# Doing business in Vietnam

Updated in November 2018

# Contents





# Foreword

Vietnam Vietnam is a unique country providing extensive opportunities for those willing to spend time to understand the market. Although not without its problems, Vietnam's economy continues to expand and modernise, and with the opening up of previously restricted industries and sectors to meet WTO commitments; opportunities continue to develop. Further growth is being stimulated through bi-lateral Free Trade Agreements (e.g. South Korea) and others such as the EU Vietnam Free Trade Agreement and the CPTPP.

Grant Thornton Vietnam has prepared this guide to assist those interested in doing business in Vietnam. This guide does not cover the subject exhaustively. However, it is intended to answer some of the more important questions that may arise. When specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Vietnam and to obtain the appropriate professional advice.

We hope this guide helps you in learning about and understanding business in Vietnam. Should you require professional assistance we will be only too willing to meet you, to see if we can help.

NOTE:

This guide contains only brief notes and includes legislation in force as of January 2017. The information herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one is entitled to rely on this information and no one should act on such information without appropriate professional advice obtained after a thorough examination of the particular situation.

Kenneth Atkinson

**Executive Chairman**

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**CEO, Managing Partner**

# Country profile

## Summary

Vietnam is a rapidly developing country with a dynamic and emerging market economy.

According to Bloomberg. Vietnam is one of the fastest growing economies in Southeast Asia. Vietnam's GDP growth rate recorded a 10-year high of 6.81% in 2017, mainly fuelled by exports, foreign direct investments and the manufacturing industry. This figure is forecasted by The Ministry of Planning and Investment to grow at a similar rate in 2018.

Vietnam comprises a landmass of 330,972 km2, a vast sea area including a large continental shelf, and a string of archipelagos stretching from the Gulf of Tonkin in the North to the Gulf of Thailand in the South.

Vietnam is an elongated "S" shape with a long borderline from China in the North, Laos in the West and Cambodia in the West and South West. Vietnam has a diversified topography of plains, midlands and mountains.

The capital of Vietnam is Hanoi, which lies in the north of the country. Other major cities include Ho Chi Minh City (often abbreviated to "HCMC" and also referred to as Saigon), Dong Nai, Ba Ria – Vung Tau, Binh Duong in the South; Hai Phong, Quang Ninh and Hai Duong in the North, Hue, Da Nang, Quang Nam, Quang Ngai on the Central and South East Coast.

Although growth has moderated somewhat during 2016, Vietnam's macroeconomic environment remains favourable. After falling to record low of 0.63% in 2015, inflation has increased slightly to 2.66% mainly due to administrative price hikes for health and education services, but this level is still well below the official target of 5%.

**Hanoi**
Capital

**330,972 km$^2$**
Area

**Vietnamese**
Language

**VND**
Currency

**+84**
International dialling code

**8am to 5pm**
Business and Banking hour

**68**
Doing Business rank 2018 (by The World Bank)

**6.8%**
GDP growth

**93 M**
Population



## Geography and population

Vietnam has the third largest population in South East Asia (after Indonesia and Philippines) and is ranked 13rd in the world in terms of total population, reaching 92.7 million according to the population survey in 2016. The rural population accounts for approximately 67%.

The city of Hanoi covers a large urban and rural area in the north of the country. The registered population was around 7.2 million at the end of 2015.

Ho Chi Minh City, the primary economic hub for Vietnam, had a population of about 8.3 million. However, the actual population of Ho Chi Minh City (and Hanoi, to a lesser extent) is likely to be significantly higher due to unrecorded migration from rural areas. In addition, Ho Chi Minh City is also bordered by the established industrial and urban areas of Binh Duong, Dong Nai and Long An Provinces, which arguably extend the City's limits into these provinces.

## Political and legal system

The Constitution in general establishes the rights of the people under the leadership of the Communist Party. The power of the people is exercised through the National Assembly at a central level and through People's Committees at a local level.

The National Assembly is the supreme representative and legislative body and determines domestic and foreign policies, socio -economic tasks, national defence and security issues.

The Head of State is the President, elected by the National Assembly and represents the Nation in internal and foreign affairs. The highest executive body in Vietnam is the Government, formerly known as the Council of Ministers. It is in charge of the general management of the economy and the State. The court and prosecution system in Vietnam has a structure similar to the administrative system. At a central level, the Supreme People's Court is the highest judicial body in Vietnam. At a local level, courts exist at provincial and district levels.

In January 2016 the 12th National Party Congress was held in Hanoi to select new leaders for the country. Nguyen Phu Trong, the incumbent General Secretary of the Communist Party was re-elected. The new President (Mr. Nguyen Phu Trong), Prime Minister (Mr. Nguyen Xuan Phuc) and Chairman of the National Assembly (Madam Nguyen Thi Kim Ngan) were also elected in May 2016.

The Vietnamese legal system consists of a constitution, codes, laws, ordinances, decrees, decisions, circulars, directives and official letters. Although all have the force of law, only laws passed by the National Assembly are referred to as such.

Ordinances are issued by the Standing Committee of the National Assembly to regulate an area where a law is not yet promulgated or regulated. On matters the National Assembly has entrusted to the Government, the Government will issue decrees, decisions, circulars or directives to implement the issued laws or ordinances.

Decrees, decisions and circulars are normally issued by individual ministries and other State agencies, including People's Committees, with respect to subjects within their sphere of responsibility and the force of subordinate legislation.

It should be noted that while codes, laws and ordinances are referred to by name; decrees, decisions, circulars and directives are usually referred to by the number, signing date, and the name of issuer.

## Language

Vietnamese is the country's official language. Foreign languages such as English, French, Russian, Chinese, Japanese and German are also used to varying degrees. English, however, is by far the most widespread foreign language and is commonly used alongside Vietnamese in legal documents relevant to foreign trade and foreign direct investment. English is also featured on the websites of many businesses (both local and foreign-owned) and Government agencies.

## Business hours/time zone

Normal working hours in Vietnam are 8 hours per day and 6 days a week. However, the standard working week for officials and public employees and employees in administrative organizations is 40 hours (5 days). Other organizations are encouraged to apply the standard working week of 40 hours. The total number of overtime hours should not exceed 4 hours a day, 30 hours a month or 200 hours a year. In special circumstances, and subject to the government's allowance, the total number of overtime hours can be extended to a limit of 300 hours per person per year.

# Public holidays

Employees who have been employed for 12 months are provided with a minimum of 12 days of paid annual leave (vacation) per year, in addition to the Public Holidays.

| | |
|---|---|
| 1 Jan | New Year's Day |
| Lunar new year (varies) | Tet Holidays (5 days) |
| 10th day of 3rd lunar month (varies) | Hung King's Anniversary |
| 30 Apr | Reunification Day |
| 1 May | International Labour Day |
| 2 Sep | National Day |

# Economy

Vietnam is a developing country that has been transitioning from the rigidities of a centrally-planned economy since 1986. Vietnam joined the World Trade Organization in January 2007, which has promoted more competitive, export-driven industries. Vietnam successfully finalised negotiations for the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) trade agreement, signed a number of bilateral and multilateral free trade agreements.

(FTAs) with other countries, including the EU Vietnam FTA, and joined the ASEAN Economic Community (AEC). It is expected that Vietnam would have much to gain from these agreements and partnerships, especially where booming apparel and shoes industries are poised to benefit from the 0% tariffs in the United States and other significant importing markets.

Agriculture's contribution to the country's GDP has continued to shrink from about 25% in 2000 to 16.3% in 2016, while contribution from the Service sector increased from 39% to 41% in the same period. The foreign invested sector was identified as an increasingly significant source of growth for the Vietnamese economy, accounting for 23.4% of the total capital invested in 2016, an increase of 23.3% from 2015.

In 2016, a total of 60,667 domestic firms closed down, a decrease of 15.0% from the same period of 2015. The number of newly-established businesses was 110,100, an increase of 16.2% in number and 48.10% in terms of capital. In addition, 26,689 enterprises resumed their operations, up 24.1% compared to the same period of 2015.

# Employment levels

As at 28 December 2016, Vietnam had 54.4 million people over 15 years old, including 47.7 million people of working age with approximately 66.6% of them concentrated in rural areas.

The number actually employed in 2016 was estimated at 53.29 million, of which, 41.9% were working in agriculture, forestry and fishery sectors, 24.69% working in the industrial and construction sector and 33.41% working in the services sector.

The underemployment rate was 1.64% on average while it was 2.10% in rural areas. Overall the unemployment rate in 2016 was 2.30%, slightly lower than that of 2015 but higher than that of 2014 (2.31% and 2.10% respectively); however, the unemployment rate in urban areas improved to 3.18% compared to 3.29% in the previous year.

# Cost of living

According to the Mercer's survey over 209 cities across five continents in 2016, Vietnam's two major cities: Ho Chi Minh City and Hanoi were ranked 88th and 106th respectively in terms of the cost of living, compared with 90th and 86th respectively, in 2015. Living in Ho Chi Minh City and Hanoi is more expensive than in Phnom Penh and Kuala Lumpur (ranked 118th and 151st respectively) but not as expensive as in Bangkok.

# Living standards

As stated by World Bank, The national poverty rate continued decreasing to 9.8% (2016) compared to 13.5% in 2014 and 17.2% in 2012.

According to the Human Development Index (HDI) report announced by UNDP in September 2015, Vietnam's HDI for 2014 positioned it at 116 out of 188, climbing 5 places from 2013 thanks to some achievements in poverty reduction, healthcare and education improvements.

**47.78 M**
people of working age

**33%**
of the labour force working in service sector

# Business etiquette and travel

## Business ettiquette

### Greetings

To greet and say goodbye to Vietnamese business partners, Vietnamese shake both of their hands with the left hand on top of the right wrist and bow slightly. Otherwise, you can bow to Vietnamese.

### Business meeting

Face-to-face meeting is considered very formal in Vietnam that will be confirmed at most one week before the appointment time, if dealing with Government departments and State Owned Enterprises. To start and open a business conversation, business cards should be handed and received to and from business partners by two hands. To clarify the person you are speaking with and show your proper respect, you should read your partners cards carefully. Do not simply glance at it and put it in wallet immediately.

One more important thing should be noted in business meetings is being receptive to any invitations to lunch or dinner after your business meetings. Dinners or luncheons are often arranged by business partners who will be hosting you to build personal relationships – one of the keys to successful business, in Vietnam.

### Addressing Vietnamese

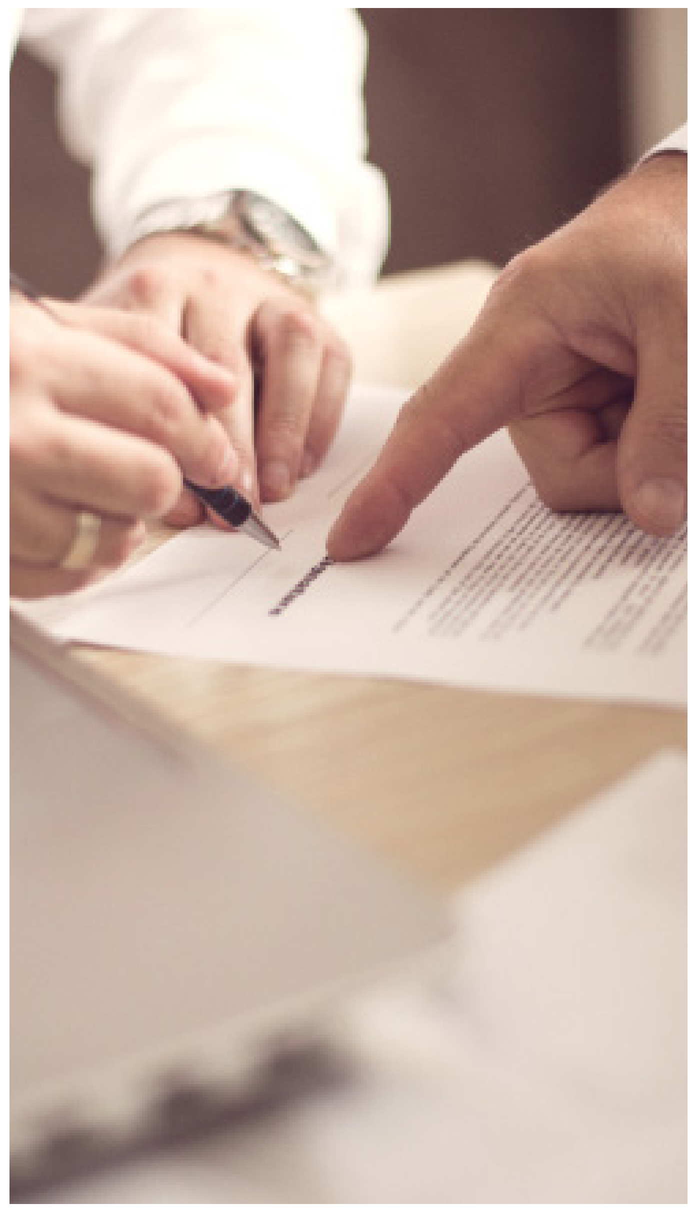
Vietnamese names are written backwards compared to Western names and generally have three or 4 parts: Surname, middle name and last name, family name starting first, middle name and last name. If it is applicable, you can add the professional title. It is normal to use the last name to address a Vietnamese i.e. their Christian name.

### Business attire

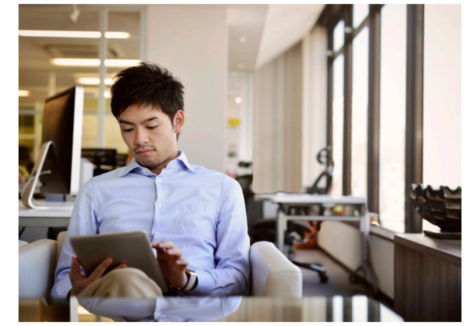
In working places, Vietnamese dress conservatively in good-looking clothes. Men wear suits and women wear suits or dresses. For the time of warmer months, particularly in Southern Vietnam, jacket and suit jackets are not required unless meeting Government officials.

### Gift giving

The giving of gifts is quite common throughout Vietnam on numerous occasions and in business meetings to express your appreciation, gratitude or respect to your business relations. The gift is not supposed to be costly but as an appreciation of friendship.







## Travel to Vietnam

### Visas

A valid visa is required for entry into Vietnam. Legally, tourist visas are not valid for business visits, although this requirement is not strictly enforced. Vietnam has signed bilateral agreements with most ASEAN countries to exempt entry visas for ASEAN citizens visiting other ASEAN countries for a pre-determined period of time. Vietnam has also exempted citizens of The United Kingdom, Germany, France, Italy, Spain (until 2021), Denmark, Finland, Sweden, Japan, South Korea, Norway, Belarus and Russia for citizens visiting Vietnam from requiring entry visas for visits of less than 15 days.

### Visa extensions

Nowadays, Vietnam visa extension is not difficult. Depending on your holding visa, the procedures takes you 7 to 10 days to extend a visa for 30 to 60 days at a cost of 40USD and 60USD respectively. Ideally, visa extensions work smoothly in four big cities: Ho Chi Minh City, Hanoi, Danang and Hue.

Currently, the government is considering entry visa exemptions to foreign visitors from Australia, New Zealand, India, and Canada and the majority of European countries.

In order to obtain a business visa, a business person should be sponsored by an organisation in Vietnam. The sponsorship can be by the visitor's Vietnamese business partner or the visitor's representative office or branch, a trade-support institution, a consulting firm or authorized agent. Visitors must submit visa application forms with photographs and their passports to the Vietnamese Embassy in their country for visa issuance and pay a visa stamping fee.

Since 1 February 2017, Vietnam has introduced a system for e visas and visitors from 40 countries can now apply on line for a 30 day single entry visa.

To apply for e-visas, foreign citizens can access the websites http://www.xuatnhapcanh.gov.vn or http://www.immigration.gov.vn.

A one-month renewable visa will generally be issued. Multiple entry-exit visas, which are valid for three to six months may be obtained for visitors who have regular business in Vietnam. It is dependent on each case, 6-month visa could be issued to visitors such as prestige tourism agencies or investors who are making investments in Vietnam.

Visas can be pre-arranged through certain travel agents or on line and collected upon arrival at Hanoi or Ho Chi Minh City airports, avoiding the need to visit a Vietnamese Embassy abroad.

Alongside implementing the e visas system, the Vietnamese Immigration Department has allowed for a Visa upon arrival In order to make the process of obtaining a visa easier for tourists and business travellers,. This system allows the traveller to apply for an approval letter from the Vietnamese Immigration Department online. The visa will be issued upon arrival at Vietnam international airport having paid the relevant fee. However Visa on arrival can be subject to delays of 30-120 minutes depending on the time of arrival, particularly in HCMC. So using the fast track option is recommended for an additional fee.

