^{ಹಸಹಕರು} Doing Business In





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I. INTRODUCTION

1. Please give a brief outline of the legal system in Vietnam. Is it based on common law, civil law, or some other system?

The legal system of Vietnam is influenced by the communist theory and Ho Chi Minh Ideology in addition to Western laws upon the introduction of a market economy ever since the adoption of the Đổi Mới ("renovation") in 1986. The current private laws in Vietnam are based on the continental European civil law system. Since joining the WTO in 2007, Vietnam has been promoting modernization in the private law sector.

2. How are the courts organized in Vietnam?

The courts in Vietnam are mainly organized into four tiers: The Supreme People's Court, the High-Level People's Court, the Provincial People's Courts, and the District People's Courts. However, from 1 January 2025 (i.e., the effective date of the Law on Organization of People's Court 2024), new courts are introduced, namely the Specialized People's Court, to handle cases within certain specific sectors including administration, intellectual properties and bankruptcy. Besides, there are Military Courts which are organized in the People's Army to resolve cases involving the accused who is an in-service army person.

The Supreme People's Court is composed of one Council of Supreme Court Judges. The Supreme People's Court is the highest judicial body of Vietnam. It is empowered to hold supervisory and review trials of cases with judgments which have already taken legal effect but have been protested. The Supreme People's Court has the power to, among others, supervise the hearings conducted by the lower courts and manage people's courts and military courts organizationally in accordance with



law. The Council of Supreme Court Judges has the right to determine certain judgements to become case precedents for the consistency in law application across court levels upon the announcement of the Chief Justice.

The High-Level People's Court is composed of one Committee of High-Level Court Judges and separate special courts, namely, the criminal court, the civil court, the economic court, the labor court, the administrative court, and the family and juvenile court. The High-Level People's Court has jurisdiction to (1) conduct appellate trials of cases where the first-instance judgments and/or rulings of Provincial People's Courts, Administration and Intellectual Properties Specialized People's Court of First Instance that have not yet taken legal effect but have been appealed and/or protested against, (2) hold supervisory and review trials of cases with judgments of Provincial People's Courts which have already taken legal effect but have been protested, and (3) resolve requests, recommendations, and protests against bankruptcy decisions of the Bankruptcy Specialized People's Court within their territorial jurisdiction.

The Provincial People's Court is composed of one Committee of Provincial Court Judges and separate special courts, namely, the criminal court, the civil court, the economic court, the labor court, the administrative court and the family and juvenile court. According to the Code of Civil Procedure 2015, the Provincial People's Courts are empowered to hold first-instance trials of cases, to conduct appellate trials of cases where the first-instance judgments and/or rulings of lower courts have not yet taken legal effect but have been appealed or protested against according to the procedural law, and to review effective judgments or rulings of lower court within their territorial and level jurisdiction. Cases wherein one party or the related asset is located offshore or subject to judicial entrustment of representative agencies of Vietnam overseas or of foreign courts are generally subject to jurisdiction of the People's Court of the relevant province, except for cases of family and marriage between Vietnamese citizens and citizens of neighboring countries residing in border areas of Vietnam.

A District People's Court may include separate courts, namely, the criminal court, the civil court, the family and juvenile court and the administrative court. A District People's Court has jurisdiction to hold first-instance trials in civil, commercial, criminal and labor cases according to the procedural law.

An Administrative Specialized People's Court of First Instance is empowered to hold the first-instance trials for administrative cases (save for the administrative cases on intellectual properties) regarding complaints against administrative decisions and administrative acts of state administrative agencies and competent individuals in state administrative agencies at the provincial level and above. An Intellectual Properties Specialized People's Court of First Instance has jurisdiction to hold the first-instance trials for intellectual properties cases (including administrative cases but relates to intellectual properties). A Bankruptcy Specialized People's Court has the authority to handle bankruptcy cases.



3. How are lawyers organized in Vietnam?

To enter into the legal profession in Vietnam, a Certificate of Lawyer Practice issued by the Ministry of Justice is required. This certificate will be issued to a person who has a bachelor's degree in law, first completed a twelve-month legal professional training course, then satisfies a probation period of twelve months for legal practice at a legal practice organization (e.g., law firms), and subsequently passed the national qualification examination and met basic requirements set out under the Law on Lawyers. To practice law as a lawyer, registration with both the Vietnam Bar Federation, oversee the legal profession nationwide and the Provincial Bar Association of the province or municipal city where the applicant practices is required.

For foreign lawyers seeking to practice in Vietnam, they may do so if they hold a still-valid homecountry practicing certificate, have experience in foreign or international legal advice, pledge to obey Vietnamese law and the lawyers' code of ethics, and are seconded or employed by a foreign-law branch/company already licensed in Viet Nam or by a Vietnamese law firm. They may work only as member-lawyers of such foreign branches/companies or under an employment contract with those entities or a Vietnamese firm. A dossier, including application form, evidence of secondment/employment, copy of practicing certificate, résumé and criminal-record check, goes to the Ministry of Justice, which must issue or refuse the five-year Practice License (which also replaces a work permit) within 30 days.

4. What type of legal fee arrangements is common in Vietnam?

By law, a lawyer's remuneration may be structured based on the nature and complexity of the legal services rendered, the time and effort invested, as well as the lawyer's experience and professional standing. Such remuneration may be determined by (1) hours of work performed by lawyer, (2) a fixed charge, (3) a contingent fee agreement or fee agreement with conditions, or (4) retainer fee. In criminal cases, however, a lawyer's remuneration must not exceed the ceiling set by the Government. At present, the maximum hourly rate for lawyers participating in criminal proceedings is capped at 0.3 times the Government's basic wage. Lawyers are expressly prohibited from soliciting or accepting any payments or benefits beyond those agreed upon in the legal service contract.

II. STRUCTURES FOR DOING BUSINESS

1. Is it necessary to set up a business organization in Vietnam to provide services or sell goods in Vietnam?

Whether it is necessary to set up a local company to provide services in Vietnam essentially depends on the nature of the services at issue. Under Vietnam's WTO Commitments and other bilateral and multilateral agreements to which Vietnam is a party, Vietnam undertakes to allow cross-border



supply for a number of services with no limitation. This means that an offshore business entity should be able to provide such services to Vietnamese customers without having to set up a business organization in Vietnam. The cross-border supply of certain other services (for instance, audiovisual services, educational services, recreational, cultural and sporting services) however is unbound by Vietnam. That means whether or not it is possible to provide such services without a presence in Vietnam depends on the particular circumstance and further consultation with the Vietnamese authority-in-charge.

Vietnamese law also allows offshore traders without presence in Vietnam, who are from countries and territories which are members of the WTO or countries and territories which have bilateral agreements with Vietnam on this issue, subject to specific conditions, to exercise the import and export rights for goods, to purchase goods for export and sell such imported goods to Vietnamese traders.

2. What forms of business organizations/ commercial presences can be set up in Vietnam?

Offshore investors may select one of the following primary and most commonly utilized forms of business organizations/commercial presences to carry out their investment projects in Vietnam.

- (1) Limited liability company ("LLC")
- (2) Joint stock company ("**JSC**")
- (3) Incorporated partnership

(4) Branch

A branch has no legal status independent from the offshore company but is allowed to conduct commercial activities that generate profits in Vietnam.

(5) Representative office

A representative office does not have a separate legal personality from the offshore company. It is established under the Vietnamese law in order to conduct market research, and seek and promote trade and business opportunities, but it is not allowed to engage in any direct profitmaking activities in Vietnam. The establishment of a representative office is generally cheaper and faster than other commercial presences.

In addition to these standard forms, Vietnamese law also recognizes other business entities such as



Private Enterprises and Cooperatives. While there are no explicit legal prohibitions preventing offshore investors from participating in these forms, they are seldom used in practice. The primary reasons lie in their inherent limitations:

- (6) Private enterprise is a sole proprietorship where the owner bears unlimited liability, exposing foreign investors to significant financial risk.
- (7) Cooperative is structured around collective ownership and democratic governance, primarily intended to support community-based or member-driven economic activity, which may not align with foreign investors' strategic or commercial interests.

3. What are the process and time required for setting up each?

(1) LLC, JSC, Incorporated Partnership, Private Enterprise and Cooperative (individually referred to as a "**Company**")

To establish a company in Vietnam, pursuant to the Law on Investment No. 61/2020/QH14 dated 17 June 2020 of the National Assembly, ("LOI"), which initially took effect from 1 January 2021 and have recently been amended and become effective from 15 January 2025, and the Law on Enterprises No. 59/2020/QH14 dated 17 June 2020 of the National Assembly ("LOE"), which have been amended and become effective from 01 March 2022 and is also under review for major revisions in 2025, the foreign investor must prepare an investment project and apply for (i) an investment registration certificate ("IRC") and (ii) an enterprise registration certificate ("ERC").

In some special investment projects as listed in the LOI (e.g., nuclear power plant, new construction of airport projects, new construction of seaport projects, petroleum processing projects, projects to which the State allocates or leases out land without tendering or auction), the foreign investors also need to carry out in advance certain procedures to secure a written in-principle approval from the relevant authority on the investment ("In-Principle Approval") which is the prerequisite for IRC. Based on the characteristics of each project, the National Assembly, the Prime Minister, or the relevant provincial People's Committee shall be empowered to issue the In-Principle Approval. For specific projects under the authority of the People's Committee but conducted in industrial zones, export processing zones, high-tech zones, or economic zones, the authority to issue the In-Principle Approval is vested in the respective management boards of those areas. Statutory timeline for obtaining the In-Principle Approval under authority of the People's Committee is 35 days (25 days for the investment registration authority to appraise and submit dossier to the People's Committee, plus 7 working days for the People's Committee to approve and issue In-Principle Approval). Statutory timeline for obtaining the In-Principle Approval under authority of the Prime Minister is at least 60 days (including 03 working days for the Ministry of Finance to seek the opinions



of the relevant regulatory agencies, 15 days for the requested agencies to consider and send their appraisal opinions to the Ministry of Finance and 40 days for the Ministry of Finance¹ to appraise and submit to the Prime Minister), plus 7 working days for the Prime Minister to approve and issue In-Principle Approval). For the projects under authority of the National Assembly, the In-Principle Approval application will be considered at the National Assembly's meeting, which is periodically held twice each year and extraordinarily held by the National Assembly.

In addition to the In-principle Approval, the Vietnamese licensing authority may also carry out procedures to select investors for implementation of the investment project by way of an auction for land use right or bidding to be selected as an investor. In certain exceptional cases (e.g., an investor has already obtained land use rights in Vietnam), that investor will be directly recognized as the investor for the relevant project without undergoing the auctioning/bidding process. An IRC will be issued to the foreign investor within five (05) working days upon completing from the date of receipt of the In-Principle Approval in case of recognition of investor, or upon receipt of request from investor in other cases (i.e., bidding, auctioning).

With respect to the projects which are not subject to the In-Principle Approval, the investment registration office will issue an IRC to the foreign investor within fifteen (15) days from the date of receipt of the proper file.

