



**THE RESEARCH OF
VIETNAM LAW AND
VIETNAM TRADE AND INVESTMENT LAWS**

**SPONCER BY
OFFICE OF THE COUNCIL OF STATE OF THAILAND**

**RESEARCHED BY
FACULTY OF LAW, CHIANG MAI UNIVERSITY**

2016

RESEARCHERS

Dr. Usanee Aimsiranun

Lecturer, Faculty of law, Chiang Mai University

Asst. Prof. Dr. Pornchai Wisuttisak

Dean, Faculty of law, Chiang Mai University

Asst. Prof. Chatree Reungdechnarong

Lecturer, Faculty of law, Chiang Mai University

Suthinee Palagawong Na Ayutthaya

Lecturer, Faculty of law, Chiang Mai University

Dr. Nguyen Ba Binh

Vice Dean, Faculty of International Trade and Business
Law, Hanoi Law University

Arbitrator of Vietnam International Arbitration Center

Mr. Nguyen Ba Son

Lawyer, Head of Phidenson Law Firm, Hanoi, Vietnam

Mr. Dang Cong Hien

Researcher, Institute for Trade, Vietnam's Ministry of
Industry and Trade

Ms. Tran Thi Thu Thuy

Researcher, Institute for Legislative Research of the
Permanent Commission of Vietnamese Parliament

Mr. Nguyen Hung Cuong

Lecturer, School of Law, Vietnam National University
(Hanoi)

Project's director

Head of specialists of Vietnam law team

TABLE OF CONTENT

TABLE OF CONTENT	3
LIST OF FIGURES	9
LIST OF TABLES	10
PART 1	11
OVERVIEW OF VIETNAM LAW	11
1. General Information about Vietnam	12
1.1 Geography	12
1.2 History	13
1.3 Social and Cultural Characteristics	13
1.3.1 Population and Ethnic Groups	13
1.3.2 Language, Religion and Culture	14
1.4 Political Regime	16
1.5 Economic Environment	18
1.5.1 From a Centrally Planned Economy to a Socialist Oriented Market Economy	18
1.5.2 From Isolation to WTO Membership	19
1.5.3 Contemporary Economic Environment	21
1.5.3.1 Recognition of the Role of the Private Economic Sector and the Equitisation (Privatization) of State Owned Enterprises	22
1.5.3.2 Foreign Investment	24
1.5.3.3 Economic Performance	26
1.5.3.4 Commercial Challenges for Businesses	27
2. Legal System	28
2.1 The Major Characteristics of Vietnam's Legal System Prior to the Doi Moi Reforms (1986)	28
2.1.1 Influence of Chinese on Vietnam's Legal System	28
2.1.2 Influence of French on Vietnam's Legal System	29
2.1.3 Influence of Socialist on Vietnam's Legal System	29
2.2 The Contemporary Legal System (since Doi Moi Reforms 1986): Building a Law-based State	30
2.3 State structure	33
3. Sources of law	38
3.1 International Agreement	38

3.2 Domestic Law	39
3.2.1 Legal Documents Enacted by Vietnamese State Organs	39
3.2.2 Custom	42
4. Court system	43
4.1 Organizational Structure, Powers and Duties of the People's Courts.....	44
4.1.1 The Supreme People's Court	44
4.1.2 Superior People's Courts.....	46
4.1.3 People's Courts of Provinces and Centrally Run Cities.....	47
4.1.4 People's Courts of Rural Districts, Urban Districts, Towns, Provincial Cities and the Equivalent.....	48
4.2 Levels of Courts in Judicial Process.....	49
4.3 Jurisdiction of the People's Courts in Civil Proceeding Related to Trades and Investments.....	50
4.3.1 Subject Matter Jurisdiction	50
4.3.1.1 People's Courts of Rural Districts, Urban Districts, Towns, Provincial Cities (District-Level People's Courts) as the Court of First Instance.....	51
4.3.1.2 People's Courts of Provinces or Centrally Run Cities (Province-Level People's Courts) as the Court of First Instance.....	52
4.3.2 Territorial Jurisdiction of the People's Courts	52
5. Method of law interpretation and problems related to law enforcement	53
5.1 Illegality and Inconsistency in the laws.....	54
5.2 Lack of transparency with corruption issue.....	54
5.3 Low level of awareness of legal rights and obligations among the people....	55
PART 2.....	57
LAWS ON TRADE AND INVESTMENT	57
IN VIETNAM	57
1. Laws and Regulations on International Trade	58
1.1 Law on Import Tax and Export Tax.....	58
1.2 Regulation of Anti-dumping	62
2. Law on Foreign Investment.....	65
2.1 Development of law on foreign investment prior to 2005	65
2.2 Current Law on Foreign Investment	66
3. Laws on Immigration	71
3.1 Before 1 January 2015	73
3.1.1 Visa Descriptions	73
3.1.2 Procedure to Apply for Vietnamese Visas	75

3.1.3 Visa Fee.....	77
3.2 From 1 January 2015.....	78
4. Business law	81
4.1 Regulation of Enterprises.....	81
4.1.1 Pre-2005 Law on Enterprises	81
4.1.2 The 2005 Law on Enterprises	82
4.1.3 Establishment and Business Registration.....	85
4.2 Commercial Law.....	86
4.2.1 Foreign traders conducting commercial activities in Vietnam	87
4.2.2 Purchase and Sales of Goods	89
4.2.3 Providing Services	90
4.2.4 Commercial Promotion	90
4.2.5 Intermediary Activities in Commerce	92
4.2.6 Other Specific Commercial Activities	93
4.2.7 Commercial Remedies and Resolution of Commercial Disputes	95
4.2.7.1 Commercial remedies	95
4.2.7.2 Resolution of commercial disputes	96
4.3 Tax Laws.....	96
4.3.1 Personal Income Tax (PIT)	96
4.3.1.1 Personal Income Taxpayers.....	97
4.3.1.2 Taxable Incomes.....	97
4.3.1.3 Tax Calculation	97
4.3.2 Corporate Income Tax (CIT)	100
4.3.2.1 Introduction about Corporate Income Tax	100
4.3.2.2 Corporate Income Tax Payer.....	101
4.3.2.3 Taxable Incomes.....	102
4.3.2.4 CIT Calculation Method.....	102
4.3.2.5 Preferential mode of corporate income tax	104
4.3.2.6 Carrying Forward of Losses	106
4.3.3 Double Taxation Avoidance Agreements and Tax Evasion Prevention.....	106
4.3.3.1 Introduction	106
4.3.3.2 Scope of double taxation avoidance agreements.....	109
4.3.3.3 Application of double taxation avoidance agreements.....	109
4.3.4 Excise tax	109
4.3.4.1 Objects Subject to Excise Tax.....	110

4.3.4.2 Goods Exempted from Excise Tax.....	110
4.3.4.3 Taxpayers	111
4.3.4.4 Tax Calculation	111
4.3.4.5 Tax Rates	112
4.3.4.6 Tax refund	114
4.4 Banking and Finance Laws.....	114
4.4.1 Law on Securities	114
4.4.2 Law on Credit Institutions.....	117
4.4.2.1 Condition of Establishment of Credit Institutions.....	118
4.4.2.2 Capital Rate for Establishment of Credit Institutions.....	123
4.4.3 Law on Anti-money Laundering	125
5. Land Laws.....	128
5.1 Regulations on Land Use Rights and Land Use Rights Certificates, Land Lease, Land Prices, Land Expropriation, Leasing Domestic Houses of Foreign Investors.....	128
5.1.1 Land Use Rights and Land Use Rights Certificates.....	128
5.1.2 Land Lease	129
5.1.3 Land Prices.....	130
5.1.4 Land Expropriation	131
5.1.5 Leasing Domestic Houses of Foreign Investors.....	131
5.2 Regulations on Land Use Planning of Urban and Rural Areas	132
5.2.1 Purpose for Land Use Planning.....	132
5.2.2 Content of Land Use Planning	133
5.2.3 Process of Land Use Planning.....	133
6. Labor Law	134
6.1. Labor Recruitment	135
6.2. Labor Contract	136
6.2.1 Type of Labor Contracts	137
6.2.2 Probationary Period.....	138
6.3 Termination of Labor Contract.....	138
6.3.1 Unilateral Termination	138
6.3.2 Dismissal.....	139
6.3.3 Termination of Labor Contract due to Structural and Technological Changes or Economic Reasons	140
6.3.4 Unlawful Termination.....	140
6.4 Wages and Overtime Payments.....	141

6.5 Sublease.....	142
6.6 Work Permits	142
6.7 Collective Labor Agreement	144
6.8 Labor Regulations.....	144
7. Intellectual Property Law	144
7.1 Copyright and Related Rights	147
7.2 Industrial Property Rights	149
7.2.1 Patents	149
7.2.2 Trademarks.....	150
7.2.3 Geographical Indications	152
7.3 Plant Variety Rights	153
7.4. Registration of Intellectual Property Rights	154
7.4.1. Registration of Copyright.....	154
7.4.2. Registration of Patent	155
7.4.3. Registration of Trademark	158
7.4.4. Registration of Industrial Design	161
8. Dispute Resolution Mechanisms for Commercial Conflicts.....	163
8.1. Litigation and Judicial Independence.....	164
8.2. Arbitration.....	166
PART 3.....	169
GOVERNMENT AGENCIES	169
RESPONSIBLE FOR	169
TRADE AND INVESTMENT LAWS AND REGULATIONS	169
1. Government Agencies on International Trade Law.....	172
1.1 Ministry of Finance- General Department of Customs.....	172
1.2 Ministry of Industry and Trade	172
2. Government Agencies on Foreign Direct Investment	173
2.1 Ministry of Planning and Investment	173
2.2 Ministry of Information and Communications.....	173
3. Government Agency on Immigration	174
3.1 Ministry of Public Security – Department of Immigration	174
4. Government Agencies on Business Law	175
4.1 Ministry of Finance.....	175
4.2 National Business Registration Portal	175
4.3 Ministry of Finance-General Department of Taxation	176

4.4 State Bank of Vietnam.....	176
4.5 Ministry of Finance- The State Securities Commission	177
5. Government Agencies on Land	178
5.1 Ministry of Agriculture and Rural Development	178
5.2 Ministry of Construction.....	178
5.3 Ministry of Nature Resources and Environment.....	179
5.4 Ministry of Natural Resources and Environment- General Department of Land Administration	179
6. Government Agencies on Labor.....	180
6.1 Ministry of Labor, Invalids and Social Affairs	180
7. Government Agencies on Intellectual Property.....	180
7.1 Ministry of Culture, Sports and Tourism.....	180
7.2 Minister of Science and Technology- National Office of Intellectual Property (NOIP).....	181
8. Government Agencies on Dispute Resolution Mechanisms for Commercial Conflicts.....	181
8.1 Ministry of Justice	181
REFERENCE	183

LIST OF FIGURES

Figure 1: Map of Vietnam.....	12
Figure 2: The Amount of Vietnam’s Imports and Exports	21
Figure 3: FDI Growth.....	25
Figure 4: Vietnam’s GDP and GDP per capita	26
Figure 5: The State Structure (at the Central Level)	33
Figure 6: The State Structure at the Local Administrative Level	37
Figure 7: Hierarchy of Legislation in Vietnam	40
Figure 8: Current Vietnamese courts structure	43
Figure 9: Criteria for obtaining an investment certificate	69
Figure 10: The Preference for Mechanisms of Dispute Resolution	164

LIST OF TABLES

Table 1: Types of legislation and competent authorities for issuance	39
Table 2: Two-instance trials.....	49
Table 3: Cassation or reopening trial	50
Table 4: Progressive personal income based on business revenue and salary of residence	98
Table 5: Tax ratio for the remaining incomes	98
Table 6: Double Taxation Avoidance and Tax Evasion Prevention Agreements to which Vietnam is a party	106
Table 7: Number of Cases Dealt with by Vietnam's Commercial Arbitration Centres..	167
Table 8: Trade and investment related government agencies	171

PART 1

OVERVIEW OF VIETNAM LAW

PART 1

OVERVIEW OF VIETNAM LAWS

1. General Information about Vietnam

1.1 Geography

Vietnam is an elongated S-shaped strip of land which is located on the Indochina peninsula in Southeast Asia. It is bordered by China to the North, Laos and Cambodia to the West, and the Pacific Ocean to the East.¹

Figure 1: Map of Vietnam²



Vietnam is the country with 65th largest landmass in the world³ comprising 331,698 square kilometres. From the northernmost point to the southernmost point, Vietnam is 1,650 kilometres in length. It is only 50 kilometres wide at its narrowest point and 600 kilometres

¹ There is no unified name for the sea to the East of Vietnam. On several maps in the world, this sea is mentioned as “South China Sea”, however, on the official map of Vietnam’s Government it is called as “Eastern Sea” (‘*Bien Dong*’).

² Vietnam Travel Guide, *Vietnam Map* <<http://www.vietnam-travel-guide.net/vietnam-map.html>>., last accessed 21 July 2012.

³ Grant Thornton, *Doing Business in Vietnam - 2011: Practical Advice for Investors* (2011)., last accessed 21 July 2012, p. 4.

at its widest section.⁴ Three quarters of its land area is low mountains and hills which form a large bow from the Northwest to the Southeast.⁵

1.2 History

Vietnam has a long history of over 4,000 years commencing with the *Van Lang* State⁶ and the legendary *Hong Bang* Dynasty during the period 2879-258BC.⁷ However, its history has been marked by interminable wars and the rule of foreign countries. Vietnam was dominated by China for a thousand years from 111BC to 939AD⁸ and then by France for almost a hundred years - from 1858 to 1954.⁹ Vietnam also has a long history of feudalism which continued until 1945.

The Democratic Republic of Vietnam (now the Socialist Republic of Vietnam) was established with the proclamation of independence by Ho Chi Minh, the first President, on 2 September 1945. However, independence was not a reality until 1975 when Vietnam was reunified after 30 years of being partitioned by two wars - first against France (until 1954), and then against the US and its allies (from 1954 to 1975).

Vietnam's history of both war and feudalism led to a weak economy based primarily on agricultural production and small trading.

1.3 Social and Cultural Characteristics

1.3.1 Population and Ethnic Groups

The latest national census survey conducted by Vietnam's General Statistics Office in April 2009 recorded Vietnam's population at about 86 million¹⁰ making it the third largest population in Southeast Asia (after Indonesia and the Philippines) and the 13th largest in the world.¹¹ Vietnam's population growth rate has been stable at around 1.2 percent annually

⁴ Chinh Phu Viet Nam [Vietnam's Government], *Mot So Thong Tin Ve Dia Ly Viet Nam [Overview on Vietnam's Geography]* <http://chinhphu.vn/cttdtcp/vi/nuocchxhcnvn/thongtintonghop/thongtintonghop_dialy.html>., last accessed 21 July 2012.

⁵ Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], *Geography* <http://www.mofa.gov.vn/en/tt_vietnam/geo/#k8qk26cscWck>., last accessed 21 July 2012.

⁶ 'Van Lang' was the name of Vietnam at that time.

⁷ Van Ta Tai and Nguyen Ngoc Huy, *The Le Code: Law in Traditional Vietnam*, Ohio Univ. Press No (1987)., p. 4.

⁸ U.S. Department of State, *Background Note: Vietnam* (2010)., last accessed 20 August 2012.

⁹ *ibid.*

¹⁰ Tong Cuc Thong Ke Viet Nam [Vietnam's General Statistics Office], *Dan So Trung Binh Phan Theo Dia Phuong [Average Population Distributed in Every Province]* <<http://www.gso.gov.vn/default.aspx?tabid=387&idmid=3&ItemID=9863>>., last accessed 20 August 2012.

¹¹ L.Anh and H.Giang, 'Viet Nam Dang O Thoi Ky "Dan So Vang" [Vietnam is Having a "Gold Population"]', *Bao Tuoi Tre [Tuoi Tre Newspaper]* <<http://tuoitre.vn/Chinh-tri-Xa-hoi/331631/Viet-Nam-dang-o-thoi-ky-%E2%80%9C9Cdan-so-vang%E2%80%9D9D.html>>., last accessed 20 August 2012.

since 1999.¹² Vietnam is also one of the world's youngest populations, and Asia's second youngest population,¹³ with about 57 percent of its population under 30 years old.¹⁴

Vietnam is one of the world's most densely populated countries, with 260 people per square kilometre.¹⁵ However, the population is unevenly distributed across the country. The number of people living in one square kilometre in the area of Red River Delta (in the North), midland and mountain area in the north, north central part and central coastal provinces, the highlands, North South Vietnam, and *Cuu Long* River Delta (in the South) is 932, 116, 197, 94, 597, and 425, respectively.¹⁶ Most people - approximately 70 percent of the population - live in rural areas. The number of rural inhabitants is nevertheless rapidly decreasing because of rapid urbanisation. Hanoi (the capital) and Ho Chi Minh City (the major business centre) are the largest cities with around seven million inhabitants in each. They are also the most densely populated areas. The number of people living in one square kilometre in Hanoi and Ho Chi Minh City is 1,935 and 3,419 respectively.

Ethnically the *Kinh* people account for about 86 percent of Vietnam's population.¹⁷ The other 14 percent of the population comprise 53 different ethnic groups, the major groups being *Muong*, *Thai*, *Tay*, *Nung*, *Hoa* and *Khmer*.¹⁸

The large and young population coupled with a stable and manageable population growth rate makes Vietnam an attractive market for both foreign and domestic businesses. However, the uneven population distribution and the existence of many different ethnic groups with different cultural preferences pose challenges for businesses in their national expansion.

1.3.2 Language, Religion and Culture

Vietnam has great diversity in its languages, religions and cultures. Vietnamese is the official language of Vietnam and is widely spoken in this country. 24 of the 53 remaining ethnic groups also have their own written languages. English is increasingly favoured as a second language while other foreign languages including French, Russian, Chinese, Japanese and German are also used to various degrees.

There are six major religions in Vietnam - Buddhism, Catholicism, Protestantism, Muslim, *Caodaism* and *Hoa Hao* Buddhism.¹⁹ Around 25 percent of Vietnam's population are believers. Buddhism was introduced to Vietnam at an early stage and is the most common

¹² Thornton, above n 3, p. 4.

¹³ Taylor Nelson Sofres, *TNS Pink Pages Marketing Book* (2008), last accessed 20 August 2012, p. 22.

¹⁴ Thornton, above n 3, p. 5.

¹⁵ Tong Cuc Thong Ke Viet Nam [Vietnam's General Statistics Office], above n 10.

¹⁶ *ibid.*

¹⁷ Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], *Ethnic Groups* <http://www.mofa.gov.vn/en/tt_vietnam/nr040810154926/#FT5pRBxAfJVp>., last accessed 22 August 2012.

¹⁸ *ibid.*

¹⁹ Consulate General of Vietnam in Houston - the US, *Religion and Belief* <<http://vietnamconsulateinhouston.org/en/general-information/religion-and-belief>>., last accessed 22 August 2012.

religion with about 10 million followers representing about 50 percent of Vietnam's religious population.²⁰ Catholicism has around 5.5 million believers while the followers of the *Caodaiism*, *Hoa Hao*, Buddhism, Protestantism and religious Muslim number approximately 2.4 million, 1.3 million, 1 million and 600,000 respectively.²¹ Religions are equal before, and protected by, the law and the people have freedom of religious belief. The 1992 Vietnamese Constitution states that:

Citizens have the right to freedom of belief and religion, and may practise or not practise any religion. All religions are equal before the law. Public places of religious worship are protected by law. No one has the right to infringe on the freedom of belief and religion or to take advantage of the latter to violate State laws and policies.²²

Vietnam's long history of feudalism has influenced, to some extent, Vietnamese legal culture. Under feudalism, the law was considered as punishment (*hinh phat*) - as a tool for the Emperor to rule over citizens.²³ Strict criminal sanctions were used to regulate not only criminal but also administrative and civil relationships.²⁴ In the eyes of Vietnamese peasants who accounted for majority of Vietnam's population, laws were merely to protect the rich people and the mandarins who worked as State officials under the feudalism.²⁵ Therefore, most Vietnamese tended to be hostile to laws. This attitude is also attributed to Vietnam's long history under foreign domination under which the laws imposed by aggressors were often harsh and were considered, in the eyes of Vietnamese, as rules of the enemy.²⁶

Having a long history of small agriculture, Vietnam traditionally has had a village culture²⁷ in which the sense of community responsibility is dominant. People care much about their family, their village and their country. There is a saying in Vietnam that "if there is a flood, the entire community will be immersed" (*Nuoc Lut Thi Lut Ca Lang*). Unlike in western countries which support individualism, individual self-consciousness is limited in Vietnam.²⁸ Moreover, it is widely accepted that Vietnamese culture has been deeply

²⁰ Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], *Ve Van De Ton Giao O Viet Nam [Religion in Vietnam]* <<http://www.mofa.gov.vn/vi/nr040807104143/nr040807105039/ns050803093042#Z6eymVb4RQ1h>>., last accessed 22 August 2012.

²¹ *ibid.*.

²² The 1992 Vietnamese Constitution (amended in 2001), article 70.

²³ Bui Ngoc Son, 'Mot Goc Nhin Ve Su Phan Chieu Truyen Thong Trong Phap Luat Viet Nam [A View of The Reflection of Tradition on Vietnamese Laws]' (2004)(2) *Tap Chi Khoa Hoc Phap Ly [Journal of Legal Science]*..

²⁴ Nguyen Thi Minh, *Legal and Professional Challenges Confronting Practising Lawyers in Contemporary Vietnam* University of New South Wales, 2008); *ibid.*, p. 17.

²⁵ Nguyen Viet Huong, 'Correlation Between "Huong uoc" Village Codes and Laws in Regulating Social Relations in Vietnamese Traditional Villages' (2003) 9(102) *Vietnam Law & Legal Forum* 27..

²⁶ Minh, above n 24 , p. 17; Nguyen Minh Tuan, 'Nhan Dien Xa Hoi Lang Xa - Xua Va Nay [Identifying Village Society - Past and Present]' (2004) 11-12 *Tap Chi Khoa Hoc Va To quoc [Journal of Science and Homeland]*..

²⁷ Tran Quoc Vuong, *Van Hoa Viet Nam: Tim Toi Va Suy Ngam [Vietnam Culture: Researches & Reflections]* (2003)., p. 71.

²⁸ Bui Ngoc Son, 'Mot Vai Dac Diem Tam Ly Dan Toc voi Viec Thuc Hien To Tung Tranh Tung o Viet Nam [Some Traditional Psychological Features of Vietnamese Related to the Implementation of

influenced by Chinese culture,²⁹ in particular Confucianism. Confucianism was introduced to Vietnam during the time of China's rule (111BC to 939AD), and had a strong influence on Vietnamese society during the *Le* (1428-1788) and *Nguyen* dynasties (1802-1845).³⁰ Confucian philosophy gives prominence to the rule of a society by virtues, rather than by laws. According to Confucianism, to build a well-ordered society it is necessary to have people who achieve five virtues: *Nhan* (compassion, charity and kindness), *Nghia* (righteousness), *Le* (good manners, politeness), *Tri* (wisdom), and *Tin* (faithfulness, fulfilling one's promises).³¹ Both traditional village culture and the influence of Confucianism emphasises sentimentalism, harmonisation, and collectivism.³² These cultural characteristics, which are still common today,³³ have led to the Vietnamese respecting affection (*Tinh*) more than laws (*Ly*).³⁴ This traditional characteristic has had a significant influence on the perception of people in general and businessmen in particular in relation to the law and to the choice of dispute resolution strategy³⁵.

Vietnam was traditionally a country of small villages. The former biggest city, *Thang Long* (today named Hanoi) had only small shops selling agricultural products. Vietnam exhibited characteristics of rural culture³⁶ which respected agriculture (*Trong Nong*) rather than commerce (*Trong Thuong*). Consequently, there were few independent businessmen³⁷ and businesses were essentially small.³⁸ This has resulted in a young market economy where most businesses are small or medium sized and lack management ability.

1.4 Political Regime

Vietnam is currently one of the world's five remaining single party socialist States. The Communist Party of Vietnam (CPV) retains the leading role in accordance with the 1992 Constitution which stipulates that:

The Communist Party of Vietnam, the vanguard of the Vietnamese working class and loyal representative of the interests of the working class, the working

Adversarial Litigation in Vietnam]' (2003)(Special Bulletin on Judicial Reform) *Tap Chi Nghe Luat [Legal Profession Review]* 17..

²⁹ Phan Ngoc, *Ban Sac Van Hoa Viet Nam [Vietnamese Cultural Character]* (Nha Xuat Ban Van Hoc [The Publishing House of Literature], 2006)., p. 90; Tai and Huy, above n 7.

³⁰ Nguyen Duc Su, 'Vi Tri Va Vai Tro Cua Nho Giao Trong Xa Hoi Viet Nam [The Place and Role of Confucianism in Vietnam's Society]' (2011) <<http://vanhoanghean.com.vn/goc-nhin-van-hoa/nhung-goc-nhin-van-hoa/1806-vi-tri-va-vai-tro-cua-nho-giao-trong-xa-hoi-viet-nam.html>>., last accessed 20 May 2012; John Gillespie, 'Private Commercial Rights in Vietnam: A Comparative Analysis' (1994) 30 *Stanford Journal of International Law* 325 ; Carol V. Rose, 'The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study' (1998) 32(1) *Law & Society Review* 93 .

³¹ John M. Koller, *Oriental Philosophies* (Scribner, 1985).; Zhiqiong June Wang, *The Impact of China's Regulatory Regime on Foreign Franchisor's Entry and Expansion Strategies* The University of New South Wales, 2010)., p. 4, p. 22.

³² Vuong, above n 27, p. 71; Son, above n 28.

³³ Son, above n 28.

³⁴ Minh, above n 24, p. 19.

³⁵ The issue is further discussed in Part 2 - 'Laws on Trade and Investment in Vietnam'

³⁶ Ngoc, above n 29, pp. 56-57.

³⁷ *ibid.*

³⁸ Vuong, above n 27, p.71.

people and the whole nation, who adheres to Marxism-Leninism and Ho Chi Minh's thought, is the force assuming leadership of the State and society.³⁹

The Communist Party of Vietnam (CPV) hold its National Congress every five years and elects a Central Committee (currently 175 official members and 25 alternate members) which leads the CPV between National Congresses.⁴⁰ Apart from the General Secretary of the CPV (the highest leader of the CPV), the leading bodies of the Central Committee are the Politburo (currently 14 members) and the Secretariat of the CPV Central Committee (currently 10 members).

The organisational network of the CPV, which corresponds with the administrative structure of the State, includes four levels: central, provincial, district, and ward.⁴¹

Vietnam has been operating under the formula that: “the party leads, the State manages, and the people own”.⁴² Under this formula, the CPV leads the country by its policies⁴³ whereas the State manages the country under laws which are the institutionalisation of the CPV’s policies.⁴⁴ The CPV also nominates its members to be appointed to leadership positions in the State bodies.⁴⁵ It is suggested by some scholars that all three power branches (legislative, executive and judicial) are effectively controlled by the CPV.⁴⁶ The State President, the Chairman of the National Assembly, and the Prime Minister are members of the CPV Politburo, whereas all members of the Government, the Chief Justice of the Supreme People’s Court and Chief Prosecutor of the Supreme People’s Procuracy are members of the Central Committee. Moreover, almost all important positions in the Government are most likely to be held by members of the CPV.⁴⁷ The rate of the National Assembly’s members having CPV membership was between 73 percent and 93 percent from the first to the 11th National Assembly.⁴⁸ For the 12th National Assembly (2007-2011), 450 (91.28

³⁹ The 1992 Vietnamese Constitution, article 4.

⁴⁰ Dieu Le Dang Cong San Viet Nam Nam 2011 [The 2011 CPV’s Statutes], article 9.

⁴¹ Dieu Le Dang Cong San Viet Nam Nam 2011 [The 2011 CPV’s Statutes], article 10.

⁴² Dang Cong San Viet Nam [The Communist Party of Vietnam], Van Kien Dang Toan Tap [Complete Documents of the Communist Party of Vietnam], *Bao Cao Chinh Tri Cua Ban Chap Hanh Trung Uong Dang Cong San Viet Nam Tai Dai Hoi Dai Bieu Toan Quoc Lan Thu VI Cua Dang [The Political Report of the Central Committee of the Communist Party of Vietnam at the Sixth Party Congress]* (15 December 1986), p. 791; Tran Duc Luong, Member of the CPV Politburo and Vietnam’s President of State, ‘Doi Moi - Su Lua Chon Dung Dan Vi Muc Tieu Phat Trien Hien Dai Cua Viet Nam [Doi Moi - A Right Choice for the Modern Development of Vietnam]’ (2005) <http://www.mofahcm.gov.vn/mofa/cs_doingoai/cs/ns04081808401042#1e6mwAgrqNed>., last accessed 20 July 2012.

⁴³ Dieu Le Dang Cong San Viet Nam Nam 2011 [The 2011 CPV’s Statutes], article 41.

⁴⁴ Dang Cong San Viet Nam [The Communist Party of Vietnam], Van Kien Dang Toan Tap [Complete Documents of the Communist Party of Vietnam], (15 December 1986), 41, p. 803.

⁴⁵ Dieu Le Dang Cong San Viet Nam Nam 2011 [The 2011 CPV’s Statutes], article 41.

⁴⁶ Penelope Nicholson and Nguyen Hung Quang, ‘The Vietnamese Judiciary: The Politics of Appointment and Promotion’ (2005) 14(1) *Pacific Rim Law and Policy Journal* 30..

⁴⁷ Minh, above n 24, p. 30.

⁴⁸ Van phong Quoc hoi [The Office of the National Assembly], *60 Nam Quoc Hoi Viet Nam [60 Years of the National Assembly of the Socialist Republic of Vietnam]* (2005), pp. 104-114.

percent) of 493 the National Assembly's members were the CPV members.⁴⁹ Similarly, most judges in the court system are also members of the CPV.⁵⁰

Prior to the *Doi Moi* reforms, the functions of the CPV and the State overlapped, and the CPV substituted for the State.⁵¹ Today, although there is still debate as to the CPV leadership of the State,⁵² the direct intervention of the CPV into State operations is much less common.⁵³ Unlike the 1980 Constitution which required all CPV's organisations to operate within the Constitution,⁵⁴ the 1992 Constitution requires all CPV's organisations to operate "within the framework of the Constitution and the law".⁵⁵ It is also undisputed that, under the leadership of the CPV, politics in Vietnam have remained stable since the reunification of the country in 1975.

1.5 Economic Environment

1.5.1 From a Centrally Planned Economy to a Socialist Oriented Market Economy

In 1975 the "Anti-American War" in Vietnam ended and the South and North regions of Vietnam were reunified as one country - the Democratic Republic of Vietnam (today the Socialist Republic of Vietnam). On reunification, the entire country followed a centrally planned economy based on the model that previously existed in the North of Vietnam and was then widely adopted in communist countries.⁵⁶ Under the centrally planned economy the State comprehensively managed and directed all economic activities by administrative commands planned in detail from the centre,⁵⁷ including what should be done, and by whom, for whom, in what amounts, and at what prices.⁵⁸ The State worked out plans for and prices of everything, from rice to even a bar of soap.⁵⁹ Administrative bodies of the State intervened directly in the production and business of economic units which had neither

⁴⁹ Tieu Ban Tuyen Truyen, Hoi Dong Bau Cu Quoc Hoi Khoa XII [The Propaganda Subcommittee, The Election Council of the 12th National Assembly], 'Ket Qua Cuoc Bau Cu Dai Bieu Quoc Hoi Khoa XII [The Result of the Election of the Members of the 12th National Assembly]' (2007) <<http://www.baucukhoa12.quochoi.vn/default.asp?xt=xt&page=newsdetail&newsid=1560>>.,last accessed 12 August 2012.

⁵⁰ Nguyen Van Tuan, 'Mot So Y Kien Ve Cai Cach Tu Phap O Viet Nam Trong Giai Doan Hien Nay [Some Opinions on the Judicial Reform in Contemporary Vietnam]' (2004)(6) *Tap Chi Dan Chu Va Phap Luat [Journal of Democracy and Law]* 17..

⁵¹ See generally Do Muoi (the then General Secretary of the CPV), *Cai Cach Mot Buoc Bo May Nha Nuoc Va Doi Moi Su Lanh Dao Cua Dang Doi Voi Nha nuoc [Partly Reforming the State Apparatus and Renovating the Party Leadership over the State]*, 2nd Meeting of the 7th Central Committee of the CPV..

⁵² John Gillespie, *Transplanting Commercial Law Reform: Developing a "Rule of Law" in Vietnam* (2006), pp 109-130.

⁵³ *ibid*, p. 130.

⁵⁴ The 1980 Vietnamese Constitution, article 4.

⁵⁵ The 1992 Vietnamese Constitution, article 4.

⁵⁶ Dang Phong, *Tu Duy Kinh Te Viet Nam: Chang Duong Gian Nan Va Ngoan Muc 1975 - 1989 [Vietnam's Economic Thought: A Miserable and Impressive March]* (Nha Xuat Ban Tri Thuc [The Publishing House of Knowledge], 2008), p. 85.

⁵⁷ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42, p. 744.

⁵⁸ Phong, above n 56, p. 84.

⁵⁹ Pham Duy Nghia, 'Tu Nha Nuoc Toan Tri Den Thoi Dai Dan Doanh: Gia Tai Cua 60 Nam Nganh Luat Kinh Te Viet Nam [From a Completely Ruled State to the Era of Private Ownership: 60 Years of the Economic Law Branch in Vietnam]' [4] (2005)(8) *Tap Chi Nha Nuoc Va Phap Luat [Journal of State and Law]* 4..

autonomy nor responsibility for their business outcomes.⁶⁰ Agreements were not entered into by businesses freely but were signed under the orders of administrative bodies of the State. The State recognised and encouraged the development of only two main economic sectors: the State owned economic sector and the collective owned economic sector.⁶¹ The private economic sector virtually did not exist.⁶² This bureaucratic and centrally planned regime led Vietnam into a serious economic crisis.⁶³ Economic inflation looked like a “flying horse”.⁶⁴ From 1985 to 1986, for example, the retail price index increased by 587.2 percent.⁶⁵

The turning-point for Vietnam occurred when the Communist Party of Vietnam realised its mistakes in managing the economy and introduced the *Doi Moi* reforms which were approved at the Party’s 6th Congress in December 1986. *Doi Moi* reforms has transformed Vietnam from a centrally planned economy to a more market-oriented economy, as well as recognised and encouraged private economic sector. According to the *Doi Moi* policy, it was necessary to build a five-sector economy⁶⁶ comprising the State owned economy, the collective economy, the small-scale individual economy, the private capitalist economy, and the State capitalist economy.⁶⁷ There was also a shift from a bureaucratic and centrally planned economy to a socialist business model which gave businesses the control over doing business.⁶⁸ The principle of building an economy in accordance with “market mechanisms” was recognised in a resolution of the 7th Congress of the Communist Party of Vietnam in 1991⁶⁹ and again confirmed in the 1992 Vietnamese Constitution.⁷⁰ In 2001, the principle of building a “socialist oriented market economy” was recognised in the documents of the 9th Congress of the Communist Party of Vietnam.⁷¹ This principle was quickly prescribed in the amendments to the Vietnamese Constitution in 2001.⁷²

1.5.2 From Isolation to WTO Membership

Although Vietnam was reunified in 1975, it was a closed door to the western world until 1986. Vietnam’s international economic relations with foreign countries were limited to

⁶⁰ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42.

⁶¹ Article 18 of the 1980 Vietnamese Constitution.

⁶² Chu Van Lam and Nguyen Van Huan, 'So Huu Tap The Trong Nen Kinh Te Thi Truong Dinh Huong Xa Hoi Chu Nghia [Collective Ownership in a Socialist Oriented Market Economy]' (2005)(12) *Tap Chi Nghien Cuu Kinh Te [Journal of Economic Studies]* 9.; Phong, above n 56 p. 276; Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42, p. 704.

⁶³ Phong, above n 56, pp. 116-139.

⁶⁴ *ibid.*, p. 254.

⁶⁵ *ibid.*

⁶⁶ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42.

⁶⁷ *ibid.*, pp. 737-738.

⁶⁸ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42, p. 746.

⁶⁹ Phong, above n 56, p. 279.

⁷⁰ Article 15, the 1992 Vietnamese Constitution.

⁷¹ Phong, above n 56, p. 279.

⁷² Article 15 of the amendments to the Vietnamese Constitution in 2001.

COMECON⁷³ countries.⁷⁴ The level of international trade was low. The annual growth rate of exports, mostly primary products, was only 3.5 percent during the period 1977-1988, accounting for only 10 percent of domestic production.⁷⁵

A significant impact of the *Doi Moi* reforms introduced in 1986 was the shift from a self-sufficient economy to an open-door economy.⁷⁶ The political report to the Sixth Congress of the Communist Party of Vietnam emphasised that:

The development of technology and science revolution and the tendency of extending the allocation and co-operation between different countries, including the countries having different social-economic regimes, are also very important conditions... we [Vietnam] have to... take full advantage of all the possibilities of extending trade relations, and of co-operating technology, science and economy with the outside world...⁷⁷

This is also codified in the 1992 Vietnamese Constitution which “extends the exchanges and co-operation to all countries in the world, no matter which social, political regime they have”.⁷⁸

Immediately after the introduction of the *Doi Moi* reforms, Vietnam passed its first Law on Foreign Investment in 1987 in order to attract foreign businesses to Vietnam. Since the introduction of the *Doi Moi* reforms, Vietnam has quickly integrated into the world economy. The first major milestone in Vietnam’s international integration was the agreement with the European Union on Trade in Textile and Clothing Products in December 1992. After restoring relationships with the World Bank and the International Monetary Fund in 1993, a normal trading relationship with the United States was re-established in 1994. In 1995, Vietnam joined the Association of Southeast Asian Nations (ASEAN), and also submitted its application for World Trade Organization (WTO) accession. It became a member of the Asia-Pacific Economic Cooperation Forum (APEC) in 1998. The trade relationship between Vietnam and the US was strongly encouraged when a bilateral trade agreement, built on the basis of WTO principles, was signed in 2000. In the two years following this agreement, from 2001 to 2003, Vietnam’s exports to the US increased more than fourfold, from US\$ 1.05 billion to US\$ 4.55 billion.⁷⁹ In 2003, the US became the largest export market for Vietnam.⁸⁰ Vietnam also started reducing its tariff barriers in

⁷³ COMECON is the abbreviation for the Council for Mutual Economic Assistance which was an economic organisation under hegemony of the Soviet Union including the countries of the Eastern Bloc and a number of communist countries in the world.

⁷⁴ Rhys Jenkins, 'Globalization, FDI and Employment in Vietnam' (2006) 15(1) *Transnational Corporations* 115..

⁷⁵ *ibid.*..

⁷⁶ Bo Ke Hoach va Dau Tu [Ministry of Planning & Investment], *Cac Thoi Ky Phat Trien [Development Stages]* <<http://www.mpi.gov.vn/portal/page/portal/bkhd/gtcbkhd/16831/39604>>., last accessed 20 July 2012.

⁷⁷ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42, p. 712.

⁷⁸ Article 14 of the 1992 Vietnamese *Constitution*.

⁷⁹ Vo Tri Thanh, 'Vietnam's Trade Liberalization and International Economic Integration: Evolution, Problems, and Challenges' (2005) 22(1) *ASEAN Economic Bulletin* 75..

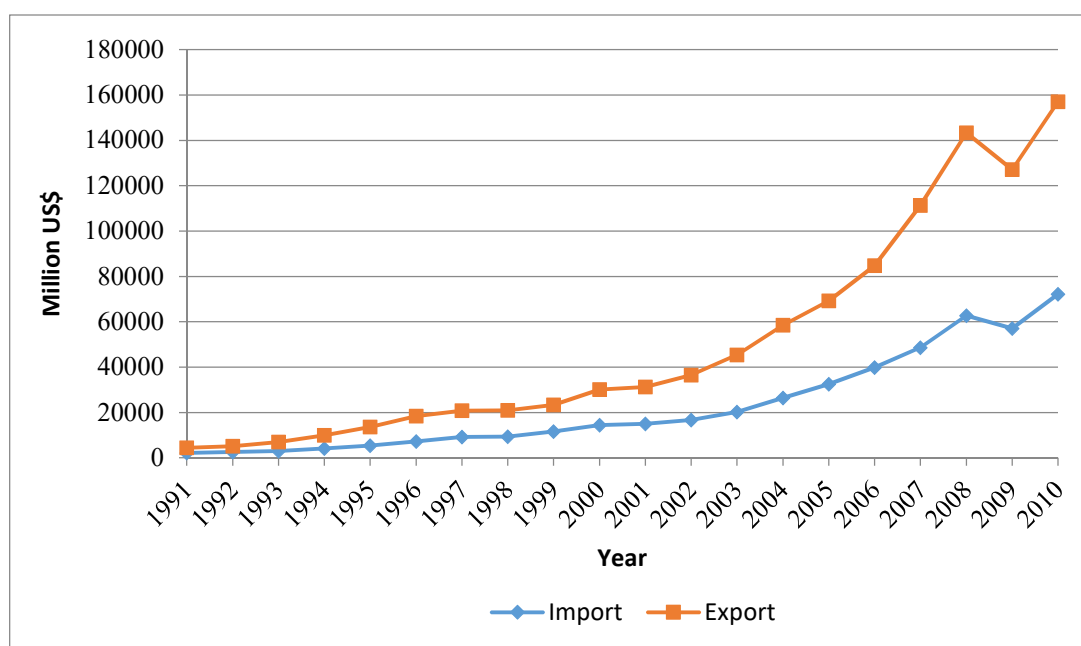
⁸⁰ *ibid.*..

compliance with CEPT/AFTA (2001), the ASEAN-China trade agreement (2002), and the trade agreements signed with South Korea (2003) and Japan (2003). In 2008 Vietnam signed the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) and the ASEAN-Australia-New Zealand Free Trade Agreement. Currently Vietnam has concluded over 90 bilateral trade agreements.⁸¹

In addition to trade integration, Vietnam has quickly assumed an important position in international social and political forums. Vietnam hosted the ASEAN Summit in 2001, and took over as chair of this organisation in January 2010 for a one-year term. It also hosted the APEC Summit in 2006. Two years later, Vietnam won a temporary seat on the United Nations Security Council. The most important integration milestone for Vietnam occurred on 11 January 2007 when Vietnam was officially admitted to the WTO - the culmination of 12 years of negotiations and substantial reform activity.

Since the *Doi Moi* reforms, and especially since WTO accession, Vietnam's international trade has risen strongly in terms of both imports and exports as indicated below:

Figure 2: The Amount of Vietnam's Imports and Exports⁸²



1.5.3 Contemporary Economic Environment

⁸¹ Doanh Chinh, 'Hội Nhập Kinh Tế Là Nhân Tố Để Việt Nam Thúc Đẩy Thương Mại Và Thu Hút Đầu Tư [International Integration is a Way for Vietnam to Motivate and Attract Investment]' (2009) <<http://nciec.gov.vn/index.nciec?2069>>., last accessed 22 January 2011.

⁸² Tổng Cục Thống Kê Việt Nam [Vietnam's General Statistics Office], *Tổng Mục Lưu Chuyển Hàng Hóa Xuất Nhập Khẩu [The Total Amount of Import and Export]* <<http://www.gso.gov.vn/default.aspx?tabid=393&idmid=3&ItemID=11626>>., last accessed 5 June 2012.

1.5.3.1 Recognition of the Role of the Private Economic Sector and the Equitisation⁸³ (Privatization) of State Owned Enterprises

Since the *Doi Moi* reforms, the private economic sector has been recognised as a necessary and important part of Vietnam's economy and is increasingly encouraged by both the Communist Party of Vietnam and the Government. The Political Report of the Central Committee of the Communist Party of Vietnam at the Sixth Party Congress stated that in addition to developing the State owned economy and the collective owned economy, the State needed to have policies on using and soundly improving other economic sectors including private economy. All the economic sectors are to be equal under the law.⁸⁴ This is also prescribed at the 1992 Constitution:

The economic policies of the State are to build a strong country with prosperous life for its people, and aimed at ever better satisfying the material and spiritual needs of the people by liberating all productive capacities, and by bringing into full play all the potentials of the various economic sectors comprising the State, collective, individual, private capitalist, and State capitalist...⁸⁵

The 2001 amendments to the 1992 Constitution emphasise that the private economy, like other economic sectors, is an important part of the Socialist oriented market economy.⁸⁶ Following the introduction of the *Doi Moi* reforms, two of the first laws were Law on Private Enterprises and Company Law passed in 1990 and became effective in 1991. These laws allowed, for the first time, private investors to establish and operate business under different structures. Since then, the improvement of the legal framework for the private economy, especially during the period of legal modernisation preparatory to WTO accession, has further supported the development of this sector.⁸⁷

By the end of 1993, there were only 4,212 private enterprises which were concentrated in the biggest cities of Vietnam.⁸⁸ By 1999, there were more than 40,000 registered companies in Vietnam.⁸⁹ As a result of the significant legal reforms for the private sector in the late 1990s and the early 2000s, the period 2000-2004 saw over 73,000 private businesses established, an increase of 3.75 times over the period 1991-1999.⁹⁰ By 2004, there were 150,000 private businesses.⁹¹ During the first three years following WTO accession, from 2007 to 2009, around 200,000 businesses were newly registered, including 58,000 in 2007,

⁸³ In Vietnam, the term "Equitisation" (*Co Phan Hoa*) rather than the western term "Privatisation" (*Tu Nhan Hoa*) is used.

⁸⁴ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42, p. 737.

⁸⁵ Article 16 of the 1992 Vietnamese Constitution amended in 2001.

⁸⁶ *ibid.*

⁸⁷ For further discussion see Part 2 - 'Laws on Trade and Investment in Vietnam'.

⁸⁸ Vu Tuan Anh et al, *Vietnam's Economic Reform: Results and Problems* (Social Science Publishing House, 1994), pp. 41-42.

⁸⁹ Henrik Schaumburg-Muller, 'Private-Sector Development in a Transition Economy: The Case of Vietnam' (2005) 15(3/4) *Development in Practice* 349..

⁹⁰ Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], 'Mot So Net Kinh Te Viet Nam [Some Characteristics of Vietnam Economy]' (2009) <<http://admm.org.vn/sites/vie/Pages/motsonetkinhtevietnd-14410.html?cid=12>>, last accessed 6 March 2012.

⁹¹ *ibid.*

65,000 in 2008, and 76,000 in 2009.⁹² By 2009, Vietnam had 454,000 private businesses - more than double the number of businesses established during the previous eight years from 1999 to 2006.⁹³ The share of the private sector's investment in proportion to total economic investment has steadily increased during the period 2001-2007, from 22.6 percent in 2001 to 38.5 percent in 2007. Although being affected by the global financial crisis, there was only a slight decrease in this sector's share in all investment in the following years - 35.2 percent in 2008 and 33.9 percent in 2009.⁹⁴ The private sector has had an increasingly important role in Vietnam's GDP - 45.6 percent of GDP in 2006, and 48 percent of GDP in 2010.⁹⁵ It created 50.2 percent of the employment of all the country, and had an annual growth rate of 10 percent during the period 2006-2010.⁹⁶

Before 1986, and as a result of the prominence of the State sector, a large number of State owned enterprises (SOEs) had been established, which dominated Vietnam's economy despite efficiency concerns. It was reported that the SOEs were operating at only 30-50 percent of their productive capacity.⁹⁷ Since the introduction of the *Doi Moi* reforms, Vietnam has undertaken a complete reform of the State economic sector. SOEs were given self-control over their business.⁹⁸ Privatization was chosen as the method of SOE modernisation. From 1992 to June 1998, there were 30 SOEs privatized. After the pilot period, the Government decided to officially privatized SOEs through issuing Decree 44/1998/NĐ-CP on Shifting the SOEs to Joint-stock Companies, dated 29 June 1998. This Decree gave a strong impetus to the privatization of the SOEs - during only one and a half years, from June 1998 to December 1999, an additional 340 SOEs were shifted to joint-stock companies.⁹⁹ The SOE privatization process has significantly developed since 2001 as a result of the introduction of a Resolution of the Communist Party of Vietnam dedicated to SOE privatization.¹⁰⁰ During the three years from 2001 to 2003, 979 SOEs were privatised. The number of SOEs has significantly decreased over the past 20 years, from 12,084 SOEs in 1990 to 1,471 SOEs in 2009.¹⁰¹ By 2010, Vietnam only had 1,206 wholly

⁹² Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], *Bao Cao Tac Dong Cua Hoi Nhap Kinh Te Quoc Te Doi Voi Nen Kinh Te Viet Nam Sau Ba Nam Viet Nam Gia Nhap WTO [A Report of the Impact of the International Integration on Vietnam's Economy after Three Years Since Vietnam Accessed WTO]* (2010)., last accessed 6 June 2012, p. 55.

⁹³ *ibid.*, p. 56.

⁹⁴ *ibid.*, p. 55.

⁹⁵ A.N, 'Doanh Nghiep Tu Nhan Dong Gop 48% Vao GDP Nam 2010 [Private Businesses Made up 48% of Vietnam's GDP in 2010]', *Bao Dien Tu Dang Cong San Viet Nam [The Electronic Newspaper of The Communist Party of Vietnam]* <http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30065&cn_id=440055>., last accessed 8 April 2012.

⁹⁶ *ibid.*.

⁹⁷ Adam McCarty, *Economy of Vietnam* (2001)., last accessed 11 May 2012.

⁹⁸ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42, p. 739.

⁹⁹ Thanh, above n 79.

¹⁰⁰ Ban Chap Hanh Trung Uong Dang Khoa IX [The Ninth Central Committee of the Communist Party of Vietnam], *Nghi Quyet Hoi Nghi Lan Thu Ba Ban Chap Hanh Trung Uong Dang Khoa IX Ve Tiep Tuc Sap Xep, Doi Moi, Phat Trien va Nang Cao Hieu Qua Doanh Nghiep Nha Nuoc [The Resolution of the Third Conference of The Ninth Central Committee of the Communist Party of Vietnam on Continuing to Dispose, Reform, Develop, and Enhance the Efficiency of the State Owned Enterprises]* (August 2001)., last accessed 20 May 2012.

