

Doing business in Vietnam

Dr Vinh Quoc Nguyen and Kien Trung Trinh
Tilleke & Gibbins

global.practicallaw.com/3-515-9149

OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

Vietnam has concluded negotiations with the EU on the EU-Vietnam Free Trade Agreement (EVFTA), which is expected to be ratified by the EU member states in 2018 and come into force as soon as possible. The EVFTA covers:

- The elimination of customs duties (over 99% of all tariffs).
- The reduction of non-tariff barriers to EU exports.
- Investment promotion.
- Many other matters related to free trade.

Vietnam has also signed, but not yet ratified, the Trans-Pacific Partnership agreement (TPP), which includes 30 chapters covering broad trade and trade-related issues, including trade in goods, investment, services, electronic commerce, government procurement and intellectual property. Currently, the final step of ratification has been delayed due to the heavily publicised withdrawal of the US from the TPP. However, the other TPP members have agreed to explore how they can move ahead without the involvement of the US.

On 1 January 2017, the new Civil Code took effect, following the new Law on Investment and Law on Enterprises of 2015. These pieces of legislation are aimed at relaxing administrative burdens, promoting parties' autonomy and business flexibility in Vietnam.

In office for over a year, the new government cabinet has been trying to build a new image of creativity and integrity, after facing many difficulties left over from the previous administration (such as corruption and budget deficits). The new government's objectives are set out as "the government of action and integrity that nurtures development and better serves the people." In mid-2017, the government requested various agencies and departments to review all business conditions in Vietnam. The review is in progress and this was a positive signal for improving the local business environment and easing business conditions.

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Vietnam is primarily a civil law country.

The Vietnamese legal system was initially modelled on the French and Soviet systems until the late 1980s, when Vietnam adopted its Doi Moi policy. This transformed Vietnam's economy from a centrally planned economy to a market-oriented economy. Following Doi Moi, many areas of law have been shifted from socialist-based models to those typically found in a western legal system.

The Law on Organisation of the People's Court of 2014 (which took effect on 1 June 2015) recognised court precedents as a source of law. In two years, the Supreme Court of Vietnam issued ten court precedents on commercial, civil and criminal matters for the lower courts to consider and apply.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Foreign investors must register foreign investments and may also have to satisfy additional investment conditions or restrictions. Examples of common investment conditions and restrictions include:

- Limitations on foreign ownership.
- Business sector restrictions.
- Form of investment requirements.
- Geographic restrictions.
- Conditions on the qualification of Vietnamese partners.
- Other conditions or requirements relating to specific business sectors.

Vietnam acceded to the World Trade Organization (WTO) in 2007 and, as part of its accession, made a number of commitments in various service sectors through the Schedule on Specific Commitments in Services. If a foreign investment involves business activities covered under these WTO commitments, the investment conditions and restrictions set out there will apply as well as relevant local legislation (which is normally in line with Vietnam's WTO commitments). If a foreign investment involves business activities not covered under Vietnam's WTO commitments, domestic law will govern. If domestic law is silent, the foreign investment may still be approved on a case-by-case basis.

The provincial Department of Planning and Investment or the board of management of the relevant industrial zone or park with jurisdiction over the location of the project has the power to approve foreign investment projects. However, larger scale projects and projects in certain sectors also require a "decision on investment planning" approval from higher level government bodies such as the National Assembly, the Prime Minister, or the provincial People's Committee prior to submission to the local investment authorities.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no restrictions on doing business with certain countries or jurisdictions.



5. Are there any exchange control or currency regulations?

The government heavily regulates transactions in relation to foreign currencies (mostly US dollars). Generally, rules on foreign currency inflow are much more relaxed than those on outflow. For example, a person leaving Vietnam is prohibited from carrying out more than US\$5,000 in cash. Any violation may subject the violator to a fine, confiscation, or even a criminal punishment. A person entering Vietnam is allowed to bring in the same amount. However, if he/she brings more than US\$5,000, then he/she only needs to declare the additional amount.

Foreign investors bringing capital to the country are welcome. However, if a Vietnamese investor wishes to invest offshore, the investor must notify and/or obtain the approval of the State Bank of Vietnam for transactions relating to the investor's offshore investment (for example, remittance of the capital amount, and repatriation of the profits). The sale of or loans in foreign currencies by a bank in Vietnam are limited to certain transactions, mostly for export-driven purposes. However, in most instances, when a foreign investor has fully paid its tax obligations, it may repatriate its proceeds back home.

The primary legislation governing foreign exchange is the Ordinance on Foreign Exchange Control of 2005 (as amended in 2013). The Vietnamese Government and the State Bank have issued numerous guiding decrees and circulars based on this legislation.

6. What grants or incentives are available to investors?

Under Vietnam's investment laws, incentives are available for certain geographic areas and industries, and for high-tech and scientific/technological enterprises or organisations. Additionally, incentives are available for projects where the investment amount is VND6,000 billion or more, of which at least VND6,000 billion will be disbursed within a period of three years or less from the date of investment approval, and for projects located in rural areas and employing 500 employees or more.

The investment incentives can take various forms, the most common of which are:

- Exemption from or a lower rate of corporate income tax for a set number of years.
- Exemption from import duty in respect of goods imported to form fixed assets and for raw materials, supplies and components for implementation of an investment project.
- Exemption from and/or reduction of land rent, land use fees, and land use tax.

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

In respect of Vietnamese corporate laws, there is no notable difference in the treatment between companies with foreign direct investment (FDI) and domestically invested companies. Similar to a company with only domestic investment, an FDI company may take the form of a single-member limited liability company (single-member LLC), a multiple-member limited liability company (MLLC) or a shareholding company (SC). These are the main business vehicles used in Vietnam for foreign businesses.

Single-member LLC

A single-member LLC has a single owner. It does not have shares, it has "charter capital" which is the value of currency or other assets denominated in Vietnamese Dong. A single-member LLC is considered a separate legal entity from the owner. The owner's liability for the single-member LLC's debt is limited to its committed capital contribution amount. This business vehicle will be applicable for business sectors that contain no limitations on foreign ownership.

MLLC

For a business venture that is subject to foreign ownership or participation restrictions or where there will be more than one owner of the Vietnamese company, establishing an MLLC or an SC is an option. An MLLC cannot have more than 50 members. Similar to the single-member LLC, members have charter capital in the MLLC instead of shares and the liability of the members is limited to each member's committed capital contribution amount.

SC

An SC, also known as a joint stock company, is a Vietnamese corporation in which the charter capital is divided into equal portions called shares. Shareholders can be organisations or individuals, with a minimum of three shareholders and no restriction on the maximum number of shareholders. A shareholder is liable for the debts and other property obligations of the SC only within the amount of capital it has contributed to the SC. With a few exceptions, shareholders can freely assign their shares. A SC is the only type of Vietnamese corporation that can issue corporate bonds and can be listed on Vietnamese stock exchanges.

