the partnership, such partner must compensate the partnership for its losses. • If a limited partner fails to contribute capital in full and on time, the shortfall is regarded as a debt owned to the partnership; in that case, the limited partner may be expelled from partnerships by the Partners' Council. • At the time of making his/its full capital contribution, a partner shall be granted a capital share certificate.
Transfer of capital	General partners cannot transfer part or all of their capital contribution in the partnership to others without approval from the remaining general partners. Limited partners have the right to transfer their capital contribution in the partnership to others.

2.2.3. Limited Liability Company

	One member limited liability company (One member LLC)	2 to 50 member limited liability company
Definition	A one member LLC may be established and owned by an individual or an entity--foreign or domestic. It is, simply, a company owned by one entity or person.	A 2 to 50 member limited liability company is an enterprise in which: • Members are organizations and/or individuals; the total number of members may not exceed 50; • Members are responsible for debts and other property liabilities of the enterprise within the amount of capital that they have committed to contribute to the company. The company is not entitled to issue shares.
Legal status	A one member LLC is a legal entity separate from its owner; the owner is liable for the debts of the company up to the charter capital of the company.	A 2 to 50 member limited liability company has the status of a legal person.
Capital Contribution	The sole owner of the company is responsible for the charter capital of the company. The owner is required to transfer ownership of the assets contributed to the company. In some business activities such as banking, insurance, etc., there are minimum capital requirements. Except for the cases mentioned above, the owner can fix the charter capital of the company. The owner has to pay its capital in accordance with the payment schedule.	There is no minimum requirement for equity contribution by any member regardless of nationality. However, in some business activities (which will be specified by the Government), the maximum ratio of capital contributed by foreign member(s) will be specified. In some business activities such as banking, insurance, etc., there are minimum capital requirements. Except for the cases mentioned above, the investors can fix their capital contribution. Investors have to pay their capital in accordance with the payment schedule.
Transfer of capital	The owner of the company is entitled to sell part or all of its capital in the company; if the transfer of capital leads to an increase in the number of investors, the company must convert to a 2 to 50 member limited liability company.	A member of the company is entitled to transfer part or all of its capital to a third party in accordance with the following provisions: • A capital share must be offered under the same conditions to all other members of the company and in proportion to their share of capital; • A capital share may be transferred to a non-member if all remaining members fail to buy such capital share within 30 days from the date of offer.

2.2.4. Joint-Stock Company

Definition	A joint stock company is an enterprise in which: • Charter capital is divided into shares; • Shareholders are organizations and/or individuals; the minimum number of shareholders is 3 with no maximum number; • Shareholders are liable for debts and other property liabilities of the enterprise up to the value of the capital to which they subscribe. A joint stock company is entitled to issue securities to mobilize capital--including common and preferred shares and bonds.
Legal status	A joint stock company is a limited liability company and has the status of a legal person.
Capital Contribution	There is no minimum requirement for equity contribution by any shareholder regardless of nationality. However, in some business activities (which will be specified by the Government), the maximum ratio of capital contributed by foreign shareholders will be specified. In some business activities such as banking, insurance, etc., there are minimum capital requirements. Except for the cases mentioned above, the investors can fix their capital contribution. Investors have to pay their capital in accordance with the payment schedule.
Transfer of capital	Shares are freely transferable, except that voting preference shares and ordinary shares of founding shareholders may not be transferred within 3 years from the date the business registration is granted, with some exceptions. The transfer may be made in writing as usual or by mere delivery of the share certificate.

2.3. Forms of Investment for Foreign Investors in Vietnam

As mentioned, foreign investors and domestic investors are treated equally in the choice of direct investment forms. However, there are some limitations and restrictions on the forms of investment as they apply to foreign investors, depending on investment fields and industries. The Government is drafting a list of fields and industries in which there will be a cap on the percentage of capital contribution by foreign investors.

Generally speaking, there are 6 forms of investment for foreign investors in Vietnam:

1. 100% Foreign-owned Factory: a business entity in which foreign investors own 100% capital;

Forms of company: can be choosing Sole Trader, Limited Liability Company or Joint Stock Company. Factory can export and conduct domestic sales.

2. Joint Venture Company: is a joint venture company between domestic and foreign investors;

Joint Venture Factory requires at least 2 shareholders. The foreign investor could hold the share up to 99%.

3. Contractual Forms:

Investors are permitted to sign an investment contract in order to co-operate in production and to share profits/products and other forms of business co-operation. Investment under contracts such as a Business Cooperation Contract (“BCC”), or Build-Operate-Transfer (“BOT”), Build-Transfer-Operate (“BTO”), or Build-Transfer (“BT”) contracts;

- Investors may enter into BCCs to cooperate in production with an agreed form of profit-sharing or production-sharing and other forms of business cooperation.
- Investors may sign BOT, BTO and BT contracts with state agencies to execute projects on construction, expansion, modernization and operation of infrastructure facilities in the domains of transport, electricity production and business, water supply and drainage, waste treatment and other domains as stipulated by the Prime Minister.

4. Reinvestment in the existing business;

Investors may invest in business development in the following forms:

- Expanding scale, increasing capacity or business capability of their existing investment;
- Renewing technologies, raising product quality, reducing environmental pollution.

5. Purchase of shares or contribution of capital and participation in management of investment activities;

Investors may also invest in Vietnam by contributing capital to or purchasing shares from other existing business entities. The ratio of capital contributed or of shares purchased by foreign investors in some fields and industries will be specified by the Government.

6. Investment in the merger or acquisition of enterprises;

Investors have the right to merge or to acquire existing companies and branches. The merger and acquisition of companies and branches must comply with the EL, the Competition Law and other laws. Each case may have its own set of conditions.

2.3. Representative Office and Branch in Vietnam

According to the Commercial Law, foreign investors can also set up a resident Representative Office or a Branch in Vietnam. The following regulations are in place regarding representative offices and branches:

2.3.1. Representative office (RO)

All foreign businesses, which have been in operation for more than a year will be allowed to open representative offices in Vietnam. To establish a RO, the foreign company must apply for a license issued by the Provincial Trade Department, and complete post licensing procedures including notice of operations and obtaining a seal. No taxes are applicable to RO's operations, besides personal income tax payable by their staff.

In general, an RO's activities are restricted to business promotion, identification of and accelerating trade opportunities and supervision of the execution of contracts signed between its parent and local partners (although the RO may sign of behalf of their parent). Further, ROs are not permitted to generate profit from operations in Vietnam, make or receive payments directly or purchase local goods directly for export or distribute imported products on behalf of their head office. However, ROs are permitted to lease office space, employ staff and execute contracts as long as this falls within the boundaries of their permitted activities. The license of a RO has a term of 5 years, although it may be extended.