¹⁰¹ Anh Thi, 'Nhin Lai Kinh Te Viet Nam Qua 20 Nam Doi Moi [Looking Back on Vietnam's Economy After 20 Years Since Doi Moi Reforms]', *VNMedia* <<http://vietbao.vn/Kinh-te/Nhin-lai-nen-kinh-te-Viet-Nam->

State owned enterprises.¹⁰² As a result, State economic sector contribution to GDP has decreased from 39.10 percent in 2004 to 33.17 percent in 2009.¹⁰³

However, it is noted that most of Vietnam's businesses - about 95 percent - are small and medium enterprises.¹⁰⁴ They have little business experience and lack capital and management ability.¹⁰⁵

1.5.3.2 Foreign Investment

Before 1986, the Vietnamese Government held the monopoly on import-export relations which was considered to be one of the main principles of its centrally planned economy.¹⁰⁶ International commercial relations were conducted through agreements with foreign governments.¹⁰⁷ Based on approved plans for the whole country, the Vietnamese Government's delegations annually went to other countries to negotiate and conclude agreements which were the framework for import-export. All the import-export needs of each province and ministry had to be approved by the Government within that framework.¹⁰⁸ Individuals and companies did not have freedom of rights to import and export and foreign investors had little opportunity to enter Vietnam.¹⁰⁹

Foreign investment was not measurable in Vietnam until 1986 when the *Doi Moi* reforms opened Vietnam's door to the world and moved Vietnam's centrally planned economy to a market economy. One year later this was intensified by the introduction of Vietnam's first Foreign Investment Law (which has been revised five times - in 1990, 1992, 1996, 2000, and 2005) to make Vietnam's market more attractive to foreign investors.¹¹⁰ In 2001, the Ninth Congress of the Communist Party of Vietnam,¹¹¹ and amendments to the 1992 Constitution,¹¹² confirmed foreign direct investment as a sector of the economy. Since the introduction of the *Doi Moi* reforms, Vietnam has experienced steadily increasing inflows

qua-20-nam-doi-moi/65052003/87/>. Federation of American Scientist, *U.S.-Vietnam Economic and Trade Relations: Issues for the 112th Congress* (5 April 2011), last accessed 3 March 2012, p. 10.

¹⁰² Huy Thang, 'Chuyen Doi Doanh Nghiep Nha Nuoc: Khong Lam Kieu "Binh Moi Ruou Cu" [The Conversion of the State Owned Enterprises: Have Not Liked Pouring "Old Wine in New Bottle"]' (6 July 2010) <<http://baodientu.chinhphu.vn/Home/Chuyen-doi-DN-Nha-nuoc-Khong-lam-kieu-binh-moi-ruou-cu/20107/33278.vgp>>., last accessed 8 July 2012.

¹⁰³ *ibid.*

¹⁰⁴ Ngoc Chau, '80% Doanh Nghiep Nho Va Vua Dang Kho Khan [80 Percent of Vietnam's Small and Medium Businesses are Meeting with Serious Problems]' (2008) <<http://vnexpress.net/GL/Kinh-doanh/Kinh-nghiem/2008/10/3BA07504/>>., last accessed 10 October 2010.

¹⁰⁵ Stated by the Vice Minister of the Ministry of Investment and Planning, cited in *ibid.*.

¹⁰⁶ Phong, above n 56, p. 107.

¹⁰⁷ Jenkins, above n 74.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

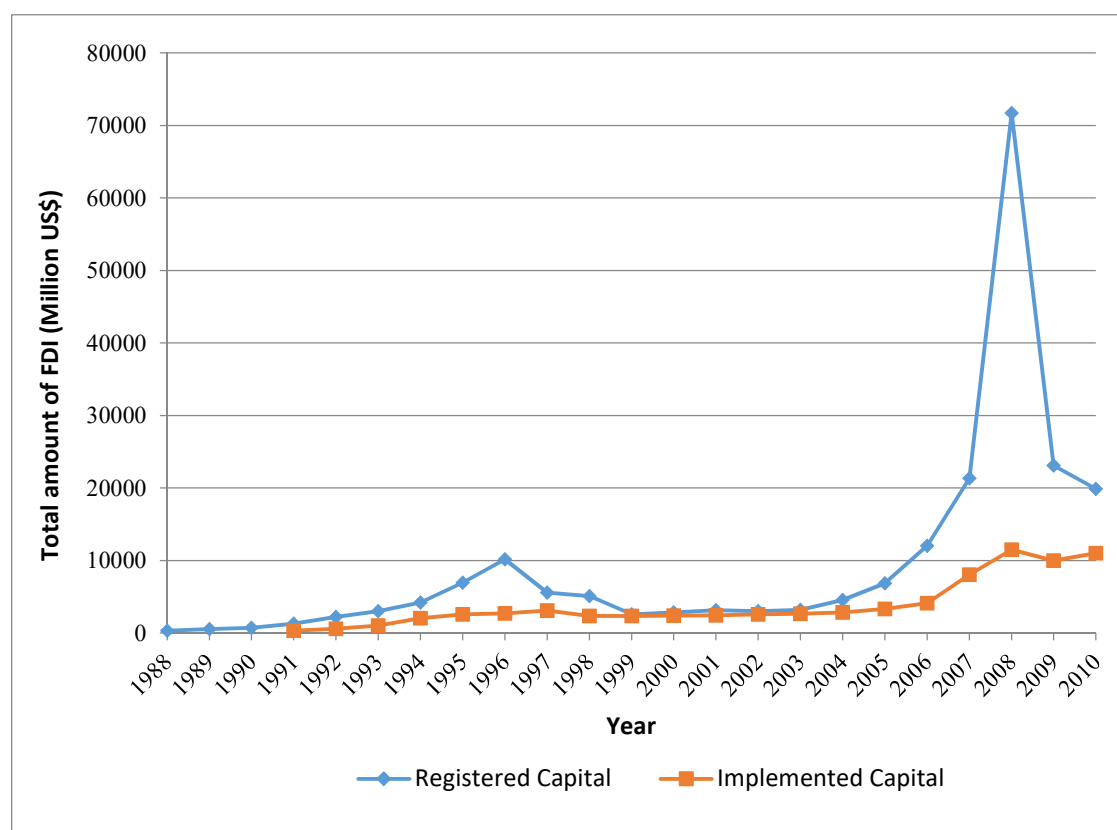
¹¹⁰ For further discussion see Part 2 - 'Laws on Trade and Investment in Vietnam'.

¹¹¹ Dang Cong San Viet Nam [The Communist Party of Vietnam], *Phat Huy Suc Manh Toan Dan Toc, Tiep Tuc Doi Moi, Day Manh Cong Nghiep Hoa, Hien Dai Hoa, Xay Dung va Bao Ve To Quoc Viet Nam Xa Hoi Chu Nghia* [Bringing into Play All National Strengths, Continuing Reforms, Enhancing Industrialisation and Modernisation, Building and Protecting the Socialist of Vietnam] (2001), last accessed 1 January 2011.

¹¹² The 1992 Vietnamese Constitution (amended in 2001), article 16.

of foreign direct investment¹¹³ in terms of both capital and number of projects. In 2008, Vietnam had 1,171 new Foreign Direct Investment (FDI) projects with total registered capital of over US\$ 60.2 billion which was triple that of 2007.¹¹⁴ The following figure indicates the growth of FDI during the last two decades:

Figure 3: FDI Growth¹¹⁵



Since Vietnam joined the WTO, the implemented capital of foreign investment has risen sharply, with growth rates of 75.3 percent and 42.6 percent in 2007 and 2008, respectively.¹¹⁶ In 2009, despite being affected by the global financial crisis, the implemented capital decreased by only 13 percent compared to that of the previous year.¹¹⁷ A recent Bloomberg study puts Vietnam at 12th place on a list of the world's top 25 economies in luring foreign direct investment.¹¹⁸

¹¹³ Kwang W. Jun et al, *FOREIGN CAPITAL FLOWS IN VIETNAM: TREND, IMPACT, AND POLICY IMPLICATIONS* (1997), last accessed 9 March 2012.

¹¹⁴ Nielsen Vietnam, 'Doom or Boom in Vietnam in 2009: What will the Global Economic Tsunami Wash upon Vietnam's Shores?' (24 March 2009) <<http://www.acnielsen.com.vn/news/BoomorDoom.shtml>>., last accessed 16 May 2012.

¹¹⁵ Tong Cuc Thong Ke Viet Nam [Vietnam's General Statistics Office], *Dau Tu Truc Tiep Nuoc Ngoai Duoc Cap Giay Phep Thoi Ky 1988 - 2010 [Foreign Investment During the Period 1988-2010]* <<http://www.gso.gov.vn/default.aspx?tabid=392&idmid=3&ItemID=11373>>., last accessed 10 June 2012.

¹¹⁶ Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], above n 92 p. 55.

¹¹⁷ *ibid.*

¹¹⁸ Trung Tam Thong Tin Cong Nghiep Va Thuong Mai, Bo Cong Thuong [Vietnam's Industry and Trade Information Center, Vietnam's Ministry of Industry and Trade], '25 Dia Chi Dau Tu Hap Dan Nhat The Gioi [25 Most Attractive Investment Places in the World]' (2010) <<http://www.vinanet.com.vn/tin-thi->

1.5.3.3 Economic Performance

During the two and a half decades since the *Doi Moi* reforms, Vietnam's economic achievements have been impressive not only in themselves but also in comparison with other developing/transitional countries.¹¹⁹ From an economic perspective, Vietnam has been called "the Star of Southeast Asia".¹²⁰ The *Doi Moi* reforms set in motion a massive transformation which has led to Vietnam being one of the world's fastest economies and Asia's second fastest growing country.¹²¹ Over the last 20 years (from 1990 to 2009) its annual average GDP growth rate has been 7.1 percent.¹²² Although being affected by the global financial crisis, the Vietnamese economy still achieved an annual growth rate of 6.8 percent in 2010.¹²³

Moreover, Vietnam has had an impressive poverty reduction program¹²⁴ with the national poverty rate rapidly reducing - from 57 percent in 1993¹²⁵ to 11.3 percent in 2009.¹²⁶ The living standards of the Vietnamese people have also significantly improved. Average income increased by about 700 percent in the period 1992 to 2007 and in 2010 Vietnam was classified as a lower middle-income country with GDP per capita of about US\$ 1,160.¹²⁷ The impressive economic growth of Vietnam is outlined in the figure below:¹²⁸

Figure 4: Vietnam's GDP and GDP per capita

truong-hang-hoa-viet-nam.gplist.287.gpopen.177738.gpside.1.gpnewtitle.25-dia-chi-dau-tu-hap-dan-nhat-the-gioi.asmx>., last accessed 28 June 2010.

¹¹⁹ Schaumburg-Muller, above n 89.

¹²⁰ Ayumi Konish, Country Director Asian Development Bank cited in Special Correspondent, 'Vietnam Commits to a Market-based Plan', *Asia Today International*, 70..

¹²¹ Sofres, above n 13, p. 22;.

¹²² Asian Development Bank, *Vietnam* (2011)., last accessed 9 March 2012.

¹²³ Thornton, above n 3, p. 12.

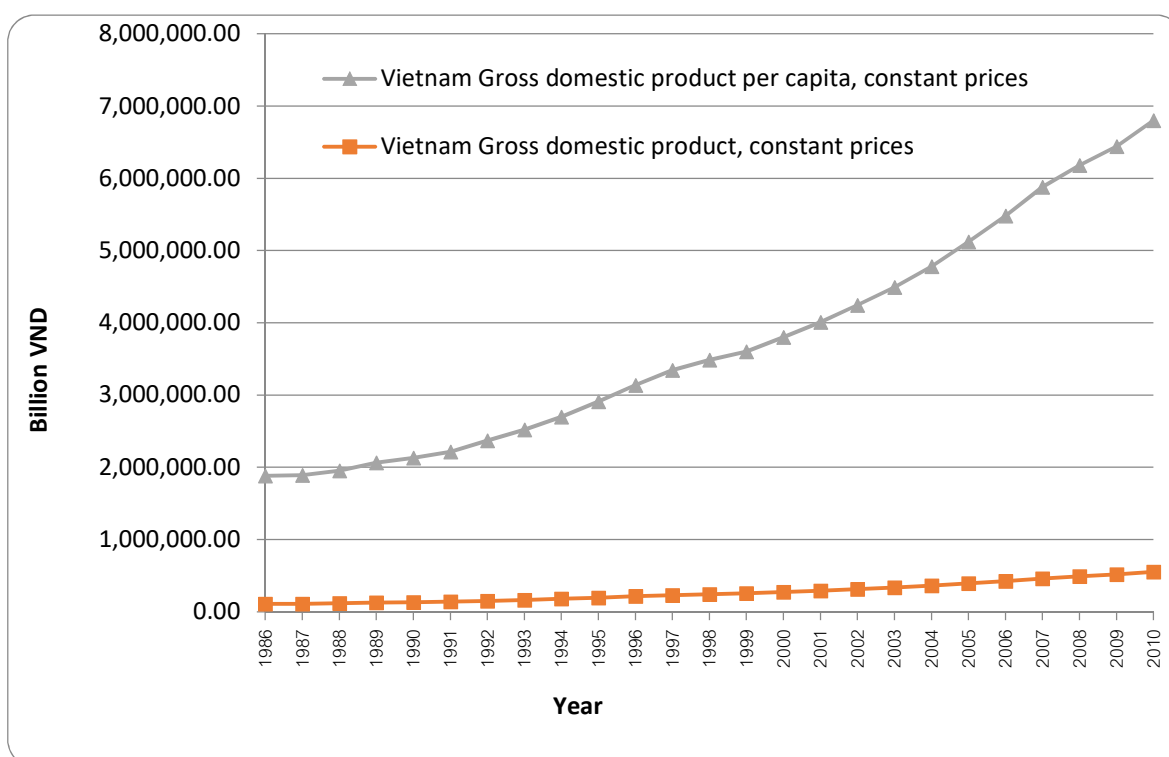
¹²⁴ Schaumburg-Muller, above n 89.

¹²⁵ The World Bank, 'Vietnam Development Report 2006' (2005) <http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2005/12/02/000160016_20051202141324/Rendered/PDF/344740VN.pdf>., last accessed 20 March 2012.

¹²⁶ Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], above n 92, p. 79.

¹²⁷ Kim Phuong, 'Viet Nam Tro Thanh Nuoc Co ThuNhap Trung Binh [Vietnam Becomes a Middle-Income Country]', *Vietnam Business Forum* <<http://vccinews.vn/?page=detail&folder=165&Id=2830>>., last accessed 10 February 2012.

¹²⁸ International Monetary Fund, *World Economic Outlook Database* (September 2011)., last accessed 18 June 2012.



1.5.3.4 Commercial Challenges for Businesses

Despite the opportunities for business since the *Doi Moi* reforms, there remain several commercial constraints for business in Vietnam. According to the Enterprise Surveys of the World Bank in 2009,¹²⁹ the main constraints on business include access to finance, practices of the informal sector, transportation, and an inadequately educated workforce.

Only 49.33 percent of the surveyed enterprises were able to obtain a line of credit or loan from a financial institution and 87.46 percent of the surveyed enterprises reported that they had to compete with unregistered or informal businesses.¹³⁰

According to the global competitiveness rankings of the World Economic Forum in 2008-2009, transport and electricity are the weakest elements of Vietnamese infrastructure with blackouts and traffic jams becoming more frequent.¹³¹

There is a lack of a skilled workforce. In 2007, the number of trained workers accounted for only 25 percent of Vietnam's labor force.¹³² A recent report of the Ministry of Investment and Planning confirms that unskilled workers make up a very high percentage of the total workforce and that there are insufficient skilled workers to satisfy the need of industry.¹³³

¹²⁹ The World Bank, *Business Environment Snapshot for Vietnam* (2011), last accessed 9 July 2012, p. 1.

¹³⁰ Ibid..

¹³¹ Nguyen Xuan Thanh and David Dapice, *Vietnam's Infrastructure Constraints* (2011), last accessed 6 July 2012.

¹³² Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], above n 92, p. 72.

¹³³ Ibid.

In 2009, the number of workers who had graduated from colleges/universities accounted for only 6.8 percent of Vietnam's workforce.¹³⁴

Furthermore, the awareness of Vietnamese consumers and businesses about intellectual property and its protection, although improving, is still weak.¹³⁵ Infringements of intellectual property rights frequently occur.¹³⁶

2. Legal System

2.1 The Major Characteristics of Vietnam's Legal System Prior to the Doi Moi Reforms (1986)

2.1.1 Influence of Chinese on Vietnam's Legal System

Vietnam has an eclectic and complicated legal history which reflects the influence of both feudalism and foreign intervention. Feudalism has a long history - from the appearance of the first State in Vietnam, *Van Lang State*¹³⁷ (2879-258BC),¹³⁸ to the establishment of the Democratic Republic of Vietnam (now the Socialist Republic of Vietnam) in 1945. Although under feudalism the Emperor had unlimited power, Vietnam's feudal legal system developed and included unique advanced laws and regulations such as the *Le Code* (also known as *Hong Duc Code*) under the *Le Thanh Tong* Dynasty (1460-1497). The *Le Code* has been described as an "unusual genius of the Vietnamese legal tradition"¹³⁹ which reflected the customs and practices of Vietnam society and had considerable influence on subsequent legal development in Vietnam.¹⁴⁰ The *Le Code* included several advanced provisions relating to fundamental civil liberties which did not appear in western law until centuries later.¹⁴¹

Under Chinese rule for about a thousand years (111BC-938AD), Vietnamese law was considerably influenced by the Chinese Confucian-legalist tradition¹⁴² - which continues after the long period of Chinese rule.¹⁴³ In Vietnam, as in China, Emperors gave prominence to virtue-rule while using laws (legal rules) to encourage good behaviour. Both virtue-rule and legal rules supported the supremacy of the state. Although imperial codes included provisions on private commercial rights, such provisions addressed only the relationship

¹³⁴ *ibid.*

¹³⁵ Tran Thanh Lam, 'Bao Ho Quyen So Huu Tri Tue Trong Boi Canh Hoi Nhap Va Xay Dung Nen Kinh Te Tri Thuc [The Protection of Intellectual Property Rights in the Context of the Integration and Building a Knowledge Economy]' (2011) <<http://thanhtra.most.gov.vn/vi/cac-bai-nghien-cuu-shtt/bao-ho-quyen-so-huu-tri-tue-trong-boi-can-hoi-nhap-va-xay-dung-nen-kinh-te-tri-thuc>>., last accessed 6 August 2012.

¹³⁶ United Nations University and World Intellectual Property Organisation, *Intellectual Property in Asian Countries: Studies on Infrastructure and Economic Impact* (2010)..

¹³⁷ 'Van Lang' was the name of Vietnam at that time.

¹³⁸ Tai and Huy, above n 7, p. 4.

¹³⁹ Nguyen Quoc Lan, 'Traditional Vietnamese Law - The Lê Code - and Modern United States Law: A Comparative Analysis' (1989) 13 *Hastings International & Comparative Law Review* 141..

¹⁴⁰ Vu Van Mau, *Dan Luat Khai Luan [General Notions of Civil Law]* (1961)..

¹⁴¹ Lan, above n 139.

¹⁴² Tai and Huy, above n 7.

¹⁴³ Although Confucianism did not have much influence on the state during the *Ly* (1009-1225) and *Tran* dynasties (1225-1400) in which Buddhism was the most influential, the Vietnamese law still affected by the Chinese law. See Tai and Huy, above n 7, pp. 9, 14.

between the state and individuals and did not resolve conflicts involving the private rights of individuals.¹⁴⁴

2.1.2 Influence of French on Vietnam's Legal System

Under the first French domination (1858-1945), parallel legal systems, one in the North and Centre of Vietnam and another in the South, were recognised. In the North and Central regions protectorates were established. The codes under the *Nguyen* Dynasty (1802-1945) governed the Vietnamese and the Chinese, but not French citizens who were subject to French law. In the South, a colony was established and Vietnamese could choose to be bound by French law. However, in terms of commerce, Vietnamese rarely submitted their disputes to French law.¹⁴⁵

Vietnam declared independence in 1945 but the next 30 years were marked by wars - first with the French (1945-1954) and then with the US and its allies (1954-1975). During the period 1945-1975, there were two different legal systems in Vietnam because of the North-South partition. In the North, controlled by the Democratic Republic of Vietnam (now the Socialist Republic of Vietnam), the first Constitution was enacted in 1946 soon after independence and established a democratic State.¹⁴⁶ However, because of the priority given to prosecuting the anti-French war (1945-1954) the 1946 Constitution was more an aspirational text than a working document.¹⁴⁷ From 1946 to 1959 the Democratic Republic of Vietnam in fact continued to use a number of French colonial civil provisions as the Government had not enacted new laws and regulations.¹⁴⁸

2.1.3 Influence of Socialist on Vietnam's Legal System

In 1959, through the enactment of a new Constitution which formalised the socialist political-legal structure,¹⁴⁹ the Democratic Republic of Vietnam embraced the building of a socialist legal system. A highly centralised legal system was established which was suitable for a Soviet-style command economy¹⁵⁰ in which land, agriculture and industry were under state or collective ownership.¹⁵¹ The South of Vietnam throughout the period 1945-1975 was controlled by different governments - the French Government (1945-1948), the National Vietnam Government (*Quoc Gia Viet Nam*) supported by the French (1948-1954), and the Government of the Republic of Vietnam (*Viet Nam Cong Hoa*) supported by the US

¹⁴⁴ Gillespie, above n 30 .

¹⁴⁵ *ibid.*

¹⁴⁶ The 1946 Constitution was passed by the Parliament of the Democratic Republic of Vietnam (now the Socialist Republic of Vietnam) on 9 November 1946.

¹⁴⁷ Ngo Duc Manh, 'Building up a Legal Framework aimed at Promoting and Developing a Socialist-Oriented Market-Driven Economy in Vietnam' in John Gillespie (ed), *Commercial Legal Development in Vietnam: Vietnamese and Foreign Commentaries* (Butterworths, 1997)., p. 281.

¹⁴⁸ *Order 90/SL* of the President of Vietnam's temporary Government dated 10 October 1945, and *Order 97/SL* of the President of Vietnam's temporary Government, dated 22 May 1950, which revised some provisions in *Civil Codes* under the previous regime.

¹⁴⁹ Gillespie, above n 52, p. 60.

¹⁵⁰ Rose, above n 30.

¹⁵¹ Gillespie, above n 30.

(1955-1975). However, the legal system which developed under the French colonial period in effect continued to be in operation in the South of Vietnam over the period 1945-1975.¹⁵²

After the reunification of the country in 1975, the centrally planned economy and the Soviet-style legal system which had been implemented in the North spread throughout the country. However, under the centrally planned economy the role of law was “fuzzy” and uncertain. Mr Hoang The Lien, a high-ranking official of Vietnam’s Ministry of Justice, has commented that:

Everything was prearranged by the State, while personal interests had to entirely submit to the interests of the State and the collective. Thus, there was only one option left for social relations: to obey the administrative orders issued from above and at all levels. In such a situation even a semblance of legality became superfluous or just a formality.¹⁵³

Therefore, prior to the *Doi Moi* reforms, Vietnam’s society and economy were governed by the resolutions and the bureaucratic management of the Communist Party of Vietnam (CPV). Administrative commands and planning documents were more important than the law.¹⁵⁴ Rules were usually executive decrees and other subordinate regulations rather than laws of the Parliament.¹⁵⁵ Consistent with the marginal role of law and the Parliament in making laws, the Ministry of Justice was also dismantled for a significant period, from 1960 to 1981.¹⁵⁶

2.2 The Contemporary Legal System (since Doi Moi Reforms 1986): Building a Law-based State

The *Doi Moi* reforms in 1986 which moved Vietnam from a centrally planned economy to a market economy led to legal reforms which changed the role of law. Under a centrally planned economy, the law was considered as a subjective requirement rather than an objective demand.¹⁵⁷ The CPV was aware both that bureaucratic management could no longer regulate the emerging mixed-market economy¹⁵⁸ and that the law plays an important role in governing society and the economy.

¹⁵² Gillespie, above n 52, p. 5.

¹⁵³ Hoang The Lien, 'On the Legal System of Vietnam' (September 1994) *Vietnam Law & Legal Forum* 34..

¹⁵⁴ Nguyen Nhu Phat, 'The Role of Law during the Formation of a Market-Driven Mechanism in Vietnam' in John Gillespie (ed), *Commercial Legal Development in Vietnam: Vietnamese and Foreign Commentaries* (1997), p. 398.

¹⁵⁵ Out of 1,747 legal documents issued from 1945 to 1954, only one was an actual law (1953 Agrarian Law). From 1955 to 1986, 7,167 legal documents were issued in which there were only 61 laws or ordinances (See Lien, above n 153).

¹⁵⁶ On 14 July 1960, the Parliament enacted the Law on the Organisation of the Cabinet Council (now the Government) in which 20 Ministries without the Ministry of Justice were mentioned. Therefore, the Ministry of Justice was automatically terminated and its officials were transferred to an Institute for Legal Research.

¹⁵⁷ Manh, above n 147, p. 288.

¹⁵⁸ Gillespie, above n 52, p. 87.

At the 6th Party Congress, at which the *Doi Moi* reforms were introduced, the importance of the role of law was expressly acknowledged:

The management of the country should be performed through laws rather than moral concepts. The law is the institutionalisation of Party lines and policies and the manifestation of the people's will, and it must be applied throughout the country. To observe the law is to implement Party lines and policies. Management by law requires attention to be paid to law making. It is necessary to supplement and perfect the legal system step by step so as to ensure that the State machinery can be organised and operated in accordance with the law.¹⁵⁹

Legal reforms and the role of law have been emphasised since the 7th Party Congress of the CPV in 1991. At this Congress, the CPV called for the amendment of the 1980 Constitution, the improvement of the skills of lawmakers, and the early enactment of a law on promulgating and implementing laws.¹⁶⁰

The building of “*Nha Nuoc Phap Quyen*”¹⁶¹ (‘law-based State’) was first introduced in a speech by the then General Secretary of the CPV (Do Muoi) at the 2nd Plenum of the 7th Central Committee on 29 November 1991. In this speech, building a “law-based State” was considered as a basic principle of the reform of state apparatus proceeding from the *Doi Moi* reforms. The “law-based State” is assumed to be a State promoting the “rule of law”,¹⁶² in which the law plays a critical role and indeed is the main tool for managing the State.¹⁶³ Although the phrase “law-based State” was not expressly mentioned in the 1992 Constitution, the role of the law was affirmed in it. The 1992 Constitution provides that the State governs society by means of the law (article 12)¹⁶⁴ and that the CPV operates within not only the Constitution¹⁶⁵ but also the law (article 4). The ideology of building a law-based State which promotes the rule of law was continually mentioned in subsequent documents of the CPV and, a decade after its recognition, the requirement of building a law-based State was officially recognised by the amendments to the 1992 Constitution in 2001. The CPV continued to show the determination to strengthen the process of building a law-

¹⁵⁹ Dang Cong San Viet Nam [The Communist Party of Vietnam], above n 42.

¹⁶⁰ Dang Cong San Viet Nam [The Communist Party of Vietnam], Van Kien Dang Toan Tap [Complete Documents of the Communist Party of Vietnam], *Bao Cao Chinh Tri Cua Ban Chap Hanh Trung Uong (Khoa VI) Tai Dai Hoi Dai Bieu Toan Quoc Lan Thu VII Cua Dang [The Political Report of the Central Committee of the Communist Party of Vietnam (Sixth Tenure) at the Seventh Party Congress]* (1991)..

¹⁶¹ This phrase was also translated as “rule of law State” (see Minh, above n 24, p. 34) or “the State governed by the rule of law” (see Manh, above n 147, p. 287).

¹⁶² John Gillespie, ‘Changing Concepts of Socialist Law in Vietnam’ in John Gillespie and Pip Nicholson (eds), *Asian Socialism & Legal Change: The Dynamics of Vietnamese and Chinese Reform* (2005).p. 54.

¹⁶³ Ngo Duc Manh, ‘Improving Legislative Work for Building a Socialist State Ruled by Law’ (2005) 12(135) *Vietnam Law & Legal Forum* 7. cited in Minh, above n 24, p. 36.

¹⁶⁴ Although there is only a minor change between the 1980 Constitution and the 1992 Constitution that “the State governs society *in accordance with* (‘*Theo*’) the law” (in the 1980 Constitution) is replaced by “the State governs society *by means of* (‘*Bang*’) the law”, this change is assumed to reflecting a “new mentality regarding the role and function of law in society” (See Manh, above n 147, p. 288).

¹⁶⁵ As stipulated in the 1980 Constitution.

based State and the role of law through issuing resolutions focusing on the judiciary and legal reforms.¹⁶⁶

Rapid changes in the market economy, and the growing awareness of the important role of the law by the CPV, led to an aggressive campaign of legislative drafting in Vietnam in the late 1980s and the 1990s. Since the *Doi Moi* reforms, a wide range of new laws covering most aspects of society have been issued. The Law on Foreign Investment in 1987 marked the starting point of the legal reforms.¹⁶⁷ From 1987 to 1992, the Parliament issued 37 laws and passed a new Constitution - the 1992 Constitution.¹⁶⁸ From 1992 to 1999 nearly 120 laws and ordinances were introduced.¹⁶⁹ In the pre-*Doi Moi* period - from 1946 to 1986 - only 29 laws and 38 ordinances were introduced.¹⁷⁰

The increasingly international integration stemming from the open-door policy - one of three main priorities of the *Doi Moi* reforms¹⁷¹ - has further motivated legal reforms in Vietnam. Since 1994 when the US lifted the trade embargo Vietnam has undergone significant international integration. Vietnam joined ASEAN in 1995,¹⁷² ASEM in 1996, APEC in 1998, and WTO in 2007. By 2009, Vietnam had signed over 90 bilateral commercial agreements (including the US-Vietnam Bilateral Trade Agreement in 2001) and nearly 60 agreements encouraging and protecting investment.¹⁷³ Vietnam's obligations under bilateral and multilateral trade agreements have been highly influential on legal reforms.¹⁷⁴ The legal system has been improved in terms of quantity, and quality. Many new laws and sub-law documents have been issued in accordance with the requirements of international agreements which Vietnam is, or would like to be, a signatory. In particular, the legal modernisation introduced as part of preparatory process for WTO's accession strongly changed the face of the legal system in Vietnam. WTO accession was regarded as an opportunity for Vietnam to achieve a legal system which was transparent, clear, and predictable.¹⁷⁵ During the negotiation period for WTO accession, Vietnam issued and revised 25 laws and ordinances.¹⁷⁶ With this legislative output, Vietnam was the first country to complete most of its legislative commitments prior to becoming a member of

¹⁶⁶ Including *Resolution 08-NQ/TW on Some Judicial Principal Tasks for the Forthcoming Period* (in 2002), *Resolution 48-NQ/TW on Strategies for Building and Improving the Legal System in Vietnam up to 2010 with the Orientation to 2020*, and *Resolution 49-NQ/TW on Strategies for Judicial Reform up to 2020* (in 2005).

¹⁶⁷ Phong Tran, 'Vietnam's Economic Liberalization And Outreach: Legal Reform' (2003) 9 *Law and Business Review of the Americas* 139..

¹⁶⁸ Minh, above n 24, p. 33.

¹⁶⁹ Brian J.M. Quinn, 'Legal Reform and Its Context in Vietnam' (2001-2002) 15 *Columbia Journal of Asian Law* 220..

¹⁷⁰ Minh, above n 24, p. 23.

¹⁷¹ Ngo Quang Xuan, 'Vietnam: Potential Market and New Opportunities' (1995) 19(1) *Fordham International Law Journal* 32..

¹⁷² Vietnam also applied for WTO membership in 1995.

¹⁷³ Pham Gia Khiem - Deputy Prime Minister and Minister of Foreign Affairs of Vietnam, cited in Chinh, above n 81.

¹⁷⁴ Gillespie, above n 52, p. 67.

¹⁷⁵ Luong Van Tu, 'Tien Trinh Gia Nhap To Chuc Thuong Mai The Gioi - WTO, Co Hoi Va Thach Thuc Doi Voi Nuoc Ta [WTO Accession Process - Opportunities and Challenges for Vietnam]' <http://wto.nciec.gov.vn/Collections/Tien%20trinh%20dam%20phan%20WTO%20cua%20VN_Mr.%20LV%20Tu.pdf>., last accessed 23 January 2011.

¹⁷⁶ *ibid.*

WTO.¹⁷⁷ A large number of laws and ordinances have been enacted in the last decade 2000 to 2010 - 166 laws and 70 ordinances, in addition to the amendments of the 1992 Constitution.¹⁷⁸ Since becoming a WTO member, Vietnam has continued to revise, and issue, laws and regulations to ensure compliance with WTO accession commitments.

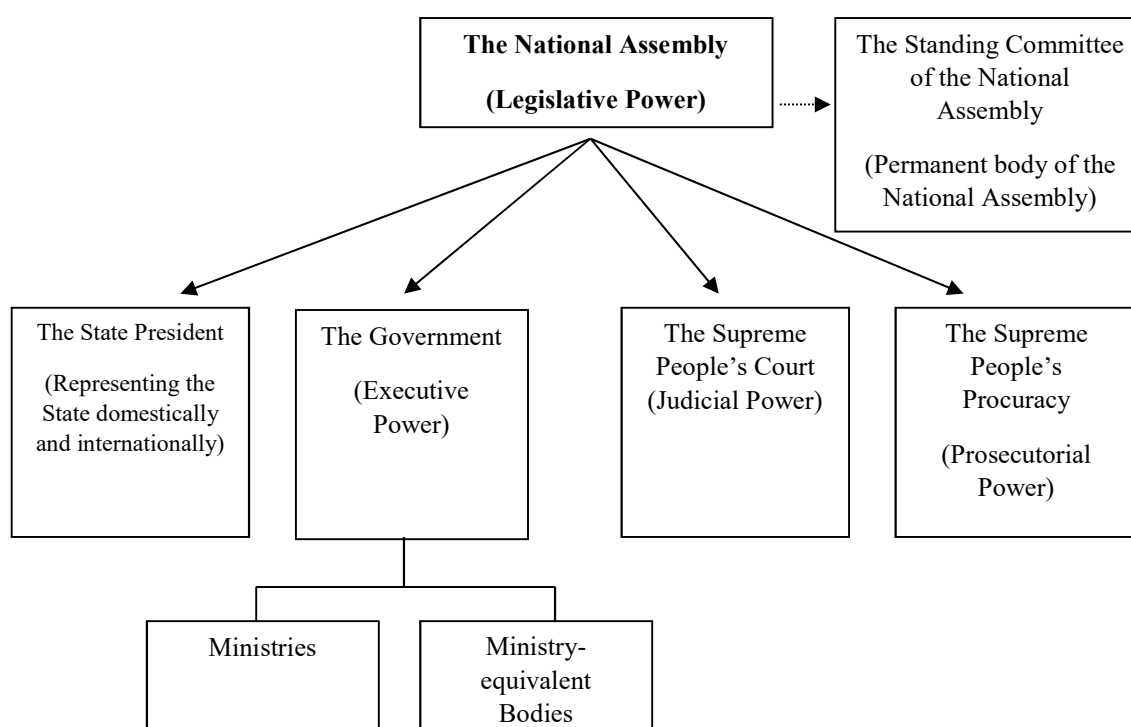
2.3 State structure

Although building a law-based State, Vietnam does not accept the doctrine of the separation of powers. According to the amended 1992 Constitution, Vietnam is:

... a law-based State of the people, by the people and for the people. All State powers belong to the people whose foundation is the alliance between the working class and the peasantry and the intelligentsia. State powers are unified and decentralised to State bodies, which shall coordinate with one another in the exercise of legislative, executive and judicial powers.¹⁷⁹

The National Assembly (*Quoc Hoi*) constitutionally holds ultimate State power which is then allocated to the President (*Chu Tich Nuoc*), the Government (*Chinh Phu*), the Supreme People's Court (*Toa An Nhan Dan Toi Cao*), and the Supreme People's Procuracy (*Vien Kiem Sat Nhan Dan Toi Cao*).¹⁸⁰

Figure 5: The State Structure (at the Central Level)



¹⁷⁷ Luong Van Tu, the then Vice Minister of the Ministry of Trade and Head of Vietnam's negotiation delegation on WTO's accession, cited in VnExpress, 'VN Chinh Thuc La Thanh Vien Thu 150 Cua WTO [Vietnam Officially Become the 150th Member of WTO]' (Pt Vnexpress) (2007) <<http://vnexpress.net/GL/Kinh-doanh/2007/01/3B9F2424/>>., last accessed 23 January 2011.

¹⁷⁸ Van Phong Quoc Hoi [The Office of the National Assembly], *He Thong Van Ban Quy Pham Phap Luat [A Collection of Legal Documents]* <<http://vietlaw.gov.vn/LAWNET/>>., last accessed 22 January 2011.

¹⁷⁹ The 1992 Vietnamese Constitution amended in 2001, article 2.

¹⁸⁰ The 1992 Vietnamese Constitution amended in 2001, articles 83, 102, 109, 135, and 139. See generally Manh, above n 147, p. 290.

The National Assembly

Under the Constitution, the National Assembly has three main functions:

- (i) constitutional and legislative
- (ii) determination of important national policies (such as the determination of economic and social development plans of the country, financial and monetary policies of the country, and the national budget) and
- (iii) supreme supervision of all activities of the State¹⁸¹

The National Assembly is composed of deputies (currently 500 members) elected through direct nationwide elections. It serves a term of five years, and meets twice a year (normally at the middle and the end of year and for around a month).¹⁸² Special meetings of the National Assembly can be called by the State President, the Prime Minister or one-third the members of the Parliament, or by the decision of the Standing Committee of the National Assembly.¹⁸³

The National Assembly is supported by a powerful Standing Committee which includes the Chairman and the Vice-Chairmen of the National Assembly.¹⁸⁴ The Standing Committee, the permanent body of the National Assembly, conducts most of the National Assembly's work, particularly when the National Assembly is not in session. It can issue ordinances and has the power to interpret the Constitution as well as laws and ordinances.¹⁸⁵

The National Assembly is the only authority which can issue and amend the Constitution and other laws. Draft laws may be submitted to the National Assembly from a range of sources - the State President, the Standing Committee of the National Assembly, the Council of Nationalities and Committees of the National Assembly, the Government, the Supreme People's Court, the Supreme People's Procuracy, the Vietnam Fatherland Front and its member organisations, and members of the National Assembly. The adoption of laws and resolutions requires the agreement of a majority of the Assembly except for special cases such as the adoption of constitutional amendments which require the agreement of two-thirds of the members of the National Assembly.¹⁸⁶ Although the real State power resides in the Government, the role of the National Assembly as the monitoring and legislative body has increased during over the last two decades.¹⁸⁷

The State President

The State President is recognised by the Constitution as the head of State and represents the State domestically and internationally.¹⁸⁸ Although the State President has a range of powers

¹⁸¹ The 1992 Vietnamese Constitution, article 83.

¹⁸² The 1992 Vietnamese Constitution, articles 85, 86.

¹⁸³ The 1992 Vietnamese Constitution, article 86.

¹⁸⁴ The 1992 Vietnamese Constitution, article 90.

¹⁸⁵ The 1992 Vietnamese Constitution, article 91.

¹⁸⁶ The 1992 Vietnamese Constitution, article 88.

¹⁸⁷ Mark Sidel, *The Constitution of Vietnam - A Contextual Analysis* (Hart Publishing, 2009), p. 369; Gillespie, above n52, pp. 106-107; Quinn, above n169.

¹⁸⁸ The 1992 Vietnamese Constitution, article 101.

and duties,¹⁸⁹ the position is largely ceremonial. The President is elected by members of the National Assembly, and for the same term as the National Assembly.¹⁹⁰ The State President is responsible to, and reports to, the National Assembly. The State President also exercises a limited legislative power.¹⁹¹ In recent years the State President has been the head of the Judicial Reform Steering Committee which plays an important role in conducting significant reforms in judicial system, especially the court system.¹⁹²

The Government

The Government of Vietnam is the executive body of the National Assembly and the State's highest administrative body.¹⁹³ The Government includes the Prime Minister, Deputy Prime Ministers, Ministers and the heads of Ministry-equivalent bodies.¹⁹⁴ Its term is five years, conterminous with that of the National Assembly.¹⁹⁵ The Government is responsible to the National Assembly, and reports to the National Assembly, the Standing Committee of the National Assembly and the State President.¹⁹⁶

Although the National Assembly is the primary law-making body, the Government also has legislative power as a second tier of legislative authority.¹⁹⁷ In fact, in Vietnam, it is not uncommon for implementing regulations to be treated in practice as having a higher validity

¹⁸⁹ Including: (i) Promulgating the Constitution, *Laws*, and *Ordinances* (ii) Assuming overall command of the armed forces and serving as Chairman of the National Defence and Security Council (iii) Recommending to the National Assembly the election, removal or dismissal of the Vice President, Prime Minister, Chief Justice of the Supreme People's Court, and Chief Prosecutor of the Supreme People's Procuracy (iv) Appointing, Removing and Dismissing Deputy Prime Ministers, Ministers and other members of the Government on resolutions of the National Assembly (v) Proclaiming a state of war and amnesties on resolutions of the National Assembly or of the Standing Committee of the National Assembly (vi) Proclaiming general or local mobilisation on resolutions of the Standing Committee of the National Assembly, and declaring a state of emergency on resolutions of the Standing Committee of the National Assembly or by itself in case the Standing Committee of the National Assembly fails to convene (vii) Recommending to the Standing Committee of the National Assembly to review ordinances within 10 days of their approval; if these ordinances are still approved by the Standing Committee of the National Assembly without the consent of the State President, the State President can submit them to the National Assembly for decision at the earliest meeting (viii) Appointing, removing and dismissing the Deputy Chief Justice, Judges of the Supreme People's Court, the Deputy Chief Prosecutor and members of the Supreme People's Procuracy (ix) Deciding on granting of senior officers' ranks and titles in the armed forces, ambassadorial titles and ranks, and State titles and ranks in other fields, and to decide on conferral of State awards, orders, medals and other honorific State titles (x) Appointing or recalling extraordinary and plenipotentiary diplomatic representatives of Vietnam, to receiving foreign extraordinary and plenipotentiary diplomatic representatives; conducting on behalf of the State's negotiations and signing international treaties with foreign Heads of State; submitting international treaties directly signed to the National Assembly for ratification; and deciding on ratification of, or accession to international treaties, except where they must be submitted to the National Assembly for determination (xi) Deciding on the granting, withdrawal or deprivation of Vietnamese citizenship and (xii) Signing decrees granting special amnesties. See the 1992 Vietnamese Constitution, article 103.

¹⁹⁰ The 1992 Vietnamese Constitution, article 102.

¹⁹¹ Gillespie, above n 52, p. 107.

¹⁹² Sidel above n 187 p. 100.

¹⁹³ The 1992 Vietnamese Constitution, article 109.

¹⁹⁴ There are currently 18 Ministries and 4 Ministry-equivalent bodies (The Office of Government, The Government's Inspection, The State Bank of Vietnam, and the Nationality Committee).

¹⁹⁵ The 1992 Vietnamese Constitution, articles 110, 113; The 2001 *Law on Government Organisation*, article 3.

¹⁹⁶ The 1992 Vietnamese Constitution, article 109.

¹⁹⁷ The 2008 Law on the Promulgation of Legal Documents, article 2.

than the source document.¹⁹⁸ State officials often act in accordance with decrees or circulars which are issued by the Government or Ministries and guide in detail the laws, rather than in accordance with the laws. And that, even if these decrees or circulars may not be conform to the Laws. Moreover, the Government influences much of the law-making of the National Assembly because most bills are drafted and submitted by the Government.¹⁹⁹

The Supreme People's Procuracy

Under the Constitution the Supreme People's Procuracy exercises the right of public prosecution and supervision of judicial activities and thereby ensures the strict and uniform observance of laws.²⁰⁰ The People's Procuracy in Vietnam comprises the Supreme People's Procuracy, the Provincial People's Procuracies, and the District People's Procuracies.²⁰¹ The Local People's Procuracies and the Military Procuracies exercise the right of public prosecution and supervision of judicial activities within their responsibility as defined by law.²⁰²

The Chief Prosecutor of the Supreme People's Procuracy is elected by the National Assembly and serves a term corresponding to that of the National Assembly.²⁰³ The Chief Prosecutor of the Supreme People's Procuracy is responsible to, and reports to, the National Assembly. When the National Assembly is not in session they are responsible to, and report to, the Standing Committee of the National Assembly and the State President.²⁰⁴

Although mainly acting as the prosecutorial power, the Chief Prosecutor of the Supreme People's Procuracy also has limited legislative power. The Chief Prosecutor of the Supreme People's Procuracy can issue circulars or coordinate with other State bodies to issue joint circulars.²⁰⁵ The Circulars of the Chief Prosecutor generally aims to define measures related to obligations and rights of People's Procuracy in provinces and in districts, of Military Procuracy. They may also cover other issues under the authority of the Chief Prosecutor.

People's Councils and People's Committees at the local level

At the local level, Vietnam is currently divided into 63 provinces and centrally administered cities (the provincial level), which are subdivided into rural districts, urban districts, county

¹⁹⁸ See generally Ngo Duc Manh, 'Nang Cao Chat Luong Hoat Dong Lap Phap Cua Quoc Hoi [Improving the Legislative Quality of the Parliament]' (Pt Tap Chi Cong San [Communist Review]) (2007) 138(18) <http://www.tapchicongsan.org.vn/details.asp?Object=4&news_ID=81049627>., last accessed 30 April 2010; said by Tran Dinh Long, Vice-Chairman of the Legal Committee of Vietnam's Parliament cited by Pham Thuy, 'Legal Document – Who Are You? [Van Ban Quy Pham Phap Luat - Anh La Ai?]' (2008) <<http://www.ttbd.gov.vn/default.aspx?tabid=581&ItemID=3798>>., last accessed 30 April 2010; Nguyen Van Hau, Head of the Propaganda Department of Ho Chi Minh Jurist Association cited by Doan Quy, 'Van Ban Quy Pham Phap Luat Sai, Chua Ai Bi Xu Ly [No One Has Been Fined Because of Promulgating a False Normative Act]' (Pt Bao Vietnamnet [Vietnamnet Newspaper]) (2009) <<http://vietnamnet.vn/chinhtri/2009/03/836452/>>., last accessed 30 April 2010.

¹⁹⁹ Sidel, above n187, p. 367.

²⁰⁰ The 1992 Vietnamese Constitution, article 137.

²⁰¹ The 2002 Law on the Organisation of the People's Procuracy, article 30.

²⁰² The 1992 Vietnamese Constitution, article 137.

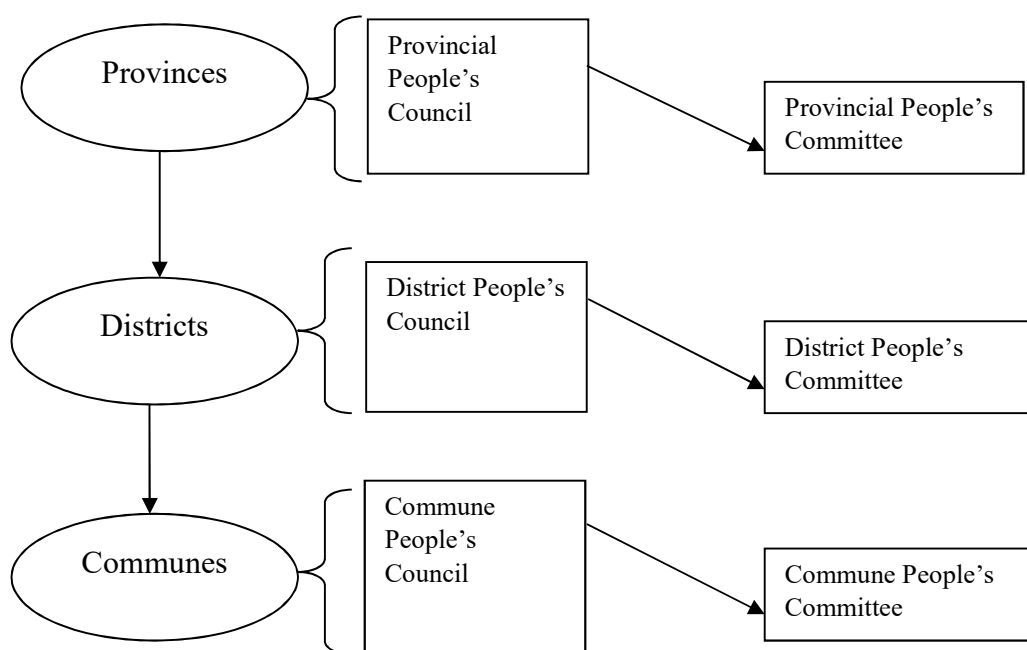
²⁰³ The 1992 Vietnamese Constitution, articles 84, 139.

²⁰⁴ The 1992 Vietnamese Constitution, article 135.

²⁰⁵ The 2008 Law on Promulgation of Legal Documents, articles 2.7, 2.11.

towns or cities under provincial administration (the district level). Under districts and district-equivalent bodies are communes or wards or townlets (the commune level).

Figure 6: The State Structure at the Local Administrative Level



The People's Councils are the State authorities in respective localities. They are elected by the local population and are responsible to the local population and to the higher State authorities. Local People's Councils are the State authorities in their respective localities,²⁰⁶ and are similar to the National Assembly at the national level. Local People's Councils comprise deputies elected through direct elections at the local level and serve for a term of five years.²⁰⁷ The deputies can question the People's Committees, the Chief Justice of the

²⁰⁶ The 1992 Vietnamese Constitution, article 119.

²⁰⁷ The 2003 Law on the Election of Deputies of the local People's Council, articles 1, 6.

People's Courts, and the Chief Prosecutor of the People's Procuracies in their respective localities.²⁰⁸ Local People's Councils are under the supervision and guidance of the Standing Committee of the National Assembly, and under the guidance and inspection of the Government in implementing legal documents of higher State bodies.²⁰⁹ Local People's Councils can also issue resolutions to ensure the strict observance of the Constitution and other laws in their localities provided that such resolutions are based on the Constitution, other laws and legal documents of the higher State bodies.²¹⁰

The People's Committees are the executive agencies of the respective People's Councils and the local administrative State bodies. Local People's Committees comprise Deputies (Chairman, Vice Chairmen and other members) who are elected by the respective local People's Councils.²¹¹ People's Committees are responsible for implementing the Constitution, laws, sub-law documents of higher State bodies, and the resolutions of the local People's Councils. They can issue decisions and instructions for this purpose.²¹²

Although local People's Councils and local People's Committees are established at all of the three levels, since 2008 the People's Councils in a number of rural districts, urban districts and wards have been removed under a pilot program introduced by the National Assembly.²¹³ It is a step of the administrative reform strategy of the State. It is said the role of the People's Councils at district and ward levels is not important. This pilot program has been applied at 67 rural districts, 32 urban districts, 483 wards at 10 provinces and centrally administered cities.

3. Sources of law

There are three main sources of law in Vietnam: 1) international agreements to which Vietnam is a party; 2) legal documents enacted by Vietnamese state organs; and 3) Vietnamese custom.

3.1 International Agreement

International agreements to which Vietnam is a party can apply directly in Vietnam legal order without any guiding legal document enacted by Vietnamese State organs.

In case of conflict, international agreements are given priority in application compared to Vietnam's legal documents.²¹⁴ Many Vietnam's legal documents include an article with the similar content, for example, article 5.1 of Vietnam's Commercial Law 2005 states that "where a treaty to which Vietnam is a contracting party stipulates the application of foreign

²⁰⁸ The 1992 Vietnamese Constitution, articles 119, 122; the 2003 Law on the Election of Deputies of the local People's Council, article 1.

²⁰⁹ The 2003 Law on the Organisation of the People's Council and the People's Committee, article 7.

²¹⁰ The 1992 Vietnamese Constitution, article 120.

