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Since its establishment with just 60 members in 1998, the European Chamber of Commerce in Vietnam (EuroCham) has grown to represent over 1,000 European businesses, counting among its members some of the world’s leading enterprises. With offices in both Hanoi and Ho Chi Minh City, and Chapters in the Central, Northeastern and Southeastern regions of Vietnam, EuroCham’s mission is to represent the business interests of our members in Vietnam and to improve the business environment in the country for the benefit of all.

The Chamber is the leading organisation representing European business interests in Vietnam, and is also an umbrella organisation gathering affiliated European business associations: the Belgian-Luxembourg Chamber of Commerce in Vietnam (BeluxCham); the Central and Eastern European Chamber of Commerce in Vietnam (CEEC); the Chamber of Commerce and Industry Portugal-Vietnam (CCIPV); the Dutch Business Association Vietnam (DBAV); the French Chamber of Commerce and Industry in Vietnam (CCIFV); the German Business Association in Vietnam (GBA); the Italian Chamber of Commerce in Vietnam (ICham); the Nordic Chamber of Commerce in Vietnam (NordCham); and the Spanish Business Group in Vietnam (SBG). The British Business Group Vietnam (BBGV) and the Swiss Business Association (SBA) are close partner organisations. EuroCham is a founding member of the inter-foreign-chamber platform Vietnam Business Forum (VBF) and chaired it in 2018 for the first time since it was established in 1997.

EuroCham is a member of the European Business Organisation Worldwide Network ASBL (EBOWWN), representing European businesses in almost 40 countries across the globe and addressing common trade and investment-related issues to the European Commission. In the region, EuroCham is a member of the EU-ASEAN Business Council. Since the end of 2015, EuroCham has been the implementing partner of the South East Asia IPR SME Helpdesk, providing free-of-charge advice and support on intellectual property protection when entering and expanding in the ASEAN market. Since 2016, EuroCham is also a consortium partner of the EU-Vietnam Business Network (EVBN), an EU co-funded project under the ICI+ programme which aims to support EU small and medium enterprises interested in doing business in Vietnam, while promoting the country and ASEAN’s business opportunities in Europe. In 2017, EuroCham was awarded Best Large Chamber of the Year at the Asia Pacific International Chambers of Commerce Awards and in 2018 Eurocham received a Certificate of Merit from Prime Minister Nguyen Xuan Phuc for its contribution to Vietnam’s development.

For more information about EuroCham: www.eurochamvn.org
To download the Whitebook: www.eurochamvn.org/Whitebook
To access the Greenbook website: www.greenbookvietnam.com
MESSAGE FROM THE CO-CHAIRMEN

On behalf of EuroCham, we are proud to present the 11th edition of our Whitebook. This report is the culmination of the insights and expertise of our members, through their work in 16 dedicated Sector Committees.

Over the last 12 months since our last Whitebook, we have celebrated some historic milestones for our Chamber and for EU-Vietnam relations. In 2018, for the first time, EuroCham reached over 1,000 members. Since EuroCham was first formed in 1998, we have grown from representing just 60 companies to now counting over 1,000 European companies, investors and business leaders as EuroCham members, including some of the world’s leading enterprises in all sectors and industries.

EuroCham marked two decades in Vietnam in 2018, and we celebrated with a special Gala Dinner where we welcomed over 600 guests including EU ambassadors and the leaders of some of the biggest European enterprises in Vietnam. This followed ‘Meet Europe 2018’ where EuroCham brought together hundreds of our members with national and provincial leaders, including the Prime Minister, to facilitate stronger relationships between European enterprises and Vietnam’s national and provincial administrations.

Our profile in Europe continued to grow in 2018. In October, we led a Mission to Brussels to push for a swift ratification of the EU-Vietnam Free Trade Agreement (EVFTA). During this Mission, we met with 4 EU Commissioners, as well as senior officials from across the Commission and Parliament. Our delegation also spoke at the European Parliament of Enterprises, and at a public hearing of the European Parliament’s International Trade (INTA) Committee. EuroCham was also honoured to join the Prime Minister of Vietnam twice in Europe, first in Brussels and later at the World Economic Forum in Davos, Switzerland.

But if 2018 was about celebrating past success, 2019 is about looking to the future of EU-Vietnam relations. The EVFTA, which should be ratified soon, will open up new opportunities for companies and consumers in both Europe and Vietnam. Through a gradual tapering off of trade tariffs, enterprises in Vietnam will get greater access to Europe’s high-spending consumer market of over 500 million people. Meanwhile, imports will increase, giving consumers in Vietnam greater access to high-quality European goods like pharmaceutical and medical products, automobiles and wines & spirits at more affordable prices.

Just as European investment and know-how supported Vietnam through its modernisation over the last three decades, so the knowledge and expertise of our market-leading enterprises will support Vietnam during its continued growth and reform in the future. The Government is embracing the Fourth Industrial Revolution, and our members are dedicated to helping Vietnam unlock the advantages and accelerate the advancement of industry digitalisation and transformation through ICT start-up innovation and investment, helping Vietnam become even more competitive as it continues to leapfrog stages of socio-economic development.

Indeed, this is the goal of our Whitebook, now in its 11th edition. In it, we gather the insights and concerns of European business, and share their recommendations to help improve the trade and investment environment. This report is a snapshot of the continuous work we engage with through our Sector Committees and in dialogue with the national and provincial leadership of Vietnam. If taken on board and addressed, we believe that these recommendations will help to improve the business environment in Vietnam and ensure that the country can fulfil its potential as a top global business, trade and investment destination.
In 2018, global trade issues have taken centre stage of the world’s political agenda. Trade dynamics have been altered by a wave of protectionism, while disruptive technologies under the umbrella of the Industrial Revolution 4.0 challenge traditional modes of production and business models. Against this background, the EU, as the biggest player on the global trading scene uniting 28 countries, has continued to promote an open trade regime with a common strategy aimed at encouraging sustainable growth that benefits all.

The EU is the world’s largest exporter of manufactured goods and services, and is itself the biggest export market for around 80 countries. EU exports support 36 million jobs within the Member States; a further 20 million jobs are supported outside the EU, including many in developing countries. Being the world’s largest single market, the key to our success has been a regulatory framework based on transparency which promotes the confidence of businesses and investors. A clear rules-based system has also furthered our engagement with the world’s developing countries and facilitated trade relations.

In the face of increasing global tensions and a slowing economy, the EU and Vietnam have proven to be robust trade partners - the numbers speak for themselves. The EU continues to be one of the most important overseas markets for Vietnam, with the EU purchasing as much as 17 per cent of the country’s global exports in 2018. The two-way trade expanded to US$56.3 billion, placing the EU as Vietnam’s fourth-largest trading partner. Vietnam’s exports to the EU increased 11 per cent year-on-year, contributing to Vietnam’s surplus of US$28.7 billion. In terms of investment, European investors contributed to 139 projects in Vietnam, amounting to over US$1.068 billion in 2018, which have endorsed innovation and boosted the overall competitiveness of Vietnam’s economy.

In this context, the impending implementation of the EU-Vietnam Free Trade Agreement (EVFTA) will be an important step to further bridge our economies. The EVFTA commitments are based on principles of transparency, inclusive growth, fair trade and sustainability. As such, our shared goal is that of economic prosperity that is distributed fairly across society and creates opportunities for all. Crucial to succeeding in this has been Vietnam’s openness to market liberalisation and continued work in implementing international standards.

We are grateful for EuroCham’s sustained effort in promoting the reform process in Vietnam. This latest edition of the Whitebook is an excellent reference source for Government agencies seeking to foster a welcoming business environment, thus also reaping the maximum benefits offered by the EVFTA.
BeluxCham is a non-profit, non-governmental professional organisation providing and promoting trade relations between Belgium, Luxembourg and Vietnam. BeluxCham offers its assistance and market-knowledge to its members and/or potential companies from Belgium, Luxembourg and Vietnam that want to establish trade, business or open an office in one of these countries. Besides business activities and events, BeluxCham also provides social-oriented events where the Belgian, Luxembourg and Vietnamese communities can gain a better knowledge about each other’s cultural heritage.

BeluxCham also promotes and supports the economic trade missions from Belgium and Luxembourg to Vietnam, as well as supporting companies that want to have a better economic relationship with Belgium, Luxembourg or Vietnam. All Vietnamese, Belgian and Luxembourg companies that want to build strong ties are always welcome as BeluxCham members.

For more information, visit our website: www.beluxcham.com

The Central and Eastern European Chamber of Commerce (CEEC) was established in 2015 to enhance cooperation and develop and promote economic, finance, commerce, investment and trade relations between Vietnam and CEE countries. Since then we have been creating opportunities for professionals and social exchange in both Hanoi and Ho Chi Minh City. Our relations with Governmental Agencies, Diplomatic Bodies and Business Associations have been constantly extended through various Memoranda of Understanding (MoU), as well as intensified with Chambers of Commerce from CEE region.

We have been providing businesses with related services to our members. The “Soft-Landing” program, that includes market entry strategy, site selection, company formation and business development, is considered as an active, professional tool for newcomers to support companies’ establishment in Vietnam. To increase knowledge and understanding of the business environment in Vietnam, we introduced a “Doing Business in Vietnam” booklet. It is a diverse tool to facilitate outreach to companies by highlighting the potential in the Vietnamese market in general and with a special focus on some sectors.

The Whitebook is an important compendium of sector and cross-sector specific business issues in Vietnam. CEEC is eager to jointly improve the positive development of the business environment and Vietnam’s economy and is looking forward to the upcoming ratification of the EU-Vietnam Free Trade Agreement (EVFTA), which will bring a wide range of investment and trade opportunities to our present and future members as well as our Vietnamese partners.

For more information, visit our website: www.ceecvn.org, or contact us via email: office@ceecvn.org
The Dutch Business Association in Vietnam (DBAV) has been active in Vietnam’s business community since its establishment in 1999. Our membership comprises businesses of different sizes and industry sectors - from fresh start-ups to Global 2000. Understanding that while some might share similar business focus and interests, each member is unique in their vision and business venture; we always do our best to create and offer personalised benefits whenever possible. It’s our goal that all of our members enjoy the values and benefits of their memberships.

The DBAV organises a variety of networking opportunities, such as Ned Drinks and our annual Dutch Open golf tournament, as well as informative events on developments and trends in Vietnam affecting the business community, such as sector-specific luncheons and factory tours. We also closely cooperate with the Vietnam Chamber of Commerce in The Netherlands to provide a full scope of service to Vietnamese-Dutch affiliated communities in both countries.

As a participant to EuroCham, the DBAV has established strong connections with Government institutions and chambers of commerce in Vietnam. Through this network, DBAV creates a platform through which the Dutch business community is a fundamental part of the larger business community in Vietnam.

The DBAV maintains close links with the Consulate General of The Netherlands in Ho Chi Minh City and The Royal Netherlands Embassy in Hanoi in order to better assist new or expanding companies to acquire information on the Vietnamese market, policies and relevant local Government ministries.

For more information, visit our website: www.dbav.org.vn

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The Chamber of Commerce France-Vietnam (CCIFV) is a non-profit organisation created in 1998. It gathers 290 members and offers its services in Hanoi as well as in Ho Chi Minh City. CCIFV is part of a worldwide network which is composed of 123 French Chambers in 92 countries. The missions of the CCIFV are:

- Drive the French business community in Vietnam, in particular by helping the share of information and experiences between its members.
- Promote the image of France in Vietnam and facilitate the relationships between the two countries.
- Help the French companies along each step of their development projects in Vietnam by offering practical support and operational solutions such as market survey, partner search, HR and incubation services.
- Support Vietnamese companies willing to approach the French market via business missions and visits to major trade fairs in France.

For more information, visit our website: www.ccifv.org
The German Business Association (GBA), founded in 1995, approved and licensed by the People’s Committee of Ho Chi Minh City in 1998, is the voice and advocate of German businesses in Vietnam, fostering bilateral socio-economic relations between the two countries.

The GBA is one of the longest established business associations and a founding-member of EuroCham in Vietnam. It represents more than 260 German corporations and works for the best possible market environment and operating conditions for German companies in the country. It acts as a competence centre for its members, facilitating helpful information on business in Vietnam and establishing new contacts within the local community.

After the agreement for a strategic partnership between Germany and Vietnam was signed during a state visit of German chancellor Angela Merkel in 2011 the GBA decided to merge with the Delegate of German Industry and Commerce in Vietnam (GIC/AHK Vietnam) to establish the German-Vietnamese Chamber of Industry and Commerce. By joining forces, the two institutions will be able to even better serve German business interests in the country and thus actively encourage and support further German investment in Vietnam. The final establishment of a bi-national German-Vietnamese Chamber of Industry and Commerce is subject to final approval by the Vietnamese authorities.

In July 2018 the GBA’s and the GIC/AHK Vietnam’s offices have relocated to the Deutsches Haus Ho Chi Minh City, the pioneering premium grade - and award-winning - office tower located in the heart of the city. It’s not only the lighthouse project representing the strategic partnership between Germany and Vietnam but also home to the German Consulate General and many German and international companies.

The GBA regularly creates opportunities for professional as well as social exchange in both Hanoi and Ho Chi Minh City, with the annual Oktoberfests, the New Year’s Reception as one of its landmark events. For the full range of activities and membership benefits please have a look at the GBA website: www.gba-vietnam.org

The Italian Chamber of Commerce in Vietnam (ICHAM) started its activities at the end of 2008 and is now in its 11th year of operation. The Chamber currently has 2 offices based in Ho Chi Minh City and Hanoi with 81 members, among which are well-known Italian names: ENI, Generali, Ariston Thermo, Intesa Sanpaolo, Unicredit, UBI Banca, Piaggio, Datalogic, Bonfiglioli, Ghella, Perfetti Van Melle, Danieli, CAE, Carvico, Tenova, Paccorini, Interglobo, Savino del Bene, Microlys, GIVI, Boncafe, Itaco (Maserati), Ermenegildo Zegna and Segis, to name a few.

ICHAM’s main purpose is undertaking activities to support bilateral trade between Italy and Vietnam, including facilitating the activities of its members; organising trade missions, workshops and seminars; developing contacts and cooperation with institutions in Italy, with Banks and with the European Union, as a full member of EuroCham and partner of European Vietnam Business Network (EVBN) and networking with the Chamber of Commerce and with business associations. ICHAM has also signed an MoU with the Department of Foreign Affairs for Provinces (DFAP) - Ministry of Foreign Affairs of Vietnam, and with the General Department of Vietnam Customs; cooperated with the Vietnamese Embassy in Italy, providing information and support for Italian companies interested in Vietnam by conducting commercial feasibility reports, organising institutional and business missions to Vietnam and vice versa for Vietnamese companies to Italy, cooperating with the Italian Embassy in Hanoi and the General Consulate in Ho Chi Minh City and also interacting with local business associations and to promote ‘Made in Italy’ to Vietnam.

For more information, visit our website: www.icham.org
On behalf of the Nordic Chamber of Commerce in Vietnam (NordCham Vietnam) and the Nordic business community in Vietnam, we are excited to support the launch of the 11th edition of the important EuroCham Whitebook. The Whitebook addresses many issues of particular concern to Nordic businesses present in Vietnam, including sectors such as Industrial Products & Engineering, Manufacturing, Information Technology, Pharmaceutical & Healthcare, Green Growth, Sustainability and many more.

NordCham Vietnam’s outreach now includes all of Vietnam as we are approaching 100 members, and all of them see and support the great value of the Sector Committees. With our increasing member base and thus influence, not only on EuroCham Executive Committee but also in the Sector Committees, we aim together with our partner EuroCham to be involved and make a difference for all Nordics involved in the Vietnamese Business environment.

For more information, visit our website: www.nordchamvietnam.com

Soren Roed Pedersen
Chairman of NordCham Vietnam

The Spanish Business Group is a group of companies and professionals based in Vietnam. Our mission is to provide a unified voice to promote the business relations between Spain and Vietnam, offering assistance and a range of services to facilitate the access to the market. The initiative is backed by the Embassy of Spain in Hanoi and the Economic and Commercial Office of Spain in Ho Chi Minh City with the purpose of fostering the relationships between Spain and Vietnam in many directions:

- Create a favourable business environment for Spanish companies with interest in Vietnam.
- Identify commercial opportunities for Spanish companies, especially in industrial and service sectors.
- Boost economic, cultural and social interactions between Spain and Vietnam.
- Increase the Spanish presence in Vietnam, both enterprises and individuals, and serve as a hub to interconnect the Spanish community.

We aim to become an official chamber of commerce under EuroCham’s umbrella during this year 2019, with the main goal of strengthening our relationship not only with the Vietnamese business community but also with Europeans doing business in Vietnam.

For more information about the Spanish Business Group and our members, please visit our website www.spanishchambervn.com or contact us info@spanishchambervn.com

Sonia Aparicio Salcedo
Representative of the Spanish Business Group

We are an independent, non-profit organization that sets out to promote the interests of its Associates in respect to commercial links between businesses in the Socialist Republic of Vietnam and the Republic of Portugal. The Chamber is financed solely by the subscriptions of the Associates and through profits arising from Chamber events and the services provided. We promote bilateral trade and business opportunities between Portugal and Vietnam by assisting companies engaged in trade, to gain access to the appropriate services, guidance and contacts for the furtherance of their business.

Our mission is:

a) to protect and promote Associates’ interests, including the furthering of all types of product, service or technology exchange between Portugal and Vietnam;
b) to monitor proposed legislation which might affect Associates’ interests and the making of representations on their behalf to appropriate authorities;
c) to encourage the consultation by government authorities and industry associations on matters affecting the interests of Associates;
d) to provide a forum for business persons of all nationalities, who use Portuguese, Vietnamese and English as a business language, for expressing their views on topics affecting their business and social environment;
e) to present a positive image to the local community; wherever possible, using the Chamber’s activities to add value to the economic life of Portugal and Vietnam, and to demonstrate a strong spirit of integration and co-operation within that community;
f) to maximise the benefits of the Chamber’s relationship with its extensive Portugal-based and Vietnam-based network of contacts, in order to continually enhance the Chamber’s profile and credibility.

Sérgio Pereira da Silva
Chairman of CCIPV
www.ccipv.com
EuroCham is one of the largest foreign Business Associations in Vietnam. We are recognised by Vietnamese and European authorities as well as international organisations as a powerful and effective strategic and advocacy advisor for the business community in the country. We take seriously our role as a facilitator and bridge between the European business community and central and provincial Government and authorities, as well as European and regional institutions. EuroCham actively engages with many local and international stakeholders on different levels and through a wide range of forums. The Chamber is called as the key factor enhancing the cooperation and investment between the EU and Vietnam.

There have been considerable improvements in the business environment in Vietnam in recent years. However, a number of constraints to business growth and potential remain. If these issues are left unresolved, they could inhibit Vietnam’s sustainable growth and create detrimental conditions for both the local and foreign business communities. Our success and progress in addressing these issues is built on our Sector Committees and members. From individuals to start-up companies and multinational corporations, our members all have a significant role in making Vietnam a better business environment. EuroCham offers a plethora of opportunities for members to get involved in Chamber activities. Through our Sector Committees, for instance, EuroCham provides members with various channels to share and disseminate information, discuss, network and advocate business interests and issues.

Sector Committees provide an effective advocacy forum for our members to address common affairs through voicing business interests to the Vietnamese Government. Sector Committees represent a wide range of industries and are an integral part of EuroCham’s advocacy mission. Over the years, our Sector Committees have grown in both quantity and efficiency.

Over the years, EuroCham has built up 16 Sector Committees in various key industries, aiming to have better engagement in advocacy activities. Sector Committees’ scope of work includes meeting and discussing common topics and drafting EuroCham’s position papers which subsequently form the basis of our Whitebook and advocacy mandate. Other works also include contributing to the report containing the analysis on the implementation of the EU-Vietnam Free Trade Agreement and EuroCham publications; attending and speaking at EuroCham’s regular meetings and advocacy events and dialogues with Government, authorities.

Over the year 2018, we have received 216 letters from Government, have held 200 Sector Committees meetings and organized 73 Government meetings and organized many advocacy training, seminars, conferences. We provided our members with opportunities to talk directly with many high-level Government officials at meetings, dialogues and seminars such as: Prime Minister’s Advisory Council for Administrative Procedures Reform (ACAPR), Vietnam Business Forum (VBF) and Ministries to follow-up on the Whitebook issues.

On top of these high-profile public activities, we continue to advocate on behalf of our members and keep them informed about the important changes that affect their business. When our members raise concerns with the Government about trade and investment in Vietnam at our events, we follow up with the relevant Ministers to ensure that these issues remain high on their agenda. We also monitor legislative developments and new policies of the Vietnamese Government and follow their implementation at a national, provincial and local level to keep our members updated.

In 2018, we also organized meetings with high-level EU institutions to update on the positive changes for the preparation of the upcoming EVFTA. Together with our partners, we also expanded our activities to more region - oriented provincial outreach and organizing B2G (business to Government) events and meetings to facilitate and enhance investment and trade between EU and Vietnam.

In 2019, Advocacy continues to be the bridge between EU and Vietnam, facilitate for the ratification on the EVFTA as well as to support Eurocham Sector Committees and members to address and resolve their business issues and recommendations to the Vietnamese Government.
Free South-East Asia IPR advice for European SMEs

Available to all EU SMEs, the Helpdesk co-operates with European SME networks, chambers of commerce and industry associations to offer these services free of charge:

**Helpdesk Enquiry Service – Confidential Advice**
Individual SMEs and SME intermediaries can submit IPR enquiries directly to the Helpdesk via phone, email or in person, getting access to a panel of experts to receive **free and confidential first-line advice** within **3 working days**.

**Training Materials**
Industry and business-focused guides and training materials address IPR issues in the South-East Asia region by:
- **IP specific guides**, e.g. patents & trade marks;
- **Country IP factsheets**, IP overviews of each of the 10 South-East Asia countries;
- **Industry specific guides**, e.g. textiles, machinery, creative industries;
- **Business guides**, e.g. technology transfer, manufacturing.

**Online Services**
- The **multi-lingual** online portal provides easy access for all EU SMEs to Helpdesk information and services, including Helpdesk guides, event information, and webinar recordings.
- Users can subscribe to our **project newsletter**, and our Twitter, Facebook and LinkedIn feeds, to stay up to date on project activities and South-East Asia IPR news.

**Training Events and Webinars**
The Helpdesk organises training events and webinars in Europe and South-East Asia on South-East Asia IPR protection and enforcement, tailored to the needs of SMEs:
- **General IPR issues**, including IP registration and establishing an IP enforcement strategy;
- **Practical business challenges**, e.g. choosing business partners, attending trade fairs, licensing;
- **Industry specific trainings**;
- **One-to-one sessions**: free 20 minute one-on-one consultations with an IP expert are available at most training events;
- **Webinars**: 60 minute presentations and live Q&A, from the convenience of your own office or home. All recordings are available for free download from our webinar section and past sessions.

#knowbeforeyougo!

The South-East Asia IPR SME Helpdesk provides **free information and services** in the form of jargon-free first-line confidential advice on intellectual property and related issues, plus training materials and online resources.

The Helpdesk **raises awareness** about IPR matters in South-East Asia affecting European SMEs, and helps them make **informed IPR decisions**.
The following South-East Asia IPR SME Helpdesk publications comprise a range of expert-written guides that assist EU SMEs in understanding the IPR landscape in South-East Asia. Download them for free from our website (www.ipr-hub.eu) or scan the QR code below.

**Country Specific Factsheets**
- Brunei IP Country Factsheet
- Cambodia IP Country Factsheet
- Indonesia IP Country Factsheet
- Laos IP Country Factsheet
- Malaysia IP Country Factsheet
- Myanmar IP Country Factsheet
- Philippines IP Country Factsheet
- Singapore IP Country Factsheet
- Thailand IP Country Factsheet
- Vietnam IP Country Factsheet

**South-East Asia IP Guides**
- Patent Protection in South-East Asia
- Trade Mark Protection in South-East Asia
- Transfer of Technology to South-East Asia
- Software Protection in South-East Asia
- IPR Enforcement in South-East Asia
- Using Contracts to Protect your Intellectual Property
- How to Secure Effective Evidence of IP infringement in South-East Asia
- How to record Trade Marks with Customs
- IP Considerations in the Cleantech Industry in South-East Asia
- IP considerations in ICT Industry in South-East Asia
- and many more, plus translation of key guides into French, German and Italian at https://www.southeastasia-iprhelpdesk.eu/en/content/helpdesk-guides

**Working together**

For more information and to discuss how we can work together, please contact us:
Tel: +84 28 3825 8116 | Tel: +32 2 663 30 51
Email: question@southeastasia-iprhelpdesk.eu
Online: www.ipr-hub.eu

If you have a question about protecting intellectual property in any South-East Asia country, please contact our free confidential helpline at: question@southeastasia-iprhelpdesk.eu
The EU-Vietnam Business Network (EVBN) is a project co-founded by the European Union and established in 2014. The overall objective of EVBN is to increase exports & investments of the European Union (EU) to Vietnam in particular by SMEs as well as to strengthen the EU Business sector in Vietnam by facilitating market access.