For investors that do not wish to establish a legal entity to run their own project in Vietnam, other permissible forms of investment include investing by way of a contractual arrangement (for example, a public-private partnership, or business co-operation contract) or by contributing capital or purchasing shares or capital contribution of an existing economic organisation in Vietnam.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

To establish a single-member limited liability company (single-member LLC), a multiple-member limited liability company (MLLC) or a non-publicly listed shareholding company (SC) for the purposes of an initial foreign investment into Vietnam, foreign investors must go through at least two stages:

- Firstly, they must apply for an Investment Registration Certificate (IRC). The IRC will recognise the contents relating to the investment project such as investor(s), project location, objectives and scale of the project, investment capital, investment incentives and restrictions.
- Secondly, they must apply for an Enterprise Registration Certificate (ERC). The ERC will provide the corporate details such as company name, registered office address, charter capital, owner's details and legal representative(s) of the company.

The provincial Department of Planning and Investment or the board of management of the relevant industrial zone or park with jurisdiction over the location of the investment project has the power to approve the IRCs and ERCs. However, larger scale projects and certain types of projects require a "decision on investment planning" approval (DIP) from higher level government bodies prior to submission of the IRC and ERC to the local investment authorities (see *Question 3*). In addition, approval of the foreign investment from a number of other government bodies may

be required depending on the nature and scale of the foreign investment.

Reporting requirements

Disclosure of business registration contents. Within 30 days of the establishment or amendment of business registration contents, enterprises must post their business registration information on the National Business Registration Portal (NBRP) (enterprises will ask the business registration authority to publicise this information).

Announcement of the company's seal specimen to the business registration authority. Before using the company's seal specimen, the company must notify the business registration authority to publicise this information on the NBRP.

The current cost of each request for publicising the information on the NBRP is VND300,000.

Share capital

With the exception of certain sectors (such as banking, finance, insurance and real estate), Vietnamese corporations are not required to have a minimum amount of charter or share capital. However, from a foreign investment approval perspective, the charter capital should be sufficient to persuade the licensing authorities of the feasibility of the project as envisioned by the investor's feasibility report submitted for foreign investment approval.

The time limit for capital contribution is 90 days from the date of the issuance of the ERC.

Non-cash consideration

Capital contribution into a business by investors can include non-cash assets (such as gold, land use rights, intellectual property rights, technology, technical know-how, or other assets). Non-cash assets contributed as capital must be lawfully owned by the investors and must be valued and denominated in Vietnamese Dong.

Rights attaching to shares

Restrictions on rights attaching to shares. Equity holders in Vietnamese companies are not allowed to withdraw their contributed capital in the company by reducing the company's charter capital during the first two years after establishment. However, the contributed capital can be withdrawn entirely by the company's dissolution.

Additionally, the members of an MLLC are restricted from assigning or selling their contributed capital to other parties who are not members of the company unless they first offer to sell the capital to all other members in proportion to their respective shares of capital contribution in the company on equal terms and conditions.

For SCs, during the first three years of company establishment, the founding shareholders are restricted from selling their ordinary shares which were subscribed at the time of the company's establishment to other parties who are not founding shareholders of the company unless approved by the company's general meeting of shareholders. In the general meeting of the shareholders, the shareholders may also decide to issue preference shares with special rights and certain restrictions attaching to each type of share. Any restriction on the share assignment must be clearly stated in the share certificate and the company's charter.

Automatic rights attaching to shares. In addition to the rights of first refusal for members of MLLCs, the member/shareholder will also have the following key rights:

- Voting rights in proportion to the contributed capital.
- To be in receipt of profits/dividends in proportion to the contributed capital.

- To receive the remainder of the value of assets of the company in proportion to the contributed capital on dissolution or bankruptcy of the company.
- To be given priority in making additional capital contributions to the company on any increase of charter capital of the company.
- To dispose of its shares in accordance with the Vietnamese laws and the company's charter.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

Single-member limited liability company (single-member LLC).

A single-member LLC can have a board of directors (called a members' council) or it can choose to have what is essentially a one-person board, in which case that person would be designated as the chairman of the company. If the single-member LLC has a board, one of the board members should be designated as the chairman of members' council.

A general director of a single-member LLC who manages the day-to-day business operations of the company, has executive powers similar to that of the chief executive officer or president in other jurisdictions. Single-member LLCs must also appoint a legal representative whose duties include exercising the rights and performing the obligations arising out of transactions of the company, and representing it to act as claimant, defendant or person with related interests and obligations in arbitration proceedings or courts, and to exercise other rights and perform other obligations in accordance with law. A single-member LLC can have multiple legal representatives provided that at least one of them permanently resides in Vietnam. If there are multiple legal representatives, the statutory powers can be divided among them as the owner sees fit. The default statutory powers of a general director and legal representative overlap, because typically one of the legal representatives will act concurrently as the general director. Vietnamese tax and accounting laws also require a single-member LLC to designate a person as its chief accountant. The chief accountant and the legal representative are required to sign all financial statements, accounting books, and tax filing.

Multiple-member limited liability company (MLLC). The management structure and key positions of the MLLC are very similar to those of a single-member LLC, except that it must have a board of directors in which every member is represented. An MLLC may also have an inspection committee, and if an MLLC has at least 11 members, an inspection committee is mandatory.

Shareholding company (SC). An SC, also known as a joint stock company, typically has the following organisational structure:

- General meeting of shareholders.
- Board of management.
- Inspection committee (if the SC has fewer than 11 shareholders, and organisational shareholders own less than 50% of the total shares, it is not required to have an inspection committee).
- General director.

The inspection committee acts as an independent auditor and watchdog organisation for the SC. Its members must not be managers or close relatives of managers of the SC, and are not required to be shareholders or employees of the SC unless the charter states otherwise. The inspection committee must have three to five members and more than half must reside in Vietnam. Its chair must be a professional accountant or auditor. If the SC has only one legal representative, this legal representative must be either the chairman of the board of management or the

director/general director of the company. (If the charter does not state otherwise, the chairman of the board of management will fill this role by default.) If the SC has more than one legal representative, both the chairman of the board of management and the director/general director will automatically be legal representatives of the company.

An SC must have a shareholders' meeting at least once a year. The quorum for a shareholders' meeting is at least 51% of the total voting shares. An affirmative vote of at least 51% of the voting shares present is required to pass a resolution. Resolutions on issues such as classes of shares, the number of new shares to be offered, amendments to the charter, reorganisation or dissolution of the SC and sale of at least 50% of the assets of the SC require 65% of the voting shares present. These are the minimum voting thresholds mandated by law. The shareholders can agree to set higher voting thresholds via the company charter.

Management restrictions

There are generally no restrictions on foreign managers. Vietnam enacted new rules on the use of expatriate labour in 2015. Instead of requiring minimum thresholds, the new rules allow local Vietnamese authorities extremely wide discretion whether to allow or reject foreign workers. The desired use of foreign employees would be first set out in a request together with an annual demand report on the use of foreign employees. These are submitted to the chairman of the local authority by the foreign contractor. There is no mandatory local hire requirement or percentage of local hire required. After submitting the plan, the chairman of the local authority may recommend local agencies and organisations to introduce and supply Vietnamese workers to the foreign contractor. Within a maximum of two months from the submission date of that plan, if Vietnamese workers are not introduced or do not satisfy the demands of the foreign contractor, the chairman of the local authority will, subject to his/her discretion, allow the recruitment of foreign employees to hold certain positions where Vietnamese recruits are not competent or otherwise deficient.