2.3.2. Branch (BO)

The Ministry of Trade is the body with the function to grant, amend or withdraw licenses for BOs. Unlike ROs, BOs are permitted to conduct business activities, execute contracts, and perform all other commercial activities for which they are licensed. Typically, they are permitted to: lease office space; recruit staff; execute contracts and carry out trading activities in Vietnam in accordance with their license; open bank accounts; remit profits abroad; and have a company stamp in their own name. BOs are subject to taxes.

Branches shall also have to follow the accounting regime, as required by the laws of Vietnam. The financial year runs from 01 January to 31 December. Other year ends shall only be used subject to MoF's approvals. Branches are required to report to the MOT, once a year, on the operational and financial position of the business while representative offices have to submit annual reports to the provincial Service of Trade.

In general, a branch can sell/ purchase goods and carry out all kinds of business activities, no requirements for paid up capital. Yet, it is not allowed to set up currently.

2.4. Key Administrative Bodies

The Ministry of Planning and Investment ("MPI") is the central administrative body that oversees all investment activities including foreign investment. The MPI is responsible for drafting legislation, developing policies, providing guidance and consultation, and coordinating with other authorities. In addition, the MPI will evaluate important investment projects as decided by the Prime Minister. The MPI is also the contact point for foreign invested enterprises ("FIE") -that is, any investment entity with some foreign investment--in respect of problems or issues that arise. The MPI is headquartered in Hanoi, and has representative offices in Ho Chi Minh City ("HCM City") and elsewhere throughout the country.

Provincial People's Committees directly administer their own foreign investment activities and issue investment certificates ("ICs") for almost all types of foreign invested projects. Every investment project that involves foreign capital needs to have an IC. Some projects that are conditional projects or projects that are very large need to be approved by the Prime Minister before the IC can be issued.

The Department of Planning and Investment ("DPI") under local People's Committees is the contact point in the licensing process. The DPI plays an active role in evaluating an investment request for projects that must pass through an evaluation process.

If an FIE is located within an industrial zone ("IZ"), it is under the administration of that IZ's Management Board. That is, an FIE in an IZ will operates subject to the IZ's rules on import/export, environment, labour, etc., in addition to the general rules of the Government and the MPI. A Management Board is authorized to issue an IC for a project that will be located within an IZ and that is within its administration.

Other, more specialized ministries are also involved in foreign investment. For example, for high-tech projects, the Ministry of Science and Technology ("MOST") plays an administrative role in developing the industry's specific policies for foreign investment, and in overseeing the application of foreign investment regulations in harmonization with the industry's own rules. It is often consulted by the MPI prior to actual licensing.

2.5. Foreign Investment Guarantees and Incentives

Through the IL, the Government commits to create a safe and friendly environment for foreign investment. The Government expressly states that it treats domestic and foreign investors in all economic sectors equally before the law. The Government guarantees that it will neither expropriate nor nationalize investment capital, real property and assets of investors inclusive of foreign investors.

In addition, in the event that law or policy subsequently promulgated provide larger benefits and incentives than those previously given to investors, such larger benefits and incentives will automatically apply retroactively to those investors. If changes adversely affect existing investors, the Government commits to adopt offsetting, particular measures, such as tax holidays or payment of compensation, in order to approximate the same conditions that existed before the amendments. This undertaking appeared also in the prior law, and there is a record of Government adherence to this undertaking.

While developing a more comprehensive IL framework, the Government has continued to improve other laws that affect the business environment, such as the Commercial Code 2005, Law on Electronic Transactions 2005, Civil Procedures Code 2005, etc.

Business entities are offered certain incentives to invest in Vietnam, mostly in the form of tax exemptions or reductions. These incentives, along with rules on the operation of business activities, are presented in the matrix which appears at the end of this Chapter. Compared to the former law, incentives are given more selectively, reflecting a more selective investment environment.

2.6. Government's Special Policies for High-tech Industries

Vietnam especially encourages foreign investment in high-tech projects. The MOST identifies what kinds of projects are considered to be high-tech projects.

As they are especially encouraged by the Government, high-tech projects enjoy the best preferential treatment and incentives. For example, the tax rate is the lowest; the tax exemption period is the longest, etc. While we discuss taxes at part 2, briefly, the corporate income tax rate for a high-tech project can be as low as 10% or 15%, depending on the specific nature and the location of the project. Interestingly, for a high-tech project in software development, individuals who are involved in software development will benefit from preferential personal income tax rates. Further, a company with a project to do research, to develop technology or to train professionals in science and technology can be exempt from the payment of land rental for a certain period of time.

2.7. Licensing Procedures

Generally speaking, foreign investors are able to choose whatever form of business structure is available for Vietnamese investors to carry out their business. The main difference is that when a foreign investor invests in Vietnam, it has to specify particular activities which the new company will conduct, and it must apply for an IC. Depending on its specific nature, a new IC can be obtained either through a registration process or through an evaluation process. As the words imply, registration is slightly simpler. Evaluation means that, in addition, the structure of the project will be reviewed.

- For an investment project in which investment capital is below 300 billion Vietnamese dong (equivalent to about US$19 million) or which is not a conditional project, registration only is required.
- For an investment project in which investment capital is from 300 billion Vietnamese dong or which is a conditional project, evaluation procedures apply.

Different projects are licensed by different licensing authorities, depending, again, on the specifications of the project. As discussed at section 1.2, although only provincial People's Committees and Management Boards of IZs have the authority to issue ICs to foreign invested projects, some conditional projects and some large size or important projects need approval in principle by the Prime Minister upon recommendation from the MPI and other ministries. Projects that need to be approved by the Prime Minister are listed in Appendix 5 of this Chapter.

An IC is project-specific in another sense. While there are standard documents to be submitted, additional documentation, such as an Environmental Impact Assessment ("EIA"), land documents and permits are required for certain projects.

An IC is issued for a foreign investor that invests for the first time in Vietnam. This IC will be treated as a Business Registration Certificate, a document necessary to set up an entity in Vietnam. This treatment is different as between domestic investors and foreign investors. Domestic investors are allowed to obtain a Business Registration Certificate before they need to obtain an IC. In addition, not all projects invested by domestic investors require an IC.

FIEs can at the same time perform more than one investment project. If an FIE has a new investment project, it will file another application for the issuance of an IC for that project and need not establish a new business vehicle. In other words, this means that an FIE may, at the same time, carry out more than one investment project.