**WE OFFER**

**Events & Business Services**
- Trade Mission: 3 - 4 day agenda with potential Vietnamese partners through B2B match making
- Events: exhibitions, trade shows, business luncheons
- Tailored services for individual companies

**Pre-market Consultation**
- Free-to-download market studies and reports
- “Ask the expert” portal on EVBN website
- Free database of service providers in Vietnam

**Business Incubation**
- Unique comprehensive startup facilities for European companies

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**The European Art of Living Exhibition**
14 - 16 June, 2019
InterContinental, Ho Chi Minh City

**Food & Beverage Trade Mission**
9 - 14 September, 2019
Ho Chi Minh City

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The structure of the Whitebook is designed to provide a concise view of the issues affecting European businesses in Vietnam. In line with this objective, for each chapter in the Whitebook, EuroCham has asked members engaged in our 16 Sector Committees to focus on the discussion of a maximum of three (3) key issues they believe the Vietnamese Government should address as a priority. The Whitebook 2019 also assesses how these concerns specifically affect Vietnam, for example, through impact on trade, growth or employment. Finally, the chapters put forward specific recommendations to help improve the current situation or resolve relevant challenges.

There are twenty (20) chapters in total; including eleven (11) cross-sectoral chapters and nine (9) sectoral chapters. Each chapter is thus organised as follows:

**KEY ISSUE**

**Relevant Government authorities**

**Issue description:** summary of the key concerns.

**Potential gains/concerns for Vietnam:** summary of the potential benefits or barriers to the Vietnamese economy/growth/employment etc.

**Recommendations:** specific recommendations to achieve improvements or help resolve the issues.
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OVERVIEW

Over the last 12 months, Vietnam has continued to integrate into the global economy and the international community. In November 2018, Vietnam became the 7th country to ratify the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the successor to the Trans-Pacific Partnership (TPP), alongside Japan, Canada, Australia, Singapore and others.1 The CPTPP is the latest in a long line of Free Trade Agreements signed in Vietnam, including the ASEAN Economic Community (AEC), which aims to reduce barriers to the movement of goods, services, capital, investment and skilled labour within the region.2

Looking ahead, the EU-Vietnam Free Trade Agreement (EVFTA) is set to be ratified and enter into force in 2019, opening up markets on both sides and bringing greater trade and investment opportunities for Vietnamese and European companies. Indeed, when all 16 of Vietnam’s Free Trade Agreements come into effect in 2020, the country will be among a huge economic network of 59 partners, including 5 permanent members of the United Nations (UN) Security Council, 15 members of the G20, and other emerging economies.

Vietnam’s greater international integration was highlighted throughout the last 12 months, with the Prime Minister of Vietnam making a number of high-profile international engagements. Vietnam organised the World Economic Forum (WEF) on ASEAN in September 2018 to promote entrepreneurialism and the 4th Industrial Revolution. In October 2018, the Prime Minister further strengthened ties with Europe, making high-profile visits to Denmark, Austria and Belgium, where he met with EU Council President Donald Tusk and EU Commission President Jean-Claude Juncker.3 In February 2019, the Prime Minister led a delegation to the World Economic Forum in Davos, Switzerland.4

REFORM AND PROGRESS

The last three decades have been a period of profound growth and development for Vietnam. The doi moi reforms of 1986, in which Vietnam embraced ‘socialist-oriented market economics’, triggered major socio-economic changes, transforming Vietnam from one of the poorest countries on earth to one of middle-income status.5 Vietnam is now one of the fastest-growing economies in the world, with an annual GDP per capita growth of 5.3 percent since doi moi – the second-strongest growth in the region, behind China.6 That strong economic growth has created new jobs and raised standards of living for millions of people. To highlight just how far Vietnam has come: In 1993, more than half of the population lived on less than US$1.90 a day. Now, that figure is just 3 per cent. Meanwhile, its GDP per capita has grown from US$360 in 1998 to over US$2,000 in 2018.

Moreover, infrastructure improvement has led to a dramatic uplift in living conditions: In 1993, less than half of households in Vietnam had access to electricity; today, access is almost universal. Even in the most rural areas and remote islands, electricity is available. More than 75 per cent of people now have access to clean water and sanitation, up from less than half the population. Vietnam has also achieved several of its Millennium Development Goals (MDG) ahead of time.7

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3 ‘PM sets off for ASEM 12, PG4, visits to European nations’, Vietnam News, 15 October 2018. Available at: <https://vietnamnews.vn/politics-laws/467789/pm-sets-off-for-asem-12-pg4-visits-to-european-nations.html#coGiOz2zfHPuUH97> last accessed on 29 December 2018.
7 Data from the World Bank. Available at: <https://data.worldbank.org/indicator/NY.GDP.PCAP.PC> last accessed on 13 July 2018.
VIETNAM’S ECONOMIC GROWTH

Vietnam’s economy grew 7.08 per cent in 2018, surpassing the 6.8 per cent growth in 2017 and recording its strongest growth for more than a decade. This growth is the result of robust domestic demand, as well as a rise in exports, manufacturing and foreign investment. Manufacturing continues to be the engine of Vietnam’s economic growth, seeing an almost 13 per cent rise in 2018. Meanwhile, the agricultural sector grew 3.76 per cent, industry and construction rose 8.85 per cent, and the service sector increased 7.03 per cent.8

Looking ahead, the Asian Development Bank (ADB) has predicted that Vietnam’s strong growth will continue in the short term, projected at 6.5 percent.9 Over the next few decades, it is predicted that Vietnam will be one of the fastest-growing economies in the world, with an estimated average annual growth rate of 5 per cent between 2014 and 2050.10 Vietnam’s demographic dividend is fuelling this growth: According to Deloitte, around 70 per cent of people in Vietnam are of working age. On top of this, domestic demand is high, rates of unemployment are low, and FDI inflows mean that exports remain strong.11 This growth is set to make Vietnam the 20th-largest economy in the world, and in the top 10 in Asia, in 2050.12

Today, this economic growth, combined with Vietnam’s favourable geography and a large, youthful and highly-educated working-age population, makes the country an attractive destination for foreign investors.13 More than 60 per cent of Vietnam’s population is under 35 years old,14 and the number of people living in urban areas is set to rise from 33 million in 2016 to 54 million – half of the total population – in 2035. This demographic dividend will help to drive Vietnam’s labour market in the coming decades.15

Through its Socio-Economic Development Strategy 2011-2020 (SEDS), the Government of Vietnam aims to make the country a modern, industrialised nation. In order to achieve this, SEDS has focused on structural reforms, environmental sustainability, social equity, and emerging issues of macro-economic stability. This requires changes to the banking system, market institutions and State-owned Enterprises (SOEs).16

VIETNAM AS AN ATTRACTIVE FDI DESTINATION

Vietnam’s stable macro-economic climate, with inflation remaining in the single digits, continues to increase investor confidence in this fast-growing market.17 Since becoming a member of the World Trade Organisation (WTO) in 2007, Vietnam has engaged in a process of reforming its domestic legislation to align it with international standards and this, in turn, has created a more attractive trade and investment environment for Foreign Direct Investment (FDI).

In fact, Vietnam’s low-cost of doing business, strong economic growth, booming middle class, and deregulated economic environment, make it an attractive destination for FDI.18 Indeed, Vietnam has a number of competitive advantages that make it attractive to foreign investors, including competitive production costs, good location in Southeast Asia, strong economic performance and growing domestic consumption.19 The country is placed 69th out of 190 countries worldwide in the World Bank’s Ease of Doing Business rankings, up from 82nd in 2016. To put that in perspective: Vietnam is ahead of the Asia-Pacific regional average, and also ahead of other countries in the region such as Indonesia (73), the Philippines (124) and Laos (154).20

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19 Vietnam highlights 2017: Investing in Vietnam, approaching the world; Deloitte, p. 3.
Vietnam has seen a significant growth in FDI since foreign investment was first permitted following the Law on Foreign Investment in 1987\(^1\), and over the last three decades the Government has continued to make significant administrative reforms to improve the trade and investment environment. Vietnam celebrated three decades of FDI in 2018, with disbursed FDI seeing a 9.1 per cent annual increase. Manufacturing made up the largest share of FDI in 2018, at 47 per cent of registered capital, with real estate (18.5 per cent) and retail (10.3 per cent) comprising the second and third-largest shares. Japan was the largest foreign investor in Vietnam, contributing 24 per cent of total FDI, with Korea and Singapore following close behind.\(^2\)

The Government continued to improve the trade and investment environment in 2018. For example, the Government issued 28 legal documents to reduce over 50 per cent (3,346 out of 6,191) of business conditions. Twenty-one legal documents were issued to reduce around two-thirds (6,776 out of 9,926) for types of goods under the specialised inspection, which helped to save almost VND 6.3 billion per year. The business climate has also improved and, according to the assessment of business, the business environment was enhanced in 2018 compared to 2017. We also appreciate the Government’s consideration and engagement of the business community in the process of law-making and administrative procedures, as this can also significantly contribute to the cutting of compliance costs.

We have also observed new Government efforts in establishing the National Committee on E-Government on the basis of the national committee for application of information technology. The Committee is chaired by the Prime Minister, and is tasked with researching and proposing guidelines, strategies, mechanisms and policies to create a favourable legal environment for the development of E-Government toward building a digital economy and society, thus facilitating the Fourth Industrial Revolution in Vietnam.

We further look forward to seeing positive results from the Government and individual Ministries in the future. For example, we welcome the decision of the Ministry of Finance to approve the decrease and simplification of 176 administrative procedures to support making business more efficient.

**VIETNAM AND THE EUROPEAN UNION**

The relationship between Vietnam and the EU has been growing stronger ever since formal ties were first established in 1990.\(^3\) Bilateral trade has been increasing over the last decade, as the graph below shows.

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Europe’s main exports to Vietnam include high-tech products such as pharmaceuticals, electrical machinery and equipment, aircraft and vehicles. Meanwhile, Vietnam’s largest exports to the EU include footwear, textiles and clothing, coffee, rice, seafood and furniture. The European Union is an important source of FDI for Vietnam, with a total investment stock of US$19.2 billion in 2017.\(^\text{25}\) Once ratified and implemented, the EVFTA will boost trade and investment between both sides. It will accelerate Vietnam’s growth and development, improve the country’s legal framework, strengthen its trade and investment environment, reduce barriers to trade, improve safety and quality standards and boost exports to the EU.

\[\text{EU-VIETNAM FREE TRADE AGREEMENT}\]

After finalising the negotiations in 2015, the process of adoption and ratification has been slow due to various factors. The main factor was the need to split the Free Trade Agreement into two parts in order to align it with the decision of the European Court of Justice on the competence sharing between the European Union and its Member States. Instead of having one single agreement, the so-called “mixed” agreement implied double ratification by EU institutions and one by the Member States and ratification of individual members according to the constitutional rules.

The Agreement has been split into two parts: The trade part and the Investment Protection Agreement (IPA). The trade part is to be adopted and ratified by EU institutions (the EU Council and EU Parliament) whereas the IPA which will continue to require the individual Member States’ ratification. Against this background, it appears unlikely that the ratification process can be concluded before the coming elections of the EU Parliament. Therefore, it can be expected that the procedure will be completed by the end of 2019 at best.

This is despite the concerted efforts and activities of EuroCham, whose Executive Board members and Sector Committees have visited the EU institutions and partners in 2017 and 2018. We participated in the EU Parliament monitoring group (INTA Committee) sessions, as well as meetings with many EU Commissioners. This delay is

\[\text{Source: European Commission Directorate General for Trade}^{24}\]


\[\text{25 Ibid.}\]
somewhat unfortunate, as European investors are exposed to the competition of third parties who already benefit from preferential FTAs like the ASEAN Free Trade Agreement or CPTPP. In any case, the challenge remains in the form of the pending approval of the EU Parliament.

From EuroCham’s discussions in the EU Parliament it appears that, despite all the undisputed economic benefits for both sides of this milestone agreement, there remain some concerns from certain MEPs with respect to some social and labour rights issues as well as cyber security legislation. On both issues, EuroCham and its Sector Committees have shared extensive analysis, particularly HR & Training and Information & Communication Technology. At this stage, EuroCham would like to emphasise the importance of perceptions in the public outside and inside of Vietnam, particularly through an open, structured dialogue with Vietnamese authorities and various stakeholders, among which EuroCham is already playing its full role.

Our HR & Training Sector Committee has raised that the observance of international standards will be critical and, in particular, the speedy ratification of ILO Conventions will be decisive. However, EuroCham and its members are willing to play an active role in promoting CSR among its members and within EuroCham’s business networks and partners.

On cyber security, EuroCham’s recent internal survey, conducted in quarter 4 2018, has shown that 67 per cent of our surveyed members in Vietnam as using cloud storage or other forms of cross-border data storage outside of Vietnam. Ninety-eight per cent of our members say that it is important that their operations in Vietnam comply with international corporate standards on data protection, confidentiality and security. Meanwhile, 68 per cent of respondents believe that measures to prevent the use of cloud storage or compliance with international standards will negatively impact their investment and business plans in Vietnam in the future.

Against this background, over-expanded data localisation appears to be a major deterrent for FDIs and a genuine burden for conducting business in Vietnam. Data localisation requirements elsewhere in Asia have proven ineffective. Vietnam could soon be the only ASEAN country with national data registration requirements. According to recent studies, this could reduce Vietnam’s GDP growth and cut off companies from the country imposing such requirements from international services, economies of scale by cloud computing and considerably raise their costs. Access to the data of companies’ customers is another sensitive topic. It involves the companies’ ethics, brand, reputation and codes of conduct. It could even potentially entail their legal liability based on contractual relationships with their customers or based on the laws within EU Member States.
EXECUTIVE SUMMARY

OVERVIEW OF VIETNAM’S BUSINESS CLIMATE

Since the publication of our last Whitebook in March 2018, the Government has continued to reform Vietnam’s legislative framework to make the country a more attractive trade and investment environment.

Through our Business Climate Index (BCI), EuroCham has been taking the pulse of European businesses operating in Vietnam since 2010. The BCI gives us up-to-date, on-the-ground insight from member companies and their perceptions of the business environment each quarter. Through our questionnaire, EuroCham members give us their view of the business situation and outlook in the Vietnamese market. Our most recent BCI shows that European companies remain positive about the business environment, with sentiment in quarter 4 of 2018 at the joint-highest level since the end of 2016.

However, despite this positive sentiment, more remains to be done. Vietnam dropped three places to 74th in the 2018 World Economic Forum's (WEF) Global Competitiveness report, which named Vietnam the 6th most-competitive economy in Southeast Asia behind Singapore (2nd), Malaysia (25th), Thailand (38th), and the Philippines (56th) but ahead of Cambodia (110th) and Laos (112th).

The Government recognises these challenges, and has passed a series of Resolutions to improve the business environment and increase Vietnam’s competitiveness, aiming to reach the ASEAN-4 average in 2020. The Government’s commitment to greater international integration is also helping to address this. Vietnam’s involvement in 16 bilateral and multilateral FTAs with 56 economies worldwide has led to the Government taking

Source: EuroCham Business Climate Index 2018

further steps to reform its administrative procedures, improve the legal framework to create a more favourable business climate, restructure State-Owned Enterprises (SOEs) and ensure more transparent administration.

EuroCham, and our 16 Sector Committees, are dedicated to helping to improve the trade and investment in Vietnam for the benefit of all. In the rest of this chapter, we highlight the sector-specific issues and recommendations that our members believe will contribute to the Government’s aims to make Vietnam a more attractive, competitive country in which to do business.

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**SUMMARY OF KEY ISSUES AND RECOMMENDATIONS**

**I. IMPROVING THE LIVING CONDITIONS OF THE PEOPLE**

1. EuroCham Healthcare Forum

   a. Working together towards life sciences sector development

      i. Strengthen the dialogue between Government, industry and relevant stakeholders to identify holistic policies that, on the one hand, address short-term issues that arise and, on the other hand, ensure benefits for patients, Government and industry alike, while simultaneously implementing recent international trade agreements successfully.

      ii. Create a predictable and outward-looking legal framework for foreign companies to operate and become long-term partners in Vietnam. This should include incentives that encourage long-term investment from MNCs for local manufacturing, technology transfer, investments in local capabilities and medical education.

      iii. Establish an inter-Ministerial Taskforce under the leadership of an appointed senior Government representative to develop a Roadmap for sector development.

   b. Enabling Public-Private Partnership

      i. Enable a legal framework (guiding Circular of MOH) for innovative (Service-based) PPPs in healthcare and integration into the National Healthcare Financing Strategy.

      ii. Vietnam should support the creation and development of a professional homecare scheme that empowers patient access to treatment with the involvement of healthcare professionals, in order to reduce the number of hospital visits, especially by patients with chronic diseases.

   c. Strengthening ethical standards in healthcare

      The HCF invites all stakeholders in healthcare to join our efforts in promoting high ethical and compliance standards, through:

      i. Industry associations – foreign and local – adopting industry self-regulated Codes of Ethics with the same high ethical standards.

      ii. Enhance dialogues with all stakeholders in healthcare to promote high ethical standards, through the forum enabled by the Multi-stakeholder Consensus Framework for Ethical Collaboration in Vietnam, which we have proudly signed with the medical community, pharmaceutical and medical device industry associations

2. International Quality Medicines – Generic and Biosimilar

   **Generic**

   a. Off-patent pharmaceutical differentiation

      i. Upgrade differentiated category mechanisms in hospital tenders, taking into consideration the real-life patient outcome benefit factor.
ii. Implement the Multi-Criteria Decision Analysis (MCDA) evaluation in drug decision making, i.e. the National Reimbursement Drug List (NRDL), as this will ensure a comprehensive and transparent mechanism.

iii. Following discussion during the Conference, adopting the MCDA framework is strongly recommended in order to support drug decision making in Vietnam, especially in the Drug Procurement (tender) process of OPPs.

iv. Introduce a faster registration timeline for high-quality OPP and an effective product introduction and visa approval process to ensure such products are being introduced in a timely manner.

b. Affordable treatment options for Vietnamese patients

i. The Government should review product categorisation, such as branded or generics, in light of experience and data collected in recent years. The process should be revised to ensure that it is delivering the desired objectives, whilst ensuring continuous improvement in cost containment.

ii. Ministry of Health should further facilitate the home treatment concept (out-patients) through favourable reimbursement schemes in order to reduce the number of hospital visits, especially by patients with chronic diseases. This will limit out-of-pocket payment for patients.

c. Sustainable supply source for local demand

i. The Government should have clear policies and guarantees to strongly support the long-term presence and investment of foreign investors in the Vietnamese market, ensuring 80 per cent of domestic demand can be met by local qualified producers in the coming years.

ii. Continue an advanced categorisation of the procurement process in Vietnam that will present opportunities for improvement, deliver benefits to the Government and control the budget.

iii. The relevant authorities should have measurements for the actual volume which suppliers must strictly commit to deliver, and a mechanism should be set up to allow hospitals to buy a 2nd choice, and for the insurance to reimburse the same value as the winning tender – in cases of limited supplies or unavailability.

Biosimilar

d. Increasing patient access to state-of-the-art therapies

Based on EU experience, the Government should consider and facilitate the introduction of high-quality biosimilar medicines to reduce the health expenditure and balance the healthcare expectations.

3. Medical Devices and Diagnostics

a. Management of medical devices in Vietnam

i. Supplement human resources with professional qualifications and experience and improve the online circulation registration system to timely appraise and approve all circulation registration dossiers submitted before the 31st of December 2019.

ii. Promulgate regulations on registration of changes that have been and are in the circulation licensing process.

iii. Implement a special licensing mechanism allowing ‘used’ medical devices to be temporarily imported into Vietnam for specific purposes.

b. Medical device socialisation and machine installation in hospitals

i. Examine the public-private model in the healthcare sector and provide diverse and feasible socialisation models.

ii. As soon as possible, issue official documents of consistent policy from relevant Ministries regarding the model of placing equipment in public health establishments, to create an open and transparent legal framework.
ii. Circulate the documents and provide training for relevant Ministries to allow better understanding of the policy as well as full compliance with the law.

c. Regulations on Value-Added Tax for imported medical devices

i. Ensure consistency in the management of imported medical devices among related Ministries and sectors.

ii. Ensure consistency in the application of the VAT rate of 5 per cent to imported medical equipment.

iii. Promulgate documents guiding the application of VAT rates to imported medical equipment in the shortest time.

4. Pharma Group

a. Fast and sustainable patient access to innovative medicines though effective implementation of key legislations

i. An optimised drug registration process that harmonises regulatory requirements with international guidelines and regional practices, and a frequent review mechanism of the reimbursement list, will accelerate access to new innovative medicines for Vietnamese patients and reduce unnecessary administrative burden.

ii. Given the sizable role that Government procurement plays in Vietnam, and the already low volume of brand name medicines in public hospitals (4%), the price negotiation mechanism identified for the procurement of off-patent brand name medicines with multiple generics from group 1 (or from ICH countries) will help to ensure their continued availability in the hospital channel, secure doctors’ choice and medicine availability for patients, and also help incentivise companies to come onshore and invest in localised manufacturing and technology transfer.

PG commits to support the effective implementation of the new Registration, Reimbursement, Tender and Toll Manufacturing Circulars.

b. The role and contribution of the innovative pharmaceutical industry to the development of a vibrant and innovative healthcare sector

i. Further to the innovative pharmaceutical industry’s mission to bring high quality medicines to Vietnam, the industry has a role to play in the development of a modernised healthcare system and healthcare sector. Support from the Government, MOH and relevant Ministries for pharmaceutical companies’ smooth transition, without disruption, from the current Representative Office operating model to the establishment of Foreign Invested Enterprises (FIEs) will ensure companies can continue to fulfil obligations on quality, safety and pharmacovigilance, and expand investment in Vietnam.

ii. Over and above a smooth transition, enablers and incentives relating to market access, government procurement and others (such as incentives for: toll manufacturing, technology transfer, investments in facilities and capability development, in patient education etc.) should be provided in legislations. This would facilitate long-term commitments from MNCs, leading to an enhancement of Vietnamese manufacturing capabilities and eventually export.

iii. Effective implementation and enforcement mechanisms for Intellectual Property and data protection rights, in line with EVFTA commitments, will create a more predictable environment for investment, promote innovation, and help address the critical health issue of counterfeit medicines.

iv. To provide data points to support the Government’s continued development of policies that further incentivise FDI, partnership between foreign and local, improve business conditions and enhance competitiveness of Vietnam pharma sector, PG looks forward to working with the Government and experts in 2019 on studies to measure the clinical, societal and economic value that the innovative pharmaceutical sector can contribute. This will also set the ground for the development of a roadmap that enables Vietnam to become a regional hub for innovative pharmaceutical manufacturing. Furthermore, we fully support the establishment of an inter-Ministerial Taskforce to develop and implement the roadmap for developing Vietnam pharmaceutical and life sciences sector.
c. Working together for an inclusive, forward-looking and sustainable healthcare financing system for Vietnam

We recommend a continuous and open dialogue and consultation to:

i. Enable a legal framework (guiding Circular) for innovative (service-based) Public-Private Partnerships in healthcare and integration into the National Healthcare Financing Strategy.

ii. Integrate in the upcoming revision of the Health Insurance Law a framework to adjust and determine the role of private health insurance to UHC via political, direct and indirect financial objectives. Meanwhile, pilot disease and therapeutic areas providing CompHI and SuppHI should be selected to facilitate alignment in the short run.

5. Nutritional Food Group

a. Proposed excise tax on sugary drinks

i. Replace the term ‘sugar-sweetened beverage’ with ‘sugar-sweetened thirst-quenching beverage’. This clearly communicates the products’ use, making it easy for State management bodies to distinguish thirst-quenching beverages from products with different uses, facilitates the implementation of the Law and aligns with the requirement of specifying product uses stipulated in Decree 43, and truthfully reflects the purpose of the Special Consumption Tax, which is to tax sugar-sweetened thirst-quenching beverages with the aim of reducing consumption of unhealthy products.

ii. Exclude ‘milk, milk products and functional foods’ from the coverage of SCT’s taxable items, as these products play a critical role in achieving national goals of improving public health in Resolution 20 and Decision 1092.

6. Food, Agri and Aqua Business

a. Traceability and accountability through an animal identification and recording system

i. Finance the setting up of an identification and recording system containing a traceability component, starting with a product, such as pig, in which Vietnam is competitive and has export potential.

ii. Roll-out the HCMC pilot nationally, raise awareness of the importance of implementing the HCMC program to increase the reputation of Vietnamese products, food safety and exports, and encourage the Government at all levels to accept, support and implement this system.

iii. Introduce an annual registration fee for this system and a fee per animal, or follow the HCMC finance model, draft regulations to prevent the sale of products that are being examined and tested, and look at international best practice for traceability and use this where necessary to improve the situation in Vietnam.

iv. Improve food safety through involving the producers and committing them to supply safe food products.

b. Registration process – initial and renewal

i. Create a one-stop shop for products dedicated to animal nutrition, regardless of species.

ii. Lighten the registration process – possibly using an online platform - especially when products are registered and freely sold in the country of origin.

iii. Effectively prepare for the implementation of the SPS commitments under the EVFTA upon day one of entry into force. Recognise the EU as a single entity and put in place a single and transparent procedure for all agro-food imports from the EU, irrespective of the EU Member State. This could be done through a specific Circular or decision covering EU imports.
c. Fertilizer law  
    i. Review tolerance levels of K2O and do not differentiate between the K2O levels in the products in order to harmonise K2O tolerance to 90 per cent or 93 per cent at most for all NPKs.  
    ii. Instead of field trials, focus on physical and chemical checks/analysis as part of the registration process.