# Key trends and statistics

## Overview

Vietnam ranked 55 out of 137 countries in World Economic Forum's Global Competitiveness Index 2017-2018 edition, a 5-rank improvement from 2016-2017 report.

In terms of credit rating, Vietnam is rated B1 with positive outlook by Moody's, an improvement compared with last-year rating of B1 Stable. Fitch also raised Vietnam's rating from BB- to BB with a stable outlook.

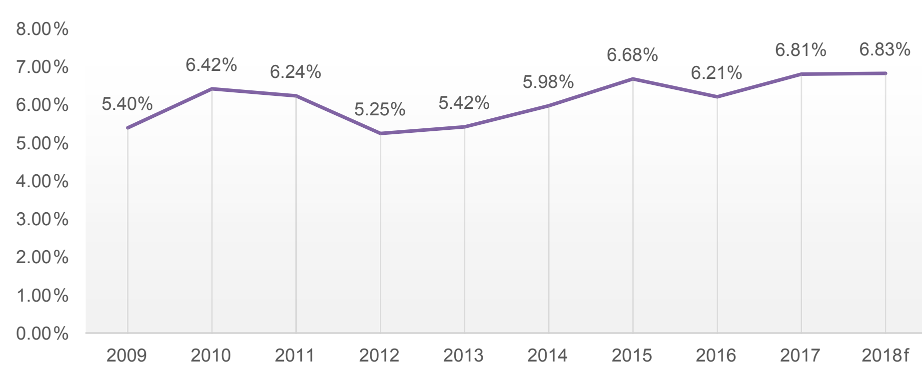
## Economic Environment

Vietnam's GDP growth rate recorded a 10 year high of 6.81% in 2017, mainly fueledfuelled by exports, foreign direct investments and the manyfacturing industry. This also ranks Vietnam as one of the fastest growing economies in Southeast Asia – according to Bloomberg. GDP is forecasted by The Ministry of Planning and Investment to grow slightly at a similar

rate in 2018.

**GDP Growth Rate (2009-2018f)**

Source: GSO and the Ministry of Planning and Investment

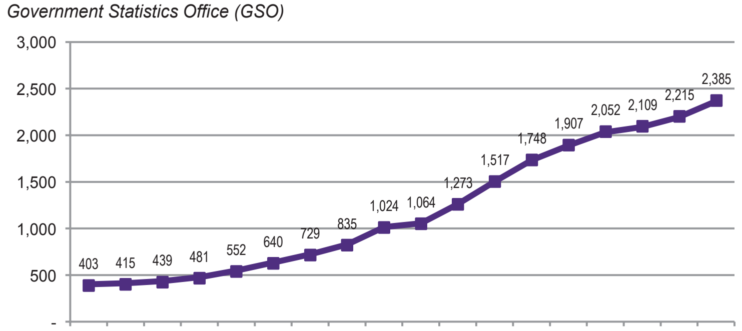



## GDP per capita

GDP per capita has continued to improve steadily y-o-y since 2000. The graph a shows the average GDP per capita of USD2,385 in 2017, an increase of 7.7% compared to 2016. The actual GDP per capita in key cities such as Ho Chi Minh City and Hanoi are significantly higher than other regions.

**GDP per capita (2001-2017)**

*Government Statistics Office (GSO)*





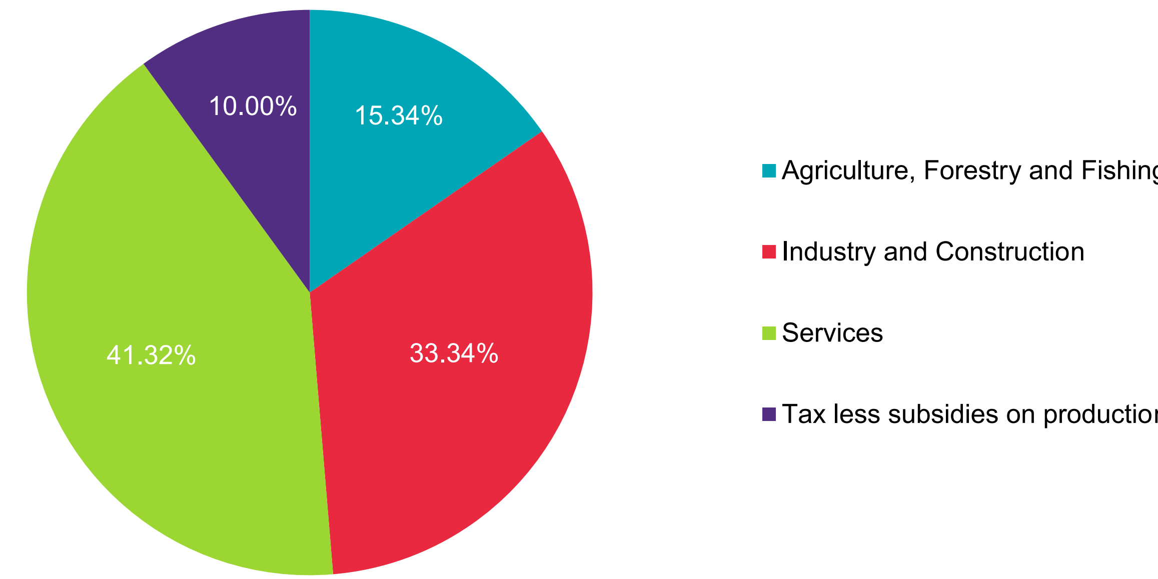

## Contribution to GDP

The Service sector continued to contribute the largest portion to the economy (41%), followed by the Industry and Construction sector.

The Industry and Construction sector, however, is the fastest growing sector with an increase by 8% in 2017.

**GDP contribution by sectors**

*Source: Government Statistics Office (GSO)*




**Principal Exports**

In 2017, export turnover increased by 21% y-o-y, reaching USD219 billion.

**Vietnam's Principal Exports**

Source: Government Statistics Office (GSO)

| Top export sectors | 2017 | | 2016 | |
|---|---|---|---|---|
| | USD Billion | % | USD Billion | % |
| Telephones and spare parts | 45.3 | 20.65% | 34.3 | 18.95% |
| Textiles and garments | 26.0 | 11.88% | 23.8 | 13.16% |
| Computers, Electronics & spare parts | 25.9 | 11.84% | 19.0 | 10.47% |
| Footwear | 14.7 | 6.68% | 13.0 | 7.18% |
| Machinery and spare parts | 12.8 | 5.83% | 10.1 | 5.60% |
| Seafood | 8.3 | 3.79% | 7.1 | 3.89% |
| Wood and wooden products | 7.7 | 3.49% | 7.0 | 3.85% |
| Means of transport and equipment | 7.0 | 3.19% | 6.1 | 3.34% |

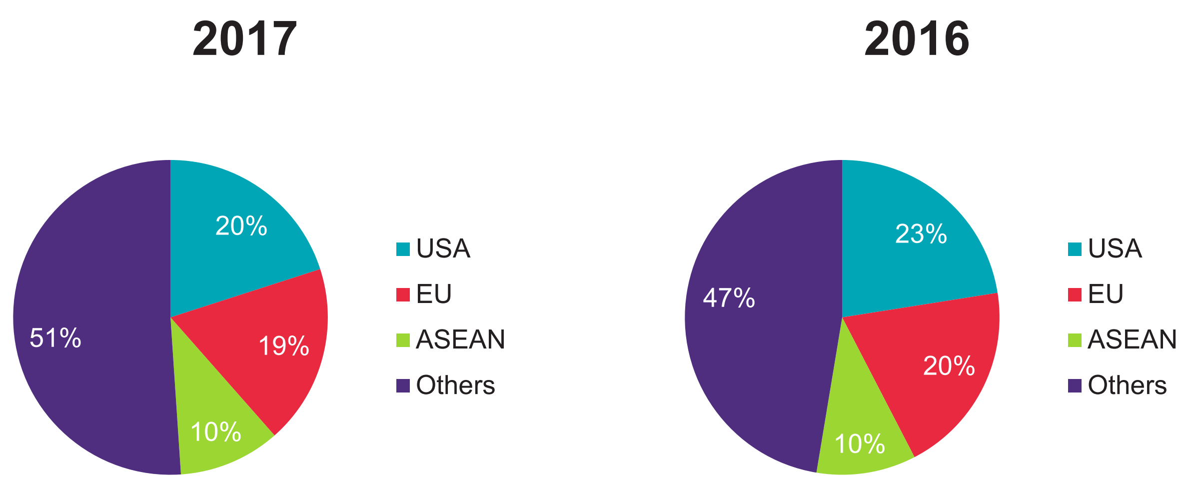
Overall, Vietnam's top export sectors remained unchanged from 2016 to 2017. Telephones and spare parts continued to contribute the largest export turnover, contributing 20.65% of total export value in 2017 and increasing by 32% y-o-y.

## Vietnam's Principal Exports Market (%)

In 2017, export turnover increased by 21% y-o-y, reaching USD219 billion.

## Vietnam's Principal Exports

Source: Government Statistics Office (GSO)




The US-23% continued to be the largest export market, followed closely by EU-20%. However, their respective proportions both dropped in 2017, indicating a shift to other markets.

## Principal Imports

Total import turnover reached USD211 billion in 2017, an increase by 21% from 2016.

The top 7 import sectors remained unchanged, while Computers, Electronics & spare parts replaced Machinery, Instruments and Accessories to be the largest import sector.

### Vietnam's Principal Imports

Source: Government Statistics Office (GSO)

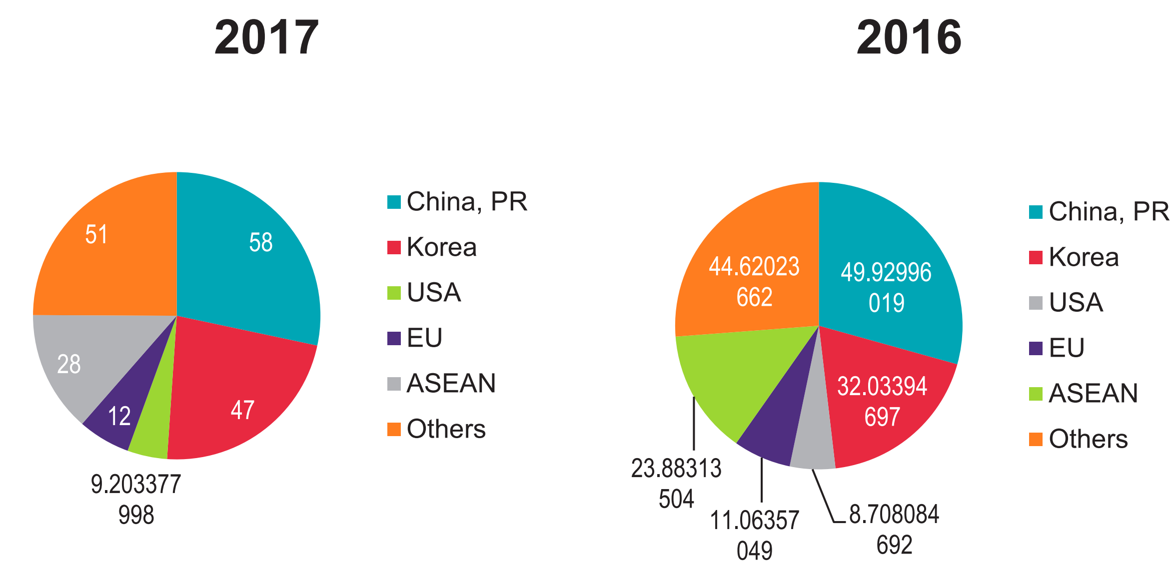
| | 2017 | | 2016 | |
|---|---|---|---|---|
| | USD Billion | % | USD Billion | % |
| Computers, Electronics & spare parts | 37.7 | 17.9% | 27.9 | 16.0% |
| Machinery and spare parts | 33.7 | 16.0% | 28.4 | 16.3% |
| Telephones and spare parts | 16.3 | 7.7% | 10.6 | 6.1% |
| Textile & fabrics | 11.4 | 5.4% | 10.5 | 6.0% |
| Iron & Steel | 9.0 | 4.3% | 8.0 | 4.6% |
| Plastics | 7.3 | 3.5% | 6.3 | 3.6% |
| Oil and gas | 7.0 | 3.3% | 4.9 | 2.8% |

China continues to be Vietnam largest source of imports, but its proportion is declining. On the other hand, the Korean percentage is increasing fast. Imports from EU and the US continue to decline, together they only make up 10% of Vietnam total imports.



## Vietnam's Principal Import Market (%)

Source: Government Statistics Office (GSO)




## Foreign Direct Investment (FDI)

Total registered FDI recorded a 10-year high of USD35.9 billion in 2017, a y-o-y increase of 47%.

Japan replaced South Korea as Vietnam's largest source of investment in 2017. Notably, the amount of Japanese FDI to Vietnam increased significantly, mostly due to various power plant projects that involved Japanese investors. Singapore and China are the next 2 largest sources of investment, making up 14.79% and 6.04% of total registered FDI, respectively.

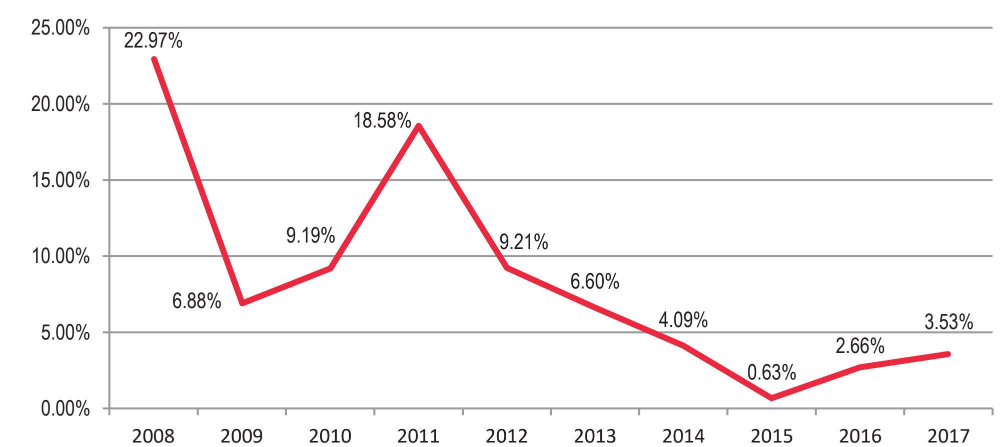
In terms of sectors, the top 3 sectors for FDI in 2017 are Processing and Production Industries (44%), Power, Water & Energy (23%) and Real Estate (8.51%).

## Inflation

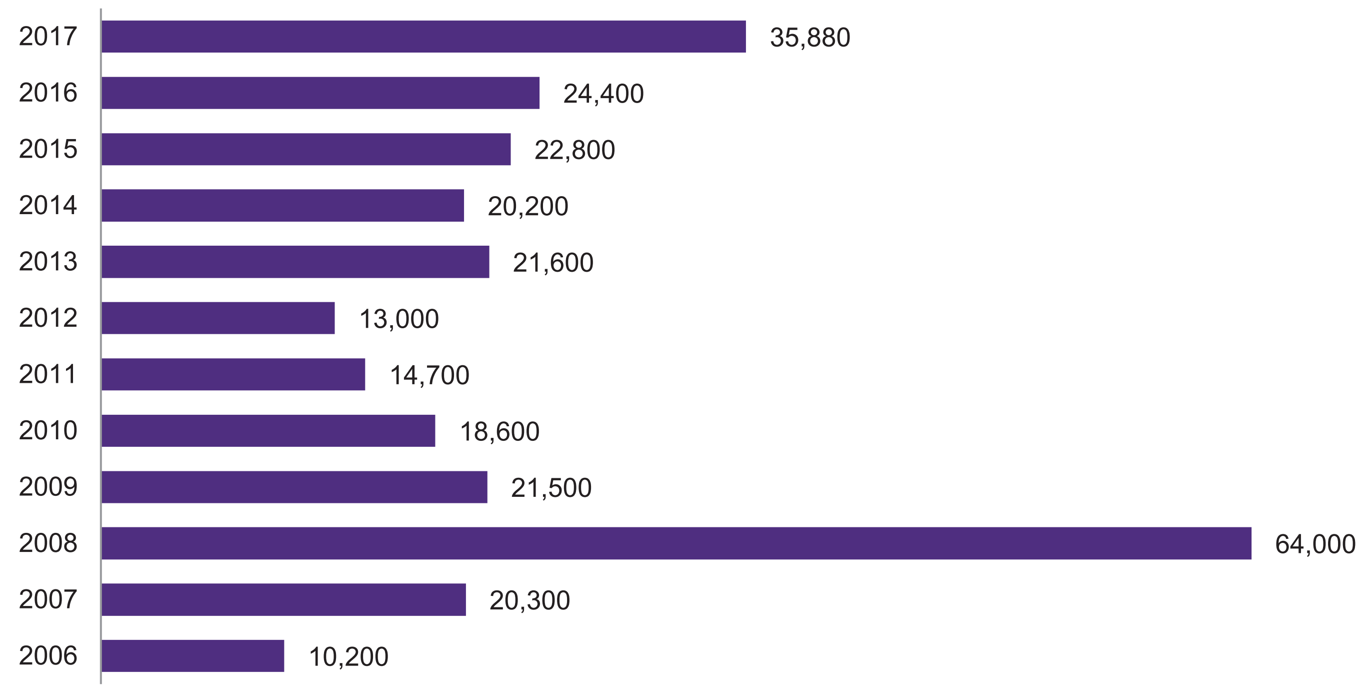
The inflation rate in 2017 increased slightly to 3.53%. It was at a record low of 0.63% in 2015. Inflation is expected to continue at a rate of under4%, which is a stated Government policy target.