The business registration office is responsible for considering the validity of the enterprise registration application file and will issue an ERC within three (03) working days from the receipt of the valid file.

(2) Branch

Foreigner investors satisfying conditions regulated by Vietnamese law and international treaties, of which Vietnam is a member, may establish a branch in Vietnam by applying for a license issued by the competent authorities. Currently, the establishment of a branch office is allowed only for certain types of business, such as banking services, legal services, franchising services, computer services, management consultancy services, construction services, and non-life insurance businesses under Vietnam's WTO Commitments. Furthermore, the establishment of foreign bank branches and branches of foreign law-practicing organizations is also governed by the Law on Credit Institutions No. 32/2024/QH15 and the Law on Lawyers No. 65/2006/QH11, as amended. Under the law, a branch license will be granted within seven

¹ The Ministry of Planning and Investment is planned to be merged into the Ministry of Finance and subsequently, the Department of Planning and Investment would be merged into the Department of Finance which shall be operated official from 01 March 2025 under Resolution 27/NQ-CP. Therefore, there may be change in the name of the State authority, but the relevant procedure should not be changed.



(07) working days from the receipt of proper dossier by the competent authorities, except for special cases.

(3) Representative office

To establish a representative office in Vietnam, a foreign investor must apply for a license issued by the competent authorities. A license for establishing a representative office will be granted within seven (07) working days from the receipt of proper dossier by the competent authorities, except for special cases.

4. Are there any fetters on the business activities that can be carried on by business organizations in Vietnam?

In Vietnam, business organizations are free to engage in any business activities that are not prohibited by law. However, the LOI sets out certain business and industry sectors in which investment in general is conditional. The conditions vary depending on each particular business sector, and the investors should inquire into the specific conditions applicable. These conditions include, among others, governmental licenses/approvals/permissions, financial capability, human resources, material facilities, minimum investment capital, practicing certificate, certificate of satisfaction of conditions, etc.

III.CORPORATIONS

1. Are there any fetters on the business activities that can be carried on by business organizations in Vietnam?

In Vietnam, a foreign-invested company may be set up in the form of a one member LLC (**"One-Member LLC**"), two-or-more members LLC (**"Multiple-Member LLC**"), a JSC, an incorporated partnership, a private enterprise or a cooperative. In which, One-Member LLC, Multiple-Member LLC, and JSC are most popular forms of enterprise active in Vietnam. The differences among the types of companies mainly include the (i) requisite number of shareholders/members, (ii) corporate governance structure, (iii) ability to offer securities, (iv) liability regime, and (v) assignment of charter capital.

(1) One-Member LLC

A One-Member LLC is owned by only one organization or an individual who is liable for all the debts and other liabilities of the company within the extent of the company's charter capital. The company owner has the right to the assignment of all or part of the charter capital of the company to other organizations or individuals.



If the company is owned by an organization, the corporate governance structure shall be held by either (i) a Chairman and a Director/General Director or (ii) Members' Council (from three (03) to seven (07) members) and a Director/General Director. Except for One-Member LLCs with State-owned enterprises as the owner, a One-Member LLC can decide whether or not to have Inspection Committee at its sole discretion.

If the company is owned by an individual, the corporate governance structure shall have a Chairman and a Director/General Director. The owner of the company is the Chairman and can either concurrently assume the position of a Director/General Director, or hire a Director/General Director.

A One-Member LLC may offer non-convertible and non-warranted bonds by way of private placement.

(2) Multiple-Member LLC

A Multiple-Member LLC has at least two (02) members but not more than fifty (50) members. The members can be organizations and/or individuals and they are liable for the debts and other liabilities of the company within the respective amount of capital contributed. In case any member failing to contribute or failing to contribute in full the amount of capital undertaken when establishing the company must be liable for debts and other liabilities of the company in proportion to the capital contribution ratio undertaken which arose prior to the date on which the company registers its charter capital adjustment. Each member may assign all or part of his capital contribution to other members or to non-members, provided that the other members have first refusal rights (except for certain special cases in which such first refusal rights are not required). The corporate governance structure of a Multiple-Member LLC includes: (i) Members' Council, (ii) Chairman of the Members' Council, and (iii) Director/General Director. A Multiple-Member LLC is required to establish an Inspection Committee if the State holds more than fifty (50)% of the charter capital of such company or such company is a subsidiary of a State owned company where the State holds one hundred percent (100%) of the charter company or holds more than fifty percent (50%) of the charter capital. It is optional for other companies not falling into the aforementioned cases. A Multiple-Member LLC may offer non-convertible and non-warranted bonds by way of private placement.

(3) JSC

A JSC is an enterprise having its charter capital divided into shares. Shareholders can be organizations and/or individuals. The minimum number of shareholders is three (03) and there is no limitation on the number of shareholders. Shareholders are liable for debts and other liabilities of the company within the amount of capital that they have contributed. In



case any shareholder who has not paid or not paid in full for the number of shares registered for subscription when establishing the company must be liable for debts and other liabilities of the company in proportion to the total aggregate par value of shares registered for subscription, which arose prior to the date on which the company registers its charter capital adjustment. A JSC may issue shares, bonds and other securities. Shares are generally free to be transferred, except for certain cases. A JSC may select either of the following corporate governance structures:

- (i) General Meeting of Shareholders ("GMS"), Board of Management, Inspection Committee and Director/General Director (the Inspection Committee is not required if the JSC has less than eleven (11) shareholders and shareholders being organization holding less than fifty percent (50%) of the total number of shares of the JSC); or
- (ii) General Meeting of Shareholders, Board of Management and Director/General Director. In this case, at least twenty percent (20%) of the number of members of the Board of Management must be independent members and there must be an auditing committee under the Board of Management. The chairman of the auditing committee must be an independent member of the Board of Management, and the other members of the auditing committee must be non-executive members of the Board of Management.

On a side note, with respect to a public JSC, the structure of the Board of Management must ensure a balance between executive and non-executive members, as well as include a sufficient number of independent members to maintain the independence of the Board of Management. In detail, if a public JSC has the corporate governance structure (i), at least one-third (1/3) of the members of the Board of Management shall be non-executive members. If an unlisted public JSC has the corporate governance structure (ii), at least onefifth (1/5) of the members of the Board of Management shall be independent members. If a listed public JSC has the corporate governance structure (ii), at least onefindependent members of the Board of Management shall be independent members. If a listed public JSC has the corporate governance structure (ii), a minimum number of independent members of the Board of Management shall vary from one to three, depending on the total number of members of the Board of Management.

(4) Incorporated Partnership

An incorporated partnership is an enterprise having at least two members being co-owners of the company jointly conducting business under one common name ("**Unlimited Liability Partners**"). In addition, 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 may be organizations or individuals and shall only be liable for the debts of the company to the extent of the amount of capital they have committed to contribute to the company. All partners shall constitute the Partners' Council. The Partners' Council shall elect one of the Unlimited Liability Partners to be the chairman of the Partners'



Council who concurrently act as a Director/General Director unless otherwise stipulated by the company's charter. An Incorporated Partnership is not allowed to offer any kind of securities. Unlimited Liability Partners is not allowed to transfer all or part of its capital contribution in the company to another individual without the consent of other Unlimited Liability Partners. In contrast, limited liability partners have the right to transfer their capital contribution to another organization or individual.

(5) Private enterprise

A private enterprise is an enterprise owned by an individual who is liable for all operation of the private enterprise by his/her total assets. A private enterprise is not allowed to issue any kind of securities. An individual may only establish one private enterprise, and must not concurrently own a household business nor be an Unlimited Liability Partner of an incorporated partnership. A private enterprise must not contribute capital upon establishment or purchase shares or capital contribution of incorporated partnerships, limited liability companies or joint stock companies.

(6) Cooperative

A cooperative is an organization that has the status of a legal entity, voluntarily established by at least 05 official members who cooperate with and assist each other in production, business and job creation with the aim of meeting general economic, cultural and social demands of its members and making contribution to sustainable community and social development, and adheres to the principles of autonomy, equality and democracy. Besides, official members as required by laws, a cooperative may include associate members with capital contributions and associate members without capital contributions. When joining cooperatives as official members or associate members with capital contributions, individual foreign investors or foreign-invested companies must satisfy market access conditions applicable to foreign investors and national defense and security assurance conditions as specified by laws. Each official member or associate member with capital contributions is responsible for the debts and financial obligations of the cooperative within his/her capital contribution to the cooperative, while such obligation is not imposed on associate members without capital contributions.

2. Are there any rules on corporate governance?

The LOE creates the regulatory framework of corporate governance for all types of companies incorporated in Vietnam, except for enterprises in certain specialized industries (e.g., credit institutions, securities companies, fund management companies, etc.) which are governed by the relevant specialized laws. Public companies are also subject to the Law on Securities and its implementing guidelines with stricter corporate governance rules.



3. Are there any regulations prohibiting a foreign-owned Vietnamese company from raising capital/debt from Vietnamese markets?

There are no regulations of Vietnamese law prohibiting a foreign-invested company in Vietnam from mobilizing capital in the Vietnamese capital market, unless the company has been issued a dissolution decision.

Foreign-invested companies may obtain loans from credit institutions and foreign bank branches licensed and operating in Vietnam, or from offshore individuals and organizations. LLCs and JSCs can issue bonds. JSCs can issue shares, convertible bonds and other securities in accordance with Vietnamese law.

4. Can a Vietnamese company have a foreign General Director?

Yes, a Vietnamese company may have a foreign General Director. There are no restrictions on the nationality of a General Director. However, the General Director must satisfy the conditions imposed on him/her under the LOE and regulations relevant to foreign employment, among others. The General Director holding the title of "legal representative" of a company with only one legal representative must reside in Vietnam and if he/she is absent from Vietnam then he/she must provide written authorization to another person residing in Vietnam to perform his/her rights and obligations as a legal representative of the company.

5. Are there any norms for the sharing of profits?

A company is entitled to distribute its legitimate after-tax profit to members/shareholders in compliance with the relevant regulations. The following table shows in detail the right to enjoy dividends, the body which has authority pertaining to profit sharing, and other relevant issues on earnings distribution in a Multiple-Member LLC and JSC.

