



Grant Thornton

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Doing business in Vietnam 2015



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Foreword

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.

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 2015. 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

Nguyen Chi Trung
Managing Partner

Country profile



Summary

Vietnam is a rapidly developing country with a dynamic and emerging market economy. Located in South East Asia, the country has positioned itself as a focal point for investment, boasting an average annual GDP growth rate of 6.6% over the last ten years. GDP growth in 2014 was 5.9% and is expected to rise to 6.2% in 2015.

Vietnam comprises a landmass of 330,972,4 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.

As the global economy has slowly recovered from the financial crisis, Vietnam's economy showed positive signs of continued macroeconomic stabilisation throughout 2014 with lower inflation, stability in the exchange rate, and stronger external account balances. However, there are still potential macroeconomic risks which require the Vietnamese government to speed up institutional and administrative reforms in order to improve the business and investment environment. As a result, it remains to be seen whether the Vietnamese government's efforts will be sufficient to restore economic growth in time for the country to transform itself into a high-income industrialised economy in the longer-term.

Capital: Hanoi
Area: 330,972.4 sq km
Language: Vietnamese
Currency: Vietnam Dong (VND)
International dialling code: +84
Business and Banking hours: 8 am to 5 pm
Political Structure: Single-party socialist republic state
Doing Business rank 2015: 78



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 90,4 million according to the population survey as at 1 April 2014. 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 7.1 million at the surveyed date.

Ho Chi Minh City, the primary economic hub for Vietnam, had a population of nearly 8 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 defense and security issues.

The Head of State is President Mr Truong Tan Sang. He is 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.

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 issuance of 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

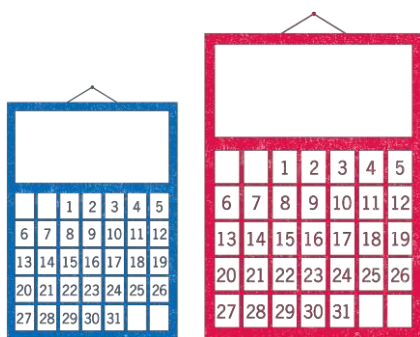
Vietnamese is the country's official language. Foreign languages such as English, French, Russian, Chinese, Japanese and German are also used to varying degrees. English, however, is by far the most widespread foreign language and is commonly used alongside Vietnamese in legal documents relevant to foreign 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.



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 became an official negotiating partner in the Trans-Pacific Partnership trade agreement in 2010.

Agriculture's contribution to the country's GDP has continued to shrink from about 25% in 2000 to 18% in 2014, while contribution from the industrial sector increased from 36% to 39% in the same period. The foreign invested sector was identified as an increasingly significant source of growth for the Vietnamese economy, accounting for nearly 20% of GDP and 22% of the total investment in 2014.

However, in 2014, a total of 67,823 firms closed, an increase of 12% from 2013. The number of newly-established businesses was 74,842 a decrease of 2.7% in number but increasing by 8.4% in term of capital in 2014. In addition, 15,419 enterprises resumes its operations, up 7.1% compared to the same period in 2013.

| Public Holiday | Date | No of days |
|--------------------------|--------------------------------------|------------|
| New Year's Day | 1-Jan | 1 day |
| Tet holidays | Lunar new year (varies) | 5 days |
| Hung King's Anniversary | 10th day of 3rd lunar month (varies) | 1 day |
| Reunification Day | 30-Apr | 1 day |
| International Labour Day | 1-May | 1 day |
| National Day | 2-Sep | 1 day |

Employment levels

As at 1 January 2015, Vietnam had 54.48 million people over 15 years old, including 47.75 million people in working age (15-54 for female and 15-59 for male), with more than 70% of the labour force concentrated in rural areas.

The number actually employed in 2014 was estimated at 53 million, of which, 46.6% were working in agriculture, and the forestry and fishery sectors, 21.4% working in the industrial and construction sector and 32% working in the service sector.

The underemployment rate was 2.45% on average while it was 3.01% in rural areas. Overall the unemployment rate remained low at 2.08% in Vietnam with 3.43% in the urban areas. Both underemployment and unemployment rates in 2014 improved in comparison with 2013 (which were 2.75% and 2.18% respectively).

Cost of living

According to the Mercer's survey of 211 cities in the world in 2014, Vietnam's two major cities including Ho Chi Minh City and Hanoi were ranked 135th and 131th respectively in terms of

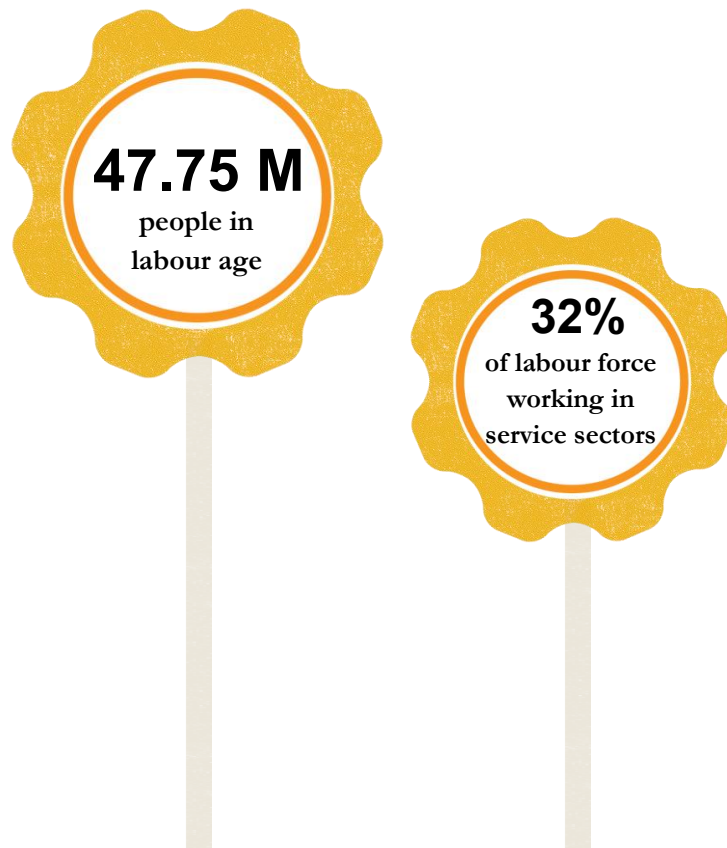
the cost of living, increasing from 141th and 134th respectively in 2013. Living in Ho Chi Minh City and Hanoi is more expensive than in Phnom Penh (ranked 169th) but not as expensive as the other cities e.g. Bangkok, Jakarta, Kuala Lumpur, etc.

Living standards

The local living standard in 2014 was stable, the number of households with food shortage reduced 26.2%, corresponding to a reduction of 25.3% in number of people suffering from food shortage.

The national poverty rate continued decreasing to 8.2% compared with the 9.9% in the previous year, and has dropped from 37.4% in 1998.

According to the Human Development Index (HDI) report announced by UNDA in September 2014, Vietnam made no improvement in its HDI in 2013, staying in the same position of 121 as in 2012. Despite some of its achievements in poverty reduction, healthcare and education improvement, Vietnam's growth has generally slowed while the country's HDI has decreased since 2008.