²¹¹ *ibid*; the 2003 Law on the Election of Deputies of the Local People's Council, article 119.

²¹² The 1992 Vietnamese Constitution, articles 123-124; the 2004 Law on the Promulgation of the Legal Documents of the People's Council and the People's Committee, article 2.

²¹³ See the Resolution 26/2008/NQ-QH12 of the National Assembly, dated 15 November 2008, on experimental removal of People Councils of Rural Districts, Urban Districts and Wards.

²¹⁴ Vietnam legal documents are further discussed in Section 3.2.

laws or international commercial practices, or contain provisions different from those of this Law, the provisions of such treaty shall apply”.

Nevertheless, the Constitution does not provide solution in case of conflict between international agreements and the Constitution. Generally, international agreements are given priority over the Vietnam’s legal documents but not the Constitution.

3.2 Domestic Law

3.2.1 Legal Documents Enacted by Vietnamese State Organs

Vietnam’s laws and regulations must be in writing.²¹⁵ Case law is not accepted as a source of law. In other words, Vietnamese judges cannot create decision as binding laws. Legislations in Vietnam include the Constitution, laws, ordinances, resolutions, orders, decisions, decrees, circulars, and instructions, which are issued by various State bodies.²¹⁶

Table 1: Types of legislation and competent authorities for issuance²¹⁷

LAWS AND REGULATIONS	AUTHORITY
Constitution Laws (including Codes) Resolutions	The National Assembly
Ordinances Resolutions	The Standing Committee of the National Assembly
Orders Decisions	The State President
Decrees	The Government
Decisions	The Prime Minister
Resolutions	The Grand Panel of the Supreme People’s Court
Circulars	The Chief Justice of the Supreme People’s Court; or The Chief Prosecutor of the Supreme People’s Procuracy; or Ministers/Heads of Ministry-level Bodies
Decisions	The State’s Auditor General
Joint Resolutions	The Standing Committee of the National Assembly and the Central Bodies of Social Political Organisations; or The Government and the Central Bodies of Social Political Organisations

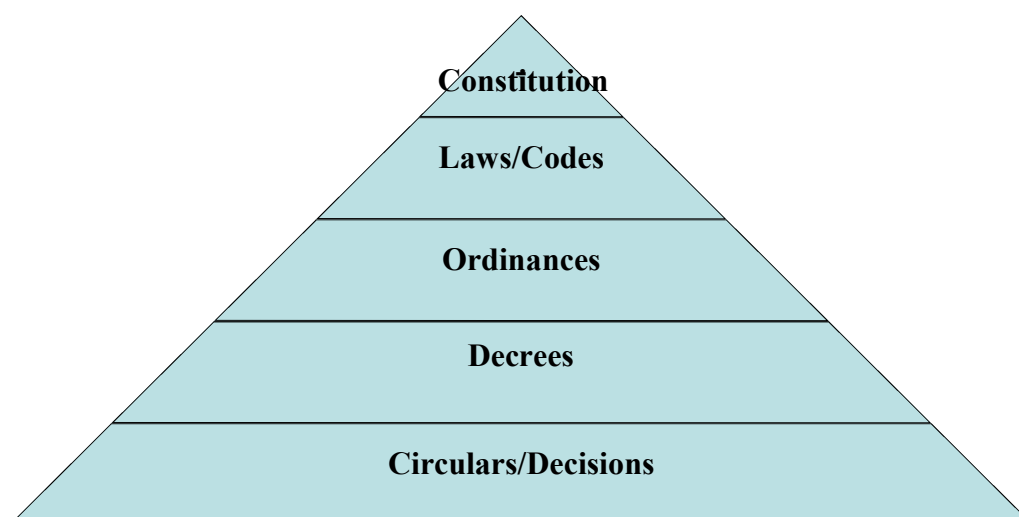
²¹⁵ The 2008 Law on Promulgation of Legal Documents, article 1.

²¹⁶ The 2008 Law on Promulgation of Legal Documents, article 2; the 2004 Law on the Promulgation of the Legal Documents of the People’s Council and the People’s Committee, article 1.

²¹⁷ *ibid.*

Joint Circulars	The Chief Justice of the Supreme People's Court and the Chief Prosecutor of the Supreme People's Procuracy; or Ministers/Heads of Ministry-level Bodies and The Chief Justice of the Supreme People's Court and/or the Chief Prosecutor of the Supreme People's Procuracy Ministers Ministers and Heads of Ministry-level Bodies Heads of Ministry-level Bodies
Resolutions	Local People's Councils
Decisions Instructions	Local People's Committees

Figure 7: Hierarchy of Legislation in Vietnam



Regarding the hierarchy of law, the Constitution is the supreme and fundamental rules. The second are laws (acts)/codes enacted by National Assembly. The third are ordinances which are issued by the Standing Committee of the National Assembly. The fourth are decrees issued by Government. Then circulars and decisions normally issued by Ministries.

For new matters, which need to be regulated by a legal document with higher legal validity than decree but not considered as a “big matter”, the form of ordinance is normally used. After a few years, the ordinance may be transformed into law.

Quality and Effectiveness of laws and regulations’ promulgation

In 1996, in order to improve the quality and effectiveness of promulgating laws and regulations,²¹⁸ the National Assembly issued the Law on Promulgation of Legal Documents which stipulates authorities and procedures of promulgating all legal documents. This law was amended in 2002 and replaced by a new law in 2008. Since 1996, the legal documents of the central State bodies must be published on the Official Gazette (*'Cong Bao'*) except for legal documents which contain State secrets.²¹⁹ Since 2004, the legal documents of the Provincial People's Councils and the Provincial People's Committees must be also published in the Official Gazette whereas the legal documents of the People's Council and the People's Committee at the district and commune levels must be posted at the office of the issuing bodies and other places determined by the Chairmen of the respective People's Committees.²²⁰ These provisions have contributed to increase the transparency of Vietnamese laws and legal system.

Since the *Doi Moi* reforms, legislation in Vietnam has developed significantly. In only one and a half decades following the *Doi Moi* reforms, from 1986 to 2001, Vietnam issued 5 codes, 87 laws and 111 ordinances - more than double the number of laws and ordinances which were issued from independence in 1945 to 1986.²²¹ The rapid growth of legislation is readily apparent from the Official Gazette. From 2 issues per month in 1995, the Official Gazette has been published daily since 2004.²²² The size of the Official Gazette increased fourfold from 1994 to 2004.²²³ As noted above, the preparation for WTO accession and the implementation of WTO accession commitments have led to the adoption and amendment of many laws and ordinances over the last decade.

Despite a significant development since the *Doi Moi* reforms, there are still some inadequacies in the legislative process in Vietnam. The National Assembly's deputies are not necessarily professional and specialised legislators and only meet twice per year. At the meetings which usually last about a month, the National Assembly spends a lot of time on deciding the important matters of the country and questioning the Government, the Chief Justice of the Supreme People's Court and the Chief Prosecutor of the Supreme People's Procuracy. The time for discussion and approval of laws is therefore very short.

With limited time available for legislative work and lack of legislative skills of the National Assembly's members, the *de facto* legislators are the administrators, particularly the Ministries since the Ministries usually chair the drafting committees. A report by officials in the Government Office stated that the Ministries often used open words and opaque drafting techniques to provide them with more discretionary power.²²⁴ Moreover, the laws

²¹⁸ The Preamble of the 1996 Law on Promulgation of Legal Documents.

²¹⁹ The 1996 Law on Promulgation of Legal Documents, article 10; the 2008 Law on Promulgation of Legal Documents, article 78.

²²⁰ The 2004 Law on the Promulgation of the Legal Documents of the People's Council and the People's Committee, article 8.

²²¹ Gillespie, above n52, p. 65.

²²² Anh Luu, 'Update: Vietnam Legal Research' (2010) <<http://www.nyulawglobal.org/globalex/vietnam1.htm>>.

²²³ Gillespie, above n52, p. 65.

²²⁴ The Office of Vietnamese Government, *Study Report to Improve the Quality of Laws and Ordinances Drafted by the Government to be Submitted to the National Assembly and the National Assembly's Standing Committee* (unpublished report, Working Delegation No.804, Hanoi) (December 2003). cited in Gillespie, above n 52, p. 179.

often contain broad principles which require subordinate regulations such as Government decrees and the Ministry circulars for implementation. Delay in issuing subordinate regulations is not uncommon,²²⁵ which leads to the frequently repeated paradox that laws have to wait for the decrees and circulars. There is also a high level of inconsistency between the subordinate regulations and the laws.²²⁶ Although their roles are to implement the laws, subordinate regulations may alter the meaning of the laws.²²⁷ The broad content of the laws also contributes to the unwritten “power” of the Executive in interpreting the laws - a power which constitutionally belongs to the Standing Committee of the National Assembly.²²⁸

In 2003 the Ministry of Justice established a Department of the Inspection of Legal Documents with responsibility to control legislative consistency.²²⁹ Its power is however limited to inspecting legal documents issued by Ministries, Ministry-equivalent bodies, Provincial People’s Councils and Provincial People’s Committees. Moreover, it seems to lack the resources to assess thousands of legal documents enacted by those State bodies every year.²³⁰

3.2.2 Custom

Custom is also a source of Vietnam’s law. Several laws, including the 2005 Vietnamese Civil Code and the 2000 Law on Marriage, recognize custom as source of law. For example, article 3 of the Civil Code provides that “in cases where it is neither provided for by law nor agreed upon by the parties, custom can be applied; if custom is unavailable, analogy of law may be applied. Custom and analogy of law must not contravene the principles provided in this Code”.

Moreover, acceptance of custom as a source of law stems from multi-ethnic and multi-religion nature of Vietnam.²³¹ Common custom is used as a supportive and supplement instruments for the law of state.²³² The use of the village self-regulations creates a sense of commonly accepted rules of their own community.

However, with the view of state’s preference, the written laws are still official legal rules for Vietnam’s society.²³³ Thus, Custom, except for international custom agreed by parties

²²⁵ See Gillespie, above n 52, p. 178.

²²⁶ Vietnam's Ministry of Justice, *Final Report Legal Needs Assessment* (2002), point 2.3.2, cited in Gillespie, above n 52, p. 178.

²²⁷ Gillespie, above n 52, p. 178.

²²⁸ Anh Luu, 'Update: Vietnam Legal Research' (2010) <<http://www.nyulawglobal.org/globalex/vietnam1.htm>>.

²²⁹ This Department has found several legal documents inconsistent with source documents and the Constitution; See generally Decision 336/2003/QĐ-BTP of the Minister of Justice, dated 5 August 2003, on the Establishment of the Department of the Inspection of Legal Documents.

²³⁰ Gillespie, above n52, p. 179.

²³¹ Nhat Thanh Phan, *Recognising customary law in Vietnam: legal pluralism and human rights* (Woolongong University, 2011) <<http://ro.uow.edu.au/theses/3455/>>. p 6-8

²³² Dao Tri Uc, 'Basic Information for Legal Research- A Case Study of Vietnam' in Institute of Developing Economies (IDE-JETRO) (ed), *Doing Legal Research in Asian Countries China, India, Malaysia, Philippines, Thailand, Vietnam* (Institute of Developing Economies (IDE-JETRO), 2002). P 217

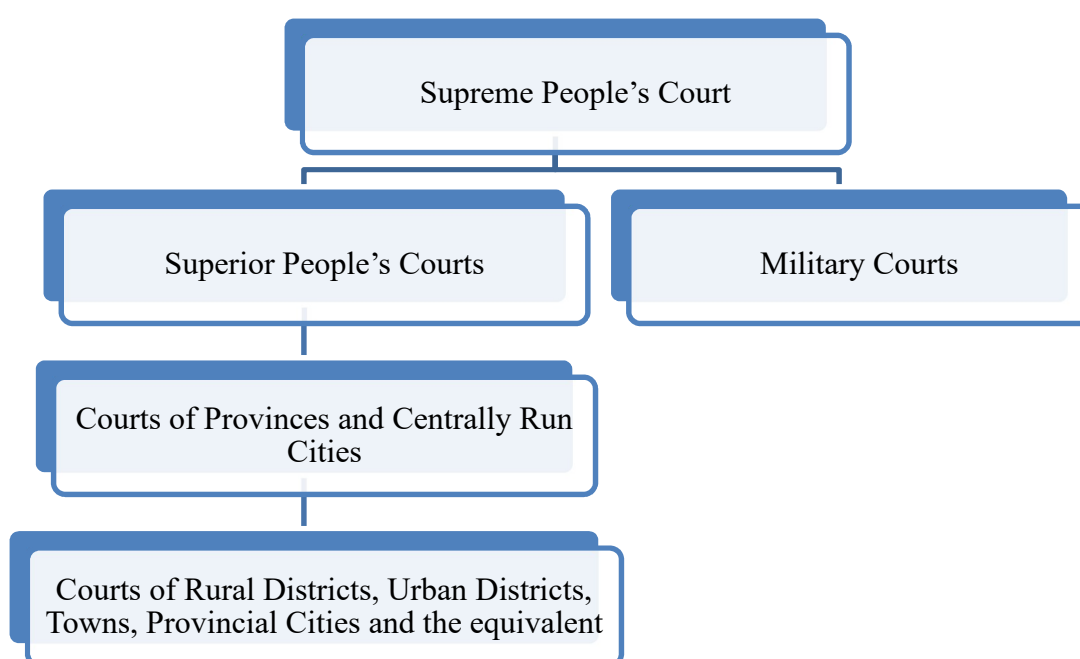
²³³ NhatThanh Phan, *Recognising customary law in Vietnam: legal pluralism and human rights* (PhD Thesis, Woolongong University, 2011) <<http://ro.uow.edu.au/theses/3455/>> p 6-8

in contracts, is not a main source of Vietnam's law and is rarely applied as a source of law in practice.

4. Court system²³⁴

According to article 102 of the 2013 Constitution of the Socialist Republic of Vietnam, article 3 of the 2014 Law on the Organization of People's Courts (herein after the 2014 LOPC),²³⁵ and the 2002 Ordinance on the Organization of Military Courts, Vietnamese court system consists of 1) The Supreme People's Court 2) The Superior People's Courts 3) The Courts of Provinces and Centrally Run Cities 4) The Courts of Rural Districts, Urban Districts, Towns, Provincial Cities and the Equivalent 5) The Military Courts.

Figure 8 : Current Vietnamese courts structure



The Military Courts can only hear cases involving defendants who are in-service army men or hear the cases which relate to security of the military.²³⁶ The Military Courts are organized in 3 levels: (1) Central Military Court (highest one); (2) Military Courts of Military Zones and (3) Regional Military Courts (under the military courts of military zones).

In the past, there were 3 levels of people's courts: the Supreme People's Court; the Provincial People's Courts; and the District People's Courts. The 2014 Law on the Organization of People's Courts (LOPC), which enters into force on 1 June 2015, modifies the structure of People's Courts by introducing the Superior People's Courts into the system,

²³⁴ The efficiency of the court system is further discussed in Part 2 - 'Laws on Trade and Investment in Vietnam'.

²³⁵ Law no. 62/2014/QH13, 24 November 2014, on Organization of People's Courts

²³⁶ Article 49 of the 2014 Law on the Organization of People's Courts

and reforms duties and power of others People's Courts. People's Courts are now divided into 4 levels:

- 1) The Supreme People's Court
- 2) The Superior People's Courts
- 3) The Courts of Provinces and Centrally Run Cities
- 4) The Courts of Rural Districts, Urban Districts, Towns, Provincial Cities and the Equivalent.

4.1 Organizational Structure, Powers and Duties of the People's Courts

4.1.1 The Supreme People's Court

The Supreme People's Court is the highest judicial body. The Supreme people's court consists of

- 1) The Judicial Council of the Supreme People's Court;
- 2) The assisting apparatus; and
- 3) The training institutions who are responsible for training judges, assessors and other staffs of people's courts.²³⁷

The Judicial Council of the Supreme People's Court

The Judicial Council of the Supreme People's Court is composed of 13-17 members including the Chief Justice, Deputy Chief Justices (being judges of the Supreme People's Court) and other judges of the Supreme People's Court. A meeting of the Judicial Council of the Supreme People's Court shall be attended by at least two-thirds of its total members. Decisions of the Judicial Council of the Supreme People's Court shall be voted for by more than half of its total members.

According to article 22 of the LOPC, the Judicial Council of the Supreme People's Court reviews according to cassation or reopening procedure judgments and decisions of courts of appeal which have taken legal effect and are protested against. The Judicial Council of the Supreme People's Court conducts trial according to cassation or reopening procedure with a trial panel composed of 5 judges or all judges of the Supreme People's Court. The cassation or reopening trial decisions of the Judicial Council of the Supreme People's Court are the highest and cannot be protested against²³⁸.

Other main powers and duties of the Judicial Council, according to article 22 of the LOPC, are:

- to issue resolutions to guide courts in uniformly applying law;
- to select its cassation trial decisions and judgments and decisions of courts which have taken legal effect and are of standard nature, summarize and develop them into court precedents and publicize court precedents for courts to study and apply in trial;

²³⁷ Article 21 of the 2014 Law on the Organization of People's Courts

²³⁸ Article 22 (4) of the 2014 Law on the Organization of People's Courts.

- to give its opinions on draft laws and resolutions for submission to the National Assembly, and draft ordinances and resolutions for submission to the National Assembly Standing Committee
- to discuss and give its opinions on draft legal documents falling under the promulgating competence of the Chief justice of the Supreme people's court and draft legal documents to be jointly promulgated by the Supreme people's court and related agencies in accordance with the law on promulgation of legal documents.

The Chief Justice of the Supreme People's Court

The Chief Justice of the Supreme People's Court is elected, relieved from duty or dismissed by the National Assembly at the proposal of the President. The term of office of the Chief Justice of the Supreme People's Court must follow the term of the National Assembly (5 years). Upon the expiration of the term of the National Assembly, the incumbent Chief Justice of the Supreme People's Court shall continue to perform his/her duties until the National Assembly of the new legislature elects a new Chief Justice.²³⁹

The Chief Justice's main duties and powers are²⁴⁰:

- to adjudicate work of the Supreme People's Court;
- to chair meetings of the Judicial Council of the Supreme People's Court;
- to protest according to cassation or reopening procedure against legally effective judgments and decisions of People's Courts in accordance with the procedural law;
- to submit to the President his/her opinions on cases in which convicts apply for commutation of capital punishment;
- to direct the overall assessment of adjudicating practices; drafting and issuance of resolutions of the Judicial Council of the Supreme People's Court to ensure the uniform application of law in trial; summarization, development and publicization of court precedents.

The Chief Justice of the Supreme People's Court submits to the National Assembly Standing Committee for decision regarding establishment or dissolution of Superior People's Courts; People's Courts of Provinces and Centrally Run Cities; People's Courts Of Rural Districts, Urban Districts, Towns, Provincial Cities and the equivalent; Military Courts of Military Zones and the equivalent; Regional Military Courts; territorial jurisdiction of Superior People's Courts, as well as establishment of other Specialized Tribunals of People's Courts when necessary.²⁴¹

The Chief Justice is also in charge of directing the drafting of laws, ordinances and resolutions to be submitted by the Supreme People's Court to the National Assembly and

²³⁹ Article 26 of the 2014 Law on the Organization of People's Courts.

²⁴⁰ Article 27 of the 2014 Law on the Organization of People's Courts.

²⁴¹ Article 27 of the 2014 Law on the Organization of People's Courts

National Assembly Standing Committee; to issue or jointly issue legal documents according to his/her competence in accordance with the Law on Promulgation of Legal Documents.²⁴²

The Chief Justice is assisted by Deputy Chief Justices who are appointed by the President from among judges of the Supreme People's Court. The term of office of Deputy Chief Justices is 5 years from the date of appointment. Deputy Chief Justices of the Supreme People's Court shall be relieved from duty or dismissed by the President.

4.1.2 Superior People's Courts

The 2014 LOPC introduces the Superior People's Court into Vietnamese court system which entails modification of People's Courts structure as well as that of duties and powers of other People's Courts.

Its duties and powers are:

- to conduct appellate trial of cases in which first-instance judgments or decisions of people's courts of provinces or centrally run cities within their territorial jurisdiction which have not yet taken legal effect are appealed or protested against in accordance with the procedural law
- to conduct trial according to cassation or reopening procedure of cases in which judgments or decisions of people's courts of provinces, centrally run cities, rural districts, urban districts, towns, provincial cities or the equivalent within their territorial jurisdiction which have taken legal effect are protested against in accordance with the procedural law

According to article 30 of the 2014 LOPC, the superior people's court consists of

- 1) The judicial committee
- 2) Specialized tribunals
- 3) The assisting apparatus

The judicial committee of a superior people's court

The judicial committee of a Superior People's Court is composed of 11-13 members including the Chief Justice, Deputy Chief Justices being high-level judges and a number of high-level judges decided by the Chief Justice of the Supreme People's Court at the proposal of the Chief Justice of the Superior People's Court. A meeting of the Judicial Committee of a Superior People's Court shall be attended by at least two-thirds of its total members. Decisions of the Judicial Committee shall be voted for by more than half of its total members.

According to article 31 of the 2014 LOPC, the Judicial Committee of a Superior People's Court conducts trial according to cassation or reopening procedure of cases in which judgments or decisions of People's Courts of Provinces, Centrally Run Cities, Rural

²⁴² Article 27 of the 2014 Law on the Organization of People's Courts.

Districts, Urban Districts, Towns, Provincial Cities or the equivalent within their territorial jurisdiction which have taken legal effect and are protested against.

A cassation or reopening trial panel is composed of 3 judges or all of the members of the judicial committee of a superior people's court.²⁴³

Specialized tribunals of superior people's courts

Specialized Tribunals of Superior People's Courts consist currently of the criminal, civil, administrative, economic, labor, family and juvenile tribunals. In case of necessity, the National Assembly Standing Committee shall decide to establish another Specialized Tribunal at the proposal of the Chief Justice of the Supreme People's Court.

According to article 33 of the 2014 LOPC, Specialized Tribunals of Superior People's Courts conduct appellate trial of cases in which judgments or decisions of People's Courts of Provinces or Centrally Run Cities within their territorial jurisdiction which have not yet taken legal effect are appealed or protested against in accordance with the procedural law.

4.1.3 People's Courts of Provinces and Centrally Run Cities

Vietnam is organized into 63 provinces and there is a provincial court in each province of the country. According to article 37 of the 2014 LOPC, the duties and power of the people's courts of provinces and centrally run cities are as follow:

- To conduct first-instance trials of cases prescribed by law
- To conduct appellate trials of cases in which first-instance judgments or decisions of people's courts of rural districts, urban districts, towns, provincial cities or the equivalent which have not yet taken legal effect are appealed or protested against in accordance with law
- To review legally effective judgments and decisions of people's courts of rural districts, urban districts, towns, provincial cities and the equivalent, and request chief justices of superior people's courts or the Chief Justice of the Supreme People's Court to consider and make protests when detecting violations of law or discovering new circumstances
- To settle other matters as prescribed by law

Since the 2014 LOPC, the People's Courts of Provinces and Centrally Run Cities have no longer the duty to conduct a trial according to cassation or reopening the case anymore, as this duty has been allocated to the newly created Superior People's Courts

The People's Courts of Provinces and Centrally Run Cities consist of

- 1) The Judicial Committee
- 2) Specialized Tribunals; and
- 3) The assisting apparatus

²⁴³ Article 32 of the 2014 Law on the Organization of People's Courts

The Judicial Committee of People's Courts of Provinces and Centrally Run Cities

The Judicial Committee is composed of the Chief Justice, Deputy Chief Justices and a number of judges. The number of its members shall be decided by the Chief Justice of The Supreme People's Court at the proposal of the Chief Justice of the People's Court of the Province or Centrally Run City. Its meeting shall be chaired by the Chief Justice.

According to article 39 of the 2014 LOPC, the judicial committee of a people's court of a province or centrally run city has the duty

- To discuss on the implementation of work programs and plans of its court
- To discuss work reports of the chief justice of its court to the Supreme People's Court and same-level People's Council;
- To discuss recommendations of the chief justice of its court for the chief justice of the superior people's court or the Chief Justice of the Supreme People's Court to review legally effective judgments and decisions according to cassation or reopening procedure at the request of its chief justice.

Specialized Tribunals of People's Courts of Provinces and Centrally Run Cities

Specialized Tribunals of People's Courts of Provinces and Centrally Run Cities consist currently of the criminal, civil, administrative, economic, labor, and family and juvenile tribunals. In case of necessity, the National Assembly Standing Committee shall decide to establish other Specialized Tribunals at the proposal of the Chief Justice of the Supreme People's Court.

Theirs duties are:

- to conduct first-instance trials of cases prescribed by law
- to conduct appellate trials of cases in which first-instance judgments or decisions of people's courts of rural districts, urban districts, towns, provincial cities and the equivalent which have not yet taken legal effect are appealed or protested against in accordance with the procedural law.

4.1.4 People's Courts of Rural Districts, Urban Districts, Towns, Provincial Cities and the Equivalent




Each province of Vietnam is divided into administrative districts and each district has a district-level people's court. A People's Court of a Rural District, Urban District, Town, Provincial City (hereinafter referred collectively to as District-level People's Courts) may have criminal, civil, family and juvenile, and administrative handling tribunals. In case of necessity, the National Assembly Standing Committee may decide to establish other Specialized Tribunals at the proposal of the Chief Justice of the Supreme People's Court.

The People's Court of a Rural District, Urban District, Town, Provincial City or the equivalent are entitled to conduct first-instance trials of cases prescribed by law.

4.2 Levels of Courts in Judicial Process

Vietnam practices the system of two-instance trials including courts of first instances and court of appeal. If a party does not agree with the judgement of the first-instance court, that party may appeal to the second-instance court within the appeal period. Passing this period, the judgement is considered as “having taken legal effect” and cannot be protested against.²⁴⁴ The judgement of the second-instance court is in principle final and must be enforced.²⁴⁵

Table 2: Two-instance trials

Appeal system (judgments of lower courts have not yet taken legal effect)		
Court of first instance 	People's Courts of Rural Districts, Urban Districts, Towns, Provincial Cities and the Equivalent 	People's courts of provinces or centrally run cities 
Court of Appeal	People's Courts of Provinces and Centrally Run Cities	Superior people's courts

The judgements of the court which have taken legal effect are susceptible to further reviews under special circumstances. According to Article 6.2 of the 2014 LOPC, “in case a violation of law is detected in a legally effective judgment or decision of a court or a new circumstance arises as prescribed by the procedural law, such judgment or decision shall be re-considered according to cassation or reopening procedures”.

- "Cassation" after an appeal, in case a serious violation on litigation procedure is identified, a party may apply to the Chief Justice of the Supreme people's court or the Chief Procurator of the Supreme People's Procuracy for a final appeal hearing.²⁴⁶
- “Reopening procedure” concerns the case where new evidence is identified after an appeal, a party may request the Chief Justice of the People's Court or the Chief

²⁴⁴ For example, on 1 January the District Court makes a judgement. After 15 days, if neither of the parties appeals, the judgement will have legal effect from 16 January.




²⁴⁵ Kenfox, Court system in Vietnam, accessed on 29 January 2016, retrieved from <http://kenfoxlaw.com/legal-topics/12977-court-system-in-vietnam.html>

²⁴⁶ Ibid. (Kenfox, Court system in Vietnam, accessed on 29 January 2016, retrieved from <http://kenfoxlaw.com/legal-topics/12977-court-system-in-vietnam.html>)

Procurator of the People's Procuracy at provincial or higher level to consider the reopening the trial.²⁴⁷

The cassation or reopening trial decisions are the highest and cannot be protested against²⁴⁸.

Table 3: Cassation or reopening trial

Cassation or reopening procedures (judgments of lower courts have taken legal effect)		
Lower court	People's Courts of Provinces, Centrally Run Cities, Rural Districts, Urban Districts, Towns, Provincial Cities or the equivalent within their territorial jurisdiction	Superior People's Courts
 Court of cassation or reopening procedure of cases	 Superior People's Courts (article 31 of the 2014 LOPC)	 The Supreme People's Court (article 22 of the 2014 LOPC)

4.3 Jurisdiction of the People's Courts in Civil Proceeding Related to Trades and Investments

4.3.1 Subject Matter Jurisdiction

In Vietnam, the civil proceedings include trade and business relations as well as labor relations. The procedures to settle civil disputes are regulated by the 2004 Vietnam's Civil Procedure Code,²⁴⁹ which was revised in 2011.²⁵⁰

²⁴⁷ Ibid. (Kenfox, Court system in Vietnam, accessed on 29 January 2016, retrieved from <http://kenfoxlaw.com/legal-topics/12977-court-system-in-vietnam.html>)

²⁴⁸ Article 22 (4) of the 2014 Law on the Organization of People's Courts.

²⁴⁹ Law No. 24/2004/QH11, 15 June 2004, Civil procedure code

²⁵⁰ Law No. 65/2011/QH12, 29 March 2011, Law Amending and Supplementing a Number of Articles of the Civil Procedure Code

According to article 29 of the revised Civil Procedure Code, business and trade disputes falling under the People's courts' jurisdiction include:

1. Disputes arising from business or trade activities among individuals and/or organizations with business registration, which are all for the purpose of profits, including:
 - a) Purchase and sale of goods;
 - b) Provision of services;
 - c) Distribution;
 - d) Commercial representation and/or agency;
 - e) Consignment;
 - f) Renting, leasing, hire-purchase;
 - g) Construction;
 - h) Consulting, engineering;
 - i) Cargo or passenger transportation by rail, road, or inland waterway;
 - j) Cargo or passenger transportation by air or sea;
 - k) Purchase and sale of shares, bonds and other valuable papers;
 - l) Investment, financing, banking;
 - m) Insurance;
 - n) Exploration and exploitation.
2. Disputes over intellectual property rights or technology transfers among individuals or organizations, which are all for the purposes of profits.
3. Disputes between a company and its members or among members of a company regarding the establishment, operation, dissolution, merger, consolidation, division, separation, organizational transformation of the company.
4. Other business, trade disputes prescribed by law.

4.3.1.1 People's Courts of Rural Districts, Urban Districts, Towns, Provincial Cities (District-Level People's Courts) as the Court of First Instance

As stipulated in Article 33, clause 1, point b) of the revised Civil Procedure Code, the People's Court of a Rural District, Urban District, Town, Provincial City (hereinafter referred collectively to as District - level People's Courts) shall have the jurisdiction to settle according to first-instance procedure the business and trade disputes as prescribed at article 29, Clause 1, Points a, b, c, d, e, f, g, h and i, which are disputes among individuals and/or organizations with business registration concerning

- Purchase and sale of goods;
- Provision of services;
- Distribution;
- Commercial representation and/or agency;
- Consignment;
- Renting, leasing, hire-purchase;
- Construction;
- Consulting, engineering;

- Cargo or passenger transportation by rail, road, or inland waterway;

4.3.1.2 People's Courts of Provinces or Centrally Run Cities (Province-Level People's Courts) as the Court of First Instance

According to article 34 of the Civil Procedure Code, the province-level people's courts shall have the jurisdiction to settle according to first-instance procedure the following business and trade disputes:

1. The business and trade disputes prescribed at Clauses 1, Article 29 of the Code, except for disputes falling under the jurisdiction of the district-level people's courts as provided for in Clause 1, Article 33 of this Code; which are
 - Cargo or passenger transportation by air or sea;
 - Purchase and sale of shares, bonds and other valuable papers;
 - Investment, financing, banking;
 - Insurance;
 - Exploration and exploitation
2. The business and trade disputes prescribed at Clauses 2, 3 and 4, Article 29 of the Code
 - Disputes over intellectual property rights or technology transfers among individuals or organizations, which are all for the purposes of profits.
 - Disputes between a company and its members or among members of a company regarding the establishment, operation, dissolution, merger, consolidation, division, separation, organizational transformation of the company.
 - Other business, trade disputes prescribed by law.
3. The business and trade disputes prescribed at Clause 1, Article 29 of the Code provided that they involve parties or properties in foreign countries or which must be judicially entrusted to Vietnamese consulates overseas or to foreign courts.

4.3.2 Territorial Jurisdiction of the People's Courts

According to article 35 of the Civil Procedure Code, territorial jurisdiction of courts to settle trade and business cases shall be determined as follows:

- a) The courts of the localities where the defendants reside or work, if the defendants are individuals, or where the defendants are headquartered, if the defendants are agencies or organizations;
- b) The involved parties shall have the right to agree with each other in writing to request the courts of the localities where the plaintiffs reside or work, if the plaintiffs are individuals, or where the plaintiffs are headquartered, if they are agencies or organizations, to settle business and trade disputes;
- c) The courts of the areas where exist immovable assets shall have the jurisdiction to settle disputes over such immovable assets.

5. Method of law interpretation and problems related to law enforcement

Courts in Vietnam are not entitled to interpret the laws. Despite the fact that the power to interpret the laws belongs to the Standing committee of the National Assembly, the interpretation of laws and regulations are done in practice by the government or ministries.

In Vietnam, methods of law interpretation are not explicitly defined. However, legal professionals may generally rely on two main methods which are 1) the Literal Rule and 2) the Mischief Rule. The Literal Rule is in the case that interpreters consider the literal meaning of statute and apply the meaning to the case at hand. The Mischief Rule is in the case that interpreters take an account to the objective of the laws set out by parliament or legislative body.

As for law enforcement, Vietnam's legislation has been comprehensively improved since the *Doi Moi* reform, particularly during the preparatory process of WTO's accession. However, legal enforcement is still a significant problem that reduces the efficiency of laws in practice.

The Vietnamese people have some popular sayings reflecting the inefficiency of laws - "Law is in the sky but the life is on the ground" (*'Luat Tren Troi Cuoc Doi Duoi Dat'*) and "Although we have a jungle of laws, people still act according to the law of the jungle" (*'Du Chung Ta Co Ca Mot Rung Luat Nhung Nguoi Dan Van Hanh Xu Theo Luat Rung'*). People also often use the phrase "Laws on paper" (*'Luat Tren Giay'*) which refers to the weak enforcement of laws in practice. According to the World Bank Institute, Vietnam's indicator of legal enforcement efficiency has increased but is still very low: -0.53 in 2004, -0.51 in 2005, -0.41 in 2006, -0.50 in 2007, and -0.43 in 2008.²⁵¹

The activities of administrative bodies can be criticised for being carried out according to the habits of officials rather than according to the law.²⁵² In practice the resolution of complaints in relation to administrative processes is usually not yet based on the law, and such complaints are commonly transferred between State bodies.²⁵³ The weak legal enforcement has been attributed to several reasons including;

- Inconsistency in the laws under government red tape procedures,
- Lack of transparency with corruption issue
- Low levels of awareness of legal rights and obligations among the people.²⁵⁴

²⁵¹ Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], above n 92, p. 95.

²⁵² Ta Thi Minh Ly, 'Ban Ve To Chuc Thuc Hien Phap Luat [A Discussion About the Organisation of Legal Implementation]' (2010) *Tap Chi Nghien Cuu Lap Phap [Journal of Legislative Research]*..

²⁵³ *ibid.*..

²⁵⁴ *ibid.*..

5.1 Illegality and Inconsistency in the laws

Vietnam legislation suffers from overlapping provisions which leads to difficulties in understanding legal rights and obligations.²⁵⁵

According to statistics from the Ministry of Justice in 2007, 320 of 1,506 legal documents which were inspected were illegal. In 2008 the numbers were 490 of 1,968.²⁵⁶ In 2010, the Head of the Department of Normative Document Inspection of the Ministry of Justice stated that 7 Ministries and 13 Provinces and Cities directly under the central government had issued several legal documents contrary to the source documents which had not yet been revised.²⁵⁷ Consistency in the law is also an issue as many legal documents are frequently revised.²⁵⁸ For example, in only 4 years from 2006 to 2009, the Decree guiding the Law on Tenders was revised three times.²⁵⁹

5.2 Lack of transparency with corruption issue

It is widely accepted that red tape and corruption are still relatively common in Vietnam.²⁶⁰ For example, a report of the World Bank in 2005 stated that although the 1999 *Law on Enterprises* required the completion of the business registration process within 15 days, this deadline was only respected in two third of the cases.²⁶¹ Recently, the Government has made a consistent effort to simplify administrative procedures. However, the procedures and the time for starting a business remained at 11 procedures and 50 days during the period 2007-2010. In 2011, the procedures and the time for starting a business were reduced to 9 procedures and 44 days, but still higher than the average level of the rest of Asia - 8 procedures and 39 days.²⁶²

Meanwhile, one third of Vietnam's public investment expenditure in 1998, equivalent to five percent of GDP, was reported to have been lost through fraud and corruption.²⁶³ In addition, the 2008 Provincial Competitiveness Index of the Vietnam Chamber of Commerce and Industry reported that more than half of all businesses said that commissions were given to public officials.²⁶⁴

²⁵⁵ Thu Hang, 'De An 30: Cuoc Dau Tranh Cat Bo Quyen Hanh Dan [Project 30: A Combat to Cutting the Right of Bothering Inhabitants]' (20 February 2011) <<http://phapluattp.vn/20110220010746814p0c1013/de-an-30-cuoc-dau-tranh-cat-bo-quyen-hanh-dan.htm>>., last accessed 30 July 2012; The World Bank, *Vietnam Aiming High: Vietnam Development Report 2007* (2006)., last accessed 30 July 2012, p. 155.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid; Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], above n 92, p. 92.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ The World Bank, above n 125, p. 46.

²⁶² Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], above n 92, p. 98; Soren Davidsen et al, *Implementation Assessment of the Anti-Corruption Law: How far has Vietnam come at the Sector Level? - A Case-Study of the Construction Sector* (May 2009)., last accessed 8 August 2012, p. 3; John Ruwitch and Jason Szep, *Vietnam's Capitalist Roaders*, Reuters No (2011)., last accessed 8 August 2012, p. 8.

²⁶³ Clay Wescott, 'Combating Corruption in Southeast Asia' <http://www.adb.org/Governance/combating_corruption.pdf>., last accessed 25 August 2012, p. 258.

²⁶⁴ The World Bank, *Vietnam Development Report 2010: Modern Institution* (2009)., p. 109.

5.3 Low level of awareness of legal rights and obligations among the people

The legal awareness of Vietnamese people is still low.²⁶⁵ Most Vietnamese still do not have a habit of respecting or using laws to protect their rights and benefits.²⁶⁶ This has, to some extent, stemmed from the characteristics of Vietnamese traditional culture - people tend to be hostile to laws and respect relationships more than the law.²⁶⁷ In 2008, a survey of 500 citizens in four provinces (Hanoi, Quang Binh, Ninh Thuan, and An Giang) found that many did not know important laws impacting on their daily lives such as the *Civil Code* and the *Law on Personal Income Tax*.²⁶⁸ Similarly, a recent survey of around 2,600 small and medium enterprises in 10 provinces in Vietnam shows that many had little knowledge of relevant laws and regulations.²⁶⁹ In Vietnam, SMEs usually “remain embedded in a relational transactional environment that is indifferent toward law-based standards and processes”.²⁷⁰ An Australian legal researcher stated a decade ago that “there is little evidence of law or courts being relevant to either daily life in Vietnam or the resolution of disputes”.²⁷¹ This conclusion is still valid today.

With regard to daily business-to-business deals, a small-scale survey of businesses conducted by the World Bank reported that all the firms in the survey do indeed use some form of written contract to formalise their deals. However, none of them places much faith in the ultimate legal enforcement power of those contracts, nor do they seriously entertain the possibility of resorting to legal action if the other party violates its obligations. The main purpose of the contracts seems to be to minimise the room for misunderstanding between the parties. And although very few firms adhere strictly to their terms, suppliers generally attempt to fulfil them. They do so for the sake of building their reputation and boost the goodwill of the contractor, rather than because they are concerned about the possibility of any legal consequences of a breach.²⁷²

However, it is necessary to note that the Vietnamese government has been carrying out many measures to strengthen legal enforcement. The Government has seriously attempted to reduce red tape. Since 2003, Vietnam has officially introduced “One Stop Shops” (*‘Co Che Mot Cua’*) for administrative services based on an initiative piloted in the 1990s.²⁷³ This mechanism allows people do business with the State through only one division of the state which is responsible for receiving requests from and giving results to people. By October 2009, 84 percent of departments in the provinces had “One Stop Shops”. The “One

²⁶⁵ *ibid.*, p. 95.

²⁶⁶ Ly, above n 252.

²⁶⁷ As mentioned in Section 1.3.2.

²⁶⁸ The World Bank, above n 264, p. 95.

²⁶⁹ *ibid.*

²⁷⁰ John Gillespie and Bui Thi Bich Lien, 'Unacknowledged Legislators: Business Participation in Lawmaking in Vietnam' in R. P. Peerenboom and John Gillespie (eds), *Regulation in Asia: Pushing Back on Globalization* (Routledge, 2009).

²⁷¹ Penelope Nicholson, 'Judicial Independence and the Rule of Law: The Vietnam Court Experience' (2001) 3 *Asian Law Journal* 37..

²⁷² The World Bank, above n 125, p. 45.

²⁷³ This was introduced by *Decision 181/2003/QĐ-TTg* of the Prime Minister, dated 4 September 2003, on *Issuing the Regulations on Implementing “One Stop Shops” Mechanism at Local Administrative Bodies*.

Stop Shops” are recognised as a successful and efficient mechanism.²⁷⁴ By 2008, around 90 percent of respondents to the Provincial Competitiveness Index Survey conducted by the Vietnam Chamber of Commerce and Industry knew that this mechanism had been implemented locally, and many agreed that this provincial implementation was good for business.²⁷⁵ In 2005, an interdisciplinary working group was established by the Prime Minister to deal with difficulties and proposals related to administrative procedures of businesses.²⁷⁶ In 2007, the Government introduced Project 30²⁷⁷ to streamline administrative procedures and it has been making real progress.²⁷⁸ An online national database with over 5,400 administrative procedures, 9,000 legal documents and 100,000 dossiers with administrative procedures, templates and forms was first introduced in October 2009.²⁷⁹ Through this project, the Government has simplified around 5,000 administrative procedures.²⁸⁰

Besides the Judicial Reform Strategy introduced in 2002,²⁸¹ the Government has been strongly supporting an anticorruption strategy. For example, in 2005, the Committee for Internal Affairs of the CPV released a *Report of the Survey on Corruption in Vietnam*, and a *Law on Anticorruption* which includes many corruption prevention measures was introduced in 2005 and amended in 2007.²⁸² In 2009, a “Strategy for Preventing and Combating Corruption towards 2020” was also introduced by the Government. In the same year, the Government Inspectorate, together with the World Bank, organised *Vietnam Innovation Day 2009 - More Accountability and Transparency, Less Corruption* which had solicited many proposals for reducing corruption by associations, State bodies, large organisations and the private sector.²⁸³

²⁷⁴ The World Bank, above n 264, p. vii.

²⁷⁵ *ibid.*, p. viii.

²⁷⁶ This was introduced by *Decision 25/2005/QĐ-TTg* of the Prime Minister, dated 26 January 2005, *on the Establishment of the Interdisciplinary Working Group for Dealing with Difficulties and Proposals related to Administrative Procedures of Businesses*.

²⁷⁷ *Decision 30/QĐ-TTg* of the Prime Minister, dated 10 January 2007, *on Approving the Project for Simplifying Administrative Procedures in all Fields under the State Management in the period 2007-2010*.

²⁷⁸ The World Bank, above n 264 p. viii.

²⁷⁹ *ibid.*

²⁸⁰ Hang, above n 255.

²⁸¹ It originated from *Resolution 08-NQ/TW* of the Politburo of the Communist Party of Vietnam *on Some Principal Tasks of the Judicial Work for the Forthcoming Period*. The 2002 judicial reform has removed a number of obstacles to judicial work in general as well as on judicial independence.

²⁸² For further discussion see The World Bank, above n 264, pp. 100-110.

²⁸³ *ibid.*, p. 95.

PART 2

LAWS ON TRADE AND INVESTMENT

IN VIETNAM

PART 2

LAWS ON TRADE AND INVESTMENT IN VIETNAM

1. Laws and Regulations on International Trade

1.1 Law on Import Tax and Export Tax

Vietnam's Law on Import and Export Tax was first adopted in 1987 (later revised in 1991, 1993 and 1998). As a part of the WTO accession preparation process, Vietnam introduced the new *Law on Import Tax and Export Tax* in 2005 (Law No. 45/2005/QH11 of 14 June 2005 on Import Tax and Export Tax), which came into effect since January 2006.

This law has made important changes in Vietnam's policy on import and export tax.²⁸⁴ It provides for import tax and export tax applicable to goods imported or exported through Vietnam's border-gates or borders; goods sold, purchased or exchanged by border residents and other sold, purchased or exchanged goods which are considered import or export goods.²⁸⁵

Goods imposed by import tax or export tax can be divided into two types²⁸⁶

- (i) goods imported or exported through Vietnam's border-gates or borders; and
- (ii) goods brought from the domestic market into non-tariff zones or from non-tariff zones into the domestic market

Goods which are not liable to import tax or export tax are²⁸⁷

- (i) Goods in transit or being transported across Vietnam's border-gates or borders; goods transferred through border-gates as provided for by the Government;
- (ii) Humanitarian aid, non-refundable aid;
- (iii) Goods exported from non-tariff zones to foreign countries, goods imported from foreign countries into non-tariff zones for use in non-tariff zones only, and goods transported from one non-tariff zone to another; and
- (iv) Goods being petroleum portions paid to the State in value as natural resource tax when exported

²⁸⁴ Vietnamonline, *Vietnam Customs Tariff* <<http://www.vietnamonline.com/az/vietnam-customs-tariff.html>>.

²⁸⁵ Article 1 of the 2005 Law on Import Tax and Export Tax.

²⁸⁶ Article 2 of the 2005 Law on Import Tax and Export Tax.

²⁸⁷ Article 3 of the 2005 Law on Import Tax and Export Tax.

In cases where treaties to which Vietnam is a contracting party, including Vietnam's WTO accession commitments, contain provisions on import tax and export tax different from this Law, the provisions of such treaties shall apply.²⁸⁸

The bases for calculating import tax and export tax are 1) the unit volume of each actually imported or exported goods item inscribed in the customs declarations, 2) tax calculation prices, and 3) tax rates in percentage (%). For goods items subject to absolute tax, the tax calculation bases are 1) the unit volume of each actually imported or exported goods item inscribed in the customs declarations, and 2) the absolute tax rate provided for a goods unit.²⁸⁹

The tax payment currency is the Vietnamese dong; in cases where it is permitted to pay tax in foreign currencies, tax must be paid in freely convertible currencies.²⁹⁰

Regarding tax calculation prices,²⁹¹ the tax calculation prices for export goods, are the contractual sale prices at the exporting border-gates. For import goods, the tax calculation prices are the actually paid prices at the first importing border-gate under contracts, in conformity with international commitments.

In terms of tax rates, Vietnam's export promotion policy result in tax exemption for most of export goods, except for some categories of goods such as ; rice, cashew nuts, mineral, forest products, fish, steel scarp.²⁹² Tax rates for these products vary from 0-5%.²⁹³ Tax rates for export goods shall be specified for each good item in the Export Tariff.

Tax rates for import goods are divided into 3 groups, namely 'ordinary tax rates', 'preferential tax rates' and 'special preferential tax rates'.²⁹⁴

- (1) The **preferential tax rates** shall apply to import goods originating from countries, groups of countries or territories, which apply the most favored nation treatment in their trade relations with Vietnam.
- (2) The **special preferential tax rates** shall apply to import goods originating from countries, groups of countries or territories, which apply special preferences on import tax to Vietnam.

Currently it is mainly applicable to ASEAN countries. In conformity with ASEAN Free Trade Area (AFTA) with Common Effective Preferential Trading Tariff (CEPT), Vietnam is committed to cancelling import duties applicable to goods in the non-exclusive list in 2015, as well as gradually

²⁸⁸ Article 6 of the 2005 Law on Import Tax and Export Tax.

²⁸⁹ Clause 1, Article 8 of the 2005 Law on Import Tax and Export Tax.

²⁹⁰ Clause 3, Article 8 of the 2005 Law on Import Tax and Export Tax.

²⁹¹ Article 9 of the 2005 Law on Import Tax and Export Tax.

²⁹² Circular 219/2013/TT-BTC and Circular 26/2015/TT-BTC

²⁹³ Institute of East Asian Studies, *Information about Vietnam* (Board of Investment of Thailand, 2009), 87.

²⁹⁴ Article 10 of the 2005 Law on Import Tax and Export Tax.

transfer goods from temporarily exclusive, sensitive and highly sensitive lists to the non-exclusive one.²⁹⁵

- (3) The **ordinary tax rates** shall apply to import goods originating from countries, groups of countries or territories, which do not apply the most favored nation treatment or special preferences on import tax to Vietnam. The ordinary tax rates shall not be 70% higher than the preferential tax rates of the same goods items specified by the Government.

Moreover, in some special cases, import goods shall also be additionally subject to one of the following taxation measures:

- (1) Raising the import tax rates, for goods excessively imported into Vietnam according to the provisions of law on safeguard in the import of foreign goods into Vietnam;
- (2) The anti-dumping tax, for imports dumped into Vietnam according to the provisions of law on anti-dumping of imports into Vietnam;
- (3) The anti-subsidy tax, for subsidized goods imported into Vietnam according to the provisions of law on anti-subsidy for imports into Vietnam;
- (4) The anti-discrimination tax, for goods imported into Vietnam from countries, groups of countries or territories, which practice discrimination with regard to import tax or apply other discriminatory measures, according to the provisions of law on the most favored nation treatment and the national treatment in international trade.