### Vietnam Annual Inflation rate (2008-2017)

*Source: Government Statistics Office (GSO)*

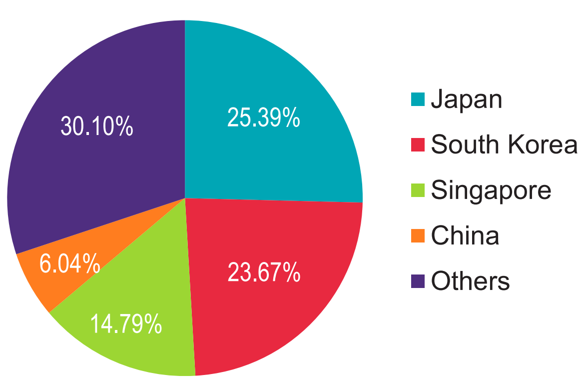


## Registered FDI



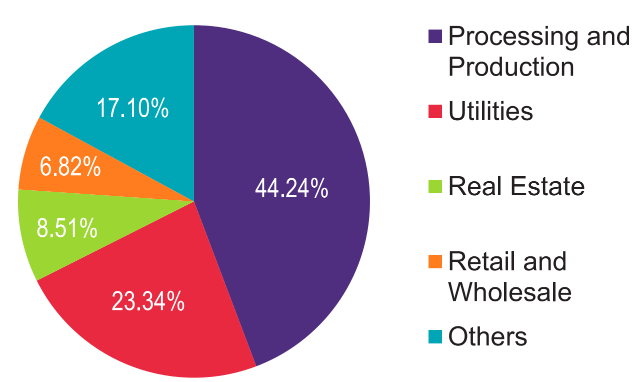

**Registered FDI by countries and territories, USD billion (2017)**

*Source: Ministry of Planning and Investment*




**Registered FDI by sectors, USD billion (2017)**

*Source: Ministry of Planning and Investment*






# Finance

## Capital markets

The Vietnam securities markets are monitored and regulated by the State Securities Commission. There are two centralised securities markets, the Ho Chi Minh City Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX).

The market for unlisted public companies, UPCOM which was established in June 2009, aims to narrow transactions on the free market, improve information and transparency of companies and reduce risks for investors.

From August 2017, investors can trade futures contracts of stock indices and government bonds on the derivatives market. By the end of 2017, it is reported by the State Securities Commission that there were 946,326 traded contracts with the total nominal value of VND 80,899 billion. The growing trend of this market is expected to continue in 2018 thanks to the introduction of covered warrants. This new product, listed on HOSE in 2018, is expected to bring more investment and hedge options to investors.

In 2015, the Vietnamese government gave a major boost to foreign direct investment by permitting foreign investors to take a majority ownership or to wholly own Vietnamese public companies. From 1 September 2015, the previous foreign ownership cap of 49% was lifted in a number of business sectors in accordance with the issuance of Decree No. 60/2015/ND-CP on 26 June 2015. However, some sectors will continue to have restrictions such as 30% for the banking industry, 49-51% for logistic services, 49% for entertainment services etc. The holding of fixed income securities is not subject to any restriction.

In 2017, Vietnam became the Asia's best performing stock market as the Vietnam Stock Index increased by 48% compared to the figure of 2016 . The total market capitalization rose 73% year-on-year, at around VND 3,360 billion and it accounted for 74.6% of GDP, exceeding the target for the year 2020.

During 2017 and early 2018, the Vietnam stock market witnessed the strong capital inflows with the IPOs and equitisation of numerous state-owned enterprises such as Petrolimex, PV Power, Binh Son Refinery. Besides, several private companies successfully conducted their IPOs in 2017, including Vietjet Air and VP-Bank. Those deals brought trillions of dong into the capital markets, contributing to the sizable growth in the industry.

The P/E ratio of Vietnam's securities market rose to 19.26x at the end of December 2017, higher than the figure of other markets in the region such as Thailand, Malaysia, China.

Foreign investors contributed a large portion in the capital inflows in the securities market in 2017. By the end of 2017, the net cash flow to Vietnam's capital market from foreigners was around USD1.2 billion. This fact illustrates that Vietnam is becoming an attractive destination for foreign investments, especially since the government loosened restrictions on foreign ownership in Vietnamese enterprises.

All securities transactions in Vietnam must be conducted in Vietnamese Dong. In order to sell and buy securities of listed enterprises, foreign investors must trade through a special Vietnam Dong indirect investment account opened at an authorized bank in Vietnam.

## Banking system

Vietnam's banking system was divided into a two-tier structure 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.

Since dividing into a two-level system, the Vietnam banking system has expanded rapidly. 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 45% of total banking system assets; however, the domination of these banks has been on a significant downward trend due to the strong growth of private banks.

2017 was a great year for the Vietnam banking system as all large banks reported substantial growth in profits earned. As reported by State Bank of Vietnam, the total assets of credit institutions in Vietnam grew significantly to approximately VND 10,000 trillion in 2017, up 17.62% year-over-year. The non-performing loan ratio of the banking system in 2017 was 9.5%, lower than the number of 2016 (11.9%). Besides, in 2017, there were successful IPOs (Initial public offerings) from various commercial banks such as VP-Bank, VIB, Kienlongbank and LienVietPostBank. This trend will continue in 2018 as a number of credit institutions are planning to go public this year, including Maritime Bank, TPBank, Techcombank and so forth.

Over the last decade, foreign banks have expanded their presence in Vietnam. There are about 49 foreign bank branches; two joint-venture banks, and nine 100 percent foreign-owned banks in the country as of 31 December 2017.

Current legislation states that the total foreign shareholding in local Vietnamese banks is not to exceed 30 percent. Within this limit the maximum shareholding permitted to a foreign bank as a strategic partner is 20 percent, while a non-strategic investor can own 15 percent. Individual investors may hold no more than 5% of the shares.

With the rapid development of the banking industry, Vietnam is in the transformation phase from a cash-based to an electronic-based society. As presented by State Bank of Vietnam, by the end of 2017, there were around 59 percent of Vietnam's population of 90+ million held bank accounts, while the account penetration rate for 2014 was only 31 percent of total adult population (baophapluat, vnexpress)

## Legal treatment

Under the current regulations, credit institutions are permitted to provide a wide range of products and services from traditional banking to fund management or securities services. In practice, due to licensing restrictions, the non-traditional banking services are generally provided by banks through separate legal entities.

In accordance with Vietnam's commitments to the WTO, the government has committed to providing a level playing field for both domestic and foreign credit institutions.

## Foreign investor banking services

Generally, all foreign investors are required to open a bank account to conduct business in Vietnam. Foreign investors are permitted to open accounts in Vietnamese Dong and some other foreign currencies. Foreign invested enterprises should note the requirement to open a capital account for all capital and dividend transactions.

## Insurance industry

Vietnam's liberalisation policy in the early 1990s opened the insurance industry up to foreign investment. Previously, the market was dominated by state-owned enterprises. Foreign invested enterprises can now operate insurance businesses as 100 percent foreign-owned enterprises, joint ventures with local partners, branches or representative offices. If an investor chooses a 100 percent foreign owned or joint venue form, they must set these up as limited liability companies.

The insurance industry has grown extensively over the past decade; with life and non-life premiums growing at a CAGR of 19.13 percent from 2006 to 2016. In 2017, the insurance premium reached approximately VND 105,611 billion, an increase of 21.20% compared to the amount of 2016, in which major growth was seen in life insurance. Nevertheless, insurance penetration is still at a relatively low level in the country, compared to other emerging markets. By the end of 2017, there were 61 insurance companies (both domestic and foreign-invested enterprises) operating in Vietnam. Among these, there were: 29 non-life insurers, 1 branch of a foreign non-life insurer, 18 life insurers, 11 insurance brokers and 2 re-insurance companies. As Vietnam signed the CPTPP in early 2018, foreign investment activities and capital inflows into Vietnam are expected to rise, leading to increase in demand for insurance and growth in this market. However, the level of competition is also foreseen to increase.

The insurance market is highly regulated in Vietnam. Insurance companies are supervised by the Insurance Supervisory Authority, a subordinate body within the Ministry of Finance, under a number of laws, including the Law on Insurance Business of 2000 and its amendment in 2010.

## Investment Management

There are various types of investment management organizations in Vietnam: securities companies, fund management companies, securities investment funds, and branches of foreign investment firms. While securities companies and securities investment funds focus virtually totally on the stock market, fund management firms and foreign invested enterprises diversify their business into numerous fields such as : securities, real estate, or investing in private companies.

According to The State Securities Commission, there are currently 93 securities companies, 47 fund management companies, 21 branches of foreign invested enterprises, and 25 securities investment funds that are in operation in Vietnam.

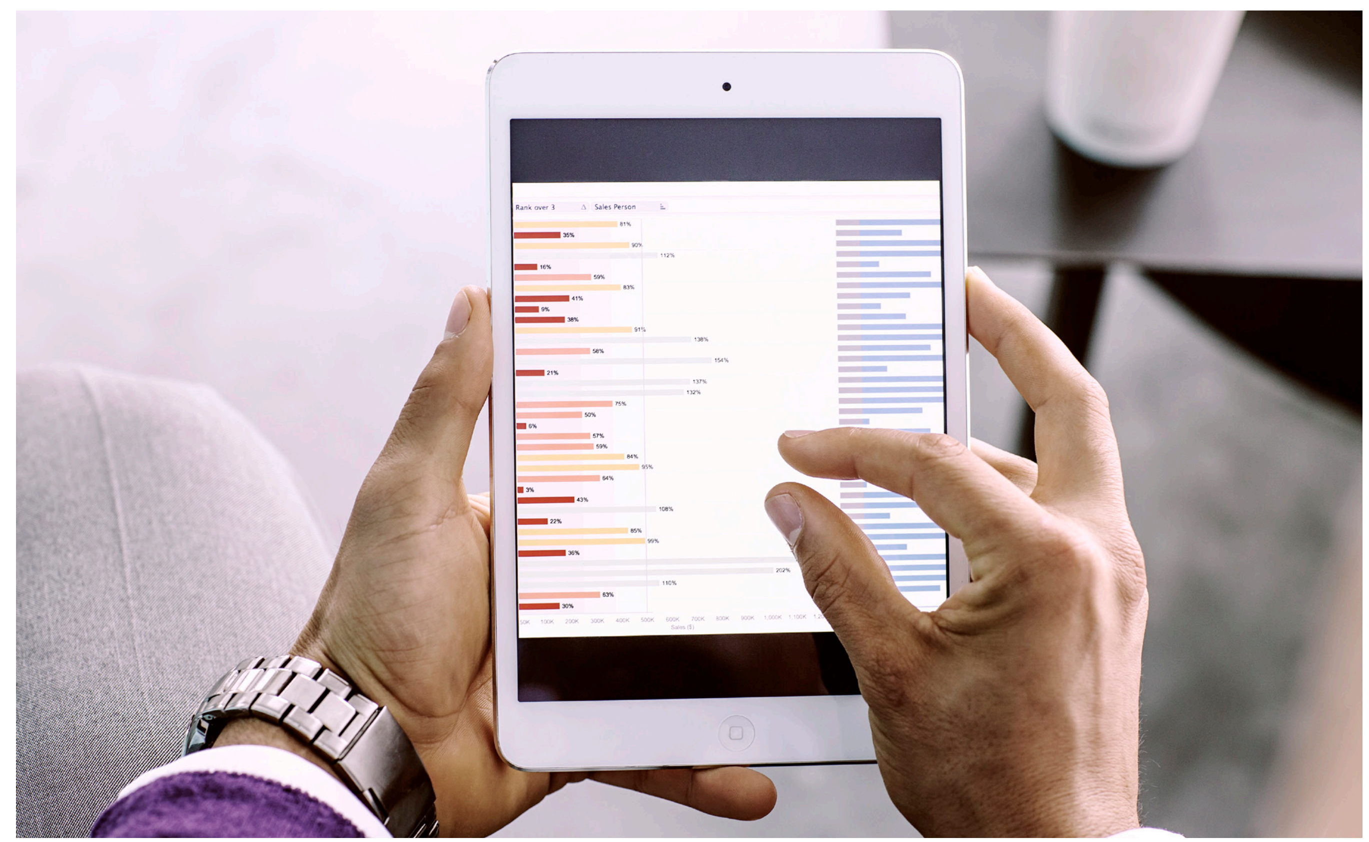
With the booming of the stock market, the investment management industry also grew quickly. At the end of 2017, the total assets of fund management companies were around VND 223 trillion, up 46% year-over-year. The total net profit for the year 2017 was VND 444 billion, increasing 87% compared to the figure of 2016.

Following the trend of the industry, the securities investment fund sector experienced significant growth in 2017 in that the total net asset value (NAV) of funds rose by 91% in comparison with the number for the year before. The average NAV per fund was 26% higher than that of 2016. There are 3 types of investment funds in the market: open-end, closed-end, and exchange-traded fund (ETF). Currently, the open-end funds are dominating the sector, thanks to its relative liquidity and open access.

In 2018, the investment management industry is expected to continue to grow, with the introduction of real estate investment funds and pension funds. The operation of those funds could bring various opportunities for investors, hence attracting more capital inflows into the market.

As the number of wealthy individuals in Vietnam is on the rise thanks to the rapid economic growth, a large number of local banks have started to tap into the wealth management and priority banking segment, which has been better served by foreign banks and branches of foreign banks, in Vietnam.

The wealth management industry is regulated by The State Securities Commission, which supervises the securities market, provides licenses to market participants and regulates the market's activities. The State Bank of Vietnam also has a role in regulating bank wealth management products.



# Regulatory environment

## Summary

The political system of the Socialist Republic of Vietnam can be defined by a single-party socialist Republic framework. The system is led by the Communist Party of Vietnam.

Executive power is concentrated in the Government, formerly known as the Council of Ministers. The Government is charged with the general management of the economy and the state. The head of government is the Prime Minister.

The Head of State, also known as the President, represents the Nation in internal and foreign affairs and helps to appoint thr Prime Minister and other officials with the help of the National Assembly.

Below the Central Government are People's Councils and People's Committees. People's Councils are directly elected by the people and People's Committees are elected by People's Councils. There are three levels of People's Committees and People's Councils: provincial, district and commune (or ward).

The National Assembly is the supreme representative and legislative body and determines domestic and foreign policies, socio-economic tasks, national defence and security issues. It has 496 members, elected by popular vote to serve four-year terms. While the Constitution in general establishes the rights of the people under the leadership of the Communist Party, the power of the people is exercised through the National Assembly at a central level and through People's Councils at a local level.

The Vietnamese judiciary is independent of the executive. The legal system consists of the Constitution, codes, laws, ordinances, decrees, decisions, circulars, directives and official letters. Although all have the force of law, only laws passed by the National Assembly are referred to as such. The Constitution is the Supreme Law of the country.

The court and prosecution system in Vietnam have a structure similar to the administrative system. At a central level, the Supreme People's Court is the highest judicial body in Vietnam. At a local level, courts exist at provincial and district levels. Legal decisions are made by the People's Courts, the People's Inspectorate, Military Tribunals and Special Tribunals.

## Data Protection

Vietnam does not have a comprehensive data protection law. Instead, the provisions for data protection can be found across a number of different pieces of legislation:

- The Constitution
- The Civil Code (Law No. 33/2005/QH11)
- The Law on Protection of Consumers' Rights (Law No. 59/2010/QH12)
- The Law on E-Commerce (Law No. 51/2005/QH11)
- The Law on Information Technology (Law No. 67/2006/QH11)
- The Law on Insurance Business (Law No. 24/2000/QH11 as amended by Law No. 61/2010/QH12)
- The Law on Credit Institutions (Law No. 47/2010/QH12)
- Cyber Security Law (Law No. 24/2018/QH14).

The provisions under the above data protection laws apply to all individuals, companies and State Bodies. While there is no official definition, personal data is generally defined as information which is adequate to accurately identify the identity of a data subject, covering at least one of the following types of information: full name, date of birth, profession, title, contact address, e-mail address, telephone number, ID number and passport number.