7. CropLife Vietnam  

**Plant Science:** In order to ensure the competitiveness of Vietnamese farmers and the future investment in Agricultural innovation:  

    i. Export support in partnership with trading partners, provide information and knowledge on crop protection to local authorities and farmers to ensure high value crops have the highest quality standards, and meet maximum residue limits (MRL) requirements for export abroad.  
    ii. Crop protection tools are properly assessed through a consistent, scientifically rigorous process in line with internationally accepted methods and standards. Such assessments need to be conducted by scientific experts and a suitable timeline should apply to allow for a thorough review.  
    iii. Vietnamese farmers should be encouraged to have access to safe crop protection products supported by high quality training and education. This will ensure that farmers continue to produce safe, affordable and nutritious food for the community and export.  
    iv. Strengthen collaboration to develop appropriate solutions for a science-based, predictable regulatory framework on genetically modified technology which will help Vietnam achieve its development goals and improve farmer incomes.

8. Green Growth  

a. Water and waste management, air quality control and waste-to-energy  

    i. Create a task force for effectively enforcing current wastewater treatment standards, and focus on industrial parks that dump untreated wastewater into the environment and implementing measures to seriously sanction offenders to deter others.

b. Accelerate private investment in water and wastewater treatment solutions  

    i. Move toward a demand-driven pricing model for wastewater treatment, coordinate the implementation of wastewater treatment and environmental protection fee regulations to remove uncertainties; and provide sustainable conditions for investments in water SOEs.

c. Waste management and e-waste recycling  

    i. Clarify the true reasons for non-compliance with current environmental regulations concerning waste treatment, implement Decision 491 and its goals by providing a conducive business environment for compliant waste management businesses, and clear, enforceable guidelines and timelines should be provided for the approval of WTE projects and their implementation should be accelerated.

d. Air quality control  

    i. Introduce specific policy targets and regulations for air quality control and emissions, tax coal power plants, cement factories and other major polluters according to the estimated socio-economic and health impact, and accelerate the development of the public transportation sector.

e. Plastic bag pollution  

    i. Implement the Prime Minister’s decisions as promulgated, strictly enforce punishments on cases infringing
waste and water treatment regulations, and gradually limit non-biodegradable polythene bags along with a complete ban of use of non-biodegradable polythene bags after two – five years.

ii. Classification of domestic wastes at household level should enable cost-effective treatment of domestic wastes and private investors’ participation in this sector.

iii. Besides single-use plastic bags also reduce the use of other non-biodegradable plastic products, such as straws, cups, and packaging.

f. Sustainable buildings and energy efficiency

i. The Ministry of Industry and Trade should publish a Roadmap to Retail Electricity Tariffs for Commercial and Industrial power consumers, indicating the likely inflation in electricity tariffs for building owners to 2020 and 2025.

ii. The use of Green Building (GB) standards should be promoted. We would support a move to recognise multiple systems for use in Vietnam, letting the market determine which are practical and useful.

iii. The application of Non-Fired Brick (NFB) solutions should be enforced and promoted through the Vietnam Association of Building Materials (VABM), and buildings should become more energy efficient.

iv. A clear urban planning showcase should be produced, including not just green buildings but also water, waste, traffic and environmental livelihood improvement solutions. This macro-level program of incentives and policies could help Vietnam move towards its vision of a Smart City.

9. Energy and Electricity

a. Made in Vietnam Energy Plan

i. The Government should pursue a more sustainable energy path that attracts new investment, promote private investment into renewable electricity generation, and adopt energy efficiency measures.

II. INCREASING CONSUMER CHOICE

1. Wine & Spirits

a. Alcohol social policy

We have seen significant progress in the latest version of the Draft Law which has addressed, in part, some key issues such as the protection of public health and control of illicit, low-quality alcohol. However, some issues on the name of the law; ban on sales via internet; restrictions on advertisement, promotions and sponsorship; health warning labels; as well as enforcement, education and communication.

b. Special Consumption Tax

i. The European W&S industry has suffered from successive reforms of the SCT, combining a progressive increase of the tax rate and a substantial increase of the taxable price since 2016 which is fully nullify the benefits of the tariff reductions negotiated under the FTA. It further intensifies the economic incentive for illicit cross-border activities and counterfeit.

ii. W&S SC would like to request greater transparency in MOF’s evaluation of the full impact of SCT regime reforms since 2016 before having any new proposal. We are willing to engage with the Government and Ministry of Finance to initiate a positive dialogue and explore a sustainable and evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption, including a roadmap to bring unrecorded alcohol into the formal economy.
c. Restrictions on eE-commerce

i. In Vietnam, the sale of alcohol above 15 abv. is prohibited on the Internet which is against the trend of the 4th Industrial Revolution. This ban exposes consumer to greater risk of purchasing smuggled, unclear origin, low-quality or counterfeit products which could have severe health implications for them.

ii. W&S SC would like to recommend that instead of an absolute ban, allowing e-commerce sales of alcohol with specific business conditions should be considered. We would readily collaborate with the Vietnamese authorities to contribute to the achievement and enforcement of appropriate tools to control and monitor those online sales, such as obtaining liquor trading license, payment by credit cards or bank transfer, ID verification etc.

d. Customs valuation framework

i. W&S SC would like to co-operate with and support the Government to apply the same tax management direction, focusing on substance over form in the Customs valuation process. This ensures compliance with WTO rules, improves transparency, and allows companies to set the right price for the market which benefits consumers and ultimately boosts imports and Customs revenue.

ii. The Government should assess the long-term impact of these practices vis-à-vis business confidence. In addition, W&S SC seeks more transparency from the Government to share their rationale and evidence as to how they come to their decisions with affected businesses.

2. Mobility: Automotive

a. Special Consumption Tax

i. For imported passenger car brands, the SCT cap for the calculations should be raised from 7 to 15 per cent for dealers selling low-volume to generate the necessary profit to comply with brand standards and maintain operations. Because of different interpretations of ‘related parties’, the Customs regulations on SCT should follow a standard calculation regardless of the ownership of the distribution channel and late penalty charges due to the unclear guidelines over the period 2016-2018 should be waived.

b. Import Duty for CKD components

i. Import Duty for CKD components should be eliminated without condition regardless of their source. For the development of the industry in general, support to grow volume is essential in Vietnam. Diversification of suppliers in the market will facilitate sustainable development and meet increasing consumer demand.

c. Homologation requirements for automotive businesses

i. Ministry of Transport should implement the assignment revising current homologation process for imported CBU. The homologation process for imported CBU should be allowed after customs clearance and with the possibility to test one model the first time only instead of the lot-by-lot homologation currently required for same models with each shipment.

d. Certification of automotive safety parts

i. Under Decree 116, importers and assemblers are legally responsible for repair, technical recall and warranty, however Circular 41 and Decree 74 delay such implementation. Thus, Ministry of Transport should revise Circular 41 in order to support enterprises as well as the Vietnam automobile industry and its customers by revising the scope of this Circular.

e. Homologation for CKD components

i. ECE certificates should be accepted for parts to avoid unnecessary cost due to double tests/audits, and a proper implementation roadmap is necessary.
f. Importation of re-manufactured parts

i. The Government should allow the import of re-manufactured parts with the same treatment as that provided to new-like goods, with specific labelling of remanufactured goods in order to prevent deception of consumers.

g. Standards for electric vehicles

i. The definition and corresponding import tax rate of Electric Vehicles following HS code remains vague and should be clarified, a consistent national charging plug standard should be identified, and the homologation process should align to international standards and reduce time-to-market.

h. Importation/exportation

i. Allow transshipment as well temporary import for export for foreign invested automotive companies, remove the new restrictions to trade on transshipment limitation for vehicles such as basic homologation for transshipped vehicles as their final destination is not Vietnam, and instruct Customs that multimodal transportation for transshipment is allowed.

3. Mobility: Motorcycles

a. Ban on motorcycles circulating in big cities by 2030

i. Local authorities could consider other, more effective solutions to address the issues of traffic congestion, pollution and traffic accidents in big cities.

ii. Research should be undertaken, referring to and adopting best practice from other motorised countries such as Taiwan, where advanced public transport and traffic infrastructure are used in harmony with motorcycles, and European well-developed cities such as Milan and Paris, successfully implementing limited traffic zones.

iii. Only out-of-date motorcycles should be banned, as these are the main cause of air pollution, and awareness on traffic safety should be raised.

b. Management of imported materials for export production

i. The Government should consider revising the current customs rules in order to enable the simplification of the management process required for enterprises who import both E31 and A12. A custom declaration and reconciliation mechanism, feasible for implementation in complex production contexts, is needed. This is important to encourage exports and to align with recent Government policy on administration and tax procedure reform.

c. Intellectual Property Rights protection

i. Different and independent centers of evaluation of IP-infringing cases should be created, and other IP-relevant authorities (such as NOIP) should be authorised to have a stronger voice on IP issues.

ii. A mechanism for IPR owners to appeal VIPRI's evaluation should be implemented, specialised tribunals on IP matters should be established, and cooperation should be enhanced between enforcement bodies and relevant agencies.
III. LEGAL FRAMEWORK

1. Judicial and arbitral recourse

a. The Vietnamese Courts

i. EuroCham members are following with great interest the current process of publicising judgements of Vietnamese courts. Our members note the launch of two websites managed by the People’s Supreme Court and encourage the publication of the judgments of all court levels without further delay.

ii. The Law on Lawyers should be amended to allow fully qualified Vietnamese lawyers to represent clients before Vietnamese courts, even if she or he is working for a foreign law firm. This has been advocated in previous editions of our Whitebook.

b. Arbitration in Vietnam

i. The Supreme People’s Court and the Chief Justice could provide more and better instructions to lower level courts to consistently limit court interventions during arbitration proceedings.

ii. The introduction of a right of appeal to first instance court decisions on jurisdiction or on the validity of an arbitral award could further contribute to making dispute settlement through arbitration in Vietnam more popular because of its own merits.

iii. As a general recommendation, we believe that learning from, and exchange with, foreign countries may lead to best practice being integrated in Vietnam, especially by learning from successful examples in the region (e.g. SIAC and HKIAC).

c. Recognition and enforcement of foreign arbitral awards

i. To further improve the recognition and enforcement of foreign business and commercial arbitral awards, we recommend Vietnam follow international best practice with regard to this matter.

ii. The implementing regulations of the 2015 Civil Proceedings Code should provide for the strict application of the provisions of the NYC including the confirmation that the burden of proof falls on the award debtor if it claims that a valid objection to enforcement exists; that the award creditor is only required to provide to the court the valid award and the valid arbitration agreement in support of its application; that the Vietnamese court can only reject applications on grounds consistent with the NYC and the 2015 Civil Procedure Code and that the Vietnamese court is strictly prohibited from re-opening the merits of the case.

iii. Introduce the automatic referral to the relevant Appeal Court of all cases where an application has been rejected by the Courts of First Instance to encourage the recognition and enforcement of foreign arbitral awards in Vietnam.

iv. Organise seminars and training courses for all judges of the provincial People’s Courts and the Appeal Courts to ensure that judges are properly trained to deal with applications for recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.

2. Mediation

a. The Singapore Convention

i. Vietnam’s participation in the Singapore Convention would strengthen the country’s stature in the international community. Moreover, as the current Decree 22 does not recognise foreign mediated settlements, participation in the Convention will then become a viable option for foreign investors and traders when the Vietnamese courts recognise mediation settlements from overseas proceedings.
b. Court-annexed mediation
i. A code of conduct should be established for mediators in Vietnam in alignment with the European Code of Conduct for Mediators or ICC Rules Code of Conduct, as that would compliment the dispute resolution mechanism in the EVFTA.

c. Mediation clauses in commercial contracts
i. Develop policies for individual stakeholders to initiate particular measures to develop mediation and implement measures to increase the awareness of mediation in the business and academic community as a viable option to resolve disputes.

3. Mergers and acquisitions
a. Market access and licensing process
i. The number of ‘conditional’ business sectors should continue to be reduced.

ii. The requirement for foreign investors to formulate and have approved registered investment projects in order to establish a subsidiary or joint venture entity in Vietnam (thus obviating the need for IRCs) should be removed.

iii. The requirement for foreign investors to obtain an ‘M&A Approval’ before implementing any private M&A transaction should also be removed.

b. Payment of the purchase price in M&A transactions
i. The Government should reduce the degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions, improve the clarity and consistency of the procedures applicable to M&A transactions, and abolish the distinction between “direct investment” and “indirect investment” transactions and the corresponding special-purpose bank accounts.

ii. The Government should also liberalise Vietnam foreign exchange control laws, in order to facilitate more easy and efficient transfers of foreign currency into and out of Vietnam, including in the context of M&A transactions; amend the deadline for submitting the tax declaration as well as tax payment for M&A transactions; and ensure faster and smoother processing of the tax clearance procedures necessary for implementing M&A transactions and the transfer of purchase prices.

c. Anti-trust restrictions
i. The implementing legislation of the New Law on Competition should provide clearer and more precise guidance on how to determine whether or not an ‘economic concentration’ is to occur, calculate ‘market share’, and determine what are the ‘relevant market(s)’ which must be analysed from a New Law on Competition perspective. Furthermore, the review process applied by the NCC should be streamlined, in order to avoid unnecessary delays in achieving the timely and orderly completion of M&A transactions.

4. Public-Private Partnerships
a. Developing a pipeline of visible projects
i. Update Decision 631 with a new list of key national and regional projects, particularly in sectors which have a good track record in other jurisdictions with well-trodden models and which are highly sought after by foreign investors such as transportation, prioritising economically viable projects as those slated to be implemented as PPPs.

ii. Clarify the bidding process for unsolicited projects and the process for converting State-funded projects into PPP format, and submit selected projects to a competitive, transparent tender as contemplated under Decree 30 and/or allow projects to be developed by leading global sponsors on the basis of unsolicited proposals/direct appointment as pilot projects in specified high priority sectors in order to develop a baseline standard of documentation and risk allocation which would be bankable in the international markets.
iii. Implement the Project Development Facility and put potential projects through a rigorous assessment (with the help of international technical and financial consultants) involving homogenous international standard screening procedures; and provide incentives and attractive measures for sectors struggling to attract PPP investment.

b. Improve capacity and coordination among Government agencies
i. Continue to organise regular and quality workshops and capacity building sessions for relevant Government authorities, especially officials at provincial levels. Updated legislation, including the draft Law on PPP, should be developed in consultation with relevant Government authorities (as well as outside stakeholders), and the Government should organise capacity building sessions centered around the new legislation at an appropriate time to ensure that it is implemented by authorities in a cohesive manner.

ii. Continue to develop implementing regulations as well as project manuals to assist the authorised State bodies in carrying out projects and develop (with the help of international consultants with experience in other markets) sets of approved bidding documents, including project contracts containing internationally acceptable risk allocation models as a basis for bidding to reduce the potential for delay.

iii. Bring in tangible projects in line with international best practice to provide the authorised State bodies with hands-on experience, and require a participative implementing process with involvement of all key Ministries and authorities for a unified practice in developing projects, potentially leveraging of those individuals who have gained experience of bankability and financeability issues in the power context.

c. Rationalising detailed implementing legislation
i. Continue to streamline the policies and guidelines related to PPPs to attract foreign investors looking to invest in infrastructure in the country, focusing on certain key elements such as the availability and disbursement of Viability Gap Funding and minimum revenue guarantees.

ii. Test these regulations with actual projects so that investors can get comfortable with how they will be interpreted in the context of developing a PPP, and take advantage of legislative momentum behind the Proposed Law on PPP in order to clarify and complete existing regulations to an international standard so as to increase the attractiveness of Vietnamese PPP projects to foreign investors.

iii. Publish on the MPI website the full text of the draft Law on PPP for the public to provide opinions.

5. Real estate
a. The right of an Apartment Building Management Board to participate in litigation
i. The competent authorities need to clarify whether Article 104.1(l) of Law on Housing (LOH) regulating the right of Apartment Building Management Board (ABMB) to perform other tasks assigned by the apartment building meeting in accordance with legal regulations consists of the right to participate in the litigation process on behalf of the apartment owners, when the ABMB is authorised by such owners. The lawful rights of an ABMB to participate in the litigation process on behalf of the apartment owners needs to be regulated in the LOH and other relevant legal documents.

b. “Condotel”, “Hometel”, and “Officetel”

i. Legal provisions should be promulgated with specific standards and guidance for “condotels”, “hometels” and “officetels”; clearly regulating the land-use term; amending legal provisions on the classification and mechanism of using land of mixed-used apartments; and granting certificates of land-use right and ownership of houses and other assets attached to land for “condotels”, “hometels” and “officetels”.

c. Protecting project housing clients in case of insolvency or bankruptcy of real estate developers

i. State Bank of Vietnam should promulgate legal provisions with specific standards and guidance for the finance abilities of the real estate developers, and regulate the penalties for real estate developers who do not sign bank guarantee contracts with competent commercial banks.
d. New regulations for promoting the development of the real estate market

i. Ministry of Construction should promote the development of social houses in urban areas and houses for industrial park workers to encourage the development of rental housing and low-price commercial housing in big cities and industrial zones.

ii. The legal framework for the debt trading market needs to be improved. At the same time, it is necessary to develop a strict and strong sanction mechanism to ensure fair and transparent operation of the debt trading market. Besides, there should be tax incentives and administrative procedures to create favourable conditions and attractive conditions for the debt trading market.

iii. A favourable legal framework for domestic and foreign financial and economic organisations should be created, especially foreign financial institutions, which will enable them to engage in debt purchasing and sale activities, and to participate in the process of handling bad debts of Vietnamese credit institutions. The Government should also consider allowing good-quality investors/foreigners to own houses and land.

IV: INCREASING VIETNAM’S COMPETITIVENESS

1. Tax and transfer pricing

a. Tax incentive transition policy for projects manufacturing prioritised supporting industry products implemented before 1 January 2015

i. The Vietnamese Government should consider giving directions to relevant Ministries and agencies to have a consistent, timely, and appropriate conclusion on the application of incentive transition policy for projects manufacturing prioritised supporting industry products implemented before the 1st of January 2015, which was introduced under Law 71/2014/QH13.

b. Transfer pricing

i. The tax authorities should adopt a more forward-looking approach. Decree 20/2017/ND-CP is now in line with internationally accepted TP regulations and the administration of the law should also be based on international standards. The United Nations (UN) Practical Manual on Transfer Pricing and the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines both caution against the use of secret comparables for transfer pricing comparability purposes.

ii. Tax authorities should give due consideration to the analysis undertaken by the taxpayer. Challenges should be based on the merits and features of the taxpayer’s comparables and adequate rationale should be provided for rejecting their comparable companies. If comparables are rejected, authorities should propose a better set based on the same database or another public database, rather than resorting to data which is not accessible to the taxpayer.

iii. For limitations on the deductibility of interest expense, interest limitation should only apply to unrelated party debt, unless a related party provides a guarantee to the lender or deposits an equivalent amount with the lender. The interest deduction that is denied should be able to be carried to subsequent years.

c. The application of tax treaties

i. Circular 205/2013/TT-BTC should be revised and amended in order to better provide guidance to taxpayers in applying tax treaties. In addition, reference to international practices/OECD Commentaries should be included as an official and effective source of interpretation for the taxpayers.

d. Corporate Income Tax – incompliance of non-tax regulations leading to non-deductible expenses

i. Ministry of Finance and General Department of Taxation, in the next regulation reviewing the Corporate Income Tax, should state clearly the types of expenses which shall be treated as non-deductible where
the related compliant requirements to other non-tax regulations are not met. Other than that, all expenses which meet the basic conditions for deduction should not be treated otherwise. Moreover, tax authorities should observe that unless tax regulations specifically govern, any incompliance with non-tax regulations which only give rise to administrative fines should not be a reason to reject an expense’s deductibility.

2. Information & Communication Technology

a. Education and training

i. The Government should cooperate with high-performing foreign universities and learn from best practice to create an international, relevant curriculum; Ministries should require students from IT universities and specialised IT vocational training institutions to complete a practical internship; and universities should collaborate closely with the ICT sector to understand technological trends and the practical demands of jobs in the industry for students after graduation.

ii. A longer mandatory internship at IT companies would allow students to acquire sufficient first-hand, practical experience and apply their technical and soft skills in an international environment. Simultaneously, IT companies would have the chance to identify and recruit talent for future vacancies and therefore potentially reduce overhead costs that would stem from training new employees.

iii. IT training should reflect the reality of the industry. Moreover, students need to understand, choose and study one or more specialised IT occupation program from their 2nd year, and have better soft-skills training and a results-oriented mind-set in order to bring practical value and technical knowledge to enterprises. The Government should also facilitate support for organisations and companies specialising in postgraduate IT training, since at present most IT-intensive training centers are foreign, with high costs.

b. Internet cost and international Internet bandwidth

i. ISPs and other operators should be allowed to set their own tariffs; some degree of competition should be introduced in services provision; and telecommunications and Internet prices should be benchmarked against regional and national averages.

ii. Efforts should be directed towards developing more local content, especially in the Vietnamese language, and there should be a stricter policy for requiring ISPs to accept compensation for internet incidents that greatly affect enterprise activities, in their Service Level Agreement (SLA).

c. Cyber security

i. Many provisions of the Cybersecurity Law and of the proposed implementing Decree are expressed in unprecise and unclear terms, and thus many key questions remain unanswered. We look forward to having further guidance of the Government and MPS on this.

ii. Data must be processed fairly for specified purposes and subject to the consent of the person concerned or to other legitimate grounds regulated by law. It is important that Vietnam adopts and reflects such a spirit for its own application of GDPR.

iii. The Cybersecurity Law provides an opportunity for public and private organisations to work together without losing the knowledge or freedom that the Internet has brought us. We recommend the Government works with innovators to provide standards-based cybersecurity capabilities which should balance both national security and business needs. Moreover, a Single Data Privacy Law which protects end-consumers’ private information stored on their systems should also be developed.

iv. We would like to see the implementation of the new Cybersecurity Law brought in line with the commitments and spirit of the EVFTA and commitments to ensure the stability of the national economy as well as bilateral trade.

d. Development of Industry 4.0

i. The Government should accelerate the digitalisation of Vietnam’s economy, and further adopt ICT applications in production as well as in other industries.
ii. The Government and universities should work together to increase the digital skills of the workforce, with a particular focus on education and training to equip students for the high-tech jobs of the future.

iii. To start with 4.0 adaptation, Government can work together with industries to start implementation with scalable solutions like operations management, predictive maintenance, inventory optimisation, energy efficiency, and traceability.

iv. The Government should also continue to roll out positive initiatives such as E-Government, digital economy and digital society, streamlining and modernising administrative processes for businesses and citizens.

3. Transport and Logistics

a. Infrastructure

i. Equal priority should be given to the effective movement of both passengers/commuters and transported goods. The Government should conduct in-depth research on the connectivity between different modes of transport among the infrastructure systems.

ii. The supervision role of the Government is emphasised in order to not only ensure the effective allocation of resources, but also ensure the safety and the sustainability of these constructions.

iii. The implementation of high-tech solutions in transport infrastructure, typically the National Single Window and the ASEAN Single Window, needs to be synchronised across all engaged Ministries to ensure optimal solutions for reducing logistics cost. We propose a clear deadline, ideally at the end of 2019, for all involved Ministries to finish incorporating their procedures to the common system.

iv. The Vietnamese Government should consider applying new technologies such as Blockchain, e-DO (electronic delivery order) for LCL shipments, e-Ports, e-tolls etc. to simplify import, export & transport procedures and support business.

b. Customs valuation

i. Increased focus should be given to improving the quality and consistency of the price consultation process. Specifically, further regulations should be issued by Customs; Border Customs should undergo further capacity training; and the Government should offer a more practical scheme to support enterprises.

ii. Customs should, when assessing the acceptance of Transaction Values, formally take into consideration corporate tax transfer pricing policies and documentation, and the price-consultation procedure should be extended to cover non-commercial imports.

c. HS Code classification

i. Vietnam Customs should publish on their official website (in both Vietnamese and English) all the legal reference sources of classification (issued within the last 5 years) and, at a minimum, those that were listed and committed to be published in Article 6 of Circular 14/2015/TB-BTC.

ii. The Classification Ruling database should incorporate a search tool to facilitate research by enterprises; until the legal sources committed to under Article 6 of Circular 14 are published and accessible to enterprises, Customs should waive retroactive collection of duties, late payment interest and penalties;

iii. With respect to the verification of COO, to comply with Article 15.6 of Circular 38/2018/TB-BTC, clear instructions from GDC should be issued regarding HS code differences which should not be the basis of COO rejection (regardless at which digit level) by Customs, unless there is clear evidence that different goods are presented at import.

iv. Where Customs change their opinion on the HS code to be applied to a product, they must provide the declarant with their decision in writing with clearly stated rationale/grounds for changing their opinion.
d. On the spot export manufacturing/processing

i. We look forward to seeing the issuance of the new Decree revising Decree 134/2016/ND-CP soon, and EuroCham additionally requests that, when the new Decree is published, it is accompanied by a clear statement from MOF and GDC that this interpretation will apply to all exports made under the on-the-spot export-import mode since September 2016.

e. Transparency of customs procedures

i. Each provincial Customs department should have their own anonymous hotline for enterprises to report issues of concern (separate to the GDC hotline) so that GDC will not be overloaded and issues can be resolved in a shorter timeframe at the local level first.

ii. GDC should publish an Annual Account on cases reported through the hotlines, and the outcomes (anonymous). This would raise awareness and provide confidence to businesses that actions are being taken.

iii. The E-customs declaration system should be revised to facilitate documented communication between all levels of Customs authorities and the business community, thereby reducing unofficial channels of communication, and opportunities for unofficial payments.