Directors' and officers' liability

Related party transactions entered into without proper corporate formality and approval, causing loss and damage to the company, are considered void and the legal representative, if being the signatory of the contract, and all other signatories and parties to the contract must be jointly responsible for any loss arising and return to the company any benefits gained from the performance of such contract or transaction.

The general director is responsible before the law and to the board of the company for the implementation of his/her rights and duties. Such duties include:

- Complying with the law, the charter and decisions of the owner(s) and/or the board of directors in the implementation of delegated rights and duties.
- Performing delegated rights and duties honestly, diligently and to their best ability to ensure the maximum lawful interest of the company and the owner(s).

A board member of a Vietnamese company is also liable if he/she is a signatory to a related party transaction that was not properly approved and causes harm. In addition, a board member is responsible "before the law" and to the owners of the company for the implementation of their rights and duties. Such duties are the same as those for a general director (see above).

In addition, the legal representative is personally liable to the company for any loss or damage to the enterprise due to a breach of any of his/her duties.

Parent company liability

Generally, there is no difference between local and foreign investors in respect of parent company liability. The parent company will be liable for the financial obligations of any

subsidiaries to the extent of its capital contribution amount, as registered with the licensing authorities of Vietnam and as stated in each subsidiary's charter.

EMPLOYMENT

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The main law regulating employment relationships in Vietnam is the 2012 Labour Code and its guiding decrees and circulars. The Labour Code explicitly states that it applies to foreign nationals working in Vietnam, and the general rule is that foreign nationals working in Vietnam must comply with the Vietnamese labour laws, unless an international treaty to which Vietnam is a member states otherwise. If an employment contract is signed with a Vietnam-based entity, the law of Vietnam must apply regardless of the choice of law by the parties.

However, the Vietnam labour legislation does not apply to foreign nationals who are working in Vietnam through an internal company transfer under a foreign employment contract. That is, the legislation does not apply to cases where a foreign parent company temporarily assigns its employee to work at its Vietnam-based subsidiary or representative office (and the labour contract is signed with the parent company).

Vietnamese nationals working abroad must comply with the laws of Vietnam (and the laws of the foreign country), unless an international treaty to which Vietnam is a member states otherwise.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

Employment contracts must be made in writing, with the exception of contracts for temporary work of less than three months, in which case an oral employment contract can be used. An employment contract must contain the following main provisions:

- The work that is to be performed, job location, and term of the contract.
- Wages (including rate, method and time of payment, allowances and other additional payments, and the regime for wage increases and promotion).
- Working hours, rest breaks, and holidays.
- Personal protective equipment for the employee.
- Social and health insurance for the employee.
- Training and skills improvement for the employee.

The concept of implied terms in an employment contract is not recognised under Vietnamese labour laws. However, statutory rights and benefits will apply to an employment relationship even if the statutory rights and benefits have been left out of the employment contract or the employment contract contradicts such statutory rights and benefits.

Employers are obliged to implement and comply with a collective labour agreement (CLA). A CLA is binding on the employer when it has been signed by the employer and the representative of the collective labour agreement following a collective bargaining session.

Vietnam's labour laws also acknowledge sector-specific agreements, known as Industry Collective Labour Agreements

(ICLA). Enterprises in an industry for which there is an ICLA are encouraged (but not required) to implement such an agreement.

12. Do foreign employees require work permits and/or residency permits?

Foreign nationals must have a work permit in order to work in Vietnam, except for those that qualify for an exemption under law. In addition, a visa/temporary residence card is also required for foreign nationals entering Vietnam to work.

A work permit is applied for by the employer on behalf of the foreign employee by submitting an application file to the local labour authority at least 15 business days prior to the date the foreign employee is to commence his/her work in Vietnam. The labour authority must issue the work permit within seven business days on receipt of a complete application file. The filing fee for a work permit ranges from VND400,000 to VND600,000.

In order to obtain a visa to work in Vietnam, there must be an invitation letter issued by a Vietnamese sponsor inviting the foreign employee to come to Vietnam to work. The sponsor must be a Vietnam-based entity and must submit the application file on behalf of the foreign employee to the Immigration Office of Vietnam. The maximum term of a visa to work in Vietnam is two years. The time frame for obtaining a visa to work in Vietnam varies depending on the type of work visa applied for, and ranges from five to eight working days. The filing fee for a visa to work in Vietnam depends on the type and term of the visa and ranges from US\$25 to US\$135.

Foreign nationals who wish to work in Vietnam on a long-term basis may be eligible to apply for a temporary residence card instead of a work visa. Foreign nationals eligible to apply for a temporary residence card include those who have obtained a work permit to work for a Vietnamese enterprise or a representative office of a foreign company in Vietnam, among others. A temporary residence card is valid from one to three years and is issued by the authorised provincial office managing entry and exit under the Ministry of Public Security. The time frame for obtaining a temporary residence card is five working days from the submission of a complete application file. The filing fee depends on the term of the temporary residence card and ranges from US\$145 to US\$155.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

There is no legislation specifically mandating that employees are entitled to management representation (such as on the board of directors) although the law recognises employees' rights to participate in management in accordance with the internal rules of the employer.

Employees have the right to request and participate in discussions with the employer, to implement democratic regulations, and to be consulted at workplaces in order to protect the employees' lawful rights and interests. However, there is no legislation requiring employees' consultation or consent for major transactions such as acquisitions, disposals or joint ventures. Employees are only entitled to be notified of the final decision of these major transactions.

However, employers are required under the law to consult a trade union for certain matters, such as retrenchment caused by corporate reorganisation, formulating internal labour rules, and conducting disciplinary hearings. Employees are represented by the executive committee of the grassroots trade union (the trade union within the company) or the executive committee of the trade

union at the directly superior level if a grassroots trade union has not been established within the company.

14. How is the termination of individual employment contracts regulated?

At-will termination by the employer is not permitted in Vietnam. The employer can only terminate a labour contract based on specific grounds as set out by law. Depending on the grounds for termination, the requirements for compensation, notice periods and procedures differ.

Dismissal is a disciplinary action imposed for a breach of "labour discipline" and is only permitted in a few limited cases, as set out in the labour laws of Vietnam and recorded in the employer's internal labour rules. Labour discipline is defined as the rules governing compliance with time, technology, and the management of business and production, as set out in the employer's internal labour rules. Dismissal involves the termination of the employment contract.

The time limit for dealing with a breach of labour discipline is a maximum of:

- 12 months from the date of the breach in case of a breach directly relating to finance, assets or disclosure of technological or business secrets of the employer.
- Six months in case of other types of breaches.

There are strict statutory procedures and sequences for conducting a dismissal procedure which must include the following steps:

- Sending written notices to required attendees, including the employee and the executive committee of the grassroots trade union (the trade union within the company) or the executive committee of the trade union at the directly superior level if a grassroots trade union has not been established within the company.
- Holding a meeting to deal with the breach of labour discipline.
- Issuing minutes of the meeting.
- Issuing a decision dealing with the breach of labour discipline.

An employee who is dismissed due to a violation of labour discipline is not entitled to any kind of allowance.

The consequences of wrongful dismissal are severe. If the dismissal is declared by the court as unlawful, the employer must re-employ the employee or pay significant damages as mandated by law.