The key data protection provisions for people or entities who hold or process personal data are as follows:

- A data subject's right to privacy shall be respected and protected by law
- The collection and publication of personal information must only occur with the consent of the data subject, unless this is being undertaken as part of obligations stipulated by law
- Any form of electronic information of a data subject must be protected and kept confidential; the control of this communication may only take place in circumstances stipulated by law and subject to a decision issued by an authorised State body
- Anyone collecting, processing and using the personal data of a data subject in a network environment must obtain consent from the data subject, unless otherwise stipulated by law
- The data subject must be notified of the form, scope, place and purpose of the collection, processing and use of his or her personal data
- The data must only be stored and used for a certain period, either as stipulated by law or per the agreement between the two parties
- The data collector must take the necessary measures to ensure that the personal data is not lost, stolen, disclosed, modified or destroyed
- Necessary measures must be taken to update or amend personal data if it is inaccurate
- Data can only be transferred to a third party where the data subject provides his consent.

There is no official body in Vietnam regulating the use of personal data. Accordingly, there is no notification or registration scheme for the collection, processing or disclosure of personal data. There is also no legal requirement to appoint a data protection officer.

Any person or business that fails to uphold necessary measures to ensure the safety of personal information may be liable to an

administrative fine of between VND 20 million and VND 30 million (US$ 900-1400).

## Exchange Controls

The management of foreign exchange for both local and foreign invested enterprises and foreign parties to business contracts is regulated by the State Bank of Vietnam (SBV).

Foreign invested enterprises and parties to Business Cooperation Contracts ("BCC") must open bank accounts in Vietnam Dong, and/or foreign currencies, with banks permitted to operate in Vietnam. Where necessary, Vietnamese enterprises with foreign-owned capital may open accounts with banks abroad with the approval of the SBV.

Furthermore, foreign invested enterprises and parties to BCCs are able to buy foreign currencies from commercial banks to cover permitted transactions. Although they have the right to cover, there is no guarantee that their foreign currency demands can be met, except for infrastructure development and other "critically important" projects.

Foreign invested enterprises and parties to BCCs are required to open a "capital account", which is a bank account for all transactions in regard to capital remittance, foreign loans, profits and other legitimate types of income from foreign investment. In addition to this account, other operating VND and/or foreign currency accounts can be opened. Specific cases and conditions for Vietnamese companies opening bank accounts in a foreign country also apply.

All foreign loans (except for short-term loan of less than 1 year) must be approved and registered with the SBV. All foreign loan transactions that a foreign invested firm undertakes must be conducted via the capital account. The conversion of currencies into USD or VND for various financial transactions is implemented in accordance with the reference to the rate set by the SBV, at the time of transfer.

Residents receiving foreign currency income from goods and services exported, or other non-resident sources in foreign countries, must transfer such income to foreign currency accounts opened with authorised credit establishments in Vietnam. This should be done in accordance with payment time-limits of contracts or payment vouchers.

Organisations receiving foreign currency from money transfers, must transfer such currency to foreign currency accounts opened with authorised banks or sell it to authorised banks.

Foreign investors are permitted to transfer dividends abroad and income legally earned in Vietnam and any remaining invested capital upon the liquidation of an investment project. This transfer must be conducted via the company's capital account.

## Money Laundering Regulations

Vietnam issued the Law on Anti Money Laundering No. 07/2012/QH13 which was effective from 01 January 2013.

Vietnamese legislation requires businesses to report transactions over a certain threshold and suspicious transactions to Vietnam's financial intelligence unit (FIU). In addition:

- Jewellery sellers must ascertain the identity of, and report, transactions of USD14,000 or more
- Securities brokers, dealers and real estate vendors have to report all transactions to the FIU regardless of the amount of the transaction
- Banks will have to ascertain the identity of businesses and persons undertaking transactions equal to or greater than VND300 million per day if the person or entity has not

- Casinos will have to ascertain the identity of persons gambling when the bets or the wins are equal to or exceed VND60 million per day
- Charities will have to report the names and addresses of organisations and people who make donations and will have to report how the funds were used
- All reporting entities must undertake AM risk assessments in respect of their business and implement compliance plans to mitigate those risks.

Failure to comply with the above provisions may result in a number of administrative sanctions. A monetary fine of VND30 million to VND50 million, (US$ 1,320 -2,200) for a failure to report any suspicious transactions can be imposed. A monetary fine of VND40 million, to VND80 million, (US$ 3,520-4,400) is applicable if a person fails to report parties involved in a concerned transaction named in the black list of the authorities. A fine and a prison term of between one and 15 years may be imposed for involvement in money laundering activities, alongside a ban on holding certain professional positions for one to five years.



## Intellectual Property Rights

Vietnam recognises the importance of protecting intellectual property rights (IPR), which include patents, trademarks and service marks, copyright and industrial designs. With the implementation of the Bilateral Trade Agreement provisions regarding IPR, Vietnam has made a commitment to protecting intellectual property. The Bilateral Trade Agreement's property rights chapter was modelled on the WTO Agreement on Trade- Related aspects of Intellectual Property.

The National Office of Intellectual Property (NOIP) is the authority responsible for the registration of intellectual property. Foreign organisations and individuals who seek to register their intellectual ownership should file their applications through an authorised agent, who will transfer their applications to the NOIP.

The Office of Copyright Protection under the of Culture, Sports and Tourism is responsible for the protection of copyrights.

### Copyright

Copyright can protect: literary work, dramatic works, musical works, artistic works, layouts and typographical arrangements, recordings and broadcasts. Copyright works, receive statutory protection automatically once they are placed in the public domain.

**Protection granted**

Copyright is granted to eligible work automatically irrespective of registration. However, registration of this copyright is recommended. The author or owner of a copyright can directly, or authorise another person, to submit an application for the registration of a copyright to the Department of Copy Right in Literature and Arts of the Department of Information and Culture.

The owner is granted moral and economics rights over his work, including the right to apply technological measures to prevent infringements of his rights.

**Infringements**

In the case of infringements, whereby a person reproduces, distributes, displays or performs the protected work, the owner can take the following actions:

- request that a person terminates the infringement, correcting any false information and providing appropriate compensation
- request the competent state authority to apply administrative, civil or criminal sanctions.

**Duration**

The length of protection is indefinite for the moral rights of authors to give titles of their works, attach their names to their works and have their real names acknowledged when the work is published.

However, the right of publication with regard to cinematographic works, photographic works, applied art works and anonymous works is only protected for 75 years from the date of first publication.

For all other works, rights are protected for the life of the author plus 50 years.

### Patents

Patents protect inventions which can be applied in an industrial environment. For a patent to be granted, the invention must be new, have an inventive step which is not obvious to someone with experience in the subject and capable of being used in some kind of industry.

**Protection granted**

A patent gives its owner the ability to take legal action to stop others from:

- the making of a product or the use of a process which is the subject-matter of the patent
- selling anything incorporating the subject-matter of the patent
- inducing third parties into any of the above, without the inventor's permission.

Patents must be registered with the National Office of Intellectual Property of Vietnam. The rights are then protected through registration and the registrant is granted moral and economic rights over the work, including the right to apply technological measures to prevent infringements of his rights.

**Infringements**

Infringing a patent means manufacturing, using, selling or importing patented products or processes without the owners' permission.

In case of infringement, the owner of a patent can request that the person terminates any infringement or request the state authority to apply administrative, civil or criminal sanctions.

**Duration**

20 years from the filing date.

### Trademarks

A trade mark must be a sign capable of distinguishing goods and services of one undertaking from those of another undertaking. Those signs can be: words, personal names, designs, letters, numeral slogans, sounds, smells, signs and distinctive colours.

**Protection granted**

The owner can obtain protection in Vietnam by registering the trademark at the National Office of Intellectual Property, unless it is a famous trade mark which is protected on the basis of actual use in the marketplace.

Registration provides the owner with exclusive use over the trade mark.

**Infringements**

Some examples of infringement of a trademarks are:

using an identical or similar trade mark for identical or similar goods and services to a registered trade mark creating a likelihood of confusion on the part of the public

where a mark has a reputation, infringement may arise from the use of the same or a similar mark which damages or takes unfair advantage of the registered mark

- In the case of infringement, the owner of a patent can request that the person terminates any infringement or request the state authority to apply administrative, civil or criminal sanctions.

**Duration**

10 years (registration can be renewed for further periods of 10 years).

### Designs

An industrial design, the external appearance of a product embodied in three dimension configurations, lines, colours or a combination of the aforementioned element, can be protected if it is new, of a creative nature and can be applied in industry.

**Protection granted**

Registering a design gives the owner a property right over the design. Holding design rights provides the one and the exclusive right to use it and to prevent any third party using it without consent.

The filing must be made with the National Office of Intellectual Property.

**Infringements**

Design rights are infringed by an unauthorised person making an article exactly or substantially similar to the protected design or by making a design document for the purpose of making unauthorised copies.

**Duration**

Once obtained, design rights are protected for a period of five years from the date of filing of the application. It can then be renewed twice for periods of five years.



# Opening up to Foreign Investment

In 2017, Foreign Direct Investment (FDI) in Vietnam hit a 10-year record at USD 35.88 billion, up 44.4% year-on-year. In Vietnam, FDI inflows are often divided into 3 categories: investment in new projects, additional capital to existing projects, and capital contribution and share purchase. As reported by the Ministry of Planning and Investment, by the end of 2017, there were 2,591 licensed new projects with total investment of USD 21.27 billion, an increase of 42% to the figure of 2016. The additional contributed capital also rose by 49.2%, at around USD 8.41 billion. In addition, the total capital contribution and shares bought by foreign investors in 2017 grew to USD6.19 billion, rising 45.1% versus the amount of 2016. In addition, FDI disbursement in 2017 was documented at USD 17.5 billion, the highest figure in the history.

Since the economic reform "Doi Moi" in 1986, foreign investment has been deemed as an essential resource for development of Vietnam economy. So as to attract further capital inflows from outside investors, a good investment climate is of the utmost importance. Therefore, the Vietnam government has made efforts to integrate into the global economy by joining international commercial organizations such as WTO and AEC, and signing various Free Trade Agreements (FTAs).

Currently, Vietnam has participated in a large number of FTAs, which are effective or still under negotiation. By 2018, there were 10 effective FTAs that had been implementing, including several notable agreements such as VCUFTA (Vietnam with the Customs Union of Belarus, Kazakhstan and Russia – effective in 2016), VKFTA (Vietnam with Korea – effective in 2015), JVEPA (Vietnam with Japan – effective in 2009).

Meanwhile, 5 FTAs were being negotiated, in which the EU - Vietnam FTA was expected to enter into force in early 2019. This agreement is expected to be one of the key drivers for economic growth, in that virtually all tariffs (with a few exceptions) imposed on imported goods from both sides would be eliminated within 10 years from the effective date. Also, it will open up the Vietnamese market to EU investments, which can encourage more foreign investment inflows into Vietnam.

CPTPP, which is considered as a modified version of the TPP, was signed in March 2018. It is the third largest signed trade agreement, after the North American Free Trade Agreement and European Union. With the absence of the United States, CPTPP is expected to still yield robust economic gains for Vietnam, although at a lower level than the original TPP. Gains from CPTPP are expected to be concentrated in a handful of industries: wearing apparel, textiles, food, beverages, and tobacco.

Apart from vast improvements in the legislative environment, there have also been improvements in bureaucratic procedures which have been considered a bottle neck to social development of Vietnam. In September 2017, the Ministry of Industry and Trade issued Decision 3610a/QD-BCT, simplifying administrative and investment procedures by removing 675 investment conditions which accounted for 55.5% of the number of existing conditions. In the period 2017-2018, the General Department of Vietnam Customs put efforts to reduce customs clearance time for exports and imports to 70 hours and 90 hours respectively and aimed for a further reduction to below 36 hours and 41 hours by 2020. In addition, tax payers have enefited from the annual time reduction for making tax filings and payments which have reduced  from 537 hours (prior to 2014) to 247 hours in 2014, to 117 hours in 2015 and to 110 hours by the end of 2016 (the average time for tax fillings of ASEAN 6 is 121 hours/year).

**US$15.182 billion**

registered FDI for new projects

**US$15.8 billion**

FDI disbursement

# Business entities

The Law on Enterprises (LOE) was adopted by Vietnam's National Assembly on 26 November 2014 and took effect on 1 July 2015. The Law provides four types of legal forms of corporation for business entities, comprising:

- Limited liability company (LLC)
- Joint-stock company (JSC)
- Sole proprietorship
- Partnership

A foreign entity may establish its presence in Vietnam as a limited liability company with one or more members, a joint-stock company, a partnership, a branch, a business cooperation contract or a representative office.

Foreign investors are also permitted to purchase an interest in existing domestic enterprises, subject to ownership restrictions; this varies depending on the relevant industry sector.

The main characteristics and management structures of the common business entities are summarised below:

## Limited Liability Companies

There are two types of limited liability company: (i) Single Member Limited Liability companies, and (ii) Limited Liability companies with two or more members. Neither form can be listed.

Limited liability companies are not entitled to issue shares and the total members in a limited liability company cannot exceed fifty.

### Establishing a limited liability company

Foreign investors wishing to form an LLC in Vietnam, and conducting their first investment in the country, must have an investment project. An investment project is a collection of proposals declaring how the firm plans to spend its medium and long-term capital to carry out its investment activity in a specified area and for a specified duration of time. Documents must also be supplied, attesting: to the legal status of the investors, proposals for investment preferential treatment and a report on the financial capacity of the investor.

This investment project will be assessed before applying for the incorporation license. Following this, an investment registration certificate (IRC) will be issued in 15 days from the receipt of sufficient documents for a common investment project. Upon the issuance of the IRC, the Investor must apply for the business registration certificate (BRC) to complete the incorporation process and put the investment project into implementation. These processes may take longer if the authorities require extra documentation. In some cases, investment certificates are issued automatically providing certain conditions are met. In other cases, investment certificates may not be granted; as it is at the discretion of the authorities.

Following establishment, a number of other formalities must be carried out. These include:

- Announcing the establishment information on the National Business Registration Portal
- Carving and registering the Company seal(s) with the licensing authority
- Opening bank accounts
- Registering labour recruitment plans with the labour office
- Registering to join the social insurance at the social insurance department
- Registering and paying the business license tax
- Submitting the proposed accounting system to the competent tax

### Capital requirement

Typically, there are no maximum or minimum capital requirements for a limited liability company. However, in some sectors a company must be able to meet certain capital threshold requirements before they are permitted to start business, e.g. for foreign-owned banks, there is a minimum capital requirement of VND3,000 billion. Limited liability companies can reduce their charter capital in accordance with the new Law on Enterprises (Article No 48/ Law on Enterprises 68/2014/QH13).

A limited liability company cannot issue shares. In addition to cash, capital contributions can be made in the form of gold, the value of land use rights, intellectual property rights, technology, technical know-how and other assets.

### Company Charter

The Company Charter (similar to an M &A) is one of the incorporation documents of the Company and constitutes the incorporation and operation of the Company. The Company Charter determines the competence, duties and obligations conferred on the company, the board of directors and its shareholders/ owners.

A Company charter should include:

- the company name, head-office, branches and representative offices
- a list of business activities the firm undertakes
- the charter capital and any methods of raising or reducing the charter capital
- name, address, nationality and other basic identification of company owner
- rights and obligations of the owner/ investor
- management structure
- legal representative of the company
- process for the adoption of decisions
- dispute resolution provisions
- method for calculating salary, allowance and bonuses of chairman, directors or general director
- principles for the distribution of profits and settlement of losses
- procedures for dissolution or liquidation.
- providing the constitution does not contravene legal obligations, the document will be binding between the company and owners.

### Management structure

The management structure of a limited liability company will depend on the number of the authorized representatives of the Company to create the mechanism of Chairman or members' council.

In the case of a "Chairman mechanism mode", the management structure will consist of one authorised representatives appointed by the owner and the general director.

In the case of "members' council mechanism mode", the management structure comprises the members' council, the chairman of the members' council and the general director.

A director/general director is appointed or hired by members to manage the daily business operations of the company. The chairman of the Members' Council, who is also elected by members, can be concurrently the company's Director/General Director.

For a company whose total members exceed eleven, a Supervisory Board must be established to supervise the management and direction of the company handled by the Management board and the Director/General Director. The competence and duties of the Supervisory Board are also defined by the company charter.

### Filing requirements

Every company established in Vietnam must comply with the Vietnamese Accounting Standards and System regulated by the Ministry of Finance. Companies are obliged to submit financial statements within 90 days of the end of each fiscal year.

Annual financial statements of public joint-stock companies must be audited before being submitted to the Shareholders' Meeting.

All shareholders who held shares for at least one year are entitled to review the reports and statements at an appropriate time.