Issues	Multiple-Member LLC	JSC
Rights	Members are entitled to receive profit distributions in proportion to their capital contribution in the company.	 (i) Ordinary shareholders are entitled to receive profit distributions in proportion to their shares in the company subject to the General Meeting of Shareholders' approval. (ii) Shareholders who hold dividend preference shares are entitled to receive either a higher dividend than that of ordinary shares or an annual

	fixed dividend.		
Authority	Members' Council	General Meeting of Shareholders.	
Conditions	An LLC is entitled to distribute profits to its members only after the completion of taxes and other financial obligations as required by law, and after distribution of profits, the company shall ensure that the company will be able to pay in full its debts and other property obligations which become due.	A JSC is entitled to pay dividends to its ordinary shareholders after the completion of taxes and other financial obligations as required by law, making appropriation for all funds of the company and making up for previous losses in accordance with law and the company's charter, and the company shall ensure that it is able to pay in full all of its debts and other property obligations which become due after payment of dividends.	
Form of profit distribution	Profits can be paid in the form of cash or assets as stipulated in the company's charter.	Dividends can be paid in the form of cash, shares of the JSC or other assets as stipulated in the company's charter.	
Illegal profit or dividend	Where profits are paid contrary to the law, all members of the LLC must refund the money or assets they received, and must be jointly liable for all debts and other property obligations of the LLC corresponding to the amount of uncollected money or assets until the distributed money or assets have been refunded in full.	law, the shareholders must refund the money or assets they received to the JSC, and where the shareholder is not able to do so, all members of the Board of Management are jointly liable for the debts and other property obligations of	

6. What type of shares can a company issue?

Only a JSC can issue shares. The following types of shares may be issued by a JSC:

(1) Ordinary Shares

A JSC must have ordinary shares.

(2) Preference Shares

A JSC can also issue (i) voting preference shares, (ii) dividend preference shares, (iii) refundable preference shares, and (iv) others stipulated by the company's charter and law



on securities.

Note that only organizations authorized by the Government and founding shareholders may hold voting preference shares. Founding shareholders' voting preference is valid for three (03) years from the date of issuance of the ERC.

IV. LIQUIDATION

1. Please give a brief outline of the procedure involved in the winding up or liquidation of a company in Vietnam.

Under the law of Vietnam, a company can put an end to its existence by way of liquidation (or "winding up"). The liquidation is triggered by (i) a decision of the owner/Partners' Council/Members' Council/General Meeting of Shareholders of the company, (ii) the expiry of the company's operational duration regulated in the corporate charter without any extension thereof, (iii) failure to meet the regulatory minimum number of members/shareholders for six (06) consecutive months, or (iv) revocation of the company's enterprise registration certificate, (except when such revocation results from administrative decisions related to tax management).

A liquidation process generally proceeds in the following manner:

- (1) Passing a decision on liquidation of the company;
- (2) Sending the decision on liquidation and meeting minutes and related documents (if required) to business registration authority, tax authority, and employees of the company. The decision on liquidation must be posted on the National Business Registration Portal and in public places at the head office, branch and representative office(s) of the company. If there are unsettled financial obligations, the debt settlement plan shall be enclosed with the decision on liquidation and sent to the creditors and people with relevant rights, obligations, and interests;
- (3) Performing public notification procedures on the commencement of liquidation;
- (4) Liquidating residual assets and settling pecuniary debts of which employment-related payments and taxes must be put in top priority;
- (5) Sending dossier on liquidation to competent authorities; and
- (6) Updating by the competent authorities of the legal status of the company on the national



business registration database.

With respect to the liquidation triggered by revocation of the company's enterprise registration certificate, the business registration office must announce the status of the company carrying out the procedures for liquidation on the National Business Registration Portal at the same time as it issues a decision revoking the enterprise registration certificate or immediately after receipt of the effective decision on dissolution from a court.

Upon expiry of one hundred eighty (180) days from the date of notification of the liquidation of the company, the business registration office shall update the legal status of the company on the national business registration database.

2. Please give a brief outline of the bankruptcy proceedings in Vietnam.

(1) Bankruptcy Petition

The bankruptcy proceeding of a company begins with the filing of a petition to the competent Court by a concerned person who believes the company to be insolvent. If the Court determines that the company is insolvent, the company will go through a Rehabilitation Procedure (see (2) below) and/or a Bankruptcy Declaration (see (3) below).

A company is deemed to be insolvent when it fails to repay a debt within three (03) months following the due date of such debt.

The legal representative of a company in any form, the owner of a private enterprise, the chairman of the BOM of a JSC, the chairman of the Member's Council of a Multiple-Member LLC, the owner of a One-Member LLC, or Unlimited Liability Partners of an incorporated partnership, is required to file a bankruptcy petition upon observing that the company has become insolvent.

In addition, the following persons have the rights (but are not required) to file a petition for bankruptcy upon observing that the company has become insolvent:

- unsecured/partially secured creditors after three (03) months from the due date of the debt;
- (ii) an employee, the grassroots trade union (or immediately higher grassroots trade union in a place where a grassroots trade union has not been established) after three (03) months from the date the company fails to make payment of wages and other employment-related debts; or



(iii) a shareholder or group of shareholders of a JSC holding 20% or more of ordinary shares for at least six (06) consecutive months or those holding less than 20% of ordinary shares for at least six (06) consecutive months so entitled by the company charter.

The Court's decision on the commencement of bankruptcy procedures does not prohibit the company from conducting its business activities but certain acts of asset disposal are restricted or subject to approval of the asset management officer or asset management and liquidation enterprise to ensure the preservation of the assets of the company.

(2) Rehabilitation Procedure

The first creditors' meeting shall be held in order to decide whether to allow the rehabilitation of the company's business ("**Rehabilitation Procedure**"). The resolution must be approved by more than half of the number of unsecured creditors representing at least 65% of the value of the unsecured debts. The resolution of the creditors' meeting shall be binding on all creditors.

If the business operation rehabilitation plan is approved, the company must formulate and submit to the Judge, creditors and the asset management officer or asset management and liquidation enterprise a rehabilitation plan within thirty (30) days from the date on which the resolution of the creditors' meeting is passed. The rehabilitation plan shall subsequently be presented at the second creditors' meeting and shall be passed by the same requisite quorum for the resolution of the first creditors' meeting.

The Rehabilitation Procedure shall be initiated by the decision of the Judge after the rehabilitation plan has been approved at the creditors' meeting. Once such decision of the Judge comes into effect, several statutory prohibitions and the supervision on the business operations shall no longer apply.

(3) Bankruptcy Declaration

In contrast, the Bankruptcy Declaration shall be made by the decision of the Court if (i) the first creditors' meeting fails to be convened or fails to pass a resolution, (ii) the second creditors' meeting fails to be convened or fails to pass a resolution on the rehabilitation plan, (iii) the company fails to formulate the rehabilitation plan within the statutory time-limit, (iv) the company fails to implement the rehabilitation plan, (v) the first creditors' meeting passes a resolution requesting declaration of bankruptcy, or (vi) the court implements the simplified bankruptcy procedure (please see below).

Where the Court issues a decision on bankruptcy declaration, the assets of the company shall



be distributed in the following order:

- (i) Bankruptcy fees;
- (ii) Wages, severance allowances, social insurance, health insurance, and others payable to the employees;
- (iii) Debts arising after commencement of bankruptcy procedure which serve the Rehabilitation Procedure; and
- (iv) Financial obligations to the State; unsecured debts payable to the creditors named in the list of creditors; secured debts which remain unpaid due to the insufficient value of the secured assets.

If the value of the assets is insufficient to make the payments in accordance with the abovementioned order, each entity having the same priority shall be paid the corresponding proportion of his or her debt.

Simplified Bankruptcy Procedure: If the Court finds that the company is unable to pay bankruptcy fees, it may declare bankruptcy in the initial stage of the bankruptcy proceedings.

V. FOREIGN INVESTMENT REGULATIONS

1. What are the sources of law regulating foreign investment in Vietnam?

Foreign investment in Vietnam is subject to Vietnamese law and bilateral and multilateral treaties to which Vietnam is a member.

In addition to Vietnam's WTO Commitments, Vietnam has signed trade agreements within the ASEAN framework, and free trade agreements (**"FTAs**") with the United States, Japan, Chile, South Korea and the Eurasian Economic Union.

On 08 March 2018, Vietnam signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**") accords with other nations across the Pacific rim in Asia, Oceania, and the Americas. On 12 November 2018, Vietnam ratified the CPTPP and it came into force on 14 January 2019.

On 15 November 2020, 15 member countries including Vietnam signed the Regional Comprehensive Economic Partnership ("**RCEP**"). The RCEP officially came into force on 1 January 2022 for Vietnam.



The negotiations on the FTA with the European Union were completed on 02 December 2015. The European Union–Vietnam Free Trade Agreement (EVFTA) and the Investment Protection Agreement between the European Union and Vietnam (EVIPA) were given consent by the European Parliament on 12 February 2020, and ratified by the Vietnam on 8 June 2020. While EVFTA, after ratification, has come into force on 1 August 2020, the EVIPA, on the European Union side, still requires ratification by the respective parliaments of all 27 European Union member states to take effect.

The current LOI, which initially took effect from 1 January 2021, has recently been amended and become effective from 15 January 2025, and the LOE, which has been amended and become effective from 01 March 2022 and is also under review for major revisions in 2025 in an attempt to further rectify the deficiencies of the prior legislation and establish distinct procedures for registration of foreign investment and corporate business licensing. Vietnam also ushered in a new era of realestate related laws by the adoption of new Law on Land, Law on Real Estate Business and Law on Residential Housing, all of which became effective on 1 August 2024, resolution on piloting the implementation of commercial housing projects through agreements on receiving land use rights or having land use rights coming into effect from 01 April 2025 and remaining in effect until 01 April 2030, in an effort to stimulate the real estate market and in particular, increase foreign investment in the residential real estate market. For securities market, the Law on Securities 2019 has been revised and become effective from 1 January 2025, with the primary goals of enhancing transparency, investor protection, and market governance. Further, the National Assembly has also recently amended and supplemented certain matters within the investment field, related to the Law on Planning, Law on Public-Private Partnership Investment and Law on Bidding which becomes effective from 15 January 2025. These amendments and supplementations, including the addition on special investment procedure, aim to facilitate administrative processes, enhance investment efficiency, attract high-quality foreign direct investment, and create a more transparent and predictable legal framework for investors.

2. What are the various methods in which foreign investment in Vietnam is possible?

The following methods of foreign investment are possible:

- (1) Establishment of a new economic organization;
- (2) Investment in the form of capital contribution or purchase of shares in an existing economic organization;
- (3) Implementation of an investment project such as implementation of PPP project;
- (4) Investment in the form of business co-operation contract with other investor(s) ("**BCC**"); and



(5) New investment forms and forms of economic organizations as stipulated by the Government.

3. What is the current foreign investment policy?

Since Vietnam became a member of the WTO in 2007, the Vietnamese Government has opened up previously restricted or closed sectors to foreign investors. Investors have rights to invest in the business lines that are not prohibited by the LOI and other laws. These prohibited business lines include, among other things, business in illegal narcotics, business in certain chemicals or minerals, prostitution business, and human trafficking.

Vietnamese law also provides the market approach conditions applicable to foreign investors which include: (1) ratio of foreign ownership of charter capital in a company; (2) investment method; (3) scope of investment activities; and (4) capacity of investors and other partners participating in the investment.

As of 26 June 2015, almost all the foreign ownership limitations in the service sectors specified under the WTO Commitments have been abolished. Certain highly-specialized and sensitive sub-sectors, such as telecommunication, transportation, agriculture and audiovisual services still maintain foreign ownership restrictions. Particularly with respect to public company, Decree 155/2020/ND-CP of the Government dated 31 December 2020 ("**Decree 155**") impose a cap of 50% on foreign investment in public companies engaging in business lines that are conditional for foreign investment, yet the law fails to specify the foreign ownership cap on such conditional business lines. Decree 155 allows foreign investors to hold an unlimited proportion in the case of public companies not falling within certain exceptions.