4. Human resources and training

a. Expansion to employer’s rights to terminate employees

i. Legislators should seriously consider revising labour regulations to provide more power to the employers in dealing with termination cases.

b. Managing foreigners working in Vietnam

i. Redefine the “inter-company transfer” definition to include expatriates who are assigned from group companies who have participated in home country to avoid double SI contribution; not apply the pension and survivorship regimes to foreign workers or apply only on an optional basis; and create the flexibility for foreign workers to receive a one-off social insurance allowance upon repatriation from Vietnam by authorising the employer to carry out the procedure on expatriates’ behalf.

ii. Stipulate the lower ratio of SI contribution for employers and foreign workers making reference to countries in ASEAN or the Asia–Pacific region; evaluate the impact of administrative procedures when applying each regime to facilitate the implementation of the executing agencies, foreign workers and employers; and the lump-sum allowance should be counted from the application date rather than from the date of issuance of a decision by the insurance agency.

iii. For work permits, supplement the definition of “intra-corporate transferees from head office to its subsidiary” by “intra-corporate transferees within the group companies”, as long as the sponsoring entity in Vietnam can prove that foreign employees are being assigned from subsidiaries within the same group.

iv. Deploy the fast-track service in which some required documents can be supplemented within the defined time, ensure the online system for work permit application runs smoothly and have experienced staff handling applications in order to avoid any delays processing and issuing work permits online, and implement the detailed instructions on the process of revoking work permits by the employer after foreign employees end their assignment in Vietnam.

c. Technical and vocational education and training practice in Vietnam

i. The Government should consider relieving the pressure on international education institutions by implementing an exemption on contributions to social insurance by foreign educators. It may also wish to consider offering incentives to attract foreign investors to these regions, and collaborate with international private institutions offering international standard teacher training and professional development to enhance the abilities of local teachers.
ii. The Government might also consider encouraging a continuous learning environment by supporting cooperative internship and mentorship programs in collaboration with the private sector through an online platform that provides new graduates or workers with a resource for guidance, opportunities and information in the area of continuous training opportunities and internships and mentoring.

iii. The Government should also leverage the expertise of the private sector. In particular, it should work with industry representatives as well as private education institutions already operating in Vietnam to develop curricula and training courses that foster lifelong learning as well as focus on developing skills such as computer literacy and coding, science and technology fundamentals, basic business skills and entrepreneurship.

5. Tourism and hospitality

a. Entry visa policy

i. Expand the list of visa-exempt countries to include all those with whom Vietnam has FTAs, including all EU countries, significant trading or investment partners and targeted inbound tourism markets; extend the period of recently announced visa exemptions and new exemptions from a 1-year period to a 5-year period; and extend the visa exemption period from 15 to 30 days.

ii. Urgently clarify the procedures and rules allowing returns within 30 days for visa-exempt travelers; improve the appearance, access speed and procedures of the current E-visa website; and extend the list of countries eligible for E-visa application to help visitors acquire a visa and save time, as well as reducing administrative dossiers for both the Government and visitors.

iii. Allow transit visas to be issued on arrival for up to 72 hours for passengers with connecting flights, and make greater efforts to allow international airlines to fly into Vietnam's airports to ease travel time for international guests. This could also include creating stopover programs.

b. Destination Marketing

i. Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion; facilitate public-private partnerships to manage and effectively operate the tourism promotion fund, aiming to promote Vietnam as a top destination in ASEAN; and focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long time, visit regularly and spend more when travelling in Vietnam.

ii. Strengthen Vietnam’s visibility while saving costs using digital, friendly-to-use applications on smart phones, and social marketing channels to develop a professional appearance as well as comprehensive and useful information for tourists; contribute funding towards not only promotional activities, but also initiatives that support the long-term objectives of the industry; and establish improved mechanisms for communication between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organisational structures.

iii. Put in place region-wide coordination structures to focus and maximise the actions of cooperating provinces and facilitate cooperation, and open tourism information and promotion centers, possibly using virtual technology, around the world once visa restrictions are improved to raise awareness of Vietnam. The Vietnam tourism website standards should be improved.

c. Development of sustainable tourism

i. City urban planners and tourism management authorities need to understand the importance of heritage assets as significant economic and national resources and recognise their economic value and fragility. There is also a need to invest in world-class storytelling at museums, historical and heritage sites.

ii. Ensure a more systematic approach to sustainable development in tourism; support local people through training and economic empowerment; strengthen the capacities of local non-profit organisations and create a framework for ‘voluntourism’ activities; and spread useful tips to tourists including
information on sensitive social issues, such as behaviours to adopt towards children selling souvenirs in the street or begging, sexual exploitation, visiting schools or orphanages etc.

iii. Provide guidelines, such as ‘dos and don’ts for travellers’, in heritage locations and spiritual sites to ease interactions with locals and raise foreign tourists’ awareness of local customs; reduce demand for endangered wildlife species and limit uncontrolled interactions with wildlife to protect the limited number of species in Vietnam; and encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives.

d. Human resources and vocational training in tourism and hospitality

i. Businesses and training institutions should collaborate to raise awareness and provide procedures to efficiently implement the National Occupation Skill Standards for housekeeping and front door operation; national Occupation Skill Standards should be developed for other sectors in the tourism and hospitality industry to enhance service quality and increase the competitiveness of Vietnam as a tourist destination in the region; and the role of Vietnam Tourism Certification Board (VTCB) should be enhanced in assessing, training and providing certification for workers who have gained practical experience, but have not received formal training.

ii. Cooperation between the Government and private sector should be reinforced to improve vocational training activities in the tourism sector for both learners and instructors.

iii. Facilitate language education for workers in the tourism industry, and invite more educational companies to open their offices in Vietnam with more internationally-oriented teaching methods and give Vietnamese students the chance to earn an international certificate in tourism and hospitality.

iv. Facilitate cooperation and know-how transfer between training institutions and the hospitality and tourism industry, i.e. enhance dual vocational training opportunities to provide practice-oriented “learning by doing” training curricula to respond quickly to the growing demand for skilled workers in the hospitality, tourism and event industry.
PART ONE

CROSS-SECTORAL ISSUES
CHAPTER 1 EU-VIETNAM FREE TRADE AGREEMENT

OVERVIEW

On the 2nd of December 2015, after almost three years and 14 rounds of negotiations, President Donald Tusk, President Jean-Claude Juncker and Prime Minister of Vietnam Nguyễn Tấn Dũng announced the conclusion of the negotiations of the EU-Vietnam Free Trade Agreement (EVFTA). The EVFTA is a new-generation Free Trade Agreement between Vietnam and the EU. On the 17th of October 2018 the European Commission submitted to the Council the proposals for signature and conclusion of two agreements: the EVFTA and the EU–Vietnam Investment Protection Agreement (IPA). The EVFTA needs to be approved by the Council and ratified by the European Parliament, while the IPA must be additionally ratified by the Parliament of each EU member country.

Both the EVFTA and EVIPA are said to bring the best advantages and benefits ever for enterprises, employees, and consumers in both the EU and Vietnam. Vietnam’s GDP is expected to increase by 10-15 per cent and exports are predicted to rise by 30-40 per cent in the next 10 years. Meanwhile, the real wages of skilled labourers could rise up to 12 per cent, while the real salaries of common workers could increase 13 per cent. Once the EVFTA is ratified and implemented, and once Government policies and institutional reforms begin to take effect, Vietnam’s business activities will boom. However, issues still remain. In this chapter, EuroCham’s Legal Sector Committee will raise the issues relevant to their particular industries, and make specific recommendations in order to address these concerns.

I. LEGAL ENVIRONMENT

(A). GENERAL MARKET ACCESS FOR GOODS AND SERVICES

The EVFTA is the most comprehensive and ambitious trade and investment agreement that the EU has ever concluded with a developing country in Asia. It is the second agreement in the ASEAN region, after Singapore, and it will intensify bilateral relations between Vietnam and the EU. Vietnam will have access to a potential market of more than 500 million people and a total GDP of US$15,000 billion (accounting for 22 per cent of global GDP). Meanwhile, exporters and investors from the EU will have further opportunities to access one of the largest and fastest-growing countries in the region. According to a report released in early 2017 covering 134 cities worldwide, Hanoi and Ho Chi Minh City are ranked among the top 10 most dynamic cities due to their low costs, rapid consumer market expansion, strong population growth and transition towards activities attracting significant amounts of Foreign Direct Investment (FDI). Statistics show that the total implemented FDI in the first eleven months of 2018 reached US$16.5 billion, increasing 3.1 per cent compared with the same period the previous year. Vietnam’s GDP growth in 2017 was 6.81 per cent, and 7.08 per cent in first 6 months of 2018 – a 10-year record.

In addition, Vietnam has the fastest-growing middle class in the region. It is predicted to almost double in size between 2014 and 2020 (from 12 million to 33 million people). Vietnam’s super-rich population is also growing faster than anywhere else, and there is no doubt that it will continue to rise over the next ten years.

Market access for goods

Nearly all customs duties – over 99 per cent of the tariff lines – will be eliminated. The small remaining number will be partially liberalised through duty-free quotas. As Vietnam is a developing country, it will liberalise 65 per cent of the value of EU exports to Vietnam, representing around half of the tariff lines, at entry into force. The remaining

1 The European Trade Policy and Investment Support Project (MUTRAP), Sustainable Impact of the EU-Vietnam FTA, 2014.
duties will be eliminated over the next ten years. This is an unprecedented, far-reaching tariff elimination for a country like Vietnam, proving its aspiration for deeper integration and trading relations with the EU.

Meanwhile, the EU agreed to eliminate duties for 84 per cent of the tariff lines for goods imported from Vietnam immediately at the entry into force of the FTA. Within 7 years from the effective date of the FTA, more than 99 per cent of the tariff lines will have been eliminated for Vietnam. This is a wider reduction compared with the 95 per cent of the tariff lines that the former TPP countries offer to Vietnamese imports. In the ASEAN region, Vietnam is the top country exporting goods to the EU. However, the market share of Vietnam’s products in the EU is still small. As a result of the EVFTA, the sectors set to benefit most are main export sectors that used to be subject to high tariffs from the EU including textiles, footwear, and agricultural products. The EU is also a good point for Vietnam to reach other further markets.

Vietnam will benefit more from the EVFTA compared with other FTAs, since Vietnam and the EU are considered to be two supporting and complementary markets: Vietnam exports goods that the EU cannot or does not produce itself (i.e., fishery products, tropical fruits, etc.) while the products imported from the EU are also those Vietnam does not produce domestically, including machinery, aircrafts and pharmaceutical products.

With better market access for goods from the EU, Vietnamese enterprises could source EU materials, technology, and equipment at a better quality and price. This, in turn, will improve their own product quality and ease Vietnam’s burden of over-reliance on its other main trading partners.

The EVFTA is considered as a template for the EU to further conclude FTAs with different countries in the ASEAN region with the aim of concluding a region-to-region FTA once there is a sufficient critical mass of FTAs with individual ASEAN countries. This process could take between 10-15 years. Thus, Vietnam should take advantage of this window of opportunity before FTAs with others in the region are concluded and take effect to become a regional hub.

Market access for EU service providers

Although Vietnam’s World Trade Organisation (WTO) commitments are used as a basis for the services commitments, Vietnam has not only opened additional (sub)sectors for EU service providers, but also made commitments deeper than those outlined in the WTO, offering the EU the best possible access to Vietnam’s market. (Sub)sectors that are not committed under the WTO, but under which Vietnam has made commitments, include: Interdisciplinary Research & Development (R&D) services; nursing services, physiotherapists and para-medical personnel; packaging services; trade fairs and exhibitions services and building-cleaning services.

When these services reach international standards, Vietnam has a chance to export high-quality services, resulting in not only an increase in export value but also export efficiency, thus helping to improve the trade balance.

Government procurement

Vietnam has one of the highest ratios of public investment-to-GDP in the world (39 per cent annually from 1995). However, until now, Vietnam has not agreed to its Government procurement being covered by the Government Procurement Agreement (GPA) of the WTO. Now, for the first time, Vietnam has undertaken to do so in the EVFTA.

The FTA commitments on Government procurement mainly deal with the requirement to treat EU bidders, or domestic bidders with EU investment capital, equally with Vietnamese bidders when the Government purchases goods or requests a service worth over the specified threshold. Vietnam undertakes to follow the general principles of National Treatment and Non-discrimination. It will publish information on intended procurement and post-award information in Báo Đầu Thầu – Public Procurement Newspaper – and on procurement system at <muasamcong.mpi.gov.vn> and the official gazette in a timely manner, allow sufficient time for suppliers to prepare for and submit requests for participation and responsive tenders and maintain the confidentiality of tenders. The FTA also requires its Parties to assess bids based on fair and objective principles, evaluate and award bids only based on criteria set out in notices and tender documentation and create an effective regime for complaints and settling disputes. These rules require Parties to ensure that their bidding procedures match the

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7 Please refer to the rules and principles.
commitments and protect their own interests, thus helping Vietnam to solve its problem of bids being won by cheap but low-quality service providers.

Government procurement of goods or services, or any combination thereof, that satisfy the following criteria falls within the scope of the FTA Government Procurement rules:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>FTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monetary values that determine whether procurement by central Government is covered under an agreement</td>
<td>130,000 Special Drawing Rights (SDRs) (US$191,000) after 15 years from the entry into force of the agreement. Initial transitional threshold: 1.5 million SDRs (US$2.23 million)</td>
</tr>
<tr>
<td>Procurement of construction services by central Government entities</td>
<td>Initial threshold: 40 million SDRs (US$58.77 million). After 15 years, 5 million SDRs (US$7.35 million)</td>
</tr>
<tr>
<td>Entities covered</td>
<td>22 central Government bodies. 42 other entities (including 2 utility-related State-owned enterprises, 2 universities, 2 research institutes and 34 public hospitals under the control of the Ministry of Health). Sub-central Government coverage: including Hanoi and Ho Chi Minh City</td>
</tr>
<tr>
<td>Exclusion of preferences for SMEs</td>
<td>Broad exclusion</td>
</tr>
<tr>
<td>Application of offsets</td>
<td>Based on the value of a contract</td>
</tr>
</tbody>
</table>

**Investment Dispute Settlement**

This is now covered in the IPA. In disputes regarding investment (for example, expropriation without compensation or discrimination of investment), an investor is allowed to bring the dispute to the Investment Tribunal for settlement. To ensure the fairness and independence of the dispute settlement, a permanent Tribunal will be comprised of 9 members: 3 nationals each appointed from the EU and Vietnam, together with 3 nationals appointed from third countries. Cases will be heard by a 3-member Tribunal selected by the Chairman of the Tribunal in a random and unpredictable way. This is also to ensure consistent rulings in similar cases, thus making the dispute settlement more predictable. The IPA also allows a sole Tribunal member where the claimant is a small or medium-sized enterprise or the compensation of damaged claims is relatively low. This is a flexible approach considering that Vietnam is still a developing country.

In case either of the disputing parties disagrees with the decision of the Tribunal, it can appeal it to the Appeal Tribunal. While this is different from the common arbitration proceeding, it is quite similar to the 2-level dispute settlement mechanism in the WTO (Panel and Appellate Body). We believe that this mechanism could save time and cost for the whole proceedings.

The final settlement is binding and enforceable from the local courts regarding its validity, except for a five-year period following the entry into force of the FTA for Vietnam (please refer to further comments in the Chapter on Judicial Recourse).
Conclusion

The EVFTA, once ratified, will create sustainable growth, mutual benefits in several sectors and be an effective tool to balance trade relations between the EU and Vietnam. Vietnam is working hard to meet the high standards set out in the FTA, and is currently offering greater opportunities for foreign businesses in preparation for the FTA’s finalisation. It is now time for foreign investors to start their business plans and grasp the upcoming clear opportunities.

ACKNOWLEDGEMENTS

EuroCham Legal Sector Committee and for this chapter in particular:
Dr. Oliver Massmann: Managing Partner and Director of Duane Morris Vietnam LLC
CHAPTER 2 ENERGY AND ELECTRICITY

OVERVIEW

EuroCham Green Growth Sector Committee (GGSC) recognises and supports the essential priorities of the Government in managing the energy market in Vietnam. These priorities are:

- Delivering a supply of reliable and affordable energy for sustainable economic growth. GGSC notes, with mounting concern, commentary from EVN which indicates that there is a risk of power shortages in the period 2020 to 2022 in southern Vietnam: This is of great concern to GGSC members who are power consumers;

- Ensuring the sustainable development of the power sector, based on a new National Power Development Plan #8 to be developed in 2019, which will urgently mobilise private sector investment, and support the equitisation of power generating assets, and;

- Reducing greenhouse gas emissions from energy production in line with the Paris Agreement and the Intended Nationally Determined Contributions (INDC) plan submitted by Ministry of Natural Resources and Environment (MONRE).

At the Vietnam Business Forum (VBF), EuroCham, together with other Chambers, presented the Made in Vietnam Energy Plan (MVEP) to Prime Minister Nguyen Xuan Phuc in Hanoi on the 5th of December 2016. This key energy policy document remains the core of our work. We continue to engage with the national energy plan to advocate using indigenous resources to deliver a sustainable energy future to 2030. We contributed to the in June and December 2018 energy policy papers to the Government of Vietnam and held a follow-up meeting with the Ministry of Industry and Trade, and Energy Regulatory Authority of Vietnam (ERAV), to reinforce the messages of MVEP.

Table 1: Progress on the MVEP energy reform recommendations

<table>
<thead>
<tr>
<th>Energy Reform Recommendations</th>
<th>Progress Made in 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Natural Gas Resources</strong></td>
<td></td>
</tr>
<tr>
<td>a. Commence development of the natural gas resources to displace imported coal</td>
<td>The Government has approved, in principle, the exploitation of new gas fields to supply the power industry. The development of new Liquefied Natural Gas (LNG) terminals has also been approved in principle.</td>
</tr>
<tr>
<td><strong>2. Energy Efficiency</strong></td>
<td></td>
</tr>
<tr>
<td>a. Publish a Roadmap to retail power tariffs to 2020 and a vision to 2025</td>
<td>A pricing framework was published by the Office of the Government in December 2017 estimating the price inflation to 2020. The estimated rate of inflation is below predicted CPI and contradicts expert analysis such as US AID/Deloitte’s November 2017 report.</td>
</tr>
<tr>
<td>b. Smart Grid Technology</td>
<td>Limited small-scale projects implemented.</td>
</tr>
</tbody>
</table>
### c. Waste to Energy – special incentives

No significant progress in 2018. Solid waste disposal remains unsustainable. There is no effective waste separation taking place.

### d. Public education campaign on energy efficiency for consumers

Limited small campaigns implemented.

### 3. Renewable Energy

#### a. Direct Power Purchase Agreements (DPPAs)

Ministry of Industry and Trade (MOIT) remains committed to implementing a pilot scheme for DPPAs. Progress has been slow and there is no defined start date or conditions for the pilot scheme. EuroCham GGSC has led the Chamber’s efforts to implement a DPPA in 2019 based on a “Sleeved DPPA” model.

#### b. i. Solar and wind FIT and PPA terms made internationally “bankable”

No progress in 2018. Revised FIT for Wind was issued in September 2018. Concerning Solar FIT with the support of the EU-Vietnam Energy Facility various consultation workshops took place in 2018 to propose an adjusted support mechanism for solar power development plan. The regulations governing rooftop solar electricity export remain ineffective and no power producers have been paid for electricity exported to EVN during 2018. On 8th January, 2019 MOIT issued a new Decision 02. In particular, this new Decision addresses the problem of net-metering for solar rooftop projects.

#### b. ii. Solar Rooftop Electricity can be exported to the grid for value (detail added in 2018)

No progress in 2018. Revised FIT for Wind was issued in September 2018. Concerning Solar FIT with the support of the EU-Vietnam Energy Facility various consultation workshops took place in 2018 to propose an adjusted support mechanism for solar power development plan. The regulations governing rooftop solar electricity export remain ineffective and no power producers have been paid for electricity exported to EVN during 2018. On 8th January, 2019 MOIT issued a new Decision 02. In particular, this new Decision addresses the problem of net-metering for solar rooftop projects.

#### c. Improve the creditworthiness of Electricity of Vietnam (EVN)

EVN achieved a credit rating of BB- in 2018, but power sales revenues appear to be less than the cost of making and delivering power. Power production costs are rising as cheap hydro and domestic coal resources are already at full capacity.

#### d. Engagement with the private sector to develop an effective Solar Decision to attract investors

Significant progress was made in 2018 by EuroCham GGSC to establish relations with EREA, Ministry of Planning and Investment (Climate Finance), and the Party’s Central Economic Committee to support VBF Power and Energy Working Group to become an accredited Observer at the Green Climate Fund (Korea). Engagement with the private sector took place in the context of the Technical Working Groups of the Vietnam Energy Partnership Group led by MOIT. This lead to the endorsement of a set of 40 policy recommendations. Public sector energy consultants advising the Government on energy policy are welcome to make further use of the market knowledge and expertise of GGSC.

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I. MADE IN VIETNAM ENERGY PLAN (MVEP)

Relevant Government authorities: Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Finance (MOF), Office of Government (OOG)

Issue description


The MVEP outlines the benefits of cleaner domestic solutions for Vietnam’s future energy needs and the positives of prioritising domestic versus imported energy resources. These advantages cover Vietnam’s social, economic and energy security goals, its global and domestic environmental commitments, and its need to attract private sector investment. The report also provides key policy and regulatory measures that could help move Vietnam towards these goals.

The MVEP focuses on analysis and regulatory support for the following:

- **Energy efficiency**: Including enhancing the role of Government and using demand-side management tools to reduce waste and attract private sector investment and innovation in efficiencies;

- **Renewable energy**: Preparing the policy and regulatory framework to enable the further development of successful markets and attract the required investments in renewables for local and foreign investors, technology and service providers; and

- **Vietnam’s natural gas**: Accelerating and expanding investment in the use of domestic natural gas as a cheaper, cleaner and more flexible fuel than imported coal. Gas remains the least polluting (with 60 per cent fewer CO₂ emissions than coal) and most cost-effective fossil fuel which can serve as a secure bridge fuel.

The report concludes that Vietnam can continue to take full advantage of its indigenous energy resources to reduce the risks and maximise the socio-economic benefits of future energy development, building on its achievements to date.
Energy policy goals

The MVEP outlines how Vietnam’s energy needs can be met with greater emphasis on cleaner domestic sources of energy such as: Renewables including biomass, wind and solar, sustainable energy efficiencies, and the increased development of Vietnam’s offshore natural gas. These will all reduce the effects on the environment and the need for imported coal. The MVEP report includes regulatory and policy recommendations that can deliver the private sector investment necessary to meet the US$100 billion required by 2030 to meet Vietnam’s energy needs, and do so in a way that maximises the use of indigenous resources and delivers on Vietnam’s environmental goals.

More efficient use of energy

The growth in demand for electricity has exceeded income growth since 2004, as the graph below shows, and the result has been a rapid rise in electricity intensity. The main constraints facing energy efficiency measures in Vietnam are threefold: (1) a lack of policy framework and its enforcement; (2) subsidised, low electricity tariffs, and no roadmap to future tariff inflation; and (3) financial mechanisms for investment in energy-efficient technology and conservation.