Business etiquette and travel

Business cards

Always carry business cards when you visit Vietnam and distribute them at every business meeting. When you meet someone for the first time in Vietnam, it is polite to offer your card with both hands. Upon receiving a card, do not stuff it into your pocket. Take a minute to look at the person's card, take care to pronounce their name correctly and acknowledge their title to show your counterpart that you value the opportunity to meet them. When you have finished engaging with the individual, place the business card in your wallet or purse, to show respect.

If you have a business card that is in English and Vietnamese, it is good etiquette to present the card with the Vietnamese side facing upwards.

The order for a Vietnamese name is family name, middle name and given name. Vietnamese names list the surname first, so when referring to a Vietnamese person, use their given name, prefixed by the appropriate term of reference. Hence, the Prime Minister of Vietnam, Nguyen Tan Dung should be referred to as Mr Dung.

Language hints

Keep in mind that many Vietnamese have learnt English at high school or university and may not necessarily have had any particular level of contact with native English speakers. Thus you will need to speak slowly and concisely. Remember to avoid using words in English that are specific to a particular country or region, and if someone does not understand certain words, try using a different version (e.g footpath, sidewalk or pavement).

It is impolite to undermine the authority of a more senior Vietnamese person by directing questions or responding to a more junior person whose English skills may be better. When using interpreters, it is polite to talk directly to the person you are dealing with and maintain eye contact.

Business attire

The climate in Vietnam can be quite hot all year round, particularly in the South so it is advisable to make allowances for this when selecting your business wardrobe. However Hanoi does have a winter season and can experience temperatures as low as 7 or 8 degrees celcius. Probably the most suitable business attire is a lightweight suit for both men and women or smart trousers with a collar and tie for men, skirt and blouse for women.

Handshakes

Handshakes are used upon meeting and departing. Some Vietnamese use a two-handed shake, with the left hand on top of the right wrist.



Business notes

Vietnamese are a polite people and will often smile and agree with you when in fact they may not have fully understood what you have said. The smile and nod are usually to acknowledge that you have spoken, and may not always indicate a firm agreement.

It is often advisable to have bilingual sales literature, including business cards and product manuals, available for more complex negotiations. It is useful to have an agenda and relevant papers translated into Vietnamese prior to the meeting so both sides are clear on what they wish to discuss.

Eating and drinking is a major part of doing business in Vietnam. Toasting at banquets is a common activity during dinner. Many Vietnamese men may smoke during the meal. When cognac or whisky is served at a meal, the custom is for individuals to drink only after a toast is made.

Returning a toast is standard practice. Common toasts are "Tram Phan Tram" (100% Bottoms Up) and "Chuc Suc Khoe" (Good Health).

Business meetings

Hierarchy and face manifest themselves in different ways at business meetings. For example, the most senior person should always enter the room first. Silence is also common in meetings where someone disagrees with another and remains quiet, so as not to cause a loss of face.

Relationships are critical to successful business partnerships. Always invest time in building a good relationship based on both personal and business lines. Any initial meeting should be used solely as a "getting to know you" meeting.

Currency

The official Vietnamese unit of currency is the Vietnamese Dong, often abbreviated as Dong or VND. Current regulations require businesses to advertise prices in VND only. Businesses that require the flexibility to operate in foreign currencies may apply for the right so to do.

When visiting Vietnam, it is still advisable to carry a supply of foreign currency, usually US dollars. Large bills receive better rates than small bills for currency conversions. Travellers' cheques in US dollars can be exchanged at certain banks.

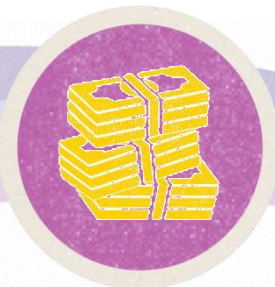
Automated Teller Machines (ATM's or cash dispensers) have experienced dramatic growth in recent years, with more than 14,410 machines and 110,021 POS machines located across the country. These provide a safe and cheap way to obtain Vietnamese currency. However, it is wise not to depend solely on ATM's when visiting areas outside of the main urban locations.

Tipping, although not customary in Vietnam, is appreciated with small tips becoming more common in recent years for the service industries.

Gifts

Gifts are not commonly exchanged when meeting for the first time. However a small token over dinner or at an appropriate moment is always appreciated. The gift is not as important as the sentiment sent with it.

A box of chocolates, a bottle of cognac (for a man), or a small souvenir from your country will show that you are a considerate person.



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. East Timor and Myanmar are exceptions at this point of time. Vietnam has also exempted citizens of Denmark, Finland, Sweden, Japan, South Korea, Norway, and Russia for citizens visiting Vietnam from requiring entry visas for visits of less than 15 days. Currently, the government is considering entry visa exemptions to foreign visitors from additional nine countries including England, Germany, France, Spain, Italy, Australia, New Zealand, India, and Canada.

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 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.

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 and collected upon arrival at Hanoi or Ho Chi Minh City airports, avoiding the need to visit a Vietnamese Embassy abroad.

In order to make the process of obtaining a visa easier for tourists and business travelers, the Vietnamese Immigration Department has allowed for E-visa or so called Visa upon arrival. E- visa 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.



International airports and transport

Vietnam's three main points of entry by air are Ho Chi Minh City (Saigon), Hanoi and Da Nang. Ho Chi Minh City's Tan Son Nhat International Airport is located approximately seven kilometers from the city's downtown and a taxi fare of around VND150-200,000 (approximately USD7-9). In Hanoi, with the recent completion of Nhat Tan Bridge, the distance from Noi Bai International Airport to central business districts has been reduced to approximately 25 kilometers. The travel time of about 30 to 45 minutes by car and the taxi fare is approximately VND350,000-400,000 (c.USD16-USD18). Da Nang International Airport, the third international airport in Vietnam, is an important gateway to access central Vietnam. The airport is 2.5 kilometres southwest of the city centre and is about a five minute drive from Da Nang city.

Visitors should only use metered taxis in Vietnam, preferably from one of the reputable taxi operators such as Mai Linh, Vinasun, TaxiGroup and Phuong Trang. There are many illegal or copy-cat taxi operators throughout the country. So to avoid inflated fares look for newer vehicles with distinctive corporate lettering and identification. Visitors are advised not to use transport if it is not metered unless booked through a hotel or reputable company.



Entry and departure requirements

Visitors to Vietnam can bring with them unlimited amounts of foreign currency, objects made of gold, silver, precious metals and gemstones or plated with silver or gold. However these must be declared in detail on customs forms. Foreign and Vietnamese currency equivalent to under USD5,000 and VND15 million respectively need not be declared. There is no restriction on books or other printed material apart from pornographic or politically sensitive material.

Books and other electronic media may be screened to ensure compliance with the laws. It is illegal to bring letters, packages or correspondence for others into or out of the country. It is also illegal to export antiques or images of Buddha. All luggage is x-rayed on international arrival and for all departures. Remember to keep your baggage claim tag, as it is often requested when collecting baggage when travelling domestically.



Key trends and statistics

Overview

In 2014, Vietnam recorded a GDP growth rate of 5.98%, an increase from 5.42% in 2013. The economy has been successfully stabilised and inflation was controlled in the range of 3% - 4%.