## Joint-Stock Companies

A joint stock company is a company whose charter capital is divided into shares, held by three or more organisations or individuals. It is a recognised legal entity and the only company type under Vietnamese law that can issue shares. Its shareholders are responsible for its debts and liabilities up to the amount of their contributed capital. A joint stock company (JSC) can issue securities and be listed on the Securities Exchange. A joint-stock company may either be 100 per cent foreign owned or domestically owned, or may take the form of a joint venture between foreign and domestic investors.

### Establishing a joint-stock company

A joint stock company is established by its founding shareholders based upon their subscription for shares in the company. It is required to have at least three shareholders,

with no maximum stipulated by law.

Following establishment, a number of other formalities must be carried out. These include:

- Announcing the approval and contents of the investment license in designated Vietnamese newspapers
- Opening bank accounts
- Registering labour recruitment plans with the labour office
- Registering with local tax and other relevant authorities
- Submitting the proposed accounting system to the Ministry of Finance.

### Capital stock and shareholders

The founding shareholders of a JSC must subscribe at least 20 per cent of the total shares that the JSC is authorised to offer for sale. Shareholders can be Vietnamese or foreign nationals. A joint-stock company must issue ordinary shares and may issue preference shares and/or issue bonds. Types of preference shares include:

- Voting preference shares: only held by government-authorised organisations and founding shareholder.
- Dividend preference shares
- Redeemable preference shares
- Other types of preference share, subject to the company's charter.

Shareholders are permitted to convert preference shares into ordinary shares, but not permitted to convert ordinary shares into preference shares.

The company's shares are allowed to be freely transferred among shareholders, except for voting preference shares.

### Company Charter

The Company Charter is one of the incorporation documents of the Company and constitutes the incorporation and operation of the Company. The Company Charter determines the competence, duties and obligations conferred on the company, the board of directors and its shareholders. The Company Charter must include:

- the company name, head-office, branches and representative offices
- the list of business activities the firm undertakes
- the charter capital and any methods of raising or reducing the charter capital
- name, address, nationality and other basic identification of company owner
- rights and obligations of the owner
- management structure
- legal representative of the company
- formality for the adoption of decisions
- dispute resolution methods
- method for calculating salary, allowance and bonuses of chairman, director or general director
- principles for the distribution of profit and settlement of losses
- procedures for dissolution or liquidation.
- providing the constitution does not contravene legal obligations, the document will be binding between the company and owners.

### Management structure

The management structure of a JSC comprises the general meeting of shareholders, the board of management, the general director and the board of supervisors (where the company has more than 10 individual shareholders).

The Board of Management should consist of at least three members but no more than 11. Its members are elected by the General Shareholder Meeting for terms of up to five years. The Board of Management has authority to make decisions, exercise the company's rights and perform the company's obligations on behalf of the company.

### Filing requirements

Every company established in Vietnam must comply with the Vietnamese Accounting Standards and System regulated by the Ministry of Finance. Companies are obliged to submit financial statements within 90 days of the end of each fiscal year.

Annual financial statements of public joint-stock companies must be audited before being submitted to the Shareholders' Meeting.

All shareholders who held shares for at least one year are entitled to review the reports and statements at an appropriate time.

## Partnerships

Partnerships can be established in Vietnam providing there are at least two individuals who are members of the partnership and co-owners of the business. These individuals will be general partners and have unlimited liability for all obligations of the partnership. The partnership may also have limited liability partners, who can be individuals of organisations, who only contribute a part of the capital and have limited liability and rights up to the value of their contribution.

Typically partnerships are not widely used for foreign investment in Vietnam.

## Branches and Representative Offices

In accordance with Commercial Law, foreign investors can set up a resident Representative Office or a Branch in Vietnam; however, ownership may be restricted in certain sectors. The following regulations are in place regarding Representative Offices and Branches:

- all foreign businesses, which have been in operation for more than a year will be allowed to open representative offices in Vietnam;
- foreign businesses shall only be entitled to set up a branch in Vietnam with the condition that the business has been in operation for at least five years;
- licenses for representative offices and branches will be valid for five years but may be extended or re-issued upon expiry;
- branches shall be entitled to do business in accordance with the branch license;
- representative offices and branch employees shall be subject to the relevant tax obligations, in accordance with the laws of Vietnam;
- branches shall have to follow the accounting regime, as required by the laws of Vietnam.
- branches are required to report annually to the Ministry of Trade, on the operational and financial position of the business;
- representative offices are required to submit annual reports to the provincial Trade Department office.

## Business Cooperation Contracts (BCC'S)

A business cooperation contract is a contractual relationship signed between multiple parties, generally a foreign investor and a local company. This does not form a legal entity but permits the partners to engage in business activities on the basis of mutual allocation of responsibilities and the sharing of profits and losses. This form of business has traditionally been used in industries where LLCs and JSCs are restricted. This form of business is a means of private financing without transferring management control to a foreign partner.

## Public and Private Partnership Contracts

Public and Private Partnership ("PPP") contracts are contractual arrangements entered into by the government with the private sector for infrastructure projects and public services. These are typically used for transportation, electricity production, water supply, drainage and waste treatment projects. It includes Build-Operate-Transfer (BOT), Build-Transfer (BT) And Build-Transfer-Operate (BTO) Contracts. The difference between BOT, BT, BTO, BOO, BTL, BLT and O&M contracts is the point in time that the project is transferred to the government.

# Labour

Laws governing employment and industrial relations largely stem from provisions set out in the 1992 Constitution which was amended and supplemented under Resolution No. 51/2001/QH10. However, the new Labour Code, enacted in 2012, provides current framework of regulations regarding the employment. Alongside the Code, there are specific implementing decrees to help guide organisations to comply with the provisions of the new Labour Code, for example, the decrees on labour contracts, on labour disputes, and salary.

The Labour Code covers a diverse range of labour related issues, including recruitment, employment contracts, working hours, labour discipline, and labour dispute resolution. The Labour Code is applicable to employees and employers, across both foreign and resident organisations.

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## Employment Contract

In Vietnam, employment relationships are governed by contractual agreements entered into between employer and employee. Contracts may take one of the following forms:

- Indefinite-term labour contract
- Definite-term labour contract - the duration of which is defined by the two parties as a period of one to three years
- A temporary labour contract for a specific project or seasonal work - the duration of which is less than one year.

A definite-term labour contract can only be renewed twice; following that, the employer must sign an indefinite-term labour contract. In case the employer does not wish to renew the labour contract with the employee, the employer must inform the employee of the termination at least 15 days before the expiry date of the labour contract.

Contracts must comply with a prescribed form published by the Ministry of Labour, War Invalids and Social Affairs (MOLISA). The labour contract must have minimum principal contents: name and address of Employer; full name, date of birth, gender, residential address, ID number of the employee; job and work place; term of the labour contract; wage, form of wage payment; deadline for wage payment; regimes for promotion and wage raise, working time; social insurance and health insurance; training. The Labour Code allows an employer to require an employee whose work is related to business or technological secrets to enter into a separate agreement on confidentiality and nondisclosure of those secrets. A confidentiality agreement may contain a clause on financial penalties in case of breach of contract.

The Labour Code prohibits employers from keeping employees' original identification cards, diplomas and certificates and requesting employees to make deposit in cash or property as security for the performance of the labour contracts when signing and performing labour contracts.

A contract must be signed by the legal representative of the Employer or an authorised person before the employment begins.

## Minimum regional wages

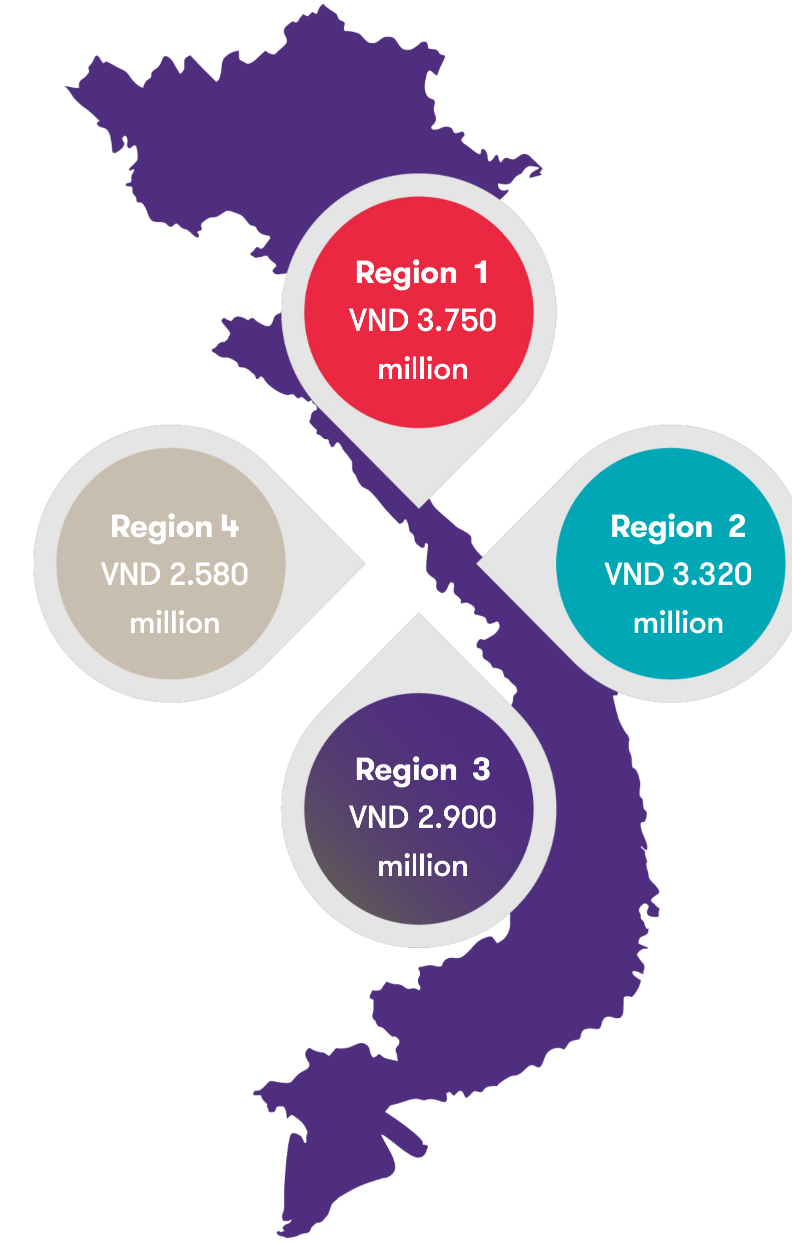
According to Decree No. 141/2017/ND-CP which is effective from 1 January 2018, the Prime Minister approved an increase in Vietnam's minimum monthly salary of between VND180,000 - VND 230,000 effective from 1 January 2018, dependent on the region. The minimum wages are as follows:

- **Region One** (which includes urban Hanoi, Hai Phong, Ho Chi Minh City) - VND3.980million
- **Region Two** (which includes rural Ha Noi, HCMC, Hai Phong plus the capital cities of Hai Duong, Hung Yen, Bac Ninh, Thai Nguyen, Nha Trang, Can Tho and Rach Gia) - VND3.530 million
- **Region Three** ( which includes the remain cities and districts in the provinces of Hai Duong, Vinh Phuc, Phu Tho, Bac Ninh, Nam Dinh, Phu Yen, Dong Nai and Tien Giang, Ben Tre) – VND 3.090million
- **Region Four** (the least developed areas in Vietnam) - VND 2.760 million.

The above are the regional minimum wage rates which are the lowest rates to be used as the basis for any arrangement between enterprises and employees on salary and salary payment, in which the wage rate to be paid to employees who work under normal working conditions, meet monthly working hour standards, and fully discharge their obligations for predetermined labor productivity norms or agreed worked duties, but these rates must be:

a) Equal or higher than regional minimum wage rates paid to unskilled employees who perform simple tasks;

b) At least 7% higher than the regional minimum wage rates paid to skilled/trained employees.



# Normal working time, overtime and leave

### Normal working time

Under the Vietnamese Labour Code, normal working hours should not exceed 8 hours per day or 48 hours per week. This may be extended through an agreement between the employer and employee but the normal working time cannot exceed 10 hours per day, or 48 hours per week.

### Overtime

Employers can request the employees to work overtime with the condition that the employer obtains the employee's consent.. The employer must ensure that the number of overtime working hours does not exceed 50% of the normal working hours per day; (in case of applying regulations on weekly work, the total of normal working hours and overtime working hours must not exceed 12 hours per day);), must not exceed 30 hours per month and the total of overtime working hours must not exceed 200 hours per year, except in some special cases as stipulated by the Government in which overtime working hours must not exceed 300 hours per year.

Employees who work overtime are entitled to additional wages. Wages for overtime work on normal days is at least equal to 150% of his/her current wage unit. Wages for overtime work on weekends are at least equal to 200% of his/her current wage unit and for public holidays and paid leave days, the overtime wage is at least equal to 300% of his/her current wage unit..

### Leave

Employees that are under 18 years of age and women who are over seven months pregnant, or have a child of less than one year in age, are granted an extra hour off a day and are not permitted to work overtime.

Employees are entitled to at least one rest day per week.

Employees who have been employed for 12 months are provided with a minimum of 12 days of paid annual leave (vacation) per year, alongside the 10 days of public holiday each year. Employees who work in dangerous jobs or those that reside in areas with harsh living conditions may be entitled to up to two to four extra days off. Furthermore, workers are generally entitled to an extra day of holiday for each five years of service with a company.

Employees are entitled to sick leave, although this is not paid for by the employer. The Social Insurance Fund covers sick-leave allowances for employees and also for female employees taking care of their sick children. The maximum time granted per year for sick leave is 30 days (in most industries and professions), with 15 days permitted for taking care of sick children. The allowance granted in lieu of salary is equal to 75 per cent of the salary.

# Social security

Vietnam's compulsory social, health & unemployment insurance ("SIHIUI") regime covers sickness, maternity, work-related accidents, unemployment, retirement and survivorship allowance. The employers and Vietnamese employees are required to contribute compulsory social insurance, health insurance and unemployment insurance on a monthly basis to the social insurance fund.

The SIHIUI contribution is computed on the factors of salary and mandatory rate.

The mandatory contribution rate by employee and employer are as follows.

| | Social insurance | Health insurance | Unemployment insurance | Total |
|---|---|---|---|---|
| Employee | 8% | 1.5% | 1% | 10.5% |
| Employer | 18% | 3% | 1% | 22% |
| Total | 26% | 4.5% | 2% | 32.5% |

Since 1 January 2015 onwards, it is compulsorily required to contribute the SIHIUI for the employees with labour contracts of 03-month term and above without any taking into account of number of employees in the labour unit as compared to pre 2014.

According to Decree No. 47/2016/ND-CP, effective from 1 May 2016, which regulates the statutory pay rate for public officials, public employees, working employees and workers. Under this Decree, the statutory pay rate was increased to VND1,210,000 per month.

With the effect of the changes in the said Decree, the maximum salary base to determine Social Insurance ("SI"), Health Insurance ("HI") and Unemployment Insurance ("UI") contribution are as follows:

- The salary base to determine SI and HI contribution shall not exceed 20 times of the regional minimum salary, from 1 January 2018 is VND 79.6 million per month for employees working in Ho Chi Minh City (i.e. the regional minimum salary VND 3,980,000 x 20 times).
- The salary base to determine UI contribution shall not exceed 20 times of the regional minimum salary, from 1 January 2017 is VND75 million per month for employees working in Ho Chi Minh City (i.e. the regional minimum salary VND3,750,000 x 20 times).

Retirement benefits are provided under the compulsory social insurance regime.

Monthly pensions are provided from the Social Insurance age for men, or 55 years of age for women.

A deduction of up to VND1 million per month is permitted for contributions to supplementary pension schemes. Though



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.

A deduction of up to VND1 million per month is permitted for contributions to supplementary pension schemes. Though still in its infancy, it is expected that a greater number of providers will offer supplementary schemes. With these schemes, the employees will have a better support in and the means to save for retirement diversify the sources of their pensions and will provide employers with a means to retain key employees.

# Healthcare and benefits

### Health care

Basic health care is covered by the Social Insurance Fund. However, private schemes are becoming more popular especially schemes from Insurance companies. However, please note that for foreigners entering into labour contracts with companies in Vietnam, they have to join the health insurance scheme with the local social insurance department.

### Workers' compensation

Workers suffering labour accidents or work-related diseases are entitled to an allowance equal to 100 per cent of their salary during the initial treatment period. Employers will be responsible for the allowance and all the examination and treatment expenses. After the conclusion of the treatment, the worker will receive further allowances from the Social Insurance Fund based on the degree of disability and illness. If a worker dies as a result of work related injury or disease, his family will be entitled to death benefits covered by the Social Insurance Fund. Employers have an additional obligation to pay compensation representing at least 30 months' salary to workers who suffer a reduction of more than 81 per cent of their labour capacity, or they must pay an equivalent amount to the close relatives of a worker who dies as a result of a labour accident or disease not caused by his own negligence. In cases where the injury or death of the worker is due to their own fault, the worker will still receive an allowance equalling at least 12 months' salary.