The statutory time limit for a licensing authority to consider and issue an IC is 45 working days. The administrative system has been reformed, efficiency in the licensing process has been improved, and this time limit is usually observed. Some licensing authorities have significantly reduced the time in which they act.

The actual time limit will probably vary for each company, depending on the extent of special conditions requested by or being offered to the company. We would expect the time variables to occur before the application is submitted, not after. That is, the justification for special treatment should be carefully documented ahead of time, and informal discussions with the licensing authority beforehand are important.

An IC will specify the privileges to which a "preferential" or "especially preferential" project is entitled in respect of tax holidays, etc.

It is important to know, in advance, what are the essential approvals and licenses required for a project. An IC is the first step. Other approvals may be required. For example, the construction of a factory requires approvals by certain authorities, such as the land administration body and construction department in that locale.

2.8. Fields, Industries that Entitle Investor to Investment Preferences

An investor in several business fields and industries is entitled to investment preferences. These are preferential projects. It is important for a company, at the licensing stage, to satisfy the licensing authority that its project qualifies.

The IL provides a list of fields and industries that are entitled to investment preferences and those preferences apply equally to domestic and foreign investors:

- Production of new materials or new energy; manufacture of hi-tech products, bio-technology or information technology; mechanical engineering;
- Farming and processing of agriculture, forest or aquatic products, salt making; production of hybrids, new plant varieties and/or animal breeds;
- Use of high technologies or modern techniques; protection of the ecological environment; research, development and nourishment of high technologies;
- Employment of a large number of workers;
- Building and developing infrastructures, important and large-scale projects;
- Development of education, training, health care, physical training and sports and national culture;
- Development of traditional crafts and industries;
- Other production and service domains which need to be promoted.

The Government is in the process of finalizing a decree to which a detailed list of areas that are entitled to investment preferences and special investment preferences will be attached. We will update this booklet when the list is adopted.

The application dossier for preferential projects must include a feasibility study. It is important, to prepare a solid feasibility study.

2.9. Conditional Investment Domains

Conditional investments must satisfy several conditions. The IL provides a general list of conditional domains that apply to every investment project involving either foreign or domestic investment, and the list includes:

- Domains that affect national defence, security, social order and safety;
- Financial and banking domains;
- Domains that affect public health;

- Cultural, information, press and publishing;
- Entertainment services;
- Real estate business;
- Survey, prospecting, exploration and exploitation of natural resources; ecological and environmental projects;
- Development of education and training;
- Some other domains as provided by law.

One should note that an enterprise in which domestic investors own 51% or more of the charter capital will be treated as a domestic investment.

2.10. Operation of Business Entity

The procedures to set up an entity to carry out business are somewhat different as between foreign investors and domestic investors. After being set up, a business (regardless of whether invested by foreign or domestic investors) will operate within the same legal framework especially in relation to the form of business structure.

Generally, the law requires that the legal representative of any business entity must reside in Vietnam. In his/her absence for more than 30 days, his/he must authorize another person to act as the legal representative of the entity.

The operation duration of a business entity can be indefinite unless the charter of the entity provides otherwise or the business entity is dissolved according to law. However, note that the duration of a foreign investment project may not exceed 50 years but may be revised. In case of special circumstances, the Government may grant a longer term, which, however, may not exceed 70 years. Presumably, upon expiration of the term of an investment project, foreign investors can continue to use their business entity to carry out other new projects.

A business entity is dissolved in the following cases:

- The operating duration stated in the company's charter expires without any decision to renew;
- A decision is made by the owners of the entity;
- A company no longer has the minimum number of members required by law for 6 consecutive months (i.e., 2 members for a 2 to 50 member limited liability company or 3 members for a joint stock company);
- The business registration certificate is withdrawn.

An entity may be dissolved only after paying all of its debts and other liabilities. If an entity is unable to pay its debts when due, it may be subject to bankruptcy.

3 ACCOUNTING AND AUDIT REQUIREMENT

3.1. Accounting

According to the Law on Accounting and its implementing legislation, the financial statements of the enterprises established in Vietnam should be prepared in accordance with the following fundamental requirements:

- Framework: Vietnamese Accounting Standards and System (VASs)
- Financial year: Year ending 31 March; 30 June; 30 September or 31 December
- Language: Vietnamese
- Reporting currency: VND
- The submission of the statutory financial statements and auditors' reports thereon (if applicable) to various Ministries and Departments of the Government is required within 90 days from the end of each financial year.

Any departures from those above requirements need to be registered with the Ministry of Finance (MoF.) for written consent. Pay attention to that foreign invested enterprise must also employ a Vietnam-qualified chief accountant for their accounting function.

3.2. Auditing

Under the Law of Independent Audit, enterprises such as all foreign invested enterprises, listed companies, banks and certain other financial institutions, insurance companies and state-owned enterprises are required to undergo an annual audit of their accounts.

4 TAXATION

Companies which operate under the Investment Law or the Enterprise Law, are subject to several taxes including corporate income tax, value added tax, import and export taxes, special taxes and their employees are subject to personal income tax. Tax incentives in relation to tax rates and tax exemptions vary, and mainly depend upon the type of business in which a company is engaged. They also vary, based on the incentives which the Government grants.

4.1 Corporate Income Tax (CIT)

The bases for CIT calculation are taxable income and the CIT rate. CIT payable is taxable income multiplied by the CIT rate.

4.1.1 Taxable Income

Taxable income includes business and other income. Taxable income from business activities is turnover minus reasonable expenses which relate to the turnover.

Turnover

Turnover is the total sum earned from the sale of goods or services, excluding VAT, whether or not the company has collected money from the sale of goods.