According to the World Economic Forum's (WEF) Global Competitiveness Report 2014–2015, Vietnam ranks 68th in terms of competitiveness amongst 144 economies, an improvement of two spots compared with last year's result. In addition, in November 2014, the credit rating agency Fitch Ratings upgraded Vietnam to "BB-" due to improvements in the country's economy and finances.

In 2014, Exports and Imports had a solid growth of 13.5% (USD150 billion) and 12.7% (USD148 billion) respectively with a trade surplus of USD 2 billion. For 2015, the National Assembly has set export - import turnover growth of 10% and a trade deficit of 5% of projected exports.

Principal imports

The import turnover was USD148 billion in 2014.

Vietnam's Principal Imports

Source: Government Statistics Office (GSO)

| Top import sectors | 2014 USD Billion | 2013 USD Billion |
|--|---------------------|---------------------|
| Machinery and spare parts | 22.5 | 18.6 |
| Electronics, Computers and spare parts | 18.8 | 17.7 |
| Fabrics | 9.5 | 8.4 |
| Telephones and spare parts | 8.6 | 8.0 |
| Petroleum | 7.6 | 7.0 |
| Steel | 7.6 | 6.7 |
| Plastics | 6.3 | 5.7 |

China is the largest market holding USD43.7 billion of Vietnam's import turnover, increasing by 18.2% compared with 2013, followed by Korea, Japan and EU countries.



Principal exports

In 2014, the export turnover was USD150 billion.

Vietnam's Principal Exports

Source: Government Statistics Office (GSO)

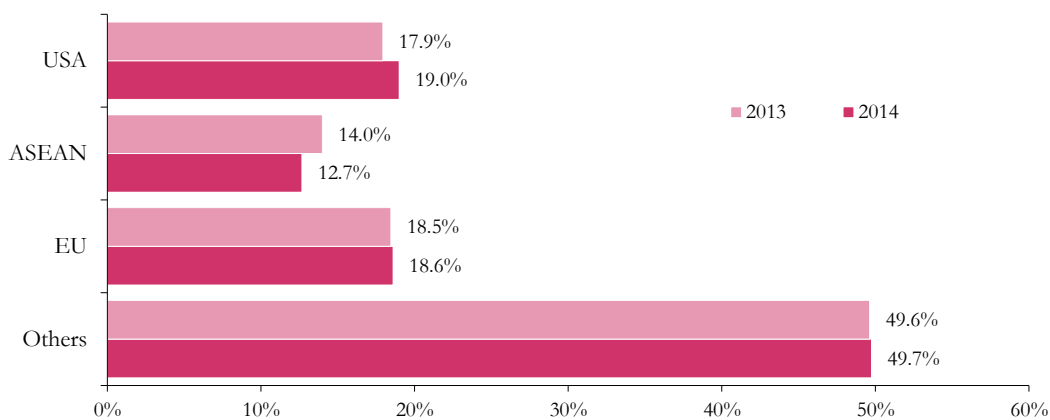
| Top export sectors | 2014 | 2013 |
|--|-------------|-------------|
| | USD Billion | USD Billion |
| Telephones and spare parts | 24.1 | 21.5 |
| Textiles | 20.8 | 17.9 |
| Electronics, Computers and spare parts | 11.7 | 10.7 |
| Footwear | 10.2 | 8.4 |
| Seafood | 7.8 | 6.7 |
| Other machinery and equipment | 7.3 | 6 |
| Crude Oil | 7.1 | 7.2 |

In 2014, Telephones and spare parts continued to contribute the largest export value, increasing 12.1% y-o-y, followed by textiles products (16.2%), and crude oil (1.4%). In terms of growth, other machinery and equipment, and footwear achieved the highest growth of 21.7% and 21.4% respectively in 2014.

In 2014, USA was the largest export market of USD28.5 billion, increasing by 20.3%. EU was the second largest export market of USD27.9 billion, increasing by 14.3% compared with last year.

Vietnam's Principal Exports Market (%)

Source: Government Statistics Office (GSO)



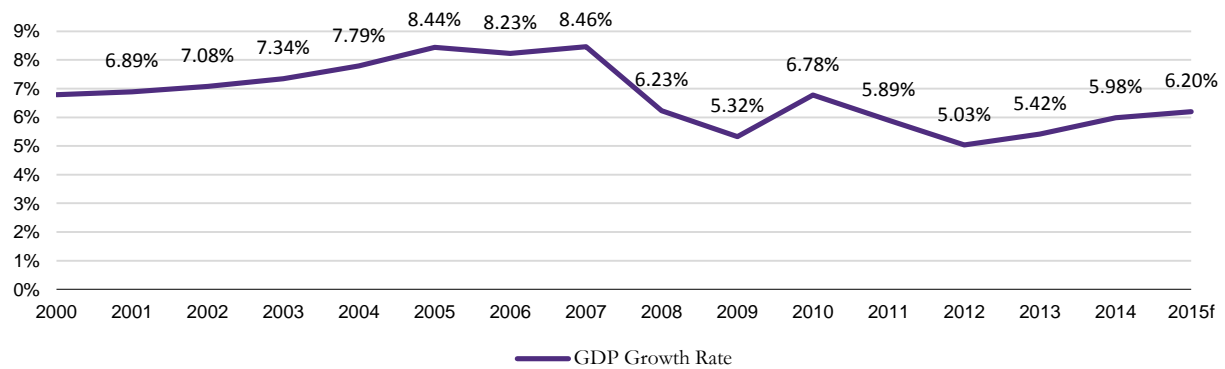
Economic environment

Gross Domestic Product (GDP) Growth

In Q3 2014, the economy gained the strongest GDP growth rate of 6.1% since 2012, and continued to increase to 6.9% in Q4 2014, resulting in a growth of 5.98% in 2014. Economic growth in 2015 is expected to continue to grow with a projected 6.2%.

GDP Growth Rate (2000-2015f)

Source: GSO

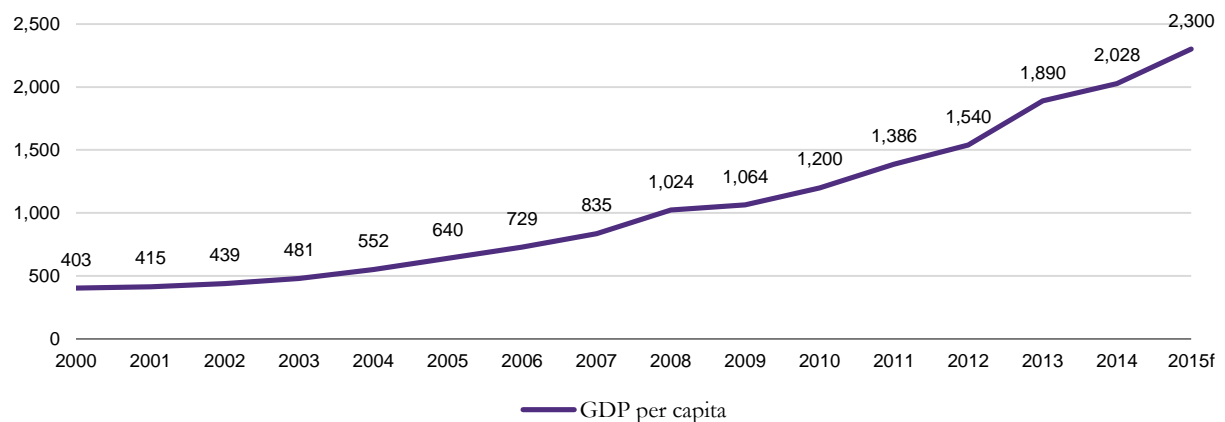


GDP per capita

GDP per capita has continued to improve steadily y-o-y since 2000. The graph below shows the average GDP per capita of \$2,028 in 2014, an increase of 8% compared with 2013. 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 (2000-2015f)