As for tax exemption, the 2005 Law on Import Tax and Export Tax provides that import goods or export goods shall be exempt from import tax or export tax in the following cases:²⁹⁶

- (1) Goods temporarily imported for re-export or temporarily exported for re-import for participation in exhibitions, trade fairs or goods display; machinery, equipment and working devices temporarily imported for re-export or temporarily exported for re-import in service of work within a certain period of time;
- (2) Goods being movable assets according to the Government's regulations²⁹⁷;
- (3) Import and export goods of Vietnam-based foreign organizations or individuals entitled to diplomatic privileges or immunities within the norms prescribed by the Government in accordance with treaties to which the Socialist Republic of Vietnam is a contracting party;

²⁹⁵ VIETRADE, Vietnam Trade Promotion Agency -, 'Rules and Regulation on Trade : Taxation' (2011) <http://www.vietrade.gov.vn/en/index.php?option=com_content&id=783&Itemid=179>

²⁹⁶ Article 16 of the 2005 Law on Import Tax and Export Tax

²⁹⁷ According to the Decision on allowance of baggage, movables, gifts, donations and sample goods that qualifies for tax exemption, tax exemption consideration and non-taxable status no.31/2015/QĐ-TTg (Decision 31/2015/QĐ-TTg), goods being movable assets consist of used or brand-new personal items used for work and daily life activities, exclusive of motor vehicles and motorbikes of individual/organizations

- (4) Goods imported for processing for foreign partners then exported or goods exported to foreign countries for processing for Vietnam then re-imported under processing contracts;
- (5) Import and export goods within the duty-free luggage quotas of persons on entry or exit under the Government's regulations;
- (6) Goods imported to create fixed assets of projects entitled to investment incentives or investment projects funded with Official Development Assistance (ODA) capital sources, including:
 - Equipment and machinery;
 - Special-use means of transport included in technological chains and means of transport used for transporting workers;
 - Components, details, parts, spare parts, fittings, molds and accessories accompanying machinery, equipment and special-use means of transport
 - Raw materials and supplies used for manufacture of equipment and machinery included in technological chains or for manufacture of components, details, parts, spare parts, fittings, molds and accessories accompanying equipment and machinery
 - Building materials which cannot be produced at home;
- (7) Goods imported in service of petroleum activities, including:
 - Equipment, machinery, spare parts and special-use means of transport necessary for petroleum activities;
 - Supplies necessary for petroleum activities, which cannot be produced at home;
- (8) Goods imported for direct use in activities of scientific research and technological development, including machinery, equipment, spare parts, supplies and means of transport, which cannot be produced at home, technologies which cannot be created at home; scientific documents, books and newspapers;
- (9) Raw materials, supplies and accessories imported for production activities of investment projects on the list of domains where investment is particularly encouraged or the list of geographical areas meeting with exceptional socio-economic difficulties shall be exempt from import tax for five years after the commencement of production;
- (10) Goods produced, processed, re-cycled or assembled in non-tariff zones without the use of raw materials and accessories imported from foreign countries, when being imported into the domestic market; for cases of using raw materials and accessories imported from foreign countries, when goods are imported into the domestic market, only import tax on imported raw materials and supplies constituting these goods must be paid;
- (11) Other specific cases decided by the Prime Minister²⁹⁸.

²⁹⁸ For example;

- Decision 08/2014/QĐ-TTg of the Prime Minister, dated on 22 January 2014, on the exemption of import and export tax for gold material imported or exported by Vietnam's State Bank;

As for time limits for tax payment, for export goods, it is 30 days as from the date the taxpayers register customs declarations. For import goods being consumer goods, the import tax must be fully paid before the receipt of goods. For import goods being supplies and raw materials for the production of export goods, the time limit for tax payment shall be 275 days as from the date the taxpayers register customs declarations²⁹⁹.

1.2 Regulation of Anti-dumping

Vietnam introduced the *Ordinance on Anti-dumping of Imports into Vietnam* in April 2004, which came into force on 1 October 2004³⁰⁰. This is Vietnam's first legal document providing the required factors for defining anti-dumping and anti-dumping duties. In addition, Vietnam has also issued other legal documents to implement and guide in details the Ordinance, including:

- Decree No.90/2005/ND-CP of the Government, dated 11 July 2005, sets detailed regulations and guidance for implementing the Ordinance on Anti-dumping of Imports into Vietnam.
- Circular No.106/2005/TT-BTC of the Ministry of Finance, dated 5 December 2005, lays out guidelines on the collection, remittance and refund of anti-dumping duty and anti-subsidy duty.
- Decree No. 04/2006/ND-CP of the Government, dated 9 January 2006, sets up the Council for Handling of Anti-dumping, Anti-subsidy and Safeguard cases and defines its functions, responsibilities, judiciary authority and organizational structure.

The Ordinance and those legal documents address main issues of anti-dumping below:

Determining of imports dumped into Vietnam

Goods imported into Vietnam may be considered as dumping if they are sold at a price below the normal price.³⁰¹

The normal price of an import into Vietnam is a comparable price of the like goods³⁰² currently on sale in the domestic market of the exporting country under normal commercial conditions. In cases where there are no like goods on sale in the domestic

-
- Decision 54/2014/QĐ-TTg of the Price Minister, dated 19 September 2014, on the exemption of import tax for accessories imported for producing or assembling medical equipment which need to be given priority for research or manufacture.

²⁹⁹ Article 15 of the 2005 Law on Import Tax and Export Tax

³⁰⁰ Ordinance No.20/2004/PL-UBTVQH11 of 29 April 2004 on anti-dumping of imports into Vietnam

³⁰¹ Article 3, the Ordinance No.20/2004/PL-UBTVQH11

³⁰² According to Clause 6, Article 2 of the Ordinance No.20/2004/PL-UBTVQH11, 'Like goods' means goods bearing all of their characteristics resembling goods which are requested to be subject to the application of anti-dumping measures or, in the absence of such goods, it means goods having many of their basic characteristics resembling goods which are requested to be subject to the application of anti-dumping measures.

market of the exporting country (or there are like goods with a negligible volume, quantity or value³⁰³), the normal price shall be determined in either of the following two ways:

- Prices of like goods of the exporting country, which are on sale in the market of a third country;
- Reasonable costs of the goods plus other reasonable expenses and profits, determined at each stage from production to circulation on the market of exporting country or of a third country.

Anti-dumping Investigation³⁰⁴

Organizations or individuals can request for an anti-dumping investigation (being regarded as representatives of a domestic industry), if both of the following two conditions are satisfied:

- (a) The volume, quantity or value of goods they produce or represent accounts for at least 25% of the total volume, quantity or value of the like goods of the domestic industry.
- (b) The volume, quantity or value of goods prescribed at Point (a) of this Clause and of the domestic producers that support the filing of dossiers of request for application of anti-dumping measures must be bigger than the volume, quantity or value of the like goods of the domestic producers that oppose the requests for application of anti-dumping measures.

Government institutions responsibility for anti-dumping rulings³⁰⁵

The Ministry of Industry and Trade (MOIT) shall be responsible for anti-dumping investigations and other related decisions.

Vietnam Competition Administration Department (VCAD)³⁰⁶ (which belongs to MOIT) shall first investigate the anti-dumping cases and then propose to MOIT to issue decisions on applying provisional anti-dumping duties if necessary.

The Council for Handling Anti-dumping cases, which also belongs to MOIT,³⁰⁷ will review VCAD's conclusions and issue guidance and advices of anti-dumping measures to be imposed.

³⁰³ Vietnam's regulations do not define "negligible volume, quantity or value". However, according to WTO regulation, sales of like product shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5% or more of the sales of the products under consideration to the importing member (Article 2, WTO Anti-dumping Agreement).

³⁰⁴ Article 8 of the Ordinance No.20/2004/PL-UBTVQH11

³⁰⁵ Article 7 of the Ordinance No.20/2004/PL-UBTVQH11

³⁰⁶ Decree No. 06/2006/ND-CP of the Government, dated 9 January 2006, defines the functions, responsibilities, judiciary authority, and organization structure of VCAD.

³⁰⁷ Decree No. 04/2006/ND-CP of the Government, dated 9 January 2006, sets up the Council for Handling of Anti-dumping, Anti-subsidy and Safeguard cases and defines its functions, responsibilities, judiciary authority and organizational structure.

Minister of Industry and Trade shall make the final decision on the application of anti-dumping measures.

Anti-dumping measures:

Anti-dumping measures shall be applied when the following two conditions are met:

- (i) The dumping margin³⁰⁸ exceeds 2% of the prices of the goods imported into Vietnam;
- (ii) The dumping action causes or threatens to cause material injury³⁰⁹ to the domestic industry.

The authority may apply the following three anti-dumping measures.³¹⁰

Provisional anti-dumping duties: 60 days after the issuance of investigation decisions, on the basis of preliminary investigation conclusions, MOIT may decide to impose provisional antidumping duties. The term limit for the application of provisional measure must not exceed 120 days from the issuing date of the decision.

The commitment measures: After the preliminary conclusions, exporters may make the commitments with MOIT or domestic producers to either (i) adjust selling prices or (ii) restrict the volume (quantity) or value of the goods sold in Vietnam.

The anti-dumping duties: This duty may be imposed in addition to tariffs on imported goods into Vietnam which cause or threaten to cause material injury to a domestic industry.

If the commitments are not fulfilled, the Minister of Industry and Trade shall decide whether to impose anti-dumping duties, based on the final conclusions and recommendations of the Council for Handling Anti-dumping cases. The rates of anti-dumping duties must not exceed the dumping margins determined in the final conclusions. The term of the duty shall not exceed 5 years. However, it may be extended if a review shows that a termination of the anti-dumping duty would likely lead to a continuation of dumping and injury.

WTO accession and Vietnam's regulations on anti-dumping

Vietnam became WTO's 150th member in January 2007. It has committed to comply with WTO's trade rules. During the 12-year period of negotiation, Vietnam's legal documents were under constant review with reference to WTO rules, especially those on anti-

³⁰⁸ Dumping margin is calculated as the difference between the normal price and the prices of the goods imported into Vietnam.

³⁰⁹ Material injury to a domestic industry is reflected as a significant decline or a drop in growth in terms of capacity, price, sale, profit, production, employment, and investment of the industry.

³¹⁰ Articles 20-22 of the Ordinance No.20/2004/PL-UBTVQH11.

dumping regulations.³¹¹ Vietnam's new anti-dumping legislation is currently in full compliance with WTO's Anti-Dumping Agreement.³¹²

2. Law on Foreign Investment

2.1 Development of law on foreign investment prior to 2005

Foreign investment is “the remittance of capital in cash or other lawful assets by foreign investors into Vietnam in order to carry out investment activities”.³¹³

Prior to 2005, Vietnam had regulated foreign and domestic investments under two separate legal regimes. The first Law on Foreign Investment was enacted on 29 December 1987 and marked the beginning of the legal renovation process to implement the *Doi Moi* reforms. Since then, numerous measures have been adopted to create an attractive investment environment for foreign investors as evident in more liberal policies and regulatory changes.

The 1987 Law was later amended in 1990 and 1992.³¹⁴ Vietnam permitted the private sector to join foreign direct investment (FDI) projects since 1990 and in 1992 significant regulatory changes occurred so as to minimize constraints and facilitate access to licenses for FDI. The amended Law on Foreign Investment allowed FDI for building infrastructure facilities, extended operational period and provided for equal tax treatment between the wholly foreign-owned enterprises (WFOEs) and joint ventures (JVs). The 1992 Constitution also played a supportive role in acknowledging foreign investment for the first time in Vietnamese history.³¹⁵

In 1996, the National Assembly enacted the Law on Foreign Investment dated 12 November 1996 and repealed the 1987 Law on Foreign Investment. The 1996 Law recognized new forms of investment including, Build-Operate-Transfer (BOT), Build-Transfer-Operate (BTO), and Build-Transfer (BT) contracts, with the objective to attract FDI into infrastructure sector. The 1996 Law also conferred the right to assign investors' interests in foreign owned enterprises to other parties. An objective of the 1996 Law is to better distribute FDI throughout the country because FDI only occurred in some regions. According to the Vietnamese Government Statistical Office (GSO), the overall trend of FDI inflows into Vietnam had increased continuously during 1988 – 1996 with the highest

³¹¹ Le Thi Thuy Van and Sarah Y. TONG, 'Vietnam and Anti-dumping: Regulations, Applications and Responses' (2009) <<http://www.eai.nus.edu.sg/EWP146.pdf>>.

³¹² Ibid.

³¹³ Article 3.12 of the 2005 Law on Investment

³¹⁴ The Law on the Amendment of and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam, dated 30 June 1990, and the Law on the Amendment of and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam, dated 23 December 1992.

³¹⁵ As part of economic policies, the Vietnamese Constitution recognizes foreign owned capital under different forms as a legitimate sector, encourages foreign investors to invest capital and technology, ensures the lawful ownership of assets, and guarantees that foreign invested enterprises will not be nationalized. (Article 16 and 25 of the 1992 Constitution.)

amount of the registered capital in 1996.³¹⁶ In the years following the Asian financial crisis of 1997 - 1998, Vietnam opted to change legal environment in order to stimulate FDI inflows.

In 2000, the 1996 Law on Foreign Investment was amended, which came into effect on 1 July 2000.³¹⁷ Three basic forms of investment were available: business co-operation contracts (BCCs), JVs, and WFOEs.³¹⁸ JVs were the most common form of investment due to privileges of partnering with the state owned enterprises (SOEs). Nevertheless, the joint ventures format presented a great deal of difficulties to foreign investors.³¹⁹ A JV and a WFOE were also required to be in the form of a limited liability company.³²⁰ A positive aspect of this Law was that a foreign-owned capital enterprise was allowed to mortgage the land-use rights as security for loans borrowed from foreign credit institutions in Vietnam.³²¹

2.2 Current Law on Foreign Investment

In 2005, as part of the legal modernization process preparatory to WTO accession, the National Assembly promulgated the Law on Investment (No. 59/2005/QH11 dated 29 November 2005), which came into force on 1 July 2006 and repealed the 1996 Law on Foreign Investment and the 1998 Law on Domestic Investment Encouragement. The 2005 *Law on Investment* is the first unified law on both foreign and domestic investments and provides equal treatment before the law to all investors from all economic sectors and as between domestic and foreign investments.³²² In addition to satisfying WTO commitments and being in conformity with international standards, the 2005 Law on Investment is also in line with the Government's initiatives aiming to improve the investment climate and remove any hindrance to foreign investors.

Generally, foreign investment is offered many preferential treatments under the 2005 Law on Investment as compared to the 1996 Law on Foreign Investment. The 2005 Law on Investment provides for various investment incentives depending on sectors and geographical areas.³²³ According to article 27, the encouraged investment sectors include:

- (i) manufacture of new materials, high-tech products, biotechnologies, information technology, and production of new energy;
- (ii) labor intensive industries;

³¹⁶ The Government Statistical Office (GSO) <http://www.gso.gov.vn/default_en.aspx?tabid=471&idmid=3&ItemID=15488>.

³¹⁷ This was pursuant to the Law on the Amendment of and Addition to a Number of Articles of the Law on Foreign Investment (No. 18/2000/QH10 of 9 June 2000). The Government later issued Decree No. 24/2000/ND-CP of 31 July 2000, which was later amended by Decree No. 27/2003/ND-CP of 19 March 2003 to elaborate on the implementation of the amended Law on Investment.

³¹⁸ Article 4 of the 1996 Law on Foreign Investment as amended in 2000

³¹⁹ There existed complications mainly resulted from regulatory procedures, inadequate administration, and corruption.

³²⁰ Articles 6 and 15 of the 1996 Law on Foreign Investment as amended in 2000.

³²¹ Article 46.3 of the 1996 Law on Foreign Investment as amended in 2000.

³²² Article 4.2 of the 2005 Law on Investment.

³²³ Article 32.1 of the 2005 Law on Investment.

- (iii) construction and development of infrastructure facilities and important industrial projects with a large scale;
- (iv) breeding, growing and processing agricultural, forestry and sea products as well as creation of new plant and animal variety, production of salt;
- (v) professional development of education, training, health, sports, physical education and ethic culture;
- (vi) development of traditional crafts;
- (vii) use of high technologies or modern techniques; protection of ecological environment; research, development and nourishment of high technologies and
- (viii) other production and service domains which need to be promoted.

As prescribed in article 28, the encouraged investment geographical areas are: (i) areas with difficult socio-economic conditions, areas with especially difficult socio-economic conditions; and (ii) high-tech zones, economic zones, industrial zones, and export processing zones. Accordingly, the investment incentives include: Corporate Income Tax (CIT) exemptions and reductions; a land rental exemption or reduction, import duty exemptions; and losses carry forward.³²⁴ As recognized in the Constitution, the 2005 *Law* also provides for investment guarantees, lawful assets and invested capital of investors will not be expropriated or confiscated.³²⁵ Nevertheless, article 6.2 stipulates two exceptions: the real necessity for the purpose of national defense and security, and the national interest. Affected investors, in this regard, will be compensated or awarded damages at the market price calculated at the time of the compulsory acquisition or requisition.

Furthermore, foreign investors can invest in all types of business except for those specifically prohibited.³²⁶ According to article 30, the prohibited investment sectors are:

- (i) projects which are detrimental to national defense and security, and the public interest;
- (ii) projects which are detrimental to historical and cultural traditions and ethics, and Vietnamese fine customs;
- (iii) projects which harm people's health, or which destroy natural resources and the environment;
- (iv) projects for the treatment of toxic wastes brought into Vietnam; and
- (v) projects for the manufacture of any type of toxic chemicals or for the use of chemical agents prohibited by international treaties.

As with many other countries, Vietnam restricts investment in sensitive fields, i.e. the so-called "conditional sectors". Investment projects in conditional sectors must satisfy certain conditions to be licensed. The conditional sectors pursuant to article 29 of the Law on Investment are:

³²⁴ Article 33-37 of the 2005 Law on Investment.

³²⁵ Article 6.1 of the 2005 Law on Investment.

³²⁶ Article 4.1 of the 2005 Law on Investment.

- (i) sectors impacting on social order, safety, or national security;
- (ii) banking and finance;
- (iii) sectors impacting public health;
- (iv) culture, information, the press and publishing;
- (v) entertainment services;
- (vi) real estate businesses;
- (vii) surveying, prospecting, exploration and mining of natural resources; the ecological environment;
- (viii) development of education and training; and
- (ix) other sectors as stipulated by laws.³²⁷

Besides that, “conditional sectors” for foreign investors also cover “investment fields under international treaties to which Vietnam is a party committing to limited market access to foreign investor”.³²⁸

More importantly, the 2005 Law on Investment offers increased forms of investment, foreign investors can directly invest in Vietnam through the following forms:

- (i) WFOEs;
- (ii) JVs between domestic and foreign investors;
- (iii) contractual forms of BCCs, BTO, BOT and BT;
- (iv) investment for expansion;
- (v) purchase of shares or contribution of capital in order to participate in management of investment activities;
- (vi) merger and acquisition;
- (vii) other forms of direct investment.³²⁹

Unlike the 1996 Law on Foreign Investment, the establishment of a JV or a WFOE can be in any forms of company including private enterprises pursuant to the 2005 Law on Enterprises³³⁰. In addition to the entry forms provided by the 2005 Law on Investment, the 2005 Commercial Law lays down that foreign business can establish representative offices or branches in Vietnam.³³¹ Moreover, foreign investors can opt to indirectly invest through purchase of shareholding, shares, bonds, and other financial instruments; securities investment funds; or other intermediary financial institutions.³³²

With regard to FDI, whether it is in the form of a WFOE, JV, BCC, or any other permitted forms, an investment certificate (IC) must be obtained from the relevant licensing authorities. To receive an IC, a foreign investor will complete either an investment

³²⁷ Decree 108/2006/ND-CP dated 22 September 2006 detailing guidelines about the conditional sectors.

³²⁸ Ibid Annex C.

³²⁹ Article 21 of the 2005 Law on Investment.

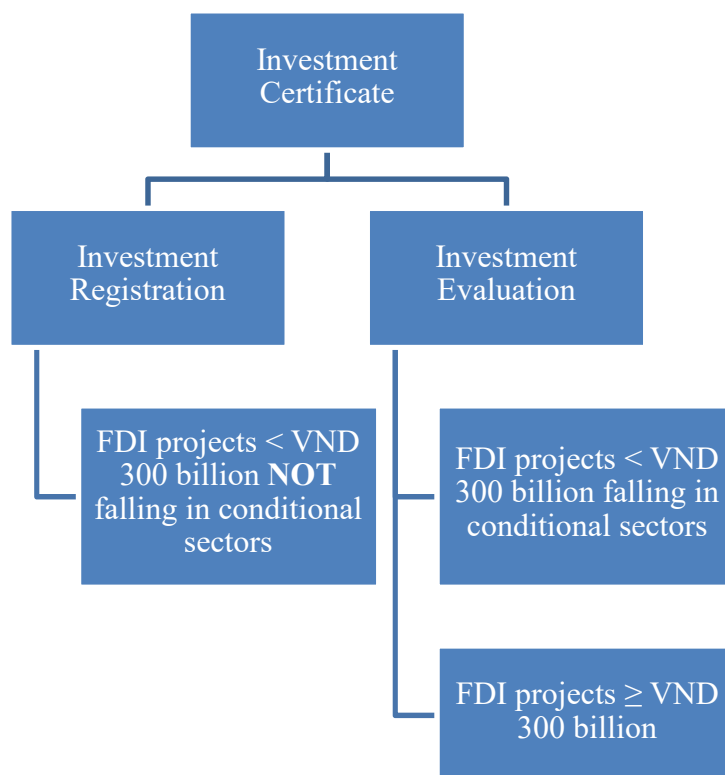
³³⁰ According to Article 4(a) of the 2005 Law on Investment, ‘Investor’ means any organization or individual carrying out investment activities in accordance with the law of Vietnam, comprising enterprises from all economic sectors established in accordance with the *Law on Enterprises*.

³³¹ Articles 16-23 of the 2005 Law on Investment.

³³² Article 26.1 of the 2005 Law on Investment.

registration or an investment evaluation procedure based on the size and type of project as shown in figure below.

Figure 9: Criteria for obtaining an investment certificate



The registration procedure applies to projects:

- 1.) which have total invested capital less than VND 300 billion (approximately USD 15,000,000); and
- 2.) which are not on the list of “conditional” sectors.³³³

The documents required for investment registration as stipulated in article 46.2 are:

- 1.) Document on investment registration contents, including legal status of the investor; objectives, size and location of the investment project; investment capital and implementation schedule of the project; land use requirements and commitments to environment protection; proposal for investment incentives (if any).
- 2.) A report on financial capability of the investor;
- 3.) JV contract or BCCs and the enterprise charter (if any).

In this regard, the time limit for issuance of an IC is within 15 business days upon the receipt of a complete and valid application.³³⁴

³³³ Article 46.1 of the Law on Investment.

³³⁴ Article 46.1 in conjunction with article 46.3 of the Law on Investment.

As for **the evaluation procedure**, which usually is more cumbersome, it applies to projects not qualified for registration, i.e. having the total invested capital of VND 300 billion or more, or being on the list of “conditional” sectors.³³⁵ In addition to a project dossier required for the registration procedure, the evaluation procedure requires foreign investors to submit, inter-alia, eco-technical explanatory statement, and explanatory statement of satisfactory regarding prescribed conditions (only for projects falling into conditional sectors).³³⁶ Under the appraisal process, the time frame is prolonged up to 30 business days from the date of receipt of a complete and valid file, or up to 45 days where necessary.³³⁷ The contents of an issued IC include the approved investment projects and the operational duration not exceeding 50 years.³³⁸ The IC also serves as a business registration certificate of the cooperate entity.³³⁹ Revocation of an IC occurs when an investor fails, without any legitimate reason, to start the approved project within 12 months.³⁴⁰

On the subject of the licensing authorities, the Provincial People’s Committee is generally the authority responsible for approving all the foreign investment projects except for the following cases:

- 1.) The Board of Management (BOM) of industrial zones, export processing zones, economic zones, and high-tech zones are responsible for issuing a license within their zones;
- 2.) The Ministry of Planning and Investment (MPI) is responsible for approving public-private partnership projects (PPP) and national important BOT projects;
- 3.) The Prime Minister’s approval is obligatory for a large number of investment projects including:
 - a) printing and distributing newspapers or printed matters;
 - b) telecommunications and internet services;
 - c) independent scientific research establishments;
 - d) commercial operation of sea and air transportation; and
 - e) Projects having a total invested capital of VND 1,500 billion or more in sectors including: business and production of alcohol, beer; business in electricity; and construction of internal waterway infrastructure, road, and railway.

³³⁵ Article 47.1 of the 2005 Law on Investment.

³³⁶ Article 48 and 49 of the Law on Investment

³³⁷ Article 47.2 of the 2005 Law on Investment.

³³⁸ Accordingly, the Government has the authority to make a decision on the extension of the operational duration not exceeding 70 years for the maximum duration. (Article 52 of the 2005 Law on Investment)

³³⁹ Article 50.1 of the 2005 Law on Investment.

³⁴⁰ Article 64.2 of the 2005 Law on Investment.

In addition to the Law on Investment, a number of bilateral investment treaties that Vietnam signed with other countries streamline its FDI regulatory framework.³⁴¹ Although Vietnam successfully adopted the 2005 Law on Investment prior to WTO accession, an abundance of legal documents was issued as supplements to the Law. Significant legal documents issued since 2005 include:

- (i) Decree No.101/2006/ND-CP, dated 21 September 2006 prescribing regulations on re-registration or transformation of foreign owned enterprises;
- (ii) Decree No.108/2006/ND-CP, dated 22 September 2006 detailing guidelines for implementing the Law on Investment; and
- (iii) Decision No.1088/2006/QDBKH of the Ministry of Planning and Investment, dated 19 October 2006 providing document forms for investment procedures in Vietnam.

Consequently, a plethora of investment policies and regulations created a highly complicated system posing difficulties to foreign investors. As of 2014, the MPI proposed a draft of the amended Investment Law to the National Assembly for approval.³⁴² The amended Law is expected to remove existing drawbacks and further enhance the business environment in Vietnam.

3. Laws on Immigration

On 16 June 2014, the Law No.47/2014/QH13 on Entry, Exit and Residence of foreigner in Vietnam has been adopted by the National Assembly. This Act enters into force on 1 January 2015 and replace the Ordinance No.24/2000/PL-UBTVQH of the Standing Committee of Vietnam's National Assembly, dated 28 April 2000 on Entry, Exit and Residence of Foreigners in Vietnam. Rules on visa can be divided into 2 periods: (i) Before 1 January 2015 and (ii) From 1 January 2015.

The legal documents of Vietnam on visa include:

- Law No.47/2014/QH13, dated 16 June 2014 on Entry, Exit and Residence of Foreigner in Vietnam, entry into force on 1 January 2015;
- Ordinance No.24/2000/PL-UBTVQH of the Standing Committee of Vietnam's National Assembly, dated 28 April 2000 on Entry, Exit and Residence of Foreigners in Vietnam (only valid until 1 January 2015);
- Joint Circular No.04/2002/TTLT/BCA-BNG of the Ministry of Public Security and the Ministry of Foreign Affairs, dated 29 January 2002 guiding the

³⁴¹ In 2001, the U.S.-Vietnam Bilateral Trade Agreement (BTA) was signed, effective 10 December 2001. The Agreement contributed to a considerable improvement to the investment climate in Vietnam. It is also one of the most comprehensive agreements Vietnam has signed as the Agreement not only covers investment protection but also trade in goods, trade in services, and the protection of intellectual property rights. Furthermore, in June 2007, the U.S. and Vietnam signed a Trade and Investment Framework Agreement to consolidate investment relationship between the two countries.

³⁴² Vietnam Briefing, 'Vietnam Issues Revised Law to Improve Local Investment', 12 February 2014 (Dezan Shira & Associates) <<http://www.vietnam-briefing.com/news/vietnam-issues-revised-law-improve-local-investment-climate.html/>>

implementation of Decree No.21/2001/NĐ-CP of the Government, dated 28 May 2001 detailing on the implementation of the Ordinance on Entry, Exit and Residence of Foreigners in Vietnam;

- Joint Circular No.01/2007/TTLT-BCA-BNG of the Ministry of Public Security and the Ministry of Foreign Affairs, dated 30 January 2007 amending and supplementing some provisions of the Joint Circular No.04/2002/TTLT/BCA-BNG of the Ministry of Public Security and the Ministry of Foreign Affairs, dated 29 January 2002 (guiding the implementation of Decree No.21/2001/NĐ-CP of the Government, dated 28 May 2001 detailing on the implementation of the Ordinance on Entry, Exit and Residence of Foreigners in Vietnam);
- Joint Circular No. 01/2012/TTLT/BCA-BNG of the Ministry of Security Public and the Ministry of Foreign Affairs, dated 3 January 2012 amending and supplementing some provisions of the Joint Circular No.04/2002/TTLT/BCA-BNG of the Ministry of Public Security and the Ministry of Foreign Affairs, dated 29 January 2002 and the Joint Circular No. 05/2009/TTLT/BCA-BNG of the Ministry of Public Security and the Ministry of Foreign Affairs on entry, exit.
- Circular No.189/2012/TT-BTC of the Ministry of Finance dated 9 November 2012 on the regime of collection, remittance, management and use of fees and charges applicable at the Vietnamese diplomatic missions or consulates in foreign countries;
- Circular No.190/2012/TT- BTC of the Ministry of Finance dated 9 November 2012 on the regime of collection, remittance, management and use of fees and charges applicable in Vietnam;
- Decision No.45/2006/QĐ-Tags of Prime Minister, dated 28 February 2006 on granting and controlling APEC business travel card (ABTC);
- Decision No.50/2006 / QĐ-BTC of the Ministry of Finance, dated 22 September 2006 on the regime of collection, remittance, management and use of ABTC fees and charges;
- Circular No.10/2006/ TT-BCA of the Ministry of Public Security, dated 9 September 2006, issued in furtherance of Decision No. 45/2006 / QĐ-TTg of Prime Minister on the regime of granting and controlling ABTC.
- Bilateral or unilateral agreements on the exemption of visa between Vietnam and foreign countries. (Up to June 2014, Vietnam has concluded 78 bilateral agreements on the exemption of visa, 76 of them have come into effect. The bilateral agreements with Costa Rica and Bolivia haven't entered into force yet. Additionally, the nationals of 6 countries such as Japan, Korea, Denmark, Norway, Sweden and Finland are exempted from visa to Vietnam according to 2 unilateral agreements: Decision No.09/2004/QĐ-BNG of the Ministry of Foreign Affairs, dated 30 June 2004 on exemption from visa to Vietnam for the nationals of Japan and Korea; Decision No. 808/2005/QĐ-BNG of the Ministry of Foreign Affairs, dated 13 April 2005 on exemption from visa to Vietnam for the nationals of Denmark, Norway, Sweden and Finland).

3.1 Before 1 January 2015

In this period, the Ordinance No.24/2000/PL-UBTVQH on Entry, Exit and Residence of Foreigners in Vietnam was the principal legal document. According to article 4, Ordinance No.24/2000/PL-UBTVQH, a foreigner entering and exiting Vietnam is required to hold a valid passport or equivalent document and visa issued by a Vietnamese authority unless he/she is entitled to visa exemption.

Foreigners exempted from entry visa to Vietnam include:

- Officials and employees of the ASEAN Secretariat (for 30 days) and ASEAN citizens (duration of stay is 30 days for Citizens of Cambodia, Malaysia, Indonesia, Singapore, Thailand, Laos; 21 days for Citizens of Philippines, and 14 days for Citizens of Brunei and Myanmar);
- Holder of ABTC (for 60 days);
- Persons who are on transit wish to enter Vietnam for visits, tourism on this occasion.

However, foreigners exempted from entry visa to Vietnam are required to: hold a valid passport for at least of 3 months from the date of entry, have a round-trip ticket or go to other countries, be not subject prohibited to enter to Vietnam.

Other foreigners who are not entitled to visa exemption must obtain a visa to enter into Vietnam. The information on visa categories, procedure to apply for Vietnamese visas and visa fee are as follows:

3.1.1 Visa Descriptions

a. Types of visa according to number of entries³⁴³

- Single visa which is valid for use only once during the period of not more than 12 months;
- Multiple visa which is valid for use more than once during the period of not more than 12 months

Entry Visa to Vietnam is non-extendable.

b. Types of visa according to person concerned³⁴⁴

A1: granted to official members of delegations invited by the Central Party Committee, the National Assembly, the State President, the Government and guests of rank equivalent to the ranks of ministers, vice ministers, presidents or vice presidents of the People's Committee of the provinces or centrally-run cities, their accompanying dependents and servants.

³⁴³ Article 7, clause 2, Ordinance No. 24/2000/PL-UBTVQH.

³⁴⁴ Chapter V, Article 1, Joint Circular No. 04/2002/TTLT/BCA-BNG.

A2: granted to members of foreign missions and their accompanying dependents and servants

A3: granted to persons who enter Vietnam to work with foreign missions or to visit members of foreign missions

B1: granted to persons who enter Vietnam to work with the Supreme People's Procuracy, the Supreme People's Court, the ministries, the ministerial-level agencies, the governmental agencies, the People's Committees of the provinces or centrally-governed cities, and the central bodies of the mass organizations

B2: granted to persons who enter Vietnam to implement investment projects already licensed by competent Vietnamese State agencies

B3: granted to persons who enter Vietnam to work with Vietnamese enterprises

B4: granted to persons who enter Vietnam to work at representative offices, branches of economic, cultural or other professional organizations of foreign countries, Vietnam-based non-governmental organizations

C1: granted to persons who enter Vietnam for tourist purposes

C2: granted to persons who enter Vietnam for other purposes

D: granted to persons who enter Vietnam without invitation or reception by any agencies, organizations or individuals wishing to enter and stay in Vietnam for no more than 15 days, meeting all requirements of type D Visa (Details shall be prescribed by overseas Vietnamese Diplomatic Missions).

According to the Joint Circular No. 04/2002/TTLT/BCA-BNG guiding the implementation of the Government's Decree No.21/2001/ND-CP of May 28, 2001 detailing the implementation of the ordinance on entry, exit and residence of foreigners in Vietnam, type D visa is a single-entry visa which shall be valid no more than 15 days, while visas in other codes shall be valid for 30 days or more

c. Forms³⁴⁵

- Sticker: pasted and sealed directly onto an applicant's passport.
- Loose-leaf: a separate visa attached to a passport

Applicants are eligible for **loose-leaf visa** in the following cases:

- Valid Passport runs out of blank visa pages;
- Passport issued by countries that have not yet established diplomatic/consular relations with Vietnam;

³⁴⁵ Article 3, Clause 1, Decree No.21/2001/NĐ-CP and Chapter II, Clause 1, point c, Joint Circular No. 04/2002/TTLT/BCA-BNG.

- Security or diplomatic reasons;
- Overseas Vietnamese holds an eligible travel document, which was informed and accepted officially in Vietnam in advance through diplomatic channels.

3.1.2 Procedure to Apply for Vietnamese Visas

a. Competent authorities

- Vietnamese diplomatic missions or consulates in foreign countries;
- The entry and exit management agency of the Ministry of Public Security (in case of application of visa on- arrival).³⁴⁶

b. Procedure to apply for visa at Vietnamese diplomatic missions or consulates in foreign countries

Depending on person who applies for visa, procedure to apply for visa is different. They are may be

- foreigners who are invited to enter to Vietnam, or
- foreigners who enter to Vietnam without invitation, or
- Vietnamese holding passport of foreign countries.

1. For whom may be invited to enter to Vietnam

- ❖ Agencies, organizations that invite foreigners into Vietnam shall send their written requests to the consular office of the Ministry for Foreign Affairs (in case of visa type A1, A2, A3) or to the entry and exit management agency of the Ministry of Public Security (for the remaining cases, except visa type D). A written request shall be replied within no more than 5 working days after the receipt of the request³⁴⁷. Additionally, if agencies, organizations that invite foreigners into Vietnam are the central authority of organizations of people; enterprise established under the laws of Vietnam; branches of foreign companies; representative offices of economic, cultural and other professional organizations of foreign countries located in Vietnam; Agencies and other organizations established and operating legally in Vietnam, it is obliged to submit a dossier to prove legal status including:
 - License or decision of the competent authorities on the establishment of the organization;
 - Registration document with the endorsement of the People's Committees where the organization is headquartered;
 - Document presenting seal and signature of the authorized person of the organization.

³⁴⁶ Article 20, Ordinance No. 24/2000/PL-UBTVQH.

³⁴⁷ Article 5, Ordinance No. 24/2000/PL-UBTVQH.

- ❖ Individuals that invite foreigners into Vietnam shall send their written requests to the entry and exit management agency of the Ministry of Public Security with the endorsement of the People's Committees where this individual lives, of the organization where he studies or works (in case of the inviter is Vietnamese or permanently residing foreigner, temporarily residing foreigner in Vietnam for at least 6 months)³⁴⁸
- ❖ Applicants shall send a dossier to Vietnamese diplomatic missions or consulates in foreign countries including:
 - 1 duly completed application form; 1 original photograph glued to the application form (taken within the last 1 year, 4x6 cm in size, straight face, no hat, no dark or tinted glasses).
 - Passport, the remaining validity of which must be at least one month longer than the valid duration of the to-be granted visa
 - Documents with information about the trip to Vietnam (if any): note verbale from the Ministry of Foreign Affairs or diplomatic mission/consular office of the respective country (as for visitors under the supervision of the Ministry of Foreign Affairs); or approval from Vietnamese authorities, namely the Immigration Department (Ministry of Public Security), or the Consular Department (Ministry of Foreign Affairs) or Ho Chi Minh city Department of Foreign Affairs.
 - Applicants who have already obtained an approval from the Vietnamese authorities shall be granted visas in accordance with the approval within 2 working days from the receipt of the duly completed visa application.

2. For whom may enter to Vietnam without invitation (visa type D)

- ❖ Applicants shall carry out procedure with instructions of the official of Vietnamese diplomatic missions or consulates in foreign countries and prepare a dossier including:
 - 1 duly completed application form; 1 original photograph glued to the application form (taken within the last 1 year, 4x6 cm in size, straight face, no hat, no dark or tinted glasses).
 - Passport, the remaining validity of which must be at least one month longer than the valid duration of the to-be granted visa
- ❖ Vietnamese diplomatic missions or consulates in foreign countries shall grant single visa for 15 days within 3 working days after the receipt of the dossier.³⁴⁹

3. For overseas Vietnamese holding foreign passport, seeking to visit their relatives in Vietnam

³⁴⁸ Chapter I- Joint Circular No. 04/2002/TTLT/BCA-BNG.

³⁴⁹ Chapter II, Joint Circular No. 04/2002/TTLT/BCA-BNG

- ❖ Applicants shall send to Vietnamese diplomatic missions or consulates in foreign countries a dossier including:
 - 1 duly completed application form; 1 original photograph glued to the application form (taken within the last 1 year, 4x6 cm in size, straight face, no hat, no dark or tinted glasses).
 - Passport or passport substitute papers, the remaining validity of which must be at least one month longer than the valid duration of the to-be granted visa
 - In case of absence of passport, the document granted by foreign competent authorities shall be accepted on condition that it was sent to Vietnam through diplomatic channels.
- ❖ Vietnamese diplomatic missions or consulates in foreign countries shall grant single-entry three-month C2 visa within 02 working days from the receipt of duly completed visa application if having evidence of recent entry into Vietnam within the past 36 months.

c. Procedure to apply for visa-on-arrival

- ❖ Applicants are eligible in the following cases:³⁵⁰
 - To attend the funeral of family member or visit a family member in critical condition
 - Arrival from a country where there is no Vietnamese diplomatic mission/consular office
 - Visit Vietnam on tours organized by Vietnamese international travel agencies
 - To provide emergency technical assistance for construction works, projects; emergency treatment for critical patients or accident victims; emergency relief in cases of natural disasters or epidemics in Vietnam
 - Other cases of emergency
- ❖ Persons invited to Vietnam by the agencies, organizations can apply for visa-on- arrival. In this case, the inviters inform to the entry and exit management agency of the Ministry of Public Security the name of Vietnam's international border gate and arrival time of invited.

3.1.3 Visa Fee

In order to receive a visa, applicants shall pay the visa fee as follows:³⁵¹

Number	Visa fee	Charge
1	Single visa	45 USD

³⁵⁰ Article 6- Ordinance dated April 28th 2000 on Entry, Exit and Residence of Foreigners in Vietnam

³⁵¹ Article 1, Circular No. 189/2012/TT and article 1, Circular No.190/2012/TT- BTC.

2	Multiple visa	
a)	For 1 month	65 USD
b)	For no more than 6 months	95 USD
c)	For more than 6 months	135 USD

3.2 From 1 January 2015

From this date, the Law No. 47/2014/QH13 dated 16 June 2014 on Entry, Exit and Residence of Foreigner in Vietnam is in force. The regulations on visa and entering to Vietnam which are currently put together in chapter II of the Ordinance No.24/2000/PL-UBTVQH is split into two chapters in the new Law: Chapter II on “Visa” and Chapter III on “Entry”. Some provisions related to types of visas and their duration are amended. In addition, this new Law supplies the conditions of granting visa to Vietnam (article 10); the case of visa exemption (article 12) and the cases of applying for visa-on-arrival (article 18). There are 20 signs of visa instead of 10 as before and the maximum duration of stay is 5 years (for foreign investors and lawyer in Vietnam) while the previous legal documents limit the duration to 12 months.

According to article 8 of Law No. 47/2014/QH13, the signs of visa are as follows:

1. NG1 – granted to members of delegations invited by the Secretary General of Vietnam’s Communist Party of, the President of Vietnam, the President of the National Assembly, the Prime Minister.
2. NG2 – granted to members of delegations invited by standing members of the Secretariat of the Vietnam’s Communist Party, Deputy President of Vietnam, Deputy President of the National Assembly, Deputy Prime Minister, President of Vietnamese Fatherland Front, Executive Judge of The Supreme Court, Chief Procurator of the Supreme Procuracy, State Auditor General; members of delegations at the same levels of Ministers, Secretary Generals of Provincial Communist Authorities, President of the People’s Committees of provinces.
3. NG3 – granted to official members of foreign diplomatic missions and consulates, representative offices of international organizations affiliated to the UN, representative offices of intergovernmental organizations and spouses, children under 18, their accompanying servants during their term of office.
4. NG4 – granted to person who enter to Vietnam to work with foreign diplomatic missions and consulates, representative offices of international organizations affiliated to the UN, representative offices of intergovernmental organizations, visitors of members of foreign diplomatic missions and consulates, representative offices of international organizations affiliated to the UN, representative offices of intergovernmental organizations.

5. LV1 – issued to people who come to work with units affiliated to Vietnam’s Communist Party; the National Assembly, the government, Central Committee of Vietnamese Fatherland Front, the People’s Supreme Court, the People’s Supreme Procuracy, State Audit Agency, Ministries, ministerial agencies, Governmental agencies, the People’s Councils, the People’s Committees of provinces.
6. LV2 – granted to persons who enter to Vietnam to work with political- social organizations, social organizations, Chambers of Commerce and Industry of Vietnam.
7. ĐT – granted to foreign investors, foreign lawyer working in Vietnam.
8. DN – granted to people who work with Vietnam-based enterprises.
9. NN1 – granted to the head of the representative office, project of international organizations, non-governmental organizations in Vietnam.
10. NN2 – granted to heads of representative offices or branches of foreign traders, representative offices of other foreign economic, cultural, professional organizations in Vietnam.
11. NN3 – granted to people who come to work with foreign non-governmental organizations, representative offices or branches of foreign traders, representative offices of other foreign economic, cultural, professional organizations in Vietnam.
12. DH – granted to persons who enter to Vietnam to do an internship, to study.
13. HN – granted to persons who enter to Vietnam to attend conventions or conference
14. PV1 – granted to journalists who permanently in Vietnam
15. PV2 – granted to journalists who enter to Vietnam for short-term working.
16. LĐ – granted to persons who enter to Vietnam to work.
17. DL – granted to tourists.
18. TT – granted to foreigners who is spouse, children under 18 of the holder of visa type LV1, LV2, ĐT, NN1, NN2, DH, PV1, LĐ or who is parents, spouse, children of Vietnamese.
19. VR – granted to persons who enter to Vietnam to come visit their relatives or with others reasons.
20. SQ – granted to persons who enter to Vietnam to do market research, travel, come to visit their relatives under the following circumstances:

- + Persons who work with the competent authorities of Vietnam on granting visa in foreign countries and their spouse, children or persons who have the written request of the competent authorities of the Ministry of foreign affairs of Vietnam;
- + Persons who have a guarantee of diplomatic missions and consular offices of the foreign countries located in the host country.

*The duration of visa varies according to the signs of visa:*³⁵²

- For the visa signed SQ, the duration must not exceed 30 days
- For the visa signed HN, DL, the duration must not exceed 3 months
- For the visa signed VR, the duration must not exceed 6 months
- For the visa signed NG1, NG2, NG3, NG4, LV1, LV2, DN, NN1, NN2, NN3, DH, PV1, PV2 and TT, the duration must not exceed 12 months
- For the visa signed LD, the duration must not exceed 2 years
- For the visa signed DT, the duration must not exceed 5 years

When visa is expired, it is possible to grant a new one

The duration of visa should be shorter than the duration of passport or valid documents for international travel at least 30 days.

As for the Visa appliance procedures:

- For the applicants for visa type NG1, NG2, NG3, NG4, the procedure shall be conducted at the competent authority of the Ministry of Foreign Affairs.
- For the rest, it shall be conducted at the entry and exit management agency of the Ministry of Public Security.

However, besides the conditions of granting visa to Vietnam regulated in the Ordinance No.24/2000/PL-UBTVQH, the new Law requires the applicant to present documents providing the entry proposes as follows:³⁵³

- a) The foreign investor must have proof of investment in Vietnam in accordance with the Law on Investment;
- b) The foreign lawyers working in Vietnam must be licensed in accordance with the Law on Lawyers;
- c) The labor overseas must have a work permit in accordance with the provisions of the Labor Code;
- d) Foreigners who enter Vietnam to study must have admission letter of the school or educational institution of Vietnam.

³⁵² Article 9, Act No. 47/2014/QH13 of 16 June 2014 on Entry, Exit and Residence of Foreigner in Vietnam.

³⁵³ Article 10, clause 4, Act No. 47/2014/QH13 of 16 June 2014 on Entry, Exit and Residence of Foreigner in Vietnam

In respect of visa exemption, the new Law adds one case where the foreigners are exempted from visa: the foreigners who enter border-gate economic zones or special administrative-economic units.³⁵⁴

In comparison with the Ordinance No.24/2000/PL-UBTVQH, the 2005 Law adds 2 cases where the applicants are eligible for visa-on- arrival:

1. Before arriving to Vietnam, the applicants have to pass many foreign countries
2. Foreign crews who are on the ship anchored at the port of Vietnam want to exit and go to another gate.

4. Business law

4.1 Regulation of Enterprises

4.1.1 Pre-2005 Law on Enterprises

Prior to 1986, the implementation of a centrally planned economy left no role for the private sector. The introduction of the *Doi Moi* reforms in 1986, which moved Vietnam from a centrally planned economy to a market economy with socialist orientation, has opened the way for the emergence of the private sector. The Law on Private Enterprises and the Company Law enacted in 1990 and effective in 1991, and the Law on State Owned Enterprises introduced in 1995, were the first laws encouraging business. During this period the following types of enterprises were provided: private enterprises (regulated by the 1990 Law on Private Enterprises), limited liability companies and share-holding company (regulated by the 1990 Company Law), and State owned enterprises (regulated by the 1995 Law on State Owned Enterprises).

In 1999 the Law on Enterprises, which repealed the 1990 Law on Private Enterprises and the 1990 Company Law, was promulgated. With the introduction of the 1999 Law on Enterprises, the separate laws on private businesses were consolidated into one law (the 1999 Law on Enterprises), with State owned enterprises being governed by another law (the 1995 Law on State Owned Enterprises).³⁵⁵ The 1999 Law on Enterprises also provided for an additional form of enterprise - the partnership. Since the introduction of the 1999 Law on Enterprises, private businesses have had more favorable conditions for development. This Law has institutionalized the freedom to conduct business by individuals and businesses in all lines of business not prohibited by law. The Law also repealed the principle of previous laws that individuals and businesses were only allowed to do business in the specific sector. The 1999 Law on Enterprises also removed administrative barriers such as permits, procedures, and fees which were obstacles to business activities. In 1999, the drafting Committee of the 1999 Law on Enterprises conducted a country- wide survey and identified over 300 different types of permits that

³⁵⁴ Article 12, clause 3, Law No.47/2014/QH13 of 16 June 2014 on Entry, Exit and Residence of Foreigner in Vietnam

³⁵⁵ The 1995 Law on State Owned Enterprises was replaced by the 2003 Law on State Owned Enterprises.

businesses were required to obtain from the competent authorities. The Government has acted to remove unnecessary permits. The Decision 19/2000/QĐ-TTg of the Prime Minister, dated 3 February 2000, abolishing 84 types of permits regarded as unnecessary and contrary to the 1999 Law on Enterprises.³⁵⁶ Under the new legal environment for business, private enterprises developed rapidly. In the period 2000-2004, 73,000 private businesses were established – which represents 3.75 times the number established in the period 1991-1999.³⁵⁷ By 2004, there were 150,000 private businesses.³⁵⁸

4.1.2 The 2005 Law on Enterprises

The 2005 Law on Enterprises No. 60-2005-QĐ11 came into effect on 1 July 2006 and repealed the 1999 Law on Enterprises, the 2003 Law on State Owned Enterprises, the regulations on organisation and management of business activities in the 1996 Law on Foreign Investment, and the 2000 Law Amending the Law on Foreign Investment. The 2005 Enterprise Law has established the general legal environment for all businesses in Vietnam.

The 2005 Law on Enterprises also sets out principles for conversion of state owned enterprises into limited liability or shareholding company companies (article 166). By 1 July 2010 all State owned enterprises were required to convert into limited liability or shareholding company companies and subjected to the 2005 Law on Enterprises. Prior to the introduction of this law, domestic and foreign enterprises were basically governed by two different legal regimes. Under the 2005 Law on Enterprises, all enterprises whether domestic, foreign, or State owned or private owned, are treated equally (article 3.1).

Although the Government made great efforts to reduce a number of unreasonable business permits since 2000, the reality is that some Ministries and other authorities still continued providing unreasonable permits. To control the types of business permits, the 2005 Law on Enterprises stipulates that only the Government is currently entitled to issue business permits if necessary and that Ministries, Ministerial-level Agencies, People's Councils and People's Committees at all levels cannot prescribe lines of business with business conditions (article 7.5).

According to the 2005 Law on Enterprises (article 7), as with the 1999 Law on Enterprises, it is required that all enterprises in Vietnam shall meet all requirements prescribed for operating business of the enterprise in terms of lines of business and business conditions as follows:

- 1) Enterprises in any economic sectors have the right to conduct lines of business which are not prohibited by law. The prohibited lines of business are business activities adversely affecting national defense, security, social order and safety

³⁵⁶ Decree 59/2002/NĐ-CP of the Government, dated 4 June 2002, continued this strategy and removed a further four permits as well as replacing 10 kinds of permits with business conditions.

³⁵⁷ Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], 'Mot So Net Kinh Te Viet Nam [Some Characteristics of Vietnam Economy]', above n .

³⁵⁸ *ibid.*

historical, cultural and ethical traditions, fine customs and traditions of Vietnam and the people's health or deteriorating natural resources which the list of prohibited lines of business shall be prescribed by the Government.

- 2) For lines of business which are subject to conditions stipulated by laws, an enterprise is only allowed to conduct such lines of business if it satisfies all of the stipulated business conditions.³⁵⁹ Business condition means a requirement which an enterprise must satisfy or perform when it conducts a specific line of business and shall be presented by way of a business license, certificate of satisfaction of conditions for business, certificate of professional indemnity insurance, requirement for legal capital or other requirements as prescribed by laws.
- 3) All enterprises are obliged to conduct business strictly in accordance with the lines of business recorded in the business registration certificate (according to article 9.1 of the 2005 Law on Enterprise). For example, to do franchising as a way to expand business, franchisors have to do franchising within the scope of its business

The 2005 Law on Enterprises provides for 4 types of enterprise: limited liability companies, shareholding company companies, partnerships, and private enterprises (sole proprietorship) (article 1 of the 2005 Law on Enterprise) as detailed below:

1) Limited Liability Company

Under the 2005 *Law on Enterprises*, a limited liability company is an enterprise which has following characteristics:³⁶⁰

- member may be organizations or individuals.
- the number of members shall not exceed 50.
- members of the company shall be liable for the debts and other property obligations of the enterprise within the amount of capital that they have undertaken to contribute to the enterprise.
- the limited liability company may not issue shares.