Figure 4: Vietnam’s electricity intensity is extremely high and growing rapidly

![Graph showing electricity intensity for Vietnam, China, Malaysia, Thailand, Philippines, and Indonesia from 2004 to 2014.](image)

Source: ECA calculations using data from BP Global’s Statistical Yearbook (electricity generation)\(^8\) and World Bank (real GDP and GDP per capita).\(^9\)

**Potential gains/concerns for Vietnam:**

The adoption of MVEP would allow:

- Faster construction of energy plants. Solar installations require just one year to be built, and even wind farms come to market much faster than thermal plants. The first phase of the Solar Energy Platform introduced by MOIT in late 2017 has shown good results with new investment attracted in 2018 to 2019 estimated at US$500m for new solar energy plants. Full implementation of the MVEP recommendations would ensure that the ambitious solar energy plan can be successfully implemented by 2025 with 4000mw of solar connected to the grid and US$3.5 billion of new investment attracted;

- A more flexible power development plan that can be adjusted to fit future demand, low or high, and removes the risk of either stranded assets or of failing to meet demand if growth exceeds estimates;

- Much greater new investment to be attracted from multiple domestic and foreign sources, in particular mobilising private sector resources, building local manufacturing capabilities, reducing the reliance on foreign governments and the need for Vietnamese Government revenues, subsidies and guarantees or Government Guarantees and Undertakings (GGUs);

- The more efficient use of electricity that will reduce energy waste and make Vietnam more competitive, productive and attractive for Foreign Direct Investment (FDI);

- An estimated US$15-20 billion could be added to Government revenues over the project lifetime in developing 3 GW of indigenous gas-fired power plants, compared to an estimated US$20-25 billion in foreign exchange costs to import coal for an equivalent coal-fired development;

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The reduction of social and environmental costs of pollution from a new generation of coal power plants which contribute to poor air, water and land quality and high health costs. Following International Monetary Fund (IMF) calculations, we estimate the costs of health and environmental impacts of the current power development plan, with its reliance on coal, could be as high as US$15 billion a year by 2030.\(^{10}\)

Vietnam to reduce its dependence on imported coal with its consequent risks for security of supply and tens of billions of dollars in foreign exchange demands and balance of payment risk, and;

A reduction in the significant financial, logistical and environmental costs of transporting coal and coal waste.

**Recommendations:**

In our view, the Government should pursue a more sustainable energy path that attracts new investment. This requires enacting some fundamental policy and regulatory reforms, which are described below:

- **Promote private investment into renewable electricity generation:**
  
  a) Introduce "sleeved" DPPAs in 2019 between power producers and large power consumers, as these have proven to be extremely effective in other, similar countries. Companies and other MNCs\(^{11}\) have stated their global commitments to seek access to clean energy. This will attract additional investment and global brands that will help Vietnam move up the manufacturing value chain.
  
  b) Implement the recommended changes to wind and solar PPAs to make these ‘bankable’ by international finance institutions, define the future Feed-In-Tariffs (FIT) for renewable energy in 2019 and 2020 or even beyond.

  EuroCham welcomes the issuance of the new Circular 02\(^ {12}\) regulating implementation of wind power project development. One of the key purposes of this Circular is to revise the Standardised Power Purchase Agreement for wind projects.

  It is strongly recommended that the Government consults and takes into considerations private investors’ opinions about its future policy on FIT for solar, biomass and waste-to-energy to be revised in 2019 and 2020 with support of EU Vietnam Energy Facility. Any changes of the current policy should give at least the same or more favourable conditions to the projects that are being developed or implemented.

  c) Continue the restructuring of EVN to enhance its creditworthiness. This credit enhancement for EVN would help the Government of Vietnam reach energy and environmental goals and encourage developers to consider Vietnam as an attractive market for investment on commercial terms.

  d) The Government is encouraged to work with EuroCham’s GGSC, VBF and EU private sector solar experts and business groups in Vietnam, to publish a Solar Power Decision with its supporting regulations in the form most likely to attract private capital investment as part of the National Power Development Plan #8 planning process.

- **Adopt energy efficiency measures:**

  a) Signal that most consumers will have to pay the true cost of energy and define the timing and speed of progress toward market-based pricing of electricity. Increased transparency is the stimulus to increase investment in energy efficiency and the installation of household solar, wind or other renewable energy sources to relieve pressure on the power distribution system. Specifically, we recommend issuing a Retail Power Price Roadmap for the full introduction of market-based pricing by 2020 with a vision to 2025, including a definition of variable pricing between the 3 main tariff groups (residential, commercial and industrial). Energy efficiency investment and innovation is not occurring in high volume because of


\(^{11}\) Examples: Apple, Nike, Coca Cola, Google, TetraPak

\(^{12}\) Circular 02/2019/TT-BCT dated 15 January 2019 of the Ministry of Industry and Trade on wind power project development and power purchase agreement for projects thereof
businesses and consumers believe that power tariffs will remain subsidised by the Government.

b) Encourage private sector investment into smart grid and smart transition technologies providing effective cost-saving solutions.

c) Develop special incentive measures for waste-to-energy systems, especially to benefit local communities through improved health and hygiene.

d) Start a public education campaign to raise awareness of the ability of consumers to reduce energy waste, in conjunction with transparent information about the increases in electricity tariffs.

- Develop offshore gas potential:
  a) We recommend that careful analysis indicating that offshore gas development cost and revenue structure is favourable to imported fuel options should be conducted. Further, the high cost of ‘clean coal’ technology far outweighs natural gas.

- Effectively implement the commitments under the EVFTA: the FTA between the EU and Vietnam contains a dedicated chapter on Non-tariff Barriers to Trade and Investment in Renewable Energy Generation. It covers specific rules for the renewable energy sector on non-discriminatory treatment in general (licensing and authorisation procedures), on local content in particular and on the use of international standards. Cooperation with the EU can help Vietnam from the EU’s successful experience in this sector. Clear rules will provide for investor confidence and better trade opportunities.

Excellent progress has been made to implement reforms that will attract substantial new investment to build energy generation capacity in Vietnam’s natural gas and Liquefied Natural Gas (LNG) industries and in the potential market to deliver “sleeved” DPPAs with energy supplied from new solar and wind farms.

This beginning of a transfer of the burden of capital investment from the State to the private sector is very timely and has attracted investors and power developers from Europe into partnerships with local companies in Vietnam. However, the desire to attract investment in energy efficiency remains unfulfilled, while retail power tariffs have remained the same for two and a half years. Moreover, there is no transparency on future power prices for consumers and the timing of the movement towards market-based pricing of energy.

EuroCham’s Green Growth Sector Committee applauds the initial signs of the development of a stronger relationship with Ministry of Industry and Trade (MOIT) and Ministry of Planning and Investment (MPI) in the development of energy policy for the private sector. We anticipate that EuroCham members’ expertise in financing, energy market analysis and risk mitigation will be of valuable assistance to Ministries in developing a reliable and sustainable energy supply in the future.

**ACKNOWLEDGEMENTS**

EuroCham Green Growth Sector Committee
CHAPTER 3 GREEN GROWTH

OVERVIEW

EuroCham established a Green Growth Business Sector Committee (GGSC) in May 2014 to mainstream and develop the essential conditions for Green Business to prosper in Vietnam. Representing the private sector, GGSC works closely with public stakeholders, including the Government of Vietnam and its agencies, donors and multilaterals. This Chapter focuses on two main topics which we believe should be priorities for the Government: Firstly, water and waste management, including air quality control and waste-to-energy; and secondly, sustainable buildings and energy efficiency.

I. WATER AND WASTE MANAGEMENT, AIR QUALITY CONTROL AND WASTE-TO-ENERGY

Relevant State authorities: Ministry of Natural Resources and Environment (MONRE), Ministry of Construction (MOC), Ministry of Finance (MOF), Ministry of Planning and Investment (MPI), Vietnam Environment Administration (VEA).

1. Enforcing wastewater regulations

Issue description

In recent years, Vietnam has discovered that the lack of coordinated supervision of wastewater treatment can cause massive environmental and socio-economic disasters affecting the livelihood of millions of people.

Potential gains/concerns for Vietnam

The Ministry of Natural Resources and Environment (MONRE) reports that: “More than 2,000 investment projects have insufficient environmental impact assessments, while hundreds of industrial zones (IZs) have no wastewater treatment systems” as required by law. “Industrial parks nationwide discharge more than a million cubic metres of wastewater each day, 75 per cent of which is untreated and harmful.” Residents are reporting serious health and environmental effects in connection with untreated wastewater from industrial zones: “Water pollution has affected agricultural production and people’s daily activities.” The amount of untreated sludge has become a major challenge.

Chapter 19 of Vietnam’s new Criminal Code, which came into effect on the 1st of January 2018, does have sanctions for environmental violations. These include sanctions for wastewater offences that could lead to the permanent closure of a business in serious cases. However, the legal sanctions cannot be an effective deterrent, if they are not enforced in practice or if the fines are too low compared to the cost of implementing effective wastewater treatment measures.

1 Please note that GGSC’s comprehensive position on energy is covered in the Energy and Electricity chapter of the Whitebook.
3 Article 37, Decree 38/2015/ND-CP dated April 24, 2015 of the Government on the management of wastes and scraps.
5 “Environmental pollution from industrial complex threatens residents”, Viet Nam News, 30 November 2018. Available at: <http://vietnamnews.vn/environment/481112/environmental-pollution-from-industrial-complex-threatens-residents.html#ZARm1kLClfTdqk.99> last accessed on 5 Dec 2018
Recommendations:

› Create a task force for effectively enforcing current wastewater treatment standards.

› Focus on industrial parks that dump untreated wastewater into the environment and implementing measures to seriously sanction offenders to deter others.

2. Accelerate private investment in water and wastewater treatment solutions

Issue description

The Ministry of Construction (MOC) estimates that Vietnam will require investments of over US$10 billion for water supply and drainage by 2020. These targets will be difficult to reach in such a short time without accelerating investment from the private sector.

However, clean water and wastewater treatment prices are too low for private investors to build financially viable businesses. Vietnam’s wastewater prices are calculated based on arbitrary percentages of the clean water supply price, despite the fact that wastewater treatment costs are higher than costs for clean water supply. Furthermore, our members report that confusion exists on the local level with regard to implementing apparently conflicting regulations, such as Decree 80 and Decree 154, on whether wastewater treatment fees and/or environmental protection fees are to be collected.

Potential gains/concerns for Vietnam

The potential gains are not just environmental. Given the right policy incentives and the coordinated implementation of reasonable regulations, Vietnam could build a sustainable water industry. Donors and multilaterals have been willing to support Vietnam in terms of financing, technical support and capacity building. These measures will not continue forever, and Vietnam is at a crossroads: It now needs to decide whether it is willing to adopt these recommendations or face further environmental degradation.

The Government has laid out a schedule to privatise Hanoi Water Corporation (Hawaco), Saigon Water Corporation (Sawaco) and 51 other water utilities by 2020. Besides the need to improve the pricing mechanism, decision making processes and other technical factors with respect to the equitisation process of State-Owned Enterprises (SOEs), no significant private investment will flow into these companies if the underlying business conditions are not financially viable and economically sustainable.

Recommendations:

› Move toward a demand-driven pricing model for wastewater treatment;

› Coordinate the implementation of wastewater treatment and environmental protection fee regulations to remove uncertainties; and

› Provide sustainable conditions for investments in water SOEs.

3. Waste management and e-waste recycling

Issue description

Vietnam’s Law on Environmental Protection operates under the principles of minimisation, re-use, collection and treatment meeting environmental standards. However, most waste is still dumped into landfills without further


11 Annex II, Decision 58/2016/QD-TTg of the Prime Minister dated 28 December 2016 providing criteria for classification of wholly State-owned enterprises and list of State-owned enterprises undergoing restructuring in 2016-2020

processing, including 90 per cent of all solid waste in Hanoi and 76 per cent in Ho Chi Minh City.\(^{13}\) Unsanitary landfills not only cause environmental hazards and infuriate local residents,\(^{14}\) but also waste valuable materials that could be recycled and used for power generation. Multinational corporations are setting their own recycling and renewable energy goals and require a supportive regulatory framework to do so.

In our 2018 and previous Whitebooks, we had recommended to set and implement clear collection goals and raise public awareness about waste management. In this respect, we welcome Decision 491\(^{15}\) setting clear targets for the management of waste up to 2025 with a vision to 2050, including collection and recycling quotas as well as awareness building activities. Decision 491 replaces Decision 2149\(^{16}\) and sets higher standards. For example, Article 1.3.b) sets forth specific objectives to be reached by 2025 as follows:

- **In terms of hazardous solid waste:**
  - 100 per cent of hazardous solid waste discharged from production, business, service, medical facilities, trade villages must be collected, transported and treated satisfying the environmental protection requirement;
  - 85 per cent of hazardous solid waste discharged from households or individuals must be collected, transported and treated satisfying the environmental protection requirement;
  - 100 per cent of electronic equipment producers must establish and publish facilities for the recovery of waste products as regulated by laws.

- **In terms of urban solid waste:**
  - All special-grade and grade-I urban centres as well as 85 per cent of other urban centers shall recycle solid waste in a manner consistent with the separating of waste in households;
  - 90 per cent of daily-life solid waste discharged in urban centres must be collected and treated satisfying the environmental protection requirement; increase the capacity to recycle, reuse and treat solid waste in combination with energy recovery or organic fertilizer production; strive to reach the goal of achieving less than 30 per cent of collected solid waste disposed by burial;
  - Use 100 per cent environmentally-friendly plastic bags in trade centers and supermarkets for the purpose of replacing persistent plastic bags to serve daily-life activities;
  - 90 – 95 per cent of daily-life solid waste landfills in urban centres that have been closed will have their lands rehabilitated and reused, and;
  - The investment in construction of solid waste treatment facilities must ensure that less than 20 per cent of solid waste will be disposed by burial.

- **In terms of rural solid waste:**
  - 80 per cent of daily-life solid waste discharged in rural settlements must be collected, stored, transported, and undergo the self-treatment or concentrated treatment satisfying the environmental protection requirement; reuse or recycle ceiling organic waste into compost or provide home-based treatment of solid waste by transforming them into compost for using at site;
  - 95 per cent of daily-life solid waste landfills in rural areas that have been closed will have their lands rehabilitated and reused; strive to reach the goal of handling 100 per cent spontaneous landfills not included in the planning meeting the environmental protection requirement;


\(^{15}\) Decision 491/QĐ-TTg of the Prime Minister dated 7 May 2018

\(^{16}\) Decision 2149/QĐ-TTg of the Prime Minister dated 17 December 2009.
CHAPTER 3 GREEN GROWTH

CROSS-SECTORAL ISSUES

The investment in construction of solid waste treatment facilities must ensure that less than 20 per cent of solid waste will be disposed by burial.

- In terms of ordinarily industrial solid waste:
  > 100 per cent of ordinarily industrial solid waste discharged from production, trading and service facilities as well as trade villages shall be collected, reused, recycled and treated meeting the environmental protection requirement;
  > 80 per cent of ash, slag and gypsum discharged from power, chemicals and fertilizer plants shall be recycled, reused and treated as materials for production, construction, land grading, etc. meeting the environmental protection requirement.

- In terms of other particular solid waste:
  > 90 per cent of total building solid waste discharged from urban centres shall be collected and treated meeting the environmental protection requirement, 60 per cent of which will be reused or recycled into products, materials by appropriate technologies;
  > 100 per cent of sludge of septic tank collected in urban centres will be handled for environmental protection assurance;
  > 80 per cent of solid waste discharged from cattle and poultry farming will be collected, reused or recycled into compost, biogas and treated meeting environmental protection requirement;
  > 80 per cent of agricultural by-products generated by businesses of agriculture must be collected, reused or recycled into friendly-environment materials, fuels or products;
  > 100 per cent of chemical and pesticide packaging used in agriculture industry must be collected, stored and handled as regulated by laws;
  > 100 per cent of medical solid waste discharged from medical facilities or hospitals will be separated, collected, stored, transported and treated meeting the environmental protection requirement.

However, the next question is how these goals can be achieved.

Potential gains/concerns for Vietnam

The goals set in Decision 491 are ambitious, and we hope that all Ministries and authorities involved will work in concert on implementing a regulatory framework that will incentivise the public and the private sectors to help achieve these goals. Many of the goals set in Decision 491 require that existing laws be complied with. Therefore, the lawmakers and regulators need to clarify the reasons why compliance with the existing laws is currently lacking and find effective solutions.

Conducting business in the waste treatment sector in compliance with the relevant laws must be properly rewarded and incentivised. Bad actors who claim that they provide recycling and other waste treatment services at low cost and in accordance with the law but then dump collected waste into the rivers and environment must be held accountable. A compliant waste management industry will not develop, if non-compliant businesses are allowed to compete unfairly (and possibly dominate) the market.

Besides, Decree 38/2015/ND-CP was amended by Decree 136 and several guiding documents regulating the collection, recycling and disposal of products including batteries and accumulators, civil and industrial electric and electronic equipment (EEE), lubricants, tubes and tires, as well as vehicles.

Vietnam has had a regulatory framework for power generation from solid waste, known as Waste-to-Energy (WTE), since 2014. Ho Chi Minh City aims to reduce landfill waste to 20 per cent by 2025 and plans to attract private investment in WTE. Since our last Whitebook, a number of smaller WTE projects have entered the construction

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17 Decree 136/2018/ND-CP dated 5 October 2018 of the Government on amending and supplementing a number of articles of the Decree related to business and investment conditions in the fields of natural resources and environment.

18 Decision 31/2014/QD-TTg dated 5 May, 2014 of the Prime Minister on supporting mechanism for development of power generation projects using solid waste in Vietnam and Circular 32/2015/TT-BCT dated 08 October 2015 of MOIT on project development and model electricity sale contract applied to generation projects using solid wastes.

We hope this progress will accelerate and that burdensome licensing procedures will be streamlined to enable more WTE projects to proceed to the implementation stage.

**Recommendations:**

- Clarify the true reasons for non-compliance with current environmental regulations concerning waste treatment.
- Implement Decision 491 and its goals by providing a conducive business environment for compliant waste management businesses.
- Clear, enforceable guidelines and timelines should be provided for the approval of WTE projects and their implementation should be accelerated.

4. Air quality control

**Issue description**

Air quality has reached ‘very unhealthy’ and ‘unhealthy’ levels in Vietnam’s major cities. Yale University has listed Vietnam among 9 countries with the worst air quality in the world. Indeed, Vietnam does not specifically regulate air pollution. Sulphur dioxide, dust, dioxide, carbon monoxide and nitrogen dioxide are emitted from transportation, industry and construction, as well as from coal power plants and cement factories.

![Air quality in Hanoi and Ho Chi Minh frequently reaches ‘very unhealthy’ and ‘unhealthy’ levels](https://airnow.gov/index.cfm?action=airnow.global_summary)

Source: U.S. Department of State

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Potential gains/concerns for Vietnam

In our report, ‘Made in Vietnam’, prepared VBF, the estimated costs of health and environmental impacts of the current power development plan, with its reliance on coal, could be as high as US$15 billion a year by 2030.\(^{25}\) Acknowledging the problem, in mid-2016 the Vietnamese Government launched a national action plan to better control and monitor emissions and improve air quality. Hanoi, for example, is planning to install 70 air monitoring stations which would help to assess the situation and measure results of emission reduction actions.\(^{26}\)

The Vietnam Environment Administration is reported to set emissions targets,\(^{27}\) however, Vietnam lacks clarity on Government policies with specific targets on air quality control. Moreover, Vietnam has no air odour regulations against strong smells from landfills, factories and aquaculture.

\(^{24}\) Ibid.
Recommendations:

› Introduce specific policy targets and regulations for air quality control and emissions;

› Tax coal power plants, cement factories and other major polluters according to the estimated socio-economic and health impact; and

› Accelerate the development of the public transportation sector.

5. Plastic bag pollution

Issue description

Plastic has become a major issue over the past few years. Up to 60 per cent of plastic waste dumped in the world’s oceans each year comes from just 5 countries. Unfortunately, Vietnam ranks 4th (after China, Indonesia and the Philippines), discharging a huge amount of plastic waste into the ocean.\(^\text{28}\) In a recent survey conducted by researchers of the Ho Chi Minh City Urban Development Management Support Center (PADDI) on ‘Life cycle of floating debris in the canals of Ho Chi Minh City’, the level of plastic waste pollution in the canals of HCMC was found to be 50 to 100 times higher than that of the Seine river in Paris, France which has a comparable population of 10 million inhabitants.\(^\text{29}\)

Recycling alone is not a complete solution, as about 80 per cent of plastics dumped are too low of value. Furthermore, the majority of plastics used in Vietnam are made of non-biodegradable materials, and under the sun’s ultraviolet light and weathering agents like current or wind, they are broken into smaller and smaller fragments over time. Plastic fragments smaller than 5mm, known as micro-plastics, can be ingested by wildlife and create many problems in the ecosystem.\(^\text{30}\) Thus, reducing the production and circulation of single-use plastic items like food packaging, bags, bottles or drinking straws is key.

Potential gains/concerns for Vietnam

Vietnam does have a tax on plastic bags, but it is not very successful.\(^\text{31}\) In our view, the fundamental issue is that the country’s tax collection system is inefficient. Decision 582\(^\text{32}\) set forth goals on gradually reducing non-biodegradable plastic bags. In addition, Article 1.3.bof Decision 491 provides that by 2025, “100% environmentally-friendly plastic bags [be] used in trade centres, supermarkets for the purpose of replacing persistent plastic bags to serve daily-life activities”. These are all laudable goals. The issue is as always implementation in practice.

Many European countries have successfully introduced a ban on non-biodegradable plastic bags. The case of Rwanda, where non-biodegradable plastic bags were banned in 2008, shows that this is achievable in developing countries.\(^\text{33}\) We recommend consulting case studies of more than 40 countries that have banned, partly banned or taxed single-use plastic bags, including France, Germany and Italy in Europe; China in Asia; and Rwanda and Kenya in Africa. Their experience shows that retail outlets, food vendors as well as consumers can relatively quickly adapt and adopt less polluting solutions.

In addition, the above Prime Minister Decisions and subsequent implementing guidelines could be expanded to include single-use plastic straws, cups, packaging, utensils, bottles, and other non-biodegradable plastic products.

To showcase that even small steps contribute to tackling Vietnam’s plastic problem, in late 2017 EuroCham

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\(^\text{30}\) Ibid. p.14


\(^\text{32}\) Decision 582/QD-TTg dated 11 April 2013 of the Prime Minister approving the project on improving the environmental pollution control for the use of non-biodegradable plastic bags by 2020

launched its own Sustainability Initiative. Companies that sign up to this initiative agree to implement measures to reduce their environmental impact. The first steps, including eliminating single-use plastic bottles and plastic straws in offices, are supported by EuroCham members and the Secretariat.

**Recommendations:**

- Implement the Prime Minister’s decisions as promulgated.
- Strict enforcement of punishments on cases infringing waste and water treatment regulations;
- Gradual limitation of non-biodegradable polythene bags and a complete ban of use of non-biodegradable polythene bags after two – five years;
- Classification of domestic wastes at household level to enable cost-effective treatment of domestic wastes and private investors’ participation in this sector;
- Besides single-use plastic bags also reduce the use of other non-biodegradable plastic products, such as straws, cups, and packaging.

We appreciate that MONRE, in coordination with other Ministries, has continued to implement legislation to address these issues. However, there is more to be done.

We recommend strict enforcement and fair prosecution of waste and water treatment regulations. Vietnam has now developed at a level that can enable the ban of non-biodegradable polythene bags. Experiences in developed countries indicate that the entire ban of these products, supported by widespread behaviour-change outreach to the public, will contribute significantly to tackling the plastic problem. The Government should initiate more coordinated action both nationwide and in the wider region to curb plastic waste, including a ban on non-biodegradable polythene bags.

As a gradual approach to that ban, we also suggest Vietnam completes policies and mechanisms to, at first, limit the production and use of biodegradable plastic bags. The limitation of production and use of the products can be implemented with increased taxes for environmental protection in the use of plastic bags and promote outreach programs to raise public awareness. Pilot models can be used before it is applied on the national scale. The next step of this policy will be a complete ban on these products.

Another initiative that can be considered to reduce the use of plastic bags is classification of domestic wastes from the source. This will enable better efficiency of waste treatment as well as attract more involvement of private investors into this sector. This, of course, should be accompanied by comprehensive policies that favour the private investment in this field.

With the rapid urbanisation process, Vietnamese households – particularly in the big cities – are discharging increasing amounts of waste into the environment. The most basic components of solid waste are organic and inorganic waste. Inorganic waste includes, for example, glass, porcelain, metals, paper, rubber, plastic, nylon plastic, fabric, and electronics. Organic waste includes mostly left-over or spoiled food, falling leaves, spoiled fruits, manure, and dead bodies of animals. If wastes are separated into two groups i.e. organic and inorganic, or three groups i.e. organic, plastics and glass at the household level, it will enable much better cost-effective treatment of domestic wastes and allow for involvement of private investments into this sector.

The classification of domestic wastes can be applied on a pilot project in one or two cities before being multiplied on a national scale. This work in fact has long been undertaken in Europe and many countries in the EU can share their experience in this field.
II. SUSTAINABLE BUILDINGS AND ENERGY EFFICIENCY

Relevant Ministries: Ministry of Natural Resources and Environment (MONRE), Ministry of Construction (MOC), Ministry of Planning and Investment (MPI), Ministry of Finance (MOF).

Issue description

Buildings are, and will remain, the largest consumers of electricity. The rapid development of the middle class and its associated lifestyle, which includes intensive air-conditioning use, accounts for a considerable proportion of the energy consumption growth in the major cities of Vietnam. Proper building design can reduce this growth for the next 25 years of a building’s lifetime. However, the development of green buildings is still in its infancy in Vietnam; just around 40 buildings have certification, the majority of these being in the industrial sector.

Potential gains/concerns for Vietnam

Firstly, due to a lack of enforcement of regulations, global corporate guidelines seem to be the only drivers. As there is no need to reduce operating expenses due to low energy prices, the green building investments remain far too low to address the current environmental concerns.