Source: Ministry of Planning and Investment

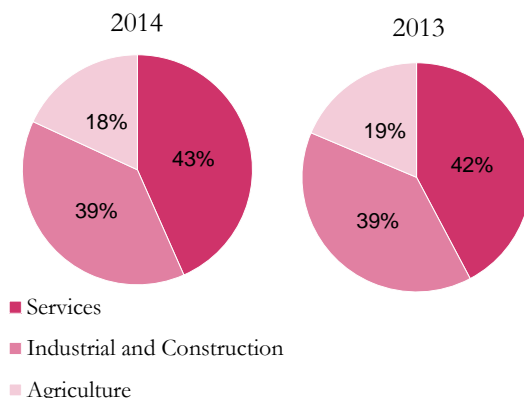


Contribution to GDP

In 2014, the services sector continued to contribute the largest portion to the GDP, increasing from 41.7% in 2013 to 43.4% in 2014. Industrial and construction sectors ranked second with 38.5%, followed by agriculture of 18.12%.

GDP contribution by sectors

Source: GSO



Foreign Direct Investment (FDI)

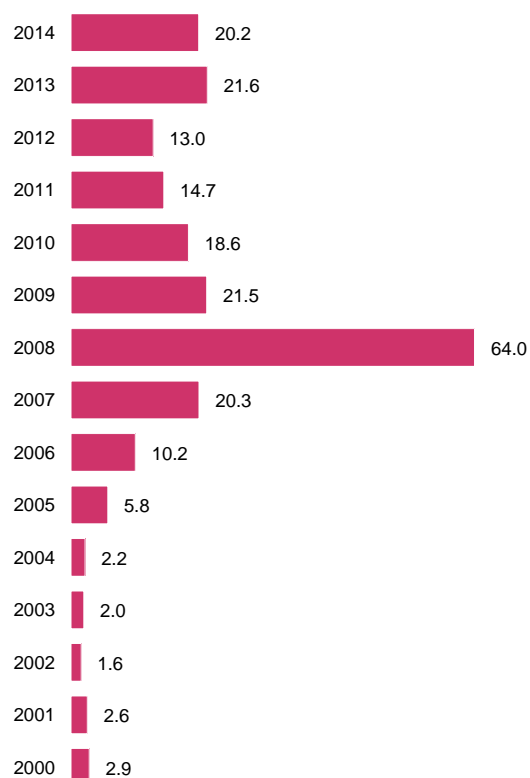
Total registered FDI in 2014 was USD20.2 billion, a decrease of 6.5% compared with 2013. Of which USD15.6 billion represented new investment.

In 2014, real estate investment increased by 12.6% (from 4% in 2013), and was the second largest FDI invested sector. The processing industry continued to be the largest sector accounting for 71.6% of the registered FDI in 2014.

In 2014, Asian countries continued accounting for the largest portion of FDI investment into Vietnam, at 85%, including Korea, Hong Kong, Singapore, Japan, China and Malaysia.

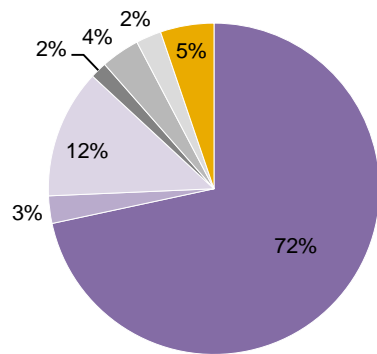
Registered FDI (2000 – 2014)

Source: GSO



Registered FDI by sectors, USD billion (2014)

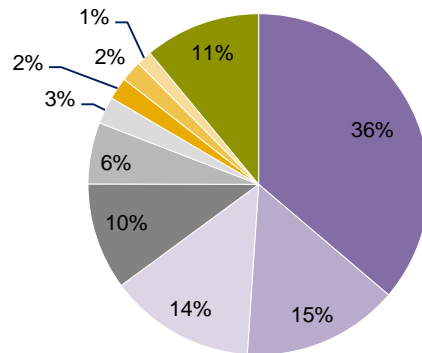
Source: Ministry of Planning and Investment



- Processing industry
- Production and distribution of utilities
- Real Estate
- Wholesales and retailing
- Professional services, Technology, Science
- Accommodation, food and beverage
- Construction

Registered FDI by countries and territories, USD billion (2014)

Source: Ministry of Planning and Investment



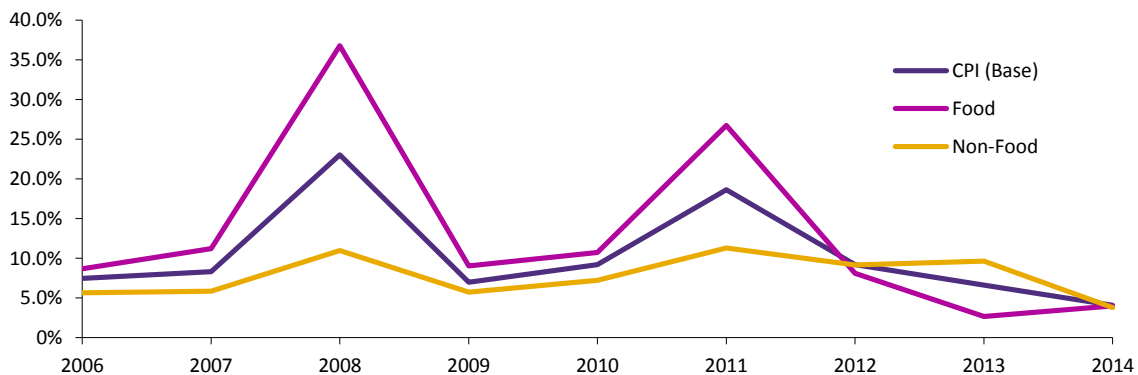
- Korea
- Singapore
- Taiwan
- China
- Canada
- Hong Kong
- Japan
- British Virgin Islands
- Malaysia
- Others

Inflation

Inflation in Vietnam averaged 10.4% between 2006 and 2014. While inflation peaked at 28.3% in August 2008, inflation was gradually brought under control falling to 18.58% in 2011. The Vietnamese government successfully controlled inflation at 4.1% in 2014, the lowest rate over the last 13 years.

Vietnam Annual Inflation rate (2006-2014)

Source: GSO



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 prime ministers 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 defense and security issues. It has 500 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 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. 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).

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 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.

Exchange Controls

The management of foreign exchange for 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, 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 of foreign investment. In addition to this account, other VND 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 with reference to the rate of the commercial bank, 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 abroad dividends and income legally earned in Vietnam and any remaining invested capital upon the liquidation of an investment project. This transfer must be conducted via capital account.