Under the new Penal Code, which was passed in 2015 (but is currently facing delays in implementation), an unlawful dismissal of an employee or even the use of threats to cause the resignation of an employee can lead to criminal liability.

15. Are redundancies and mass layoffs regulated?

An employer can make employees redundant due to:

- Technological changes (such as changes to part of or all of the equipment, machinery or technology processes).
- Changes in organisational structure, in cases of a merger, consolidation, or cessation of operation of one or several departments or units, or where the employer faces difficult economic conditions.

If such changes lead to the termination of two or more employees, the employer is required to form and implement a "labour usage plan" in conjunction with the grassroots trade union (the trade union within the company) or the executive committee of the trade

union at the directly superior level if a grassroots trade union has not been established within the company. The termination of two or more employees on a layoff basis can be implemented only after consultation with the grassroots trade union and after the provincial labour authority has been served with a 30-day notice.

TAX

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

Vietnam recognises the concept of tax residency. An employee who is a resident of Vietnam (regardless of nationality) is taxed on his/her taxable income earned inside and outside the Vietnamese territory. An employee who is a non-resident is taxed on taxable income earned inside the Vietnamese territory.

An employee is regarded as a resident of Vietnam if he/she satisfies at least one of the following conditions:

- Spends at least 183 days in Vietnam within one calendar year or within a consecutive 12-month period from the date of first entry into Vietnam.
- Has a regular residential location in Vietnam, meaning that the person has either a:
 - residential location for which permanent residence has been registered under the law on residence;
 - leased residence under the law on residential housing with a lease term of at least 90 days.

An employee who does not satisfy the conditions set out above is regarded as a non-resident of Vietnam.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Tax. Taxable income associated with an employment relationship includes:

- Salaries, wages and amounts of similar nature.
- Allowances.
- Remuneration of all kinds.
- Sums of money earned for participation in business associations, boards of directors, control boards, management boards and other organisations.
- Other monetary or non-monetary benefits received by taxpayers.
- Bonuses and rewards.

Tax resident employees are subject to personal income tax at progressive rates of 5% to 35%.

Employees must finalise and file (or authorise the employer to file) their tax finalisation return to the Vietnam tax authority within 90 days from the end of the tax year.

Social security contributions. Both employers and employees are required to contribute to social insurance, health insurance, and unemployment insurance funds. Foreign employees are only required to contribute to the health insurance fund.

The employers' and employees' contributions are calculated as a percentage of the employee's salary and allowance as stated in an employment contract (base salary), as follows:

- Social insurance: for employers at 17% and for employees at 8%.
- Labour accident and occupational disease insurance: for employers at 0.5%.
- Health insurance: for employers at 3% and for employees at 1.5%.
- Unemployment insurance: 1% for both employers and employees.

The employee's salary for calculation of social insurance, labour accident and occupational disease insurance, and health insurance is capped at 20 times the statutory national base salary. The employee's salary for calculation of unemployment insurance is capped at 20 times the statutory minimum regional salary. These minimum salaries are subject to change during a year.

Non-tax resident employees

Non-resident employees are subject to personal income tax at a flat rate of 20% and social security contributions at the same rate as tax resident employees (see above, *Tax resident employees: Tax*).

Employers

Employers must withhold income tax of employees at applicable rates for each employee (see above, *Tax resident employees: Tax*) and remit the tax to the Vietnamese tax authority on a monthly or quarterly basis by the 20th day of the following month (if on a monthly basis) or by the 30th day of the month following the reporting quarter (if on a quarterly basis).

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

Vietnam does not explicitly define "tax residence" for business vehicles. However, business vehicles will be regarded as having Vietnamese tax residence if incorporated in Vietnam. Tax resident businesses are subject to corporate income tax (CIT) and taxed on worldwide income.

Non-tax resident business

Non-tax resident business is a business vehicle incorporated outside of Vietnam but having Vietnam-sourced income (for example, income derived from carrying out business in Vietnam or engaging in a transaction with a Vietnamese contracting party). This is regardless of whether the services are performed inside or outside of Vietnam. Non-tax resident business is referred to as "foreign contractor" under Vietnamese tax laws.

Foreign contractors are subject to foreign contractor tax (FCT), which consists of CIT and VAT, and are taxed through a withholding mechanism. FCT rates vary and are specified according to the nature of the service supplied. For the CIT component, the rate varies from 0.1% to 10%. For the VAT component, the rate can range from exempted to 5%.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Corporate income tax (CIT)

As of 1 January 2016, the standard corporate income tax rate is 20% (reduced from 25% to 22% in 2014 and to 20% presently). Preferential tax rates are available when certain criteria are met. Certain industries may have a higher tax rate applied (for example, oil and gas and other rare natural resources operations (ranging from 32% to 50%) and platinum, gold, silver, tin, wolfram, antimony, precious stones, and rare earth mining (ranging from 40% to 50%)).

Value added tax (VAT)

VAT applies to the provision of goods and services used for the purposes of production, trading, and consumption in Vietnam. The standard rate of VAT is 10%. Reduced rates and exemptions are provided for certain categories.

Special sales tax (SST)

SST is a form of excise tax that applies to the production or import of certain goods and the provision of certain services, such as cigarettes, liquor, and lotteries. SST rates range from 7% (petrol) to 70% (cigarettes).

Stamp duty

Stamp duty applies on the required registration of ownership of certain assets, including buildings, land, transportation vehicles and guns. Stamp duty rates range from 0.5% to 15%.

Business license tax (BLT)

BLT is imposed on economic organisations in accordance with the registered capital in the business registration licence or the investment licence, ranging from VND1 million to VND3 million per year. Payment of BLT is due on the registration of business for tax purposes and subsequently on an annual basis.

Foreign contractor tax (FCT)

FCT is a system of withholding tax with wide application in Vietnam. It is applicable to foreign entities or individuals deriving income from carrying out business in Vietnam or engaging in a transaction with a Vietnamese contracting party, whether or not they have any legal entity in Vietnam.

Dividends, interest and IP royalties

20. How are the following taxed:

- **Dividends paid to foreign corporate shareholders?**
 - **Dividends received from foreign companies?**
 - **Interest paid to foreign corporate shareholders?**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders?**
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Dividends paid

Dividends can only be issued after tax has been paid, as dividends form part of the company profits. Consequently, dividends can only be remitted once a year after a company's tax year has passed and an audited financial statement has been concluded. No withholding tax is imposed on profits paid to foreign corporate shareholders.

Dividends received

Dividends received from foreign companies may be subject to corporate income tax (CIT) (for Vietnamese corporate shareholders) or personal income tax (PIT) (for individuals), unless provisions under a tax treaty state otherwise.

Interest paid

A withholding tax of 5% applies to interest paid on loans from foreign entities.

Interest paid on bonds (except for tax-exempt bonds), bonuses accompanying interest on the deposits, interest paid on late payments, and certificates of deposit issued to foreign entities are subject to 5% foreign contractor tax (FCT). Sales of bonds and certificates of deposits are subject to a deemed tax of 0.1% of the gross sales proceeds. However, the rates above may be reduced under a tax treaty.