### Probation

Employers and employees may agree on a probationary period. This must not exceed 60 days for work that requires special or highly technical skills and 30 days for all other work. A probationary employee must not be paid less than 85% (per cent) of the normal wage for that job.

### Dismissal

The current Labour Code protects the employee. In general, both employer and employee may unilaterally terminate a labour contract in certain circumstances specified in the Labour Code; these include failure of employees to carry out their tasks, breach of discipline or serious injury of illness. Termination may also occur due to financial problems or the advent of technology rendering the employee's job obsolete. Termination must be made in writing.

In some cases, the employer is required to discuss the termination and reach an agreement with the executive committee of the trade union. Where the employer or employee is terminating a contract, advance notice must be given. This is calculated considering the period for which the worker has been employed.

| Type of contract | Advance Notice Required (days) |
|---|---|
| Indefinite term contract | 45 days |
| Definite term contract | 30 days |
| Seasonal contracts | 3 days |

### Protection from termination

While Vietnam has not yet developed a set of laws and regulations to deal with employment discrimination issues, labour law prescribes the prohibition of discrimination based on sex, race, social class, beliefs or religion. Therefore, no employee can be dismissed based upon these factors. Furthermore, the labour code specifically provides that no female employee can be dismissed because she is getting married, pregnant, taking maternity leave or nursing a child.

### Collective redundancies

Employers are restricted in the situations that they are permitted to make mass redundancies. For example, natural disasters, fire or other major events, as set out by the government. If the employer intends to undergo mass redundancy, they must consult with the trade union and appropriate state authority. They must also provide severance payments, where applicable.

### Severance payments

There are two treatments depending upon the date of recruitment:

- For the employee who commenced employment before 1 January 2009 Where a labour contract is terminated, employees working for 12 months or more will be entitled to severance allowance equal to the aggregate amount of half of one month's salary for each year of employment.

In case of restructuring, change of technology, change for economic reasons, merger, consolidation, division, or separation of an enterprise, the severance allowance will be one month's salary for each year of employment, but at least two months' salary.

- For employees recruited after January 1st 2009

Once the labour contract is terminated subject to contribution of UI, the State Unemployment Agency shall pay the severance allowance.

## Employment of resident and non-resident employees

The Vietnamese Labour Code states that foreign companies, branches and representative offices must provide Vietnamese citizens with priority of employment opportunity.

Any Vietnamese citizens who wish to be employed by foreign companies must satisfy the following criteria:

- are over 18 years old (with exceptions)
- have fulfilled their legal obligations
- have not been charged with any criminal activity
- are not officials, employees of mass organisations or armed forces personnel
- are retired officials, public servants or discharged armed forces personnel, who have obtained consent from their former employers.

Where employment positions require specialist skills or senior management responsibilities that Vietnamese residents cannot fill, organisations are authorised to recruit foreigners to fill that position. However, the employer must have a plan or program of training to enable a Vietnamese national to take over the job and replace the foreigner at a point in the future. For most positions, foreign employees must provide original copies of relevant educational qualifications in order to obtain a work permit.

Foreigners who work in Vietnam are required to obtain a work permit or to obtain confirmation from the local labour department that he/she is exempted from a work permit.

Work permits are issued for the same duration as the term of the labour contract; a work permit can be issued for a maximum of 24 months and is allowed to be renewed with the same duration.

All foreigners are required to apply for a work permit, except for the following cases:

- They are a member of a limited liability company with more than two members;
- They are the owner a limited liability one-member company
- They are a member of the management board of a joint-stock company
- They are in Vietnam to offer and sell services
- They are in Vietnam to deal with emergency cases that are likely to affect business activities that Vietnamese experts cannot deal with
- They are a foreign lawyer who has been issued a license to practice law in Vietnam
- Foreigners' internal movement in the enterprises operating in 11 service sectors specified in Vietnam's commitment schedule to WTO are not subject to work permits. (11 service sectors are listed in Annex I under Decree 35/2016/TT-BCT issued on 28 Dec 2016 which is effective from 10th February 2017).

### Trade Unions

All companies, with either Vietnamese or foreign

owned capital, must permit their employees to join a trade union. Disputes between employers and employees should be resolved through negotiations. If a resolution is not reached then the Ministry of Labour, War Invalids and Social Affairs or Labour Tribunal may be asked to intervene to settle the dispute.

Companies are required to contribute 2% of total salary expenses into a trade union fund.



# Financial reporting and audit

The accounting and auditing profession in Vietnam has improved dramatically in recent years. This is a result of the introduction of and continuing improvement of the accounting and auditing standards. Additionally, professional bodies have been established, the number of qualified accountants and auditors has increased as well as further development of relevant laws and regulations.

## Vietnamese Accounting Standards and System

**Accounting Standards**

There are currently 26 Vietnamese Accounting Standards ("VAS") which were issued from 2001 to 2005. All standards were adopted from and primarily based on the International Accounting Standards ("IAS") and International Financial Reporting Standards as promulgated by the International Accounting Standards Board (IASB) prevailing at the time of issuance. Key differences between IFRS and VAS include terminology, applied valuation methods or disclosure requirements due to the continuing changes and amendments to IFRS.

Vietnam is on the way to close the gap between VAS and IFRS and it is expected that full adoption of IFRS will be made by 2020.

**Accounting System**

All companies in Vietnam are required to adopt Circular No. 200/2014/TT-BTC dated 22 December 2014 ("Circular 200") issued by the Ministry of Finance ("MOF"), and other prevailing Vietnamese decisions and circulars. Circular 200 provides guidance on Vietnamese Accounting Systems and the application of and adoption of accounting standards to all types of enterprises in Vietnam.

On 26 August 2016, the Ministry of Finance issued Circular No.133/2016/TT-BTC ("Circular 133") which provides guidance on Vietnamese Accounting Systems for Small and Medium-sized Enterprises ("SMEs"). Circular 133 took effect for fiscal years commencing on or after 1 January 2017. Circular 133 replaces the contents applied to SMEs of both Decision No.48/2006/QD-BTC ("Decision 48") dated 14 September 2006 and Circular No. 138/2011/TT-BTC ("Circular 138") dated 04 October 2011 as issued by the Ministry of Finance. The SMEs are authorised to proactively design and construct their accounting system in line with SMEs' respective industries, management and decision-making purposes. SMEs can decide to apply the accounting system under Circular 200/2014/TT-BTC dated on 22 December 2014 of the Ministry of Finance ("Circular 200") and relevant amendments, supplements or replacements of regulations, but are required to notify the Tax Authorities as well as to consistently apply this accounting system during the fiscal year. In case the SMEs decide to apply Circular 133, they are required to notify the Tax Authorities and implement the changes as from the beginning of the fiscal year.

All securities companies in Vietnam are required to adopt Circular No. 210/2014/TT-BTC ("Circular 210"), issued by the MOF on 30 December 2014, providing guidance on accounting systems applicable to securities companies. Circular 210 provides a number of amendments related to the chart of accounts, accounting methods, forms of accounting books and methods of preparation and presentation of financial statements applicable to securities companies established and operating under the provisions of the Vietnamese Securities Law. Circular 210 is applied for securities companies' financial year starting from 1 January 2016 onwards.

## Accounting records and financial statements

The Vietnamese Law on Accounting stipulates that the accounting records and financial statements of all enterprises established in Vietnam should be prepared in accordance with the following fundamental requirements:

**Accounting records**

- Framework: Vietnamese Accounting System
- Language: Vietnamese
- Currency: VND (*)
- The company can use electronic documents as accounting records, but must print and file those electronic papers in hardcopy
- Records retention: five (5) years for accounting documents; ten (10) years for accounting data, accounting books and permanently for documents that are significant in term of economics, national security and defence

(*) Foreign -invested entities are allowed to select and use another currency in recording transactions and maintaining their accounting records, provided that they can clearly demonstrate that the receipts and disbursements are mainly denominated in such other currency. However for statutory reporting, entities using another currency as functional currency must convert their financial statements prepared under such other currencies into VND under certain prescribed regulations.

**Financial statements**

- Framework: Vietnamese Accounting Standards and System (VASs)
- Financial year: An accounting period is generally 12 months in duration. Enterprises must select the fiscal year-end which could be either at the end of the calendar year or at the end of each quarter (i.e. 31 March, 30 June and 30 September). A notice to the local tax authority is required to be submitted if an enterprise selects a quarter date other than December(**)
- Language: Vietnamese
- Reporting currency: VND (***)
- Approval: The financial statements must be approved by the Chief Accountant and the Legal Representative.

(**) For newly incorporated enterprise, the first accounting period must not be more than 15 months after the enterprise's date of incorporation.

(***) If an enterprise selects a foreign currency to be used as functional currency in recognising transactions, maintaining its accounting records and preparing its financial statements, its financial statements are required to be translated into VND for statutory reporting purposes.

The MOF also issued Circular 202/2014/TT-BTC dated 22 December 2014 to guide, amend and supplement on the methods how to prepare and present consolidated financial statements.

## Auditing standards

There are forty seven (47) Vietnamese Standards on Auditing ("VSA") which were issued by the MOF. Of these, 37 standards were issued in 2013 and 10 standards were newly issued in 2015. The VSA were essentially adopted from ISA. All audit activities and practices of audit firms and auditors are required to be in accordance which VSA and the Law on Independent Audit, which was released on 29 March 2011 and took effect on 1 January 2012.

## Audit requirements

Under the Law on Independent Audit, annual financial statements of foreign invested entities and public interest entities (i.e. listed entities, banks, insurance companies, securities companies and financial institutions), and any other entities involved in special circumstances such as mergers and acquisitions, changes in ownership, termination and bankruptcy must be audited by an audit firm legally operating in Vietnam.

Under the prevailing regulations certain entities such as banks, non-banking credit institutions and branches of foreign banks have to rotate or replace their audit firm by another audit firm after five (5) consecutive years. There is no similar requirement for rotation of audit firms and auditors for other business entities. However, the Law on Independent Audit mandates that signing auditors (licensed auditors signing the auditor's report along with the legal representative of the audit firm) have to be rotated or replaced after three (3) consecutive years.

**Foreign invested entities** are required to have their annual financial statements audited. Those entities must appoint an audit firm from the list of practicing auditors and audit firms qualified to provide audit services as approved and published by the MOF annually. There were 180 audit firms in the list of firms who are approved and authorised by the MOF in 2018.

**Public interest entities** are required to submit "reviewed" semi-annual financial statements and "audited" annual financial statements. Such review and audit should be carried out by auditors and audit firms qualified to provide such services to Public Interest Entities (PIE) as approved by the State Securities Committee ("SSC"). The list of approved auditors and audit firms is reviewed and published annually on the websites of the MOF, SSC and Vietnamese Association of Certified Public Accountants ("VACPA").

Currently, there are 32 audit firms in that list which includes Grant Thornton Vietnam.

Audit contracts should be signed with the independent auditors no later than 30 days before the end of the entity's financial year in accordance with Decree 105/2004/ND-CP dated 30 March 2004 and the Law on Independent Auditing with effect from 1 January 2012.

## Filing/publication requirements

**Foreign invested entities** are required to submit statutory audited financial statements to its applicable licensing body, Department of Finance in provinces and cities under the jurisdiction of the central government where such enterprise's head offices are located, and the local tax authority and department of statistics within 90 days from their reporting date. For enterprises located in an Export Processing Zones or Industrial Zones, financial statements will be filed with Export Processing Zone or Industrial Zone Management Board if required.

**Public interest entities** are required to submit and publish their half-year reviewed financial statements and year-end audited financial statements within 45 days and 90 days respectively from the balance sheet date.

# Tax System

## The tax system of Vietnam has undergone crucial reforms since Doi Moi in 1986.


In particular, since Vietnam obtained memberships of international organizations e.g. ASEAN (1995) and WTO (2007), tax policy and tax reform has become more aligned with international rules and practices, and at the same time tax collection and administration processes have been improved. In 2007, the Law on Tax Administration was first implemented. The Law provides rules on tax administration, management of information, tax collection and enforcement, and has provided guidance in areas previously open to wide interpretation. Later in 2007, the National Assembly also passed the first Law on Personal Income Tax, covering taxation of all income of individuals in Vietnam for the first time. This Law introduced the concept of personal and family deductions in determining taxable income of individuals.

In 2008, three major tax laws were amended: Corporate Income Tax, Value Added Tax and Special Sales Tax. All of these laws were implemented in 2009 and were further amended in 2014, 2015 with various changes for implementation in 2014 and 2015 onwards.

Tax administration is controlled by the General Department of Taxation, which operates under the Ministry of Finance. Tax affairs may also be handled by local provincial Tax Departments.

Foreign investors are likely to be subject to the following common taxes:

- Corporate Income Tax
- Value Added Tax
- Personal Income Tax
- Foreign Contractor tax
- Others (e.g. Special Sales Tax, Environmental Tax, Import and Export Duties, Natural Resources Tax, Environmental Tax, Property Tax, etc.).

## CORPORATE INCOME TAX ("CIT")

### Scope

Organizations conducting business and earning taxable income in Vietnam, which do not benefit from tax exemptions, are subject to CIT, comprising:

- Enterprises established pursuant to the law of Vietnam
- Foreign enterprises earning income in Vietnam with or without a resident establishment in Vietnam
- Enterprises established pursuant to the Law on Co-Operatives
- Professional entities established pursuant to the law of Vietnam
- Any other organization conducting activities of production or business that earns income from activities, in Vietnam.

A company is a tax resident if it is incorporated in Vietnam or has a permanent establishment ("PE") in Vietnam. In these cases, the foreign enterprise must pay tax on its worldwide income. If the company is not either a tax resident or does not possess a PE, it is only required to pay tax on income arising in Vietnam.

### CIT rate

Currently, the CIT standard rate is 20%. For corporations with total revenues of less than VND20 billion, a 17% CIT rate shall be applied.

Certain industries are liable to a higher tax rate:

- Companies operating in the oil and gas industry are subject to rates ranging from 32% to 50%, depending on the location and specific project.
- Any companies engaging in prospecting, exploration and exploitation of mineral resources are subject to CIT rates of 40% or 50% depending upon location.

CIT may be reduced under investment incentive schemes.

### Deductible vs. non-deductible expenses

**Deductible expenses**

Expenses are CIT deductible if they meet the following requirements:

- Relevant to business activities;
- Having sufficient legitimate invoices and vouchers;
- Settlement via forms of non-cash payment for transactions from VND20 million and above; and
- Not specifically identified as being non-deductible.

**Non-deductible expenses** include:

- Depreciation of fixed assets which is not in accordance with the prevailing regulations;
- Employee remuneration expenses which are not actually paid, or are not stated in a labour contract or collective labour agreement;
- Staff welfare (including certain benefits provided to family members of staff) exceeding a annual cap of one month's average salary;
- Reserves for research and development not in accordance with the prevailing regulations;
- Provisions for severance allowance and payments of severance allowance in excess of the prescribed amount per the Labour Code;
- Overhead expenses allocated to a PE in Vietnam by the foreign company's head office exceeding the amount under a prescribed revenue-based allocation formula;
- Interest on loans corresponding to the portion of charter capital not yet contributed;
- Interest on loans from non-economic and non-credit organizations exceeding 1.5 times the interest rate set by the State Bank of Vietnam;
- Provisions for stock devaluation, bad debts, financial investment losses, product warranties or construction work which are not in accordance with the prevailing regulations;
- Unrealised foreign exchange losses due to the year-end revaluation of foreign currency items other than accounts payable;
- Donations except certain donations for education, health care, natural disaster or building charitable homes for the poor;
- Administrative penalties, fines, late payment interest;
- Contributions to voluntary pension funds and the purchase of voluntary pension for employees exceeding VND 1 million per month per person;
- Certain expenses directly related to the issuance, purchase or sale of shares;
- Creditable input value added tax, corporate income tax and personal income tax.

The previous cap on the tax deductibility of advertising and promotion expenses was abolished from 2015

For certain businesses such as insurance companies, securities trading and lotteries the Ministry of Finance provides specific guidance on deductible expenses for CIT purposes.

## Taxable Income

Taxable income is defined as the difference between total revenue and deductible expenditures, plus other assessable income.

Business Units are required to prepare an annual CIT return which includes a section for making adjustments to accounting profit to arrive at taxable profit.

## Losses

Businesses that incur losses after tax finalization are entitled to carry forward those losses to be offset against the assessable income of future years for maximum of five consecutive years before they expire.

Losses on incentivised activities can be offset against profits from non-incentivised activities, and vice versa.