4. Can an offshore company set up a wholly-owned subsidiary in Vietnam?

Yes. An offshore company can set up a wholly-owned subsidiary in Vietnam except for certain industry areas such as advertising, audiovisual services, logistics, services incidental to agriculture, hunting and forestry and telecommunication services, which require investment in the form of a BCC or a joint venture.

5. Are there any limitations on foreign ownership in a Vietnamese company?

A foreign investor is allowed to own an unlimited proportion of charter capital of a company, except for the following:

(1) The ownership ratio for those sectors restricted in international treaties of which Vietnam is a member must follow the limits set out therein;



- (2) Permitted foreign ownership ratio in the banking, civil aviation, logistics, publishing and press sectors is restricted;
- (3) A foreign investor being an individual or organization which itself is not licensed and does not operate in banking, securities or insurance or has been operational for less than two (02) consecutive years immediately preceding the year of contributing capital for establishment or purchasing shares or capital contribution portions, may own a maximum of 49% of the charter capital of a securities business organization;
- (4) For public companies, the cap on foreign ownership is currently 50% if the company operates in a business investment line with conditions applicable to foreign investors but there is not yet any specific provision on foreign ownership ratio; and
- (5) The ownership ratio of foreign investors in State enterprises which conduct equitization or convert their ownership into another form is restricted under the law on equitization and conversion of State enterprises.

6. Are there any restrictions on land ownership by a foreign-invested company?

Yes. First, in Vietnam, private ownership of land is not permitted conceptually; however, Vietnamese law establishes the concept of land use rights ("**LURs**") for private entities (including foreign-invested companies) and other groups of land users (e.g., State authorities, People's armed forces, etc.).

Secondly, a foreign-invested company is defined by the land laws as a company where foreign investors hold more than 50% of total charter capital, either directly or via its first layer subsidiaries (**"FIEs With Majority Foreign Ownership**"). As such, unless otherwise narrowly applied by the State authorities, a common interpretation is that a foreign invested company with 50% or less foreign capital ownership (**"FIEs With Minority Foreign Ownership**") will enjoy the same treatment as domestic entities under the land laws.

The outline of restrictions on FIEs With Majority Foreign Ownership regarding LURs is as follows:

(1) Acquisition of LURs

Methods of LURs acquisition	FIEs With Minority Foreign Ownership	FIEs With Majority Foreign Ownership
Receiving the transfer of land use rights (for	Yes	No
land located outside industrial parks,		

Methods of LURs acquisition	FIEs With Minority Foreign Ownership	FIEs With Majority Foreign Ownership
industrial clusters, and high-tech parks)		
Receiving the transfer of land use rights in industrial parks, industrial clusters, and high-tech parks	Yes	Yes
Leasing/Being allocated land from the State	Yes	Yes
Acquiring LURs according to the results of successful conciliation of land disputes recognized by the people's committees; mortgage contracts; decisions of authorities on settlement of land disputes, complaints and denunciations about land, judgments and decisions of the courts, enforcement decisions of enforcement authorities; decisions or awards of the Vietnam commercial arbitration; documents recognizing the results of auctions of land use rights; documents on division and separation of land use rights.	Yes	Yes
Receiving capital contribution in the form of land use rights	Yes	Yes
Receiving land use right as gift	Yes	No
Inheriting the land use right	Yes	No
Having LURs recognized by the State for land that is being used stably	Yes	No
Through the division, separation, merger, consolidation, conversion of enterprises	Yes	No
Receiving the transfer of investment capital being the value of land use rights	No*	Yes

(*) Although the law provides for this scenario exclusively for FIEs With Majority Foreign Ownership, this scenario might be also applicable to FIEs With Minority Foreign Ownership, depending on the interpretations.



(2) Land use term

In respect of land use term, the Land Law classifies land into two categories: (i) land with a long and stable use term (or indefinite term), and (ii) land with a definite use term.

Generally speaking, only FIEs With Minority Foreign Ownership may be able to acquire land with a long and stable use term through their right of direct LUR acquisition.

For the lands with a definite use term, the land use term shall be considered and decided based on the operation term of the investment project or the application for land allocation and land lease, but shall not exceed fifty (50) years in common circumstances, and seventy (70) years in special circumstances (e.g., investment projects in economic zones, areas with difficult or especially difficult socio-economic conditions, or investment projects with large investment capital but slow capital recovery). Upon expiry of the land use term, the State shall, at its sole discretion, approve the extension of the land use term if the land user wishes to continue using the land. It should be noted that the respective investment project term must be extended before the land use term extension, and such extension generally requires satisfaction of certain conditions (e.g., non-violation of land laws, conformity with planning).

(3) Rights and obligations of foreign-invested companies using land

Foreign-invested companies using land have different rights and obligations depending on the payment method of land use fee (i.e., land allocation without land use fee and land allocation with land use fee) or land rental (land lease with annual rental payment and land lease with lump-sum rental payment). For example, foreign-invested company leasing land from the State may mortgage the LURs if the land rental is paid in lump-sum and in advance, while those leasing land from the State with payment of land rental on an annual basis may only mortgage assets owned by them attached to the leased land.

Foreign-invested companies established as a result of share purchase in a Vietnamese company have rights and obligations corresponding to the payment method of land use fee or land rental as mentioned above.

VI. LABOR

1. What are the principal regulations governing the rights and obligations of employees?

The principal regulations governing the rights and obligations of employees are the Labor Code 2019, as amended and its implementing guidelines.



2. Are there any maximum working hours prescribed for employees?

The law provides that the normal working hours must not exceed eight (08) hours per day and not exceed forty-eight (48) hours per week. The employer may determine work on a daily or weekly basis with the notification to the employee. In case of working on a weekly basis, the limit is ten (10) hours per day and forty-eight (48) hours per week. The employers are responsible for ensuring that the working time exposed to dangerous and toxic elements is limited in accordance with the national technical regulations and relevant laws.

Except for certain special cases as stipulated by the Government (e.g., carry out mobilization orders, defense and security tasks, protect human life works, etc.) where the limitation on overtime working hours is not applied, when organizing overtime work in other cases, the employer shall obtain the consent of the employee participating in working overtime regarding overtime working hours, overtime location, and overtime work. The overtime working hours must not exceed 50% of normal working hours per day, or not exceed twelve (12) hours per day (including normal working hours and overtime working no a weekly basis, or not exceed forty (40) hours per month. Generally, the employer shall ensure that the employees' overtime working hours do not exceed two hundred (200) hours per year. In some exceptions as stipulated by the Government (e.g., the production and supply of electricity, telecommunications, oil refining; water supply and drainage; cases where urgent work must be resolved that cannot be delayed due to the seasonal nature or timing of raw materials and products, etc.), the overtime working hours can be increased to a maximum of three hundred (300) hours per year.

3. How can the services of an employee be terminated?

- (1) A labor contract shall be terminated in the following events:
 - (i) The expiry of the labor contract, except for some statutory special cases;
 - (ii) The tasks stated in the labor contract have been completed;
 - (iii) Both parties agree to terminate the labor contract;
 - (iv) The employee is sentenced to serve a jail term or to death penalty, or is prevented from performing his job in the labor contract in accordance with a judgment or decision of a court that has come into effect;
 - (v) The foreign employees working in Vietnam is deported in accordance with a judgment or decision of a court that has come into effect, or a decision of a competent authority;



- (vi) The employee dies or is declared by a court to have lost the civil act capacity, is missing or dead;
- (vii) The individual employer dies or is declared by a court to have lost the civil act capacity, is missing or dead. The organization employer terminates its operation or the specialized authority for business registration under the provincial people's committee issues notification that the employer no longer has a legal representative or an authorized person to exercise the rights and obligations of the legal representative;
- (viii) The employee is dismissed;
- (ix) The employee unilaterally terminates the labor contract under the Labor Code 2019;
- (x) The employer unilaterally terminates the labor contract under the Labor Code 2019;
- (xi) The employer retrenches the employee due to structural or technological changes or because of economic reasons, merger, consolidation or division of the enterprise;
- (xi) The work permit of a foreign employee working in Vietnam expires;
- (xii) There is an agreement on probationary work stated in the labor contract, but the employee does not satisfy the requirements or either party rescinds such agreement.
- (2) An employer can unilaterally terminate a labor contract in any of the following circumstances:
 - (i) The employee repeatedly fails to perform the work in accordance with the labor contract as determined in accordance with the criteria for assessing the level of completion of work as set out in the rules of the employer, which are issued by the employer and consulted the opinion of the organization representing the employees at the grassroots level (if any);
 - (ii) Where an employee suffers an illness or injured in an accident but their ability to work has not recovered after having received treatment for twelve (12) consecutive months if the employee works under an indefinite term labor contract, or for six (06) consecutive months if the employee works under a definite term labor contract of twelve (12) up to thirty six (36) months, or more than half of the labor contract term if the employee works under a definite term labor contract of under twelve (12) months;
 - (iii) Natural disaster, dangerous epidemic, fire, hostility, or resettlement, narrowing of production and business as required by a competent authority that the employer tried



every possible remedy but was still forced to reduce the number of employment;

- (iv) The employee is absent from the workplace after fifteen (15) days from the expiry of the suspension of labor contract;
- (v) The employee has reached the retirement age under the Labor Code 2019, except where there is another agreement;
- (vi) The employee arbitrarily leaves the job without a satisfactory reason for a period of five (5) consecutive working days or more;
- (vii) The employee provided untruthful information under the Labor Code 2019 when entering into the labor contract in a manner that affects the employer's recruitment.

<u>Notice requirement</u>: Other than cases as mentioned at Sections 6.3(b)(iv) and 6.3(b)(vi) above, an advance notice of forty-five (45) days is required to terminate an indefinite term contract and thirty (30) days for a definite term contract with a term of twelve (12) up to thirty six (36) months. For a definite term contract with a term of less than twelve (12) months and in cases as mentioned at Section 6.3(b)(ii) above, an advance notice of three (03) working days is required.

- (3) An employee can be dismissed where:
 - (i) The employee commits an act of theft, embezzlement, gambling, deliberate violence causing injury, use of drugs inside the workplace,
 - (ii) The employee commits an act of disclosure of business or technology secrets or infringement of intellectual property rights of the employer, or acts which cause serious damage or threaten to cause serious damage to the assets or interests of the employer or commits an act of sexual harassment at the workplace as defined in the internal labor rules;
 - (iii) An employee who has been disciplined in the form of deferral of the period for a wage increase, or demotion and thereafter committed a second offense during the period when the initial disciplinary measure had not yet been absolved ("second offense" means a case where the employee recommits the same breach for which he has already been dealt with for a breach of discipline and for which the disciplinary action has not yet been removed in accordance with the Labor Code 2019);
 - (iv) An employee arbitrarily leaves the job for an aggregate of five (05) days in thirteen(30) days or an aggregate of twenty (20) days in three hundred sixty-five (365) days



calculating from the first day leave without satisfactory reasons.