IP royalties paid

IP royalties paid to foreign entities are subject to a withholding tax of 10%, unless the rate is reduced under a tax treaty.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Currently, there are no specific tax-driven thin capitalisation rules in Vietnam.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

At the end of a fiscal year, a parent company must prepare:

- Its own consolidated financial statements in accordance with the law on accounting of Vietnam.
- A general report on the annual business results of the parent company and its subsidiary.

A foreign subsidiary must repatriate all profit received and other income earned from the offshore investment within six months from the date of the tax finalisation or document of equivalent validity under the law of the country that receives the investment.

23. Are there any transfer pricing rules?

Vietnam's transfer pricing regulations are mainly governed by Decree 20/2017/ND-CP of the government dated 24 February 2017, which provides a definition of related-party transactions, and guidelines on the calculation of arm's length prices in business transactions between affiliated parties.

There are various factors to determine whether parties are related parties, typically capital participation, control or management. The current regulations provide a wide ranging definition of related-party transactions, and the control threshold required to be a "related party" is 25% for a limited liability company or 10% for a joint stock company, which is lower than in many other countries. The definition also covers significant supplier, customer and funding relationships between otherwise unrelated parties.

If the Vietnamese tax authorities believe the transaction was not priced according to the arm's length principle, they will adjust the value of the transaction and tax accordingly.

Customs duties

24. How are imports and exports taxed?

Vietnam imposes a tax on almost every type of product that is imported into the country. Imports are subject to import tax, VAT (unless exempt under the VAT regulations) and, for certain goods, special consumption tax (SCT).

Import duty rates are classified into three categories, including common rates, preferential rates and special preferential rates. The rate applied depends on the country of origin of the product. Certain goods are exempt from import and export duties, including goods in transit and humanitarian aid.

Double tax treaties

25. Is there a wide network of double tax treaties?

Vietnam has signed more than 75 double taxation agreements and there are a number of others at various stages of negotiation. In February 2017, Vietnam ratified its double taxation treaty with the US and is in the final stage of bringing the treaty into force.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

The main competition authority in Vietnam is the Vietnam Competition Authority (VCA) under the Ministry of Industry and Trade (MOIT). Information on the VCA, fields under the VCA's administration, legal resources, legal guidance on the competition law as well as procedures to handle competition cases can be found at the VCA's website (www.vca.gov.vn/) (in both English and Vietnamese).

The Competition Law passed by the National Assembly of Vietnam in 2004 is the primary law governing competition issues in Vietnam. The Competition Law provides for acts in restriction of competition, acts of unfair competition, order and procedure for setting competition cases, and measures to handle violations of the law.

The Competition Law applies to business organisations, individuals and foreign enterprises operating in Vietnam. However, the law does not detail what constitutes "operating in Vietnam".

Restrictive agreements and practices

Anti-competitive practices are defined as enterprise practices that reduce, distort or hinder competition in the market, including practices being agreements in restraint of competition, abuse of dominant market position, abuse of monopoly position and economic concentration.

Violations of competition-restricting agreements may lead to administrative sanctions or criminal penalties. Regarding the administrative penalties, competition-restricting agreements are penalised with a fine of up to 10% of the total revenue of the enterprise for the previous year and the potential confiscation of material evidence and facilities used to commit the breach.

Vietnam's new Penal Code 2015 as amended in 2017 (effective 1 January 2018), specifically imposes criminal sanctions for violations relating to competition-restricting agreements, and also introduces the concept of corporate criminal liability. Accordingly, a company can be:

- Fined up to VND5 billion, and be forced to suspend operations from between six months to two years.
- Prohibited from doing business or operating in certain business activities, or prohibited from raising capital from one to three years.

Unilateral conduct

An enterprise or a group of enterprises holding a dominant market position cannot abuse its position. A dominant market position exists when any of the following applies:

- One enterprise has at least a 30% market share of the relevant market.
- Two enterprises have at least a 50% market share.
- Three enterprises have at least a 65% market share.
- Four enterprises have at least a 75% market share.

When enterprises hold a dominant market position, they cannot:

- Sell goods or services at prices lower than aggregate costs in order to eliminate competitors.
- Impose irrational buy/sell prices of goods or services or fix minimum resale prices.
- Restrict production or distribution of goods, limiting markets.
- Impose dissimilar commercial conditions in similar transactions in order to create competitive inequality.
- Impose conditions on other enterprises to conclude purchase or sales contracts.
- Prevent new competitors from entering the market.

An enterprise will be considered to be a monopoly if there are no enterprises competing in the goods and services in which such enterprise conducts business in the relevant market. Monopolies are prohibited from engaging in the same practices as enterprises holding a dominant market position, and monopolies cannot impose disadvantageous conditions on their customers or abuse their monopolistic position to unilaterally cancel or change a signed agreement.

27. Are mergers and acquisitions subject to merger control?

The competition laws also govern "economic concentration activities" (including mergers, consolidations, acquisitions, and joint ventures) which may cause enterprises to gain a dominant market position. If enterprises participating in an economic concentration activity have a combined market share of over 50% of the relevant market, the economic concentration is prohibited with some specific exceptions.

If enterprises participating in economic concentration have a combined market share of between 30% and 50% of the relevant market, the companies must both:

- Notify the competition-managing agency (that is, the Vietnam Competition Authority).
- Obtain approval from the competition-managing agency before implementing economic concentration. This is unless such enterprises:
 - are considered small or medium sized as prescribed by law (after implementing their economic concentration); or
 - the economic concentration is deemed necessary to avoid the bankruptcy of the participating enterprises.

If the combined market share of the enterprises participating in economic concentration activity is lower than 30% of the relevant

market, they are not required to notify their economic concentration to the competition-managing agency.

The Competition Law applies to organisations and individuals conducting business, and foreign enterprises operating in Vietnam. Because of the broad applicable scope, even if the economic concentration of foreign enterprises takes place entirely abroad, if the parties participating in the economic concentration operate in Vietnam through their subsidiaries in Vietnam or have their products or services sold or rendered in the Vietnamese market, the enterprises participating in the economic concentration and the economic concentration activity may also be subject to the Competition Law.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents

A patent is defined as a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws. Certain subject matters are not patentable, including scientific discoveries, theories, mathematic methods, aesthetic solutions, animal varieties and methods of human/animal disease prevention, diagnosis and treatment, and so on. Claims of all formats are accepted excluding use claims, omnibus claims, and claims written as an improvement.

A patent is eligible for protection in the form of the grant of an invention patent when it satisfies the following conditions:

- It is novel.
- It is of an inventive nature.
- It is susceptible of industrial application.

Unless a patent is common knowledge, it must be protected in the form of the grant of a utility solution patent when it satisfies the following conditions:

- It is novel.
- It is susceptible of industrial application.

Registration. A patent application can be filed directly at the National Office of Intellectual Property (NOIP) of Vietnam or its branches or via post. The website provides guidance on the application procedure (<http://noip.gov.vn>).