Secondly, by using clay brick, Vietnam destroys 3,000 ha of rice fields and consumes over 6 million tons of coal every year. Both the Government and Ministry of Construction (MOC) have introduced measures to address this. Firstly, Decision 567 aims to achieve 30-40 per cent Non-Fired Brick (NFB) usage by 2020, with 15-20 million tons of industrial waste. Secondly, Directive 10 and Article 3 of Circular 13, regulate that State-budgeted or State-related projects must use NFB. All construction in Hanoi and Ho Chi Minh City must use 100 per cent NFB materials. In other Northern, Midland and South-Eastern provinces: Urban centres from type III must use a minimum of 90 per cent, while the remaining shall use a minimum of 70 per cent. The remaining provinces must use a minimum of 70 per cent (from type III) and the rest shall have 50 per cent. Other construction projects with more than 9 floors shall have 80 per cent usage of NFB materials.

The Government has also introduced Decree 139, replacing Decree 131. These new regulations set the fines for non-compliance at between VND20-30 million. However, we look forward to seeing the proper and effective implementation of these regulations.

Finally, the Vietnam Energy Efficiency Building Code (VEEBC), published in 2013 by MOC, is legally mandatory. The VEEBC code is comprehensive and reflects international as well as local norms. However, the code is not widely disseminated and buildings are not currently required to follow it in order to obtain a construction licence. Even a simplified version of this code would require owners to build much more efficiently, and would require engineers to acquire basic knowledge about the energy efficiency of equipment.

34 Decision 567/QD-TTg dated 28 April 2010 of the Prime Minister approval of the program of development of non-baked materials until 2020.
35 Directive 10/CT-TTg dated 16 April 2012 of the Prime Minister on increasing the use of non-baked building materials and limiting the production and use of clay brick.
36 Circular 13/2017/TT-BXD of the Ministry dated 8 December 2017 of the Ministry of Construction guiding on the use of non-fired building materials in construction. This Circular replaces Circular 09/2012/TT-BXD dated 28 November 2012 of MOC which stated that 100% state projects and others with more than 9 floors must have over 50% usage of NFB materials.
37 Decree 121/2013/ND-CP dated 10 October 2013 of the Government of the Government providing regulations on sanction of administrative violation in construction activities, real estate business; operation, production and business of building materials; management of technical infrastructure management of housing and office development.
38 QCVN 09:2013/BXD set under the Circular 15/2013/TT-BXD dated 26 September 2013 of the Ministry of Construction, issuing the National technical standards on buildings adopting energy efficiency.
Recommendations:

EuroCham GGSC would like to suggest the following recommendations:

› The Ministry of Industry and Trade (MOIT) should publish a Roadmap to Retail Electricity Tariffs for Commercial and Industrial power consumers, indicating the likely inflation in electricity tariffs for building owners to 2020 and 2025. Greater transparency on the timing of the introduction of market-based pricing for electricity and the removal of subsidies would stimulate immediate and widespread investment in energy efficiency measures. EuroCham members who are significant power consumers have requested a clearer pricing framework to allow them to anticipate electricity price inflation and to mitigate the impact on their businesses by reducing consumption of electricity;

› The use of Green Building (GB) standards should be promoted. Many building owners have been introduced to the concept of GB, and organisations such as the Vietnam Green Building Council (VGBC) report a significant uptick in interest over the past couple of years. Over 100 buildings are now GB-certified or are undergoing GB certification in Vietnam. We recommend the Government provides effective encouragement for building owners to certify their buildings. In addition to international green building certifications already being used in Vietnam, such as the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) and International Finance Corporation (IFC) Edge, VGBC has developed the LOTUS certificate. We would support a move to recognise multiple systems for use in Vietnam, letting the market determine which are practical and useful. These systems could be licensed for operation based on a set of simple criteria such as transparency, reliability and coherence according to recognised norms;

› The application of NFB solutions should be enforced and promoted through the Vietnam Association of Building Materials (VABM), since compliance may reduce carbon emissions from 70 to 40 per cent;

› Buildings should become more energy efficient. Making buildings more energy efficient does not mean higher investment costs. This process can be applied from the architecture phase, with passive design and the use of environmentally-friendly construction materials, to the implementation of energy-efficient devices during construction. We would encourage all buildings to achieve the minimum standards of the VEEBC code (or a simplified version) in order to receive the Building Licence at Basic Design Stage. Furthermore, EVN could impose a tariff scheme that rewards low-energy consumption buildings with lower prices and impose higher prices on high consumption buildings, and;

› There are many individual sustainable building solutions and best practice case studies available in the market. However, we believe that a clear urban planning showcase should be produced, including not just green buildings but also water, waste, traffic and environmental livelihood improvement solutions. This macro-level program of incentives and policies could help Vietnam move towards its vision of a Smart City.

ACKNOWLEDGEMENTS

EuroCham Green Growth Sector Committee
CHAPTER 4 HUMAN RESOURCES

OVERVIEW

The EuroCham Human Resources and Training Sector Committee would like to express our sincere appreciation for the positive changes and the efforts taken by the Government and relevant Ministries in terms of improving regulations regarding labour, employment and training over recent years. We fully support the increased dialogue and consultation with the business community.

Vietnam’s Socio-Economic Development Strategy (SEDS) 2011-2021 defines promoting human resources/skills development as one of the three breakthrough areas. The lack of necessary skills in primary industries and sectors is still the most significant challenge for the Vietnamese workforce, although training investment is increasing each year. Improving training, education and the legal systems on managing labour will help meet the demand for a skilled workforce, improved productivity and also promote a competitive and healthy investment environment.

We are very interested to see the on-going progress of labour quality, labour rights and labour commitment, especially since Vietnam has actively participated in global integration; signing and implementing many Free Trade Agreements (FTAs), including signing the EU-Vietnam Free Trade Agreement (EVFTA) with the European Union.

The EVFTA contains a robust and comprehensive chapter on Trade and Sustainable Development, which deals, inter alia, with labour matters relevant to trade relations between the EU and Vietnam. The objective is to promote mutual supportiveness between trade, investment and labour policies as well as to ensure that increased business relations do not come at the expense of workers’ rights. In this context, Vietnam has committed to the ratification and effective implementation of the fundamental International Labour Organisation (ILO) Conventions, including the three pending ones (No. 87, No. 98 and No. 105). The FTA also includes commitments to promote responsible business practices (Corporate Social Responsibility, or CSR) at the level of enterprises, be it local or foreign investment. To ensure that Vietnam can comply with its commitments under the FTA, we suggest the following recommendations:

- Follow the action plan for the ratification of the pending ILO fundamental Conventions, whereby ILO Convention No. 98 will be submitted to the National Assembly in May 2019, ILO Convention No. 105 will be ratified by 2020 and ILO Convention No. 87 will be ratified within the next few years;
- Ensure that the revision of the Labour Code currently ongoing is in line with the FTA commitments, in particular, the establishment of independent workers’ organisations;
- Begin the process to amend the Trade Union Law to reflect the principles of freedom of association, as set out in ILO Convention No. 87;
- Work with the ILO to monitor and facilitate the implementation of the FTA commitments;
- Upgrade the labour inspectorate system to improve its capacity to effectively implement core labour standards, and in particular, retain the provision in the draft revised Labour Code whereby the Labour Inspectorate would not provide any notice prior to undertaking a labour inspection; and
- Develop awareness on CSR principles in line with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights.

In order to effectively implement the EVFTA, Vietnam also needs to improve the country’s working environment throughout preparations and enforcement of existing regulations (as presented in detail below) and passing new legislation.
I. EXPANSION TO EMPLOYER’S RIGHTS TO TERMINATE EMPLOYEES

Relevant Ministries: Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

Vietnam’s labour law is generally very protective toward employees, especially on issues related to employment termination. Unlike in many other countries, Vietnamese law does not recognise the concept of ‘termination at will’. Employment termination must follow strict requirements on reasons and procedures. The cases in which an employer can terminate an employee's employment contract are fairly limited. However, in practice, businesses – especially foreign investors whose global labour standards apply alongside local regulations – often rely on their internal global corporate policies or practices to deal with employment issues. Some breaches which seriously violate internal corporate policies and which, under these policies, would lead to immediate dismissal, do not meet the threshold for termination under Vietnamese law. Some employers have no choice but to terminate employment contracts with their employees to protect their business interests. However, this exposes them to the major risk of having this decision challenged by an employee and found unlawful by Vietnamese courts.

Potential gains/concerns for Vietnam

From the practical perspective of businesses in dealing with their employees, there are several major concerns regarding the labour laws on termination:

1. Unilateral termination (Article 38 of the Labour Code)

The scenarios in which an employer can unilaterally terminate their employees are limited under the law, according to which an employer can unilaterally terminate their employees in the following cases:

- Where the employee frequently fails to perform his or her assigned tasks in accordance with the terms of the signed employment contract;
- Where an employee is sick or has an accident and remains unable to work after having received treatment for a period of 12 consecutive months in the case of an indefinite-term employment contract, for 6 consecutive months in the case of a definite-term employment contract, or more than half the duration of the contract in the case of an employment contract for seasonal work or a specific task of less than 12 months. Upon recovery, the employee shall be considered for reinstatement or continue to work for the employer;
- In the event of a natural calamity, fire or force majeure as prescribed by law, and where the employer has exhausted all possibilities and is forced to scale down production and reduce the workforce; and
- Where the employee does not present him or herself at the workplace upon the expiry of the temporary suspension of his or her employment under the law.

These cases do not sufficiently reflect the practical situations of companies having to terminate the employment contract of their employees. Specifically, it is common for candidates to provide falsified information regarding their degrees, expertise and work experience during the recruitment process to increase their chances of being hired. Many employers decide to recruit those candidates based on false information, as the employee would not otherwise have met the recruitment criteria. When this deception comes to light after the employee’s probationary period has ended, there is no regime under the law to terminate an employment contract with the employees for providing falsified information during the recruitment process. However, we note that under the draft revised Labour Code, this has been added as a ground for the employer’s unilateral termination of the labour contract. We recommend legislators retain this important revision in the final version of the revised Labour Code.

Furthermore, there are other cases where an employee has been purposely absent from work without permission or proper reason. Under the current Labour Code, if an employee has been absent from work for 5 accumulated days in one month or 20 accumulated days in one year without proper reason, he or she would be subject to disciplinary action and dismissal. However, the statutory procedures to carry out a dismissal are very lengthy and troublesome (described in detail in section III below). For this misconduct, it is more reasonable to allow the employer to immediately terminate the employees’ contract of employment to save resources and give them...
more time to find alternative personnel. The draft revised Labour Code permits employers to unilaterally terminate the employment contract for this unauthorised absence with 3 working days’ notice, and we encourage legislators to retain this provision.

Another issue concerns the termination of older employees. Under the current Labour Code, a labour contract automatically terminates once an employee has reached retirement age and contributed to the social insurance fund for the number of years required to receive a pension. Under the current Labour Code, differential retirement ages apply for men and women – men retire at age 60, but women retire at age 55. The draft revised Labour Code proposes gradually increasing the retirement age for men and women, whereby the final retirement ages will be 60 years old for women and 62 years old for men.

This unequal retirement age for men and women has been identified as a factor preventing women from being promoted to upper management positions. In fact, in a meeting with EuroCham’s Human Resources and Training Sector Committee, the UN Women’s Development Programme stated that they considered the differential retirement age as an obstacle to achieving gender equality in the workplace. Accordingly, we encourage legislators to set the same retirement age for both men and women.

2. Labour discipline and dismissal

Dismissal is the most severe disciplinary action that can be taken against an employee. This action is limited to certain kinds of misconduct, in particular:

- a. Where an employee commits an act of theft, embezzlement, gambling, intentionally causes injury, uses illicit drugs in the workplace, discloses technological or business secrets or infringes the intellectual property rights of the employer, or commits acts which are seriously detrimental or pose seriously detrimental threats to the assets or interests of the employer;

- b. Where an employee who is subject to the disciplinary measure of a deferred wage increase, recidivates while the disciplinary measure is still in force; or where an employee was demoted as a labour reprimand and recidivates; and

- c. Where an employee has been absent from work for 5 accumulated days in one month or 20 accumulated days in one year without proper reason.

Therefore, the scope of dismissal is narrow and does not cover many acts of misconduct that companies face. For instance, acts of sexual harassment, aggression and hostility, fraud, giving or receiving bribes or kickbacks and violent behaviour (including intimidation, attempts to instil fear in others or subjecting others to emotional distress) should also be subject to dismissal. The Labour Code does allow an employer to dismiss employees based on the severity of the damages caused, for example, if an employee “commits acts which are seriously detrimental or posing a seriously detrimental threat to the assets or interests of the employer”.

However, there is no clear guidance on the threshold for what should be considered ‘seriously detrimental’ or ‘posing a seriously detrimental threat’. In practice, during the registration of internal labour regulations, each local Department of Labour, Invalids and Social Affairs (DOLISA) has a different interpretation of this provision. Some DOLISAs interpret it to mean that the employers, based on their business situation, should define the threshold of serious damage in their internal labour regulations. Meanwhile, other DOLISAs argue that serious damage must be defined as that with a total value equal to at least 10 months of the regional minimum wages applicable to the employees’ place of work. The DOLISAs’ different interpretation of this regulation has made the application of dismissal more difficult in practice. Moreover, for many acts of serious misconduct, it is not possible to prove material financial damages. For example, in most cases, it would not be possible to prove the damage caused by bribery, despite the fact that it may cause irreparable – though unquantifiable – damage to a company’s reputation.

3. Meeting between UN Women’s Development Programme and EuroCham’s HR & Training SC, 16 August 2018, regarding consultation on the role and engagement of the private sector in Vietnam in promoting women’s economic empowerment as part of the UN Women’s Development Programme’s regional programme on “Promoting women’s economic empowerment at work in Asia”.
Moreover, some of the provisions of the current Labour Code provide blanket protection to female employees from disciplinary action or termination who are pregnant, on maternity leave or raising a child under 12 months, rather than specifically addressing the issue of women facing discrimination based on these grounds.

Under the current Labour Code, even where a woman faces dismissal for reasons entirely unrelated to her pregnancy, maternity leave or raising a young child, she has protected status. This restriction is overly broad, and we recommend to tailor the restriction to meet the actual underlying objective of providing protection from discrimination to women in the workplace. Under the current Labour Code, the protected period could last for a very significant period of time. For example, if a woman committed a serious act of misconduct just before she became pregnant, the employer would be unable to discipline her for the nine months of her pregnancy, and then for an additional 12 months after she gave birth to her child. Thus, some employers would face the circumstance that they would have to maintain an employee's employment for almost two years after a very serious act of misconduct. In practice, we have seen many situations in which female employees who are expecting or raising a small child commit serious breaches causing serious damages to their employer. However, the employer cannot dismiss them and finally has to end up negotiating a mutual termination of employment contract and provide an exorbitant settlement package for the female employee. This situation causes difficulties and harm to employers' business because they do not have rights to protect themselves from employees' breaches, especially in cases relating to fraud, bribery, trade secrets and disclosure of confidential information. These restrictions on termination may also be counter-productive in achieving their objective of promoting women's equality in the workplace – employers may be more hesitant to hire female employees if they face the risk of being unable to dismiss them for serious acts of misconduct for periods of up to close to two years.

We note that the draft revised Labour Code has tailored the restrictions on termination of women who are pregnant, on maternity leave or raising a child of under 12 months by stating that an employer may not dismiss or terminate an employee on the basis of one these statuses, and by placing the onus of proof upon the employer to establish that the reason for the termination or dismissal is unrelated to the female employee being subject to one of these conditions.4 We also note that the draft revised Labour Code has broadened the grounds of protection from discrimination to include “maternity” and “family responsibilities.”5 We believe that these changes more effectively implement the goal of protecting women from discrimination in the workplace.

The Labour Code also prescribes that an employer can dismiss an employee who is subject to the disciplinary measure of wage increase deferment but who recidivates while the disciplinary measure is still in force or who was demoted as a labour reprimand and recidivates, as described in point 2 above. In practice, many employees do not repeat the same act of misconduct. Instead, they commit other acts of misconduct which are equally or even more severe than the previous one. However, there is no legal basis for an employer to remedy this and dismiss them.

Furthermore, there are many deficiencies in the general labour disciplinary procedures. The statute of limitations for settling a labour disciplinary action varies from 6 to 12 months from the date of the occurrence of the misconduct. An employer must gather evidence, hold a disciplinary hearing and issue a dismissal decision within this limitation period. Presently, the general limitation period applicable to employee misconduct is 6 months, but it is extended to 12 months where the act of misconduct is directly related to finance, assets and disclosure of technological or business secrets. The current statute of limitations is problematic because many employees carry out their acts of misconduct in a surreptitious manner, so the employer only learns of the act of misconduct after the limitation period has already expired. For example, employee fraud is generally undertaken in a secretive manner to avoid detection, so is often only discovered at a much later date. Another problem with the current limitation period is that it often takes a considerable amount of time to gather evidence of the employee's misconduct, and employers have difficulty completing all the disciplinary procedures within the limitation period. As discussed in further detail below, the disciplinary hearing procedures can make this a very lengthy process to complete.

We are encouraged to see that disciplinary procedures have been simplified under the new Decree 148.6 In order to dismiss an employee, an employer must hold a disciplinary hearing with the presence of both the employee and the executive committee of the trade union. Previously, an employer had to issue at least three invitations

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6 Decree No. 148/2018/ND-CP of Government dated 24 October 2018 amending Decree No. 05.
to the required attendees before it was permitted to proceed in the absence of one of the parties. In practice, this often meant that it would take around one month to conclude the disciplinary hearing, since one of the required parties would not attend. However, under Decree 148, effective as of 15 December 2018, an employer is now only required to send one invitation to the disciplinary hearing and within three working days the invitees must confirm their attendance or explain their legitimate reasons for being unable to attend. The employer is permitted to proceed with the disciplinary hearing in the absence of one of the parties if they do not provide a legitimate reason for failing to attend. While this will likely streamline the disciplinary hearing procedure, there are still problems, as Decree 148 does not provide a definition of “legitimate reasons” so it will be unclear when the employer can proceed in the absence of one party. Moreover, there is no stated limit to the number of times a party can refuse to attend based on “legitimate reasons”, so the disciplinary hearing process could ultimately take even longer than under the previous regulations.

**Recommendations:**

Therefore, to increase the quality of the workforce, facilitate fair competition in the labour market and attract more foreign investors and employers, legislators should seriously consider revising labour regulations to provide more power to the employers in dealing with termination cases. In particular, we recommend the following measures:

- Retain provisions in the draft revised Labour Code providing further grounds for the employer to unilaterally terminate employees, for instance where:
  - Employees have provided falsified background information during the recruitment process, which affects the employer’s assessment; and
  - Employees have been absent from work without permission and/or proper reasons for a total of 5 working days within one month or 20 days within one year.

- Impose the same retirement age for men and women;

- Expand the scope of acts of misconduct subject to immediate dismissal (e.g. fraud, giving or receiving bribes or kickbacks, sexual harassment or aggressive, hostile and violent behaviour or having violated the internal safety rules which lead to potential risk to human life);

- Tailor the regulations on the restriction applied to the dismissal of female employees in accordance with the draft revised Labour Code, so that employers are prohibited from terminating or dismissing a female employee based on her pregnancy, maternity leave or raising a young child and placing the onus on the employer to establish that the employee’s dismissal is for reasons unrelated to these statuses;

- Allow an employer to dismiss an employee who is subject to the disciplinary deferment of wage increase but who commits further misconduct with the same level of severity while the disciplinary measure is still in force or who was demoted as a labour discipline measure and commits a new act of misconduct with the same level of severity;

- Extend the statute of limitations for settling a labour disciplinary action from 12 to 24 months (we refer to the same statute of limitations for settling a labour disciplinary action with respect to cadres and civil servants under the Law on Cadres and Civil Servants). This statute of limitations should be calculated from the date the misconduct was discovered by the employer, rather than from the date the act occurred;

- Provide further guidance on the definition of “legitimate reasons” for one of the required parties to refuse to attend a disciplinary hearing, and include a limit to the number of times a party may refuse to attend; and

- Set out the threshold as a basis to determine “seriously detrimental” or “posing seriously detrimental damages” – for instance, a specific monetary threshold – or, alternatively, remove the requirement for acts within this category to cause damage equivalent to a monetary threshold.

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7 Law 22/2008/QH12 dated 13 November 2008 adopted by National Assembly on Cadres and Civil Servants
CHAPTER 4 HUMAN RESOURCES

II. MANAGING FOREIGNERS WORKING IN VIETNAM


Issue description

Under the Law on Social Insurance 2014 and Decree 143\(^8\), from 1 January 2018, foreigners working in Vietnam will be subject to statutory Social Insurance (“SI”) contributions. The people subject to the mandatory SI scheme are those who:

- Work under a work permit or practice certificate or practice license; and
- Maintain a labour contract with an indefinite term or a definite term of one year or more with a Vietnamese company.

The exemption of mandatory SI contribution includes those who:

- Work in Vietnam under intra-company transfer form as regulated in Decree 11\(^9\) (managers, executive directors, experts or technicians of a foreign enterprise which has established a commercial presence in Vietnam and were employed by the foreign enterprise at least 12 months prior to being transferred); or
- Have passed the retirement age in accordance with the Labour Code.

In short, the contribution scheme for foreigners is similar to Vietnamese, including 5 regimes: sickness, maternity, labour accident, pension, and survivorship allowance. In which, the contribution to 3 short-term regimes (sickness, maternity and labour accidents) is applicable from 1 December 2018, and the remaining 2 long-term regimes (pension and survivorship allowance) will be applicable from 1 January 2022.

Upon the termination of the Vietnam labour contract or expiration of the work permit, and when the expatriates no longer live and work in Vietnam, they can claim a one-off allowance for the contribution period. The claimable amount and procedure are similar to that applied for Vietnamese.

Upon the release of the official guiding Decree, there are still several insufficient and impractical points in this Decree which will be discussed in the next section of this chapter.

Potential gains/concerns for Vietnam

Firstly, the Decree excludes foreign workers who are being internally transferred within enterprises in accordance with Decree 11. Decree 11 defines internal transfer as the transfer from the subsidiaries or headquarters on the business licence in Vietnam as the investors or owners of the entities in Vietnam. However, in practice, most foreign workers are assigned to Vietnam from the group companies rather than from the headquarters. This leads to the fact that this SI exemption is applied to limited individuals and results in double SI contribution in both their home and host countries.

Regarding SI regimes, even though the long-term regimes are expected to be effective from 1 January 2022, the application of 5 regimes would not be fair or practical for foreign employees who keep contributing to SI in their home country. We understand that the Government is considering the fact that Vietnam has not signed any bilateral agreements with other countries on insurance coverage. Without relevant bilateral agreements, this will definitely result in double cost for both employees and employers as well as administrative burdens. Furthermore, the application of pension and survivorship regimes is unnecessary and controversial, since foreign employees normally work in Vietnam for a short period of time, especially in light of strict management of foreign workers.

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\(^8\) Decree 143/2018/ND-CP dated 15 October 2018 of the Government on elaborating on Law on social insurance and Law on occupational safety and hygiene regarding compulsory social insurance for employees who are foreign nationals working in Vietnam.

when the Vietnamese competent authorities review and approve the labour quota for work permit issuance. The Decree proposes that foreign employees in such cases will have the right to request a lump-sum payment before they leave Vietnam. However, the claim procedure will inevitably lead to a greater administrative burden for all stakeholders, including social insurance authorities, employers and foreign employees. In addition, the relevant dossiers of expatriates issued by overseas authorities are required to be translated into Vietnamese and notarised in accordance with prevailing regulations which are normally time-consuming.

In terms of contribution rate, based on the table comparing the social insurance contributions of foreign workers in Vietnam and other ASEAN countries that EuroCham’s HR & Training SC has shared with MOLISA in our position paper dated the 2nd of October 2017, the contribution rate in Vietnam is far higher than other countries, but the rate of return is lower. The procedure of SI implementation for foreign workers is also a big question in practice. The insufficient procedure of SI implementation, especially the procedure to claim a lump sum when foreigners repatriate or move to other countries, will not have a positive effect on the attractiveness of Vietnam’s investment environment.

**Recommendations:**

In view of these concerns, we recommend the following measures:

- Redefine the “inter-company transfer” definition to include expatriates who are assigned from group companies who have participated in home country to avoid double SI contribution;
- Not to apply the pension and survivorship regimes to foreign workers or apply only on an optional basis;
- Create the flexibility for foreign workers to receive a one-off social insurance allowance upon repatriation from Vietnam by authorising the employer to carry out the procedure on expatriates’ behalf;
- Stipulate the lower ratio of SI contribution for employers and foreign workers making reference to countries in ASEAN or the Asia–Pacific region;
- Evaluate the impact of administrative procedures when applying each regime to facilitate the implementation of the executing agencies, foreign workers and employers; and
- The lump-sum allowance should be counted from the application date rather than from the date of issuance of a decision by the insurance agency.