Based on the number of company members, the 2005 *Law on Enterprises* also divides the limited liability company into two types: limited liability companies with two or more members³⁶¹ and one member limited liability companies.³⁶²

2) Shareholding company

The shareholding company is an enterprise which has the following features:³⁶³

³⁵⁹ Article 7.2 of the 2005 Law on Enterprises

³⁶⁰ Article 38 and 63 of the 2005 Law on Enterprises.

³⁶¹ Article 38 of the 2005 Law on Enterprises.

³⁶² Article 63 of the 2005 Law on Enterprises.

³⁶³ Article 77 of the 2005 Law on Enterprises.

- the charter capital shall be divided into equal portions called shares
- shareholder may be organizations or individuals
- the minimum number of shareholders shall be three and there is no restriction on the maximum number of shareholders
- shareholders shall be liable for the debts and other property obligations of the enterprise only within the amount of capital contributed to the enterprise
- Shareholders may freely assign their shares to other persons except in some cases stipulated by the Law on Enterprise
- The shareholding company can issue all form of securities

3) Partnership

Partnership, as a form of business organisation, was first recognised by the 1999 *Law on Enterprises*, and is currently governed by the 2005 *Law on Enterprises*. Under the 2005 *Law on Enterprises*, a partnership is defined as an enterprise³⁶⁴ which has the following features:³⁶⁵

- There are at least two members being co-owners of the company jointly conducting business under one common trade name (hereinafter referred to as unlimited liability partners);
- In addition to unlimited liability partners there may be limited liability partners;
- Unlimited liability partners must be individuals who shall be liable for the obligations of the company to the extent of all of their assets;
- Limited liability partners shall only be liable for the debts of the company to the extent of the amount of capital they have contributed to the company.
- The partnership may not issue any form of securities.

4) Private Enterprises/Sole Proprietorship

The private enterprise is the least sophisticate form of business. It is a business entity owned by one person who retains all profits and bears unlimited liability. The private enterprise cannot issue any form of securities and each person can establish only one private enterprise.³⁶⁶

Under the 1999 *Law on Enterprises*, if an individual wanted to establish an independent enterprise that did not link with other organizations and individuals, he/she had to choose the private enterprise form. However, the 2005 *Law on Enterprises* now allows individuals wishing to operate an independent enterprise to establish a limited liability company owned by only one individual (article

³⁶⁴ In Vietnam, a partnership is a company.

³⁶⁵ Article 130 of the 2005 Law on Enterprises.

³⁶⁶ Article 141 of the 2005 Law on Enterprises.

63.1). Under the previous laws, only organizations could establish one member limited liability companies.

4.1.3 Establishment and Business Registration

All forms of enterprises under the 2005 Law on Enterprises as above-mentioned are required to register the business in order to be a legal entity according to laws. The founder of the new enterprises must submit all required documents to the competent business registration body and such business registration body shall consider all documents and issue a business registration certificate within a time-limit of 10 working days from the date of receipt of such documents (Article 15 of the 2005 Law on Enterprise)³⁶⁷.

All enterprises shall become a juristic person who is capable to create legal relations and bound by such legal actions after the business registration certificate is obtained from the competent body.

Competent government for establishment and business registration

The competent body which handles all business registrations and controls the operation of each business as well as considers and issue business registration certificate is “Department of Planning and Investment (DPI)”. The enterprises must contact and register their business with local business registration office under DPI in province which the principle office of enterprise is located.

Procedures for establishment and business registration

- Check availability and reserve the name for the enterprise
- Prepare application form to register the business (the form can be downloaded from www.business.gov.vn or can be picked up at local business registration office) and the required documents
- Submit the application form along with the required documents at the provincial business registration office.
- The registrar shall consider the application and documents. If approved, the business registration certificate shall be granted to the enterprise. If refused, the registrar shall notify the enterprise in writing with reasons and details which requires the enterprise to add or revise.

³⁶⁷ For example, according to Article 18 of Vietnam Law on Enterprises, a limited liability company’s dossiers include:

1. Business registration application, made according to a form set by competent business registration offices.
2. Draft of the company's charter.
3. List of members
4. Written certification of legal capital issued by a competent agency or organization, for companies conducting business activities which are required by law to have legal capital.
5. Practice certificates of directors or general directors and other individuals, for companies conducting business lines which are required by law to have practice certificates.

However, for foreign business registration, foreign investment project and establishment of the foreign-invested enterprise must be approved by the Vietnamese competent authorities in form of “investment certificate” which is equivalent of the business registration certificate. In order to get approval for establishment of the foreign-invested enterprise, the enterprise shall proceed as follows:

- 1) For foreign invested projects which have an invested capital of below 300 billion Vietnamese dong and which are not included in the list of sectors of investment subject to conditions, the investors shall perform the procedures for investment registration at a provincial State administrative body for investment for issuance of an investment certificate (Article 46 of the 2005 Law on Investment).
- 2) For foreign invested projects which have an invested capital of 300 billion Vietnamese dong or more and projects on the list of sectors of investment subject to conditions, the procedures for evaluation must be performed by the competent authority for issuance of an investment certificate. With respect to important national projects, the National Assembly shall decide on the policy for and shall provide regulations on the criteria for these projects, and the Government shall provide regulations on the order and procedures for evaluation and for issuance of investment certificates (Article 47 of the 2005 Law on Investment).

4.2 Commercial Law

The 2005 Commercial Law (No. 36/2005/QH11) was passed at the seventh session of the 11th National Assembly on 14 June 2005 and came into force on 1 January 2006. It repeals the 1997 Commercial Law.

The 2005 Commercial Law has a broader scope of application than the 1997 Commercial Law and is recognized as being consistent with international practices. Under the 2005 Commercial Law, a new concept of “commercial activities” is introduced which covers all commercial activities including buying and selling goods or providing services, investment, commercial promotion, and other activities for profit purpose. Transactions which were not previously recognized are allowed by this Law including transactions made by a party which does not have a profit purpose with a trader if the first party has chosen the 2005 Commercial Law as the applicable law for the transactions.

The 2005 Commercial Law prescribes fundamental principles in commercial activities which secure the rights of the traders as well as protect consumers’ rights. This law ensures the equity before law in commercial activities³⁶⁸ and ensures that the parties have freedom to reach agreements not in contravention of the provisions of law, fine tradition and customs and social ethics. The parties shall act on their own freewill, and neither party is allowed to impose its own will on, to force, intimidate or obstruct, the other party.³⁶⁹

³⁶⁸ Article 10 of the 2005 Commercial Law.

³⁶⁹ Article 11 of the 2005 Commercial Law.

4.2.1 Foreign traders conducting commercial activities in Vietnam

Foreign traders conducting commercial activities in Vietnam:

1. Foreign traders mean traders established and making their business registrations according to the provisions of foreign laws or recognized by foreign laws.
2. Foreign traders are entitled to set up their representative offices or branches in Vietnam; to establish in Vietnam foreign-invested enterprises in the forms provided for by Vietnamese law.
3. Vietnam-based representative offices and branches of foreign traders have the rights and obligations specified by Vietnamese law. Foreign traders shall be held responsible before Vietnamese law for all activities of their Vietnam-based representative offices and branches.
4. Foreign-invested enterprises established in Vietnam by foreign traders according to the provisions of Vietnamese law or international treaties to which the Socialist Republic of Vietnam is a contracting party shall be regarded as Vietnamese traders.

Rights of representative offices:

1. To operate for the purposes, within the scope and duration stipulated in their establishment licenses.
2. To rent offices, rent and purchase equipment and facilities necessary for their operations.
3. To recruit Vietnamese and expatriate employees to work for them according to the provisions of Vietnamese law.
4. To open accounts in foreign currencies or foreign currency-based Vietnam dong at banks licensed to operate in Vietnam, and to be allowed to use those accounts solely for their operations.
5. To have seals bearing their names according to the provisions of Vietnamese law.
6. To have other rights as defined by law.

Obligations of representative offices:

1. Not to directly conduct profit-generating activities in Vietnam.
2. To conduct commercial promotion activities within the scope permitted by this Law.
3. Not to enter into contracts, not to amend or supplement contracts already entered into by foreign traders, except where chief representatives obtain valid letters of authorization from foreign traders or other cases specified in Clauses 2, 3 and 4, Article 17 of this Law.

4. To pay taxes, fees and charges, and fulfil other financial obligations provided for by Vietnamese law.
5. To report on their operations according to Vietnamese law.
6. To have other obligations as defined by Vietnamese law.

Rights of branches:

1. To rent offices, rent and purchase equipment and facilities necessary for their operations.
2. To recruit Vietnamese and expatriate employees to work for them according to Vietnamese law.
3. To enter into contracts in Vietnam in compliance with their operation contents specified in their establishment licenses and the provisions of this Law.
4. To open Vietnam dong accounts and foreign-currency accounts at banks licensed to operate in Vietnam.
5. To transfer profits overseas according to the provisions of Vietnamese law.
6. To have seals bearing their own names according to the provisions of Vietnamese law.
7. To conduct activities of goods purchase and sale and other commercial activities in compliance with their establishment licenses according to the provisions of Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.
8. To have other rights provided for by law.

Obligations of branches:

1. To observe the accounting regime provided for by Vietnamese law; in cases where it is necessary to apply another commonly used accounting system, the approval by the Finance Ministry is required.
2. To report on their operations according to the provisions of Vietnamese law.
3. To have other obligations provided for by law.

Rights and obligations of foreign-invested enterprises:

Rights and obligations of foreign invested enterprises shall be determined according to the provisions of Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party.

Competence to license foreign traders to conduct commercial activities in Vietnam:

- 1) The Government shall uniformly manage the licensing of commercial activities of foreign traders in Vietnam.
- 2) The Planning and Investment Ministry shall be answerable to the Government for managing the issuance of licenses to foreign traders investing in Vietnam according to the provisions of Vietnamese law.
- 3) The Trade Ministry shall be answerable to the Government for managing the issuance of licenses to set up Vietnam-based representative offices of foreign traders; or licenses to set up branches, joint-venture enterprises or enterprises with 100% foreign capital in Vietnam in cases where such traders are specialized in conducting activities of goods purchase and sale or other activities directly related to goods purchase and sale in compliance with Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.
- 4) Where a specialized law contains specific provisions on the competence of ministries or ministerial-level agencies, which are responsible before the Government for managing the issuance of licenses to foreign traders for conducting commercial activities in Vietnam, the provisions of such specialized law shall apply.

Termination of operations in Vietnam of foreign traders:

- 1) Foreign traders shall terminate their operations in Vietnam in the following cases:
 - a) Upon expiration of the operation duration stipulated in their licenses;
 - b) At the request of traders, which is approved by competent state management agencies;
 - c) Under decisions of competent state management agencies as a sanction against their violations of law and their licenses;
 - d) Where traders are declared bankrupt;
 - e) Where foreign traders terminate their operations according to foreign laws, for representative offices, branches or foreign parties to business cooperation contracts with Vietnamese parties;
 - f) Other cases provided for by law.
- 2) Before terminating their operations in Vietnam, foreign traders are obliged to pay debts and fulfill other obligations toward the State, concerned organizations and individuals in Vietnam.

4.2.2 Purchase and Sales of Goods

Generally, contracts for sale and purchase of goods may be expressed in verbal or written form or established by specific acts. However, some types of contracts for purchase and sale of goods must be made in writing as provided by law. For sale and purchase of goods banned from business. Goods subject to business restriction and goods subject to conditional business, the seller and buyer must fully meet the conditions provided by laws,

otherwise, such sale and purchase shall not be enforceable.³⁷⁰ For international sale of goods (which must be conducted in form of export, import, temporary import for re-export, temporary export for re-import, and transfer through border-gates), the contract must be made in writing or other forms of equal legal validity.³⁷¹

The parties to contracts have freedom to make agreement regarding rights and obligations under the sale and purchase contract such as delivery of goods, remedies in case of delivery of goods in sufficient quantity or goods not appropriate to contracts, price, and payment. In case there is no agreement between the parties, the 2005 Commercial Law provisions of rights and obligations of parties to contracts for purchase and sale of goods as prescribed in Chapter 2 of the 2005 Commercial law shall apply.

The 2005 Commercial Law also considers goods exchange as a purchase and sale of goods. Goods exchange means commercial activities whereby the parties agree to purchase and sell a defined quantity of goods of a defined type through the goods exchange under the standards of goods exchange, at the price agreed upon at the time the contract is entered into and with time of goods delivery determined to be a specific point of time in the future. Activities of purchase and sale of goods through Goods Exchange shall be specified by the Government.

4.2.3 Providing Services

Generally, service contract may be expressed in verbal or written form or established by specific acts. However, for some types of services, contracts must be made in writing as provided by law.³⁷² For service banned from business, services subject to business restriction and services subject to conditional business, the parties involved must fully meet the conditions provided by laws, otherwise, such service contract shall not be enforceable.

The parties to contracts have freedom to make agreement regarding rights and obligations under service contracts. If there is no agreement between the parties, the provision of rights and obligations of parties to service contract as prescribed in Chapter 3 of the 2005 Commercial Law shall apply, for example, the service provider shall provide the service with the best effort to achieve a desired result and with the highest capacity, the service provider shall keep confidential information which is received in the course of service provision if so agreed by the parties or provided by law. And service providers must complete their service within the time limits.

4.2.4 Commercial Promotion

According to the 2005 Commercial Law, commercial promotions which are recognized by law are in the following forms:

³⁷⁰ Article 24 of the 2005 Commercial Law.

³⁷¹ Article 27 of the 2005 Commercial Law.

³⁷² Article 74 of the 2005 Commercial Law

1) Sale Promotion

Sale promotion is commercial enhancement by traders to promote the purchase and sale of goods or the provision of service by offering certain benefits to customers. The traders can directly conduct sale promotion for goods/or services that they trade in or for goods and/or services of other traders under the agreement with the latter.³⁷³ Sale promotion can be in forms prescribed by article 92 of the 2005 Commercial Law such as giving samples of goods or providing sample services to customers for trial use free of charge; or selling goods at price lower than normal price rate.

Sale promotion must be made in writing. All Vietnamese traders and Vietnam based branches of foreign traders shall have the right to conduct sale promotion themselves or to hire traders to do so. However, representative offices of traders are not allowed to conduct sale promotion either by themselves or by hiring others.

2) Commercial Advertising

Commercial advertising is to introduce to customers goods or services of traders. Vietnamese traders and branches of foreign traders licensed to conduct commercial activities in Vietnam shall have a right to advertise their goods and/or services or to hire other traders providing advertisement service to do so. Representative office is not allowed to directly conduct commercial advertising but it can hire other traders to do so if authorized by the traders. In case of foreign traders wishing to advertise their goods or service, they must hire Vietnamese traders engaged in business of providing commercial advertising to do so.³⁷⁴

Contract for advertisement service must be made in writing. Moreover, the advertisement shall not be the prohibited commercial advertisement as prescribed in article 109 of the 2005 Commercial Law such as advertisement revealing State secrets, having untruthful information, using method of comparing goods with other traders' goods of the same kind of business, or having unfair competition purpose.

3) Display and Introduction of Goods and Services

Vietnamese traders and Vietnam based branches of foreign traders shall have a right to display and introduce their goods and/or services or to hire other traders providing advertisement service to do so. Representative office is not allowed to directly display and introduce goods except for displays and introductions at their offices. In case of foreign traders not yet licensed to conduct commercial activities in Vietnam wishing to display and introduce their goods or service, they must hire Vietnamese traders engaged in business of providing commercial advertising to do so.³⁷⁵ In this regard, the contract for goods/services display and introductions must be made in writing.

4) Trade Fair and Exhibition

³⁷³ Article 88 of the 2005 Commercial Law

³⁷⁴ Article 103 of the 2005 Commercial Law

³⁷⁵ Article 118 of the 2005 Commercial Law

Trade fair and exhibition is commercial promotion activity conducted in a concentrated manner at particular locations and for given period of time for traders to display and introduce their goods or services and to seek opportunities for entering into contracts for sale and purchase of goods or service contract. Vietnamese traders and branches of foreign traders can organize or participate in trade fairs and exhibitions or to hire other traders providing advertisement service to do so. Representative office is not allowed to directly organize or participate in trade fairs or exhibition but it can hire other traders to do so if authorized by the traders. Foreign traders shall have the right to directly participate or hire Vietnamese traders to participate in trade fairs but to organize a trade fair, foreign trader must hire Vietnamese traders providing trade fair service to do so.

4.2.5 Intermediary Activities in Commerce

According to the 2005 Commercial Law, the legal intermediary activities in commerce which are recognized by law are as follows:

1) Representation of Traders

Representation of traders is when a trader (referred to as representative) is authorized by another trader (referred to as nominator) to conduct commercial activities in name and under instructions of the latter for remuneration. Contracts for representation of traders must be made in writing or other forms of equivalent legal validity³⁷⁶ which the parties may agree that the representative may conduct part or all of commercial activities within the scope of operation of the nominator.

2) Commercial Brokerage

Commercial brokerage is a commercial activity whereby a trader acts as an intermediary (referred as broker) between parties selling and purchasing goods or providing commercial services (referred as principle) in the course of negotiations and entering into contracts for sale and purchase of goods or provision of services and shall be entitled to remuneration under a brokerage contract.

3) Sale and Purchase of Goods by Mandated Dealers

Purchase and sale of goods by mandated dealers mean commercial activities whereby the mandatory conducts the purchase and sale of goods in his/her/its own name under terms agreed upon with the mandator and is entitled to receive mandate commission. All goods which are lawfully circulated may become the subject matter of a mandated sale and purchase. Mandate contracts must be made in writing or in other forms of equivalent legal validity.³⁷⁷

4) Commercial Agency

³⁷⁶ Article 142 of the 2005 Commercial Law

³⁷⁷ Article 159 of the 2005 Commercial Law

Commercial agency is a commercial activity whereby the principal and the agent agree that the agent, in its own name, sells or purchases goods for the principal or provides services of the principal to customers for remuneration.

In commercial agency, principal are traders that deliver goods to agent for sale or provide money to agents for purchase of goods, or traders that authorize the provision of services to service-providing agent.

And, agents are traders that receive goods to act as sale agent or receive money to act as purchase agents or accepts the authorization to provide services. Agency can be in form of off-take agency, exclusive agency, and general goods sale or service providing agency. In this regard, agency contracts must be made in writing.³⁷⁸

4.2.6 Other Specific Commercial Activities

Other than the commercial activities previously mentioned, the 2005 Commercial law also recognizes other specific commercial activities as follows:

1) Commercial processing

Commercial processing is commercial activity whereby a processor uses part or whole of raw materials and materials supplied by the processee to perform one or several stages of the production process of the latter's request in order to receive remuneration. Commercial processing contract must be made in writing.³⁷⁹

2) Auction of goods

Auction of goods is a commercial activity whereby sellers themselves conduct or hire auction organizers (traders who register the business of auction service) to conduct public sale of goods to selected purchasers that offer the highest prices. The law also states that the auction of goods must be conducted on the principles of publicity, honesty, and assurance of legitimate rights and interest of auctions participants.³⁸⁰ Moreover, it also prescribes the procedures of an auction which requires the auctioneer and participants to comply with accordingly.

3) Bidding for goods or services

Bidding for goods or services is a commercial activity whereby a party purchases goods or services through bidding (referred to as bid solicitor) in order to select, among traders participating in the bidding (referred to as bidders), a trader that satisfies the requirements set forth by the bid solicitor and is selected to enter into and perform a contract (referred as a bid winner). Bidding for goods can be conducted in form of open bidding and restriction bidding which the forms shall be decided by the bid solicitor. The law prescribes the procedures of bidding such as bid opening and minutes of bid opening. It also states that involved parties may agree that bid winners make

³⁷⁸ Article 168 of the 2005 Commercial Law

³⁷⁹ Article 179 of the 2005 Commercial Law

³⁸⁰ Article 188 of the 2005 Commercial Law

deposits or guarantee to secure the performance of contracts and the money deposited shall be set by bid solicitor but must not exceed 10% of the contract value.³⁸¹

Bidding shall be reorganized if 1) there is a violation of regulation on bidding and 2) all bidders fail to satisfy the bidding requirement.³⁸²

4) Logistic services

Logistic services is when traders organize the performance of one or many jobs including reception, transportation, warehousing, yard storage of cargoes, completion of customs procedures and other formalities and paperwork, provision of consultancy to customers, services of packaging, marking, delivery of goods, or other services related to goods according to agreements with customers in order to receive service charges. In the course of transportation of goods, the traders providing logistic services must comply with the provisions of law and transportation practices. For liability, the traders providing logistic services shall be liable not exceeding the limitation of liability for the full loss of the goods.³⁸³

5) Transit of goods through Vietnamese territory and goods transit services

Transit of goods means the transportation of goods owned by foreign organizations or individual through the Vietnamese territory, including transshipment, portage, warehousing, shipment separation or alteration of modes of transportation or other jobs performed in the course of transit. The law states that the goods shall only be transited through international border-gates and on certain routes in the Vietnamese territory, any change of routes must be consented by the Transport Minister.³⁸⁴

6) Assessment services

Assessment service is when traders perform necessary jobs to determine actual conditions of goods, results of the provision of services and other contents at the request of customers. Traders providing commercial assessment services must be 1) enterprise established according to the provision of law 2) having assessors who have all the qualifications specified by law.³⁸⁵

7) Lease of goods

Lease of goods means commercial activities whereby one party transfers the right to possess and use goods (referred to as lessor) to another party (referred to as lessee) for a certain duration to receive rentals. The law allows the lessee to sub-lease goods only when they obtain consents of lessors which lessees shall be responsible for sub-leased goods, unless they otherwise agree with lessors. Moreover, any change of ownership of leased goods shall not affect the validity of lease contract.

8) Commercial franchise

³⁸¹ Article 231 of the 2005 Commercial Law.

³⁸² Article 232 of the 2005 Commercial Law

³⁸³ Article 238 of the 2005 Commercial Law

³⁸⁴ Article 243 of the 2005 Commercial Law

³⁸⁵ Article 257 of the 2005 Commercial Law

A commercial franchise is when franchisors permit and require franchisee to undertake themselves to purchase or sell goods or provide services under the methods of organization prescribed by franchisors including under trademarks, advertisement, and business know-how as well as with supervision and assistance of franchisors. The franchise contract must be made in writing.³⁸⁶ Moreover, before granting commercial franchise, intended franchisor must register them with the Trade Ministry.³⁸⁷

4.2.7 Commercial Remedies and Resolution of Commercial Disputes

4.2.7.1 Commercial remedies

When a party is in breach of contract and the other party is suffered from such breach, the breaching party is liable for breaching acts except for the following cases³⁸⁸:

- Liability exemption agreed upon the parties
- In event of force majeure
- A breach by one party is entirely attributable to the other party's fault
- A breach is committed by one party as a result of State agency's decision which the parties cannot know at the time of contract execution.

Applicable commercial remedies in Vietnam which the breaching party shall conduct to compensate the other party are as follows:³⁸⁹

- 1) Specific performance contract
Specific performance contract means a remedy whereby the non-breaching party requests the breaching party to properly perform the contract or apply other measures to properly perform the contract and the breaching party have to bear any costs incurred.
- 2) Fines for breach
The fine level for a breach or the aggregate fine for more than one breach shall be agreed in the contract by the parties but must not exceed 8% of the value of the breached contractual obligation portion.³⁹⁰
- 3) Forcible payment for damages
The value of damages that the party can claim is the value of the material and direct loss suffered by the non-breaching party due to the breach of contract and the direct profit which non-breaching party would have earned if such breach had not been committed.³⁹¹
- 4) Temporary suspension of performance of contracts

³⁸⁶ Article 285 of the 2005 Commercial Law

³⁸⁷ Article 291 of the 2005 Commercial Law

³⁸⁸ Article 294 of the 2005 Commercial Law

³⁸⁹ Article 292 of the 2005 Commercial Law

³⁹⁰ Article 301 of the 2005 Commercial Law

³⁹¹ Article 302 of the 2005 Commercial Law

The contracts which are suspended from performance are still in full force and effective and the non-breaching party is entitled to claim for damages.

5) Stoppage of performance of contract

When a contract is stopped from performance, it shall be terminated from the date when one party receives the notice on stoppage.

6) Cancellation of contracts

As a result of cancellation of contract, the contract shall be invalid from the time it is entered into and the parties shall not have to continue performing then contractual obligation.

7) Other remedies agreed by the parties which are not against Vietnamese law, treaty, and international commercial practice.

However, the non-breaching party still has the right to claim damages for loss caused by a contract breach by the other party even though the remedies above-mentioned have been applied.³⁹²

4.2.7.2 Resolution of commercial disputes

Forms of resolution of disputes applicable in Vietnam are as follows:

- 1) Negotiation between the parties
- 2) Conciliation between the parties by a body, organization or individual selected by the parties to act as the conciliation mediator.
- 3) Resolution by the Arbitration or the Court.

The statute of limitation for initiating lawsuits shall be 2 years from the time when the legitimate rights and interests are infringed upon.³⁹³

4.3 Tax Laws

4.3.1 Personal Income Tax (PIT)

Vietnam's National Assembly issued the Law No. 04/2007/QH12 on Personal Income Tax (PIT) on 21 November 2007, which came into effect on 1 January 2009. The Law applies to individuals earning income. The 2007 Personal Income Tax (PIT) Law specifies taxpayers, taxable income, tax exempt income, reduction of tax and the basis for calculating personal income tax.

Other legal documents related to Personal Income Tax include;

- Decree no. 65/2013/ND-CP of the Government, dated 27 June 2013, detailing a number of articles of the law on personal income tax and law amending and supplementing a number of articles of the law on personal income tax
- Circular no. 111/2013/TT-BTC of Ministry of finance, dated 15 August 2013 on the implementation of the law on personal income tax, the law on the

³⁹² Article 316 of the 2005 Commercial Law

³⁹³ Article 319 of the 2005 Commercial Law

amendments to the law on personal income tax, and the government's decree no. 65/2013/ND-CP

4.3.1.1 Personal Income Taxpayers

According to article 2.1 of the 2007 Personal Income Tax Law, Personal income taxpayer means

- any resident individual with taxable income as stipulated in article 3 of this Law arising either within or outside the territory of Vietnam, or
- any non-resident individual with taxable income as stipulated in article 3 of this Law arising within the territory of Vietnam

Therefore, residents must pay personal income tax to the revenue generated within and outside Vietnam territory. For non-residents, they pay personal income tax for incomes generated in Vietnam territory.

Article 2.2 defines “resident” as individual who meets one of the following conditions:

- Being present in Vietnam for 183 days or more in a calendar year or in 12 consecutive months from the date of entry into Vietnam
- Having a regular residential location in Vietnam being a residential location for which permanent residence has been registered or a property rented pursuant to a lease for a term for residential purposes

4.3.1.2 Taxable Incomes

According to article 3 of the 2007 Personal Income Tax Law, incomes which are subject to personal income tax comprises the following types of incomes ;

1. Business income
2. Income from salaries and wages
3. Income from equity investment
4. Income from transfer of capital
5. Income from transfer of real estate
6. Income from prizes
7. Income from intellectual property rights
8. Income from franchises
9. Income from inheritances
10. Income from receiving gifts

4.3.1.3 Tax Calculation

Assessable income = Taxable incomes - deduction
--

Payable tax = Assessable income × Tax rate

Articles 10 - 18 of the 2007 Personal Income Tax Law specify “taxable incomes” from income sources mentioned in article 3.

According to article 21 of the 2007 Personal Income Tax Law, “assessable income” is the total taxable income minus deduction factors such as expenses related to making income, payables like social insurance, health insurance, deductions of family circumstances (if any).

To reduce the tax burden and ensure social justice, the State provides for deduction for family circumstances which comprises two elements³⁹⁴:

- The deduction rate for the taxpayer is 9 million/month (108 million/year)
- The deduction rate for each dependent is 3.6 million per month

The deduction of family circumstances is the amount to be deducted from the taxable income before rating for corporate income, salaries, remuneration of resident taxpayers. The other incomes, such as prize from lottery, inheritance, donated money, dividends from investment, securities, are not deductible.

Where the consumer price index (CPI) fluctuates over 20% in comparison to the latest adjustment of rate for family circumstance deduction, the Government will submit to the Standing Committee of the National Assembly to adjust the family circumstance deduction rate in line with the price fluctuation for the next tax period.

Table 4: Progressive personal income based on business revenue and salary of residence

Tax scale	Income tax per year (million vnd)	Income tax per month (million vnd)	Tax rate (%)
1	Up to 60	Up to 5	5
2	Over 60 – 120	Over 5 - 10	10
3	Over 120 – 216	Over 10 - 18	15
4	Over 216 – 384	Over 18 - 32	20
5	Over 384 – 624	Over 32 - 52	25
6	Over 624 – 960	Over 52 - 80	30
7	Over 960	Over 80	35

Table 5: Tax ratio for the remaining incomes

³⁹⁴ Article 12 Decree no. 65/2013/ND-CP of the Government, dated 27 June 2013, detailing a number of articles of the law on personal income tax and law amending and supplementing a number of articles of the law on personal income tax

Taxable incomes	Tax rate (%)
a) Income from equity investments	5
b) Income from intellectual property rights, franchises	5
c) Income from prizes	10
d) Income from inheritances, gifts	10
đ) Income from capital transfer specified in paragraph 1 Article 13 of this Law	20
Income from transfer of securities provided for in paragraph 2 Article 13 of this Law	0.1
e) Income from transfer of property prescribed in paragraph 1, Article 14 of this Law	25
Income from transfer of property prescribed in paragraph 2 Article 14 of this Law	2

2. For non-residents

The 2007 Personal Income Tax Law stipulates taxable income as well as the specific tax rate for each taxable object as shown in the table below:

Income category	Taxable income	Tax rate	Notes
Corporate income	As revenue: including the full amount arising from the supply of goods and services including costs due on the purchase of goods and services on behalf of non-residents, but are not refunded, divided into 3 groups:		
	- Commodity trading activities.	1%	
	- Service trading activities.	5%	
	- Activities in manufacturing, construction, transportation and other business activities.	2%	
Income from salaries, remuneration	As taxable income from salaries, remuneration: total salaries, remuneration that non-residents get by doing a job in Vietnam, regardless income payment place.	20%	The income can be paid abroad

Income from equity investments	As the total amount non-residents get from the transfer of capital in Vietnamese individuals, organizations, regardless the transfer is made in Vietnam or in foreign countries.	0.1%	
Income from transfer of property	As a transfer price of property.	2%	
Income from royalties, franchise	As income surpassing 10 million dong according to each contract of transfer, transfer of use rights of intellectual property objects, technology transfer or franchise in Vietnam.	5%	
Income from prizes, inheritance, gifts	As the prize value, inherited property value, gifts over 10 million dong according to each lucky time in Vietnam.	10%	

4.3.2 Corporate Income Tax (CIT)

Corporate Income Tax has a very early formation history expressed by many different forms. In Vietnam, the predecessor of the corporate income tax is income tax applied at the beginning of the 20th century to the State's economic bases (profit extraction). As of 1990, the National Assembly enacted Income Tax Law applying uniformly to all organizations and individuals with trading activities in all economic sectors. Income tax levies on the profits obtained in the business process of the tax payers.

To overcome the foregoing limitations, on 10 May 1997, the National Assembly passed the Corporate Income Tax Law which took effect from 1 January 1999 (amended in 2003). On 3 June 2008, the National Assembly enacted new corporation income Law (hereinafter the Corporate Income Tax Law 2008) with effect from 1 January 2009.³⁹⁵ On 19 June 2013 the National Assembly enacted Law amending some Articles of Corporate Income Tax Law (hereinafter referred to as the Corporate Income Tax Law 2013) in force since 1 January 2014.³⁹⁶

4.3.2.1 Introduction about Corporate Income Tax

Corporate income tax is a direct tax which levies on income of business entities.

At present corporate income tax regulations is based on

- 1) Corporate Income Tax Law 2008
- 2) Corporate Income Tax Law 2013 (which revises some articles of the Corporate Income Tax Law 2008)

³⁹⁵ Law No. 14-2008-QH12, dated 3 June 2008 on Corporate Income Tax.

³⁹⁶ Law No. 32/2013/QH13, dated 19 June 2013 on amending and supplementing some articles of Corporate Income Tax.

3) Decree no. 218/2013 dated 26 December 2013 detailing and guiding for implementation of Corporate Income Tax Law (hereinafter referred to as the Decree no. 218/2013/ND-CP).

In accordance with the Corporate Income Tax Law 2008, the corporate income tax levies taxable income on organizations production and business of goods, services. The corporate income tax does not concern personal income from production and business of goods, services (identified as objects of personal income tax).

4.3.2.2 Corporate Income Tax Payer

Corporate income taxpayers are businesses and other organizations of production and/or trading of goods and provision of services. Corporate income tax payers can be divided into two groups as follows:

a) The organizations which are enterprises, cooperatives of production and business of goods, services including:

- Enterprises established in accordance with Vietnam Law: Private companies, limited liability companies, joint stock companies, partnerships, groups of companies.
- Enterprises established under the provisions of the law of foreign countries (hereinafter referred to as foreign enterprises) with the resident facilities or non-resident facilities in Vietnam.
 - According to Article 1 of the revised Corporate Income Tax Law 2013, Resident facilities of foreign enterprises are the production and business facilities from which foreign companies conduct a part or all of production and business in Vietnam, including:
 - Branches, administrative offices, factories, workshops, means of transportation, oil ores, gas ores, mines or other mining sites of natural resources in Vietnam;
 - Location of construction, building construction, installation and/or assembly;
 - Facilities providing services, including consultancy services through employees or other individuals, organizations;
 - Agents for foreign enterprises;
 - Representatives in Vietnam, in case of the authorized representatives to sign contracts on behalf of foreign enterprises or unauthorized representatives to sign contracts on behalf of foreign enterprises, but regularly carrying out the delivery of goods or provision of services in Vietnam
- Organizations established by Law on cooperatives: cooperatives, cooperative alliances and cooperation.

b. Groups of organization which are not cooperatives, enterprises performing production and business with income, including;

- Business units established in accordance with Vietnam Law, including economic organizations of political, social-political organizations, social, social-professional organizations, the people's armed units; agencies, business units engaged in production and business of goods and services.
- Other organizations involved in production, business with income.

4.3.2.3 Taxable Incomes

According to Article 3 of the 2008 CIT Law, “taxable incomes” include income from goods and service production and business activities and other incomes.

According to Article 3, Clause 2 of the 2008 CIT Law as amended in 2013, “other incomes” cover

- Income from transfer of capital, the right to capital contribution
- Income from real estate transfer, transfer of investment projects, transfer of right to participate in investment projects, transfer of the right to explore, extract, and process minerals
- Incomes from the right to use property and property ownership, including income from intellectual property rights
- Income from transferring, leasing and liquidating assets
- Income from interest of deposits, loans, sale of foreign currency
- Proceeds from doubtful debts written off but now recovery
- Proceeds from liabilities of which owners are not identified
- Omitted incomes in previous years
- Other income, including income from production or business outside of Vietnam.

4.3.2.4 CIT Calculation Method

Article 6 of the 2008 CIT Law stipulates that tax bases include taxed income and tax rate as follows:

$\text{Payable CIT} = \text{Assessable income} \times \text{Tax rate}$
--

a. Taxed income

According to Article 7 of the 2008 CIT Law, “taxed income” is the taxable income minus tax-exempt income and losses carried forward from previous years

$\text{Assessable income} = \text{Taxable incomes} - \text{Tax-exempt incomes} - \text{Losses carried forwards under the provisions}$

Taxable income is determined as follows:

$\text{Taxable income} = \text{Revenue} - \text{Deductible expenses} + \text{other incomes}$
--

- *Revenue* is the total amount of sales, processing, service supply, subsidies, surcharges, additional charges benefited by enterprises. Revenues are denominated in Vietnam dong; in case of revenue in foreign currencies, foreign currencies must be converted into Vietnam dong at the average exchange rate on the interbank foreign currency market, announced by the State Bank of Vietnam at the time of generation of revenue in foreign currency.
- *Deductible expenses* : an enterprise shall be permitted to deduct all expenses, if they satisfy both the following conditions:
 - The expenses actually arose and relate to the activities of production and/or business of the enterprise.
 - The expenses are accompanied by complete invoices and source vouchers as stipulated by law. For individual invoice of purchase of goods and services with value from twenty million dong or more, there must be voucher of non-cash payment.
- *Other incomes* include
 - Income from transfer of capital, the right to capital contribution
 - Income from real estate transfer, transfer of investment projects, transfer of right to participate in investment projects, transfer of the right to explore, extract, and process minerals
 - Incomes from the right to use property and property ownership, including income from intellectual property rights
 - Income from transferring, leasing and liquidating assets
 - Income from interest of deposits, loans, sale of foreign currency
 - Proceeds from doubtful debts written off but now recovery
 - Proceeds from liabilities of which owners are not identified
 - Omitted incomes in previous years
 - Other income, including income from production or business outside of Vietnam.

b. Tax rate

- From 1 January 2014 corporate income tax rate is reduced from 25% to 22%. From 1 January 2016, the applicable tax rate is 20%. For enterprises with total revenue not exceeding 20 billion dong, the applicable tax rate is 20%.

- The corporate income tax rate for activities of search, exploration and exploitation of oil, gas and other precious resources in Vietnam is between 32% - 50% to suit each project, each business establishment.

4.3.2.5 Preferential mode of corporate income tax

a. Conditions for preferential enterprise income tax

According to Article 18 of the 2008 CIT Law, Preferential enterprise income tax applies to enterprises which simultaneously satisfy the following two conditions:

- comply with the cost accounting regime, maintain invoices and source vouchers
- pay taxes in accordance with declarations.

b. Content of tax incentives

1. Preferential tax rates:

1.1 Applying the tax rate of 10% in 15 years for:

- Income from enterprises implementing new investment projects in areas with particularly difficult social-economic conditions, economic zones, hi-tech parks;
- Corporate income from implementation of new investment projects;
- Income of high-tech enterprises, enterprises of agricultural high-tech applications under the provisions of the Law on High Technology;
- Corporate income from implementing new investment projects in the manufacturing sectors (excluding projects producing goods subject to excise tax, the mining project) which meet one of two criteria:
 - o the project has an investment capital at least six trillion dong, disbursement with three years from the date of issuance of investment certificate and the total revenue is at least ten trillion dong/year, latest after three years from the year of turnover;
 - o the projects with a minimum investment scale at least six trillion dong, disbursement with three years from the date of issuance of investment certificate and using more than three thousand laborers.

1.2 Applying the tax rate of 10% for:

- Corporate income from carrying out social activities in the field of education - training, vocational training, health, culture, sports and environment;
- Corporate income from the implementation of investment project - social housing business to sell, lease, purchase for objects defined in Article 53 of the Housing Law;
- Income from press agencies from the print operation, including newspaper advertisements in accordance with the provisions of the Press Law;

- Income of agencies from publishing activities under the provisions of Publishing Law;
- Corporate income from planting, care and protection of forest;
- Agriculture, forestry and fisheries in areas with difficult economic-social conditions;
- Production, breeding and hybridization, livestock;
- Manufacturing, mining and refining of salt

1.3 Applying the tax rate of 20% (17 % in 2016) in a period of 10 years for:

- Corporate income from implementing new investment projects in areas with difficult economic - social conditions;
- Corporate income from implementing new investment projects, including high-grade steel production; manufacturing energy saving products; manufacturing machinery and equipment for agriculture, forestry, fishery and salt;
- Production and irrigation equipment;
- Production and refining animal feed, poultry and aquatic products;
- Development of traditional industries.

1.4 Applying 20% (17 % in 2016) tax rate to

- Income of people's credit funds and micro-finance institutions.

2. Preferential tax exemption period or reduction:

2.1 Tax exemption for 4 years, reduction of 50% of payable tax for the next 9 years:

- Corporate income from implementing new investment projects
- Corporate income from implementing new investment projects in the social sectors in the areas of difficult or very difficult economic - social conditions
- High-tech enterprises, agricultural enterprises of high-tech applications

2.2 Tax exemption for 4 years, reduction of 50% of payable tax for the next 5 years

- Corporate income from carrying out new investment projects in the field of socialization in areas other than the list of areas with difficult or very difficult economic - social conditions

2.3 Tax exemption for 2 years, reduction of 50% of payable tax for the next 4 years

- Corporate income from implementing new investment projects included: high grade steel production; manufacturing energy saving products; manufacturing machinery and equipment for agriculture, forestry, fishery and salt; production and irrigation equipment; production and refining animal feed, poultry and aquatic products; traditional sector development
- Corporate income from implementation of new investment projects in industrial parks (except industrial zones located in the areas of advantageous economic and social condition).

The period for tax exemption or for tax reduction of corporate income from implementation of new investment projects is to be counted from the first year of taxable income from the investment projects. In case there is an absence of taxable income in the first three years, the tax exemption period, tax relief is calculated from the fourth year.

4.3.2.6 Carrying Forward of Losses

Enterprises with loss can carry the loss forward subsequent years; this loss is deducted from taxable income. Time for carrying the loss forward is five years as of the following year when the loss incurs.

4.3.3 Double Taxation Avoidance Agreements and Tax Evasion Prevention

4.3.3.1 Introduction

As of 15 July 2014, Vietnam has concluded agreements on double taxation avoidance and tax evasion prevention with respect to income with 69 countries/territories around the world.

The purpose of double taxation avoidance and tax evasion prevention agreements is to eliminate double taxation by the way of:

- a) Exemption or reduction of payable tax in Vietnam for residents of the member countries of agreements; or
- b) Withholding tax that objects residing in Vietnam have paid in the member countries of the Agreement on the tax amount payable in Vietnam.

In addition, double taxation avoidance and tax evasion prevention agreements also provide the legal framework for cooperation and mutual assistance between tax authorities in Vietnam and the tax authorities of the countries/regions in the international tax management in order to prevent tax evasion of taxes levied on income and on property.

Table 6: Double Taxation Avoidance and Tax Evasion Prevention Agreements to which Vietnam is a party

No	Country	Date of signing	Entry into force
1	Australia	13 October 1992 in Ha Noi	30 December 1992
2	France	10 February 1993 in Ha Noi	1 July 1994
3	Thailand	23 December 1992 in Ha Noi	29 December 1992
4	Russia	27 May 1993 in Ha Noi	21 March 1996
5	Sweden	24 March 1994 Stockholm	8 August 1994
6	Korea	20 May 1994 in Ha Noi	11 September 1994
7	England	9 April 1994 in Ha Noi	15 December 1994

No	Country	Date of signing	Entry into force
8	Singapore	2 March 1994 in Ha Noi Protocol amending the Agreement: 12 September 2012 in Singapore	Agreement: 9 September 1994 Protocol: 11 January 2013
9	India	7 September 1994 in Ha Noi	2 February 1995
10	Hungary	26 August 1994 in Budapest	30 June 1995
11	Poland	31 August 1994 in Warszawa	28 January 1995
12	Netherlands	24 January 1995 in Hague	25 October 1995
13	China	17 May 1995 in Beijing	18 October 1996
14	Denmark	31 May 1995 in Copenhagen	24 April 1996
15	Norway	1 June 1995 in Oslo	14 April 1996
16	Japan	24 October 1995 in Ha Noi	31 December 1995
17	Germany	16 November 1995 in Ha Noi	27 December 1996
18	Romania	8 July 1995 in Ha Noi	24 April 1996
19	Malaysia, Indonesia	7 September 1995 in Kuala Lumpur	13 August 1996
20	Laos	14 January 1996 Vientiane	30 September 1996
21	Belgium	28 February 1996 in Ha Noi Protocol amending the Agreement: 12 March 2012 in Ha Noi	Agreement: 25 June 1999 Protocol: no effect
22	Luxembourg	4 March 1996 in Ha Noi	19 May 1998
23	Uzbekistan	28 March 1996 in Ha Noi	16 August 1996
24	Ukraine	8 April 1996 in Ha Noi	22 November 1996
25	Switzerland	6 May 1996 in Ha Noi	12 October 1997
26	Mongolia	9 May 1996 in Ulan Bator	11 October 1996
27	Bulgaria	24 May 1996 in Ha Noi	4 October 1996
28	Italy	26 November 1996 in Ha Noi	20 February 1999
29	Belarus	24 April 1997 in Ha Noi	26 December 1997
30	Czech	23 May 1997 in Prague	3 February 1998
31	Canada	14 November 1997 in Ha Noi	16 December 1998
32	Indonesia	22 December 1997 in Ha Noi	10 February 1999
33	Taipei	6 April 1998 in Ha Noi	6 May 1998

No	Country	Date of signing	Entry into force
34	Algeria	6 December 1999 in Algiers	No effect
35	Myanmar	12 May 2000 in Yangon	12 August 2003
36	Finland	21 November 2001 in Helsinki	26 December 2002
37	Philippines	14 November 2001 in Manila	29 September 2003
38	Iceland	3 April 2002 in Ha Noi	27 December 2002
39	North Korea	3 May 2002 in Pyongyang	12 August 2007
40	Cuba	26 October 2002 La Havana	26 June 2003
41	Pakistan	25 March 2004 in Islamabad	4 February 2005
42	Bangladesh	22 March 2004 in Dhaka	19 August 2005
43	Spain	7 March 2005 in Ha Noi	22 December 2005
44	Seychelles	4 October 2005 in Ha Noi	7 July 2006
45	Sri Lanka	26 October 2005 in Ha Noi	28 September 2006
46	Egypt	6 March 2006 in Cairo	No effect
47	Brunei	16 August 2007 Bandar Seri Begawan (Brunei)	1 January 2009
48	Ireland	10 March 2008 in Dublin	1 January 2009
49	Oman	18 April 2008 in Ha Noi	1 January 2009
50	Austria	2 June 2008 Vienna	1 January 2010
51	Slovakia	27 October 2008 in Ha Noi	29 July 2009
52	Venezuela	20 November 2008 Caracas	26 May 2009
53	Morocco	24 November 2008 in Ha Noi	12 September 2012
54	Hong Kong	16 December 2008 in Ha Noi 2 nd Protocol: 13 January 2014 in Hong Kong	12 August 2009 Protocol: no effect
55	The United Arab Emirates (UAE)	16 February 2009 in Dubai	12 April 2010
56	Qatar	8 March 2009 Doha	16 March 2011
57	Kuwait	10 March 2009 in Kuwait	11 February 2011
58	Israel	4 August 2009 in Ha Noi	24 December 2009
59	Saudi Arabia	10 April 2010 in Riyadh	1 February 2011
60	Tunisia	13 April 2010 in Tunis	6 March 2013

No	Country	Date of signing	Entry into force
61	Mozambique	3 September 2010 in Ha Noi	No effect
62	Kazakhstan	31 October 2011 in Ha Noi	No effect
63	San Marino	14 February 2013 in Rome	No effect
64	Serbia	1 March 2013 in Ha Noi	No effect
65	New Zealand	5 August 2013 in Ha Noi	5 May 2014
66	Palestine	6 November 2013 in Ha Noi	2 April 2014
67	Oriental Republic of Uruguay	10 December 2013 in Montevideo	No effect
68	Azerbaijan	19 May 2014 in Ha Noi	No effect
69	Turkey	8 July 2014 in Ankara	No effect

4.3.3.2 Scope of double taxation avoidance agreements

Double taxation avoidance and tax evasion prevention agreements apply to

- residents in Vietnam or
- residents in the countries which enter into the Agreement with Vietnam or
- concurrently residents in Vietnam and countries making the Agreement with Vietnam

Taxes covered by double taxation avoidance and tax evasion prevention agreements are taxes levied on income and property specified in each agreement. For Vietnam, the taxes applied by the Agreement include corporate income tax and personal income tax.

4.3.3.3 Application of double taxation avoidance agreements

Double taxation avoidance and tax evasion prevention agreements do not create new tax obligations different from the domestic tax laws. In case the agreement provides that Vietnam has the right to collect taxes for a certain types of income or revenue but Vietnam's tax laws do not regulate tax collection on such income, the current tax regulation of Vietnam shall prevail over the provision in the agreement.

4.3.4 Excise tax

Law No. 27/2008/QH12 of 14 November 2008 which takes effect on 1 April 2009³⁹⁷ contains provision on excise tax. The excise tax applies to the production or import of certain goods and the provision of certain services, considered as luxury.

³⁹⁷ The provisions applicable to liquor and beer take effect on 1 January 2010.

4.3.4.1 Objects Subject to Excise Tax

The 2008 Law on Excise Tax classifies objects subject to excise tax into two groups:

1. Goods:
 - Cigarettes
 - Liquor, beer
 - Under-24 seat cars
 - Motorcycles of a cylinder capacity of over 125 cm³
 - Aircraft and yachts
 - Gasoline
 - Air-conditioners of 90,000 BTU or less,
 - Playing cards
 - votive gilt papers and votive objects.
2. Services:
 - dance halls
 - massage parlors and karaoke bars
 - casinos, prize-winning video games, betting
 - golf business
 - lottery business³⁹⁸

4.3.4.2 Goods Exempted from Excise Tax

According to article 3 of the 2008 Law on Excise Tax, goods which are not subject to excise tax include:

1. Goods which are directly exported by producers or processors, or which are sold or entrusted by these producers or processors to other business establishments for export;
2. Imported goods, including:
 - a/ Goods as humanitarian aid or non-refundable aid; gifts for state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations or people's armed forces units; and donations or gifts for individuals in Vietnam within the quotas prescribed by the Government;
 - b/ Goods transited or transported via Vietnamese border gates or borders, and goods transported to and from border gates under the Government's regulations;
 - c/ Goods temporarily imported for re-export and temporarily exported for re-import which are not subject to import duty or export duty within the time limit specified in the law on import duty and export duty;

³⁹⁸ Article 2 of Law No. 27/2008/QH12 of 14 November 2008 on excise tax

d/ Personal effects of foreign organizations and individuals within diplomatic immunity quotas; personal belongings within duty-free luggage quotas; and goods imported for duty-free sale under law;

3. Aircraft and yachts used for commercial transportation of cargos, passengers and tourists;

4. Ambulances; prison vans; hearses; cars designed with both seats and standing places for transporting 24 or more people; cars running in recreation, entertainment and spoils areas which neither are registered for circulation nor move on roads;

5. Goods imported from abroad into non-tariff areas, goods sold from the inland into non-tariff areas for use only in non-tariff areas, and goods traded between non-tariff areas, except under-24 seat cars.

4.3.4.3 Taxpayers

Taxpayers include producers and importers of goods and providers of services which are subject to excise tax.³⁹⁹

4.3.4.4 Tax Calculation

The payable excise tax amount is the excise taxed price multiplied by the excise tax rate.⁴⁰⁰

Excise tax amount = taxed price x tax rate
--

Taxed price

The excise taxed price of a goods or service is the goods selling price or the service charge, exclusive of excise tax and value-added tax.