Expenses

Reasonable expenses, excluding VAT, which may be deducted to determine taxable income include:

- Depreciation of fixed assets used for business activities. Depreciation rates are determined in accordance with use duration as described by current regulations. Normally, depreciation ranges from 5 to 10 years. Some fixed assets may be depreciated over a period of 25 to 50 years (for example, houses) or depreciated over a period of 3 years (for example, electronic equipment);
- Expenses for raw materials, materials, fuel, energy, labour tools, and goods used in the business;
- Salaries, wages, meals, allowances paid on the basis of labour contracts, excluding compensation for founders who do not directly take part in running the business;
- Expenses for scientific and technological research; innovation; improvement; health care and corporate training for employees, and even financial support for outside educational programs;
- Expenses for outside services: electricity, water, telephone, office supplies, property insurance; audit, legal consultancy, management companies; rentals and repairs of fixed assets; payments for the use of technical materials, patents, licenses of technology transfer, trademarks which are not treated as fixed assets; other expenses for outside services;
- Special payments for women employees as prescribed by current regulations; payments for labour safety, cost of safety measures for the establishment,

social and medical insurance, trade union fund contributions according to regulations;

- Loan interest for domestic loans; bank fees and loan interest paid under foreign credit agreements which have been approved by the State Bank. Note that loan interest on contribution of legal capital and charter capital is not included;
- Provisions for bad debts, inventory, drop in securities prices;
- Severance allowance paid to employees according to current regulations;
- Expenses directly related to the circulation and sale of products such as packaging, warehousing and guarantees;
- Expenses for advertisement, marketing, sales promotion, guest reception, commissions, external relations, conferences and other expenses. Expenses under this category must not exceed 10% of the total of items 1 to 10 above;
- Taxes, charges, fees, land rental which are related to business activities, but do not include CIT, and
- Management expenses allocated to a permanent establishment in Vietnam by a foreign company.

4.1.2 CIT Rate

The CIT rate is generally 25%, except for those business establishments conducting prospecting, exploration and mining of petroleum, gas and other rare and precious natural resources, which is from 32% to 50%.

The amount of CIT payable is equal to the assessable income multiplied by the tax rate. Where an enterprise has already paid income tax outside Vietnam, the amount of CIT already paid shall be deducted, however at a maximum not in excess of the amount of CIT payable.

4.1.3 Loss Carry Forward

A Foreign Invested Enterprise (FIE) is entitled to carry forward the total loss experienced in any year to subsequent profit-making years, for up to 5 years.

4.1.4 Tax incentives:

Company engaged in preferred areas of investment or located in special geographical areas are generally entitled to preferential tax rates, as follows:

- 10% CIT rate 10% CIT rate for 15 years for new investment projects in an area with especially difficult socioeconomic conditions, in economic zones and in high-tech zones; and to new investment projects in the sectors of high technology, scientific research and technological development, investment in development of especially important infrastructure facilities of the State, and production of software products;
- 10% CIT rate for the entire operational period is applicable to enterprises operating in the sectors of education and training, occupational training, health care, culture, sport and the environment;
- 20% CIT rate for the first 10 years applies to new investment projects in areas with difficult socioeconomic conditions;
- 20% CIT rate for the entire operational period is applicable to agricultural service co-operatives and to people's credit funds.

Aside from the preferential tax rates, qualified projects may also be entitled to tax exemption or fifty per cent reduction of CIT for a certain number of years during the incentive period.

4.1.5 Reimbursement of CIT as a Result of Reinvestment

Investors which reinvest dividends and other lawful income which they have received from their investment in a FIE in Vietnam are under the Investment Law, is no longer entitled to a refund of the CIT paid on reinvested dividends and income.

4.1.6 No Tax on Income Transferred Abroad

Profits generated from investing under the Investment Law in Vietnam (including CIT reimbursement due to reinvestment and income from capital transfer), can be transferred abroad or retained overseas, free of remittance tax.

4.1.7 Tax declarations and payment

Taxpayers subject to CIT are to file tax declarations and pay taxes on a quarterly and on an annual basis. The quarterly income tax return is to be filed and taxes paid not later than the 30th day of the following quarter. The annual CIT finalisation return is to be filed and the taxes paid not later than 90 days from the end of the fiscal or calendar year.

Enterprises are to pay tax in the place where it has its main head office. If an enterprise has a "dependent accounting production establishment" in another province or city, then the amount of CIT assessable and payable will be determined in accordance with a ratio of expenses as between the production establishment and the main head office.

4.2 Dividend Payments

Dividends or income distributed from activities being capital contribution, joint venture and/or association with a domestic enterprise after payment of corporate income tax are tax exempt income. No profit remittance tax is imposed.

4.3 Personal Income Tax (PIT)

The new Law on Personal Income Tax was approved by the Vietnamese National Assembly on 20 November 2007. The new law which takes effect on 01 January 2009 replaces the previous regulations on Income Tax of High Income Earners in Vietnam.

4.3.1 Taxpayers

Taxpayers subject to PIT are resident individuals who are taxable on worldwide income and non-resident individuals who are taxable on income arising within Vietnam.

Residency

Any individual shall be considered a resident for tax purposes if he satisfies one of the following conditions:

- Being present in Vietnam for a period of 183 days or more within one western calendar year or for 12 consecutive months
- Having a regular residential location in Vietnam in one of the following cases:
  - In case of a foreigner who has permanent residence recorded in the residence card or temporary residence card;
  - Having a lease contract of 90 days or more including: hotels, boarding houses, rest houses, lodgings, working offices and office headquarters.

Non-residency

A non-resident is any individual who does not satisfy the above conditions.

4.3.2 Taxable income

Taxable income comprises 10 types of income:

- business income;
- income being salaries and wages;
- income from capital investments;
- income from capital transfers;

- income from real property transfers;
- income being winnings or prizes;
- royalties;
- income from franchises;
- income being inheritance and receipt of a gift.

4.3.3 Tax Exempt Income

Income not subject to tax includes:

- income from real property transfers as between certain related parties;
- income from transfer of a sole residential house [and/or] residential land use right in Vietnam;
- income being receipt of an inheritance or gift of real property as between certain related parties;
- interest on money deposited at a bank or credit institution, and income being interest from life insurance policies;
- foreign currency remitted by overseas Vietnamese;
- income being that part of night shift or overtime salary payable that is higher than the day shift or normal working hours salary stipulated by the Labour Code;
- income being scholarships;
- income being compensation payments from life and non-life insurance contracts and compensation for labour accidents.