Enforcement and remedies. The following authorities are empowered to settle patent infringement:

- **Administrative bodies.** These include:
 - **Inspectorates.** These include the Inspectorate of the Ministry of Science and Technology and the inspectorates of the Departments of Science and Technology at the provincial level, which deal with patent infringement by the administrative route (administrative action);
 - **Customs.** Customs can seize goods that infringe patents at the borders of Vietnam. To some extent, customs seizure can be regarded as another administrative action;
 - **Chairpersons of People's Committees.** Chairpersons at the provincial and district level do not directly handle patent infringement. However, they impose administrative sanctions on infringers in accordance with petitions from Customs or the Inspectorate of the Ministry of Science and Technology.
- **Judicial body (court).** The court has jurisdiction over patent infringement. There is no specialised IP tribunal that deals with patent infringement. IP dispute cases are treated similarly to other disputes when it comes to resolution by the courts.

Damages. Damages can include the following:

- **Physical damages.** Physical damages include loss of property, reduction of income and profits, loss of business opportunities, reasonable expenses for prevention and remedy of such damages.
- **Spiritual damages.** Spiritual damages include loss of honour, dignity, prestige, reputation and other spiritual damages.

Remedies. There are remedies available under:

- **Administration action.** In a typical patent infringement case, the remedies often include (among other things):
 - a statutory fine of up to VND500 million where it is impossible to determine the actual damages;
 - destruction of the infringing elements;
 - a forcible recovery of the illicit profits to the state treasury;
 - suspension of the business for up to three months and confiscation of the goods for destruction.
- **Civil action.** The following remedies are available under a patent infringement case heard in court:
 - compulsory termination of the act of patent infringement of intellectual property rights;
 - compulsory public rectification and apology;
 - compulsory performance of civil obligations;
 - compulsory compensation for damages;
 - compulsory destruction or distribution or put to use for non-commercial purposes of goods and materials, where the predominant use is for the production and trade of goods infringing intellectual property rights. This is provided that such distribution and use does not influence the exploitation of rights by the intellectual property rights holder.

There is no special prerequisite for the above remedies.

Length of protection. For an invention patent, protection begins from the issue of the patent and continues for 20 years from the date of filing.

For a utility solution patent, protection begins from the issue of the patent and continues for ten years from the date of filing.

There is no procedure for extending patent protection.

Trade marks

Definition and legal requirements. Vietnamese law provides that a trade mark is any sign used to distinguish goods or services of different organisations and individuals. It can be in the form of letters, words, pictures, figures, three-dimensional figures or a combination thereof, and in one or more colours. Trade marks include service, certification and collective marks.

A trade mark will be refused registration if it is:

- Indistinctive (such as simple geometric symbols).
- Identical or confusingly similar to a state flag or emblem.
- A symbol that merely indicates matters of time, quantity, quality, or characteristics of the goods or services (that is, a descriptive mark).
- Deceptive to consumers.
- A generic symbol or emblem.
- Confusingly similar to a registered mark or the subject of a prior application, a mark considered famous, widely used and recognised, or registered to a protected geographic location, or a registered industrial design;

- Contrary to the interests of society, public order or humanitarian principles.

Protection. The National Intellectual Property of Vietnam (NOIP), an agency under the Ministry of Science and Technology (MOST) is responsible for registration of trade marks in Vietnam. The NOIP's website (<http://noip.gov.vn/>) provides guidance on the application procedure.

Unregistered trade marks are only protected if they are well-known. Well-known marks are protected on the basis of use and are not dependent on registration procedures. The scope of protection for unregistered but well-known marks can be extended to not only similar marks for similar goods/services, but also for dissimilar goods/services if the use of such mark may affect the distinctiveness of the well-known mark or the mark registration was aimed at taking advantage of the reputation of the well-known mark.

Enforcement and remedies. The owner of a registered/well-known trade mark or its licensee (if allowed by the trade mark owner) can enforce its rights. The following enforcement actions are available:

- Mediation.
- Arbitration.
- Administrative action.
- Civil action.

Apart from the above actions, the owner can opt for border control measures to monitor and seize infringing goods crossing the borders of Vietnam. Generally, administrative action and civil action are the most popular enforcement actions in Vietnam. Administrative action is conducted by administrative enforcement bodies such as the Inspectorate of the Ministry of Science and Technology, the Market Surveillance Agency and Customs. Civil action is handled by the court.

Remedies. The remedies available under an administrative action include but are not limited to:

- A statutory fine of up to VND500 million where it is impossible to determine the actual damages.
- Destruction of the infringing elements.
- A forcible recovery of the illicit profits to the state treasury.
- A suspension of the business for up to three months and confiscation of the goods for destruction.

The remedies available under civil action are the same as those for patent infringement (*see above, Patents*).

The owner of an unregistered trade mark can take actions against a third party's use of the mark based on unfair-competition grounds.

Length of protection and renewability. A trade mark registration is valid for ten years from the filing date, and can be renewed without limit.

Registered designs

Definition. An industrial design means the outward appearance of a product embodied in three-dimensional configuration, lines, colours or a combination of such elements.

An industrial design will be eligible for protection when it satisfies the following conditions:

- It is novel.
- It is of a creative nature.
- It is susceptible of industrial application.

Registration. The NOIP registers industrial designs. Its website provides guidance on the procedure (

[http://noip.gov.vn/web/noip/home/vn?proxyUrl=/noip/cms_vn.nsf/\(agntDisplayContent\)?OpenAgent&UNID=B6858DD01E73A0E5472577730009631A](http://noip.gov.vn/web/noip/home/vn?proxyUrl=/noip/cms_vn.nsf/(agntDisplayContent)?OpenAgent&UNID=B6858DD01E73A0E5472577730009631A)).

Enforcement and remedies. Enforcement and remedies applicable to industrial design are typically the same as for trade marks (*see above, Trade marks*).

Length of protection and renewability. An industrial design patent will be valid from the grant date for five years and can be renewed for two consecutive terms, each of five years.

Unregistered designs

Definition and legal requirements. Vietnam does not have a statutory definition for unregistered designs as such. An unregistered design can be protected by well-known trade mark laws, unfair competition laws or copyright laws.

To be eligible for trade mark protection, the unregistered design must be recognised as well-known throughout Vietnam. The competent authorities, such as the NOIP or the court will have the power to recognise the well-known status of a trademark based on the criteria set out under Article 75 of the IP Law.

To enjoy protection under the unfair competition laws, the unregistered trade mark must be widely used in Vietnam to the effect that it has become the trade indication of the owner.

In some cases, the design of a product can be copyrighted. Therefore, to enjoy copyright protection, such unregistered design must be copyrightable.

Enforcement and remedies. *See above, Trade marks.*

Length of protection. This is not applicable. The owner must establish the well-known status or wide use of the unregistered mark whenever the owner starts a new enforcement action.

Copyright

Definition and legal requirements. Copyright means the right of an organisation or individual to works which such organisation or individual created or owns. The subject matter of copyright will consist of literary, artistic and scientific works. The subject matter of copyright-related rights consists of performances, audio and visual fixation, broadcasts and satellite signals carrying coded programmes.

Copyright arises from the moment a work is created and fixed in a certain material form, irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered. Furthermore, the related rights will arise at the moment a performance, audio and visual fixation, broadcast or satellite signal carrying coded programmes is fixed or displayed without causing loss or damage to copyright.

In fact, organisations and individuals who directly create such works are protected by copyright. The organisations and individuals include:

- Foreign organisations and individuals with works published for the first time in Vietnam and not yet published in any other country, or with works also published in Vietnam within 30 days after publication for the first time in another country.
- Foreign organisations and individuals with works that are protected in Vietnam under an international treaty on copyright to which the Socialist Republic of Vietnam is a member.