1. For domestically produced goods, it is the selling price set by the producer;
2. For imported goods, it is the import-duty calculation price plus the import duty.
For imported goods eligible for import duty exemption or reduction, it is exclusive of the exempted or reduced import duty amount;
3. For processed goods, it is the taxed price of the goods sold by processing-ordering establishment or the selling price of the product of the same or similar kind at the same time with the time of goods sale;
4. For goods sold on installment or deferred payment, it is the one-off selling price of such goods, exclusive of the installment or deferred payment interest;
5. For services, it is the service charge set by the service provider.
 - a) For golf business, it is the selling price of the membership card or golf-playing ticket, inclusive of the golf playing charge and deposit (if any);

³⁹⁹ Article 4 of Law No. 27/2008/QH12 of 14 November 2008 on excise tax

⁴⁰⁰ Article 5 of Law No. 27/2008/QH12 of 14 November 2008 on excise tax

- b) For casino, prize-winning video game and betting business, it is the turnover from such business minus the prize already paid to customers;
 - c) For dance hall, massage parlor and karaoke bar business, it is the turnover from such business.
6. For goods and services used for barter, internal consumption or donation, it is the excise taxed price of the goods or service of the same or similar kind at the time of barter, internal consumption or donation.

Taxed prices are calculated in Vietnam dong. In case taxpayers have foreign-currency turnover, foreign-currency amounts must be converted into Vietnam (at the average exchange rate on the inter-bank foreign currency market, announced by the State Bank of Vietnam at the time of turnover generation, for determination of taxed prices⁴⁰¹).

4.3.4.5 Tax Rates

The excise tax rates are as follows⁴⁰²:

No.	Goods or services	Tax rate (%)
I	Goods	
1	Cigarettes, cigars and other tobacco preparations	65
2	Liquor	
	a) Of 20° proof or higher	50
	b) Of under 20° proof	25
3	Beer	50
4	Under-24 seat cars	
	a) Passenger cars of 9 seats or fewer, except those specified at Points 4e, 4f and 4g	
	Of a cylinder capacity of 2,000 cm ³ or less	45
	Of a cylinder capacity of between over 2,000 cm ³ and 3,000 cm ³	50
	Of a cylinder capacity of over 3,000 cm ³	60
	b) Passenger cars of between 10 seats and under 16 seats, except those specified at Points 4c, 4f and 4g of this Article	30
	c) Passenger cars of between 16 seats and under 24 seats, except those specified at Points 4e, 4f and 4g of this Article	15

⁴⁰¹ Article 6 of Law No. 27/2008/QH12 of November 14, 2008 on excise tax

⁴⁰² Article 7 of Law No. 27/2008/QH12 of November 14, 2008 on excise tax

No.	Goods or services	Tax rate (%)
	d) Cars for both passenger and cargo transportation, except those specified at Points 4e, 4f and 4g of this Article	15
	e) Cars running on gasoline in combination with electricity or bio-fuel, with gasoline accounting for not more than 70% of the used fuel	70% of the tax rate for cars of the same kind as specified at Points 4a, 4b, 4c and 4d
	f) Cars running on bio-fuel	50% of the tax rate for cars of the same type as specified at Points 4a, 4b, 4c and 4d
	g) Electrically-operated cars	
	Passenger cars of 9 seats or fewer	25
	Passenger cars of between 10 seats and under 16 seats	15
	Passenger cars of between 16 seats and under 24 seats	10
	Cars for both passenger and cargo transportation	10
5	Two- and three-wheeled motorcycles of a cylinder capacity of over 125 cm ³	20
6	Aircraft	30
7	Yachts	30
8	Gasoline	10
9	Air conditioners of 90.000 BTU or less	10
10	Playing cards	40
11	Votive gilt papers and votive objects	70
II	Services	
1	Dance halls	40
2	Massage parlors and karaoke bars	30

No.	Goods or services	Tax rate (%)
3	Casinos and prize-winning video games	30
4	Betting	30
5	Golf business	20
6	Lottery business	15

4.3.4.6 Tax refund

Taxpayers who produce taxable goods from raw materials for which excise tax has been paid and who can produce lawful documents on tax payment may have the tax amounts paid for raw materials deducted upon the determination of payable excise tax amounts at the stage of production⁴⁰³.

4.4 Banking and Finance Laws

4.4.1 Law on Securities

The up and down of the stock price is a measure of the part of the economic growth in each nation. Therefore, Vietnam is rather strict on the activities offering the stock, listing, exchanging, trading, stock investment, stock services and stock market.

Activities related to stock in Vietnam are mainly regulated by Law on Securities 2006⁴⁰⁴ which was amended in 2010⁴⁰⁵ and detailed by Government's Decree No. 58/2012/ND-CP dated 20 July 2012⁴⁰⁶ (hereinafter referred to as the revised Law on Securities 2012).

According to article 1, paragraph 1 of the 2012 revised Law on Securities, "stock" is an evidence to confirm the rights and legitimate interests of the owner of the property or capital of the issuer. Stock is shown in the form of a certificate, a book entry or electronic data, including the following types:

- a) Stocks, bonds, treasury certificates
- b) Right to buy shares, warrants, call options, put options, futures contracts, group of stock or index of stock
- c) Capital contribution contracts
- d) Other stocks specified by the Ministry of Finance

In the stock market, investors may:

- Purchase stocks of the issuers

⁴⁰³ Article 8 of Law No.27/2008/QH12 dated 14 November 2008 on excise tax

⁴⁰⁴ Law No.70/2006/QH11 dated 29 June 2006 on Securities

⁴⁰⁵ Law No. 62/2010/QH12 dated 24 November 2010 amending, supplementing a number of articles of law on securities

⁴⁰⁶ Government's Decree No. 58/2012/ND-CP dated 20 July 2012 detailing and guiding the implementation of some articles of the Law on Securities and the Law amending and supplementing a number of articles of Law on Securities

- Trade in stocks listed on the Stock Exchange Center hereinafter referred as “STC”.

Listed stocks are eligible for sale and purchase at STC. The listed stocks are often issued by effective trading companies, audited financial situation and enterprises’ information publicly announced. Investors can deal with stocks via securities companies - brokers and not directly deal at STC or directly with each other.

The securities firms have to strictly comply with the legal framework, including the Ministry of Finance’s Circular No. 210/2012/TT-BTC, 30 November 2012 which regulates the establishment and operation of securities companies (hereinafter referred to as Circular No. 210/2012/TT-BTC).

According to the Circular No. 210/2012/TT-BTC, the securities companies means "enterprises engaged in the securities business, making some or all of the following operations:

- securities brokerage,
- securities dealing,
- securities underwriting,
- consulting for securities investment"

Under the provisions of Vietnam Law, foreigners cannot establish or own securities companies. The securities business is classified as conditional business under the registered capital for securities enterprises in Vietnam as follows:

- a) Securities brokerage: VND 25 billion;
- b) Securities deal: VND 100 billion;
- c) Underwriting securities: VND 165 billion;
- d) Securities Investment Consulting: VND 10 billion.

Where a firm request for permission for the above securities business operations, the legal capital is total legal capital corresponding to each business conditions. For a fund management company, the requirement for registered capital of a fund management company in Vietnam, a branch of a foreign fund management company in Vietnam is VND 25 billion.

The establishment process for a securities company is detailed in the Circular 210/2012/TT-BTC which confers power to the State Securities Commission to manage the operations of securities companies and issue license to the securities companies

As prescribed in article 5 Circular No. 210/2012/TTBTC, procedures for issuance of license for establishment and operation shall be as follow:

- 1) The State Securities Commission shall have the right to request the representative of the founding shareholders or members or the person

proposed to act as director (general director) to explain matters either directly [in person] or in writing

- 2) Founding shareholders or members for establishment of the securities company must finalize the set of application file for issuance of a license for establishment and operation.
- 3) The founding shareholders or members must finalize their material facilities and deposit their capital contribution in an escrow account.
- 4) The SSC shall inspect the material facilities at the headquarters of the securities company before officially issuing a license for establishment and operation.

As stipulated in article 4 Circular No. 210/2012/TTBTC, an application file for issuance of a license for establishment and operation of a securities company shall contain:

- 1) Application for issuance of a license for establishment and operation
- 2) Explanatory statement on material facilities, showing they are adequate for the securities business activities accompanied by documents evidencing the right to use the headquarters
- 3) Minutes of meeting and the resolution of the founding shareholders or members on the establishment of the securities company.
- 4) List of the proposed director (general director) and securities practitioners accompanied by valid copies of their securities practicing certificates; and curriculum vita of the director;

Based on the sensitivity of the stock market, to ensure steady, healthy stock market and ensuring the interests of all market participants, Vietnam Law stipulates restrictions to securities companies, securities brokers with restrictions on borrowing, lending and investment (Article 42-44 Circular No. 210/2012/TT-BTC). Accordingly, the ratio of total debt to equity holders of the securities companies is controlled not exceed 3 times. Also under the Circular No. 210/2012/TT-BTC, the securities company must not

- Lend money and securities of any kind, except where securities firms lend customers to purchase securities under the provisions of margin trading of securities by the Ministry of Finance.
- Buy, pool to buy property unless otherwise for use in head office, branches and transaction offices in direct service to the professional activities of securities firms.
- Buy and invest in real estate under the provisions must not exceed fifty percent (50%) of its total asset value of the company's securities

- Use the seventy percent (70%) equity to invest in corporate bonds, or own an equity in organizations, in which cannot be used more than twenty percent (20%) of equity to invest in unlisted companies.

Vietnam laws also regulate the proportion of foreign investment. According to Decision No. 55/2009/QĐ-TTg on 15 April 2009 of the Prime Minister, foreign investors buying and selling securities on the Vietnam stock market can hold:

- Stocks: maximum 49% of the total shares of public joint stock company, unless stated otherwise by specialized law. Where the proportion of foreign ownership is classified according to a list of specific business lines, the classified list shall be applied.
- Public investment fund certificate: maximum 49% of total public investment fund.
- For public securities investment companies: maximum 49% of the charter capital of a public securities investment company.
- For bond: issuers may set a limited holding rate for outstanding bonds of the issuer.

4.4.2 Law on Credit Institutions

The establishment, operation and arrangement of organizational structure of the credit institutions are regulated by the 2010 Law on credit institutions.⁴⁰⁷

Credit institutions are enterprises to implement some or all of banking operations. Credit institutions include banks, non-bank credit institutions, microfinance institutions and people's credit funds.

- **Bank** is type of credit institutions which can conduct all banking activities under the provisions of the Law on credit institutions 2010.
- Types of banks are commercial banks, policy banks, and cooperative banks. The Commercial bank is a type of bank which conducts all banking activities and other business activities in accordance with the provisions of Law on Credit Institutions 2010 for profit.
- **Non-bank credit institution** is a credit institution to implement one or more banking activities under the provisions of Law on credit institutions 2010 but the non-bank credit institution cannot take individual deposits and providing payment services through customers' account. Non-banking credit institutions include financial companies, financial leasing companies and other non-banking financial institutions.

⁴⁰⁷ Law No. 47/2010/QH12 dated 29 June 2010 on Credit Institutions

The Financial leasing company is a type of financial companies whose main activity is financial leasing under the provisions of Law on credit institutions 2010.

- **Microfinance Organization** is a type of credit institutions mainly performing some banking activities to meet the needs of individuals and families with low incomes and micro enterprises.
- **The People's Credit Fund** is a credit institution voluntarily established by legal entities and individuals and households under cooperative form to carry out banking activities under the provisions of this Law and the Law of cooperatives for a mutual assistance in the development of production, business and life.

4.4.2.1 Condition of Establishment of Credit Institutions

Law on Credit Institutions 2010 sets out the conditional establishment of commercial banks in particular and credit institutions in general with regard to legal capital, managers, and executives.

Vietnam laws also allow the establishment of credit institutions with 100% foreign capital if the statutory conditions are satisfied.

The State Bank of Vietnam is the competent authority to issue establishment licenses, establishment of additional licenses, revoking licenses for the establishment of credit institutions. After obtaining the establishment license of the State Bank, the credit institutions shall make the business registration at the Department of Investment and Planning where the credit institutions locate the headquarters for local enterprises.

A 100% foreign-owned credit institution

According to Article 20.1 and 20.2 of Law on Credit Institutions 2010, in order to be granted with Licenses, a 100% foreign-owned credit institution shall comply with these following conditions:

- a) Having chartered capital, injected capital level at least equals to legal capital requirements.
- b) The owners of sole member limited liability credit institutions, the founding shareholders, the founding members who are legal entities and legally operating and having sufficient financial capability to make capital contribution; the founding shareholders or the founding members who are individuals and having full capacity for civil acts and sufficient financial capability to make capital contribution.

The State Bank shall stipulate in details conditions for license applicable to owners of sole member limited liability credit institutions, founding shareholders and founding members.

- c) The administrators, managers, members of the Board of Control shall meet all criteria and conditions stipulated in Article 50 of this Law.
- d) Having Charter that is line with provisions of this Law and other applicable provisions of the laws.
- e) Having a feasible establishment project, or business plan that the proposed business shall not affect the safety and stability of the credit institutions system; shall not create monopoly or competition constraints or unfair competition in the credit institutions system.
- f) The foreign credit institution is permitted to conduct banking activities in accordance with provisions of the laws of its home country where its head quarter is located.
- g) The proposed activities that the foreign credit institution is applying for to conduct in Vietnam must be those permitted to conduct in its home country where its head quarter is located.
- h) The foreign credit institution must have sound business performance; and meets the conditions as stipulated by the State Bank concerning total assets value, financial standing and prudential ratios.
- i) The foreign credit institution shall commit in writing, which to be sent to the State Bank, on its willingness to provide joint venture credit institutions, 100% foreign owned credit institutions and foreign banks' branches with financial, technological, managerial, operational support, ensuring that these organizations maintain the actual value of the their chartered capital/injected capital not lower than the legal capital and fully satisfy the provisions on prudential assurance provided in this Law.
- j) The competent supervisory authority in home country has already signed MOU with the State Bank on cooperation regarding supervision of banking activities and exchange of prudential supervision information. The competent supervisory authority in home country shall have written statement certifying that they supervise foreign credit institutions' operations on consolidated basis and in accordance with international best practices.

Commercial banks

Dossiers of application for granting permits for establishment and operation of commercial banks consist of:

1. Application for granting permits for establishment and operation of commercial banks signed by the founding shareholders, owners, founding members
2. The draft of Charter.

3. Scheme to establish commercial bank, including at least the following contents:

- a) Need for the establishment of commercial bank;
- b) Name of commercial bank, name of province/city under central authority where the its head office to be located, operation time, charter capital when establishing, operation contents;
- c) Financial capability of shareholders of establishment capital contribution, limited partners;
- d) Organization diagram and operation network of the bank expected in the first 3 years;
- e) List of personnel expected in which describes in detail the professional qualifications, working experience in the financial sector, banking and risk management to meet the requirements of each position and title:
 - i. The Chairman, members, independent members of the Management Board, Members' Council; Heads of the Committees of the Management Board, Members' Council;
 - ii. Heads, members, members specializing in and being responsible for the Inspection Committee;
 - iii. General Director (Director), Deputy general directors (Deputy director), Chief Accountant and heads of subordinate units in the organizational structure;
- f) Policy on risk management: Identify, measure, prevent, manage and control credit risk, operational risk, market risk, liquidity risk and other risks in the process of operation;
- g) Information Technology:
 - (i) the expectation of financial investment for information technology;
 - (ii) Information technology system must meet the requirements for administration, risk management of commercial bank and the regulations of the State Bank;
 - (iii) Ability to apply information technology, which clearly states: the time to conduct investment in technology; type of technology expected to apply; expectation of managers and capacity of managers in the application of information technology; ensuring systems of information technology to be integrated and connected to the management system of the State Bank to provide information according to management requirements of the State Bank;
 - (iv) Dossiers of information technology infrastructure for the operation of commercial bank;

- (v) Measures to ensure safety, security corresponding to the type of service to be expected to deploy;
 - (vi) Risk management plan for the technology expected to apply in the operation of commercial bank;
 - (vii) Expect to assign responsibilities for reporting and controlling activities of information technology systems.
- h) Ability to stand and development of the bank on the market:
 - (i) Analysis of the banking market, which state the real status, challenges, and prospects;
 - (ii) Ability to participate and compete on the market of the bank, in which prove the advantage of bank as participating in the market;
 - (iii) Development strategy, extension of the network of operation and contents of banking activities, type of customers and numbers of customers. In particular, specify in detail the satisfaction of the conditions for activity contents with conditions.
- i) Internal systems of inspection, audit:
 - (i) The principle of operation of internal inspection system;
 - (ii) The draft of basic internal regulations of the organization and operation of the bank, at least including the internal regulations specified in clause 2 of Article 93 of the Law on credit institutions and the following provisions:
 - Regulation on organization and operation of the Management Board, Members' Council, Inspection Committee, Executives;
 - Regulation on organization and operation of the head office, branches, and other subordinate units.
 - (iii) The contents and process of operation of the internal audit.
- j) Business plan expected in the first 3 years, which must at least include the following contents: market analysis, strategy, objectives and action plans, financial statements of each year (balance sheet and report of business results, reports of cash flow, minimum capital safety norms, the criteria for performance effect and explanation of ability to perform financial targets in each year).

4. Documents proving the capacity of the apparatus of management, inspection and administration expected:

- a) Curriculum vitae, judicial record (or equivalent document);
- b) Certified copies of documents evidencing qualifications;

- c) Other documents evidencing the satisfaction of the conditions and standards stipulated in the Law on Credit Institutions and relevant provisions of law;
- d) Where the person to be elected as member of the Management Board, Members' Council, member of the Inspection Committee, General Director (Director) is not nationality of Vietnam, in addition to the documents mentioned above, there should be written commitment to fully meet the conditions for residing and working in Vietnam.

5. Minutes of the meetings of founding shareholders, founding members or the document of owner on the selection of the Preparatory Committee, Head of the Preparatory Committee, passing the draft of Charter, Scheme to establish the bank and a list of administration positions.

As stipulated in article 5 in Circular No 40/2011/TT-NHNN regulating on licensing and some contents of the organization and operation of commercial banks, foreign bank branches, and representative offices of foreign credit institutions, foreign institutions with banking activities in Vietnam, the order and procedures for granting permits of establishment and operation of commercial banks, permits for the establishment of foreign bank branches are as follows:

a) The Preparatory Committee makes dossiers requesting for issuance of permits and mailed or submitted directly to the State Bank.

Within 60 days from the date of receiving the dossier requesting for issuance of permit, the State Bank shall send written reply to the preparatory committee to confirm that it received complete and valid dossier for consideration and approval in principle. Where the dossier requesting for issuance of permit is incomplete, the State Bank shall send written reply to the Preparatory Committee requesting for additional documents.

b) Within 90 days from the date of sending written confirmation of received complete and valid dossier, the State Bank shall send written approval in principle of the establishment of commercial bank, foreign bank branch. In case of disapproval, the State Bank shall send a written reply to the Preparatory Committee, in which states clearly the reasons of disapproval.

c) Within 60 days from the date of receiving written approval in principle of the establishment of commercial bank, foreign bank branch, the Preparatory Committee sets up additional documents and mailed or submitted directly to the State Bank. Exceeding the above time limit, if the State Bank did not receive or received incomplete documents as mentioned above; the written approval in principle is no longer valid.

Within 2 days from the date of receipt of complete additional documents, the State Bank certifies in writing the reception of the full documents. Within 30 days from the date of receipt of complete additional documents, the State Bank proceeds to license in

accordance with the provisions. In case of not licensing, the State Bank sends a written reply to the Preparatory Committee, in which states clearly the reasons of not licensing.

4.4.2.2 Capital Rate for Establishment of Credit Institutions

On 22 November 2006, the Government issues the Decree No. 141/2006/ND-CP stipulating the list of legal capital rate of credit institutions as follows:

No.	Type of credit institutions	Legal capital is applicable until	
		2008	2010
I.	Bank		
1	Commercial bank		
	a. State own commercial Bank	VND 3,000 billion	VND 3,000 billion
	b. Commercial Joint Stock Bank	VND 1,000 billion	VND 3,000 billion
	c. Joint Venture Bank	VND 1,000 billion	VND 3,000 billion
	d. Bank with 100% foreign capital	VND 1,000 billion	VND 3,000 billion
	e. Branches of foreign banks	USD 15 million	USD 15 million
2	Policy Bank	VND 5,000 billion	VND 5,000 billion
3	Investment Bank	VND 3,000 billion	VND 3,000 billion
4	Development Bank	VND 5,000 billion	VND 5,000 billion
5	Cooperative banks	VND 1,000 billion	VND 3,000 billion
6	People's Credit Fund		
	a. the Central People's Credit Funds	VND 1,000 billion	VND 3,000 billion
	b. Basic People's Credit Fund	VND 1 billion	VND 1 billion
II	Non-banking credit institutions		
	a. Financial Companies	VND 300 billion	VND 500 billion
	b. Financial leasing companies	VND 100 billion	VND 150 billion

For foreign investors, on 3 January 2014 the Government issued Decree No. 01/2014/ND-CP on foreign investors buying shares of Vietnam credit institutions (hereinafter referred to as Decree No. 01/2014/ND-CP). The Decree provides for legal restriction for foreign investors at the credit institutions established in Vietnam as follows:

- Foreign investors have to buy shares in credit institutions in Vietnam in the form of; 1) direct purchase from existing shareholders, 2) credit institutions makes an offering shares, or 3) converting enterprises to the holding credit institutes⁴⁰⁸
- Percentage of maximum share ownership of foreign investors is detailed below:

⁴⁰⁸ In accordance with the Article 6.3 of the Decree No. 01/2014/ND-CP, foreign investors shall purchase shares in case where credit institutions transform the legal form into joint-stock credit institutions

No.	Objects	maximum ownership of charter capital in 1 credit institution in Vietnam
1	Foreign individuals	5%
2	Foreign organizations	15%
3	Foreign investors under state strategic plan	20%
4	Foreign investor and its affiliates	20%
5	Total level of shareholding of all foreign investors and their affiliates	30%

The percentage of equity ownership by foreign investors in the foregoing credit institutions in Vietnam also includes the funds that foreign capital investors entrust to other institutions and/or individuals to buy shares.

Foreign investors converting convertible bonds of credit institutions in Vietnam to stock must also ensure the foregoing equity ownership percentage

3. Restrictive conditions

The current Vietnamese law does not impose requirements on foreign individuals or foreign organizations (including foreign credit institutions) with less than a 10% shareholding in a Vietnamese credit institution.

However, it imposes restrictive conditions for a foreign organization wishing to hold 10% or more in a Vietnamese credit institution as follows:

- Being ranked from stable rate or equivalent or higher rated by international credit institutions
- Having sufficient financial resources determined by the independently audited financial statements
- The purchase of shares does not create an exclusivity, does not affect the stability of credit institution system
- No violations of the law on currency, banking, securities, stock market in the local country
- Obtain assets equivalent USD10 billion, if foreign investors are banks finance companies, and leasing companies. USD 1 billion, if they are other organizations.

Moreover, in case of foreign investors under state strategic plan (the foreign institutions which have the financial capacity and commitment in writing by the authorized person on the long-term benefits attached with Vietnam credit institutions and Vietnam credit institutions support in transshipment modern technology, development of banking

products, services, financial capacity, management, operation), the investors must meet the following conditions:

- Be a credit institution such as foreign banks, foreign financial companies and leasing companies
- Having experience in international activities in the banking sector for at least 5 years.
- Having total min assets of the preceding year equivalent to USD 20 billion
- Not holding 10% of the charter capital in any other credit institutions in Vietnam.

In addition, the conditions for financial institutions to sell shares to foreign investors are prescribed in article 11 of Decree No. 01/2014/ND-CP.

1. Credit institutions transforming legal form into the joint-stock credit institutions must have plan on approved plan on equitation, plan on transformation and plan on share sale for foreign investors
2. The joint-stock credit institutions must have plan on increasing charter capital, plan on selling treasury stocks, and plan on share sale for foreign investors. The plans have to be approved by General Council of Shareholders.

Stock sale price of credit institution:

1. For unlisted shares of credit institutions: sale price will be determined through an auction or agreement
2. For listed credit institutions: selling price of stock complies with the law on securities and stock market

4.4.3 Law on Anti-money Laundering

Vietnam's legal documents on prevention of money laundering consist of

- Law No. 07/2012/QH13 dated 18 June 2012 on Anti-money laundering
 - Government Decree No. 116/2013/ND dated 4 October 2013 detailing implementation of a number of provisions of the Law on Anti-money laundering
 - State Bank of Vietnam's Circular No. 35/2013/TT-NHNN dated 31 December 2013 guiding on the implementation of some provisions on anti-money laundering.
- The decree and circular are purported to be a supplementary mechanism for prevention measures, anti-money laundering regulations.

Law on Anti-Money Laundering 2012

According to its article 1, the 2012 Law on Anti-Money Laundering stipulates

- the measures to prevent, detect, stop and handle the organizations and individuals with the acts of money laundering
- the responsibilities of agencies, organizations and individuals in the prevention of money laundering and international cooperation on anti-money laundering

The prevention of money laundering in order to fund the terrorism shall comply with this Law, regulations of the Penal Code and the law on prevention terrorism.

According to article 21 and 22 of Law on Anti-Money Laundering 2012, all financial, non-financial organizations and individuals concerned with finance (such trading games with prize, casino, real estate exchange floor; layer organizations) must report suspect transaction to the State Bank of Vietnam. The transaction value is determined by the Prime Minister under the proposed regulations of the Central Bank. The State Bank of Vietnam defines criteria of the suspect transaction. The examples of suspect transaction as detailed in article 22 are;

- The client provides incorrect, incomplete information;
- The clients persuade the reporting subjects not to report to state agencies
- Unable to identify clients by the information provided
- The individual or agency phone number provided by the client agencies cannot be contacted
- The transactions are done by organizations and individuals in the warning list;
- The transactions are done between the parties involved in criminal activities;
- The organizations and individuals involved in transaction with a large amounts inconsistent with the income of business activities of these organizations and individuals;
- Transactions are not done in proper process and procedures as prescribed by law.

Decree No. 116/2013/ND

On 4 October 2013, the Government issued Decree No. 116/2013/ND-CP detailing implementation of some articles of the Law on Anti-Money Laundering (hereinafter referred to as Decree 116/2013/ND-CP). The decree stipulates specific measures to prevent and combat money laundering including:

- Identifying, reporting and storing customer information
- Gathering, processing and transferring information on prevention of money laundering
- Application of Interim Measures
- Responsibilities of the State Bank, Ministry of Public Security and other ministries
- International cooperation on prevention of money laundering

For financial institutions, Decree 116/2013/ND-CP requires the process of customer checking. The process should be followed in the following cases;

- when customers firstly open accounts
- when customers firstly establish relationships with financial institutions to use products or services offered by financial institutions
- when customers perform irregular transactions of large value (the total value of VND 300 trillion or more in a day)
- when customers make electronic transfers, without information about name, address or account number of the originators
- when the parties are involved in transactions are related to money laundering
- when there is doubt about the accuracy or completeness of customer identification information previously collected.

Decree 116/2013/ND-CP also requires financial institutions to make internal regulations for preventing anti-money laundering. The examples of internal regulations are;

- customer acceptance policy
- processes and procedures for customer identification
- verification and updating customer information
- guiding the process of reporting the transaction
- reviewing process, detection and handling of suspicious transactions
- storage and confidentiality of information
- adoption of interim measures and principles in handling of delayed transaction cases
- reporting, providing information to the central bank and the competent authority;
- professional training on anti-money laundering
- control and internal audit compliance with policies, regulations, processes and procedures relating to anti-money laundering activities

State Bank of Vietnam's Circular No. 35/2013/TT-NHNN

The Circular applies to financial institutions, entities and individuals engaged in the non-financial sector. The Circular also covers Vietnamese entities and individuals; foreign organizations which operate in Vietnam or do not operate in the Vietnamese territory of Vietnam but maintain financial transactions in Vietnam.

The Circular No. 35/2013/TT-NHNN states obligations to fight against money laundering as follows:

- The Circular requires financial institution to report to State Bank of Vietnam when there is transactions connecting with foreign customers who have political influence, since the foreign customers with political influence are considered high-risk customers. In addition, the reporting entities must closely

supervise high-risk customers' transactions by updating customers' information on bi-annual basis.

- When the reporting entities detected the huge value transactions, suspicious transactions, electronic funds transfer in excess of the statutory limits, or money laundering for terrorist financing. The reporting entities must report to State Bank of Vietnam in writing. The Circular requires financial institution to report to State Bank of Vietnam when the value of foreign currencies or Vietnam Dong to be transacted in cash, precious metals, precious stones and negotiable instruments for customs declarations is above VND300 million.

Authorities responsible for Money Laundering prevention

According to Law on Anti-Money Laundering g 2012, the following State authorities are responsible to report, prevent, and fight against money laundering are;

- **Anti-Money Laundering Administration (“AMLA”) under the Banking Inspectorate and Supervision Department of the State Bank of Vietnam.** The AMLA assists the Chief Inspector of the SBV to implement anti-money laundering (“AML”) regulations and international AML commitments to which Vietnam is a signatory. The AMLA’s duties and powers are set out in Decision No. 1654/QD-NHNN of the SBV dated 14 July 2009
- **State Bank of Vietnam** has the primary role to regulate and supervise implementation of AML regulations
- **Ministry of Public Security** is responsible for discovery and investigation of money laundering crimes
- **Ministry of Finance** is responsible for implementation of AML measures in insurance, business, securities, and prize-winning games and casinos
- **Ministry of Construction** is responsible for implementation of AML measures in the real estate business
- **Ministry of Justice** is responsible for implementation of AML measures which apply to lawyers, legal practice organizations, notaries and notary public offices.

5. Land Laws

5.1 Regulations on Land Use Rights and Land Use Rights Certificates, Land Lease, Land Prices, Land Expropriation, Leasing Domestic Houses of Foreign Investors

On 29 November 2013, the 13th National Assembly of the Socialist Republic of Vietnam passed Law No.45/2013/QH13 (hereinafter referred to as Land Law of 2013) for regulations on land ownership, rights and responsibilities of the State in representative of the people's ownership of land, administration of land use, and rights and obligations of land users to land.

5.1.1 Land Use Rights and Land Use Rights Certificates

In Vietnam, private ownership of land is not recognized. The state manages land ownership and allocates land to the land users who obtain land use rights. Land use rights certificates (LUC) are issued to the land users who fulfill the conditions required by law. The owners of land use rights have full power to land, such as conversion, transfer, inheritance, gift, and mortgage.

While the Land Law allows local companies to receive the land use rights transferred from other stakeholders, foreign investors are not allowed to do so. Foreign investors in Vietnam will receive land use rights through capital contributions, with equal rights as land use owners (lease, donation, mortgage, capital contributions), if the capital partners having rent/cash allocation is not from the State budget.

In case of foreign joint venture with State owned enterprises which lease land from State before 1 July 2004, the State owned enterprises can imply the value of land use rights as the state budget allocated for the enterprises. The State owned enterprises are not liable on debt recognition and rent payment for joint ventures with foreign organizations. The value of land use rights is treated as part of the State capital contribution to the joint venture enterprises.

5.1.2 Land Lease

Instead of capital contributions for the land use rights with Vietnamese partners as to establish joint venture enterprises, foreign investors can obtain land lease after that establishment of foreign capital investment enterprises in Vietnam. According to Article 153, clause 3 of the Land Law of 2013, enterprises with foreign investment reserving the right to use the land under the following form:

- The State leases land
- Land lease, sublease of economic organizations⁴⁰⁹, Vietnamese people residing abroad
- Land lease attached to the infrastructure of enterprises with foreign investment

The land lease term for foreign investment enterprises are reviewed on the basis of investment projects or application for land allocation. Normally, the land lease will not exceed 50 years. However, in the special case, land lease term may be extended, but not exceeding 70 years. When the term expires, the land user who wishes to further use the land shall request the State to consider the extension of land use rights. The State generally considers extending the land use term upon the following conditions:

- The land lessees comply with Land Law
- Land use is consistent with the approved land use plan
- The right of foreign investors to use leased land

⁴⁰⁹ Economic organizations include enterprises and cooperatives

As provided above, land use rights of foreign investors will change depending on the rent payment method. Under the provisions of the Land Law of 2013, as foreign investors are leased land by Vietnam State, they have the right to choose between one of the two payment methods:

- Land lease with annual rent payment
- Land lease with single rent payment for the entire lease period

For the case of ***land lease with annual rent payment***, in addition to general rights of land users, foreign investment enterprises can:

- have land use rights, or dispose assets on the land as collateral of their ownership in credit institutions
- make a capital contribution with assets
- sell the property on the land

However, foreign investment enterprises do not have rights to transfer land use rights, lease, sublease or mortgage the land use rights.

If foreign investors choose the land lease form of a ***single payment for the entire lease period***, they have the same rights as owners of such land use rights as follow:

- Transferring land use rights and properties attached to the land under their ownership within the land use term
- Leasing or subleasing the land use rights and properties attached to the land under their ownership within the land use term
- Mortgaging land use rights and assets attached to the land with credit institutions during the term of land use
- Capital contributions by land use rights and assets attached to the land cooperation in production and sales within land using term

5.1.3 Land Prices

The prices of land are determined by three methods:

- by consideration of People's Committees of provinces
- by auction or
- by the land users in the contracts of transfer, lease/sublease or capital contribution with the land use rights.

The State makes land evaluation based on purposes of use. The State issues the land rate every 5 years on 1st January for land types and location. The land price determination is based on the following criteria:

- The land use is charged for households or individuals for the area within the limits recognized by the State for purposes of agricultural and non-agriculture use
- Land use rating
- The costs and fees on the management and use of land
- The administrative fines for violations of land related regulations
- The compensation for the state if any damage in management and use of land
- Evaluating land use rights to pay the volunteer returning the land to the State in case the returned land is the land allocated by the State with land use charge
- Notarization of contracts relating to land use rights. All contracts relating to land must be notarized in accordance with law

5.1.4 Land Expropriation

The 2013 Land Law allows the State to expropriate the land of the entities allocated/leased land. Foreign investors' land is expropriated in case of violation of the law in the following cases:

- Foreign investors use land for improper purposes and are administratively sanctioned for acts of improper land use purposes while they make further violations
- willfully destroy land
- do not carry out their obligations to the state and do not abide by administrative penalties
- do not use land to implement investment projects within 12 continuous months

Moreover, the State may expropriate land for purpose of national security and social-economic development for public national interests. In case of land expropriation, the land users are compensated.

5.1.5 Leasing Domestic Houses of Foreign Investors

As stipulated in article 131 of the 2005 Housing law⁴¹⁰, only the following persons are allowed to rent domestic houses in Vietnam

- Organizations and individuals who are allowed to enter Vietnam for a period of 3 consecutive months or more
- Vietnamese residing abroad who are authorized to rent domestic houses in Vietnam

Domestic houses to be leased must meet the following conditions:

⁴¹⁰ Law No. 56/2005/QH11, dated 29 November 2005, on Housing

- The certificate of house ownership is issued in accordance with the regulations;
- There should be separate domestic houses or self-contained apartments;
- Ensuring quality and safety for tenants;
- Ensuring the supply of electricity, water, sanitation and other essential conditions;
- There is no dispute about the ownership and use rights.

Leases of domestic houses must be notarized by a notary public or authenticated by People's Committees of districts for housing in urban areas or People's Committee for housing in rural areas. However, notarized or certified by the People's Committee of communes will not be required for the leases of houses less than 6 months. In this case, the lessor must submit the People's Committee of communes the copies of leases.

5.2 Regulations on Land Use Planning of Urban and Rural Areas

Chapter IV of the Land Law of 2013 lays down principles related to land use planning. Land use planning in Vietnam is not divided between urban and rural areas, but divided according to administration level and purpose. According to article 36 of Land Law of 2013, the land use planning system in Vietnam is organized as follows:

- Land use planning at national level
- Land use planning at provincial level
- Land use planning at district level
- Land use planning for defense
- Land use planning for security

Land use planning must be consistent with the rules regarding to the strategy, master planning, economic-social development planning, including defense and security policy. Also land use planning must be consistent with the land use planning approved by the state competent agency basing on the factors of:

- economical and effective land-use
- rational exploitation of natural resources and environmental protection
- adapt to climate change
- protection and restoration of historical - cultural landscapes
- democracy and openness
- the purpose of defense and security

5.2.1 Purpose for Land Use Planning

Typically, the legal bases for land use planning include:

- Strategy of economic - social development, defense and security
- Natural economic - social conditions

- Current status of land use, land potential and the results of implementation of previous land use planning
- Demand of land use sectors
- Progress of science and technology related to the use of land
- National land use planning
- Plan for economic –social development for 5 years and each year
- Land use demand for 5 years
- Results of implementation of land use plans of prior period
- Potential investment, mobilizing resources to implement the land use plan

5.2.2 Content of Land Use Planning

Content of land use planning:

- Land use orientation for 10 years;
- Determining land use criteria;
- Determining land types for province administration of economic – social zones;
- Mapping of land use planning for national economic - social zones;
- Implementation of land use planning.

Content of land use plans:

- Analyzing and evaluating the implementation of land use plans of the prior period;
- Determining the area of land types in land use planning period of 5 years;
- Planning of 5 year land use for each administrative unit;
- Method to implement the land use plan.

5.2.3 Process of Land Use Planning

The responsible authorities for making planning scheduling are;

- The Government makes land-use planning at national level. Ministry of Natural Resources and Environment shall assist the Government in making land-use planning at national level;
- The Provincial People's Committee makes land-use planning at provincial level;
- The People's Committee makes land-use planning at district level;
- Ministry of Defense makes land use planning for national defense;
- Ministry of Public Security makes land use planning for national security.

The steps of land use planning are

Step 1: Consultation on land use planning

The authorities collect the people's opinions on land use planning. Authorities publicize the contents of land use planning on the website of each agency. Time for collecting opinion on land use planning is 30 days.

Step 2: Appraisal of land use planning

The Prime Minister sets up an evaluation council of land use planning at national level, with the assistance of the Ministry of Natural Resources and Environment.

The Minister of Natural Resources and Environment sets up an evaluation council to make the land use planning of defense, security and land-use planning at provincial level.

The Land management agencies at the central level shall assist the Council in evaluating process of land use planning.

Chairman of the provincial People's Committee sets up the evaluation council of land use planning at district level. Land management agencies at provincial level and district level shall assist the Council in the evaluating process of land use planning.

The content evaluation of land use planning includes:

- Legal basis, scientific basis of land use planning;
- Relevance of land use planning with strategies for economic and social development, defense, national and local security, and development zones;
- Economic - social, environmental efficiency;
- Feasibility of land-use planning;
- Appropriate level of land-use plans;
- Compatibility of land use planning with economic - social development plans.

Step 3: Decision on approving the land use planning

Authority to make decision approving the land use planning are

- National Assembly decides on land use planning at national level;
- Provincial People's Committee approves land use planning at provincial level but has to submit the planning to central Government for an approval;
- Provincial People's Committee approves land use planning at district level.

After approval of land use planning by the State competent agencies, land use planning must be publicized.

6. Labor Law

The Labor Code was first passed by the 9th National Assembly of the Socialist Republic of Vietnam at the 5th Session on 23 June 1994, which was effective from 1 January 1995.

After 15 years of execution, the rapid changes of socio-economic situation in general, and labor market and labor relations, in particular, require the Labor Code to be amended and

supplemented. Starting from the basic issues, on 18 June 2012, at the 3rd meeting of the 13th National Assembly of the Republic Socialist Vietnam adopted the Labor Code of 2012 (No. 10/2012/QH13) which took effect from 1 May 2013.

The Labor Code of 2012 serves as the main law governing employment relationships in Vietnam, and applies to:

- Vietnamese and foreign employees, trainees and apprentices working in Vietnam
- Employers (whether Vietnamese owned or an FIE) in Vietnam
- Other agencies, organizations and individuals directly related to labor relationship

The following materials are the basic content of the Labor Code of 2012 to further regulate labor relations to encourage good labor relations, and to protect the legitimate rights and interests of the parties. It constitutes an important contribution to further development of the productive forces, economic –social development in terms of international integration in Vietnam today.

6.1. Labor Recruitment

Enterprises with foreign investment are allowed to directly employ or recruitment through job center/labor sublease Vietnamese laborers. Seven days prior to recruitment, enterprises with foreign investment post up recruitment notices at the head offices stating vacancies, job requirements, number of employees to be employed, contract term, wages and working conditions.

The international organizations and foreign companies including representative offices and branches in Vietnam can make employment through job centers, the labor sublease.

Foreigners working in Vietnam can work under the following forms⁴¹¹:

- Working under labor contracts
- Being reassigned within the company
- Implementing contracts or agreements on business, commerce, finance, banking, insurance, science and technology, culture, sports, education, vocational training, and health
- Service providers under contracts
- Working for foreign non-governmental organizations, and international organizations in Vietnam operating under the provisions of Vietnam Law
- Volunteers
- Responsible for the establishment of commercial presence
- Managers, executives, professionals, technical workers
- Participating in tenders and projects in Vietnam

⁴¹¹ Article 2 of Decree No. 102/2013/ND-CP regulating the implementation of some articles of the Labor Code concerning foreign workers working in Vietnam.

To be able to work in Vietnam, foreign citizens must satisfy the following conditions⁴¹²:

- Capable of full civil behavior;
- Good qualifications, skills and health in accordance with job requirements;
- Not committing a crime or prosecuted for criminal liability in accordance with Vietnamese and foreign laws;
- Obtain work permits issued by Vietnamese authorities (except cases provided by law).

Foreign citizens working in Vietnam who are exempt from work permit include⁴¹³:

- Capital-contributing members or owners of limited liability companies;
- Members of the Board of Directors of joint-stock companies;
- Chiefs of representative offices and directors of projects of international organizations or non-governmental organizations in Vietnam;
- Those who stay in Vietnam for a period not exceeding 3 months to offer services for sale.
- Those who stay in Vietnam for a period not exceeding 3 months to deal with complicated technical or technological problems that adversely impact or are at risk of exerting adverse impacts on production and business activities and these problems cannot be handled by Vietnamese and foreign experts who are currently in Vietnam;
- Foreign lawyers possessing a professional practice license in Vietnam in accordance with the Law on Lawyers;
- Foreign citizens who are exempt from work permit as stipulated in a treaty to which Vietnam is a contracting party;
- Those who are studying and working in Vietnam, provided that the employer shall notify their employment to the provincial-level state management agency of labor 7 days in advance.

6.2. Labor Contract

Labor contracts must be made in writing and must be signed by representatives of employers (employer) and employees (employee). Labor contracts must be made in 2 copies for each party to hold 1 copy. The law requires the following labor contracts to be made in form of written document only:

- Non- term labor contracts (Article 16 of the Labor Code of 2012)
- Term labor contracts from 3 months or more (Article 16 of the Labor Code of 2012)
- Labor contracts with the family maid (Article 180 of the Labor Code of 2012)
- Labor contracts to work as dancers, hostesses, employees in establishments such as hotels, restaurants, discos regardless of contract term (Decree 87/CP

⁴¹² Article 169 of Labor code of 2012

⁴¹³ Article 172 of Labor code of 2012

dated 12 December 1995 of the Government on strengthening the management of cultural activities and services)

Contracts for temporary jobs lasting less than three months or for domestic helper work can be done in oral.

The Labor Code of Vietnam requires that labor contracts include the following material terms:

- work to be performed;
- working hours and rest hours;
- wages;
- working place/location;
- duration of contract
- conditions on occupational safety and hygiene; and
- social insurance for the employee.

In practice, the employer and employee may specify additional terms of contract but the contract cannot grant to employees fewer benefits than that required by Vietnamese labor law. All contract contents must be consistent with the laws of Vietnam and the corporate collective labor agreements.

6.2.1 Type of Labor Contracts

As stipulated in Article 22 of the Labor Code of 2012, there are 3 types of labor contracts:

1. Non-term labor contract means a contract in which two parties do not determine the term, the effective date of termination of contract;
2. Term labor contract means a contract in which two parties determine the term, the effective date of termination of the contract during the period from 12 months to 36 months;
3. Seasonal labor contract (under 12 months).

According to the Labor Code, the companies can make two consecutive term contracts. The 3rd time must be converted into a non-term contract under the following conditions:

- When a term labor contract expires while employees keep working, within 30 days from the date of expiration of the labor contract, the two parties should make a new labor contract;
- If a new labor contract is not made within 30 days after expiration of the contract, the concluded contract shall become a non-term labor contract;
- Where the two parties sign a new labor contract which is definite term contracts, they can only sign for 1 time for a period not exceeding 36 months. If the employee continues to work, the employment contract of indefinite term must be signed.

Moreover, to protect employees from abuse of seasonal labor contracts, article 22, paragraph 3 of the 2012 Labor Code stipulates that it is prohibited to enter into a seasonal or work-specific employment contract of less than 12 months to carry out regular work which has the duration of more than 12 months, except in order to temporarily replace an employee who has taken leave for military obligations, pregnancy and maternity, sick leave, occupational accident or other temporary leaves.

6.2.2 Probationary Period

Probationary period depends on nature and complexity of the job. One probationary period is allowed for each job and the following conditions should be satisfied:

- No more than 60 days for the job of occupational title requiring professional qualifications from college or more;
- No more than 30 days for the job of occupational title requiring qualifications of vocational intermediate, specialized intermediate and technical workers, professional staff;
- No more than 6 working days for other jobs.

6.3 Termination of Labor Contract

Regarding the right to terminate the labor contract, the Labor Code provides the following termination cases of the labor contract:

- Termination by the parties' will including the cases of contract expiration, when two parties agree to terminate the contract or have completed the work under the contract
- Termination by the will of a third party, including the cases when the employee is sentenced to jail, dies, or is declared by the court to have lost the capacity of civil act (Article 36, paragraph 5, 6 and 7, Labor Code of 2012)
- Unilateral termination of labor contract

6.3.1 Unilateral Termination

Labor Code of 2012 recognizes the right to unilaterally terminate the labor contract by the employer as well as the employee with restrictions in certain cases. Party terminating the labor contract is obliged to inform the other party about the unilateral termination of a labor contract.

1) Unilateral termination of labor contract by employee

Unilateral termination of the labor contract of employee is specified in Article 37 of the Labor Code of 2012. Accordingly, for term labor contract, when terminating the labor contract, the employee has to give one of the reasons prescribed in Article 37, Paragraph 1, such as the employee is assigned a wrong job, not paid in full, has been subject to abusive, sexual harassment, elected for specialized tasks in elected bodies. For non-term labor contract, the employee may unilaterally terminate without reason (Article 37,

Paragraph 3). Prior to unilaterally terminate the contract, the employee must comply with notice periods (Article 37, Paragraph 2 (3)).

2) Unilateral termination of labor contract by employer

An employer can only unilaterally terminate an individual labor contract under the following specific circumstances provided by the 2012 Labor Code:

- the employee's repeated failure to perform work in accordance with his labor contract;
- the employee's inability to work after having been ill or injured and treated for 12 consecutive months (for indefinite term labor contracts), 6 consecutive months (for definite term labor contracts) or more than half the duration of the contract (for seasonal or specific job labor contracts of less than 12 months);
- the employer's need to narrow production and reduce the number of jobs as a result of a natural disaster or force majeure;
- the employee's failure to work at the workplace on the 15th day from expiry of the term of suspension of performance of his labor contract; and
- the employer's retrenchment of employees as a result of restructuring, change of technology, for economic reasons, or due to merger, consolidation or separation of the enterprise.

An employer that unilaterally terminates a labor contract must provide advance notice to the employee according to the prescribed period under the law.

6.3.2 Dismissal

Dismissal is the most severe disciplinary action against the employee and shall be applied only in the cases as follows (Article 126 of Labor Code of 2012)

- Where an employee commits an act of theft, embezzlement, gambling, intentionally causing injury, drug use within the workplace, revealing trade secrets, technology secrets, infringement of intellectual property rights of the employer, causing serious harm or threatening to cause serious damage particularly to property and interests of the employer;
- Where an employee who is subject to the disciplinary measure of deferment of wage increase recidivates while the disciplinary measure is not yet repealed; or where an employee was demoted as a labor discipline and recidivates (Recidivism means an employee recommitting the same breach of labor disciplinary regulations while the disciplinary measure has not been repealed in accordance with Article 127 of the Labor Code 2012);
- Where an employee has been absent from work for 5 accumulated days in 1 month or 20 accumulated days in 1 year without a proper reason.

Proper reasons include natural disasters, fires, sickness of the employee or his/her relatives certified by a competent healthcare institution; and other reasons as stipulated in the internal work regulations.

Required processes for termination due to disciplinary misconduct

- There must be disciplinary meetings between persons concerned, including representatives of the labor union executive committee (if any);
- The company must show the evidence to prove violations of the employee and the employee has the opportunity to defend himself/herself;
- The persons concerned present the reports of events. If there is no report of the employees, the person in charge should present the report of the affair or detection of the affair (specify reason without a report);
- The company consults the labor union executive committee on layoff disciplinary. In case the labor union executive committee does not agree with the form of layoffs, the company must report to the Ministry of Labor, Invalids and Social Affairs about the layoff decision after 30 days;
- Layoff decision must be issued within 3 months (in special cases not more than 6 months) from the date of violation.

6.3.3 Termination of Labor Contract due to Structural and Technological Changes or Economic Reasons

The company may reduce the number of jobs because of organizational or economic reasons including

- Structural and technological changes⁴¹⁴
- Economic reasons;
- Merger, dissolution of several departments of the company.

In case of the structural and technological changes, which affect the jobs of many employees, the employer is responsible for developing and implementing plans of labor use; if there is a new job, the company should provide retraining to the employee before allowing the employee to work on such new job.

In case the employer is forced to lay off the employee without giving a new job, the employer must pay severance allowance for the employee at the rate per annum paid as monthly salary but at least equal to 2 months of salary

6.3.4 Unlawful Termination

In cases of unlawful termination of labor contracts, according to Article 41 of Labor Code of 2012, the employer shall be liable as follows:

⁴¹⁴ For example, the company decides to cut down some departments (e.g. legal department)

- The employer must receive the employee back to work under labor contract signed and must pay wages, social insurance, and health insurance during the period that the employee is unemployed for at least 2 months plus the wage under labor contract;
- If the employee does not want to continue to work, in addition to compensation as prescribed above, the employer must pay an allowance for each year of work at a half month's salary;
- Where the employer does not want to receive the employee back to work and the employee agreed, in addition to the compensation amounts specified as above-mentioned and the allowance, two parties agree to the additional compensation which is equal to at least 2 months of wages under labor contract;
- Where there is no position, job in the labor contract while the employee still wants to work, in addition to the compensation, the two parties negotiate to amend and supplement the labor contract;
- In case of violation of the advance notification provisions, the employer shall pay compensation to the employee an amount equivalent to the employee's wage in the days without prior notice.

6.4 Wages and Overtime Payments

1) Minimum Wage

As stipulated in Decree 182/2013/ND-CP⁴¹⁵, from 1 January 2014, minimum wage for employees working in enterprises, cooperatives, cooperative groups, farms, households, individuals and agencies and organizations that hire employees will be from VND 1,900,000/ month to VND 2,700,000/month depending on the region.