4.3.4 Tax Rates for Residents

The scale of progressive tax tariff on business income and salary received by residents is as follows:

Average monthly income Unit: VND million	**Tax rate %**
Up to 5	5
Over 5 to 10	10
Over 10 to 18	15
Over 18 to 32	20
Over 32 to 52	25
Over 52 to 80	30
Over 80	35

Source: Circular 84/2008/TT-BTC

Income other than salary and business income received by residents shall be subject to the following tax rates:

Taxed income	**Tax rate %**
Incomes from capital investment (such as dividends and interest)	5
Incomes from copyright and commercial franchising	5
Incomes from winnings or prizes	10
Incomes from inheritances and gifts	10
Incomes from capital transfer	20
Incomes from securities transfer	0.1 on transfer prince or 20 on gain
Incomes from real estate transfer	25

4.3.5 Tax Rates for Non-residents

Tax rates applicable to non-residents receiving business income are as follows:

Business lines	CIT rates
Goods trading	1%
Service provision	5%
Production, construction, transportation and other business activities	2%

Salaries and wages for work done in Vietnam is subject to the 20% Vietnam income tax regardless of where the income is paid. Other incomes are subject to the following rates:

Type of income	Tax rate %
Incomes from capital investment (such as dividends and interest)	5
Income from royalties and franchises	5
Incomes from winnings or prizes	10
Incomes from inheritances and gifts	10
Incomes from capital transfer	20
Incomes from securities transfer	0.1
Incomes from real estate transfer	2

4.3.6 Tax Declaration and Payment

Income paying organizations paying income subject to withholding tax are required to make monthly tax declarations not later than the 20^{th} day of every month. If an income paying body deducts lower than VND5 Million, it can make the tax declaration on a quarterly basis not later than the 30^{th} day of the first month of the following quarter. The total income withheld must be finalized not later than 90 days of the end of the western calendar year.

Business individuals who comply with the accounting regime for invoices and source documents must submit provisional quarterly declaration not later than the 30^{th} day of the first month of the following quarter and submit the annual finalization declaration not later than the 90^{th} day of the end of the western calendar year.

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

- An individual receiving income being salary paid by an entity from overseas
- A Vietnamese individual with income being salary paid by an international organization, embassy or consulate in Vietnam

4.3.7 Tax Finalization

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

- Where the amount of tax payable in the year is greater than the amount already deducted or provisionally paid in the year, or tax obligations arise throughout the year for which deductions or provisional payments have not yet been made
- Where the taxpayer requests a tax refund or an offset of tax in the following period.
- Where a resident individual being a foreigner upon termination of his or her contract to work in Vietnam and before exiting Vietnam

Taxes due based on the declarations must be paid not later than the deadline for filing the declarations.

4.4 Value Added Tax

Goods and services used for production, business and consumption in Vietnam are subject to VAT, except for some goods and services which are specifically exempt as stipulated by the Government.

Most organizations which produce and trade in goods and services are subject to VAT. Under the VAT law, a company would be liable to pay VAT for selling its products in Vietnam. The VAT rate on exported goods is 0%, as discussed in more detail below.

However, specialized equipment and machinery which are included in technological lines, which cannot be manufactured in Vietnam, and which are imported to create a FIE's fixed assets, are not subject to VAT.

4.4.1 VAT calculation bases

VAT calculation bases consist of 2 elements: taxable price and tax rate.

4.4.1.1. Taxable Price

Taxable price is the selling price for goods sold or services rendered, prior to inclusion of VAT. As for imported goods, the taxable price is the border-gate import price plus import tax.

4.4.1.2. VAT Rates

Currently, VAT rates are 0%, 5%, 10%

Rate	Applicable to
0%	exported goods and services; construction and installation operations of export processing enterprises; goods sold to duty-free shops; international transportation, and to goods and services that are not subject to VAT and that are exported, except for the following: technology transfers and intellectual property transfers to foreign countries; services being reinsurance offshore; credit services, assignment of capital and derivative financial services; post and telecommunications services; and export products being exploited natural resources and mined minerals that have not yet been processed.
5%	areas of the economy considered as essential goods and services, including clean water for manufacturing and for living purposes; fertilisers; ore used for production of fertilisers; pesticides and growth stimulants for animals and crops; feed for cattle, poultry and other animals; fresh food produce; sugar and its by-products; products made from jute, sedge, bamboo, rattan, thatch, coconut fibre, coconut shell, water hyacinth, and other handmade products produced by using agricultural raw materials; semi-processed cotton; newsprint; medical equipment and instruments; medical sanitary cotton and bandages; preventive and curative medicines; and pharmaceutical products and pharmaceutical materials which are the raw materials for producing preventive and curative medicines; scientific and technological services as stipulated in the Law on Science and Technology.
10%	all other goods and services not subject to the 0% and 5% rates.

4.4.2 VAT Payable

VAT payable is calculated by the deduction method, as stipulated in the Law on VAT. Briefly, the deduction method means that VAT payable is output VAT (VAT received) minus input VAT (VAT paid).

Output VAT is the taxable price of goods sold, multiplied by the applicable VAT rate.

Input VAT is the taxable price of goods sold or services rendered to a company by a selling entity, multiplied by the applicable VAT rate. Specifically, input VAT is the total amount of VAT paid by the company. It appears on the VAT invoices that a seller issues to the company.

4.4.3 VAT declarations and payment

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

4.5 Export Tax and Import Tax

All goods which FIEs are permitted to export and/or import, including goods sold to enterprises in EPZs, and/or goods sold by enterprises in EPZs, are subject to export and/or import tax. FIEs have to pay export and import tax according to the Law on Export Tax and Import Tax.

4.5.1 Export tax

Most finished products, if exported, are subject to an export tax rate of 0%.

- Materials, raw materials, semi-finished products sold by FIEs to EPZs and which are used to produce and/or process exported goods are exempt from export tax.

4.5.2 Import tax

- FIEs are exempt from import duties for goods imported to create fixed assets.

FIEs are exempt from import tax on raw materials for making products, for 5 years after commencement of production if the investment:

- is especially encouraged;
- is located in an area which is on the List of geographical locations with special socio-economic difficulties; or
- involves the manufacture of engineering, electrical and electronic parts and accessories.

FIEs will be reimbursed for import duties paid on raw materials and materials imported for the production of goods which are exported, and on raw materials used to make products which are sold to enterprises which produce goods for export.

4.6 Special Sales Taxes

The following goods are subject to special sales tax: cigarettes, cigars and other products processed from tobacco and used to inhale, sniff, chew, smell or swallow; spirits; beer; passenger vehicles of less than 24 seats, including vehicles for carrying both passengers and cargo with 2 or more rows of seats, designed with a fixed partition between the passenger and cargo compartments; 2-wheel and 3-wheel motor vehicles with cylinder capacity above 125cm3; aircraft and yachts; various types of petrol, naphtha, reformat component and other products used to mix in petrol; air-conditioners with a capacity of 90,000 BTU or less; playing cards and votive paper.

The following businesses are also subject to the special sales tax: business of operating dancehalls; business of operating massage lounges and karaoke parlours; business of operating casinos and of operating electronic games with prizes including jackpot machines, slot machines and other similar types of machines; betting business; golf business including selling membership cards and tickets to play golf and perform the business of operating lotteries.

The amount of special sales tax payable shall equal the special sales taxable price multiplied by the special sales tax rate, which range from 10% to 70% depending on the taxable goods or services.