- (4) An employer is not allowed to terminate a labor contract:
 - (i) With an employee who is suffering from an illness or injured in an accident or occupational disease and is under medical treatment, except for cases where such employee has received medical treatment for a certain period of time but their ability to work has not recovered as stated in Section 6.3(b)(ii) above;
 - (ii) With an employee who is on annual leave, personal leave or any type of leave permitted by the employer;
 - (iii) With a pregnant female employee, or an employee taking maternity or parental leave or raising a child under twelve (12) months old.

4. Are there mandatory requirements for grant of leave or public holidays?

By law, an employee is entitled to the following fully paid leave:

(1) <u>Annual leave</u>: An employee who works under normal working conditions is entitled to take twelve (12) working days of annual leave for a full twelve (12) months, or fourteen (14) working days of annual leave for a minor employee, a disabled employee and an employee who works under heavy, hazardous or dangerous job, or sixteen (16) working days of annual leave for an employee who works under extremely heavy, hazardous or dangerous job. If an employee works for less than twelve (12) months, the employee is entitled to leave on a prorata basis. The number of days of annual leave increases by one (01) day for every five (05) years of employment.

The employer has responsibility to regulate the timetable for annual leave after consulting the opinion of employees and informing the employees in advance.

- (2) <u>Public holidays</u>: An employee is entitled to a total of eleven (11) days leave on Vietnamese public holidays, which are:
 - (i) New Year's Day: one (01) day (solar calendar January 1);
 - (ii) Lunar New Year Festival: five (05) days;
 - (iii) Hung Vuong's Memorial Day: one (01) day (Lunar calendar March 10);



- (iv) Victory Day: one (01) day (solar calendar April 30);
- (v) International Labor Day: one (01) day (solar calendar May 1); and
- (vi) National Day: 02 (two) days (September 2 and the immediately preceding or immediately following day).

Foreign employees working in Vietnam shall, in addition to the public holidays prescribed in Section 6.4(b) above, also be entitled to one (01) traditional new year holiday and one (01) national day holiday of their country.

The Prime Minister shall annually decide the specific public holidays as prescribed in Section 6.4(b)(ii) and 6.4(b)(vi) above based on the actual conditions.

- (3) <u>Personal Leave of Absence</u>: An employee may take fully paid leave of absence for personal reasons in the following circumstances:
 - (i) Marriage: three (03) days;
 - (ii) Marriage of his/her children: one (01) day; and
 - (iii) Death of biological or adopted parent, biological or adopted parent of the employee's spouse, spouse, biological or adopted child: three (03) days.
- (4) Leave without pay: An employee may take leave of absence without pay for personal reasons by notifying to the employer in the following circumstances:
 - (i) Death of a paternal or maternal grandparent or biological sibling, or on the marriage of a parent or biological sibling: one (01) day; and
 - (ii) Agreement with the employer on leave: Upon agreement between the employer and the employee.

5. Can employment contracts contain restrictive covenants such as noncompete clauses?

Currently, there are no laws or regulations that explicitly allow restrictive covenants in Vietnam, and therefore, the law is open to interpretation. A non-compete covenant may run counter to the Labor Code 2019, which provides that an employee is free to work for any employer of his choice. However, a confidentiality clause, including but not limited to the identification of confidential information,



scope of confidentiality, the protection duration and measures for confidential protection, may be enforceable when an employee does work which is directly related to business or technological secrets as defined by law.

In practice, these restrictive covenants are normally stated in separate agreements from a labor contract. Once the employment relation has been terminated, it is expected that such restrictions should be still valid as civil agreements.

It should be noteworthy that in 2023, the Chief Justice of the Supreme People's Court issued a decision to officially announce Precedent No. 69/2023/AL ("**Precedent**"), which was approved by the Council of Judges of the Supreme People's Court, among others. This Precedent is derived from a decision issued in 2018 by the People's Court of Ho Chi Minh City ("**Court**") on the petition for set aside of an arbitral award regarding non-disclosure and non-compete agreement issued by the respondent in the dispute in VIAC) requested to set aside the award under reason, among other, that the non-disclosure and non-compete agreement was an integral part of her labor contract. The Court dismissed employees' request on the basis that the non-disclosure and non-compete agreement was independently of the labor contract and under the authority of commercial arbitration (legal solution of the Precedent). This Precedent indirectly expresses the court's opinion about recognition of the validity of non-disclosure and non-compete agreement.

6. Can the employment contract compel employees to work for an establishment for a minimum period of time?

Under Vietnamese law, there is no statutory minimum period of time that required an employee to work for an employer under a signed labor contract, whilst it is relatively easy for the employee to unilaterally terminate a labor contract. That said, the law requires certain procedures to be met and in the event that an employee unilaterally terminates the labor contract in contravention of the law, the employee shall not be entitled to any severance allowance and must pay the employer compensation equal to half of one month's salary. If the employee breaches the advance notice requirement, the employee shall compensate the employer an amount equal to the employee wage during the period for which advance notice was not provided. In addition, the employee will be liable for payment of compensation for the costs of training (if any) in accordance with the provisions of the Labor Code 2019.

7. Are female employees entitled to maternity leave?

According to the Labor Code 2019, a female employee is entitled to maternity leave prior to and after the birth of her child for a total period of six (06) months, the maximum period of prenatal leave shall be two (02) months. When a female employee gives birth to more than one child at a time, she is entitled to an additional one (01) month leave for every additional child.



8. Are male employees entitled to paternity leave?

Yes, a male employee currently paying social insurance premiums whose wife gives birth is entitled to a paternity leave of:

- (1) Five (05) working days for normal birth delivery;
- Seven (07) working days, if his wife undergoes a surgical birth or gives birth under thirty-two
 (32) weeks of pregnancy;
- (3) Ten (10) working days, if his wife gives birth to twins, and additional three (03) working days for each child counted from the third; or
- (4) Fourteen (14) working days, if his wife undergoes a surgical birth to twins or more.

Under the new Social Insurance Law 2024 effective as from July 01, 2025, cases mentioned in Sections VI.8(1), VI.8(2) and VI.8(3) above remain unchanged. For a case mentioned in Section VI.8(4), a male employee is entitled to fourteen (14) working days, if his wife undergoes a surgical birth to twins and additional three (03) working days for each child counted from the third born.

VII. INTELLECTUAL PROPERTY

1. What types of intellectual property rights are protected in Vietnam?

The intellectual property rights that are protected under the Civil Code 2015 and the Law on Intellectual Property (the "**IP Law**"), which was adopted in 2005 and revised in 2009, 2019 and 2022, can be categorized into three principal groups, including (1) copyrights and related rights; (2) industrial property rights (trademarks, trade names, trade secrets, industrial designs, integrated circuit layout designs, patents and utility solutions, and geographical indications); and (3) plant variety rights.

2. Is there any procedure to be made to protect intellectual property in Vietnam?

In order to protect intellectual property in Vietnam, registration is required except for copyrights and related rights, trade names, trade secrets and well-known trademarks (trademarks which are widely known by a relevant part of the public throughout the territory of Vietnam). Generally, proper registration shall be accomplished under a first-to-file priority basis, except for integrated circuit layout designs and geographical indications.



The application for registration may be lodged in Vietnam or overseas if so allowed under the law of Vietnam and the treaty regarding intellectual property to which Vietnam is a party. Where the application is lodged overseas, the applicant may however need to satisfy certain requirements as provided under the law of Vietnam; for instance, an application requesting protection of an invention in technical fields that impact national defense and security, under the registration right of individuals who are Vietnamese citizens permanently residing in Vietnam or of organizations who are established under Vietnamese law and created in Vietnam is only lodged overseas after an application for the registration of such invention has been lodged first in Vietnam to carry out security control procedures, otherwise such invention may not be protected by the State of Vietnam.

3. Are there any international treaties regarding intellectual property that Vietnam is a party to?

Yes, Vietnam has entered into several international treaties regarding intellectual property such as those mentioned below.

Vietnam became a member of the WTO in January 2007. According to the terms of its accession to the WTO, Vietnam agreed to immediately comply with the terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPs**).

Vietnam is also a party to the World Intellectual Property Organization (**WIPO**) Convention and to the following WIPO-administered treaties, among others:

- (1) Berne Convention for the Protection of Literary and Artistic Works;
- (2) Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
- (3) Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;
- (4) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- (5) Paris Convention for the Protection of Industrial Property;
- (6) Madrid Agreement Concerning the International Registration of Marks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- (7) Patent Cooperation Treaty;



- (8) International Convention for the Protection of New Varieties of Plants; and
- (9) Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs.

Although not a party to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks ("**Nice Agreement**"), Vietnam follows the international system of classifying goods and services prescribed in the Nice Agreement.

In addition, Vietnam has entered into multilateral and bilateral agreements that significantly provide for its commitments to the protection of intellectual property rights, such as the Agreement between the Government of the United States of America and the Government of the Socialist Republic of Vietnam on the Establishment of Copyright Relations (1998), the Agreement between Swiss Federal Council and the Government of the Socialist Republic of Vietnam on the Protection of Intellectual Property and Co-operation in the field of intellectual property (2000), Chapter II - Intellectual Property Rights of the Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations (2001), Chapter 9 - Intellectual Property of the Agreement between Japan and the Socialist Republic of Vietnam for an Economic Partnership (2009), Chapter 18 -Intellectual Property of the CPTPP (2019), Chapter 12 – Intellectual Property of the Free Trade Agreement between the European Union and the Socialist Republic of Vietnam (2020), and Chapter 12 – Intellectual Property of the Free Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland (2021).

4. Are there any regulations or guidelines by public institutions, such as the Fair Trade Commission or some other competition authority, in regard to intellectual property licenses?

No. The Viet Nam Competition Commission (VCC) is the competition authority delegated to administer the Competition Law 2018, but so far, there have been no specific regulations or guidance regarding intellectual property licenses issued by them.

Nevertheless, the Competition Law 2018 deals with the activities of using misleading instructions and infringement of trade secrets (including accessing or collecting confidential information in business by circumventing the security measures taken by the owner of such information, disclosing or using confidential information in business without permission from the owner of such information) as unfair competitive practices. Further, under the Competition Law 2018, the ownership and the right to use objects of intellectual property rights are, among others, factors for the competition authority to determine whether an enterprise or a group of enterprises is deemed to hold a dominant market position or whether an economic concentration may have a significant anti-competitive effect post-concentration.