Losses from the transfer of real estate and the transfer of investment projects can be offset against profits from other business activities.

The taxpayers are not allowed to carry back losses.

## Administration

Taxpayers subject to CIT are obliged to file tax declarations on an annual basis.

The tax payment shall be on a quarterly basis based on estimates, and on an annual basis based on the finalization. The quarterly CIT shall be paid no later than the 30th day of the following quarter. Timeline for both filing the annual CIT finalization returns and paying taxes is no later than 90 days from the end of the fiscal year. The final tax payment at year-end finalization stage is required not exceeding 20% of the accumulated CIT liabilities paid during four quarters. Otherwise, the shortfall in excess of 20% is subject to penalty calculated at 11% per year for late payment counting from the deadline for payment of CIT in the 4th Quarter.

The standard tax year is the calendar year. For enterprises that apply a fiscal year different from the calendar year, the tax period shall be determined according to the applied fiscal year. An enterprise may change the tax year period but the period chosen cannot exceed 12 months and it is required to notify the tax authorities prior to implementation

Firms must pay tax in the province where their main head office is located. 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 incurred by each manufacturing establishment over the total expenditure of the company.

## Capital gains

Vietnam does not operate a separate Capital Gains Tax ("CGT") regime.

For local corporate sellers, any gain derived from the transfer of capital/securities in another Vietnamese entity is regarded as other income and accordingly subject to CIT at the current standard rate of 20%.

For foreign sellers (e.g. corporations and individuals being tax resident in Vietnam), the tax treatment on capital gains earned by a foreign seller is different depending on the corporate form of the target. In particular, the transfer of contributed capital in a Vietnamese limited liability company is subject to CGT at 20% on the gain whereas the transfer of securities (bonds, shares of joint stock company) is subject to CGT on a deemed basis at 0.1% of the sale price.

However, an individual investor who is a non-tax resident in Vietnam and earns income from the transfer of capital/ securities in a Vietnamese LLC/JSC is subject to PIT at a rate of 0.1% on the sales proceeds.

The taxable gains are determined as the excess of the transfer price less the purchase price of transferred capital/ securities less the deductible transfer expenses.

## Groups

There are no provisions within the corporate tax law addressing the concept of group consolidation. Nevertheless, current regulation stipulates that profits and losses cannot be offset between companies within a group.

## Thin capitalisation rules

At present, there are no thin capitalization rules. However, certain restrictions to that effect can be found in the regulations on foreign loans and corporate income tax (permitted borrowing capacity and excessive interest rates)

## Dividend Income

Dividends paid to corporate shareholders are generally exempt from CIT, if the paying firm has fulfilled its CIT obligations before payment.

## Profit Repatriation

Foreign investors are allowed to repatriate their profits either on annual basis or on termination of the investment, in Vietnam, provided that they have profit based on the audited financial statements.

The foreign investors or their investee companies at the foreign investors' authorization are required to notify the local tax authorities the plan to repatriate profits at least 7 working days prior to the scheduled repatriation.



## Tax Incentives

Tax incentives comprise preferential tax rates, tax exemption and tax reduction and are applicable to new investment projects in encouraged locations, encourage sectors and scale of projects. Investment expansion projects (including expansion projects licensed or implemented during the period from 2009 to 2013 which were not entitled to any CIT incentives previously) which satisfy certain conditions are also entitled to CIT incentives from 2015. The projects which are formed after certain acquisitions or re-organisations are not considered new investment projects and investment expansion projects entitled to the said tax incentives.

| CIT rate | Description | Applicable period | CIT Exemption | CIT Reduction |
|---|---|---|---|---|
| 10% | *(1) Income from new investment project in the areas of with specially difficult socio-economic conditions , economic zones, hi tech zones*<br>*(2) Income from new investment projects in:*<br>*• Scientific research and technology development; investment in the development of specially crucial infrastructure works as prescribed, software production*<br>*• Manufacturing composite materials, light construction materials, precious and rare materials; manufacturing reproduction energy, clean energy, energy from destroying waste; developing bio-technology*<br>*• Environmental protection.* | *15 years*<br>*For the newly invested projected in the Item (2), the applicable period might be extended for additional 15 years at maximum, subject to the Government's decision* | *4 years* | *9 years* |
| | *(3) Income of hi-tech enterprises, agricultural enterprises applying hi-technology*<br>*(4) Income from newly-established investment project in the sector of production (except for project producing goods subject to special sales tax, mineral exploitation project) have investment capital scale at the minimum of VND6,000 billion and being disbursed not over 3 years from the date of investment certificate, and*<br>*• Having total minimum revenue of VND10,000 billion/year no later than 3 years from the year generating revenue; or*<br>*• Using over 3,000 fulltime employees no later than 3 years from the year generating revenue.* | *15 years* | *4 years* | *9 years* |
| 10% | *Income of enterprises from socialization activities in the sectors of education and training, vocational training, culture, medical health, sports and the environment*<br>*For CIT Reduction: 5 years OR 9 years applying for the areas with specially difficult/ difficult socio-economic conditions* | *Entire project life* | *4 years* | *5 years*<br>*OR*<br>*9 years* |
| 15% | Incomes of enterprises from farming, husbandry, processing of agriculture and aquaculture products in areas with normal socio-economic conditions | *Entire project life* | | |
| 20% | Income from newly-invested projects based in the areas with difficult socio-economic conditions<br>Income from newly-invested projects in manufacture of high-quality steel; production of energy saving products; manufacture of machinery and equipment serving for agriculture, forestry, fish breeding, salt production; manufacture of irrigation equipment; production and refining of feed for cattle, poultry and aquatic resources; development of traditional trades and occupations | *10 years*<br>*(CIT rate of 17% from 01/01/2016)* | *2 years* | *4 years* |

## TRANSFER PRICING

Enterprises that have transactions with related parties are required to prepare compliance documents in order to maintain sufficient evidence toward the arm's length (appropriateness) nature in such transactions. In this respect, according to the newly issued Vietnamese Transfer Pricing (TP) regulations, which took effect onMay 2017 and applied for tax year 2017 onwards, enterprises shall be considered associated in a tax period under two (2) general conditions as follows:

i. A party participates directly or indirectly in the management, control or equity of the other, or puts investment in the other;

ii. Parties participate directly or indirectly in the common management, control, or the capital of or put investment into other parties.

In general, the TP legal regime in Vietnam is generally established from the foundation of the Transfer Pricing guidelines and the Base Erosion and Profit Shifting (BEPS) action plan issued by Organization for Economic Co-operation and Development (OECD). The current regulations mandate the three (3) acceptable categories of TP methods of examining the arm's length principle, i.e. comparable uncontrolled price method, comparable profit margin methods (including cost plus method, resale price method and comparable profit method) and profit allocation method.

Taxpayers who incur related party transactions are required to disclose their transactions under the annual TP Disclosure Forms (TPFs), which are filed together with the annual Corporate Income Tax return. In addition, taxpayers are also required to prepare the contemporaneous TP Documentation (TPD) report in Vietnamese before the disclosure of the TPFs, which provide consistent information with the above TPFs, information relative to the operation and profitability of the taxpayer and the Group as a whole, and most importantly, proper analysis to prove that the related party transactions are conducted in accordance with the arm's length principle. Taxpayers shall maintain the TPD report in their facility and submit to the Tax authorities upon receiving a request. The new TP regulations has reduced the submission deadline from 30 working days to 15 working days during TP audit and remain at 30-working-days for other circumstances.

At the same time, the new TP regulations have also provided the conditions for simplification in TP declaration, in which taxpayer, has once satisfied the regulated conditions, they will be exempted from the preparation of TPD report in the respective tax year.

Of note, the Ministry of Finance has recently introduced the Advance Pricing Agreement ("APA") mechanism in accordance with Circular 201/2013/TT-BTC dated 20 December 2013. The General Department of Taxation is working through process of guidance which will allow both the taxpayers and the tax authorities to seal the advance agreement on the pricing methods and outcomes.

### Controlled foreign companies (CFC)

There is no anti-controlled foreign company legislation.



## VALUE ADDED TAX ("VAT")

VAT is an indirect tax, the cost of which ultimately falls on the consumer. The majority of transactions involving the supply of goods, the provision of services and imports will be subject to this tax.

Broadly, VAT is levied on the value added, at each stage of the production and distribution supply chain. Registered businesses act as collection points for the Value Added Tax Department.

### VAT rates

The standard rate is **ten percent (10%)**. In addition, there are other rates of 5% and 0% and VAT exemption, as below:

- **0%** : This rate applies to exported goods/services including goods/services sold to overseas/non-tariff areas and consumed outside Vietnam/in the non-tariff areas, goods processed for export or in-country export (subject to conditions), goods sold to duty free shops, certain exported services, construction and installation carried out for export processing enterprises, aviation, marine and international transportation services.
- **5%**: This rate applies generally to areas of the economy concerned with the provision of essential goods and services. These include: clean water; teaching aids; books; unprocessed foodstuffs; medicine and medical equipment; various agricultural products and services; technical/scientific services; rubber latex; sugar and its by-products; certain cultural, artistic, sport services/products and social housing.
- **VAT exemption**: Under this treatment, no output VAT shall be charged and the input VAT shall be uncreditable, but considered as deductible expenses for CIT purposes, comprising the followings

- Certain agricultural products;
- Supply of fertilizer, feed for livestock, poultry, seafood and other animals

Goods/services provided by individuals having annual revenue of VND 100 million or below;

- Imported or leased drilling rigs, airplanes and ships of a type which cannot be produced in Vietnam;
- Transfer of land use rights (subject to limitations);
- Financial derivatives and credit services (including credit card issuance, finance leasing and factoring); sale of VATable mortgaged assets by a borrower under the lender's authorization, in order to settle a guaranteed loan and provision of credit information.
- Various securities activities including fund management;
- Capital assignment;
- Foreign currency trading;
- Debt factoring;
- Certain insurance services (including life insurance, health insurance, agricultural insurance and reinsurance);
- Medical services;
- Teaching and training;
- Printing and publishing of newspapers, magazines and certain types of books;
- Public passenger transport;
- Transfer of technology, software and software services except exported software which is entitled to 0% rate;
- Gold imported in pieces which have not been processed into jewellery;
- Exported unprocessed mineral products such as crude oil, rock, sand, rare soil, rare stones, etc., or processed into other products in which the total value of such natural resources and minerals plus the energy cost are at least 51% of production costs
- Imports of machinery, equipment and materials which cannot be produced in Vietnam for direct use in science research and technology development activities;
- Equipment, machinery, spare parts, specialized means of transport and necessary materials which cannot be produced in Vietnam for prospecting, exploration and development of oil and gas fields;
- Goods imported in the following cases: international non-refundable aid, including from Official Development Aid, foreign donations to government bodies and to individuals (subject to limitations).

In addition, there are regulated cases that goods and services are not required to declare and pay VAT. This means that no output VAT has to be charged but input VAT paid on related purchases can be creditable. These supplies include:

- Compensation, bonuses and subsidies, except those provided in exchange for marketing/promotional services;
- Transfers of emission rights and other financial revenues;
- Certain services rendered by a foreign organization which does not have a PE in Vietnam, where the services are rendered outside of Vietnam, including repairs to means of transport, machinery or equipment, advertising, marketing, promotion of investment and trade to overseas; brokerage

activities for the sale of goods and services overseas, training, certain international telecommunication services;

- Sales of assets by non-business organizations or individuals who are not registered for VAT;

- Transfer of investment projects;

- Sale of agricultural products that have not been processed into other products or which have just been through preliminary processing;

- Capital contributions in kind;

- Certain asset transfers between a parent company and its subsidiaries or between subsidiaries of the same parent company;

- Collections of compensation/indemnities by insurance companies from third parties;

- Collections on behalf of other parties which are not involved in the provision of goods/services (e.g. if company A purchases goods/services from company B, but pays to company C and subsequently company C pays to company B, then the payment from company C to company B is not subject to VAT);

- Commissions earned by (i) agents selling services, including postal, telecommunications, lottery, airlines/bus/ship/train tickets, at prices determined by principals; and (ii) agents for international transportation, airlines and shipping services entitled to 0% VAT; and (iii) insurance agents;

- Commissions from the sale of exempt goods/services.

### VAT calculation methods

There are two VAT calculation methods:

• **Credit method** applies to business establishments maintaining full books of account, invoices and documents in accordance with the relevant regulations, including: (i) Business establishments with annual revenue subject to VAT of VND1 billion or more, and (ii) Certain cases voluntarily registering for VAT declaration under the deduction method.

Accordingly, VAT payable = Output VAT – Input VAT.

Input VAT is creditable if it meets the requirements of:

- Relevant to business activities;
- Having sufficient legitimate invoice and vouchers;
- Settlement via forms of non-cash payment for transaction more than VND20 million; and
- Paying under the bank account.

• **Indirect method** applies to:

- Business establishments with annual revenue subject to VAT of less than VND1 billion;
- Individuals and business households;
- Business establishments which do not maintain proper books of account and foreign organizations or individuals carrying out business activities in forms not regulated in the Law on Investment; and
- Business establishments engaging in trading in gold, silver and precious stones.

Accordingly, VAT payable = revenue x ratio for direct VAT calculation.

Ratios for direct VAT calculation varies depending on the business activities, as below:

**1%**
distribution, supply of goods

**3%**
the production, transportation, service exclusive of materials

**5%**
service, construction exclusive of material

**2%**
other business activities



### VAT administration

All organizations and individuals producing VAT liable goods and supplies must register for VAT. Also, branches must register separately and declare VAT on their own transactions.

The Business Units shall file and pay their VAT returns on a monthly basis by the 20th day of the subsequent month, or on a quarterly basis by the 30th day of the subsequent quarter (for companies with prior year annual revenue of VND 50 billion or less).

### Invoices and payment vouchers

Entities may use pre-printed invoices, self-printed invoices or electronic invoices to declare their VAT liability. There are stipulated items that must be included and strictly reflected onto the invoice.

Since 24 Dec 2014, the General Department of Taxation regulates invoices, contracts, payment vouchers and the related documents,which must be consistent and the payment voucher must state clearly the payment for the reference contract. Otherwise, it shall not be creditable for VAT purpose.

### VAT refunds

From 01 July 2016, VAT refunds will no longer be allowed, except the following cases:

• For exporters, where excess input creditable VAT exceeds VND300 million, a refund may be granted on a monthly/quarterly basis, however, the amount of input VAT relating to export sales to be refunded must not exceed 10% of export revenue.

• Newly established entities in the pre-operation investment phase may claim VAT refunds on a yearly basis or where the accumulated VAT credits exceed VND300 million.

However, for investment projects, VAT refunds shall not be granted in the following cases:

- the chartered capital has not been fully contributed as registered;

- Conditional investment projects does not meet the conditions under Investment Law

- Investment project exploiting natural resources licensed after 01 July 2016, or manufacturing project in which the cost of natural resources and energy expenses account for 51% or more of the total cost of the product.

# PERSONAL INCOME TAX ("PIT")

The new Law on PIT took effect on 1 January 2009. This replaced the previous ordinance and regulations covering Income Tax on High Income Earners in Vietnam.

### Individuals liable to PIT and tax resident status

Individuals are subject to Vietnamese PIT based upon their tax resident status, i.e. PIT on their worldwide incomes for tax residents or PIT on Vietnam sourced income for non-tax residents.

Any foreign individual shall be considered a PIT resident if he/ she meets one of the following conditions:

• Being present in Vietnam for a period of 183 days or more within either a western calendar year or for 12 consecutive months counting from the first arrival date;

• Having a permanent residence in Vietnam (including a registered residence which is recorded on the permanent/temporary residence card in case of foreigners) and being unable to prove tax residence in another country;

• Having a leased house in Vietnam with a term of 183 days or more in a tax year and being unable to prove tax residence in another country

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

### Taxable income

**Taxable income** generally comprises 10 main types of income: employment income, business income, income from capital investments, income from capital transfers, income from real property transfers, winnings or prizes, royalties, income from franchises, income from inheritances and receipts of gifts.

**Income not subject to tax** generally includes:

**Employment**

• One-off regional transfer allowances for: (i) foreigners moving to reside in Vietnam, (ii) Vietnamese holding other country nationality working in Vietnam, and (iii) Vietnamese working overseas;

• Once per year home leave round trip airfare for expatriates and Vietnamese working overseas;

• Employee training fees paid to training centres;

• School fees up to high school in Vietnam/overseas for children of expatriates/Vietnamese working overseas;

• Mid-shift meals (subject to a cap if the meals are paid in cash);

• Taxable housing benefit including utilities: being the lower of the actual rental paid and 15 per cent of the employee's gross taxable income (excluding taxable housing);

- 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;
- Compensation for labour accidents; and
- Income of Vietnamese vessel crew members working for foreign shipping companies or Vietnamese international transportation companies

To apply the PIT exemption on the above, there are a range of conditions and restrictions.