4.7 Natural Resources Tax

All organisations and individuals engaged in exploiting or mining natural resources in compliance with the laws of Vietnam, irrespective of their industry, scope and operational form, are liable to register, declare and pay royalties.

Taxable resources means all natural resources existing in the land, islands, internal waters, sea territory, exclusive economic zones (including maritime areas common to both Vietnam and a neighbouring country) and the continental shelf under the sovereignty of the Socialist Republic of Vietnam, including: metallic mineral resources; non-metallic mineral resources including soil, stone, sand, gravel, coal, gemstones, mineral water and natural thermal water; oil; gas or natural gas; natural forest products; natural marine products; natural water including surface water, ground water and other natural resources under the law on natural resources.

The taxable value of a resource is the selling price of each item or unit of resource at the place of mining in accordance with the principle of market price. The royalty rates vary from 0% to 40%.

Exemptions or reductions in royalty taxes include offshore fishing by high-capacity vessels; organisations, individuals and households that exploit aquatic resources or make unprocessed salt (for 2009 and 2010); natural water used for generation of hydropower that is not fed into the national power grid; soil or combined soil products for ground levelling or construction works.

4.8 Tax Treaties

Vietnam has signed treaties on avoidance of double taxation with many countries:

- Algeria
- Australia
- Austria
- Bangladesh
- Belarus
- Belgium
- Brunei
- Bulgaria
- Canada
- China
- Cuba
- Czech Republic
- Denmark
- Egypt
- Finland
- France
- Germany
- Hungary
- Hong Kong
- Iceland
- India
- Indonesia
- Ireland
- Israel
- Italy
- Japan
- Kazakhstan
- Kingdom of Saudi Arabia
- Kuwait
- Laos
- Luxembourg
- Malaysia
- Morocco
- Mongolia
- Mozambique
- Myanmar
- Norway
- Netherlands
- North Korea
- Oman
- Pakistan
- Philippines
- Poland
- Qatar
- Romania
- Russia
- Seychelles
- Singapore
- South Korea
- Slovakia
- Spain
- Sri Lanka
- Sweden
- Switzerland
- Taiwan
- Thailand
- Tunisian Republic
- Ukraine
- United Arab Emirates
- United Kingdom
- Uzbekistan
- Venezuela

Expatriates living in Vietnam who are residents of any such countries are allowed to deduct tax paid in their home country from their Vietnamese tax obligation. Certain conditions have to be met in order to qualify.

4.9 Transfer Pricing Rules

Related party transactions must be conducted at arm's length and must comply with the transfer pricing rules and documentation requirements. Parties are related if they hold directly or indirectly at least 20% of the equity or the total property of the other business establishment. The definition of affiliated parties also extends to certain significant suppliers, customer and funding relationships between otherwise unrelated parties such as a business establishment, which directly or indirectly controls more than 50% of the turnover of sales (calculated on the basis of each type of product) of the other business establishment. Vietnam transfer pricing rules adopted the revised Organization for Economic Co-operation and Development (OECD) transfer pricing guidelines and acceptable methods of determining "arms length principle" such as comparable uncontrolled price, cost plus, resale price, comparable profits and profit split.

Contemporaneous documentation is required to be prepared and maintained. Such documentation is required to be presented to the tax authorities (translated into Vietnamese) within 30 days of receiving a written request. In addition, a declaration is required to be filed together with the CIT return providing details of associated transactions and the methodologies adopted.

5 LABOR

5.1 Brief Comments on Vietnam’s Labour Force

Vietnam has a young labour force. The level of experience and expertise in certain areas is still low. However, literacy is high, and computer literacy in particular, by both anecdotal report and surveys, is quickly developing. Vietnamese youngsters are dynamic, eager and fast to learn and acquire new skills.

A near universal view within the foreign manufacturing community is that Vietnamese workers have good assembly skills. They are attentive to detail, especially in areas that require a high level of accuracy.

5.2 State Management Agencies

The Ministry of Labor, War Invalids and Social Affairs (“MOLISA”) acts on behalf of the State in managing labor-related activities of enterprises. It is responsible to formulate and enforce policies on the salary system, and on management and development of the labour force. It sets out general employment rules applicable to all enterprises.

People’s Committees, acting through Departments of Labour, War Invalids and Social Affairs (“DOLISA”) under them, are responsible for management of labour in their locale. They are responsible to implement labour rules and monitor compliance. They follow labour issues and report to the MOLISA.

Trade unions exist at all levels, from the enterprise level to the industry level, and from the provincial level to the central level. They participate in the supervision of labour-related activities at their level. Trade unions have been an (allegedly) essential part of Vietnam’s political system. Their current task is to represent and protect workers’ rights and interests. However, in reality, they are not very active as a force either in political or even in labour matters.

There are also labour inspectorates that have been established by the MOLISA and People’s Committees at all levels to carry out inspection with regard to compliance and complaints. Normally, these bodies are reactive rather than proactive.

5.3 General Employment Conditions

Amendments to Vietnam’s Labour Code took effect on May 1, 2013. This summary includes reference to the amendments.

The Labour Code sets forth rules for the employment of workers. It also provides for rights and obligations of both employees and employers. There is a large body of independent regulations which implement the Labour Code.

5.3.1. Minimum Wage

The minimum wage is the monthly wage which must be paid to an employee hired to perform a basic job that does not require training. The minimum wage is fixed from time to time by the Government. There is a minimum wage for each region and each industry. Workers in HCM City and Hanoi are paid wages which are higher than those in other places. From 1 January 2013, the minimum wage of Vietnamese labourers doing the simplest jobs under normal working condition for enterprises with foreign investment is as follows:

- US$ 112 per month for foreign investment enterprises operating in urban districts of Hanoi and Ho Chi Minh cities;
- US$ 100 per month for foreign investment enterprises operating in rural districts of Hanoi and Ho Chi Minh cities; urban districts of Hai Phong; Ha Long city or Quang Ninh province; Bien Hoa city of Dong Nai province; Vung Tau city of Ba

Ria-Vung Tau province; Thu Dau Mot provincial capital and rural districts of Thuan An, Di An, Ben Cat and Tan Uyen of Binh Duong province;

- US$ 79 - 86 per month for foreign investment enterprises operating in remaining localities.

An enterprise will pay wages in line with its business conditions, based on the above minimum wage structure.

A worker's wage may be denominated in either US dollars or Vietnamese dong, but, if it is in US dollars, it must be paid in Vietnamese dong at the average exchange rate applicable at the time of payment. Most employers opt to denominate wages in Vietnamese dong.