**Work permit**

**Issue description**

The term “an intra-company transferee” in accordance with Decree 11 is defined as a manager, executive director, expert or technician of a foreign enterprise which has established a commercial presence in Vietnam and who was employed by the foreign enterprise at least 12 months prior to being transferred. In practice, Multi-National Companies (MNCs) have numerous subsidiaries around the world and often relocate their staff to different countries to maximise the skills of their global workforce. Unfortunately, intra-company transferees may only be recognised in Vietnam if they are assigned from the subsidiaries or headquarters registered on the business licence in Vietnam as the investors or owners of the entities in Vietnam. As a result, Circular 35
t can only be applied in very limited cases.

In addition, due to the strict requirements on the legalisation of documents issued overseas, the time required to prepare documents for a work permit application can range from 2 to 3 months – or even longer due to the complicated procedures of legalisation in different countries. This is a continuing issue for both employers and foreign workers.

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10 Circular 35/2016/TT-BCT of Ministry dated 28 December 2016 of Ministry of Industry and Trade on identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in Vietnam’s WTO commitments on services.
The introduction of Circular 23\textsuperscript{11} has led to a faster and more straightforward process compared to the existing paper-based procedure. However, some issues remain with the implementation in different locations. The processing time to receive the application, proceed and release the results of the work permit through the online procedure may take longer than the existing paper-based procedure due to technical problems in the online system. Furthermore, some local authorities are not familiar with the system and lack resources to handle these online applications. Recently, the Government has also introduced Decree 140 amending some articles of Decree 11 on managing foreign nationals working in Vietnam. One notable point in this Decree is the cancellation of the employer’s responsibility to return the work permit of foreign employees to the local authority where the work permit was issued.

Potential gains/concerns for Vietnam

The narrow definition of intra-company transferee is not in accordance with international practice and often leads to impractical implementation. In practice, some local authorities sometimes require intra-company transferees who are being transferred (within the group) to Vietnam to submit their local employment agreements. As a result, intra-company transferees may be subject to statutory Social Insurance for foreign workers as well as the relevant local employment regulations. The preparation time for documents required for work permit applications causes significant difficulties for foreign employees and employers who wish to deploy their staff to Vietnam at the right time to meet business requirements.

The purpose of issuing work permits online is to help improve and shorten the processing time. However, frequent system errors and a shortage of staff handling the database have caused a delay in issuing work permit for foreign employees. As the result, either the corporation or the employee would prefer applying by paper rather than online to avoid complicated technical issues. Furthermore, paper documents can be reviewed by the handling staff at the time of submission and requests for supplementary materials made right away to save time.

Eliminating the employer’s responsibility to return foreign employees’ original work permit to the issuing authority after ending the assignment may cause risk for the employer if the foreign employees use that work permit for other undefined purposes.

Recommendations:

We suggest that the Government and MOLISA should consider:

- Supplementing the definition of “intra-corporate transferees from head office to its subsidiary” by “intra-corporate transferees within the group companies”, as long as the sponsoring entity in Vietnam can prove that foreign employees are being assigned from subsidiaries within the same group;
- Deploy the fast-track service in which some required documents can be supplemented within the defined time. The higher fee for the fast-track service can be charged and having the system to control the employer will enable them to supplement documents as requested;
- Ensure the online system for work permit application runs smoothly and have experienced staff handling applications in order to avoid any delays processing and issuing work permits online and;
- Implement the detailed instructions on the process of revoking work permits by the employer after foreign employees end their assignment in Vietnam.

III. TECHNICAL AND VOCATIONAL TRAINING AND EDUCATION PRACTICE IN VIETNAM

Relevant Ministries: Ministry of Labour, Invalids and Social Affairs (MOLISA), Ministry of Education and Training (MOET).

Issue description

The Vietnamese economy continues to make significant steps forward. Vietnam has demonstrated true dedication to equipping its labour force with the training and access to quality education needed to empower workers to work more productively. Education has long been a priority for Vietnam and training and quality education remain paramount for the preparation of young people with skills for the workplace. The quality of training and education in Vietnam benefits from being at the highest possible standard. Truly significant improvements have been made in this area in the past year with the passing of Decree 86\(^\text{12}\) and we are optimistic about the pace of these advances.

There continues to be a trend of Vietnamese graduates entering the workforce each year without the necessary skills for the workplace and we recognise the efforts made in the past year by the Vietnamese Government to address this matter. An educated and skilled Vietnamese workforce helps ensure the success of both domestic and foreign investment. Graduates from Vietnamese institutions must be equipped with the practical knowledge, technical and soft skills, resourcefulness, and mind-set for an ever-changing and evolving workforce. Recognised deficits in competencies are being addressed and minimised through a concentrated effort to ensure that students receive employability and technical skills training prior to graduation. Indeed, Decree 86 allows foreign training agencies to participate in this endeavour.

At the top end of the workforce, Vietnamese students can prepare for their careers by gaining access to top international universities both overseas and within the country. At the same time, learning opportunities at international institutions operating in Vietnam help students gain admission to top institutions once they reach university level and also provide students with international exposure and cultural sensitivity through the presence of foreign educators. International educational institutions in Vietnam account for a significant number of the foreign labour force and therefore places a larger burden on these institutions with the implementation of social insurance deductions for foreigners.

According to Decree 86, schools and kindergartens can tie up with accredited foreign educational institutions subject to the approval and specific guidelines of the Vietnamese Government. The Government will also issue specific guidelines on the integration of foreign and domestic courses and graduates of such integrated courses must receive certificates, which should be valid and be recognised by both Vietnam and the foreign country. This will certainly encourage foreign investments in the sector.

To further encourage foreign investment in this sector, local public education institutions are encouraged to partner with private international education institutions to conduct training of teachers working in the public school system. Partnerships with private institutions offering blended educational programs that combine online learning with face-to-face studies for training of Vietnamese teachers in the public school sector could be used to further develop local teachers with the international standard skills to continue to develop students with the expanding skills necessary for future careers in emerging industries which might not yet exist.

Today’s learning environment is changing rapidly, and organisations are making it a priority to change the way they are creating, managing and delivering learning. They are exploring ways to increase the amount of experiential and informal learning they are able to deliver, as well as rethinking both new and existing content to be smaller and more mobile friendly. These priorities are aimed at delivering learning in a continuous, impactful way. The need to go beyond traditional courses and classes is clear, as nearly two-thirds of companies say they need people to connect to learning resources on a weekly or daily basis. This frequency cannot be achieved via courses and classes alone, so companies must develop new learning interactions in education to meet this need.

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Potential gains/concerns for Vietnam

Vietnam is our host country. We honour and respect Vietnamese culture and readily acknowledge the strides being made to improve the abilities of young people as they prepare to enter the workforce – particularly through the passing of Decree 86. Vietnam has shown its willingness to create partnerships of private education and training institutions operating in the country as well as from the expertise of foreign institutions to address current skills gaps. Partnerships with private institutions that offer flexible, blended online and face-to-face teacher training programs, English and soft skills training can be used to upskill Vietnamese educators in public schools, and also help Vietnamese students and fresh graduates entering the workforce acquire the necessary abilities.

Furthermore, while there are currently a number of initiatives underway to improve vocational and workplace skills training and education in Vietnam, more can be done to attract and recruit students into educational, vocational and technical training institutions. Additionally, much can be gained by building the capacity and fostering the quality of educational, vocational and technical training institutions, and continuing to offer opportunities for Vietnamese students to learn at international schools while at home in Vietnam.

Recommendations:

With the aim of supporting international standard education in Vietnam in order to enhance white-collar job readiness and increase productivity at the top of the labour pool, the Government should consider relieving the pressure on international education institutions by implementing an exemption on contributions to social insurance by foreign educators, since international education institutions employ them in significant numbers. If the Government is interested in promoting international education in secondary cities, it may wish to consider offering incentives to attract foreign investors to these regions. It is also recommended that the Government collaborate with international private institutions offering international standard teacher training and professional development to enhance the abilities of local teachers.

With the ongoing rapid changes in technology, the demand for coaching and mentoring programs continues to increase. The Government might also consider encouraging a continuous learning environment by supporting cooperative internship and mentorship programs in collaboration with the private sector through an online platform that provides new graduates or workers with a resource for guidance, opportunities and information in the area of continuous training opportunities and internships and mentoring.

With regards to technical and vocational education and training, we suggest that the Government leverages the expertise of the private sector. In particular, it should work with industry representatives as well as private education institutions already operating in Vietnam to develop curricula and training courses that foster lifelong learning as well as focus on developing skills such as computer literacy and coding, science and technology fundamentals, basic business skills and entrepreneurship. It would also be beneficial to invest in and support advanced vocational training for teachers, and sponsor the technical facilities and equipment of public colleges.

ACKNOWLEDGEMENTS

Eurocham Human Resources and Training Sector Committee.
CHAPTER 5 INTELLECTUAL PROPERTY RIGHTS

OVERVIEW

Vietnam has made significant progress in strengthening the protection of Intellectual Property Rights (IPR) over the last 25 years since its participation in the WTO and commitment to comply with the TRIPS Agreement, Berne Convention and a series of other international, multilateral and bilateral treaties. The process of joining the WTO, and that of negotiating, signing and implementing international, multilateral and bilateral commitments with regions and countries with a highly-developed legal system for IPR protection has strongly facilitated and promoted the enhancement of IPR protection in Vietnam.

It should be emphasised that, while Vietnam has participated in many international treaties on IPR protection and promulgated a series of legal documents to incorporate international commitments into domestic legislation to strengthen IPR protection, in practice, there are still many barriers hindering the full and serious implementation of international commitments and legal provisions on IPR protection. The elimination of these barriers requires special attention from the Government and Ministries of Vietnam. This is essential to ensure that these commitments are fully and effectively integrated into public life, thus contributing to the competitiveness and sustainable development of Vietnam’s economy, in line with the ambitions of the Prime Minister and Government.1

The upcoming implementation of the EVFTA will bring positive improvements in the IPR field, which will benefit both the IPR owners as well as consumers.

In 2018, Vietnam made certain efforts to consolidate the country’s legal framework to protect IPR, including the issuance of the guiding documents including Decree 222 replacing Decree 1003, Decree 854 and Circular 16.5 The promulgation of these documents has contributed to solving some problems in the implementation of the provisions of the IP Law and previous guiding documents in the protection of copyright and industrial property rights. However, these new documents fail to deal with a number of difficulties and obstacles in the practice of registration and enforcement of IPR in Vietnam mentioned in previous EuroCham Whitebooks.

I. DECREE 22 AND STRENGTHENING THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS, ESPECIALLY IN THE DIGITAL ENVIRONMENT

Relevant Ministries: Ministry of Culture, Sports and Tourism (MCST), Ministry of Information and Communication (MOIC)

Issue description:

Compared to Decree 100 and the replaced Decree 85, Decree 22 continues to improve and supplement some important regulations and guidelines to enhance the protection of copyright and related rights, particularly:

2 Decree 22/2018/ND-CP dated 23 February 2018 of the Government with effect from 10 April 10 2018, detailing a number of articles and measures to implement the Law on Intellectual Property 2005 (IP Law) which were amended and supplemented in 2009.
3 Decree 100/2006/ND-CP dated 21 September 2016 of the Government, detailing and guiding the implementation of a number of articles of the Civil Code and the Law on Intellectual Property regarding copyright and related rights.
4 Decree 85/2011/ND-CP dated 20 September 2011 of the Government amending and supplementing a number of articles of Decree 100/2006/ND-CP detailing and guiding the implementation of a number of articles of the Civil Code, the Law on Intellectual Property on copyright and related rights.
The Decree stipulates that the State will provide financial support to purchase copyright for related State agencies and organisations, giving priority to investment in training civil servants and employees in the management and enforcement of copyright and related rights protection from central to local levels. Priority is also given to investment in and application of science and technology, promoting communication to raise awareness and observance of laws, strengthening knowledge-sharing in educational institutions, mobilising social resources to improve capacity of copyright and related rights protection, thus meeting the requirements of socio-economic development and international integration.6

The Decree specifies the responsibilities of the Ministry of Culture, Sports and Tourism as regards copyright and related rights. Specifically, the responsibility to coordinate with Ministries, Ministerial-level agencies and Government agencies, and the duties and powers of State management over copyright and related rights in the localities of provincial/municipal People’s Committees.7

The new Decree clearly stipulates the order, procedures and time limits for considering invalidation of Copyright Registration Certificates and Related Rights Registration Certificates. Pursuant to Decree 100 and the replaced Decree 85, the Copyright Office shall cancel Copyright Registration Certificates and Related Rights Registration Certificates where it is determined that the holders of such certificates are not the authors or the owners and where the works, performances, audio recordings, video recordings and broadcast programs are not subject to protection as specified by law.8 This provision has caused many difficulties and delays in resolving requests for cancellation of Copyright Registration Certificates and Related Rights Registration Certificates in the past. The new Decree prescribes two cases in which the Copyright Office shall issue a decision to invalidate Copyright Registration Certificates and Related Rights Registration Certificates: (i) the Copyright Office receives a valid Judgment or Decision of the Court or a Decision of the agency competent to handle infringements of copyright and related rights on the invalidation of such Copyright Registration Certificates and Related Rights Registration Certificates,9 and (ii) the Copyright Office receives written requests for invalidation of issued Copyright Registration Certificates and Related Rights Registration Certificates from individuals or organisations holding such certificates.10

The new Decree requires organisations and individuals using copyrighted works, audio recordings, video recordings or broadcast programs – those not required to seek permission from the copyright holders but to pay royalties and remuneration – to directly contact the owner(s) or representative regarding exploitation and use. Where the owner cannot be contacted, an announcement must be made in the mass media.11 In case such works are related to the rights and interests of many organisations authorised to represent a specific right or group of rights, the new Decree specifies that these organisations can agree on a representative to negotiate on licensing, collecting and distributing royalties according to the Charter and authorisation documents.12 The new Decree also requires the organisations representing co-owners to maintain their own database of copyright and related rights, and be connected to the national database of copyright and related rights.13

**Potential gains/concerns for Vietnam**

However, some issues mentioned in previous Whitebooks have not been resolved in the new Decree. In particular:

Regarding the presumption and proof of copyright and related rights, we propose supplementing the provisions of the Berne Convention. Specifically, the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union. It shall be sufficient for his name to appear on the work in the usual manner.14 This is instead of stipulating that organisations and individuals that have been granted copyright/related rights registration certificates are not obliged to prove the copyright or related rights of their own in case of dispute unless there is evidence to the contrary.15

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6 Article 4 of Decree 22/2018/ND-CP
7 Article 5 of Decree 22/2018/ND-CP
8 Article 39.1.c Decree 100/2006/ND-CP amended, supplemented according to Decree 85/2011/ND-CP
9 Article 39.2.a Decree 22/2018/ND-CP
10 Article 39.2.b Decree 22/2018/ND-CP
11 Article 43.2 Decree 22/2018/ND-CP
12 Article 44.3 Decree 22/2018/ND-CP
13 Article 47.3 Decree 22/2018/ND-CP
Regarding the procedures for copyright and related rights registration, the Copyright Office’s requirement for copies of identification documents and residential addresses of authors and owners when submitting an application, and the publication of these documents on its website are still major obstacles. Many copyright authors and owners have refrained from filing applications for registration of their copyrighted works in Vietnam solely because they are not comfortable disclosing their personal information and documents, despite assurances that both will be kept strictly confidential.

Although the IP Law 2005 specifies that the competent State agency has the right to request an intellectual property assessment when handling cases of IPR infringement, and that IPR holders and relevant organisations and individuals have the right to request an intellectual property assessment to protect their legitimate rights and interests, after 14 years there is still no professional agency in Vietnam which effectively provides assessment of copyright and related rights. In many cases, copyright authors and owners have not been able to enforce their copyright solely because they have not been able to obtain a copyright assessment opinion confirming the infringement.

Online copyright and related rights infringement is increasingly widespread and serious. We will discuss this issue in detail and make recommendations in the sub-section of IPR enforcement below.

The above outstanding issues on copyright and related rights seriously affect the ability to register and enforce these rights in Vietnam. This presents many difficulties for Vietnam to comply with international commitments, and causes concerns for authors and owners, law enforcement agencies and the public.

**Recommendations:**

- Supplement regulations on the presumption of copyright and related rights based on the appearance of the author’s name on the work;
- Remove unreasonable requirements regarding provision of personal information and identification documents of copyright owners and authors when applying for Copyright and Related Rights Registration Certificates;
- Supplement specific provisions on the protection and handling of infringement of copyright and related rights on digital environment;
- Strengthen the training of relevant officials on copyright and related rights, especially in digital environments;
- Set up specialised agencies able to provide copyright expert assessment. EuroCham’s IPR SC remains open for discussion and cooperation on this matter in the future, and;
- Apply regulations and guidelines on the responsibilities of intermediary service providers, in particular, the ‘notice-and-take-down’ measures and the responsibilities of intermediary service providers that ignore or fail to fully comply with the notice-and-take-down requests of the author/owner of other rights.

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16 Article 201 of Law on Intellectual Property 50/2005/QH11
II. CIRCULAR 16\textsuperscript{17} AND PROVISIONS OF ARTICLE 90.2 OF THE INTELLECTUAL PROPERTY LAW

Relevant Government authorities: Ministry of Science and Technology (MOST)

Issue description

Circular 16 supplements a series of critical regulations and guidelines in regards to registration of industrial property rights. These include amendments to the basis for the acquisition of industrial property rights (authorisation, re-examination period, protection certificate issuance period, extension of the period to respond to National Office of Intellectual Property (NOIP) notices, and fees refund); complaint and complaint settlement; procedures for processing international trademark applications designating Vietnam; amendment, supplement and recognition of well-known trademarks; as well as additional provisions on industrial design applications and inventions. Despite these positive changes, we have noticed some unclear issues that require detailed instructions and guidance for practical implementation.

Firstly, as stipulated at Point 22, Circular 16, ‘Complaint and settlement of complaints about the procedures for establishment of industrial property rights’, details falling in the following categories will not be considered in the process of resolving complaint:

‘Article 22.
1 The person having the right to complain, the matters against which the complaint is filed, the time limit for filing a complaint and the complaint handler.

…

c) The subject of the decision or notice against which the complaint is filed is the application for establishment of industrial property rights when such decision or notice is issued. The following contents specified in the complaint are beyond the scope for settling complaints so they are not accepted during complaint settlement:

…

(ii) New contents which the applicant for establishment of industrial property rights who are regulated in the decisions or notices which are complained is yet to provide during the appraisal but can change such decisions or notices.’

New facts as stipulated at Point 22.1c (ii) could include:

- Details including a Letter of Consent signed by the owner of a cited trademark;
- The amendment of the name and address of the owner of the cited trademark in case of an identical ownership but with a different name and address, and;
- Termination of cited trademark due to inactivity, or transfer of cited trademark to the applicant.

If these facts were not provided during the examination process, they will be considered new and will not be taken into consideration during the complaint process. Nevertheless, specific instructions from NOIP are necessary to clarify the following issues:

- **Letter of Consent/Trademark Coexistence Agreement, results of name/address amendment, results of cited trademark transfer, results of cited trademark cancellation/invalidation request:** During the course of filing a response to the examination results, applicants who are awaiting the letter of consent/

coexistence agreement/documents of transfer procedures or who have recorded the amendment of name/address, submitted the transfer request or cancellation/invalidation request, have been informed that results will be supplied once available. However, for certain reasons, their registration is refused by NOIP, and it is unclear whether the documents supplemented at this stage will be considered as new facts/details.

**Cited trademark has been expired for more than 5 years upon complaint request:** When the notice of appraisal result is issued, the cited trademark has expired but is still within the 5-year period. Although the applicant of the complaint has responded to the result of the appraisal, it is not accepted by NOIP and a notice of refusal is issued. Afterwards, when the applicant reaches the complaint stage, the expiry already exceeds the 5-year period. It is therefore unclear whether a complaint request for a trademark which expired more than 5 years ago is considered as new fact.

Secondly, in regards to regulations concerning the revocation of an issued decision on refusal and restoration of the appraisal process when ‘new facts’ as described at Point 15.7b Circular 16/2016 are discovered or provided:

‘Point 15

…

7 Tasks for completion of appraisal

…

b) Upon the expiration of the time limit prescribed in 15.7.1 (i) and (ii), if the applicant fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion, within 15 working days from the expiration of the abovementioned time limit, NOIP shall issue a decision on rejected application.

In case the applicant finds out or provides new facts (which have not been considered in the examination process) that may affect the examination outcome, NOIP shall, upon request of the applicant, consider the revocation of the decision on refusal to grant the protection title and resume the examination process.’

**Potential gains/concerns for Vietnam**

According to the definition specified at Point 22.1.c (ii) above, ‘new facts’ are details that have not been submitted by the applicant during the appraisal process. This perception may lead to conflicts in the process of handling a complaint. In particular, according to Point 22.1.c (ii), new facts are definitely not considered in the complaint stage, however, as stipulated at Point 15.7.b above, these new facts could also be taken into consideration. In order to avoid such confusion, it is necessary to clarify that the ‘new facts’ under Point 15.b are the facts that the applicants have provided but which have not been considered by NOIP. If this is the case, we would be grateful if NOIP could provide a clarification on the definition of this ‘new facts’ concept in order to distinguish it from the ‘new facts’ under Point 22.1.c (ii).

In addition, further clarification in terms of procedures is also needed. Should ‘Request of the applicant’ be submitted following complaint procedures or which procedures. If NOIP later refuses the ‘request to revoke decision of refusal’ from the applicant, will the applicant still have the right to challenge the ‘Decision of Refusal’ within 90 days? Furthermore, the revocation of administrative decisions must adhere to the relevant procedures. Therefore, NOIP should explicate the basis for revoking ‘decision of refusal’ as well as the related procedures and consequences. Overall, there are still certain issues in regards to the ‘new facts’ and ‘revoking Decision of Refusal’ that need to be clarified. We highly recommend NOIP to provide detailed guidance and instructions for practical implementation.

Thirdly, we would like to mention the record of changes in a representative for an industrial property trademark registration application. According to Article 17.5 of Circular 16, prior to the decision of NOIP to grant protection titles, the applicant may take the initiative, or upon NOIP’s request, to amend and supplement application documents. Further clarification from NOIP is essential for the following issue in regards to a change of representative of the application for trademark registration that has already obtained a notice of intention to grant protection titles. When NOIP issues a notice of intention to grant protection titles, the applicant is subjected to a 3-month period...
in which to respond to the notice/pay the specified fee. However, before the end of this period, the applicant wants to change the industrial property representative, who then submits a request for representative change. The amendment of the application (to recognise a new representative) normally takes 2-3 months. However, there are no regulations or guidelines specifying whether the representative is entitled to pay a fee for trademark registration when submitting a request to record a representative change. If the new representative is not required to pay the fee, it is unclear how NOIP will handle the protection title granting. It is also unclear which action the applicant needs to take towards the issued notice of granting protection titles, whether NOIP notifies the new representative of the mark registration granting and the applicant still has 3 months to pay the fee.

Apart from issues related to new facts, the revocation of Decision of Refusal and change of representative in Circular 16 as mentioned above, we would also like to address a practical situation in which a previously refused registration is still being used as a reference to refuse subsequent applications. According to Article 90.2 of the IPR Law, ‘where two or more applications are filed by many different parties for registration of an identical or similar mark, the registration may only be granted to the valid application with the earliest priority or filing date among applications that satisfy all required conditions for the issue of a protection title’. Under this provision, it can be understood that only applications that meet the conditions for granting a protection title will be taken as a reference to refuse subsequent applications. Nevertheless, in practice, there are many cases in which refused trademark applications are being used as a basis for denying later applications. There have not been any clear regulations on applications being denied which could be used as a reference.

Recommendations:

Therefore, it is advisable that NOIP defines whether an application for trademark registration which has received a decision of refusal can be used as the basis for refusing a subsequent application. If yes, which of the following applications could be used as a control to deny subsequent applications:

- An application with an issued decision of refusal, and no complaint request submitted after the expiration of the complaint period; in this case, when is the application considered invalid?
- An application with an issued decision of refusal, but where the applicant has submitted a complaint request which is unresolved, or;
- An application with an issued decision of refusal, where no complaint request has been submitted but which is still within the complaint period.

We look forward to receiving NOIP’s guidance on the above issues.

III. IPR ENFORCEMENT

Relevant authorities: Ministry of Science and Technology (MOST), Ministry of Culture, Sports and Tourism (MCST), Ministry of Information and Communication (MOIC), National Office of Intellectual Property (NOIP), Vietnam Internet Network Information Centre (VNNIC)

Issue description

IPR infringements in cyberspace remain problematic, especially the issues with cybersquatting, websites sharing pirated content and the trade of infringing products in e-commerce platforms. The legal framework to address such infringements is inadequate. For example, the lack of provisions on 'notice-and-take-down' measures against counterfeit listings in e-commerce platforms or pirated content on infringing websites continues to limit IPR holders’ rights to self-defence.

In practice, IPR holders would seek administrative remedies in acting against IPR infringements and this route has proved to be the most popular and effective. However, infringers have become more and more sophisticated and tried to delay the administrative proceedings. Moreover, low fines do not deter infringers from continuous or repeated infringements.
Criminal enforcement would impose a greater deterrent. IPR holders should seek this in cases of serious infringements where the infringers are counterfeiting manufacturers or involved in pharmaceutical products or products that people consume. However, the lack of procedural guidance and the unclarified requirements for criminal prosecutions under the current legal framework have posed challenges to IPR criminal enforcement.