VIII. EXCHANGE CONTROL

1. Are there any restrictions on the amount of local currency that may be brought into or taken out of Vietnam?

There is no limitation on the amount of local currency (VND) that is allowed to be brought into or taken out of Vietnam; however, a border gate customs declaration shall be required if the cash amount carried by an individual upon entry into or exit from Vietnam is more than VND 15,000,000.00. Other payment instruments such as traveler's cheques, bank cards, saving books, and securities are not subject to the customs declaration requirement. Furthermore, a certificate issued by a licensed credit institution or an approval from the State Bank of Vietnam (SBV), as the case may be, must be obtained when one tries to leave the country bringing an amount of local currency more than the said threshold or more than the carried amount that was declared to the border gate customs upon the latest entry. Nevertheless, where the amount of local currency in cash (even if over the above threshold) does not exceed the amount brought in on the most recent entry into Vietnam which is conducted within the previous twelve (12) months, it is exempted from such certification requirement.

2. Are there any restrictions on the amount of foreign currency that may be brought into or taken out of Vietnam?

Even though the Vietnamese laws do not impose any limit on the amount of foreign currency brought into or out of Vietnam, an individual who carries foreign currency over the threshold of USD 5,000.00 or other foreign currencies of the same value on entering into or exiting the country must declare the amount with the border gate customs. This requirement applies to cash only; other payment instruments such as traveler's cheques, bank cards, savings books, and securities are not subject to the customs declaration requirement.

If the person intends to deposit foreign currency in cash brought into Vietnam with a licensed credit institution, he must have it declared at customs regardless of the amount. The declaration, in this case, shall be valid for sixty (60) days from the entry date of such person.

When trying to exit Vietnam with an amount of foreign currency more than the above-mentioned threshold, the person carrying such must have a certificate issued by a licensed credit institution or an approval from the State Bank of Vietnam, as the case may be. Nevertheless, where the amount of foreign currency in cash (even if over the above threshold) does not exceed the amount brought in on the most recent entry into Vietnam which is conducted within the previous twelve (12) months, it is exempted from such certification requirement.



3. Are there any restrictions on the inflow or outflow of foreign exchange?

The laws on foreign exchange control of Vietnam set out a broad range of permitted transactions in which foreign exchange can be made, including capital transactions and non-capital (current) transactions.

Capital transactions are made for the purpose of transferring capital between a resident and a nonresident in (1) direct investment, (2) indirect investment, (3) borrowing and repayment of foreign loans, (4) lending and collection of foreign loans, and (5) other activities in accordance with Vietnam laws and regulations. In general, all capital transactions must be made through an account opened at a credit institution licensed to operate in Vietnam. Credit institutions shall be allowed to grant foreign loans to non-residents in accordance with SBV's regulations. Credit institutions other than commercial banks shall open an account for granting and collecting foreign loans at a bank providing account service to implement a foreign loan. Meanwhile, enterprises shall extend outbound loans, except export of goods and deferred payment services, to non-residents after obtaining permission from the Prime Minister. SBV shall provide guidelines for enterprises to open an account for implementing transactions relating to foreign loans.

Obtaining foreign loans are strictly controlled under the Vietnamese laws. Residents who wish to obtain foreign loans must satisfy certain regulatory conditions. Furthermore, medium and long-term foreign loans must be registered with the SBV (or through its provincial branches, depending on the principal amount), except for foreign loans in the form of deferred payment for the import of goods. Short-term foreign loans are also not required to be registered, unless the term of such short-term foreign loan is extended to become over one (01) year or there is outstanding principal amount (include capitalized interest) after the first anniversary of the first withdrawal of loan which is not settled within thirty (30) working days therefrom. The State Bank of Vietnam shall conduct certification of registration of the loans within the total foreign loan limit approved annually by the country's Prime Minister. Any foreign loan is subject to monthly reporting requirement.

Non-capital transactions refer to transactions between residents and non-residents which are not for the purpose of transferring capital. Making payment for import and export of goods and services is typical for this kind of transaction. All transactions which are payments and remittance of money relating to import and export of goods and services must be conducted in the form of remittance via a licensed credit institution. Residents having foreign currency revenue derived from export of goods and services or from other non-capital transactions must remit such foreign currency amount into a foreign currency account opened at a credit institution licensed to open in Vietnam consistent with the payment term in the contract/payment document, except for some cases for which the SBV shall consider granting permission to retain a part of or all foreign currency revenue overseas.



4. Can a foreign investor repatriate profits earned from investment in Vietnam?

Yes. The Law on Investment 2020, as amended, provides that a foreign investor may remit income derived from business investment activities from Vietnam after it has met its financial obligations to the State. If the income is derived from its direct investment activities and in Vietnamese Dong, the foreign investor will be permitted to convert the income into foreign currency at a licensed credit institution and remit it overseas within thirty (30) working days from the date of conversion.

IX. M&A

1. What are the various methods of mergers and acquisitions available to Vietnamese companies?

The following are the most common methods:

(1) Equity acquisition

Equity acquisition is the most popular M&A method in practice in Vietnam. Investors (both foreign and domestic ones) are allowed to purchase shares or receive an assignment of charter capital from an existing shareholder of a JSC or member of an LLC (**"Share Transfer**"), or subscribe to newly issued shares from a JSC , or contribute additional capital to an LLC (**"Share Subscription**").

(2) Asset acquisition

An investor may choose to make an asset acquisition in which the investor purchases key assets of the target company.

In addition, in many cases, the investor acquires not only the target company's assets but also those associated with the company such as intellectual property, client base, distribution systems, supplier lists, etc. This is also referred to as business acquisition.

(3) Merger/Consolidation

• **Merger** means the transfer by one or more companies (referred to as "merging companies") of all of its lawful assets, rights, obligations and interests for the purpose of merging with another company (referred to as the "merged company"). The merging companies shall no longer exist.



 Consolidation means the transfer by two or more companies (referred to as "consolidating companies") of all of their lawful assets, rights, obligations and interests for the purpose of consolidating among themselves so as to become a new company. The consolidating companies shall terminate their existence.

Under the Competition Law 2018, generally speaking, any of the above cases (which is referred to as "economic concentration") could be prohibited if it causes or probably causes substantial anti-competitive effects on the Vietnamese market. Substantial anti-competitive effects are assessed based on the following factors: (i) combined market share of enterprises engaging in the economic concentration on the relevant market; (ii) the degree of concentration on the relevant market before and after the economic concentration; (iii) the relationship of the parties engaging in the economic concentration in the production, distribution or supply chain for a certain kind of goods/service or the business lines of the parties engaging in the economic concentration which are inputs of or complementary to one another; (iv) competitive advantage brought about by economic concentration in the relevant market; (v) the ability of enterprises after the economic concentration for increasing significantly their prices or return on sales; (vi) the ability of enterprises after the economic concentration for expansion; and (vii) particular factors in the sectors and domains where enterprises are engaging in economic concentration.

2. What is the process and timing for each method?

(1) Equity acquisition

(for private companies)

(i) Internal approval

The shares in a JSC are generally free to be transferred; however, if the foreign investor being a non-founding shareholder acquires shares from the founding shareholders within three (03) years as from the company's incorporation, an approval of the GMS is required.

The assignment of charter capital in an LLC is subject to the right of first refusal by the members.

On the contrary, most cases of Share Subscriptions require approval of the GMS or Members' Council of the target company.



(ii) Competition notification

Under the Competition Law 2018, an equity acquisition that gives the acquirer the ability to control or govern the target company as stipulated by law must be subject to the notification to the competition authority in advance if such equity acquisition would meet a normal notification threshold specified as follows:

- Total assets in the market of Vietnam of the enterprises participating in the economic concentration (including affiliated enterprises): from VND 3,000 billion in the fiscal year preceding the planned year of economic concentration;
- Total turnover (sales or purchases) in the market of Vietnam of the enterprises participating in the economic concentration (including affiliated enterprises): from VND 3,000 billion in the fiscal year preceding the planned year of economic concentration;
- Transaction value of the economic concentration: from VND 1,000 billion; or
- Combined market: from 20% of the relevant market in the fiscal year immediately preceding the year of economic concentration.

An economic concentration outside Vietnamese territory is subject to the merger filing requirement under the Competition Law if they meet any of the first, second or fourth thresholds described above.

In addition, there are other notification thresholds applicable for economic concentration including credit institutions, insurance companies or securities companies.

The competition authority has thirty (30) days from the receipt of a valid and complete notification dossier to notify the involved parties as to the result of its preliminary assessment. However, if the competition authority decides that it needs to procure an official assessment after the preliminary assessment, the regulatory time-limit for the official assessment shall be ninety (90) days from the date the preliminary assessment result has been notified to the involved parties, which may be extendable to no more than sixty (60) days.

(iii) Registration for equity acquisition

A foreign investor must register its equity acquisition with the Department of Finance (formerly, Department of Planning and Investment) of the province in which the head



office of the target company is located ("**DOF**"), in the following circumstances:

- (a) The target company is operating in industries or trades in which business investment is conditional in respect of foreign investors; or
- (b) The purchase of shares results in the foreign ownership in the target company reaching more than 50% of the charter capital of that company in the following cases: increasing the ratio of charter capital ownership of foreign investors from 50% or below 50% to more than 50%; or increasing the charter capital ownership of foreign investors when foreign investors already owned more than 50% of the charter capital in the target company; or
- (c) The target company has a land use right certificate for land on an island or on a coastal or border commune, ward or town or in another area that affects national defense and security.

The DOF must issue a notice to the foreign investor within fifteen (15) days from the date of receipt of a proper file if the foreign investor satisfies the applicable investment conditions.

(iv) Notice on Change to Shareholding

The target company being a JSC must notify the local DOF of any change to shareholders being foreign investors, and for Share Subscription, the change of charter capital.

The target company being an LLC must register for change of ERC in case of change to company members, and for Share Subscription, the change of charter capital.

The DOF shall make changes to the contents above within three (03) working days from the date of receipt of the notice of the target company.

(2) Asset acquisition

(i) Internal approval

Where assets are valued at 35% or more of the total value of assets recorded in the most recent financial statement of a JSC, or smaller percentage or value as stipulated in the company's charter, the approval of the GMS on the sale must be obtained.

Where assets are valued at 50% or more of the total value of assets recorded in the



most recent financial statement of an LLC, or smaller percentage or value as stipulated in the company's charter, the approval of the Members' Council on the sale must be obtained.

(ii) Competition notification

Please refer to the process and timing in (1)(ii) above.

(iii) Property ownership registration

In Vietnam, there are certain assets the ownership of which must be registered with the competent State agencies, such as land use rights, buildings, cars and ships. Asset transfer agreements concerning this type of asset are almost always required to be registered and some must be notarized. Upon registration, the new owner shall be recorded in the title documents of the assets.

(iv) Investment registration

In the case of an asset acquisition, the foreign acquirer would generally have to set up a subsidiary in Vietnam and therefore would be required to undertake the procedures for registration of the investment project.

The timing for completion of the related regulatory procedures for this type of M&A transaction depends on the type of acquired assets. Changing the title documents of immovable assets is time-consuming depending on specific regulations of every single provincial government. Furthermore, in the case of incorporation of local subsidiary, the procedures for registration of the investment project can take anywhere from fifteen (15) to forty-five (45) business days as stipulated in laws or even much longer time in practice.