5.3.2. Overtime Payment

Generally speaking, a worker who works overtime is entitled to receive overtime pay. While current regulations, at one place or another, state that overtime payment does not apply to certain jobs, payment for employees working overtime is often a matter of an enterprise's own practice.

The Labour Code provides different mandatory payment rates for overtime: 150% after normal working hours, 200% on weekends, and 300% on a holiday or a paid leave. Employees and their employer may agree on an amount of overtime which may not exceed 4 hours per day or 200 hours per year. In some cases, it may reach 300 hours per year.

For employees who work night shifts, the Labour Code requires them to be paid at least 20% more than those who work normal hours.

Application of the rules on overtime tends to be flexible with the employees' own desire to exceed the minimums given consideration, although nothing in the law permits the employee to exceed the maximum.

5.3.3. Annual Leave

An employee who has worked for 1 year is entitled to a statutory annual leave of 12 working days. For an employee who has worked for less than a year, he/she may receive leave on a pro-rata basis. If, by reason of termination of employment or for any other reason, an employee has not taken all of his/her annual leave, the employee must be paid for the days not taken.

5.3.4. Bonuses

Paying annual bonuses is generally a matter of an enterprise's own determination, based on the enterprise's annual business performance and its workers' performance. However, the practice most employers have consistently followed is to pay an annual bonus equivalent to at least 1 month salary. An employee in his/her first year is usually paid a portion of the annual bonus corresponding to the time he/she has been with the enterprise.

5.3.5. Social and Medical Insurance

Social insurance

Social insurance is compulsory for any employee who works for at least 3 months. Both the employer and the employee are required to contribute to the social insurance fund. Employers and employees must pay contributions to the State Social Insurance Fund equal to 16% of gross income by the employer and 6% by the employee.

The government also contributes and provides additional funds. Employees and their beneficiaries can claim benefits in the form of compensation for sick leave, maternity leave, compensation for work-related accidents and occupational diseases, retirement and death benefits.

For employees who work for less than 3 months, the social insurance contribution is required to be included in their wages, and those employees may voluntarily join the social insurance fund, or they may, by themselves, obtain insurance from other sources.

The Fund covers the employees' benefits during sick leave, maternity leave, retirement, allowances for work-related accidents and occupational diseases, and survivors' benefits.

The ceiling level for social insurance is 20 times the Government's minimum wage.

Health insurance

Health insurance is compulsory for all employees. Contributions come from both the employer and the employee. Health insurance covers non work-related medical expenses.

Insurance Fund to partially cover health care benefits. The contributions currently constitute 4.5% of gross income, with 3% being the responsibility of the employer and 1.5% the responsibility of the employee. Expatriates are not required to contribute to the State social and health insurance funds.

5.3.6. Pensions

Monthly pensions are provided from the Social Insurance Fund where an individual has contributed social insurance for more than 20 years and when they reach 60 years of age for men, or 55 years of age for women.

5.3.7. Unemployment Insurance

The unemployed are entitled to 3 months unemployment benefits if they have paid between 12 and 36 months of unemployment insurance, and 6 months of benefits if they have paid 36 to 72 months insurance. Ex-employees would be paid an unemployment allowance for 1 year if they had paid over 144 months of unemployment insurance. The allowance is up to 60% of the persons' previous salary.

Funding for the unemployment insurance comes from the State, enterprises and labourers. Employees pay 1% of their monthly salary to unemployment insurance; employers use 1% of their monthly salary expense for unemployment insurance; and the State assist funding by contributing 1% of the employer's monthly salary to the fund.

5.3.8. Maternity Leave and Payment

A female employee is entitled to maternity leave for 6 months, calculated both prior to and after giving birth to her child. If she is covered by social insurance, she is entitled to receive a social insurance benefit equivalent to the full salary for the period, plus an additional 1 month's salary.

Additional leave without pay is possible if permitted by the employer.

5.3.9. Severance pay

When the labor contract terminates, the employer is responsible to give the severance pay to the regular employees that have been worked for 12 months or more. A half- month salary shall be paid for each working year.

The working time for severance pay calculation is the total duration that the employee has actually worked for the employer excluding the time the employee has taken the unemployment insurance as prescribed in the Law on Social insurance.

5.3.10. Redundancy pay

The employer is responsible to give the redundancy pay to the dismissed regular employees that have worked for 12 months or more 1-month salary is paid for each working year but must not be lower than the salary of 02 months.

The working time for redundancy pay calculation is the total duration that the employee has actually worked for the employer excluding the time the employee has taken the unemployment insurance as prescribed in the Law on Social.

5.4 Recruitment: Direct Hire vs. Use of an Employment Agency

Direct hire or use of a labour supply agency is a matter of choice for an enterprise with foreign investment, provided that it must register the persons it recruits with the labour authorities in the locale.

5.5 Individual and Collective Labour Agreements

5.5.1. Individual Labour Agreement

Essentially, all employees are required to have a labour agreement with their employer. There are 3 types of individual labour agreement recognized by law, namely an agreement for an indefinite term, an agreement for a definite term of 1 to 3 years, and an agreement for a specific task which will last for less than 1 year.

Insofar as the second and third types are concerned, if such agreement expires without being renewed, or if no new agreement is executed for the employee to continue to work, the expired agreement will be deemed to remain in effect with one condition; that is, it will become an indefinite term agreement. In addition, a definite term labour agreement may be used only 2 consecutive times, including renewal, for a single employee. After the second consecutive definite term, if the employer and the employee enter into a new labour agreement, this agreement must be an indefinite term labour agreement. If the employee’s employment continues, but no new labour agreement is executed, the current labour agreement will automatically become an indefinite term agreement.

An individual labour agreement signed between an enterprise with foreign investment and an employee must be prepared on a standard form issued by the MOLISA. It contains particulars such as the nature of the work, working hours, employment term, remuneration package, leave, bonus, insurance, etc. Additional terms may be added. The employer and the employee must each keep one original.

For a definite term, specific task agreement, one labour agreement may be used for a group of employees. Such agreement is signed between the employer and a representative of the group. It will be effective and enforceable as if signed by each employee.

5.5.2. Collective Labour Agreement

An employer employing 10 or more persons may enter into a collective labour agreement with its employees. A collective labour agreement must contain basic terms such as working hours, salaries and bonuses, insurance, work safety provisions, and guarantee of employment. A collective labour agreement may be signed for 1 to 3 years. The term could be less than 1 year if it is the first time the employer has entered into a collective labour agreement.