Protection. Copyright holders can register copyright at the Copyright Office of Vietnam (cov.gov.vn).

Enforcement and remedies. In Vietnam, generally, the legal enforcement actions against copyright infringement include:

Administrative action. To initiate the action, the right holder must file an application with the competent authorities such as the Inspectorate of Culture, Sport and Tourism, or Market Control

Bureau. The authority will then examine the request to determine whether the complaint suffices or not. When the complaint and its accompanying documents are found to be satisfactory, the competent authority will then raid the infringer. If infringement is found, the competent authority will impose sanctions on the infringer (for example, a fine, or removal of the infringing works).

The infringer will be compelled to cease the infringing acts and will receive a warning or monetary fine at least equal to the value of the infringing goods, but no more than five times the value of the infringing goods. Counterfeit goods may also be confiscated, together with the raw materials, equipment and means used to produce them. In addition, counterfeit goods may be ordered destroyed, distributed through non-commercial channels, or transported or re-exported out of Vietnam after the infringing elements of the goods have been removed.

- **Civil action.** To initiate a lawsuit, the right holder will need to file a petition and the necessary documents with the court. It usually takes six to 12 months for a case to come to hearing. If the parties are able to reach an amicable agreement before the judgment is issued, the court will acknowledge their agreement and issue its decision accordingly.

The civil remedies that courts will apply against a copyright infringer are the same as those listed for trade marks (see *above, Trade marks*).

- **Criminal action.** In Vietnam, criminal prosecutions have the power to award the harshest penalties for copyright infringement. However, due to a lack of guidelines and an inconsistency in regulations on the actions, criminal action against copyright infringement is practically infeasible at the moment, and is rarely pursued.

Length of protection and renewability. The moral rights of authors to give titles to their works, attach their real names or pseudonyms to their works, and protect the integrity of their works are protected for an indefinite term. The moral rights of authors to publish their works and the economic rights of authors are provided as follows:

- Cinematographic works, photographic works, stage works, applied art works and anonymous works will have a term of protection of 75 years as from the date of first publication. If a cinematographic work or stage work has not been published within 25 years from the date of its formulation, the term of protection is 100 years from the date of its formulation. When information on the author of an anonymous work appears, the term of protection of such work will be calculated according to the point below.
- Any work not provided in the point above will be protected for the whole life of the author and for 50 years after his/her death. In the case of a work of joint authors, the term of protection will expire in the 50th year after the death of the last surviving co-author.

Other

IP rights holders have the right to prevent unfair competition, including the following acts:

- Using commercial indications to cause confusion as to business entities, business activities or commercial origin of goods or services.
- Using commercial indications to cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services, or as to the conditions for provision of goods or services.
- Using marks protected in a country which is a contracting party to a treaty of which the Socialist Republic of Vietnam is a member and under which representatives or agents of owners of such marks are prohibited from using such marks, if users are

representatives or agents of the mark owners and such use is neither consented to by the mark owners nor justified.

- Registering or possessing the right to use or using domain names identical or confusingly similar to protected trade names or marks of others, or geographical indications without having the right to use, for the purpose of possessing such domain name, benefiting from or prejudicing the reputation and popularity of the respective mark, trade name or geographical indication.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Agency

The legal framework surrounding commercial agency agreements in Vietnam is relatively limited and the parties are generally free to decide on the contents of their agency agreement. Agency agreements are mainly regulated by the Law on Commerce No. 36/2005/QH11 adopted by the National Assembly of Vietnam on 14 June 2005 (Commercial Law). The Commercial Law defines "commercial agency" as a commercial activity whereby the principal and the agent agree for the agent to, on behalf of the principal, but in its own name, conduct the sale and purchase of goods or provide services to third parties (customers).

The principal can either be a lawfully established economic organisation or an individual who has a business registration, collectively referred to as a "business entity" under the Commercial Law. Likewise, the agent in a commercial agency relationship can only be a duly registered business entity under Vietnamese law.

There are no requirements under the law as to registration of the agency agreement.

An agent has the right to enter into agency agreements with more than one principal, unless the parties agree otherwise, or the law provides that an agent can only contract with one principal in relation to a certain product or service.

Unless otherwise agreed by the parties, the term of agency will terminate no earlier than 60 days from the date either party serves a notice of termination of the agency agreement on the other party. In case the principal serves such termination notice, the agent has the right to request the principal to pay damages for the period of time during which the agent acted as agent for the principal (unless otherwise agreed). The agent does not have the right to claim damages from the principal for the term for which the agent acted as agent for the principal if the agency agreement is terminated at the request of the agent.

There is no apparent authority doctrine under Vietnamese commercial agency law, meaning the common law doctrine under which the principal is bound by the agent's actions in relation to a third party, even though the agent had no actual authority to act on behalf of the principal. This is because the principal has indicated to the third party that the agent is authorised to act on its behalf and the third party has relied in good faith on such authority. In Vietnam, a transaction established by an agent that is outside of the scope of the principal's express authorisation cannot bind the principal.

Distribution

Distribution includes activities of wholesale (that is, sale to organisations), retail (that is, sale to individuals), agency for purchase and sale of goods, and franchising, and is regulated mainly by the Civil Code 2005 and the Commercial Law.

Companies engaged in distribution activities in Vietnam must be fully licensed to do so. Foreign investors can conduct distribution activities in Vietnam by establishing a wholly foreign owned Vietnamese entity. A company located offshore can also enter into

a distribution agreement with a local company to distribute the goods in Vietnam (provided that the local company is duly licensed to undertake the distribution activities in question). Vietnamese law regulates which goods are permitted for distribution and which are not.

The parties to a distribution agreement are generally free to agree on its content. There are no requirements under the law as to the registration of a distribution agreement, or requirements to pay compensation for failure to renew the agreement. The parties are further free to agree to exclusive distribution within a specifically appointed territory.

Franchising

Vietnam has specific legislation regulating franchising, both by local franchisors in Vietnam and foreign franchisors, based outside Vietnam.

A foreign franchisor does not need to have a legal presence in Vietnam. It can franchise in Vietnam without establishing a business entity in Vietnam. However, its franchise system needs to have been operated for at least one year prior to franchising in Vietnam. There are also certain registration requirements that a foreign franchisor will need to carry out. In particular, it must register its intended franchising activities with the Ministry of Industry and Trade (MOIT).

On a successful franchise registration, a foreign franchisor can grant a franchise to a franchisee in Vietnam. However, there are ongoing notification requirements that foreign franchisors must be aware of. As part of the franchise description document, the franchisor would have disclosed certain information in the registration process. Depending on the specific change, a foreign franchisor would need to notify the MOIT of such change either on an annual basis or an ad hoc basis (that is, within 30 days of when such change took place).

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

Generally, e-commerce transactions are regulated by the provisions of laws such as the:

- Law on Commerce No. 36/2005/QH11 adopted by the National Assembly of Vietnam on 14 June 2005 (Commercial Law).
- Law on Protection of Consumer Rights No. 59/2010/QH12 adopted by the National Assembly of Vietnam on 17 November 2010 (Consumer Protection Law).
- Law on Advertising No. 16/2012/QH13 adopted by the National Assembly of Vietnam on 21 June 2012 (Law on Advertising).