2) Working time

Normal working hours shall not exceed 8 hours a day and 48 hours a week. The employer is entitled to provide the job in hours or day or week; in case of weekly period, the normal working hours shall not exceed 10 hours a day, but not more than 48 hours a week. The State encourages the employer to perform a working week of 40 hours.

3) Annual leave and holidays

The employee who has worked for 12 working months for an employer shall be entitled to annual leave, paid leave under the labor contract as follows:

- 12 working days for an employee working in normal conditions;

⁴¹⁵ Decree 182/2013/ND-CP dated 14 November 2013 stipulating region-based minimum wage levels for laborers working for companies, enterprises, cooperatives, cooperative groups, farms, households, individuals and agencies, organizations employing laborers

- 14 working days for an employee working in hard, hazardous, or dangerous conditions in areas where living conditions are harsh according to the list published by the Ministry of Labor - Invalids and Social Affairs in collaboration with the Ministry of Health or labor minors or disabled employees;
- 16 working days for an employee working in extremely hard, hazardous or dangerous conditions in areas where living conditions are particularly harsh according to the list published by the Ministry of Labor - Invalids and Social Affairs in collaboration with the Ministry of Health.

Employees are paid leaves on the following dates:

- New Year, 1 day (1 January, solar calendar);
- Lunar New Year, 5 days;
- Victory Day, 1 day (30 April, solar calendar);
- International Labor Day, 1 day (1 May, solar calendar);
- National Day, 1 day (2 September, solar calendar);
- Hung Kings Commemoration Day, 1 day (10th day of the 3rd lunar month).

For foreign employee working in Vietnam, in addition to the public holidays as mentioned above, they are entitled to 1 day of the traditional festival and 1 day of the National Day of their country.

6.5 Sublease

Due to the labor demand in the market, the Labor Code of 2012 has supplemented regulations on sublease. Accordingly, sublease means an employee is employed by an enterprise licensed to sublease employees but works for another employer. The employee is managed by the later employer while maintains relationships with the sublease enterprise. Sublease enterprise is required to deposit 2 billion dong. The head of enterprise must have experience in the field of labor sublease for at least 3 years and must ensure business conditions for facilities and equipment according to the provisions of Decree 55/2013/ND-CP.⁴¹⁶

6.6 Work Permits

Vietnam laws encourage employers to recruit laborers in Vietnam, foreign employment is only allowed when Vietnamese laborers cannot meet the needs of the employers and the employment must be approved by the foreign employment policy of the Chairman of the provincial People's Committee. In principle, foreigners who wish to work in Vietnam as employee must have work permits.

The foreign employees must meet the following conditions: have full civil act capacity; good qualifications, skills and health in accordance with job requirements; have not been

⁴¹⁶ Decree No. 55/2013/ND-CP, dated 22 May 2013 detailing the new Labor Code's provisions on labor outsourcing.

offenders or prosecuted for criminal liability in accordance with Vietnam Law and foreign laws. Term of work permits is no longer than 2 years.

However, Vietnam law also stipulates cases where foreign employees are exempt of work permits (article 172 of Labor Code): the limited partners or owners of limited liability companies; members of the Board of Directors of the joint stock companies; heads of the representative offices, projects of international organizations, non-governmental organizations in Vietnam; staying in Vietnam for less than 3 months to carry out the service offering, staying in Vietnam for less than 3 months to process failures, technical situations, complex technologies incurred, which affect or threaten to affect production and business that Vietnamese experts and foreign experts in Vietnam cannot handle; as a foreign lawyer who has been licensed to practice law in Vietnam under the provisions of the Law on Lawyers.

Procedures and conditions for granting work permits are detailed in the Government's Decree no.102/2013/ND-CP dated 5 September 2013 providing detailed regulations for implementation of some articles of the Labor Code on foreign employees working in Vietnam and Circular 03/2014/TT-BLDTBXH of Ministry of Labor, War Invalids and social affairs dated 20 January 2014 guiding the implementation of some articles of the Decree No. 102/2013/ND-CP.

In order to apply for a work permit, the following documents are required

- The letter asking for work permit grant;
- The health certificate;
- The document which confirms that the foreign worker has not committed an offence;
- The document confirms the foreign worker as an administrator, chief executive officer, expert or technical labor;
- The document of the province's chairman approving the use of foreign workers;
- 2 photos (4 cm x 6 cm);
- Copy of passport or equivalent

According to Article 17 of Decree 102/2013/ND-CP, the reasons to revoke work permits are as follows:

- The documents submitted for work permits are fraudulent;
- The work permit has already expired;
- Foreign workers do not respect the content of the work permit;
- The labor contract is terminated;
- The content of the labor contract is not in conformity with the content of work permit;
- The contract or agreement on trade, commerce, finance, banking, insurance, technological science, culture, sports, education, vocational training and/or health expires or be terminated;

- The competent foreign authority informs that it stops permitting foreign workers to work in Vietnam;
- The employer stops its activity/work;
- The foreign worker is punished by imprisonment, dies or disappears by Court's decision;
- The competent authority proposes, in writing, to revoke the work permit of foreign workers due to violation of Vietnam laws.

6.7 Collective Labor Agreement

Enterprises with foreign investment must negotiate for a collective labor agreement at the request of the trade union executive committee. The collective labor agreement takes effect when more than 50% of the labor collective agree with the collective bargaining content.

The collective labor agreement recognizes each issue agreed between the employer and the collective labor on the working conditions. The copies of the collective labor agreement must be submitted to the Ministry of Labor, Invalids and Social Affairs within 10 days after signing.

6.8 Labor Regulations

Enterprises with foreign investment using more than 10 employees should have labor regulations. Labor regulations include the following contents:

- Working time and rest time;
- Order in the workplace;
- Occupational safety and occupational health in the workplace;
- The protection of property and trade secrets, secret of technology, intellectual property of the employer;
- The employee's violation acts of labor discipline labor and other forms of disciplined labor, material responsibility.

Within 10 days from the date of issue of labor regulations, the employer must submit the registration document of the labor regulations at the Ministry of Labor, War Invalids and Social Affairs.

7. Intellectual Property Law

Vietnam's legal frameworks for intellectual property (hereafter IP) emerged in the 1980s following the issuance of the then Government Council's Decree 31/CP on Innovations, Technical Improvement, Manufacture Rationalization, and Invention, dated 23 January 1981.⁴¹⁷ The Decree 31 was the first regulation on IP in Vietnam. According to the Decree 31, inventor's certificates and exclusive patents were issued for the protection of patent

⁴¹⁷ See generally Sesto E. Vecchi and Michael J. Scrown, 'Intellectual Property Rights in Vietnam' (1992) 11*Pacific Basin Law Journal* .67.

rights. The State generally owned the inventor's certificates while the exclusive patents mainly belonged to foreign inventors.⁴¹⁸

Significantly, in 1982 the Decree No.125/HDBT of 29 July 1982 on the Reorganisation of the State Committee of Science and Technology established the National Office of Inventions (now the National Office of Industrial Property Office). On 14 December 1982, the Government enacted Decree 197/HDBT on Trademarks so as to unify the administration of trademark and protect the legitimate interests of consumers. Later, on 18 October 1983, the Chairman of the State Committee of Science and Technology (now the Ministry of Science and Technology) issued Circular 125/SC to guide the implementation of the regulations on trademarks.

Even though the foregoing legal documents gave rise to the protection of patents and trademarks, such regulatory regime left much to be desired under Vietnam's centrally planned economy which opposed to the private ownership of property including intellectual property. After Doi Moi, Vietnam had promulgated many sub-law documents extending the protection regime for other objects of IP, namely industrial designs and utility solutions.⁴¹⁹

A turning point in Vietnam's IP protection occurred in 1989 when the State Council enacted the Ordinance on the Protection of Industrial property on recognising the concept of industrial property for the first time. The *Ordinance* acknowledged patent rights as exclusive rights and granted an exclusive patent, instead of a certificate, to the inventor. Moreover, the *Ordinance* also provided for the protection of appellations of origin, and laid down more legal grounds for the court to assume a role of the protector of industrial property rights.

Since 1995, with the purpose of quickly integrating into the international community and attracting foreign investment, Vietnam has taken many regulatory initiatives to create its IP regulatory regime fully compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereafter the TRIPS Agreement). The initial milestone for this effort was the introduction of the first Civil Code in 1995. The 1995 Civil Code addressed IP and technology transfers as prescribed in Part VI (articles 745-825) and also essentially provided a framework for regulating copyright and related rights, patents, utility solutions, industrial designs, trademarks, and appellations of origin. However, the 1995 Code did not cover the protection of other objects of IP, namely trade secrets, trade names, and layout-designs of integrated circuits.

From 1996 to 2003, a large number of sub-law documents were issued to implement the provisions on intellectual property rights (hereafter IPRs) in the 1995 Civil Code. They, along with provisions in Part VI of the 1995 Civil Code, covered numerous matters of

⁴¹⁸ The first inventor's certificate was issued on 11 April 1984.

⁴¹⁹ Including Decree 85/HDBT dated 13 May 1988, on Regulations on Industrial Designs; Decree 200/HDBT, dated 28 December 1988, on Regulations on Utility Solutions; Decree 201/HDBT, dated 28 December 1988, on Regulations on Licensing; Ordinance, dated 11 February 1989, on the Protection of Industrial Property Rights 1988, on Regulations on Licensing.

intellectual property rights including patents, trademarks, trade names, industrial designs, trade secrets, geographical indications, layout-designs of integrated circuits, copyright and related rights, new plant varieties, and the right to prevent unfair competition. By 2003, Vietnam's IP regulatory regime basically satisfied the TRIPS requirements in relation to the scope of protection.⁴²⁰

In 2005, as a result of the legal modernization process preparatory to WTO accession, Vietnam first introduced the 2005 Law on Intellectual Property,⁴²¹ effective 1 July 2006, which was later amended in 2009. This is the first unified law for all aspects of IPRs. The 2005 Law on Intellectual Property has 6 parts, 18 chapters and 222 articles which divides the protection of IPRs into three main areas: (1) Copyright and related rights, (2) Industrial property rights, and (3) Rights to plant varieties.

The 2005 Law on intellectual Property also provides administrative, civil, and criminal measures as well as border control measures to combat infringements of IPRs. Consequently, the 2005 Law on Intellectual Property, combined with the basic civil law principles of IPRs in Part VI (articles 736-757) of the 2005 Civil Code and subordinate regulations,⁴²² constitute a comprehensive and consistent legal regime for IPRs in Vietnam.⁴²³

In addition to the domestic regulatory frameworks, Vietnam has joined a series of international IP treaties including:

- 1) Madrid Agreement Concerning the International Registration of Marks (in 1939);
- 2) Paris Convention for the Protection of Industrial Property (in 1949)
- 3) Convention Establishing the World Intellectual Property Organisation (in 1976)
- 4) Patent Cooperation Treaty (in 1993)
- 5) Berne Convention for the Protection of Literary and Artistic Works (in 2004)

⁴²⁰ Council for Trade-Related Aspects of Intellectual Property Rights, WTO, *Review of Legislation: Vietnam* (2010)., last accessed 20 August 2012.

⁴²¹ The 2005 Law on Intellectual Property No. 50/2005/QH11 of 29 November 2005 was promulgated by the Order No. 28/2005/L-CTN of 12 December 2005 of the President of the Socialist Republic of Vietnam. In order to enhance the IP protection regime, Vietnam also promulgated the new 2005 Civil Code, which reaffirmed the basic civil principles of IPRs (Part VI of the Code).

⁴²² To implement the IP law, the Government and Ministries have issued a series of Decrees and Decisions including: (i) Decree 100/2006/ND-CP, dated 21 September 2006, guiding the implementation of a number of articles of the 2005 Civil Code and the 2005 Law on Intellectual Property Concerning Copyright and Related Rights; (ii) Decree 103/2006/ND-CP, 104/2006/ND-CP, 105/2006/ND-CP, and 106/2006/ND-CP, dated 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 IP law concerning industrial property, rights to plant varieties, the protection of IPRs and State management of IP, and administrative violations in the industrial property field, respectively; (iii) Decision 69/2006/QĐ-BNN of the Minister of Agriculture and Rural Development, dated 13 September 2006, on Data Confidentiality of Testing Data of Agro-Chemical Products; and (iv) Decision 30/2006/QĐ-BYT of the Minister of Health, dated 30 September 2006, on Promulgation of Regulations on Data Protection Applied to Drug Registration Dossiers.

⁴²³ Council for Trade-Related Aspects of Intellectual Property Rights.

- 6) Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (in 2005)
- 7) Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (in 2006)
- 8) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (in 2006)
- 9) International Convention for the Protection of New Varieties of Plants (in 2006).

As a WTO member, Vietnam also has to comply with the TRIPS Agreement which sets minimum standards for IP protection.⁴²⁴

Furthermore, Vietnam concluded bilateral agreements relevant to protection of IP with the following countries:

- 1) The United States (the Vietnam-US Copyright Agreement in 1997 and the Vietnam-US Bilateral Trade Agreement in 2000 Chapter II of which is devoted to intellectual property issues)
- 2) Switzerland (the Vietnam-Switzerland Agreement on the Protection of Intellectual Property and on Cooperation in the Field of Intellectual Property in 1999)
- 3) Japan (the Agreement between Japan and the Socialist Republic of Vietnam for an Economic Partnership in 2008 Chapter IX of which is devoted to intellectual property issues).

Under the 2005 Law on Intellectual Property, Vietnam classifies the protection of IPRs into 3 areas:⁴²⁵

- Copyright and related rights
- Industrial property rights
- Rights to plant varieties

7.1 Copyright and Related Rights

As stipulated in article 3.1 of the 2005 *Law on Intellectual Property*, objects of copyright are literary, artistic and scientific works.⁴²⁶ While objects of copyright-related rights

⁴²⁴ The TRIPS Agreement was negotiated in the 1986-1994 Uruguay Round. On 1 January 1995, the WTO agreements, including TRIPS, became effective. All members of WTO were given a period to ensure that their laws comply with TRIPS: one years for the developed countries, five years (until 2000) for the developing countries and (under certain conditions) transition countries, and 11 years (until 2006) for the least-developed countries. However, the least-developed countries are currently extended the period to comply with TRIPS to 2013 in general, and to 2016 for pharmaceutical patents and undisclosed information.

⁴²⁵ The 2005 Law on Intellectual Property, article 1.

⁴²⁶ The 2005 Law on Intellectual Property, article 14 prescribes copyrighted types of works including: textbooks, photographic works, cinematographic works, architectural works, computer programs, and compilation of data.

include performances, sound recordings, video recordings, broadcasts, and encrypted program-carrying satellite signals.

On the other hand, subject matters ineligible for copyright protection include: 1) news of the day; 2) data, concepts, principles, systems, processes, and operational methods; 3) administrative and legal documents, other judicial documents, and official translations thereof.⁴²⁷

Copyright grants exclusive rights to an individual or organization that created or owned a work subject to copyright protection and arises automatically at the moment when the work is originally created and fixed in any tangible form.⁴²⁸

Vietnam does not only protect works of its nationals, foreign author's works also have copyright protection in Vietnam corresponding to the following cases:⁴²⁹

- 1) The work was first published in Vietnam.
- 2) The work was later published in Vietnam within 30 days of first publication.
- 3) The work is qualified for the protection under international treaties on copyright to which Vietnam is a contracting party.

Although registration is not obligatory to copyright protection, it serves as *prima facie* evidence of ownership. In order to obtain a registration certificate, an author or owner of the work can file an application to the Copyright Office of Vietnam (COV), administered by the Ministry of Culture, Sports and Tourism.

According to Article 18 of the 2005 *Law on Intellectual Property*, copyright consists of moral rights and economic rights. Moral rights allow an author to title his or her work, attach a real or pseudonym to his or her work, prevent others from altering the work, protect the integrity of the work, and publish the work or authorize others to do so.⁴³⁰ Economic rights include the right to display works in public or communicate works to the public by wire or wireless means or electronic information; the right to reproduce, distribute, or import works including copies of the works; the right to lease computer programs and cinematographic or copies of the works; and the right to make derivative works.⁴³¹

As a signatory to the Berne Convention, Vietnam is obliged to provide minimum IP protection standards. Evidently, article 27 of the 2000 Law on Intellectual Property prescribes the duration of copyright and related rights. The term of protection for photographic works, dramatic works, cinematographic works, works of applied art and anonymous works is 50 years from first publication or 50 years from the date of the fixation of a cinematographic work or dramatic work if the work has not been published.

⁴²⁷ The 2005 Law on Intellectual Property, article 15.

⁴²⁸ The 2005 Law on Intellectual Property, article 4.2 and 6.1.

⁴²⁹ The 2005 Law on Intellectual Property, article 13.

⁴³⁰ The 2005 Law on Intellectual Property, article 19.

⁴³¹ The 2005 Law on Intellectual Property, article 20.1.

For other works, the term of protection is the author's life plus 50 years after the death of the author or the last surviving co-author. In this regard, copyright expires at 24.00 hours of 31 December of the expiration year. Significantly, all moral rights are protected for an indefinite term except for the right to publish the works or authorize others to publish the works, which has the same term of protection as economic rights mentioned above.

7.2 Industrial Property Rights

Objects of industrial property rights include: inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, trademarks, trade names and geographical indications.⁴³² Under the 2005 Law on Intellectual Property, Vietnam protects some of the aforementioned industrial property rights as follows:

7.2.1 Patents

Vietnam has three types of patent available for protection under the 2005 Law on Intellectual Property.

1. Invention
2. Utility solution
3. Industrial designs

The first type is an **invention patent** defined as “a technical solution in form of a product or a process which is intended to solve a problem by application of laws of nature”.⁴³³

Subject matters not regarded as inventions include:

- 1) Theories, mathematical methods, and scientific discoveries
- 2) Presentations of information
- 3) Aesthetic creations
- 4) Plant varieties and animal breeds
- 5) Conducting business, computer programs, schemes, plans, rules and methods for performing mental acts, playing games
- 6) Human and animal disease prevention, diagnostic and treatment methods

An invention patent is granted when the invention is

- 1) novel
- 2) involves an inventive step, and
- 3) be capable of industrial application.⁴³⁴

On the other hand, an invention is protected under the form of a **utility solution**, provided it is novel, industrially applicable, and not a common knowledge.⁴³⁵ If all the patentability

⁴³² The 2005 Law on Intellectual Property, article 3.2.

⁴³³ The 2005 Law on Intellectual Property, article 4.12.

⁴³⁴ The 2005 Law on Intellectual Property, article 58.1.

⁴³⁵ The 2005 Law on Intellectual Property, article 58.2.

requirements are satisfied, an individual or organization will be granted a patent. The period of validity for an invention patent is 20 years from the date of issuance while a patent for utility solution lasts for 10 years after the filing date.⁴³⁶ In order to maintain the validity, patent holders must pay maintenance fee.⁴³⁷ Failure to pay the fee results in a termination of the patent's validity.⁴³⁸

In addition to patents for invention and utility solution, Vietnam also grants **a patent for industrial designs** statutorily defined as “a specific appearance of a product embodied by three-dimensional configurations, lines, colors, or a combination of these elements”.⁴³⁹

Subject matters not regarded as industrial designs include:

- Shape of a product invisible during the use of the product;
- Appearance of a civil or an industrial construction work;
- Appearance of a product dictated by the product's technical features.⁴⁴⁰

An industrial design is protected under the condition that it is new, creative, and industrially applicable. The patent term for an industrial design is 5 years after the filing date and may be renewable for 2 consecutive periods of 5 years.⁴⁴¹

Unlike copyright protection, patent protection requires a registration with the National Office of Intellectual Property (NOIP), administered by the Ministry of Science and Technology. It is also possible to file for patent protection under the Patent Cooperation Treaty (PCT) of which Vietnam is a member so that the protection covers in all contracting states.

Vietnam adopts the first to file system granting a patent to the first person filed a patent application that satisfies all required conditions irrespective of the date of invention. Additionally, the first to file principle also plays a vital role for registration of industrial designs and marks.

7.2.2 Trademarks

A mark is defined as “any sign used to distinguish goods and/or services of different organizations or individuals”.⁴⁴² Vietnam's protected forms of trademark include a collective mark owned by a collective in order to distinguish goods or services of members from those of non-members, and a certification mark used for the purpose of certifying certain standards with regard to the origin, materials, quality, safety, just to name a few.⁴⁴³ Registration is not mandatory for trademark protection. The owner of an unregistered

⁴³⁶ The 2005 Law on Intellectual Property, article 93.2 and 93.3.

⁴³⁷ The 2005 Law on Intellectual Property, article 94.1.

⁴³⁸ The 2005 Law on Intellectual Property, article 95.1.

⁴³⁹ The 2005 Law on Intellectual Property, article 4.13.

⁴⁴⁰ The 2005 Law on Intellectual Property, article 64.

⁴⁴¹ The 2005 Law on Intellectual Property, article 93.4.

⁴⁴² The 2005 Law on Intellectual Property, article 4.16.

⁴⁴³ The 2005 Law on Intellectual Property, article 4.17 and 4.18.

famous trademark can take an action against acts of unfair competition and can also file a request to revoke the registration of confusingly similar marks. In this regard, a mark must be well known to the relevant public sector in Vietnam.⁴⁴⁴

As stipulated in article 72 of the 2005 *Law on Intellectual Property*, a mark is protected on condition that it satisfies these two requirements:

- 1) Being visible in the form of words, letters, images, drawings, holograms or a combination thereof, represented in at least one or more colors; and
- 2) Being capable of distinguishing products or services of one undertaking from those of other undertakings.

Hence, distinctiveness of a mark is mandatory for trademark protection. A mark is distinctive if it has at least one or more easily noticeable or memorable elements and does not fall into a number of characteristics set forth in article 74.2.⁴⁴⁵

Signs ineligible for trademark protection include:⁴⁴⁶

- 1) Signs contrary to law, public order, social interests, and humanity
- 2) Signs identical with or confusingly similar to national emblems and flags
- 3) Signs identical with or similar to official quality marks, control marks, and warranty marks
- 4) Signs causing confusion mislead or deceive consumers as to the origin, quality, intended function, value or other characteristics of goods or services.

Interestingly, Vietnam does not require the actual use of a mark for registration; therefore, registration for future use of such mark is permissible. However, trademarks that have not been used for 5 consecutive years or more are subject to cancellation.⁴⁴⁷

Individuals or organizations have the right to register marks so that they can use the marks for their goods or services.⁴⁴⁸ The authority responsible for issuing a certificate is the NOIP. Accordingly, a registered mark certificate is valid for 10 years calculated from the grant date and is indefinitely renewable for every 10 years.⁴⁴⁹

⁴⁴⁴ The 2005 Law on Intellectual Property, article 75 prescribes criteria for evaluation of well-known marks. Example of these criteria are: 1) territorial area in which the goods or services are circulated; 2) wide reputation of the goods or services; 3) the period of use; 4) number of countries protecting the mark; and 5) number of countries acknowledging the mark as being famous.

⁴⁴⁵ Example of signs considered as indistinctive are: 1) numerals, letters, geometric figures, simple shapes, and or scripts of uncommon languages, with the exception of signs widely used and recognized as a mark; and 2) signs identical with or similar to a geographical indication being protected if the use of such signs may mislead consumers as to the geographical origin of goods.

⁴⁴⁶ The 2005 Law on Intellectual Property, article 73.

⁴⁴⁷ The 2005 Law on Intellectual Property, article 136.2.

⁴⁴⁸ The 2005 Law on Intellectual Property, article 87.1.

⁴⁴⁹ The 2005 Law on Intellectual Property, article 93.6.

7.2.3 Geographical Indications

Under the 2005 Law on Intellectual Property, geographical indications (hereafter GIs) have broader definitions not limiting to words, signs, symbols or images. The Law also extend the scope of protection to cover agricultural products and foodstuffs as prescribed in Decree No.54/2000/ND-C and the European Council (EC) Regulation No.510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs respectively.

Geographical indication is defined as a sign identifying goods as originating from a specific territory, region, locality, or country.⁴⁵⁰ GIs are eligible for protection when they satisfy the following conditions:

- 1) Products bearing a GI must originate from the territory, area, or country corresponding to such GI; and
- 2) Products bearing a GI must have a quality, reputation, or characteristics essentially attributable to geographical conditions of the territory, area, or country corresponding to such geographical conditions.⁴⁵¹

Reputation of products bearing GIs is measured by the level of trust and awareness that consumers have toward that product. Meanwhile, quality and characteristic of goods bearing GIs is determined by using qualitative or quantitative, physical, chemical, and/or microbiological criteria that can be examined by technical means or experts using proper testing methods.⁴⁵²

Nevertheless, article 80 of the 2005 Law on Intellectual Property stipulates that some subject matters are ineligible for GI protection as follows:

- 1) names and indications that have become generic in Vietnam
- 2) GIs identical with or similar to a protected mark, if the use of such GIs likely causes a confusion regarding the origin of goods;
- 3) GIs that mislead consumers in relation to the true geographical origin of goods bearing such GIs;
- 4) Foreign GIs no longer protected or used in foreign countries.

It is noteworthy that the right to register GIs belongs to the State allowing individuals or organizations to produce products bearing GIs. Local administrative authorities or collective organizations representing individuals or organizations can exercise the right to register GIs by filing an application to the NOIP. However, such individuals or organizations cannot become the owners of GIs.⁴⁵³ Unlike other industrial property rights, GIs have indefinite validity period starting from the issuance date of certificates of registered GIs.

⁴⁵⁰ The 2005 Law on Intellectual Property, article 4.22.

⁴⁵¹ The 2005 Law on Intellectual Property, article 79.

⁴⁵² The 2005 Law on Intellectual Property, article 81.

⁴⁵³ The 2005 Law on Intellectual Property, article 88.

As of 2014, Vietnam has approximately 38 protected GIs and ranks the second highest number of registered GIs in ASEAN.⁴⁵⁴

7.3 Plant Variety Rights

Objects of rights to plant varieties are plant varieties and its propagating materials.⁴⁵⁵ Relevant legislations include the 2005 Law on Intellectual Property and Decree No.104/2006/ND-CP dated 22 September 2006 on detailed regulations to implement some articles in the 2005 Law on Intellectual Property with respect to plant variety rights. Vietnam is also member of the International Union for the Protection of New Varieties of Plants (UPOV) since 2006. As a consequence, the National Assembly adopted several amendments to the 2005 Law on Intellectual Property so that the protection of plant varieties is in compliance with the international standards. Parties eligible to file for plant variety protection in Vietnam now include foreign organizations and individuals having permanent residence or offices or having establishments producing, or trading in plant varieties in countries that are signatories to agreements on plant variety protection for which Vietnam is also a contracting state.⁴⁵⁶

Moreover, individuals or organizations having the right to register for plant varieties protection in Vietnam include:⁴⁵⁷

- 1) Breeders who have selected and bred plant varieties;
- 2) Individuals or organizations that are transferred the right to register for plant varieties protection;
- 3) Individuals or organizations who fund breeders as job assignments

According to article 4.5 of the 2005 Law on Intellectual Property, “plant variety rights” are defined as rights of individuals and organizations to new plant varieties that they created or discovered, selected, developed, or own. Article 4.24 defines “a plant variety” as a grouping of plants that are morphologically uniform, unchanged, and suitable for being propagated, identified by the expression of phenotypes derived from a genotype or a combination thereof, and distinguished from any other plant grouping through the expression of at least one inheritable phenotype.

As stipulated in article 159 – 163 of the 2005 Law on Intellectual Property, plant varieties eligible for protection must be

- 1) new
- 2) stable
- 3) uniform
- 4) distinct

⁴⁵⁴ Examples of famous Vietnam’s GIs are the Phu Quoc fish sauce and Tan Cuong tea.

⁴⁵⁵ The 2005 Law on Intellectual Property, article 3.3.

⁴⁵⁶ The 2005 Law on Intellectual Property, article 157.

⁴⁵⁷ The 2005 Law on Intellectual Property, article 164.2.

5) designated by proper denominations⁴⁵⁸

In addition to the aforementioned requirements, plant varieties must also be on the list of protected species issued by the relevant Vietnamese authority.⁴⁵⁹ Importantly, registration is a prerequisite for protection of rights to plant varieties in Vietnam.⁴⁶⁰ The New Plant Variety Protection Office (PVPO) under the Ministry of Agriculture and Rural Development is the authority in charge of applications for new plant variety protection, which comprise of the application form, photos of the plant specimen, the technical questionnaire, and other supporting documents. A private testing center, a competent state, or an individual assigned by the Ministry of Agriculture and Rural Development will conduct technical examination. It is also acceptable to submit the test results originating from countries signatory to bilateral agreements on plant varieties with Vietnam. A certificate of plant variety protection is valid for 25 years from the grant date for timber trees and vines and 20 years for other plant varieties.

7.4. Registration of Intellectual Property Rights

7.4.1. Registration of Copyright

* *Timeline*

The duration of copyright application is around 20 - 30 working days.

* *Required documents and information*

- notarized copy of certificate of business registration of the owner
- copy of the author's ID or passport
- power of attorney
- statutory declaration of the author(s)
- printing of the art work (sealed by the company)
- One of the following documents:
 - declaration of the author (in case the author is the owner)
 - assigned decision (in case the staff of the company/the owner is assigned tasks to design the art work)
 - contract of lease of design (in case the owner hired a third party to design the art work)

* *Copyright Registration Fees*

No.	Works	Official fee (VND)
I	Registration of authors' rights	

⁴⁵⁸ Examples of improper denominations of plant varieties are: 1) denominations that violate social ethics; 2) denominations that easily cause misleading about identifications of the breeders; 3) denominations consisting of only numerals, except for the numbers are relevant to the characteristics of plant varieties.

⁴⁵⁹ The 2005 Law on Intellectual Property, article 158.

⁴⁶⁰ The 2005 Law on Intellectual Property, article 164.1.

No.	Works	Official fee (VND)
1	a) Works of literature, science, textbooks, curricula and other works presented in the form of letters or other characters (in general, the kinds of Literary works); b) Lectures, speeches and other sermons; c) Journalistic works; d) Musical works; đ) Photographic works.	100,000
2	a) Architectural works; b) Sketches, diagrams, maps, drawings related to topography, scientific works.	300,000
3	a) Plastic-art works; b) Works of applied art.	400,000
4	a) Cinematographic works; b) Theatrical works displayed on tapes and disks.	500,000
5	Computer programs, data collections or programs running on the computer	600,000
II	Registration of related rights	
1	Performances displayed on: a) Recordings; b) Video recordings; c) Broadcasts.	200,000 300,000 500,000
2	Recordings	200,000
3	Video recordings	300,000
4	Broadcasts	500,000

7.4.2. Registration of Patent

* *Timeline:*

A patent application will be examined through the following process:

	<i>Time Frame</i>	<i>Content of examination</i>
<i>Beginning of the national phase</i>	31 months from the date of priority	Submitting all required documents

	<i>Time Frame</i>	<i>Content of examination</i>
<i>Formality examination</i>	1- 3 months from the filing date (if all required documents are submitted) or from the date of supplementation of all documents	Examination of formality of the patent application
<i>Publication</i>	19 months from the filing date after the acceptance of application (if no request for early publication)	Publishing application in IP Gazette
<i>Substantive examination</i>	18 months from the date of filing request for substantive examination (if it is filed after the publication date) or from the publication date (if the request for substantive examination is filed before the publication date)	Examination of criteria of protection of the patent application
<i>Granting</i>	1- 3 months from the date of Notification to Grant Patent for Invention/Utility solution	- The Applicant pays the registration and publication fees - Publishing the Patent in IP Gazette

Kindly note that, in practice, the term for registration process normally takes longer (up to several months) due to the workload of the NOIP and the slow examination process by the NOIP's examiner.

** Required documents and information:*

The following documents/information should be provided:

- i. The Power of Attorney which is only simply to be signed by the Applicant, neither notarization nor legalization is required;
- ii. The paper on assignment of the right to file an application in the national phase (if any) within 34 months from the date of priority;
- iii. The copy of the international application (if the applicant requests the entry into the national phase before the date of publication of the international publication);
- iv. Name and address of:
 - Applicant;
 - Author(s) of invention/utility solution;

- v. A soft copy in word format of the English specification of the application for translation into Vietnamese is requested to provide via email at the time of instruction.

** Patent Registration Fees:*

No.	Work items	Official fee (VNĐVNĐ)
A	PATENT	
I	Filing fees	
1.1	Filing a patent application (<i>with one independent claim and not exceed 5 pages of specification</i>)	180,000
	- <i>Addition fee for each independent claim from the second one</i>	180,000
	- <i>Additional fee for each page of specification from the sixth one</i>	12,000
1.2	Publication of a patent application	120,000
1.3	Request for substantive examination for the first independent claim	540,000
	- <i>Additional charge for each independent claim from the second one</i>	540,000
1.4	Claiming priority (for one earlier application)	600,000
1.5	Translation fee from English into Vietnamese	-
1.6	Filing request for earlier publication (after filing the patent application)	-
1.7	Filing a divisional application	Being treated as a new application
II	Granting fees	
2.1	Granting patent for patent (including Register and Publication) for the first independent claim	360,000
	- <i>Additional charge for each independent claim from the second one</i>	120,000
2.2	Annuities fee for the first year for the first independent claim	300,000
	- <i>Additional charge for each independent claim from the second one</i>	300,000

No.	Work items	Official fee (VNĐVNĐ)
III	Annuity fees (per annum for one independent claim)	
	1 st and 2 nd year	300,000
	3 rd and 4 th year	480,000
	5 th and 6 th year	780,000
	7 th and 8 th year	1,200,000
	9 th and 10 th year	1,800,000
	11 th to 13 th year	2,520,000
	14 th to 16 th year	3,300,000
	17 th to 20 th year	4,200,000
IV	Other fees	
4.1	Recording change of name and address of inventor, applicant and patentee; patent agency	360,000
4.2	Recording transfer of a pending application	120,000
4.3	Recording assignment of a patent right	690,000
4.4	Making amendment to the specification, claims and drawings	-
4.5	Making comments and preparing observations on the office action or notification	-
4.6	Interview with examiner	-
4.7	Filing request for extension of time limit for responding to office action or notification (only one time)	120,000
4.8	Filing request for duplicate copy (including certified copy of the priority document, duplicate copy of patent certificate, and duplicate copy of the patent register)	120,000
4.9	Withdrawal of a patent application	-

7.4.3. Registration of Trademark

** Timeline*

The duration of a trademark search is around 10 - 15 working days.

The duration of trademark application is around 14 - 18 months - from the filing date to the actual receipt of the registration. The process involves these stages: (1) formality examination and publication in the Gazette (3 months); (2) substantive examination (9

months) and (3) issuance of registration certificate of the registered mark (2 months). Kindly note that the term for registration process in practice normally takes up to several months longer due to the workload of the NOIP and the slow examination process by the NOIP's examiner.

** Required Documents and Information*

- Name and address of the Applicant;
- List of Goods/Services;
- Specimen of the applied mark (soft version);
- An original Power of Attorney which is simply signed by the Applicant.

** Trademark Registration Fees:*

Work items	Official fee (VND)
1. Registration of a trademark for 1 class (maximum 6 items of goods or services) (including filing fee, substantive examination and publication)	660,000
- Additional charge for each class of goods or services from the second one (maximum 6 items of goods or services)	540,000
- Additional charge for each items of goods or services from the 7 th in one class	114,000
2. Claiming priority right (for each earlier application)	600,000
3. Advice on difficult classification of goods or services	0.00
4. Reclassification of goods or services	120,000
5. Amendment of application inclusive of publication fee	240,000
6. Assignment of trademark application inclusive of publication fee	240,000
7. Granting trademark certificate (inclusive of Register and Publication)	360,000

Work items	Official fee (VNĐ)
Additional charge for each class of goods or services from the second one	100,000
8. Amendment of trademark certificate (inclusive of publication of decision on amendment, register of amended certificate)	360,000
9. Assignment of trademark certificate (for each certificate, inclusive of filing a request, examination, search on associated marks, granting certificate of recordal, register of certificate of recordal, publication of decision on recordal)	750,000
10. Renewal of trademark registration for the first class of goods or services (inclusive of publication of decision to renewal	660,000
- Additional charge for each class from the 2 nd one	540,000
11. Late renewal of trademark registration (for each late month)	10%
12. Trademark Search for each International Class (inclusive information search and legal examination, maximum 6 items of goods or services)	
12.1. Similar search	
- Normal (within 4 - 10 working days)	
- Urgent (within 2 - 3 working days)*	
13. Appeal/opposition, invalidation, cancellation of trademark certificate (for each Class of goods/services with maximum 6 items, inclusive of information search, legal examination)	360,000
- additional charge for each item of goods/services from the 7th in one class	60,000
IV. OTHER FEES	
1.Registration of license agreement (for each IP object)	690,000
inclusive of filing application for recordal, examination, granting certificate of recordal, publication of decision to	

Work items	Official fee (VNĐ)
grant certificate of recordal, register of certificate of recordal	
2. Obtaining a duplicate of certificate or patent	120,000
3. Obtaining certified copies (for 1 page)	10,000
- Additional charge for each page from the 2 nd one	5,000
4. Obtaining certified copies for claiming priority right (for each document)	60,000
- Additional charge for each page from the second one	5,000
5. Obtaining extension of time for submitting document (each time)	12,000
6. Obtaining certified copies of international trademark registration extended to Vietnam (for each registration)	60,000

7.4.4. Registration of Industrial Design

* *Timeline:*

An industrial design application will be examined through the following process:

	<i>Time Frame</i>	<i>Content of examination</i>
<i>Formality examination</i>	1 - 2 months from the filing date (if all required documents are submitted) or from the date of supplementation of all documents	The legitimization of the application and enclosed documents will be examined. If these documents meet the formality requirements, the Department of Industrial Design will issue the decision on the legitimate formality of the application.
<i>Publication</i>	2 months from the date of acceptance of application (if no request for early publication)	The application will be published on the Industrial Property Gazette.
<i>Substantive examination</i>	9 - 12 months from the date of filing request for substantive examination (if it is filed after	The protective criteria of the industrial design will be examined.

	<i>Time Frame</i>	<i>Content of examination</i>
	the publication date) or from the publication date (if the request for substantive examination is filed before the publication date)	
<i>Granting</i>	1 - 3 months from the date of notification to grant patent for industrial design	<ul style="list-style-type: none"> - The Applicant pays the registration and publication fees. - The industrial design will be published on Industrial Property Gazette.

Kindly note that the term for registration process normally takes longer to several months in practice due to the workload of the NOIP and the slow examination process by the NOIP's examiner.

** Required documents and information:*

For a patent application, the following documents/information should be provided:

- i. The Power of Attorney which is to be signed by the Applicant, neither notarization nor legalization is required;
- ii. Name and address of:
 - Applicant;
 - Author(s) of industrial design;
- iii. Title of the industrial design;
Indication of the kind of products for which the industrial design is to be used;
- iv. Priority document (if any);
- v. The set of picture of the industrial design

** Industrial Design Registration Fees:*

Work items	Official fee (VND)
1. Filing application for registration of an industrial design (for each variation, inclusive of filing fee, substantive examination and information search)	720,000
- Additional charge for each additional variation from the 2 nd one	600,000
2. Claiming priority right (for each earlier application)	600,000
3. Publication of the industrial design application	120,000
- Additional charge for each figure from the 2 nd one	60,000

Work items	Official fee (VND)
4. Amendment of application (inclusive of publication of amended application)	240,000
5. Assignment of industrial design application including publication fee	240,000
6. Granting patents for industrial design (inclusive of Register and Publication)	360,000
- Additional charge for each figure from the second one	120,000
7. Change of name and address of the industrial design owner (inclusive of publication of decision on amendment, register of amended patent)	360,000
- Additional charge for each figure, from the 2 nd one	60,000
8. Restricting industrial design variation (per one variation, inclusive of publication of decision on amendment, register of amended patent)	360,000
- Additional charge for each figure, from the 2 nd one	60,000
9. Assignment of industrial design patent (for each industrial design patent, inclusive of filing a request, examination, granting certificate of recordal, register of certificate of recordal, publication)	750,000
10. Renewal of industrial design patent (each time for each variation)	690,000
11. Preparing description of industrial design	0.00
12. Appeal/opposition, invalidation, cancellation of patents for industrial design (for each variation, inclusive of information search, legal examination)	420,000

8. Dispute Resolution Mechanisms for Commercial Conflicts

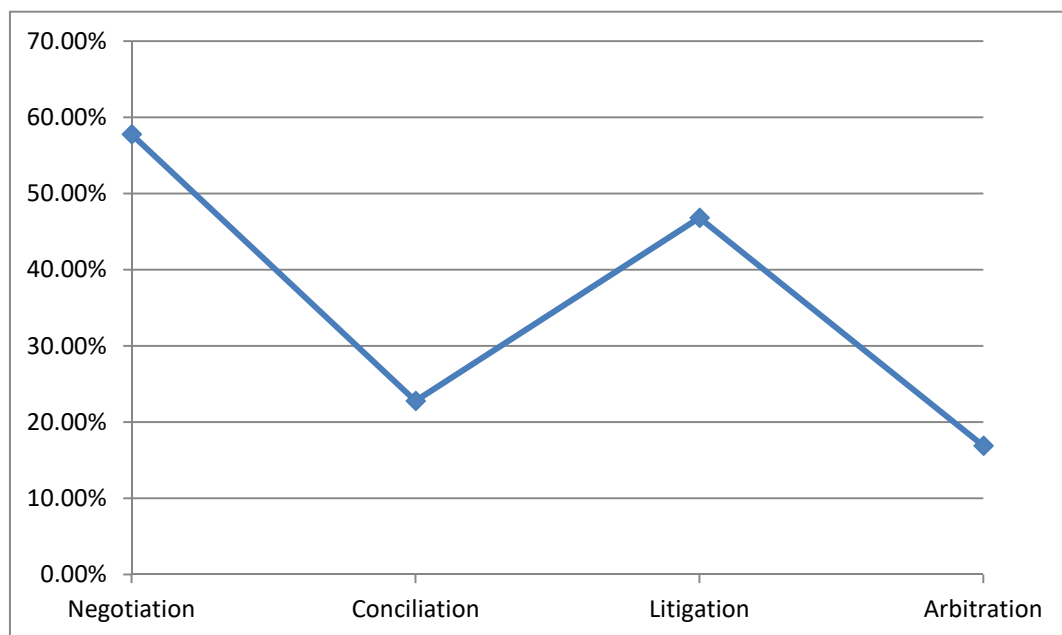
In Vietnam, commercial disputes can be resolved by litigation as well as by alternative dispute resolution techniques which include negotiation, mediation, and arbitration.

8.1. Litigation and Judicial Independence

Vietnam is, traditionally, not a litigious society⁴⁶¹ and people prefer to deal with disputes by mechanisms outside of courts.⁴⁶² With a tradition of village life and a culture of giving prominence to morality, the Vietnamese prefer using informal dispute resolutions to court processes. There is a saying in Vietnam that “the law of the Emperor ends at the village gate” (*Phep Vua Thua Le Lang*). Another popular saying is that “hundreds of legal arguments are not equal to a little affection” (*Hang Tram Cai Ly Khong Bang Mot Ty Cai Tinh*).

However, a consistently increasing number of cases are being resolved by courts - an increase of around 7% percent per year over recent years. The number of cases dealt with by the courts was 169,379, 181,339, and 194,652 in 2002, 2003, and 2004, respectively.⁴⁶³ According to a recent survey of the Ministry of Justice which was conducted with 237 business organisations and individuals, the highest preference was for negotiation. Figure 10 below outlines the use of different mechanisms of dispute resolution:⁴⁶⁴

Figure 10: The Preference for Mechanisms of Dispute Resolution



⁴⁶¹ Nguyen Hung Quang, 'Lawyers and Prosecutors under Legal Reform in Vietnam: The Problem of Equality' in Stephanie Balm and Mark Sidel (eds), *Vietnam's New Order: International Perspectives on the State and Reform in Vietnam* (2007) 164.; Anh Luu, 'Update: Vietnam Legal Research' (2010) <<http://www.nyulawglobal.org/globalex/vietnam1.htm>>..

⁴⁶² Minh, above n , p. 19; Quinn, above n , p. 258.

⁴⁶³ To Van Hoa, *Judicial Independence: A Legal Research on Its Theoretical Aspects, Practices from Germany, the United States of America, France, Vietnam, and Recommendations for Vietnam* (2006)..

⁴⁶⁴ Hoi Luat Gia Viet Nam [Vietnam Jurist Association], *Bao Cao Tong Ket Thi Hanh Phap Lenh Trong Tai Thuong Mai 2003 (Trinh Quoc Hoi Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam Khoa XII) [The Summary Report of the Implementation of the 2003 Ordinance on Commercial Arbitration (a Submission to the 12th Parliament of the Socialist Republic of Vietnam)]* (30 April 2009).., last accessed 20 June 2012, p. 21.

Judicial independence is recognized as an important principle of Vietnam's legal system and is enshrined in the 1992 Constitution: "when adjudicating, judges and honorary judges are independent and only conform to the law".⁴⁶⁵ This principle has been further entrenched in the various laws relating to the court system including the 2002 Law on the Organisation of the People's Court, the 2002 Ordinance on Judges and Honorary Judges, the 2003 Code of Criminal Procedure, and the 2004 Code of Civil Procedure.⁴⁶⁶

Since the Doi Moi reforms, particularly after the introduction of the 1992 Constitution, the judicial system in general and judicial independence in particular have been constantly improved. Many remedies have been used to address the shortcomings related to the judicial independence.

Prior to 1993, judges were appointed by the representative body. This system is problematic because it allows the leading local executives to influence on the judicial selection which would be detrimental to the independence of judges. In 1993, the appointment and promotion of judges was thus vested in the President of State rather than in representative bodies.⁴⁶⁷

A significant judicial reform was introduced in 2002, which originated from Resolution 08-NQ/TW of the Politburo of the Communist Party of Vietnam on Some Principal Tasks of the Judicial Work for the Forthcoming Period. The 2002 judicial reform has removed a number of obstacles to judicial work in general as well as on judicial independence. Prior to 2002 the court system was highly dependent on the executive.⁴⁶⁸ In particular, the Government estimated the budget for the entire court system and its personnel.⁴⁶⁹ The Ministry of Justice and the Department of Justice in the provinces had a decisive role in the management of the Local Courts including the appointment and reappointment of judges.⁴⁷⁰ Since the 2002 judicial reform, the budget estimation and the management of the court system have been the responsibility of the Supreme People's Court rather than of the Government, and the Local Courts have not been influenced by the Ministry of Justice or the Department of Justice in the provinces.⁴⁷¹

There are still obstacles which could undermine judicial independence both institutionally and individually. Firstly, lower courts strongly depend on higher courts, not only for appeal procedure and advice but also for organizational aspects.⁴⁷² Secondly, the Chief

⁴⁶⁵ Article 130 of the 1992 Vietnamese Constitution.

⁴⁶⁶ Hoa, above n 463 p. 411.

⁴⁶⁷ Hoa, above n **Error! Bookmark not defined.** p. 362.

⁴⁶⁸ To Van Hoa, *Tinh Doc Lap Cua Toa An: Nghien Cuu Phap Ly Ve Cac Khia Canh Ly Luan, Thuc Tien O Duc, My, Phap, Viet Nam Va Cac Kien Nghi Doi Voi Viet Nam [Judicial Independence: a Legal Research on Its Theoretical Aspects, Practices from Germany, the United States of America, France, Vietnam, and Recommendations for Vietnam]* (Nha Xuat Ban Lao Dong [Labour Publishing House], 2007), p. 470.

⁴⁶⁹ Articles 43-44 of the 1992 Law on the Organisation of the People's Court as amended in 1994 and 1995.

⁴⁷⁰ Hoa, above n 463 p. 414.

⁴⁷¹ Articles 45-46 of the 2002 Law on the Organisation of the People's Court; Hoa, above n 463, p. 415.

⁴⁷² Hoa, *Tinh Doc Lap Cua Toa An: Nghien Cuu Phap Ly Ve Cac Khia Canh Ly Luan, Thuc Tien O Duc, My, Phap, Viet Nam Va Cac Kien Nghi Doi Voi Viet Nam [Judicial Independence: a Legal Research on*

Judge of the Supreme People's Court and the Provincial Court's Chief Judge have much influence on the selection of the judges of the Supreme People's Court and selection of local judges, respectively.⁴⁷³ Thirdly, the limited five-year terms of appointment or reappointment could make judges psychologically insecure and vulnerable to influence by members of the selection council of judges.⁴⁷⁴

However, the reform of the court system in general as well as of judicial independence in particular is ongoing and supported by the continuous efforts of the CPV and the Government. In 2005, the CPV issued Resolution 48-NQ/TW of the Politburo on Strategies for Building and Improving Vietnam's Legal System up to 2010 with the Orientation to 2020 and the Resolution 49-NQ/TW of the Politburo on Strategies on Judicial Reform up to 2020. One of the main focuses of these resolutions is judicial independence.

8.2. Arbitration

In 1960, under Decree 20/TTg of the Prime Minister on the Organisation of the State Economic Arbitration, arbitration was first introduced in Vietnam through establishing arbitration centers ('the State Economic Arbitration Centers') as State organs. From 1960 to 1975, these centers dealt mainly with violations of economic contracts.⁴⁷⁵ However, they were operating as State organs responsible for managing economic contracts during the period 1975 to 1993.⁴⁷⁶ During this period, non-government arbitration also existed.

The Foreign Trade Arbitration Commission and the Maritime Arbitration Commission were established by the Vietnam Chamber of Commerce and Industry in 1963 and 1964 respectively.⁴⁷⁷ The former could deal with foreign contractual conflicts in which a party was a foreign entity or individual whereas the latter could deal with cases involving international maritime transportation in which one party was foreign.⁴⁷⁸

In 1993, driven by a need that stemmed from the process of building a market economy and integrating into the world, the Vietnamese Government abolished the rigid state economic arbitration system and established centers for economic arbitration.⁴⁷⁹ That same year, the Foreign Trade Arbitration Commission and the Maritime Arbitration Commission were also merged to establish the Vietnam International Arbitration Centre of the Vietnam Chamber of Commerce and Industry.⁴⁸⁰ The economic arbitration centers had power to hear conflicts related to international commercial relations.⁴⁸¹ However,

Its Theoretical Aspects, Practices from Germany, the United States of America, France, Vietnam, and Recommendations for Vietnam], above n , p. 422.

⁴⁷³ *ibid.*, pp. 427-428.

⁴⁷⁴ Minh, above n 462, p. 130; Quinn, above n 462.

⁴⁷⁵ Hoi Luat Gia Viet Nam [Vietnam Jurist Association], above n 464, p. 16.

⁴⁷⁶ *ibid.*

⁴⁷⁷ *ibid.*

⁴⁷⁸ *ibid.*, pp. 16-17.

⁴⁷⁹ According to Decree 116/CP of the Government, dated 5 September 1994, on the Organisation and Operation of Economic Arbitration.

⁴⁸⁰ According to Decision 204/TTg of the Prime Minister, dated 28 March 1993.