Money Laundering Regulations

Vietnam issued the Law on Anti Money Laundering No. 07/2012/QH13 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:

- Jewelry 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 undertaken any other transactions in six months
- 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 VND5 million to VND15 million for a failure to report any suspicious transactions can be imposed. A monetary fine of VND10 million to VND30 million is applicable if a person informs a party involved in a concerned transaction of the reported contents or of information that has been provided to 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 modeled 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 Ministry of Culture and Information 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 | Infringements | Duration |
|--|---|--|
| <p>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.</p> <p>The owner is granted moral and economics rights over his work, including the right to apply technological measures to prevent infringements of his rights.</p> | <p>In the case of infringements, whereby a person reproduces, distributes, displays or performs the protected work, the owner can take the following actions:</p> <ul style="list-style-type: none"> 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. | <p>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.</p> <p>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.</p> <p>For all other works, rights are protected for the life of the author plus 50 years.</p> |

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 | Infringements | Duration |
|---|---|---------------------------------------|
| <p>A patent gives its owner the ability to take legal action to stop others from:</p> <ul style="list-style-type: none"> 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. <p>Patents must be registered with the National Office of Intellectual Property of Vietnam. The rights are then protected by registration. granted moral and economics rights over his work, including the right to apply technological measures to prevent infringements of his rights.</p> | <p>Infringing a patent means manufacturing, using, selling or importing patented products or processes without the owners' permission.</p> <p>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.</p> | <p>20 years from the filing date.</p> |

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 | Infringements | Duration |
|---|---|--|
| <p>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.</p> <p>Registration provides the owner with exclusive use over the trade mark.</p> | <p>Some examples of infringement of a trade mark are:</p> <ul style="list-style-type: none"> 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. | <p>10 years (registration can be renewed for further periods of 10 years).</p> |

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 | Infringements | Duration |
|---|---|--|
| <p>Registering a design gives the owner a property right over the design. Holding design rights provides the own the exclusive right to use it and to prevent any third party using it without consent.</p> <p>The filing must be made with the National Office of Intellectual Property.</p> | <p>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.</p> | <p>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.</p> |

Opening up to Foreign Investment

Since opening up its economy to foreign investment in the late 1980's, Vietnam has experienced significant improvement in living standards and the economy in general. This modernisation and economic growth led to a long period of negotiation and finally accession to full WTO membership in 2007.

Even though Vietnam is still facing macro challenges, it is experiencing a strong recovery in foreign investment and registered Foreign Direct Investment (FDI) has been US\$20 billion in the last two consecutive years. In 2014, registered FDI achieved at US\$20.2 billion that exceeded the budget by 19%. In addition, FDI disbursement also recorded an increase by 7.4% versus 2013, at US\$12.4 billion.

After being affected by the tension with China in H1-2014, markets have returned to normal as investors regain their confidence in the economy. Noticeably, many investors in China are moving their operations, to Vietnam, in order to capitalise on the country's economic and political stability, investment incentives and the advantages of labour cost competitiveness.

Vietnam considers foreign investments are a vital resource for development. As a result the government has taken several actions to improve the investment environment and attract foreign capital inflows.

In 2015, Vietnam plans to equitise more than 400 SOEs, 143 of which have completed their privatisations in 2014.

In addition, there are several sectors that have been partially or even fully opened to foreign investors, following the commitment schedule with the World Trade Organization (WTO).

Noticeably, from the beginning of 2015, in accordance with Asian Free Trade Area (AFTA)'s,

Vietnam will remove the majority of tariffs to increase the free mobility of commodities and labour force within ASEAN. Furthermore, the country is working with the United States, and ten other countries to craft a high-standard free trade agreement (Transparent-Pacific Partnership – TPP) that will provide wider market access for goods and services, enhance labour standards, improve the transparency and consistency of the regulatory environment to make it easier for small- and medium-sized businesses to operate across the region.

In addition, Vietnam and the EU are expecting to conclude the final negotiating session on the EU – Vietnam Free Trade Agreement (EVFTA) on March 24th 2014. The Agreement, once effective, would result in easing rules, standards and regulations for exporters, reducing duty fees and tariffs as well as extending working permissions for EU workers.

Apart from vast improvements in the legislative environment, there have also been improvements in bureaucratic procedures which have been considered as a bottle neck to social development of Vietnam and several administrative procedures have been cut. The Government has also improved facility and information systems to serve enterprises better. There are two major improvements that have been recognised. The first is the time reduction for registering a new business which reduced from 32 days (during 2005 and 2008) to 5 days (2014) and aiming for a further reduction to 2 – 3 days by 2015. The second is for the tax payers that have been benefited from the annual time reduction for making tax filings and payments that decreased from 537 hours to 201 hours and is expected to reach 171 hours by 2015.

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). Vietnamese law recognises the following types of securities: shares, bonds and fund certificates.

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

Under the current regulations, foreign investors may hold up to 49 per cent of the charter capital of a listed company. An exception to this is the banking industry, where foreign investors may not hold more than a total of 30 per cent of the shares of a bank and no single foreign investor may hold more than 15 per cent (or 20 per cent with Prime Minister's approval) of total shares. The holding of fixed income securities is not subject to any restriction.

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 per cent 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 70 per cent of total banking system assets; however the domination of these banks has been on a significant downward trend.

Over the last decades, foreign banks have expanded their presence in Vietnam. There are more than 50 foreign bank branches; five joint-venture banks, and five 100 per cent foreign-owned banks.

Current legislation states that the total foreign share holdings in local Vietnamese banks is not to exceed 30 per cent. Within this limit the maximum shareholding permitted to a foreign bank as a strategic partner is 15 per cent (which can be increased to 20 per cent with the approval of the Prime Minister), while a non-bank investor that is not a strategic investor can own 5 per cent.

While the banking industry developed rapidly, Vietnam is still a largely cash-based society. This is evidenced through the fact that only about 22 per cent of Vietnam's population of 90+ million held bank accounts in August 2014.

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 per cent foreign-owned enterprises, joint ventures with local partners, branches or representative offices. If investors choose a 100 per cent 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 13.7 per cent. Nevertheless, insurance penetration is still at a relatively low level in the country. As at November 2014, there were 59 insurance companies (both domestic and foreign-invested enterprises) operating in Vietnam. Among these, there were: 29 non-life insurers, 16 life insurers, 12 insurance brokers and two re-insurance companies.

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 number laws, including the Law on Insurance Business of 2000 and its amendment in 2010.

Investment management industry

The Vietnamese asset management industry is relatively immature; industry penetration is low, with less than five per cent of the population owning any investments other than real estate, gold and cash.

Nevertheless, the asset management industry is performing well. This has been partly driven by the country's low PE ratio; Vietnam's stock market is one of the cheapest in Asia with VN Index being traded at 13.61x P/E, which is far below Indonesia's, Philippines', India's and Thailand's PE ratios. Furthermore, dividend yield and ROE at 4.9 per cent and 24.9 per cent, respectively, were the highest in the Southeast Asia region at the time of writing. Currently, over 40 asset managers operate in the country; offering public mutual funds and privately offered 'member funds'.

The industry is regulated by the States 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.