(3) Merger/Consolidation

(i) Internal procedures

A consolidation/merger contract shall cover the plan for employment of employees; procedures and conditions for conversion of assets; and shares and bonds. The charter of the consolidated company/merged company shall also be drafted. These important documents must be approved by the GMS/Members' Council of the involved companies.



(ii) Notification

The consolidation/merger contract shall be sent to all creditors and notified to employees within fifteen (15) working days from the date of its approval.

(iii) Competition notification

Please refer to the process and timing in (1)(ii) above.

(iv) Business and investment registration

The consolidated company and the merged company will need to carry out the procedure for business registration. Under the law, the investment registration would take fifteen (15) to forty-five (45) days to accomplish.

3. What are the criteria for determining which method is most suited to a particular case?

The investor may affect the M&A by one of the above ways in contemplation of the following issues:

(1) What is the type of asset to be acquired?

This question is relevant in many instances because the land use right is the typical asset of interest to be acquired. When the land use right is the object of the acquisition, certain conditions apply; for example, land use right granted from an annual-pay land lease contract with the State shall not be allowed to be transferred if no immovable assets have been created on the land. However, the same shall not apply in an equity acquisition since the ownership of the land use right still remains under the name of the acquired company even though the company's owners have been changed.

(2) What shall be left?

In an equity acquisition, merger or consolidation transactions, generally, the successors shall continue to enjoy preferential treatments that have been granted by the State to the predecessors and shall, at the same time, be liable for pending financial obligations of the predecessors. But this does not apply in asset acquisitions where the acquirers will generally not inherit any liability concerning the assets purchased from the sellers.

(3) How cumbersome are the transfer procedures?



In an asset acquisition, the acquiring company will have to obtain new licenses, approvals, permits or registration necessary for its operations. Contracts may be novated by way of the acquired company assigning the contractual rights and duties to the acquiring company; such novation may require consents from other contractual parties. Employees who are subject to the transfer will at first terminate their employment with the acquired company and then enter into new employment with the acquiring entity on a voluntary basis. Furthermore, depending on the specific type of the assigned assets, the acquiring company will have to undergo necessary procedures for receipt of ownership of the assigned assets from the acquired company. These points may make an asset acquisition more cumbersome than an equity acquisition from the licensing perspective. Therefore, depending on the scale and nature of the business and asset that the acquirer is interested in, an equity acquisition may be a better choice if the acquirer wishes to undergo a simpler transfer process.

4. What are the additional requirements, if any, if one of the companies involved in the restructuring is listed on one or more of the stock exchanges in Vietnam?

A foreign investor acquiring shares in a listed company will be required to obtain a securities trading code with the Vietnam Securities Depository and Clearing Corporation ("**VSDC**") via a securities company licensed as a depository member of the VSDC. After that, such foreign investor needs to open a securities trading account and/or a securities depository account at a securities company in order to conduct the transaction.

Furthermore, if the acquisition results in a major ownership of 5% or more of shares in a public company (listed or unlisted) ("**Major Ownership**"), within five (05) working days from the date the acquirer becomes the major shareholders who hold the Major Ownership, a notification on the ownership must be addressed to the State Securities Commission ("**SSC**") and if the shares of such company are listed, the Stock Exchange where the shares of such company are listed.

5. When do compulsory takeover regulations apply?

There is no regulation on mandatory takeovers in Vietnam's laws other than the tender offer requirement imposed on specific acquirers under the Law on Securities 2019.

An acquirer is required to make a tender offer where (1) it and its affiliated persons intend to purchase voting shares leading to direct or indirect ownership of 25% or more of currently circulating shares in any one public company, (2) it and its affiliated persons holding 25% or more of the voting shares in any one public company wish to make further purchases leading to direct or indirect ownership of or in excess of 35%, 45%, 55%, 65% or 75% of the number of currently circulating voting shares in the public company, or (3) except for the case of an offer to acquire that was made with respect to all of the voting shares of a public company, after conducting a public offer to acquire,



an acquirer and its affiliates holding 80% or more of the number of voting shares of a listed company must continue purchasing the remaining number of shares within thirty (30) days on the same conditions on acquiring price and method of payments offered in the tender offer tranche.

The Law on Securities 2019 also provides certain circumstances where the tender offer requirement is waived; for example, purchase of shares of a public company newly issued under an issuance plan passed by the company's GMS or acquisition of existing shares which have been approved by the GMS with a clear determination of the transferor and the transferee will not trigger a tender offer even though the deal can lead to ownership of any percentage mentioned in cases (1), (2) and (3) above in such company.

6. Would the above forms of restructuring also be available to foreign companies?

Yes, but it would depend on the business line of the target company, and in any event, the laws in this area have not been developed to provide clear and sufficient regulations on these deals.

X. TAX

1. What determines the extent of a corporation's liability to pay Vietnamese income tax?

Vietnam imposes corporate income tax ("**CIT**") on any organization engaged in production and/or business in goods and services earning taxable income.

The amount of CIT payable is equal to the assessable income multiplied by the tax rate. Assessable income within any tax period shall be equal to taxable income less tax exempt income and losses carried forward from previous years. Taxable income shall equal turnover fewer deductible expenses plus other taxable income.

Tax incentives (i.e., tax exemption or reduction as well as preferential tax rates) are also available when statutory conditions are satisfied.

2. How is residence treated for tax purposes?

The outline of the tax laws in Vietnam is as follows, though it is affected by tax treaties.

With respect to CIT, generally, enterprises established pursuant to the law of Vietnam must pay CIT on certain global income while foreign companies without resident establishments in Vietnam are only obligated to pay the tax on income arising in the country. Foreign companies having resident



establishments in Vietnam must pay tax on (1) taxable income arising in Vietnam and not related to the operation of the resident establishment; and (2) taxable income arising in connection with the operation of the resident establishment in Vietnam. The resident establishments of foreign companies include, among others, branches, operational offices, plants, workshops, means of transportation, mines, petroleum and gas fields.

Similar rules are applicable to personal income tax ("**PIT**"). Accordingly, residents are subject to PIT on their worldwide income but non-residents are taxed on their Vietnam-sourced income only. An individual is a resident if he or she has (i) been in the country for one hundred eighty three (183) days or more in a calendar year or in consecutive 12 months counting from his/her first arrival date; or (ii) had a permanent residence in Vietnam (including a registered residence which is recorded on the permanent/temporary residence card or a rented house in Vietnam with lease term of one hundred eighty three (183) days or more in a tax year in case of foreigner). In case an individual has a permanent residence but is in Vietnam less than one hundred eighty three (183) days in a tax year in practice and unable to prove tax residence in another country, such individual is deemed as a resident.

3. What is the corporate tax rate and how is it applied?

The taxable corporate income is subject to the standard tax rate of 20% applicable to both local and foreign-owned companies. The rates for companies operating in petroleum range from 25% to 50% in conformity with each petroleum contract. The rates for companies operating in searching, exploring, and exploiting other rare natural resources range from 32% to 50% in conformity with each project and business establishment. Preferential rates of 10% or 17% shall be granted to corporate taxpayers for a limited period based on the business scope of, and location of the investment project implemented by, the taxpayers.

4. What is the tax rate applicable to foreign companies on their income earned in Vietnam?

Foreign companies having Vietnam-sourced income shall be subject to a Foreign Contractor Tax ("**FCT**"). Please see the response to Section 10.5(c) below for further information on applicable tax rates.

5. What other taxes are payable in Vietnam?

(1) Business Registration Tax ("**BRT**")

BRT is paid annually. Currently, the BRT ranges from VND 1,000,000 to VND 3,000,000 depending on the registered charter capital of the enterprises.



(2) Value-Added Tax ("VAT")

VAT is levied on goods and services used for production, trading and consumption in Vietnam (including those imported from abroad). VAT rates are 0%, 5% and 10% depending on the nature of goods and services. The tax rate of 0% applies to certain goods and services only, such as exported goods and services, international transportation and goods and services not liable to value-added tax when exported, except for transfer of technology and intellectual property; offshore reinsurance services; credit provision, capital transfer and derivative financial services; post and telecommunications services; and exported products which are unprocessed mined resources and minerals and products that are made from mineral resources and the total value of the mineral resources and energy costs account for 51% or more of the prime costs. Certain goods and services are not subject to VAT. The National Assembly has approved a 2% reduction in the VAT until 30 June 2025 applicable to goods and services currently subject to the 10% VAT rate, with the exception of the following goods and services: telecommunications, information technology, financial activities, banking, securities, insurance, real estate business, metals, pre-cast metal products, mineral exploitation products (excluding coal mining), coke, refined petroleum, chemical products, and goods and services subject to special consumption tax.

(3) Foreign Contractor Tax ("FCT")

FCT is, in fact, not a separate tax but a combination of VAT and CIT or PIT. This special tax is imposed on foreign organizations and foreign individuals ("foreign contractors" or "foreign sub-contractors") doing business in Vietnam or having income arising in Vietnam on the basis of a contract, agreement or undertaking between such foreign contractor and a Vietnamese organization or individual ("contractor's contract") or between such foreign contractor and a foreign sub-contractor to perform part of the work of the former contractor's contract ("subcontractor's contract"), among other statutory cases.

A foreign contractor or a foreign sub-contractor in the form of an organization is conditionally entitled to pay FCT in one of three ways. It can pay the tax (i) directly to the State if (a) it has a permanent establishment in Vietnam, (b) the period of conducting business in Vietnam pursuant to the contractor's or sub-contractor's contract is from one hundred and eighty three (183) days as from the effective date of such contract, and (c) it adopts Vietnamese Accounting Standards (the "VAS"), makes tax registration, and is issued with a tax code by the tax authority (the "Deduction Method"), (ii) indirectly through its Vietnamese counterparty in case it does not satisfy all conditions required for performing Deduction Method (the "Withholding Method"), or (iii) under a method that combines the first and the second in terms of payment mechanism and tax rates (the "Hybrid Method"), in which the foreign contractor will pay VAT based on the Deduction Method but pay CIT based on the Withholding Method, if (a) it has a permanent establishment in Vietnam, (b) the period of conducting



business in Vietnam pursuant to the contractor's or sub-contractor's contract is from one hundred and eighty three (183) days as from the effective date of such contract, and (c) it organizes its accounting in accordance with the laws on accounting and guidelines of the Ministry of Finance.

If organizational foreign contractors or sub-contractors apply the Deduction Method, the VAT and CIT rates are the same as those applicable to Vietnamese companies. Based on the nature of the provided products or services, VAT rates of 2%, 3% or 5% and CIT rates ranging from 0.1% to 10% (for example, construction (2%), general services (5%), loan interest (5%) and royalties (10%)) shall be imposed to calculate tax liability of the organizational foreign contractors or sub-contractors, in cases where the Withholding Method or Hybrid Method is taken.

Individual foreign contractors and foreign sub-contractors shall pay VAT in accordance with the three payment methods available to organizational foreign contractors and foreign sub-contractors as stated above. For payable PIT, please see Section 10.5(d) below for further information on PIT rates applicable to foreign individuals.