### Non-Employment

- Interest earned on deposits with credit institutions/banks and on life insurance policies;
- Retirement pensions paid under the Social Insurance law (or the foreign equivalent);
- Income from transfer of properties between various direct family members;
- Inheritances/gifts between various direct family members;
- Monthly retirement pensions paid under voluntary insurance schemes;
- Income from life insurance policies;
- Foreign currency remitted by overseas Vietnamese
- Scholarships
- Compensation payments from life and non-life insurance contracts.

### PIT deductions

Tax deductions include:

- Contributions to mandatory social, health and unemployment insurance schemes;
- Contributions to local voluntary pension schemes;
- Personal and family relief: Personal relief of VND9 million/month, and family relief of VND3.6 million/month/ dependent. The dependent allowance is not automatically granted, and the taxpayer needs to register qualifying dependents and provide supporting documents to the tax authority; and
- Contributions to certain approved charities.

### PIT administration

- **Individual tax code**: Any individual present in Vietnam who has taxable income must obtain an individual tax code. The taxpayers who have taxable employment income must submit the tax registration file to their employer; the employer will subsequently submit this to the local tax office. For individuals with taxable non-employment income, they must submit their tax registration file directly to the district tax office.
- **PIT declaration and payment**:

- For employment income, Employers must deduct and withhold employees' PIT and submit/ pay it to the tax authority, alongside the relevant social security contributions on monthly basis with the timeline no later than the 20th of following month or on a quarterly basis by the 30th day following the reporting quarter. The total income withheld must be finalized no later than 90 days after the end of the western calendar year.

Expatriate employees are also required to carry out a PIT finalization on termination of their Vietnamese assignments before exiting Vietnam. Tax refunds due to excess tax payments are only available to those who have a tax code.

- For non-employment income, the individual is required to declare and pay PIT in relation to each type of taxable non employment income. The PIT regulations require income to be declared and tax paid on a regular basis, often each time income is received.

- **PIT credit**: For tax residents who have overseas income, any PIT paid in a foreign country is creditable against tax paid in Vietnam subject to certain percentage and tax administration procedures.
- **PIT year**: The Vietnamese tax year is the calendar year. However, in the calendar year of first arrival, his/her first tax year is the 12 month period from the date of arrival. Subsequently, the tax year is the calendar year.

### Progressive PIT rates on employment income

| Annual employment Income for resident | | PIT rate (%) |
|---|---|---|
| From (million VND) | To (million VND) | |
| 0 | 60 | 5 |
| 60 | 120 | 10 |
| 120 | 216 | 15 |
| 216 | 384 | 20 |
| 384 | 624 | 25 |
| 624 | 960 | 30 |
| 960+ | - | 35 |



### Brief of PIT rates and bands

| No. | Type of PITable incomes | PIT rate | |
|---|---|---|---|
| | | resident | non-resident |
| 1 | Employment income | Progressive rate as above (*) | 20% |
| 2 | Business income | | |
| | Goods distribution/ supply | 0,5% | |
| | Service, construction exclusive of building material | 2% | |
| | Particularly: Asset lease, insurance brokerage, lottery brokerage, multi-level marketing brokerage | 5% | |
| | Manufacturing, transportation, service associated with goods, construction inclusive of building material | 1,5% | |
| | Other business activities | 1% | |
| 3 | Capital investment | 5% | |
| 4 | Capital assignment | 20% on net gains | 0.1% on sale proceeds |
| 5 | Transfer of securities | 0.1% on gross sale proceeds | |
| 6 | Real property transfer | 2% on gross sale proceeds | |
| 7 | Royalties/ Technology transfer/ Franchising | 5% on amount over VND10 million | |
| 8 | Winnings/ Prizes/ Inheritance/ Gifts | 10% on amount over VND10 million | |

## FOREIGN CONTRACTOR'S TAX ("FCT")

FCT imposed on foreign business individuals and foreign organizations earning Vietnam-sourced income (herein referred as "foreign contractor" or "FC"), except: (i) "pure supply of goods" under INCORTERMS., i.e. where title passed at or before the border gate of Vietnam and there are no associated services performed in Vietnam, (ii) services performed and consumed outside Vietnam. It includes two kinds of taxes: VAT-FCT and CIT-FCT at varied FCT rates.

There are three methods of FCT payment at the FC's selection:

- **Deduction method:**

This method allows the FC declaring: (i) VAT under the approach of crediting the input VAT against the output VAT, and (ii) CIT based on the declaration of revenue and expense similar to the local enterprises' application. Of note, FC is required to meet some criteria, including FC's adoption of the Vietnamese Accounting System.

- **Direct method:**

Under this method, FCT is the mechanism to withhold taxes. The FC's VAT and CIT will be withheld by the Vietnamese customers at prescribed rates from the payments made to the FC. Various FCT rates are regulated under the nature of activities performed (please kindly see our below table briefing the FCT rates for each activities).

- **Hybrid method:**

This method is a mixed-up between the deduction method and direct method, i.e. allows the FC declares VAT based on the creditable approach and CIT at direct method.

**FCT rates**

| Ratio for FCT (%) | | | |
|---|---|---|---|
| | Type of business activities | Deemed VAT-FCT rate (%) | Deemed CIT-FCT rate (%)x |
| 1. Trades: | (i) Distributing, supplying goods;<br>(ii) Distributing, supplying goods associated with services rendered in Vietnam (including the form of on-spot export and import);<br>(iii) Supplying goods under INCOTERMS where the seller bears risk relating to goods in Vietnam. | 1/Exempt | 1 |
| 2. Services: | Services | 5 | 5 |
| | Restaurant/ hotel/ casino management services | 5 | 10 |
| | Service associated with goods supply<br>(if contract doesn't separate the value of goods and service) | 3 | 2 |
| 3. Insurance: | Insurance | 5 /Exempt | 5 |
| | reinsurrance abroad, commission of the reinsurrance transfer | Exempt | 0.1 |
| 4. Leasing: | Leasing machinery and equipment | 5 | 5 |
| | Leasing aircraft, airplane engines/ spare parts, vessels<br>(for aircraft and vessel cannot be produced in Vietnam) | Exempt | 2 |
| 5. Banking: | Derivative financial services | Exempt | 2 |
| | Loan interest | Exempt | 5 |
| 6. Capital Investment: | Transferring securities/ deposit certificates | Exempt | 0.1 |
| 7. Oil and Gas: | Supply of goods and/or services for oil & gas exploration and development | Standard: 10<br>(or 5%/ exempt) | 5 |
| | Leasing drilling rigs | Exempt | 5 |
| 8. Construction: | Construction, installation including supply of materials, machinery, equipment | 3 | 2 |
| | Construction, installation excluding supply of materials, machinery, equipment | 5 | 2 |
| 9. Transportation: | Transport (including the transport by seaway, by airway) | 3/0 | 2 |
| 10. Royalty: | Royalty/ Licence fee<br>(*):Software licenses, transfer of technology, transfer of intellectual property rights are VAT exempt | Exempt (*) | 10 |
| 11. Others: | Other production | 3 | 2 |
| | Other Business activities | 2 | 2 |



Vietnam has entered into more than 70 DTAs with other countries for the avoidance of Double Taxation (note that the DTA with the United States of America is still not effective). FCs, and individuals working in Vietnam being nationals of the countries who have entered into Tax Treaties with the Vietnamese Government can apply for either FCT exemption for the part of CIT only or the PIT provided that these FCs/ individuals satisfy certain conditions of the Tax Treaty, i.e. (i) the FCs do not create or have a PE, (ii) the individuals do not become tax resident and receive income from a PE in Vietnam.

The Vietnamese Government has given more guidance on the application of DTAs effective since 2014. The most notable changes relate to beneficial ownership and general anti-avoidance provisions. DTA entitlements will be denied where the main purpose of the arrangements is to obtain beneficial treatment under the terms of the DTA (treaty shopping) or where the recipient of the income is not the beneficial owner. The guidance dictates that a substance over form analysis is required for the beneficial ownership and outlines the factors to be considered:

- Where the recipient is obligated to distribute more than 50% of the income to an entity in a third country within 12 months;
- Where the recipient has little or no substantive business activities;
- Where the recipient has little or no control over or risk in relation to the income received;
- Back to back arrangements;
- Where the recipient is resident in a country with a low tax rate;
- The recipient is an intermediary or agent.

# OTHER TAXATION

## Import Duty

Generally, all goods crossing Vietnamese borders are subject to import duties. In particular:

- Goods imported through Vietnamese border gates or border by road, river, seaport, airport, international railway, international post and other locations for customs procedures clearance
- Goods transferred from the local market to non-tax areas or vice versa
- Other goods traded or exchanged that are considered as imports.

The following goods are not subject to import duties:

- Goods transited and transported by mode of border gate trans-shipment through Vietnam's border gates or borders under the customs law
- Humanitarian aid goods
- Goods imported from abroad into non-tariff zones and only used therein
- Goods brought from one non-tariff zone to another

Import duty rates are classified into 3 categories: ordinary rates, preferential rates and special preferential rates.

Preferential tax rates are applicable to imports originating from countries or groups of countries or territories that grant most-favoured-nation treatment in trade relations with Vietnam. Taxpayers declare the origin of goods themselves and are held responsible for declarations regarding the origin of goods.

Particularly-preferential tax rates are individually specified for each item covered by decisions released by the Minister of Finance.

Ordinary tax rates are applicable to imports originating from countries, groups of countries or territories that do not grant most-favoured-nation treatment or special import tax preferences to Vietnam. The ordinary tax rate is equal to 150 per cent of the preferential tax rate.

Apart from being subject to import tax, in certain situations Vietnam also imposes an anti-dumping tax, anti-subsidy tax and anti-discrimination tax or safeguard tax, in accordance with existing rules.

Import and export duty rates are subject to frequent changes and it is always prudent to check the latest position.

## Export Duty

Export duties are charged on a limited number of items, generally natural resources such as sand, chalk, marble, granite, ore, crude oil, forest products, and scrap metal. Export duty rates range from 0-50 per cent.

## Special Sales Tax (SST)

Special sales tax is a form of excise tax levied on the production or import of certain goods and the provision of certain services:

- Goods generally subject to SST include: cigarettes, cigars and other products processed from tobacco; spirits and beer; certain passenger vehicles; two-wheel motor vehicles with a cylinder capacity above 125cm3; aircraft and yachts; various types of petrol; air-conditioners with a capacity of 90,000 BTU or less and playing cards.
- Businesses subject to SST include: dancehalls, massage lounges and karaoke parlours, casinos, slot machines and

other similar types of machines, betting businesses, golf and lotteries.

Taxpayers producing SST liable goods from SST liable raw materials are entitled to claim a credit for the SST amount paid on raw materials imported or purchased from domestic manufacturers

The SST payable is computed by the taxable price multiplied with the SST rate, which ranges from 10 per cent to 70 per cent depending on the kinds of taxable goods or services.

Also, there are various anti-avoidance rules which specify minimum prices for SST purposes. For example where a manufacturer produces goods subject to SST and sells such goods through an agent, the minimum price for calculation of SST is 90% of the average selling price of the agent.

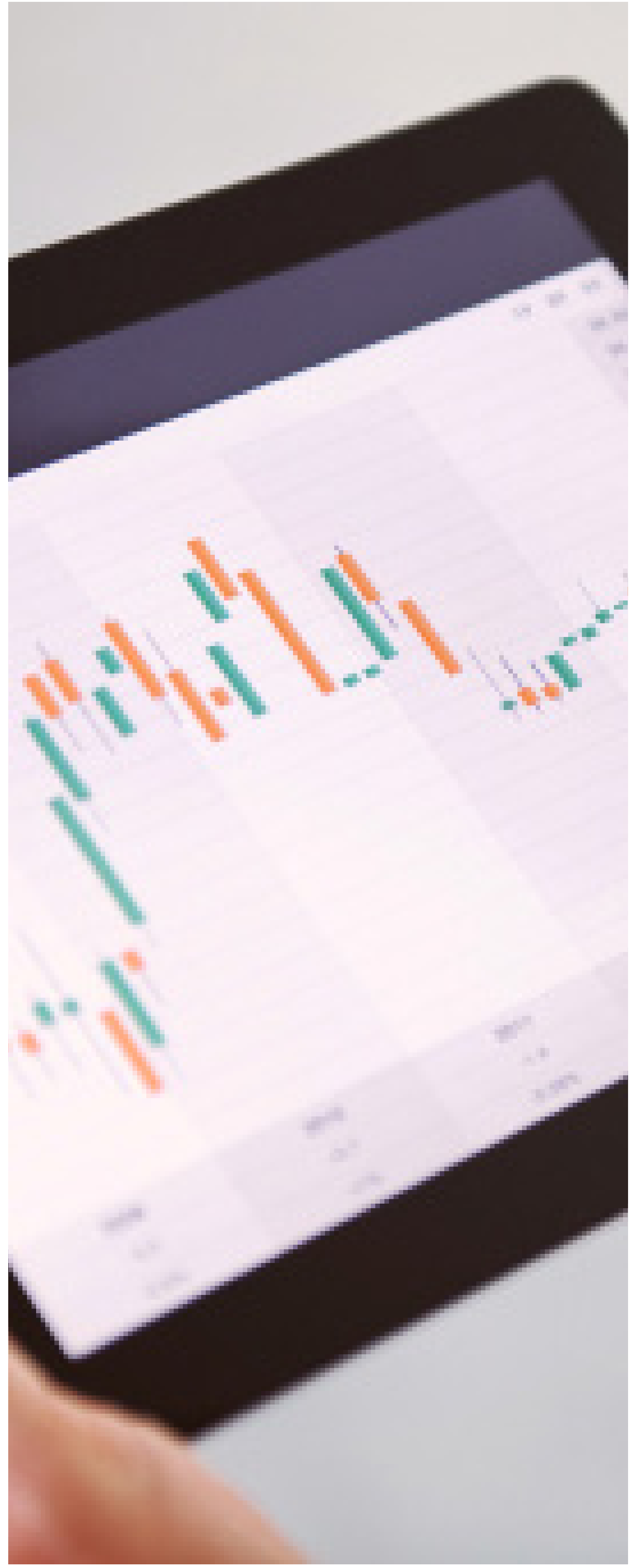
## Natural Resources Tax ("NRT")

NRT is also known as production royalty tax. All organizations 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 per cent to 40 per cent, whilst petroleum, natural gas and coal gas are taxed at progressive tax rates depending on the daily average production output.

Exemptions or reductions in NRT include offshore fishing by high-capacity vessels; natural water used for generation of hydropower that is not fed into the national power grid; and soil or combined soil products for ground levelling or construction works.



## Property tax

Property tax in Vietnam is levied in the form of three taxes: land-use fee, land rental and non-agricultural land-use tax.

- The land-use fee applies to organizations which are allocated land by the State to develop infrastructure for sale or for lease and who are subject to the payment of land-use fee. The duration of land usage under this category should be "long term stable use".
- Land rental is the amount an investor may lease (or rent) land in Vietnam. The amount varies depending on a number of factors including the location, infrastructure and the industrial sector in which the business is operating. Payment of the lease can be for a long fixed period of time or annually.
- Non-agricultural land-use tax applies to
- Residential land in rural/urban areas and non-agricultural land used for business purposes. The calculation of tax liability is based on the land area, price of land and tax rate.

In addition, owners of houses and apartments have to pay land tax under the law on non-agricultural land use tax. The tax is charged on the specific land area used based on the prescribed price per square meter and progressive tax rates ranging from 0.03% to 0.15%.

## Environmental protection tax

Environmental tax is an indirect tax, collected on products and goods that, when used, are deemed to cause negative environmental impacts. The tax is levied on the production or importation of certain goods, based on the Absolute tax rate. Export products are exempted from environmental protection tax.

## Anti-avoidance measures

While Vietnam does not have any specific anti-avoidance rules, the tax authorities have the power to carry out tax audits of any taxpayer. Tax inspections can be conducted on a regular basis but no more than once a year. Tax inspection durations must not exceed thirty days from the date of notification of the tax inspection decision; however these may be extended for an additional period not exceeding thirty days.

A taxpayer who pays tax later than the deadline is to pay the full tax amount plus a fine equal to 0.03 per cent per day for late payment of the tax amount for each day the payment is late. Taxpayers that make incorrect declarations, thereby reducing taxes payable or increasing refundable tax amounts, are to pay the full amount of the undeclared tax or return the excess refund, and will also pay a fine equal to 20 per cent (%) of the under-declared or excess refunded tax amounts, together with a fine for late payment of the tax.

A taxpayer that commits an act of tax evasion or tax fraud is liable to pay the full amount of tax according to regulations and a fine will be imposed of between one and three times the evaded tax amount. The general statute of limitations for imposing tax is ten years and for penalties is five years.

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