Business entities

New Law on Enterprises (LOE) was adopted by Vietnam's National Assembly on 26 November 2014 and will take effect on 1 July 2015. The Law sets out six types of business entities that are permitted to operate in Vietnam, comprising:

- Limited liability company
- State owned enterprises
- Joint-stock company
- Private enterprise
- Partnership
- Group of companies.

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 limitations; this varies depending on the relevant industry sector.

The main characteristics and management structures of each type of business entities are summarised below:

Limited Liability Companies

There are two types of limited liability company (i) One 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 of the financial capacity of the investor.

This investment project will be assessed at the same time as the company's registration; the documents will be combined into a single application (up to 30 June 2015). Following this, an investment certificate will be issued in 15 days from the receipt of sufficient documents. The investment certificate serves concurrently as a business registration certificate (BRC). This process 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; it is at the discretion of the authorities. From 1 July 2015, Investment Certificate will be granted first and separate with the company registration.

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 with local tax and other relevant authorities

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

There is a requirement for a limited liability company to have a charter, this Charter is required in the application dossier to establish the Company. The company will be governed by the Law on Investment and the Law on Enterprises, while this will determine the rights powers, duties and obligations conferred on the company, the board of directors and its shareholders.

A Company charter should 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 limited liability company will depend on whether the company is a single-owner or multiple-owner company.

In a single-owner company, the management structure will consist of the legal representatives appointed by the owner and the general director.

For a multiple-owner company, 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 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 rights and duties of the Supervisory Board are also subject to the company's 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 30 days for private enterprises and partnerships and within 90 days for other enterprises from the end of each fiscal year.

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 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 JSC can issue securities and list 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 with local tax and other relevant authorities

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 shareholders
- 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

There is a requirement for a company to have a constitution. The company will be governed by the Law on Investment and the Law on Enterprises, while this will determine the rights powers, duties and obligations conferred on the company, the board of directors and its shareholders.

If there is a constitution drawn up, it will 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 company 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 licenses;
- 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, once a year, 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.

Build-Operate-Transfer (BOT), Build-Transfer (BT) And Build-Transfer-Operate (BTO) Contracts

Foreign investors may sign BOT, BT, and BTO contracts with state bodies to implement infrastructure construction projects in Vietnam. These are typically used for transportation, electricity production, water supply, drainage and waste treatment projects. The rights and obligations of the parties are set out and regulated by the signed contract. The difference between BOT, BT and BTO contracts is the point in time that the project is transferred to the government.

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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 the current framework of regulations regarding the employment relationship. 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 relating 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.

Employment Contract

In Vietnam, employment relationships are governed by the contractual agreement 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.

Definite-term labour contracts 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 labor 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 principal contents: name and address of Employer; full name, date of birth, gender,

residence address, ID number of the employee; job and work place; term of the labor 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 Labor 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. The confidentiality agreement may contain a clause on compensation consequences in case of breach of contract.

The Labor 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 labor contracts when signing and performing labor contracts.

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



Minimum region wage

In November 2014, the Prime Minister approved an increase in Vietnam's minimum monthly salary of between VND250,000 - VND400,000 effective from 1 January 2015, dependent on the region. The minimum wages are as follows:

- **Region One** (which includes urban Hanoi, Hai Phong, Ho Chi Minh City) - VND3.1 million
- **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) - VND2.75 million
- **Region Three** (which includes capital cities and the main districts in the provinces of Hai Duong, Vinh Phuc, Phu Tho, Bac Ninh, Nam Dinh, Phu Yen, Dong Nai and Tien Giang, Ben Tre) - VND2.4 million
- **Region Four** (the least developed areas in Vietnam) - VND2.15 million.

Normal working time, overtime and leave

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 cannot exceed 10 hours per day, or 48 hours per week.

Employer can request the employees to work overtime with the condition that the employer obtained the employee's consent. The number of overtime working hours must not exceed 50% of the normal working hours per day, or 12 hours per day or 200 hours per year. In some special cases, the Government allows the overtime working hours go up to 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 is 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.

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 that 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 following.

| | 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 labor contract of 03-month term and above without any taking into account of

number of employees in labour unit compared with year 2014 backwards.

The base salary used for calculation of SIHIUI contribution for salary scheme are as followings:

- The salary base to determine SI and HI contribution shall not exceed 20 times of the regulated **general minimum salary**, currently is VND23 million per month (i.e. the general minimum salary of VND1,150,000 x 20 times); and
- The salary base to determine UI contribution shall not exceed 20 times of **the regional minimum salary**, currently is VND 62 million per month for employees working in **Ho Chi Minh City** (i.e. the regional minimum salary VND3,100,000 x 20 times).

Retirement benefits are provided under the compulsory social insurance regime.

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

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 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 Insurance Fund. However, private schemes are becoming more popular especially amongst foreign employers but please note that for foreigners entering into labor contract 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 equaling 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 |
|--------------------------|-------------------------|
| 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 upon the recruiting time:

- *For the employee still working with the entity before 1 January 2009 up to now:*

Where a labour contract is terminated, employees working for 12 months or more will be entitled into 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 the employee newly-recruited since 1 Jan 2009 onwards:*

Once the labour contract is terminated, upon the time contributing for 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 labor department that he/she is exempted for 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 will be 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 of which the 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.

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 union fund.



Financial reporting and audit

Summary

As a result of the continuing improvements of the accounting and auditing standards as well as the development of professional bodies and the increasing number of qualified accountants and auditors, accounting and auditing practices in Vietnam have significantly improved over the years.

Vietnamese Accounting Standards and System

Accounting Standards

There are currently 26 Vietnamese Accounting Standards (“VAS”) which were issued from 2001 to 2005. All of standards were adopted from and primarily based on the International Accounting Standard (“IAS”) promulgated by the International Federation of Accountants prevailing at the time of issuance. While Vietnam is actively pursuing the adoption of IFRS standards, some of the current VAS are outdated because of the continuing changes and amendments of the International Financial Reporting Standards (“IFRS”) published by the International Federation of Accountants.

In accordance with the strategic plan approved by the Prime Minister of Vietnam, Vietnam is working on the full adoption of the IAS and IFRS and expects to complete this project over a span of about 4 years - from 2016 to 2020.

Accounting System

All companies in Vietnam are required to adopt the new edition of the Vietnamese Accounting System, which was issued by MOF through Circular No. 200/2014/TT-BTC dated 22 December 2014 (“Circular 200”). The Vietnamese Accounting System covers and provides guidance over the application of and adoption of accounting standards to all types of enterprises in Vietnam and the VAS is supplanted by a number of Circulars and Decisions issued mostly by the MOF. The VAS along with the various Circulars and Decisions covers a lot of matters such as the prescribed accounting documents, accounting books, chart of accounts and financial statements.

The current edition contains some modifications compared to the earlier version under Decision No. 15/2006/QĐ-BTC dated 20 March 2006, because it now allows entities to customise their own accounting documents and accounting books to suit their unique and specific needs. In addition, certain accounting treatment, for some specific accounts, were revised to align the VAS to the IFRS over the recognition of and application of a very important concept - “substance over form”. However, if an entity wishes to modify its chart of accounts and the format of its financial statements, it has to obtain a written approval from the MOF.

Circular 200 is effective from 1 January 2015 onwards.