The above laws are of general applicability and can also apply to brick-and-mortar transactions.

A number of laws specifically regulate e-commerce activities, depending on the circumstances. These include:

- Decree No. 52/2013/ND-CP of the Government dated 16 May 2013 on e-commerce (Decree 52).
- Decree No. 72/2013/ND-CP of the Government dated 15 July 2013 on the management, provision and use of Internet services and online information (Decree 72).

E-commerce firms should closely examine the intended functionalities on their websites as these can trigger different regulations. For example, some e-commerce websites may feature simple games that users can play. These may raise different implications under Vietnam's online gaming regulations and position the e-commerce firm as a provider of online games.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

In Vietnam, some advertising-related legislation applies generally, such as the:

- Law on Commerce No. 36/2005/QH11 adopted by the National Assembly of Vietnam on 14 June 2005 (Commercial Law).
- Law on Advertising No. 16/2012/QH13 adopted by the National Assembly of Vietnam on 21 June 2012 (Law on Advertising).

Other laws only focus on particular types of advertising. For example, there is specific legislation relating to advertising pharmaceuticals which would not apply to other types of advertisements.

Advertising falls within the larger concept of "commercial enhancement" which is a legal term of art. Commercial enhancement additionally includes:

- Sales promotion activities.
- The display and introduction of goods and services.
- Trade fairs and exhibitions.

Those wishing to advertise should exercise care in determining if their intended advertising activity actually falls within a different category and may therefore trigger specific requirements. For example, sales promotion is defined as an act of commercial enhancement by a business entity aimed at enhancing the purchase and sale of goods and the provision of services by giving specified benefits to customers. These acts may include giving samples or trial goods, gifts or free services, discount programmes, coupons, contests, lucky draws and customer loyalty programmes, among other matters.

Promotional activities will also require that notifications are made to certain government authorities, and depending on the facts at hand, government approvals may be required.

The law relating to promotions is unique in that it is the only type of "commercial enhancement" that prohibits entities based outside of Vietnam from hiring Vietnamese business entities to engage in promotion activities on their behalf. In comparison, for the other three types of commercial enhancement (see above) including advertising, such entities are specifically allowed to hire Vietnamese entities to engage in the relevant types of commercial enhancement activities desired.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Data protection, more specifically, the right to privacy and confidentiality of information is a fundamental right enshrined in the Vietnamese Constitution.

There is no single comprehensive legal document regulating data privacy in Vietnam. However, there are a number of laws and regulations with provisions to protect personal data privacy. The key principle across these documents is that the information owner must consent to the collection, processing and use of their personal information and the use of such information must be in accordance with prior stated purposes. Sanctions, ranging from administrative sanctions and fines to criminal liability for particularly serious violations, are set out in legislation. Additionally, compensatory damages may be awarded in successful lawsuits.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

Product liability law in Vietnam is still underdeveloped. Law provisions on product liability are scattered between the following laws:

- **Law on Quality of Products and Goods 2007.** This provides that a manufacturer, importer, or a seller is responsible for paying full compensation to a victim if the concerned goods are defective.
- **Law on Consumer Protection 2010.** This lists out the general rights of a consumer in Vietnam.

- **Civil Code 2015.** This provides a contractual and tortious basis for a victim to seek damages from the other contracting party or a tortfeasor.

However, the provisions of the laws listed above are general and difficult to apply. So far, there have not been many cases in Vietnam's courts related to product liability. In practice, product liability law in Vietnam mostly concerns the compliance by producers with national product standards, and the administrative handling of violations of such standards. For example, if a product is found to not meet standards, it is most likely that the company will be subject to an administrative fine and sanctions (for example, being ordered to cease production). Few civil cases are concurrently taken. However, since Vietnamese nationals have become more cautious of their health and security conditions, it is possible that civil cases will increase in the future.

MAIN BUSINESS ORGANISATIONS

Ministry of Planning and Investment (MPI) (Bộ Kế hoạch và Đầu tư)

W www.mpi.gov.vn/en/Pages/default.aspx

Main activities. State management of planning, development, and statistics, including foreign investment.

Ministry of Industry and Trade (MOIT) (Bộ Công thương)

W www.moit.gov.vn/en/Pages/default.aspx

Main activities. State management of industry and trade, including import-export, energy, and consumer goods.

Ministry of Finance (MOF) (Bộ Tài chính)

W

Main activities. State management of finance, including state budget, taxes, national reserves, securities, and insurance.

General Department of Taxation (Tổng cục Thuế)

W

Main activities. State management of domestic revenues nationwide, including taxes, charges and fees.

Ministry of Labour – Invalids and Social Affairs (MOLISA) (Bộ Lao động Thương binh và Xã hội)

W

Main activities. State management of labour and employment, including foreign workers, trade unions, and social insurance.

ONLINE RESOURCES

Official Government Portal

W www.chinhphu.vn

Description. Official website of the Government of Vietnam. Legal documents in Vietnamese are fairly up-to-date, but only a limited number of English translations are available.

Thu Vien Phap Luat (Law Library)

W thuvienphapluat.vn

Description. Unofficial source of legal documents in Vietnamese and English. English translations are updated more frequently than on the government websites. Some content requires a paid subscription.

Practical Law Contributor profiles



Dr Vinh Quoc Nguyen
Partner

Tilleke & Gibbins
T +84 28 3936 2068
F +84 28 3936 2066
E vinh.n@tilleke.com
W www.tilleke.com

Professional qualifications. Doctor of Judicial Science; Meiji Gakuin University; LLM, Nagoya University; LLB, Hanoi University of Law; Practising Certificate from the Ministry of Justice of Vietnam

Areas of practice. Banking and finance; commercial transactions and M&A; real estate; labour and employment.

Languages. Vietnamese, English, Japanese

Professional associations/memberships. Ho Chi Minh City Bar Association, Vietnam International Arbitration Centre.

Publications

- *PLC Insurance and Reinsurance Global Guide* (Vietnam chapter).
- *PLC Commercial Real Estate Global Guide* (Vietnam chapter).
- *Multilaw Litigation and Dispute Resolution Practice Group: Enforcement of Foreign Judgments Project* (Vietnam chapter).
- Asian-MENA Counsel: "Tricks of the trade: a guide for M&A in Vietnam".
- Vietnam Economic Times: "Shifting Ground".



Kien Trung Trinh
Partner

Tilleke & Gibbins
T +84 24 3772 5567
F +84 24 3772 5568
E kien.tt@tilleke.com
W www.tilleke.com

Professional qualifications. LLB, Hanoi Law University; Practising Certificate from the Ministry of Justice of Vietnam

Areas of practice. Commercial transactions and M&A; corporate services; labour and employment; regulatory affairs.

Non-professional qualifications. BEc, Hanoi Foreign Trade University

Languages. Vietnamese, English

Professional associations/memberships. Hanoi Bar Association.

Publications

- *Practical Law Agricultural Law Global Guide* (Vietnam chapter).
- *Practical Law Employment and Employee Benefits Global Guide* (Vietnam chapter).
- *CILS International Employment Law* (Vietnam chapter).