A collective labour agreement has to be registered with the relevant labour department within 10 days after it has been executed, and it becomes effective upon registration. A collective labour agreement is the main source of employees’ rights and interests. There may be some overlap between a collective labour agreement and an individual labour agreement. In that case, a collective labour agreement prevails.

5.6 Trade Unions

Trade unions exist at all levels, and, as mentioned, form a part of Vietnam's political system. Vietnam has a separate Law on Trade Unions that deals with the establishment and operation of trade unions at all levels. Trade unions are empowered to monitor compliance with labour regulations. They have a role in educating workers to perform their duties of citizenship in the interest of the country.

The right to form a trade union is given to all employees. The employer is required to acknowledge the status of a legally established trade union, and, indeed, to assist in its formation, and to provide facilities in order for the trade union to function. An employer may not prejudice an employee because he/she has formed or joined a trade union.

5.7 Work Safety

The law strictly requires an employer to implement safety measures in the workplace. Liability will be imposed on the employer for work-related accidents that cause injuries during the course of employment. If an employee is not covered by social insurance, the employer is obliged to pay compensation to the employee or his/her beneficiary. Whether or not the employee was at fault is irrelevant in respect of the employer's obligation to pay compensation, but fault is relevant in determining how much is to be paid.

5.8 Labour Dispute Resolution

Emphasis is placed on negotiation and conciliation in order to resolve labor-related disputes. The law sets out rules for conciliation, including powers of conciliators, and responsibilities of the parties in dispute. If conciliation fails, a court action may be instituted with the Labor Court under the relevant People's Court. The time limit for an employee to file a request to resolve a dispute with the court if conciliation fails ranges from 6 months to 1 year, depending on the nature of a particular dispute. DOLISAs and the Labour Courts tend to favour the employee, but they are not dogmatic.

5.9 Employment of Expatriates

Recent developments in regulations implementing the Labour Code relax a number of restrictions on the employment of expatriates. While the employment of an expatriate is still limited to a managerial position or a position requiring a high level of expertise for which position Vietnamese are not yet generally qualified, an enterprise with foreign investment is no longer required to provide an explanatory statement for the need to recruit an expatriate. It is generally required that the enterprise have a plan for Vietnamese staff to replace expatriates; however, an enterprise is permitted to extend the employment of the expatriate if it does not yet have a competent Vietnamese replacement.

On the other hand, the new rules limit the employment of expatriates in another way. Firstly, the right of an enterprise with foreign investment to employ the first expatriate is an automatic right; however, employment of the second and subsequent expatriates is possible if each additional expatriate does not cause the number of expatriates to exceed 3% of the total number of employees of the enterprise with foreign investment. In case enterprises with foreign investment wish to employ a number of expatriates that account for more than 3%, they must submit their proposals to presidents of provincial/municipal People's Committees for consideration and written approval on the basis of the actual need of each enterprise. Where enterprises with foreign investment have projects approved or have been granted investment certificates by Vietnamese state agencies, which specify the number of expatriates allowed, the approval of presidents of provincial/municipal People's Committees is not required. Even so, the number of expatriates in a single enterprise with foreign investment is capped at 50.

This controversial 3% threshold rule appears not to have been evenly applied. In the past, despite the existence of certain limitations, the authorities' view was fairly relaxed. Most enterprises with foreign investment filled many positions with people recruited from abroad. We believe that the policy will continue to be flexible in specific cases.

With limited exceptions, most expatriates who work for 3 months or more in Vietnam are required to have a work permit. Expatriates are exempt from obtaining a work permit as follows:

- Expatriate who enters Vietnam to work for less than 3 months or to handle emergency cases such as complicated technical or technological unexpected problems which affect or threaten to affect production/business activities and which Vietnamese/foreign experts working in Vietnam are unable to handle;
- Expatriate who is a member of the Management Board of company established under Vietnamese law;
- Expatriate lawyer who receives Certificate of practice of Law in Vietnam granted by the Ministry of Justice.

6 BANKING AND CAPITAL MARKETS

6.1 Banking system

Vietnam's banking system was divided into a two-tier system in 1988 when the State Bank of Vietnam (SBV) assumed the regulatory and supervisory roles for the banking sector, with commercial activities shifting to credit institutions. The SBV acts as both the Central Bank and as a Government Agency of the Socialist Republic of Vietnam. Operating under the tight direction of the Government, the SBV is subject to the Government's or the Prime Minister's approval for key areas of operation.

Vietnam's credit institutions comprise state-owned commercial banks (SOCBs), joint-stock commercial banks, joint-venture banks, 100% foreign-owned banks, branches of foreign banks, credit cooperatives, finance leasing companies and finance companies.

Four SOCBs dominate the domestic banking sector; the Bank for Foreign Trade of Vietnam (Vietcombank); the Vietnam Joint Stock Commercial Bank for Industry and Trade (Vietinbank); the Bank for Investment and Development of Vietnam (BIDV); and the Vietnam Bank for Agriculture and Rural Development (Agribank). The SOCBs currently account for around 50% of total banking system assets, however the domination of these banks has been on a significant downward trend.

Over the last two years, foreign banks have expanded to expand their presence in Vietnam. There are more than 33 foreign bank branches; five joint-venture banks, and five 100% foreign owned banks in accordance with Vietnam's WTO commitments (HSBC, Standard Chartered Bank, ANZ Bank, Shinha Bank-Korean Bank and Hong Leong Bank Berhad-Malaysia Bank). Further, there are nine non-bank credit institutions and 54 representative offices from 22 countries and territories. Reports suggest that more than 20 other foreign banks are waiting for 100% foreign-owned banking licenses in order to operate in Vietnam.

6.2 Capital markets

The Vietnam securities markets are monitored and regulated by the State Securities Commission. Ho Chi Minh City Securities Trading Centre (HOSTC) was first opened in July 2000. Five years later, in an effort to establish a new market for trading securities of small and medium enterprises, the Hanoi Securities Trading Centre (HASTC) was inaugurated in March 2005. All bond transactions are traded on HASTC. In July 2007, HOSTC was upgraded to a full stock exchange and renamed Ho Chi Minh City Stock Exchange (HOSE). The market for unlisted public companies, UPCoM which was established in June 2009, aims to narrow transactions on the free market, improve information transparency of companies and reduce risks for investors.

This document is provided as a general overview of matters to be considered when setting up an overseas business in Vietnam. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided.

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REFERENCES

Statistic book of General Statistic Office of Vietnam;
CIA World Fact book 2012.