Accounting records and financial statements

The Vietnamese Dong (VND) is the prescribed functional and reporting currency in Vietnam. All companies are required to recognise all transactions using the VND as its currency and all records must be expressed and kept under such currency. Foreign -invested entities are allowed to select and use another currency in recognising transactions and maintaining its accounting records provided they can clearly demonstrate that their receipts and disbursements are mainly incurred or done through such other currency. However, for statutory reporting, entities using another currency as functional currencies must convert their financial statements prepared under such other currencies to the VND under certain prescribed regulations.

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

- 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 quarterly ending fiscal year-end(*)

- Language: Vietnamese
- Reporting currency: VND (**)
- Approval: The financial statements must be approved by the Chief Accountant and the Legal Representative.

(*) For a 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.

Auditing standards

The Law on Independent Audit, which governs the audit practice in Vietnam, was released on 29 March 2011 and took effect on 1 January 2012. To date, MOF has issued thirty seven (37) Vietnamese Standards on Auditing ("VSA"). The VSAs were essentially adopted from ISAs.

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 and financial institutions) must be audited. In addition, the audit must be carried out by an auditing firm legally operating in Vietnam.

Under the prevailing regulations, certain entities such as for banks, non-banking credit institutions and foreign banks' branches have to rotate or replace their auditing firms by another auditing 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 auditing firm) be rotated or replaced after three (3) consecutive years.

Foreign invested entities are required to be audited at least once a year. Those entities must appoint auditing firms from the list of practicing auditors and audit firms qualified to provide audit services as approved and published by MOF annually. There were 141 auditing firms in the list of firms who are approved and authorised by the MOF in 2015.

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 auditing 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 auditing firms is reviewed and published annually on the websites of the MOF, SSC and Vietnamese Association of Certified Public Accountants ("VACPA"). Presently, there are 27 auditing firms in that list which include Grant Thornton Vietnam.

Filing/publication requirements

Foreign invested entities are required to submit statutory audited financial statements to its applicable licensing body, Department of Finance at provinces and cities under the jurisdiction of the central government where such enterprise's head offices are located, local tax authority and department of statistics within 90 days from their reporting date.

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 from the balance sheet date, respectively.

Tax System

Since the commencement of the “Innovation” policy in 1986, Vietnam’s economy has shifted from being centrally based to a market based economy. The tax system of Vietnam has therefore undergone crucial reforms since that time. In particular, since Vietnam obtained memberships of international organizations e.g. ASEAN (1995) and WTO (2007), tax policy and tax reform has become 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, four major tax laws were amended: Corporate Income Tax, Value Added Tax, Personal Income Tax and Special Sales Tax. All four of these laws were implemented in 2009 and were amended in 2013 with various changes for implementation in 2014 and 2015.

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 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.

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 not possess a PE, it is only required to pay tax on income arising in Vietnam.

CIT rate

Currently, the CIT standard rate is 22%; this is set to decrease to 20% from 1 January 2016. For corporations with total revenues of less than VND20 billion, the 20% CIT rate shall be currently 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% upon location.

CIT may be reduced under investment incentive schemes.

Deductible vs. non-deductible expenses

Deductible expense

Expenses are CIT deductible if they meet the requirements of the followings:

- Relevant to business activities;
- Having sufficient legitimate invoice and vouchers;
- Settlement via forms of non-cash payment for transaction more than VND20 million;
- Paying under the registered bank account; and
- Be 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 member of staff) exceeding a 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 account payables;
- 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 and life insurance 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.

It is worth noting that from 2015, the cap on the tax deductibility of advertising and promotion expenses has been abolished.

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 of 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 carry-back of losses is not permitted.

Tax Incentives

Companies engaged in preferred areas of investment or located in special geographical areas are generally entitled to tax incentives, as follows:

Preferential CIT rates

- **10%:**
 - ✓ *within 15 years* for new investment projects in an area with especially difficult socioeconomic conditions, in economic zones and in high-tech zones; and to new investment projects in the sectors of high technology, scientific research and technological development, investment in development of especially important infrastructure facilities of the State, and production of software products; the products support the high technology sector; the products support the garment, textile and footwear, IT, automobiles assembly, mechanics sector and are not produced domestically as at 1 January 2015, or if produced domestically, they meet the quality standards of the EU or equivalent.
 - ✓ *for the entire operational period* is applicable to enterprises operating in the sectors of education and training, occupational training, health care, culture, sport and the environment;
- **15% within 10 years** applied to: income of the company from farming, breeding, processing of agriculture and aquaculture products in an area other than disadvantaged areas or particularly disadvantaged areas
- **20% (reduced to 17 per cent from 1 January 2016)**
 - ✓ *for the first 10 years* applies to new investment projects in areas with difficult socioeconomic conditions;
 - ✓ *for the entire operational period* is applicable to agricultural service co-operatives and to people's credit funds.

Beside the preferential rates, taxpayers shall be eligible for tax holidays and 50% reductions. Tax holidays are available for two to four years, and the 50% tax reductions are up to nine years counting consecutively from the first profit-making year of the fourth revenue-making year, whichever comes first.

Additional tax reductions may be available for companies engaging in manufacturing, construction and transportation activities which employ many female staff or employ ethnic

minorities

Large manufacturing projects with investment capital of VND12,000 billion or more, disbursed within 5 years of being licensed (excluding those related to the manufacture of products subject to special sales tax or those exploiting mineral resources) and using technologies appraised in accordance with relevant laws can also qualify for CIT incentives if the projects meet either of the following criteria:

- minimum revenue of VND10,000 billion/annum at least 3 years after the first year of operations; or
- headcount of more than 3,000 at least 3 years after the first year of operations.

Business expansion projects which meet certain conditions are also entitled to CIT incentives.

New investment projects do not include projects established as a result of certain acquisitions or re-organizations.

Tax incentives which are available for investment in encouraged sectors do not apply to other income, which is broadly defined.

Administration

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

The tax payment shall be on a quarterly on the estimation calculation, and 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 return and paying taxes is no later than 90 days from the end of the fiscal or calendar 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 interest fine of 18% per year for late payment counting from the deadline paying the Quarter 4th CIT liability

The standard tax year is the calendar 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 its implementing.

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' regime. Capital gains will therefore form a part of a firm's taxable income and will be taxed at the standard CIT rate.

There are specific rules for CIT imposed on the transfer of capital in an enterprise or the sale of securities by investors. The purchase price and transfer expenses are generally deducted from the transfer price in order to calculate the taxable capital gain. This tax is known as the Capital Assignment Profits Tax. Where the vendor is a foreign entity, the Vietnamese purchaser is required to withhold the tax due and account for this to the tax authorities. Where the purchaser is also a foreign entity, the Vietnamese enterprise in which the interest is transferred is responsible for the administration of the Capital Assignment Profits Tax.

For the transfer of shares in a Vietnamese JSC, gains derived by the resident entity are taxed at 22 per cent.

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. Dividends received from foreign companies are credited against CIT payable in Vietnam but not exceed the income tax calculated under the CIT

Law of Vietnam.

Profit Remittance

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

The foreign investors or its invested company at the foreign investors' authorization are required to notify the local tax authorities the plan to remit profits at least 7 working days prior to the scheduled remittance.