(4) Personal Income Tax ("**PIT**")

PIT, as can be inferred from its name, is imposed on individuals only. Income from business, salaries and wages, capital investment, capital transfers, real property transfers, winnings or prizes, franchises, royalties, inheritance and gifts are all subject to PIT.

With respect to residents, the factor is determined as discussed in Section 10.2 above. Progressive tax rates with 5% increment apply to income in the form of salaries and wages starting from 5% for the first VND 5,000,000 earned per month and capped at 35% for any monthly earnings over VND 80,000,0000. Other incomes are taxed at specific rates, for example, 2% of transfer price for real property transfers, 20% of taxable income for equity transfers, 0.1% of selling price for securities transfers.

On the other hand, non-residents pay PIT at a fixed rate of 20% for income from wages and salaries and at different rates for different income, for example 5% applies to income from provision of services and 0.1% for equity transfers.

(5) In addition to the above, Vietnam also imposes tax on goods and services imported or exported (Import and Export Duties); specific goods and services that are not encouraged to be consumed (Special Sales Tax); natural resources (Natural Resources Tax); products and goods that, when being used, may cause negative environmental impacts (Environmental Protection Tax); and land use (Agricultural Land Use Tax and Non-agricultural Land Use Tax).



6. Is there a tax on dividends?

(1) Individuals

Dividends received by individuals (both residents and non-residents) are subject to PIT at 5% except for some statutory exemption cases.

(2) Corporations

Dividends paid by local-based enterprises from their after-tax profits shall be exempt from CIT.

7. Are payments subject to withholding tax?

Yes. Personal income payments that are made in favor of non-residents are subject to withholding tax. In addition, corporate income payments that are taxed by FCT paid under a Withholding Method are also withheld.

8. Is capital gains tax payable in Vietnam?

Yes. Gains derived by investors (both local and foreign) on capital assignment or securities transfer are subject to CIT (applicable to the corporate) or PIT (applying to the individual). The applicable CIT and PIT rate differs between residents and non-residents as follows:

		Corporate residents	Corporate non-residents	Individual residents	Individual non-residents
Capital assignment		20% of the capital gain amount			
Securities transfer	Non-public JSC				
	Public JSC			0.1% of the t	ransfer price



XI. DISPUTE RESOLUTION

1. Please give a brief outline of the civil procedure in Vietnam.

To commence a civil action, a plaintiff files a petition enclosed with documents and evidence to the competent People's Court (the "**Court**"). The Court's jurisdiction over the case shall be determined based on territorial basis, subject matter in dispute, and plaintiff's options (in certain cases). The Court only accepts the petition if it is in writing and certain compulsory contents are contained therein. If the Court preliminarily finds the case to be within its jurisdiction, it shall issue a notice to the plaintiff for advance payment of the court fee. After the payment is made, the Court officially accepts the case and prepares for a session to check the submission, approach and presentation of the evidence among the concerned parties (similar to hearings conducted in other jurisdictions) to commence.

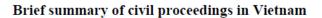
This session also includes the Court-supervised conciliation (unless cases are not allowed conciliation by the law), where the Judge in charge of the case shall play an intermediary role assisting the litigants to reach an amicable agreement on the dispute. If no settlement of the whole case is reached at the session, the Court shall fix the date for a trial.

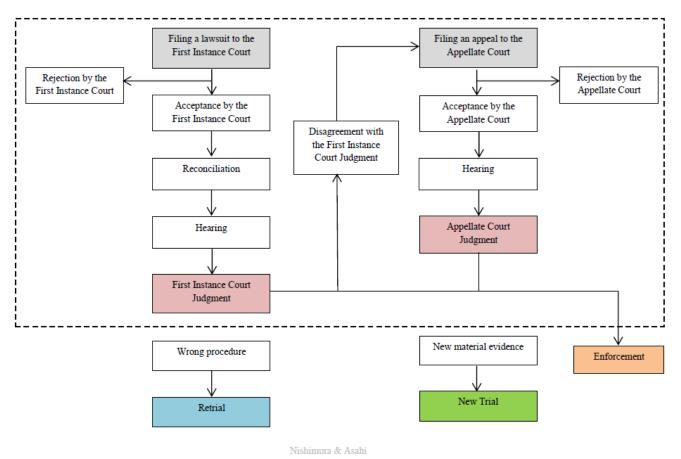
Standard civil cases shall be open to the public in the presence of all concerned persons. Generally, the tribunal shall act collectively when hearing the cases and make decisions on a majority basis. Litigants' rights to terminate or amend their claims or to agree voluntarily among themselves on the case are respected during the course of the litigation.

Judgments and decisions of first-instance Courts may be appealed. Furthermore, a legally enforceable judgment or decision of the Court shall be reviewed in accordance with the procedure for judicial review. If there is a serious breach of law or fresh evidence has been found, a new trial will be initiated.

During the proceedings, any concerned party shall have the right to petition the Court to apply, change or suspend one or more preliminary injunctive relief measures to protect evidence, preserve the status quo, etc., in order to avoid irrecoverable damage or to secure legal execution.

A court judgment or decision, if not voluntarily enforced by the losing party, may be referred to the State agency named the Civil Judgment Enforcement Agency. Enforcement of a judgment is normally time-consuming in Vietnam due to the overload of cases that need to be enforced. Since 2009, establishment of certain Ho Chi Minh City-based private bailiff offices have been allowed with limited power to execute the Court's judgment, i.e., verification of the conditions for judgment enforcement.





2. How are foreign judgments enforced in Vietnam?

A civil judgment issued by a court in the countries that have entered into a judicial assistance agreement with Vietnam will be considered for enforcement in Vietnam. In absence of the judicial assistance agreement, a foreign judgment shall be considered for recognition and enforcement on a reciprocal basis or specific cases under the law of Vietnam.

3. What are the alternative methods of dispute resolution available in Vietnam?

(1) Commercial Arbitration

Under Vietnamese law, commercial arbitration centres may settle commercial cases if the parties have agreed to bring their case to arbitration. Currently, there are nearly fifty (50) commercial arbitration centres in Vietnam. Vietnamese law allows both ad hoc and institutional arbitration.

(2) Commercial Mediation



To establish an alternative dispute resolution along with commercial arbitration, a decree on commercial mediation was passed by the Government in 2017. Under this decree, if mediation is successful, the mediation result shall be binding upon the involved parties and either party has the right to request the court to recognize such mediation result. Currently, there are ten (10) mediation centres in Vietnam.

4. What types of disputes are settled by foreign/international arbitration?

The LOI and the Law on Commercial Arbitration permits the parties in a dispute, either of which is a foreign investor or a company having more than fifty percent (50%) of its charter capital held by foreign investors (or some other companies specified by the LOI), to agree and specify foreign arbitration or an international arbitration institution or an arbitral tribunal established by the parties in dispute, provided that the dispute in question is a commercial dispute, in addition to a court or an arbitration in Vietnam, to resolve the dispute. However, any dispute between a foreign investor and a local State administrative body relating to investment activities in Vietnam shall be resolved by a Vietnamese court or arbitration, unless otherwise provided in a contract signed between the competent State body and the foreign investor or in an international treaty of which the Socialist Republic of Vietnam is a member.

5. How are arbitral awards enforced in Vietnam?

(1) Domestic arbitral awards

Recognition of courts is not required for enforcement of domestic arbitration awards, and such domestic arbitration awards shall be automatically enforced unless they are set aside by the Court upon request of a disputed party. If the award debtor fails to carry out the award voluntarily in a timely manner, the award creditor shall have the right to request the competent Civil Judgment Enforcement Agency to enforce such award.

(2) Foreign arbitral awards

Unlike domestic arbitral awards, foreign arbitral awards are subject to the recognition and enforcement by the local courts. A foreign arbitral award shall be considered being recognized and enforced in Vietnam if it is made in the territory of a foreign country which is a party to an international treaty on recognition and enforcement of foreign arbitral award with Vietnam. With respect to foreign arbitral awards made in the territories which are non-contracting States of a treaty to which Vietnam is a party, they shall be considered for recognition and enforcement on a reciprocal basis.

Vietnam is a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, thus, an award rendered by a convention State member is



enforceable in Vietnam.

An application for recognition and enforcement of foreign arbitration award, within three (3) years from the date the foreign arbitral award becomes legally effective, shall be first lodged with the Ministry of Justice of Vietnam and shall be subsequently transferred to the competent Court or directly sent to the competent Court of Vietnam. The Court shall consider the recognition and enforcement of the arbitral award under the procedure specified in the Code of Civil Procedure.

6. What are the grounds on which an arbitration award can be challenged in the courts in Vietnam?

(1) Domestic arbitral awards

The court may, at the request of a party to the dispute, set aside an arbitral award given under one of the following circumstances:

- There was no arbitration agreement or the arbitration agreement is void;
- The composition of the arbitration tribunal and/or the arbitration procedure was inconsistent with the agreement of the parties or contrary to the provisions of the Law on Commercial Arbitration;
- The dispute was not within the jurisdiction of the arbitration tribunal; where an award contains an item which falls outside the jurisdiction of the arbitration tribunal, such item shall be set aside;
- The evidence supplied by the parties on which the arbitration tribunal relied to issue the award was forged; an arbitrator received money, assets or some material benefits from one of the parties in dispute which affected the objectivity and impartiality or the arbitral award; or
- The arbitral award is contrary to the fundamental principles of the laws of Vietnam. Fundamental principles of the laws of Vietnam are the basic rules having comprehensive effect (or umbrella effect) for the formulation and implementation of the laws of Vietnam.
- (2) Foreign arbitral awards

In order for a foreign arbitral award to be enforced in Vietnam, it must first be recognized by a competent court in Vietnam. However, a competent court may deny the recognition of



foreign arbitration award in the following circumstances:

- The parties to the arbitration agreement did not have the capacity to sign the arbitration agreement in accordance with the law applicable to each party;
- The arbitration agreement is unenforceable or invalid in accordance with the governing law;
- The award debtor had not received due notice of appointment of arbitrators or arbitration proceedings; or for other legitimate reasons, the respondent could not exercise its rights in the proceedings;
- The foreign arbitral award was entered into where no settlement was requested or was beyond the request of the disputing parties;
- The composition of the arbitration body and/or the arbitration proceedings was not in accordance with the arbitration agreement of the parties or the applicable law;
- The award is not yet enforceable or binding on the parties;
- The award has been overruled or suspended by the competent authorities of the countries where the award was made or whose law was the governing law;
- The relevant dispute cannot be resolved by arbitration in accordance with the laws of Vietnam; or
- The recognition and enforcement of the foreign arbitration award in Vietnam is contrary to the basic principles of the laws of Vietnam.

A Vietnamese court is not empowered to re-hear the case but only to review the documents to ensure that they are in compliance with Vietnamese law and the relevant treaty.

(As of May 2025)

This article is intended to provide only general, non-specific legal information and does not purport to give a legal opinion or advice on specific facts.