⁴⁸¹ *ibid.*, p. 17.

during this period, the legal framework for arbitration was still insufficient and the role of the arbitration bodies in practice was very limited.⁴⁸²

In 2003, the Standing Committee of the Parliament adopted the Ordinance on Commercial Arbitration to further support the development of arbitration. This Ordinance recognized international principles and rules on arbitration, which mostly imitated the 1985 UNCITRAL Model Law on International Commercial Arbitration and provided the legal framework for the operation of arbitration.⁴⁸³ However, the number of cases settled by the arbitration was very limited⁴⁸⁴ as indicated below for the period 2004-2006:⁴⁸⁵

Table 7: Number of Cases Dealt with by Vietnam's Commercial Arbitration Centres

The Arbitration Centre	Year		
	2004	2005	2006
The Asian International Commercial Arbitration	6	5	7
The Vietnam International Arbitration Centre	26	17	31
The Ho Chi Minh City Commercial Arbitration	0	3	5
The Hanoi Commercial Arbitration Centre	5	9	3
The Cantho Commercial Arbitration Centre	0	0	0
The Pacific International Arbitration Centre	0	0	0
The Far East Arbitration Centre	0	0	0
Total Amount of Cases	37	34	46

Recently, in order to address the weaknesses which had appeared in the implementation process of the 2003 *Ordinance on Commercial Arbitration* the Parliament passed the Law on Commercial Arbitration in 2010 which came into effect on 1 January 2011. This law is recognized as a further step in the improvement of the legal framework for arbitration necessary to support its development in Vietnam.

In relation to foreign arbitral awards, Vietnam has been a member of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 *New York Convention*) since 1995. Under this Convention Vietnamese courts will recognize and enforce awards made in the territory of the 1958 New York Convention's

⁴⁸² *ibid*, p. 18; Vu Anh Duong, 'Thuc Tien Ap Dung Phap Lenh Trong Tai Thuong Mai Tai Trung Tam Trong Tai Thuong Mai Quoc Te Viet Nam [The Practice of Applying the *Ordinance on Commercial Arbitration* at the Vietnam International Arbitration Centre]' (2008)(3) *Tap Chi Khoa Hoc Phap Ly [Journal of Legal Science]* 5..

⁴⁸³ Pham Duy Nghia, 'Law on Arbitration in Vietnam: Development and Issues' (2008) *Law & Development*..

⁴⁸⁴ Hoi Luat Gia Viet Nam [Vietnam Jurist Association], above n 464, last accessed 20 June 2012, p. 19.

⁴⁸⁵ *ibid*.

States. Moreover, under the 2004 *Code of Civil Procedure*, Vietnamese courts can also recognize and enforce foreign arbitral awards on the principle of reciprocity without requiring membership of the same international arbitration agreements.

PART 3

GOVERNMENT AGENCIES

RESPONSIBLE FOR

TRADE AND INVESTMENT LAWS AND

REGULATIONS

PART 3

GOVERNMENT AGENCIES RESPONSIBLE FOR TRADE AND INVESTMENT LAWS AND REGULATIONS

The Government of Vietnam is the executive body of the National Assembly and the State's highest administrative body.⁴⁸⁶ The Government includes the Prime Minister, Deputy Prime Ministers, Ministers and the heads of Ministry-equivalent bodies. The Government is five-year term, conterminous with that of the National Assembly.⁴⁸⁷ The Government is responsible to the National Assembly, and reports to the National Assembly, the Standing Committee of the National Assembly and the State President.⁴⁸⁸

There are currently 18 Ministries and 4 Ministry-equivalent bodies.

The 18 Ministries of Vietnam Government are as follows:

- Ministry of National Defence;
- Ministry of Public Security;
- Ministry of Foreign Affairs;
- Ministry of Justice;
- Ministry of Finance;
- Ministry of Industry and Trade;
- Ministry of Labor, Invalids and Social Affairs;
- Ministry of Transport;
- Ministry of Construction;
- Ministry of Information and Communications;
- Ministry of Education and Training;
- Ministry of Agriculture and Rural Development;
- Ministry of Planning and Investment;
- Ministry of Home Affairs;
- Ministry of Health;
- Ministry of Science and Technology;
- Ministry of Culture, Sports and Tourism;
- Ministry of Natural Resources and Environment

The 4 Ministry-equivalent bodies are

- the Office of Government
- the Government's Inspection
- the State Bank of Vietnam
- the Nationality Committee

⁴⁸⁶ The 1992 Vietnamese *Constitution*, article 109.

⁴⁸⁷ The 1992 Vietnamese *Constitution*, articles 110, 113; The 2001 *Law on Government Organisation*, article 3.

⁴⁸⁸ The 1992 Vietnamese *Constitution*, article 109.

The government agencies that closely relevant to laws on trade and investment can be shown according to below table;

Table 8: Trade and investment related government agencies

Matter concerned	Government Agencies
1. International Trade law	- Ministry of Finance- General Department of Customs. - Ministry of Industry and Trade
2. Foreign Direct Investment law	- Ministry of Planning and Investment - Ministry of Information and Communications
3. Law on Immigration	- Ministry of Public Security and The Immigration Department of the
4. Business Law - Regulation of Enterprise - Commercial Law - Tax Laws - Banking and Finance Laws	- Ministry of Finance - National Business Registration Portal - Ministry of Finance-General Department of Taxation - State Bank of Vietnam - Ministry of Finance- The State Securities Commission
5. Land Laws	- Ministry of Agriculture and Rural Development - Ministry of Construction - Ministry of Nature Resources and Environment
6. Labor Law	- Ministry of Labor, Invalids and Social Affairs
7. Intellectual Property Law	- Ministry of Culture, Sports and Tourism - National Office of Intellectual Property (NOIP)
8. Dispute Resolution Mechanisms for Commercial Conflicts	- Ministry of Justice

Therefore, the next section of this chapter 3 presents agencies which have authority relating to trades and investments according to the table above.

1. Government Agencies on International Trade Law

1.1 Ministry of Finance- General Department of Customs

Website: <http://www.customs.gov.vn>

Address: Block E3 - Duong Dinh Nghe street, Yen Hoa, Cau Giay, Hanoi, Vietnam

Phone: (+844) 39440833 (ext: 8623)

Email: webmaster@customs.gov.vn

The General Department of Customs under Ministry of Finance is in charge of State enforcement of Law on Import Tax and Export Tax in 2005⁴⁸⁹. The department of customs will have duty to regulate and govern import and export activities. The Department also has an authoritative power to deal with smuggling and commercial fraud as to protect consumer's interests from import and export products. The department has its central offices in Hanoi and has various offices in major provinces of Vietnam.⁴⁹⁰

1.2 Ministry of Industry and Trade

Website: www.moit.gov.vn

Address: 54 Hai Ba Trung Street, Hoan Kiem District, Hanoi, Vietnam

Phone: +84.4.22202222

Ministry of Industry and Trade has authoritative power on state management function of industry and trade in various activities such as engineering, metallurgy, electricity, new energy, renewable energy, petroleum, chemicals, industrial explosives, mining and mineral processing industry, consumer goods, food industry and other processing industry, commercial and domestic markets; import and export, border trade, foreign market development, market management, trade promotion, e-commerce, trade services, international economic integration, competition management, application of safeguard measures, anti-dumping, anti-subsidy, protection of consumer's interests.

Ministry of Trade and Industry is in charge of powers relating to approval on investment and trade projects, trade planning policy and issuing any regulation governing trade standards in Vietnam. The Ministry also has duty to support development of industrial

⁴⁸⁹ Law No. 45/2005/QH11 of 14 June 2005 on Import Tax and Export Tax.

⁴⁹⁰ Article No.3, Decision No 02/2010/QĐ-TTg dated Jan.15th 2010 by Government Prime Minister)

sector in Vietnam. All activities relating to trade and industry must be under supervision and approval of the Ministry.⁴⁹¹

2. Government Agencies on Foreign Direct Investment

2.1 Ministry of Planning and Investment

Website: www.mpi.gov.vn

Address: 6B Hoang Dieu Street, Ba Dinh District, Hanoi, Vietnam

Phone: +84.4.38455298

Ministry of Planning and Investment is in charge of state management of investment plans and investment approvals. The Ministry's investment plans relate to advice on strategies and economic – social development from investment and planning of economic zones (including industrial zones, border-gate economic zones, hi-tech zones and other types of economic zones)

The Ministry of Planning and Investment has power to govern and control any investment activities including issuing regulations to local and foreign investments, making strategic national investment policy, allocating state budget to major investments, coordinating with minister of Finance for national investment budget.⁴⁹² Thus, all investments must be under approval and governance of the Ministry.

2.2 Ministry of Information and Communications

Website: www.mic.gov.vn

Address: 18 Nguyen Du Street, Hanoi, Vietnam

Phone: +84.4.39435602

Ministry of Information and Communications is a government agency regulating and controlling press, publishing, postage, telecommunications, radio frequency, information technology and electronics; radio and television, news, external information, background information and information infrastructure and national media.

Ministry of Information and Communications has authoritative power to issue regulation regarding to information and communication in Vietnam. The Ministry also has a power to direct and guide press, publishing, printing and to issue any policies on press and publishing activities.⁴⁹³ The Ministry has a power to issue regulation and policy on

⁴⁹¹ Government's Decree No. 95/2012/ND-CP on 12 November 2012, defining the functions, tasks, powers and organizational structure of Ministry of Industry and Trade.

⁴⁹² Government's Decree No. 116/2008/ND-CP on 14 November 2008, defining the functions, tasks, powers and organizational structure of Ministry of Planning and Investment.

⁴⁹³ Government's Decree No. 132/2013/ND-CP dated 16 October 2013, defining duties, tasks, authorities, and structures of Ministry of Information and Communications

advertisement, telecommunication, and information technology. All investments and businesses about the advertisement, telecommunication, and information technology, press, and publishing must obtain an approvals from the Ministry and must be compliant to Ministry' regulation and supervisions.

3. Government Agency on Immigration

3.1 Ministry of Public Security – Department of Immigration

Website: www.vnimm.gov.vn

Address: 44-46 Tran Phu Street, Ba Dinh District, Hanoi, Vietnam

Phone: +84.4.38257941

Phone number for help regarding the immigration procedure of foreigners:
+84.4.38264026

Immigration Department of the Ministry of Public Security perform the State management function in the field of immigration, which includes⁴⁹⁴

- The State management on immigration and residence of foreigners in Vietnam;
- The State management on immigration of Vietnamese citizens;
- Prompt prevention, detection, interference and handling of violations of Vietnam law on immigration.

Immigration Department has the following tasks and powers:

1. Organize and implement measures on immigration and residence of foreigners in Vietnam and immigration of Vietnamese citizens as prescribed by the law.
2. Make statistics in the field of immigration.
3. Advise the leaders of the Party and Government to issue, supplement, amend the legal documents in the field of immigration; issue documents and forms in the field of immigration management.
4. Issue, amend, supplement, cancel or revoke visas, residence certification and other papers valid for entry and exit of foreigners in Vietnam, passports and other valuable documents for entry and exit of Vietnamese citizens as prescribed by the law.

⁴⁹⁴ Vietnam's Immigration Department,
<http://vnimm.gov.vn/nimppPW/appmanager/vnimm/home?_nfpb=true&_st=&_windowLabel=vnimmSubMenu_1&_urlType=action&wlpvnimmSubMenu_1__jpfbJSFTARGET=view%3A%2Fportlet%2FuiPortlet%2Fheader%2FvnimmSubMenu.jsp#wlp_vnimmSubMenu_1>.

5. Carry out inspection and control on activities on entry and exit, transit of foreigners and Vietnamese citizens at the international borders of Vietnam. Receive Vietnamese citizens who are not permitted to reside abroad and solve related problems.
6. Combat and prevent illegal immigration and management of foreigners' residence in Vietnam; to execute the expulsion over foreigners.
7. Implement international agreements in the field of immigration.
8. Perform other tasks related to the Ministry's management scope in the field of immigration.

4. Government Agencies on Business Law

4.1 Ministry of Finance

Website: www.mof.gov.vn

Address: 28 Tran Hung Dao Street, Hoan Kiem District, Hanoi, Vietnam

Phone: +84.4.2220.2828

Ministry of Finance is government agency responsible for management State finance, including the State's budget, taxes, charges, fees and other state revenues, national reserves, State's property, State financial investment, corporate finance, financial cooperatives

The Ministry has power to regulate and control customs, accounting, independent auditors, price, securities, insurance, financial services, and other services under state owned enterprises.

Ministry of Finance carries out the duties and powers relating to regulation of finance, administration of state budgets, management of tax and revenue collection, supervision on corporate finance of state enterprises, governance of insurance businesses, administration of customs, and price control supervision. Thus, all business involving with finance, insurance, and taxing must be under approval and supervision of the Ministry of finance.⁴⁹⁵

4.2 National Business Registration Portal

Website: <https://dangkykinhdoanh.gov.vn>

⁴⁹⁵ Government's Decree No. 215/2013/ND-CP on 23 December 2013, defining the functions, tasks, powers and organizational structure of Ministry of Finance.

Local or foreign businesses interesting to register their forms of businesses in Vietnam can refer to the National Business Registration Portal (NBRP) which is a unified registration authority. The aim to establish the NBRP is to improve the legal framework of business registration and to establish Vietnam national business registration managements and systems.⁴⁹⁶ The NBRP provides basic information of a company such as name, address, name of the legal representative and business registration number without any charges. The NBRP also issue a business registration and gives information of the business registration of such company.⁴⁹⁷ Thus, the NBRP is a website for organizations and individuals to implement online business registration, access business registration information and be used for the issuance of Business registration certificate. In addition to the online portal for registration of business, Vietnam government, in order to services business registration, set up by Vietnam Business Registration Offices in various cities and province.

4.3 Ministry of Finance-General Department of Taxation

Website: www.gdt.gov.vn

Address : 123 Lo Duc St., Hanoi, Vietnam

Phone Number : (04)-39712310

Fax : (04)-39712286

The General Department of Taxation is a department under the Ministry of Finance performing management of State's budget. In case the businesses registration is issued by National Business Registration Portal, all of the business information will be transferred to the database of the Department General of Taxation.⁴⁹⁸ The Department General of Taxation then processes and creates an enterprise code number and transfers it to the national database in order for the provincial business registration office to issue it to the enterprise. Each enterprise is issued one unique enterprise code number. This code number is both the business registration code number and the tax code number of that enterprise.⁴⁹⁹

Businesses wanting to report their taxes or to consult about taxing requirement can refer to the central office of the General Department of Taxation in Hanoi or to taxes office in all provinces in Vietnam.

4.4 State Bank of Vietnam

Website: <http://www.sbv.gov.vn>

⁴⁹⁶ Vietnam Business Registration Portal, About us, <https://dangkykinhdoanh.gov.vn>

⁴⁹⁷ Vietnam Business Law Blog, <http://vietnam-business-law.info/blog/2013/9/15/companies-search-in-vietnam>

⁴⁹⁸ World Bank, 2015, Starting Business in Vietnam, <http://www.doingbusiness.org/data/exploreeconomies/vietnam/starting-a-business/>

⁴⁹⁹ Ibid

Address: 49 Ly Thai To, Hoan Kiem, Hanoi

Tel: (84 - 43) 826.5975

Businesses, wishing to operate banking services, have to contact State Bank of Vietnam (SBV). The SBV is a ministerial agency of the Government - the Central Bank of Vietnam. The SBV performs the state management of monetary and banking activities and foreign exchange; performs the issuance of money, acts as the bank of credit institutions and provides monetary services for the Government; and performs the state management of public services under the jurisdiction of the State Bank.⁵⁰⁰

The SBV performs the traditional role of a central bank and regulates the banking system in Vietnam by collaborating with the Ministry of Finance and the SBV's network of provincial branches. The SBV has its authoritative powers to control all aspects of monetary management and supervision. SBV has the department of supervision agency whose task is to inspect the banking industries.

4.5 Ministry of Finance- The State Securities Commission

Website: <http://www.ssc.gov.vn>

Address: 164 Tran Quang Khai, Ha Noi, Viet Nam

Telephone: (84-4)9.340.760

Fax: 84-4) 9.340.739

The State Securities Commission (SSC) is an agency under the Ministry of Finance. It is the regulatory agency supervising and controlling all securities activity in Vietnam, including securities activities carried out by commercial banks.

The SSC is responsible for regulation of securities and securities market, management of public services in the fields of securities and securities market in accordance with applicable laws.⁵⁰¹ The SSC's administrative power to supervise securities market includes issuing permit, suspension, or any controlling orders to the businesses in the securities market. Thus, business in order to enter or to stay in the securities market in Vietnam has to be under supervision of the SSC.

⁵⁰⁰ The State Bank of Vietnam, 2015, http://www.sbv.gov.vn/portal/faces/en/enpages/home/sbvintroduction/mr?_afLoop=7467669733565715&_afWindowMode=0&_afWindowId=tm8n0htl7_88#%40%3F_afWindowId%3Dtm8n0htl7_88%26_afLoop%3D7467669733565715%26_afWindowMode%3D0%26_adf.ctrl-state%3Db813fg33u_112

⁵⁰¹ State Securities Commission, About Us-Function and Tasks, http://www.ssc.gov.vn/ubck/faces/en/enmenu/enpages_engioithieu/functionduties?_adf.ctrl-state=rlqx2qpcn_4&_afLoop=1494466913609812

5. Government Agencies on Land

5.1 Ministry of Agriculture and Rural Development

Website: www.mard.gov.vn

Address: 2 Ngoc Ha Street, Ba Dinh District, Hanoi, Vietnam

Phone: +84.4.38468160

Ministry of Agriculture and Rural Development is an agency governing sectors of Agriculture, forestry, salt, fishery, irrigation and rural development throughout the country. The Ministry has its duties and powers to govern enterprises, cooperatives and other collective business forms.⁵⁰²

The Ministry regulates and governs processing, storage, transportation, and trading of agricultural products, forestry products, seafood and salt. The Ministry also has power to implement the activities of trade promotion, investment promotion in sectors under the Ministry's administrative scope. Any business or trade activities relating to agricultural products, forestry products, seafood and salt must be under supervision and approval by the Ministry.

5.2 Ministry of Construction

Website: www.moc.gov.vn

Address: 37 Le Dai Hanh Street, Hanoi, Vietnam

Phone: +84.4.3821 5137

Ministry of Construction is a government agency governing construction planning and architecture, investment and construction activities, urban development, urban infrastructure and industrial zones, economic zones, hi-tech zones, housing, and offices;

The Ministry of Construction is responsible for administering construction sector by setting up law, policy and regulation on construction and property market.⁵⁰³ The Ministry has a power to govern construction and architecture investment, construction activities, and property markets. The Ministry also has a duty to implement government construction projects. All activities relating to construction, architecture, and property businesses must be under governance and approvals from the Ministry.

⁵⁰² Government's Decree 199/2013/ND-CP of 26 November 2013 defining the functions, tasks, powers and organizational structure of the Ministry of Agriculture and Rural Development.

⁵⁰³ Government's Decree No. 62/2013/ND-CP on 25 June 2013, defining the functions, tasks, powers and organizational structure of the Ministry of Construction.

5.3 Ministry of Nature Resources and Environment

Website: www.monre.gov.vn

Address: 10 Ton That Thuyet Street, Hanoi, Vietnam

Phone: +84.4.7956868

Ministry of Natural Resources and Environment is a government agency responsible for state management on land, water resources, mineral resources, geology, environment, hydrometeorology, climate change, surveying and mapping, integrated and uniform management on seas and islands, and State management of public services in the sectors.

Ministry of Natural Resources and Environment has power to govern and control investment and business activities relating to geology and natural resources.⁵⁰⁴ The Ministry also has a power to promote and protect environment by regulating the environmental impact assessment, commitment to environmental protection and environmental protection schemes and environmental impact reports. All investments and business which may affect environment must be under approvals and governance of the Ministry.

5.4 Ministry of Natural Resources and Environment- General Department of Land Administration

Website: <http://www.gdla.gov.vn/index.php/vi/download.html>

Address 10 Tn Tht Thuyt - Hà Nội

Phone: 84 (4) 36290196

Fax: 84 (4) 36290210

General Department of Land Administration under the Ministry of Natural Resources and Environment is a land registration authority. The General department helps the Ministry in management of registration on land use rights throughout the country. The department also has its administrative agencies for land at the central and provincial level who are entitled to establish departments, offices and public service organizations to fulfill their administrative activities and assist them in land administration.⁵⁰⁵ In addition at the Province level, the Peoples' Provinces Committees (PPC) and cities under central authority are to make decisions on the establishment of Province Department of Natural Resources and Environment which operates as a Land Registration Office. There are also district branch of the Land Registration Office.⁵⁰⁶

⁵⁰⁴ Government's Decree No. 21/2013/ND-CP on 4 March 2013, defining the functions, tasks, powers and organizational structure of the Ministry of Natural Resources and Environment.

⁵⁰⁵ Luu Van Nang, 2015, Land administration and land registration and the relationship among government bodies in Viet Nam, http://unstats.un.org/unsd/geoinfo/RCC/docs/rccap20/27_paper_LuuVanNang.pdf

⁵⁰⁶ Ibid

To facilitate land users, each district has one branch of Land Registration Office. Also at the local level, the People's Committees via the Department of Natural Resources and Environment at all levels (province, district and commune) bear responsibilities of conducting the State management on land in the locality within their jurisdiction. So a uniform system for the organization of administrative authorities concerned with land has been established and set from the central authority of Ministry of Natural Resources and Environment.

Thus, the business in processing the land use rights title for their business has to refer to local or central authority of the Land Registration Office. The main contact point for searching information about land use rights registration is at the General Department of Land Administration.

6. Government Agencies on Labor

6.1 Ministry of Labor, Invalids and Social Affairs

Website: www.molisa.gov.vn

Address: 12 Ngo Quyen Street, Hoan Kiem District, Hanoi, Vietnam

Phone: +84.4.62703613

Ministry of Labor - Invalids and Social Affairs is a government agency, performing the State administration relating to any issue of labors. The Ministry has a power to regulate and control labor on employment, vocational training, labor, wages, salaries, social insurance (compulsory social insurance, voluntary social insurance, unemployment insurance), occupational safety, people with special contribution to the country, protection and care of children, gender equality, and prevention of evil society nationwide.

The Ministry has power to supervise and regulates business activities involving with employment and unemployment, supervising and controlling labor contract for Vietnamese working oversea, supporting vocational training, setting up the minimum wage and wage regime, governance on compulsory social insurance and voluntary social insurance, and setting up safety standard for labor⁵⁰⁷. Thus, all activities of business and investments which has labors must be under supervision of the Ministry of Labor

7. Government Agencies on Intellectual Property

7.1 Ministry of Culture, Sports and Tourism

Website: www.bvhttdl.gov.vn

Address: 51 Ngo Quyen Street, Hoan Kiem District, Hanoi, Vietnam

⁵⁰⁷ Government's Decree 106/2012/ND-CP on 20 December 2012, defining the functions, tasks, powers and organizational structure of the Ministry of Labor, Invalids and Social Affairs.

Phone: +84.4.3.9438231

Ministry of Culture, Sports and Tourism is a government agency, responsible for state administration function of culture, families, fitness, sports and tourism.

The Ministry is also responsible for governance on copyright and intellectual property.⁵⁰⁸ The Ministry has power to enforce law relating to copyright and related intellectual property. The Ministry governs process of issuing, renewal or cancellation of Certificates of registration on copyright and intellectual property.

The Ministry regulates and promotes tourism sector by setting up standards, procedures, documents ranking of tourist businesses. All tourism business must be under supervision and approvals from the Ministry.

7.2 Minister of Science and Technology- National Office of Intellectual Property (NOIP)

Website: <http://www.noip.gov.vn/web/noip/home/en>

Address: 384-386, Nguyen Trai Street, Thanh Xuan District, Ha Noi

Phone: (+844) 3858 3069, (+844) 3558 8217,

Fax: (+844) 3858 8449, (+844) 3858 4002

The NOPI is under the administration of the Ministry of Science and Technology. Businesses in registering their patents have to contact NOIP which is an authority having functions of exercising the State management and providing services in the field of intellectual property and patent registration. Businesses can enquire further information about patent and intellectual property registration at the NOIP.

8. Government Agencies on Dispute Resolution Mechanisms for Commercial Conflicts

8.1 Ministry of Justice

Website: www.moj.gov.vn

Address: 60 Tran Phu Street, Ba Dinh District, Hanoi, Vietnam

Phone: +84.4.62739718

The Ministry of Justice is a government agency performing state function on the formulation and implementation of laws, inspection of legal documents, administrative control, dissemination and legal education.

⁵⁰⁸ Government's Decree No. 76/2013/ND-CP on 17 July 2013, defining the functions, tasks, powers and organizational structure of Ministry of Culture, Sports and Tourism.

The Ministry is also responsible for state management of civil, administrative enforcement, judicial administration, judicial assistance, state compensation for administrative activities and enforcement of judgments and other judicial tasks nationwide.

In addition, the Ministry of Justice carries out the duties and powers relating to the following trade and investment of;

- Supervision to lawyers, solicitors, notaries, judicial experts, auctioneers of properties and commercial arbitrators,-
- Administration of justice systems and procedures
- Management of judicial staffing and operation of the civil judgment enforcement
- Establishing and making regulation to dispute settlement in court case or other alternatives judicial mechanisms⁵⁰⁹

⁵⁰⁹ Government's Decree No. 22/2013/ND-CP on 13 March 2013, defining the functions, tasks, powers and organizational structure of Ministry of Justice.

REFERENCE

A.N, 'Doanh Nghiep Tu Nhan Dong Gop 48% Vao GDP Nam 2010 [Private Businesses Made up 48% of Vietnam's GDP in 2010]', *Bao Dien Tu Dang Cong San Viet Nam [The Electronic Newspaper of The Communist Party of Vietnam]* <http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30065&cn_id=440055>

Anh, Vu Tuan et al, *Vietnam's Economic Reform: Results and Problems* (Social Science Publishing House, 1994)

Asian Development Bank, *Vietnam* (2011)

Ban Chap Hanh Trung Uong Dang Khoa IX [The Ninth Central Committee of the Communist Party of Vietnam], *Nghi Quyet Hoi Nghi Lan Thu Ba Ban Chap Hanh Trung Uong Dang Khoa IX Ve Tiep Tuc Sap Xep, Doi Moi, Phat Trien va Nang Cao Hieu Qua Doanh Nghiep Nha Nuoc [The Resolution of the Third Conference of The Ninth Central Committee of the Communist Party of Vietnam on Continuing to Dispose, Reform, Develop, and Enhance the Efficiency of the State Owned Enterprises]* (August 2001)

Bo Ke Hoach Va Dau Tu [Ministry of Planning & Investment], *Bao Cao Tac Dong Cua Hoi Nhap Kinh Te Quoc Te Doi Voi Nen Kinh Te Viet Nam Sau Ba Nam Viet Nam Gia Nhap WTO [A Report of the Impact of the International Integration on Vietnam's Economy after Three Years Since Vietnam Accessed WTO]* (2010)

Bo Ke Hoach va Dau Tu [Ministry of Planning & Investment], *Cac Thoi Ky Phat Trien [Development Stages]* <<http://www.mpi.gov.vn/portal/page/portal/bkhdt/gtcbkhd/16831/39604>>

Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], *Ethnic Groups* <http://www.mofa.gov.vn/en/tt_vietnam/nr040810154926/#FT5pRBxAfJVp>

Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], *Geography* <http://www.mofa.gov.vn/en/tt_vietnam/geo/#k8qk26cscWck>

Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], 'Mot So Net Kinh Te Viet Nam [Some Characteristics of Vietnam Economy]' (2009) <<http://admm.org.vn/sites/vie/Pages/motsonetkinhteviet-nd-14410.html?cid=12>>

Bo Ngoai Giao Viet Nam [Vietnam's Ministry of Foreign Affairs], *Ve Van De Ton Giao O Viet Nam [Religion in Vietnam]* <<http://www.mofa.gov.vn/vi/nr040807104143/nr040807105039/ns050803093042#Z6eymVb4RQ1h>>

Chau, Ngoc, '80% Doanh Nghiep Nho Va Vua Dang Kho Khan [80 Percent of Vietnam's Small and Medium Businesses are Meeting with Serious Problems]' (2008) <<http://vnexpress.net/GL/Kinh-doanh/Kinh-nghiem/2008/10/3BA07504/>>

Chinh, Doanh, 'Hoi Nhap Kinh Te La Nhan To De Viet Nam Thuc Day Thuong Mai Va Thu Hut Dau tu [International Integration is a Way for Vietnam to Motivate and Attract Investment]' (2009) <<http://nciec.gov.vn/index.nciec?2069>>

Chinh Phu Viet Nam [Vietnam's Government], *Mot So Thong Tin Ve Dia Ly Viet Nam [Overview on Vietnam's Geography]* <http://chinhphu.vn/cttdtcp/vi/nuocchxhcnvn/thongtintonghop/thongtintonghop_dialy.html>

Consulate General of Vietnam in Houston - the US, *Religion and Belief* <<http://vietnamconsulateinhouston.org/en/general-information/religion-and-belief>>

Council for Trade-Related Aspects of Intellectual Property Rights, WTO, *Review of Legislation: Vietnam* (2010)

Dang Cong San Viet Nam [The Communist Party of Vietnam], Van Kien Dang Toan Tap [Complete Documents of the Communist Party of Vietnam], *Bao Cao Chinh Tri Cua Ban Chap Hanh Trung Uong Dang Cong San Viet Nam Tai Dai Hoi Dai Bieu Toan Quoc Lan Thu VI Cua Dang [The Political Report of the Central Committee of the Communist Party of Vietnam at the Sixth Party Congress]* (15 December 1986)

Dang Cong San Viet Nam [The Communist Party of Vietnam], Van Kien Dang Toan Tap [Complete Documents of the Communist Party of Vietnam], *Bao Cao Chinh Tri Cua Ban Chap Hanh Trung Uong (Khoa VI) Tai Dai Hoi Dai Bieu Toan Quoc Lan Thu VII Cua Dang [The Political Report of the Central Committee of the Communist Party of Vietnam (Sixth Tenure) at the Seventh Party Congress]* (1991)

Dang Cong San Viet Nam [The Communist Party of Vietnam], *Phat Huy Suc Manh Toan Dan Toc, Tiep Tuc Doi Moi, Day Manh Cong Nghiep Hoa, Hien Dai Hoa, Xay Dung va Bao Ve To Quoc Viet Nam Xa Hoi Chu Nghia [Bringing into Play All National Strengths, Continuing Reforms, Enhancing Industrialisation and Modernisation, Building and Protecting the Socialist of Vietnam]* (2001)

Davidson, Soren et al, *Implementation Assessment of the Anti-Corruption Law: How far has Vietnam come at the Sector Level? - A Case-Study of the Construction Sector* (May 2009)

Do Muoi (the then General Secretary of the CPV), *Cai Cach Mot Buoc Bo May Nha Nuoc Va Doi Moi Su Lanh Dao Cua Dang Doi Voi Nha nuoc [Partly Reforming the State Apparatus and Renovating the Party Leadership over the State]*, 2nd Meeting of the 7th Central Committee of the CPV

Duong, Vu Anh, 'Thuc Tien Ap Dung Phap Lenh Trong Tai Thuong Mai Tai Trung Tam Trong Tai Thuong Mai Quoc Te Viet Nam [The Practice of Applying the Ordinance on Commercial Arbitration at the Vietnam International Arbitration Centre]' (2008)(3) *Tap Chi Khoa Hoc Phap Ly [Journal of Legal Science]* 5

Federation of American Scientist, *U.S.-Vietnam Economic and Trade Relations: Issues for the 112th Congress* (5 April 2011)

Gillespie, John, 'Private Commercial Rights in Vietnam: A Comparative Analysis' (1994) 30 *Stanford Journal of International Law* 325

Gillespie, John, 'Changing Concepts of Socialist Law in Vietnam' in John Gillespie and Pip Nicholson (eds), *Asian Socialism & Legal Change: The Dynamics of Vietnamese and Chinese Reform* (2005)

Gillespie, John, *Transplanting Commercial Law Reform: Developing a "Rule of Law" in Vietnam* (2006)

Gillespie, John and Bui Thi Bich Lien, 'Unacknowledged Legislators: Business Participation in Lawmaking in Vietnam' in R. P. Peerenboom and John Gillespie (eds), *Regulation in Asia: Pushing Back on Globalization* (Routledge, 2009)

Grant Thornton, *Doing Business in Vietnam - 2011: Practical Advice for Investors* (2011)

Hang, Thu, 'De An 30: Cuoc Dau Tranh Cat Bo Quyen Hanh Dan [Project 30: A Combat to Cutting the Right of Bothering Inhabitants]' (20 February 2011) <<http://phapluatttp.vn/20110220010746814p0c1013/de-an-30-cuoc-dau-tranh-cat-bo-quyen-hanh-dan.htm>>

Hoa, To Van, *Judicial Independence: A Legal Research on Its Theoretical Aspects, Practices from Germany, the United States of America, France, Vietnam, and Recommendations for Vietnam* (2006)

Hoa, To Van, *Tinh Doc Lap Cua Toa An: Nghien Cuu Phap Ly Ve Cac Khia Canh Ly Luan, Thuc Tien O Duc, My, Phap, Viet Nam Va Cac Kien Nghi Doi Voi Viet Nam [Judicial Independence: a Legal Research on Its Theoretical Aspects, Practices from Germany, the United States of America, France, Vietnam, and Recommendations for Vietnam]* (Nha Xuat Ban Lao Dong [Labour Publishing House], 2007)

Hoi Luat Gia Viet Nam [Vietnam Jurist Association], *Bao Cao Tong Ket Thi Hanh Phap Lenh Trong Tai Thuong Mai 2003 (Trinh Quoc Hoi Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam Khoa XII) [The Summary Report of the Implementation of the 2003 Ordinance on Commercial Arbitration (a Submission to the 12th Parliament of the Socialist Republic of Vietnam)]* (30 April 2009)

Huong, Nguyen Viet, 'Correlation Between "Huong uoc" Village Codes and Laws in Regulating Social Relations in Vietnamese Traditional Villages' (2003) 9(102) *Vietnam Law & Legal Forum* 27

International Monetary Fund, *World Economic Outlook Database* (September 2011)

Jenkins, Rhys, 'Globalization, FDI and Employment in Vietnam' (2006) 15(1) *Transnational Corporations* 115

Koller, John M., *Oriental Philosophies* (Scribner, 1985)

L.Anh and H.Giang, 'Viet Nam Dang O Thoi Ky "Dan So Vang" [Vietnam is Having a "Gold Population"]', *Bao Tuoi Tre [Tuoi Tre Newspaper]* <<http://tuoitre.vn/Chinh-tri-Xa-hoi/331631/Viet-Nam-dang-o-thoi-ky-%E2%80%9Cdan-so-vang%E2%80%9D.html>>

Lam, Chu Van and Nguyen Van Huan, 'So Huu Tap The Trong Nen Kinh Te Thi Truong Dinh Huong Xa Hoi Chu Nghia [Collective Ownership in a Socialist Oriented Market Economy]' (2005)(12) *Tap Chi Nghien Cuu Kinh Te [Journal of Economic Studies]* 9

Lam, Tran Thanh, 'Bao Ho Quyen So Huu Tri Tue Trong Boi Canh Hoi Nhap Va Xay Dung Nen Kinh Te Tri Thuc [The Protection of Intellectual Property Rights in the Context of the Integration and Building a Knowledge Economy]' (2011) <<http://thanhtra.most.gov.vn/vi/cac-bai-nghien-cuu-shtt/bao-ho-quyen-so-huu-tri-tue-trong-boi-can-hoi-nhap-va-xay-dung-nen-kinh-te-tri-thuc>>

Lan, Nguyen Quoc, 'Traditional Vietnamese Law - The Lê Code - and Modern United States Law: A Comparative Analysis' (1989) 13 *Hastings International & Comparative Law Review* 141

Lien, Hoang The, 'On the Legal System of Vietnam' (September 1994) *Vietnam Law & Legal Forum* 34

Luu, Anh, 'Update: Vietnam Legal Research' (2010) <<http://www.nyulawglobal.org/globalex/vietnam1.htm>>

Ly, Ta Thi Minh, 'Ban Ve To Chuc Thuc Hien Phap Luat [A Discussion About the Organisation of Legal Implementation]' (2010) *Tap Chi Nghien Cuu Lap Phap [Journal of Legislative Research]*

Manh, Ngo Duc, 'Building up a Legal Framework aimed at Promoting and Developing a Socialist-Oriented Market-Driven Economy in Vietnam' in John Gillespie (ed), *Commercial Legal Development in Vietnam: Vietnamese and Foreign Commentaries* (Butterworths, 1997)

Manh, Ngo Duc, 'Improving Legislative Work for Building a Socialist State Ruled by Law' (2005) 12(135) *Vietnam Law & Legal Forum* 7

Manh, Ngo Duc, 'Nang Cao Chat Luong Hoat Dong Lap Phap Cua Quoc Hoi [Improving the Legislative Quality of the Parliament]' (Pt Tap Chi Cong San [Communist Review]) (2007) 138(18) <http://www.tapchicongsan.org.vn/details.asp?Object=4&news_ID=81049627>

Mau, Vu Van, *Dan Luat Khai Luan [General Notions of Civil Law]* (1961)

McCarty, Adam, *Economy of Vietnam* (2001)

Minh, Nguyen Thi, *Legal and Professional Challenges Confronting Practising Lawyers in Contemporary Vietnam* University of New South Wales, (2008)

Nghia, Pham Duy, 'Tu Nha Nuoc Toan Tri Den Thoi Dai Dan Doanh: Gia Tai Cua 60 Nam Nganh Luat Kinh Te Viet Nam [From a Completely Ruled State to the Era of Private Ownership: 60 Years of the Economic Law Branch in Vietnam]' [4] (2005)(8) *Tap Chi Nha Nuoc Va Phap Luat [Journal of State and Law]* 4

Nghia, Pham Duy, 'Law on Arbitration in Vietnam: Development and Issues' (2008) *Law & Development*

Ngoc, Phan, *Ban Sac Van Hoa Viet Nam [Vietnamese Cultural Character]* (Nha Xuat Ban Van Hoc [The Publishing House of Literature], 2006)

Nicholson, Penelope, 'Judicial Independence and the Rule of Law: The Vietnam Court Experience' (2001) 3 *Asian Law Journal* 37

Nicholson, Penelope and Nguyen Hung Quang, 'The Vietnamese Judiciary: The Politics of Appointment and Promotion' (2005) 14(1) *Pacific Rim Law and Policy Journal* 30

Nielsen Vietnam, 'Doom or Boom in Vietnam in 2009: What will the Global Economic Tsunami Wash upon Vietnam's Shores?' (24 March 2009) <<http://www.acnielsen.com.vn/news/BoomorDoom.shtml>>

Phan, Nhat Thanh, *Recognising customary law in Vietnam: legal pluralism and human rights* Woolongong University, 2011) <<http://ro.uow.edu.au/theses/3455/>>

Phat, Nguyen Nhu, 'The Role of Law during the Formation of a Market-Driven Mechanism in Vietnam' in John Gillespie (ed), *Commercial Legal Development in Vietnam: Vietnamese and Foreign Commentaries* (1997)

Phong, Dang, *Tu Duy Kinh Te Viet Nam: Chang Duong Gian Nan Va Ngoan Muc 1975 - 1989 [Vietnam's Economic Thought: A Miserable and Impressive March]* (Nha Xuat Ban Tri Thuc [The Publishing House of Knowledge], 2008)

Phuong, Kim, 'Viet Nam Tro Thanh Nuoc Co Thu Nhap Trung Binh [Vietnam Becomes a Middle-Income Country]', *Vietnam Business Forum* <<http://vccinews.vn/?page=detail&folder=165&Id=2830>>

Quang, Nguyen Hung, 'Lawyers and Prosecutors under Legal Reform in Vietnam: The Problem of Equality' in Stephanie Balm and Mark Sidel (eds), *Vietnam's New Order: International Perspectives on the State and Reform in Vietnam* (2007) 164

Quinn, Brian J.M., 'Legal Reform and Its Context in Vietnam' (2001-2002) 15 *Columbia Journal of Asian Law* 220

Quy, Doan, 'Van Ban Quy Pham Phap Luat Sai, Chua Ai Bi Xu Ly [No One Has Been Fined Because of Promulgating a False Normative Act]' (Pt Bao Vietnamnet [Vietnamnet Newspaper]) (2009) <<http://vietnamnet.vn/chinhtri/2009/03/836452/>>

Rose, Carol V., 'The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study' (1998) 32(1) *Law & Society Review* 93

Ruwitch, John and Jason Szep, *Vietnam's Capitalist Roaders*, Reuters No (2011)

Schaumburg-Muller, Henrik, 'Private-Sector Development in a Transition Economy: The Case of Vietnam' (2005) 15(3/4) *Development in Practice* 349

Son, Bui Ngoc, 'Mot Vai Dac Diem Tam Ly Dan Toc voi Viec Thuc Hien To Tung Tranh Tung o Viet Nam [Some Traditional Psychological Features of Vietnamese Related to the Implementation of Adversarial Litigation in Vietnam]' (2003)(Special Bulletin on Judicial Reform) *Tap Chi Nghe Luat [Legal Profession Review]* 17

Son, Bui Ngoc, 'Mot Goc Nhin Ve Su Phan Chieu Truyen Thong Trong Phap Luat Viet Nam [A View of The Reflection of Tradition on Vietnamese Laws]' (2004)(2) *Tap Chi Khoa Hoc Phap Ly [Journal of Legal Science]*

Special Correspondent, 'Vietnam Commits to a Market-based Plan', *Asia Today International*, 70

State, U.S. Department of, *Background Note: Vietnam* (2010)

Studies, Institute of East Asian, *Information about Vietnam* (Board of Investment of Thailand, 2009)

Su, Nguyen Duc, 'Vi Tri Va Vai Tro Cua Nho Giao Trong Xa Hoi Viet Nam [The Place and Role of Confucianism in Vietnam's Society]' (2011) <<http://vanhoanghean.com.vn/goc-nhin-van-hoa/nhung-goc-nhin-van-hoa/1806-vi-tri-va-vai-tro-cua-nho-giao-trong-xa-hoi-viet-nam.html>>

Tai, Van Ta and Nguyen Ngoc Huy, *The Le Code: Law in Traditional Vietnam*, Ohio Univ. Press No (1987)

Taylor Nelson Sofres, *TNS Pink Pages Marketing Book* (2008)

Thang, Huy, 'Chuyen Doi Doanh Nghiep Nha Nuoc: Khong Lam Kieu "Binh Moi Ruou Cu" [The Conversion of the State Owned Enterprises: Have Not Liked Pouring "Old Wine in New Bottle"]' (6 July 2010) <<http://baodientu.chinhphu.vn/Home/Chuyen-doi-DN-Nha-nuoc-Khong-lam-kieu-binh-moi-ruou-cu/20107/33278.vgp>>

Thanh, Nguyen Xuan and David Dapice, *Vietnam's Infrastructure Constraints* (2011)

Thanh, Vo Tri, 'Vietnam's Trade Liberalization and International Economic Integration: Evolution, Problems, and Challenges' (2005) 22(1) *ASEAN Economic Bulletin* 75

The Office of Vietnamese Government, *Study Report to Improve the Quality of Laws and Ordinances Drafted by the Government to be Submitted to the National Assembly and the National Assembly's Standing Committee* (unpublished report, Working Delegation No.804, Hanoi) (December 2003)

The World Bank, 'Vietnam Development Report 2006' (2005) <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/12/02/000160016_20051202141324/Rendered/PDF/344740VN.pdf>

The World Bank, *Vietnam Aiming High: Vietnam Development Report 2007* (2006)

The World Bank, *Vietnam Development Report 2010: Modern Institution* (2009)

The World Bank, *Business Environment Snapshot for Vietnam* (2011)

Thi, Anh, 'Nhin Lai Kinh Te Viet Nam Qua 20 Nam Doi Moi [Looking Back on Vietnam's Economy After 20 Years Since Doi Moi Reforms]', *VNMedia* <<http://vietbao.vn/Kinh-te/Nhin-lai-nen-kinh-te-Viet-Nam-qua-20-nam-doi-moi/65052003/87/>>

Thuy, Pham, 'Legal Document – Who Are You? [Van Ban Quy Pham Phap Luat - Anh La Ai?]' (2008) <<http://www.ttbd.gov.vn/default.aspx?tabid=581&ItemID=3798>>

Tieu Ban Tuyen Truyen, Hoi Dong Bau Cu Quoc Hoi Khoa XII [The Propaganda Subcommittee, The Election Council of the 12th National Assembly], 'Ket Qua Cuoc Bau Cu Dai Bieu Quoc Hoi Khoa XII [The Result of the Election of the Members of the 12th National Assembly]' (2007) <<http://www.baucukhoa12.quochoi.vn/default.asp?xt=xt&page=newsdetail&newsid=1560>>

Tong Cuc Thong Ke Viet Nam [Vietnam's General Statistics Office], *Dan So Trung Binh Phan Theo Dia Phuong [Average Population Distributed in Every Province]* <<http://www.gso.gov.vn/default.aspx?tabid=387&idmid=3&ItemID=9863>>

Tong Cuc Thong Ke Viet Nam [Vietnam's General Statistics Office], *Dau Tu Truc Tiep Nuoc Ngoai Duoc Cap Giay Phep Thoi Ky 1988 - 2010 [Foreign Investment During the Period 1988-2010]* <<http://www.gso.gov.vn/default.aspx?tabid=392&idmid=3&ItemID=11373>>

Tong Cuc Thong Ke Viet Nam [Vietnam's General Statistics Office], *Tong Muc Luu Chuyen Hang Hoa Xuat Nhap Khau [The Total Amount of Import and Export]* <<http://www.gso.gov.vn/default.aspx?tabid=393&idmid=3&ItemID=11626>>

Tran Duc Luong, Member of the CPV Politburo and Vietnam's President of State, 'Doi Moi - Su Lua Chon Dung Dan Vi Muc Tieu Phat Trien Hien Dai Cua Viet Nam [Doi Moi - A Right Choice for

the Modern Development of Vietnam]' (2005) <http://www.mofahcm.gov.vn/mofa/cs_doingoai/cs/ns04081808401042#1e6mwAgrqNed>

Tran, Phong, 'Vietnam's Economic Liberalization And Outreach: Legal Reform' (2003) 9 *Law and Business Review of the Americas* 139

Trung Tam Thong Tin Cong Nghiep Va Thuong Mai, Bo Cong Thuong [Vietnam's Industry and Trade Information Center, Vietnam's Ministry of Industry and Trade], '25 Dia Chi Dau Tu Hap Dan Nhat The Gioi [25 Most Attractive Investment Places in the World]' (2010) <<http://www.vinanet.com.vn/tin-thi-truong-hang-hoa-viet-nam.gplist.287.gpopen.177738.gpside.1.gpnewtitle.25-dia-chi-dau-tu-hap-dan-nhat-the-gioi.asmx>>

Tu, Luong Van, 'Tien Trinh Gia Nhap To Chuc Thuong Mai The Gioi - WTO, Co Hoi Va Thach Thuc Doi Voi Nuoc Ta [WTO Accession Process - Opportunities and Challenges for Vietnam]' <http://wto.nciec.gov.vn/Collections/Tien%20trinh%20dam%20phan%20WTO%20cua%20VN_Mr.%20LV%20Tu.pdf>

Tuan, Nguyen Minh, 'Nhan Dien Xa Hoi Lang Xa - Xua Va Nay [Identifying Village Society - Past and Present]' (2004) 11-12 *Tap Chi Khoa Hoc Va To quoc [Journal of Science and Homeland]*

Tuan, Nguyen Van, 'Mot So Y Kien Ve Cai Cach Tu Phap O Viet Nam Trong Giai Doan Hien Nay [Some Opinions on the Judicial Reform in Contemporary Vietnam]' (2004)(6) *Tap Chi Dan Chu Va Phap Luat [Journal of Democracy and Law]* 17

Uc, Dao Tri, 'Basic Information for Legal Research- A Case Study of Vietnam' in Institute of Developing Economies (IDE-JETRO) (ed), *Doing Legal Research in Asian Countries China, India, Malaysia, Philippines, Thailand, Vietnam* (Institute of Developing Economies (IDE-JETRO), 2002)

United Nations University and World Intellectual Property Organisation, *Intellectual Property in Asian Countries: Studies on Infrastructure and Economic Impact* (2010)

Van, Le Thi Thuy and Sarah Y. TONG, 'Vietnam and Anti-dumping: Regulations, Applications and Responses' (2009) <<http://www.eai.nus.edu.sg/EWP146.pdf>>

Van Phong Quoc Hoi [The Office of the National Assembly], *He Thong Van Ban Quy Pham Phap Luat [A Collection of Legal Documents]* <<http://vietlaw.gov.vn/LAWNET/>>

Van phong Quoc hoi [The Office of the National Assembly], *60 Nam Quoc Hoi Viet Nam [60 Years of the National Assembly of the Socialist Republic of Vietnam]* (2005)

Vecchi, Sesto E. and Michael J. Scrown, 'Intellectual Property Rights in Vietnam' (1992) 11 *Pacific Basin Law Journal* 67

Vietnam's Immigration Department,
 <http://vnimm.gov.vn/nimppPW/appmanager/vnimm/home?_nfpb=true&_st=&_windowLabel=vnimmSubmenu_1&urlType=action&wlpvnimmSubmenu_1_jpfJSFTARGET=view%3A%2Fportlet%2FuiPortlet%2Fheader%2FvnimmSubmenu.jsp#wlp_vnimmSubmenu_1>

Vietnam's Ministry of Justice, *Final Report Legal Needs Assessment* (2002)

Vietnam Travel Guide, *Vietnam Map* <<http://www.vietnam-travel-guide.net/vietnam-map.html>>

Vietnamonline, *Vietnam Customs Tariff* <<http://www.vietnamonline.com/az/vietnam-customs-tariff.html>>

VnExpress, 'VN Chinh Thuc La Thanh Vien Thu 150 Cua WTO [Vietnam Officially Become the 150th Member of WTO]' (Pt Vnexpress) (2007) <<http://vnexpress.net/GL/Kinh-doanh/2007/01/3B9F2424/>>

Vuong, Tran Quoc, *Van Hoa Viet Nam: Tim Toi Va Suy Ngam [Vietnam Culture: Researches & Reflections]* (2003)

W.Jun, Kwang et al, *FOREIGN CAPITAL FLOWS IN VIETNAM: TREND, IMPACT, AND POLICY IMPLICATIONS* (1997)

Wang, Zhiqiong June, *The Impact of China's Regulatory Regime on Foreign Franchisor's Entry and Expansion Strategies* The University of New South Wales, (2010)

Wescott, Clay, 'Combating Corruption in Southeast Asia' <http://www.adb.org/Governance/combating_corruption.pdf>

Xuan, Ngo Quang, 'Vietnam: Potential Market and New Opportunities' (1995) 19(1) *Fordham International Law Journal* 32