Transfer pricing

Related party transactions must be conducted at arm's length and must comply with the transfer pricing rules and documentation requirements.

Parties are related if they hold directly or indirectly at least 20% of the equity or the total property of the other business establishment. The definition of related parties also extends to:

- i. certain significant suppliers, customer and funding relationships between otherwise unrelated parties such as a business establishment, which directly or indirectly controls more than 50 per cent of the sales turnover (calculated on the basis of each type of product) of the other business establishment; and
- ii. domestic related party transactions.

Vietnam transfer pricing rules generally adopted the revised Organization for Economic Co-operation and Development (OECD) transfer pricing guidelines. This included the acceptable methods of determining the “arm's length principle”, such as, comparable uncontrolled price, cost plus, resale price, comparable profits and profit split.

Contemporaneous documentation is required to be prepared and maintained. Such documentation is required to be presented to the tax authorities (translated into Vietnamese) within 30 days of receiving a written request. In addition, a declaration is required to be filed together with the CIT finalization returns providing details of related party transactions and the methodologies adopted. By the time of the submission of the transfer pricing declaration, the company shall

maintain the supporting documentation to prove that its related-party transactions are conducted in line with the arm's length principle and to confirm the arm's length price on this transfer pricing declaration.

An advance pricing agreement ("APA") mechanism was introduced in 2014. The GDT is working through the initial "pilot APA

applications" which will allow the taxpayers and the tax authorities to agree in advance the pricing method 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 importations 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; fertilizer production; teaching aids; books; unprocessed foodstuffs; medicine and medical equipment; husbandry feed; 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 uncreditible, but considered as deductible expenses for CIT purposes, comprising the following:
 - Certain agricultural products;
 - 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 VAT able mortgaged assets by the 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;
- Passenger transport by public buses;
- 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.;
- 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).

Besides, there are regulated **cases that goods and services are not required to declare and pay VAT**, it means that no output VAT has to be charged but input VAT paid on

related purchases may be credited. 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 accounts, 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 registered 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 vary upon the business activities, as below:

- **1%:** this ratio is for the business of “distribution, supply of goods”;
- **3%:** this ratio is for “the production, transportation, service associated with goods, construction exclusive of the materials;
- **5%:** this rate is for “service, construction exclusive of material”; and
- **2%:** this ratio is for other business activities.

VAT administration

All organizations and individuals producing VAT liable goods and supplies must register for VAT. Also, its branch must register separately and declare VAT on its 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 the invoice, contract, payment voucher and the related 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

If an enterprise's input VAT exceeds its output VAT during consecutively 12 months, it can claim a refund from the authorities.

In certain cases (e.g. exporters where excess input VAT credits exceed VND300 million), a refund may be granted on a monthly/ quarterly basis. 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.

Newly established entities and certain investment projects which are in the pre-operation stage may be entitled to refunds for VAT paid on imported fixed assets based on shorter timelines than normal, subject to certain conditions.

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 of High Income Earners in Vietnam.

Individuals liable to PIT and tax resident status

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

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 arriving date;
- Having a permanent residence in Vietnam (including a registered residence which is recorded on the permanent/temporary residence card in case of foreigners);
- Having a leased house in Vietnam with a term of 183 days or more in a tax year and 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 centers;
- 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: being the lower of the actual rental paid and 15 per cent of the employee’s gross taxable income (excluding taxable housing);
- that part of night shift or overtime salary payable that is higher than the day shift or normal working hours salary stipulated by the Labour Code;
- 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 (subject to a cap);
- 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. Those 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 tax administration procedures.

- **PIT year:** The Vietnamese tax year is the calendar year. However, where 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 (VND) | To (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 – 2015

| No. | Type of PITable incomes | PIT rate | |
|-----|---|--------------------------------------|-----------------------------|
| | | resident | non-resident |
| 1 | Employment income | <i>Progressive rate as above (*)</i> | 20% |
| 2 | Business income | | |
| | Goods distribution/ supply | 0,5% | |
| | Service, construction exclusive of building material | 2% | |
| | <i>Particularly: Asset lease, insurance brokerage, lottery brokerage, multi-level marketing brokerage</i> | 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 gross sale proceeds |
| | <i>Particularly: Security transfer</i> | | 0.1% on gross sale proceeds |
| 5 | Real property transfer | 2% on gross sale proceeds | |
| 6 | Royalties/ Technology transfer/ Franchising | 5% on amount over VND10 million | |
| 7 | Winnings/ Prizes/ Inheritance/ Gifts | 10% on amount over VND10 million | |

FOREIGN CONTRACTOR TAX ("FCT")

FCT imposed on the foreign business individuals and foreign organization earning Vietnam-sourced income (herein referred as "foreign contractor" or "FC"), except: (i) "pure supply of goods" under INCOTERMS, i.e. where title passed at or before the border gate of Vietnam and there are no associated services performed in Vietnam, (ii) service 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 at the declaration of revenue and income similar to the local enterprises' application. Of note, FC is required to meet some criteria, including FC's adoption of Vietnamese Accounting System.

- **Direct method:**

Under this method, 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 at creditable approach and CIT at direct method.

FCT is also among of forms of "withholding taxes" due to its "direct method".

FCT rates – 2015

Ratio for FCT (%)

| Type of business activities | | Deemed VAT-FCT rate | Deemed CIT-FCT rate |
|-----------------------------|---|--|---------------------|
| 1. Trades: | (i) Distributing, supplying goods; (ii) Distributing, supplying goods associated with services rendered in Vietnam (including the form of on-spot export and import); (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 <i>(if contract doesn't separate the value of goods and service)</i> | 3 | 2 |
| 3. Insurance | Insurance | 5 /Exempt | 5 |
| | reinsurance abroad, commission of the reinsurance transfer | Exempt | 0.1 |
| 4. Leasing: | Leasing machinery and equipment | 5 | 5 |
| | Leasing aircraft, airplane engines/ spare parts, vessels <i>(for aircraft and vessel cannot be produced in Vietnam)</i> | 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 & Gas: | Supply of goods and/or services for oil & gas exploration and development | Standard: 10 <i>(or 5%/ exempt)</i> | 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 <i>(*):Software licenses, transfer of technology, transfer of intellectual property rights are VAT exempt</i> | Exempt (*) | 10 |
| 11. Others | Other production | 3 | 2 |
| | Other Business activities | 2 | 2 |

APPLICATION FOR DOUBLE TAX AGREEMENT (“DTA”)

Vietnam has entered into more than 70 DTAs with other countries for the avoidance of Double Taxation (note that still absence of DTA with the United States of America). The FCs, individual working in Vietnam holding the nationality of the countries entered into the Tax Treaties with Vietnamese Government can apply for either FCT exemption for the part of CIT only or the PIT provided that these FCs/ individuals satisfy some certain conditions at 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 the income from the PE in Vietnam.

Vietnamese Government has guided more 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 TAXATIONS

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 border 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 tax rates include preferential tax rates, particularly-preferential tax rates and ordinary tax rates.

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 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, 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, especially, 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 leveling 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 sales or for lease 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.

Besides, 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 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 tax.

Anti-avoidance measures

While Vietnam do not have any specific anti-avoidance rules, the tax authorities have the power to carry out tax audits of any taxpayers. 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 0.05 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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