**Potential gains/concerns for Vietnam**

The uncertainty in the deterrence of cybersquatting can discourage international enterprises from making their commercial presence in Vietnam. Moreover, infringers have taken advantage of the provision on settlement of IPR infringement when there are disputes over IP rights by delaying the competent authorities’ settlement of infringement actions. Mere administrative sanctions may not compensate large-scale businesses for the damages resulting from infringement of their valuable IPR assets. Therefore, the improvement of judicial capacity in handling IPR matters would help increase the confidence of foreign investors in Vietnam.

**Recommendations:**

IPR SC members would like to recommend the Government and relevant authorities to consider the following:

- The eventual adoption of a Uniform Domain-Name Dispute-Resolution Policy (UDRP)-type system for resolution of ‘.vn’ domain name disputes and cybersquatting;
- Repeal the current provisions which allow enforcement agencies to suspend cases if there are disputes over IP rights, or establish a fast-track procedure for cancellation or invalidation actions to shorten the time period of suspension of the enforcement action;
- Introduce ‘notice-and-take-down’ measures against counterfeit listings in e-commerce platforms and pirated content on infringing websites and impose proportionate sanctions against the platforms or websites for non-compliance;
- Clarify certain vague definitions in the Penal Code, IP Law and the subordinate legal instruments through amendments of the existing laws or new guidelines;
- Restructure the current judicial assessment system and regulations to accommodate IPR judicial assessment to support criminal prosecutions against serious IP infringement, and;
- Concentrate on enhancing judicial capacity by promoting training programs for the police, prosecutors and judges.

**IV. TRANSPARENCY**

Relevant authorities: Ministry of Science and Technology (MOST), Ministry of Culture, Sports and Tourism (MCST), Ministry of Information and Communication (MOIC), National Office of Intellectual Property (NOIP)

**Issue description**

Transparency in the process of handling applications for industrial property registration

Transparency in the process of handling applications for industrial property registration by NOIP is perceived through the level of information disclosure on the process and outcome of handling applications for industrial property registration, complaint, cancellation and invalidation requests from third parties so as to enable any individuals and organisations other than the applicant to access and search for information.

Currently, basic information on applications for industrial property registration has been published on the monthly industrial property official gazette. However, the current data uploaded on the website of NOIP has not been fully updated, especially for inventions. In addition, the application process is also summarised on the Industrial Property Digital Library (IPLIB) of NOIP after the publication date. Nevertheless, the detailed content of processing applications is not specified, particularly as below.
1.1 Details of industrial property objects have not been fully updated

Uploaded information related to inventions on NOIP’s digital library site has not been updated and there are still errors in the search process. The format of inventions data on the digital library site is not uploaded in text format which causes difficulties when looking up keywords in the patent description. Similarly, the search process for data on industrial design on IPLIB site experiences the same issues with errors and limitations.

1.2 Detailed content of registration application’s appraisal results has not been published

In fact, the publication of appraisal results has been currently applied for international applications designating Vietnam. In the world, the contents of appraisal results are also published on the website of the World Intellectual Property Organisation (WIPO). Therefore, the publication of outcome for national applications is also feasible since it does not affect the legitimate rights and interests of the applicants and is aligned with international practice.

1.3 Detailed content on the settlement of complaint and/or property title cancellation and invalidation request has not been published

We warmly welcome the fact that NOIP has published preliminary information on protection titles being complained about and/or cancelled or invalidated in the monthly industrial property official gazette. Nonetheless, specific information on the content of complaints and administrative decisions on the settlement of complaint, cancellation and invalidation requests has not been published.

Announcing decisions on administrative sanctions

Among all the Governmental agencies that are competent to impose administrative sanctions in the field of industrial property, the Inspectorate of MOST is the only unit to publish the contents of sanctioning decisions under their authority on the IPR Enforcement Database18 accompanied by specific analysis and comment. In addition, this database contains violation cases handled by the Vietnam Competition Authority, the Inspectorate of the Ministry of Culture, Sports and Tourism, the Inspectorate of the Department of Culture, Sports and Tourism and the Inspectorate of the Department of Science and Technology in localities. The supply of information on typical cases has greatly contributed to enhancing the transparency, synchronisation and uniformity in the examination, inspection and handling of violations by the Inspectorate of MOST and other enforcement agencies.

However, at the moment, this database only releases 87 violation cases that were handled from 2004 to 2011. From 2012 to 2018, there have been no decisions on administrative sanctions published in the above-mentioned database. The publication of too few cases and the current interruption of information disclosure leads to difficulties for people to access and keep updated of information in order to assess and understand the perspectives of enforcement agencies in the process of handling violations.

Announcing court judgments and decisions

On the basis of Resolution 0319, People’s Courts at all levels are responsible for the disclosure20 of legally effective judgments on the online Portal of the Courts. This provision is an encouraging step towards the development of the Vietnamese judiciary, ensuring the legitimate rights of citizens to access information. At the same time, it is aligned with the EVFTA21, which is in the process of being ratified.

Nonetheless, as of the end of 2018, the online Portal of the Court has just released 212,581 judgments and decisions. In 2018 alone22, the courts settled 441,553 cases out of 556,838 cases handled. Regarding the field of intellectual

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18 IPR Enforcement Database, Ministry of Science and Technology Portal. Available at: <https://www.most.gov.vn/thanhtra/pages/csdI.aspx>
19 Resolution 03/2017/NQ-HDTP dated 16 March 2017 of the Supreme People’s Court on the publication of judgments and decisions on the electronic portal of the Court, effective from 1 July 2017.
20 Except for judgements and decisions that are not allowed to be published on the online Portal of the Court as stipulated at Article 4, Resolution 03/2017/NQ-HDTP dated March 16 2017 of the Supreme People’s Court
21 Chapter 14 about Transparency, EVFTA
property, according to the search at the online portal of the Court, until the end of 2018, only 3 judgments and 7 decisions of the Court had been announced. The cause of this problem is said to originate from the overload of the court system in digitising and coding information of judgments and decisions.

**Potential gains/ concerns for Vietnam**

- The fact that information on industrial property objects has not been fully updated on the website imposes limitations on searching activities for those who want to utilise the IPR establishment and protection system in Vietnam.

- The publication of information on the content of processing applications and the settlement of complaints, cancellation and invalidation of protection titles will allow applicants to have timely access to the content and outcome of the cancellation, invalidation and complaint requests.

- Disclosing information on the content of processing applications provides applicants and others with a better understanding of the protection status of intellectual property objects in order to build their own plan in intellectual property protection.

- The publication of the Court’s judgments and decisions will substantially contribute to educate and raise public awareness on legal procedures. More importantly, this promotes the development of jurisprudence, especially in the field of intellectual property, leading to unified interpretation and application of the legal provisions, which encourages transparency and predictability in the proceedings.

- Delay in the publication of judgments and decisions of the Court creates difficulties in monitoring the public accountability of the Court and the legitimate right to access information of citizens and enterprises.

**Recommendations:**

We suggest the following recommendations in order to strengthen the legal framework in processing applications, resolving complaints, cancellation and invalidation requests as well as handling intellectual property disputes.

- NOIP should finalise and update information of industrial property objects on their website in an accurate and timely manner to facilitate searching activities of the community.

- Full contents of the outcome of appraisal of IPR applications and complaints, administrative decisions on the settlement of complaints, and cancellation and invalidation requests should be published on the IPLIB.

- The Inspectorate of MOST and enforcement agencies should continue to clarify the process of publishing typical cases related to the sanction of administrative violations in the field of intellectual property and, at the same time, update IP enforcement database.

- The Courts at all levels must strictly comply with the provisions on time limit for publication of judgments and decisions of Courts.

- Develop legal regulations to clarify cases that do not require publication of judgments and decisions of courts.

- Establish a specialised division or assign specific responsibilities in the Court to undertake the publication of judgments and decisions.

**ACKNOWLEDGEMENTS**

EuroCham Intellectual Property Rights Sector Committee
CHAPTER 6 JUDICIAL AND ARBITRAL RECOURSES

OVERVIEW

EuroCham members seek an efficient and transparent justice system when conducting business with Vietnamese partners and when investing in Vietnam. We want to ensure that business commitments will be performed as agreed and that proper recourse will be available in the event of any breach or dispute.

However, our members regularly report serious obstacles in trying to ensure their rights in Vietnam. We would like to highlight in this chapter on judicial and arbitral recourses some of these issues with respect to the following topics: Vietnamese courts, arbitration in Vietnam and the recognition and enforcement of foreign arbitral awards in Vietnam.

EuroCham welcomes the implementation of the EU Justice and Legal Empowerment programme in Vietnam (EU JULE) financed by the European Union and the United Nations. The programme aims to strengthen the rule of law in Vietnam through a more reliable, trusted and better accessed justice system.

The Legal Sector Committee would welcome a comparable initiative to help improve the standards of commercial litigation and arbitration in Vietnam, and would be happy to participate in such programme.

I. THE VIETNAMESE COURTS

Relevant State authorities: Ministry of Justice (MOJ), Supreme People’s Court, Supreme People’s Procuracy, National Assembly (Legal/Judicial Economic Committees), Ministry of Industry and Trade (MOIT), Vietnam Competition Authority (VCA)

Issue description

Foreign investors in Vietnam usually prefer to settle their disputes by arbitration rather than in front of national courts. The perceived lack of independence of the judiciary is one of the main reasons why foreign investors tend to avoid Vietnamese courts to settle their disputes.

In the World Economic Forum’s Annual Global Competitiveness Report, Vietnam consistently ranks low (with limited progress) on both judicial independence and on the efficiency of the legal framework in settling disputes. In the 2018 edition of this comparative study, Vietnam ranks 94 out of 140 participating countries in the ‘institutions’ category, which includes, among other things: (intellectual) property rights, judicial independence, burden of Government regulation, efficiency of the legal framework in settling disputes and in challenging regulations and future orientation of Government.¹

Table 2. Vietnam’s competitiveness according to the World Economic Forum

<table>
<thead>
<tr>
<th>Year</th>
<th>Judicial Independence</th>
<th>Efficiency of the Legal Framework in Settling Disputes</th>
<th>Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td># 86 out of 140</td>
<td># 69 out of 140</td>
<td># 85 out of 140</td>
</tr>
<tr>
<td>2016-2017</td>
<td># 92 out of 138</td>
<td># 72 out of 138</td>
<td># 82 out of 138</td>
</tr>
<tr>
<td>2017-2018</td>
<td># 84 out of 137</td>
<td># 82 out of 137</td>
<td># 79 out of 137</td>
</tr>
<tr>
<td>2018</td>
<td># 89 out of 140</td>
<td># 88 out of 140</td>
<td># 94 out of 140</td>
</tr>
</tbody>
</table>

Source: K.Schwab, World Economic Forum²

² Ibid.
One of the reasons that may explain this negative perception of the Vietnamese judiciary is the lack of transparency. Vietnamese courts have only recently started to publish judgments, and many of them remain unpublished. As a result, there is a lack of a well-established and reliable body of precedents and case-law that could provide guidance and predictability on the likely outcome of individual disputes.

Our members also face this issue in competition law, when dealing with the Vietnam Competition Authority (VCA) and the Vietnam Competition Council (VCC). Decisions of these authorities are generally not published, although some cases are reported in the VCA’s yearly report. Investors and their advisors lack assurance regarding the interpretation of fundamental concepts such as the definition of the relevant market and the market share of an enterprise. The National Assembly of Vietnam has passed a new Law on Competition (the Law) which will come into effect on the 1st of July 2019. The Law establishes the National Competition Commission (NCC), a new administrative authority which will replace the VCA and VCC, and provides that the main decisions issued by the NCC in relation to a competition case (e.g. decisions relating to economic concentration, and decisions on handling a competition case) will be published on the NCC’s website after taking effect for a period of 90 consecutive days. We hope that such publication may lead to the establishment of a reliable body of precedents.

Furthermore, the permitted scope of legal services for foreign law firms remains uncertain, in particular, since the adoption of Decree 123 and Decree 137 guiding the Law on Lawyers. The Law on Lawyers, as amended in 2012, still prevents a fully qualified Vietnamese lawyer from representing clients before Vietnamese courts if he or she is working for a foreign law firm. This is of some importance for foreign investors, who often wish to be supported by their legal counsel in all aspects of their operations in Vietnam, including disputes.

**Potential gains/concerns for Vietnam**

In the words of Věra Jourová, EU Commissioner for Justice, Consumers and Gender Equality: ‘Effective justice systems play a key role for an investment-friendly environment, providing greater regulatory predictability and thereby contributing to sustainable growth.’ When planning to invest abroad, the availability of an efficient and transparent judicial system is one of the key factors that foreign investors take into account. We therefore believe that further judicial reform in Vietnam will lead to increased confidence among investors, which could in turn boost Vietnam’s economy.

**Recommendations:**

- EuroCham members are following with great interest the current process of publicising judgements of Vietnamese courts. Our members note the launch of two websites managed by the People’s Supreme Court and encourage the publication of the judgments of all court levels without further delay;

- The Law on Lawyers should be amended to allow fully qualified Vietnamese lawyers to represent clients before Vietnamese courts, even if she or he is working for a foreign law firm. This has been advocated in previous editions of our Whitebook.

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5 Decree 137/2018/ND-CP dated 8 October 2018 of the Government amending and supplementing Decree 123/2013/ND-CP.


8 In accordance with the Resolution No. 03/2017/QQ-HDTP of the Judicial Council of the Supreme People’s Court on the publication of judicial judgments and decisions, issued on 16 March 2017, effective from 01 July 2017.
II. ARBITRATION IN VIETNAM

Relevant State authorities: Ministry of Justice (MOJ), Supreme People’s Court, Supreme People’s Procuracy, National Assembly (Economic Committee)

Issue description

Statistics released by the Vietnam International Arbitration Centre (VIAC) in 2018 show that dispute settlement through arbitration (or mediation) in Vietnam is increasingly popular: 180 disputes with a total value of around 9.5 thousand million VND) have been filed and resolved by VIAC in 2018.9

To compare these statistics with two of Asia’s largest arbitration institutions: In 2016, the Singapore International Arbitration Centre (SIAC) received 343 new cases10 whereas the Hong Kong International Arbitration Centre (HKIAC) received a total of 532 new disputes in 2017.11

Unfortunately, the reasons for the increased popularity of VIAC may have more to do with the disadvantages of other dispute settlement mechanisms in Vietnam, such as the Vietnamese courts (see Section I above) or international arbitration, rather than the effectiveness of arbitration at VIAC itself.

One of the main concerns relates to the intervention of the Vietnamese courts during VIAC proceedings. As an example, there are cases where the respondent in VIAC proceedings raised an unfounded objection to the jurisdiction of the VIAC tribunal. When the tribunal issued a decision to confirm its jurisdiction, the respondent successfully applied to a Vietnamese court to have the decision overturned. Since the decision of the Vietnamese court on this issue is final and binding, and since there is no right of appeal against the court’s decision, the court decision resulted in the termination of the VIAC proceedings. The absence of the right to appeal a decision to set aside an arbitral award continues to represent a major obstacle for foreign investors who are seeking the fair and transparent resolution of their claims in Vietnam.

Our members have reported other examples of intervention by Vietnamese courts, not only before an award is issued (which results in the termination of arbitration proceedings) but also by setting aside an award once it has been issued by a VIAC tribunal. For example, we are aware of cases in which the Vietnamese courts set aside arbitral awards allegedly due to a conflict with the ‘fundamental principles of Vietnamese law’, but in fact the courts reconsidered the merits of the case.

Recommendations:

› The Supreme People’s Court and the Chief Justice could provide more and better instructions to lower level courts to consistently limit court interventions during arbitration proceedings;

› The introduction of a right of appeal to first instance court decisions on jurisdiction or on the validity of an arbitral award could further contribute to making dispute settlement through arbitration in Vietnam more popular because of its own merits; and

› As a general recommendation, we believe that learning from, and exchange with, foreign countries may lead to best practice being integrated in Vietnam, especially by learning from successful examples in the region (e.g. SIAC and HKIAC).

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9 “Vietnam international arbitration centre report on summarizing activities in 2018”, VIAC. Available at <https://drive.google.com/file/d/1AjR1FLuGgBS1TX2Wmb1puyRfor-qB5/view> last accessed on 26 February 2019.


III. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Relevant State authorities: Ministry of Justice (MOJ), Supreme People's Court, Supreme People's Procuracy, National Assembly’s Economic Committee

Issue description

Foreign investors in Vietnam generally choose dispute resolution by international arbitration where the value of the contract is substantial. Although international arbitration is often costly and time consuming, an international arbitral award is generally enforceable in most jurisdictions around the world under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC), of which Vietnam is a party.

The vast majority of state parties to the NYC properly apply its provisions in practice and duly recognise and enforce foreign arbitral awards within their own jurisdictions. However, our members have found that it is extremely difficult in practice to achieve the recognition and enforcement of foreign arbitral awards through the Vietnamese courts. The main difficulties encountered are (1) the reversal of the burden of proof in respect of objections to applications for recognition and enforcement of foreign arbitral awards, and (2) the rejection of applications by the Vietnamese courts for reasons that are not consistent with the NYC, as discussed further below.

1. Reversed burden of proof

Under the provisions of the NYC, if the award debtor raises any objection to the enforcement of a foreign arbitral award, then the award debtor is required to provide evidence to prove its objection. However, in practice the Vietnamese courts reverse the burden of proof and require the award creditor to prove that any objections raised by the award debtor are invalid or not applicable. This practice encourages award debtors to raise as many objections as possible, sometimes frivolously, which the award creditor is required to disprove. This imposes a significant cost and time burden on the award creditor and obstructs the award creditor in enforcing its legitimate rights.

On the 27th of November 2015, the National Assembly passed Law 92/2015/QH13 promulgating the new Civil Procedure Code (2015 Civil Procedure Code). The Code contains a specific provision on the burden of proof which makes clear that the award debtor shall bear the burden of proof. Our members welcome this positive step and will closely follow its application by the Vietnamese courts.

2. Rejection of arbitral awards for reasons not consistent with the NYC

It appears that the Vietnamese courts have often issued decisions to reject applications for the recognition and enforcement of foreign arbitral awards for reasons not consistent with the NYC.

For example, the NYC provides for very limited exceptions where an application for recognition and enforcement can be rejected. These exceptions include, for instance, cases where a party to the arbitration agreement was, under the law applicable to it, under some incapacity and therefore lacked authority to sign the agreement, or cases where a party was not given proper notice of the arbitration proceedings, which must be determined pursuant to rules of the relevant arbitration institution and the governing law of the arbitration agreement.

However, in many cases, the Vietnamese courts have determined that the foreign party to the arbitration agreement lacked capacity to sign a contract by wrongly referring to the Vietnamese law instead of applying the relevant law governing the foreign party. This happens even where evidence has been presented to the court demonstrating that the foreign party had full capacity to sign such a contract as a matter of its applicable law. This issue has appeared in more than one case despite the clear provision of the law of Vietnam, under which the court, in order to reject the application, shall establish that one of the parties to the arbitration agreement did not have the capacity to sign the agreement in accordance with the law applicable to that party.

In other cases, the Vietnamese courts have determined that notices were not properly served on the respondent by wrongly applying Vietnamese law and not referring to the rules of arbitration governing the proceedings and the governing law of the arbitration agreement.
Our members have noted with interest that the 2015 Civil Procedure Code clearly provides that the court may only reject an application for recognition and enforcement of a foreign arbitral award where there is ‘well-grounded evidence’ that the application falls within one of the exceptions to recognition and enforcement provided in the law. This provision is intended to ensure that the Vietnamese courts have properly applied the provisions of the NYC and, for example, prohibit judges from applying Vietnamese law to determine issues that must be applied by reference to the applicable foreign law or the rules of the relevant arbitration institution. Our members are closely following the practical implementation of these provisions by the Vietnamese courts.

Recommendations:

- To further improve the recognition and enforcement of foreign business and commercial arbitral awards, we recommend Vietnam follow international best practice with regard to this matter;
- The implementing regulations of the 2015 Civil Proceedings Code should provide for the strict application of the provisions of the NYC including the confirmation that the burden of proof falls on the award debtor if it claims that a valid objection to enforcement exists; that the award creditor is only required to provide to the court the valid award and the valid arbitration agreement in support of its application; that the Vietnamese court can only reject applications on grounds consistent with the NYC and the 2015 Civil Procedure Code and that the Vietnamese court is strictly prohibited from re-opening the merits of the case;
- Introduce the automatic referral to the relevant Appeal Court of all cases where an application has been rejected by the Courts of First Instance to encourage the recognition and enforcement of foreign arbitral awards in Vietnam; and
- Seminars and training courses could be organised by the Supreme People’s Court for all judges of the provincial People’s Courts and the Appeal Courts to ensure that judges are properly trained to deal with applications for recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.
- We hope that our concerns and recommendations as mentioned in this chapter will be taken into account by the Vietnamese Government. At the same time, we will continue to offer expert support and cooperation in order to find solutions to these issues and to improve the system of judicial recourse in Vietnam.

ACKNOWLEDGEMENTS

EuroCham Legal Sector Committee and for this chapter in particular:
Bernadette Fahy, Lawyer at Audier & Partners Vietnam LLC
Antoine Logeay, Lawyer at Audier & Partners Vietnam LLC
BACKGROUND:

Commercial mediation is slowly becoming a more favourable alternative to resolving commercial disputes around the world, with the help of a neutral, independent and impartial person commonly referred to as a mediator. Mediation is seen primarily as an alternative to court (Alternative Dispute Resolution, or ADR). ADR is sometimes taken to refer to mediation; however, on other occasions the term may also include arbitration, conciliation and a range of other processes.¹

The term ‘mediation’ is often misunderstood by the legal community and the general public, because it is defined both as general term (covering all forms of dispute settlement processes, which also includes conciliation) and it is also interchangeably used as a specific term that excludes conciliation as a process.

The 2002 United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Conciliation was amended in 2018. Annex II, UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, defines mediation as a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons (‘the mediator’) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose a solution to the dispute upon the parties involved.²

MEDIATION STYLES

There are three major styles of mediation: Facilitative, evaluative, and transformative.³

Facilitative mediation, also referred to as ‘traditional mediation’, is a professional mediator’s attempts to facilitate negotiation between the parties in conflict and does not include legal advice, recommendations, suggestions or consultation on settlement. In evaluative mediation mediators are more likely to make recommendations and to express opinions. Instead of focusing primarily on the underlying interests of the parties involved, evaluative mediators may be more likely to help parties assess the legal merits of their arguments and make fairness determinations.⁴ Transformative mediation, meanwhile, focuses on empowering disputants to resolve their conflict and encouraging them to recognise each other’s needs and interests.⁵

There are also many types of mediation centres.⁶ Free-standing (private) mediation centres or programs are organised without any court connection or component. They are usually run by a Chamber of Commerce, NGO, Trade Association, international or for-profit organisation. Agreements arising out of private mediations are enforced like contracts. Court-annexed mediation centers have ADR programs or practices authorised and used within the court system and controlled by the court, but are not part of it. Cases are referred to mediation by courts only.

³ Ibid.
⁵ Ibid.
⁶ “Implementing Commercial Mediation”, World Bank, p. 22.
When it comes to the dispute resolution processes, there are several definitions. The first, Arb-Med, is a hybrid dispute resolution process and another type of mediation where a trained, neutral third party hears disputants’ evidence and testimony in an arbitration.\(^7\) The Singapore International Arbitration Centre (SIAC) offers this process and refers to it as the ‘SIAC-SIMC Arb-Med-Arb Model’ and offers a Model Clause (‘Arb-Med-Arb Clause’).\(^8\) The second process is e-mediation or Online Dispute Resolution (ODR); in e-mediation, a mediator provides mediation services to parties who are located at a distance. This is more likely to resemble traditional facilitative mediation. The court-mandated or court-annexed mediation process, although typically defined as completely voluntary, can be mandated by a court wishing to promote a speedy and cost-efficient settlement.\(^9\)

### I. THE EU-VIETNAM FREE TRADE AGREEMENT (EVFTA) AND LEGAL FRAMEWORK IN VIETNAM

**Issue description**

Vietnam and the EU formally completed the legal review of the EVFTA and Investment Protection Agreement (IPA) in August 2018.\(^10\) The specific regulations on mediation included in the EVFTA demonstrates the special attention given by Europe and Vietnam to dispute resolution through mediation.\(^11\) An entire chapter of the EVFTA is devoted to outlining the protocols of the dispute mechanism in the trade agreement.

ANNEX 15-C of the EVFTA sets out the procedure for resolving commercial trade disputes involving the trade agreement. In future, this trend is to include dispute resolution mechanisms such as mediation and conciliation. This could well lead to an instrument on the enforcement of international commercial settlement agreements resulting from mediation. The result could have an effect similar to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.\(^12\) Through the EVFTA, Vietnamese legislators will be provided with a sound legal framework to develop commercial mediation and investment mediation.

The EVFTA also details a working framework for the settlement of investment disputes through mediation. The Vietnamese regulations mirror Directive 2008/52/EC of the European Parliament and Council of 21 May 2008.\(^13\) In recent years, commercial mediation has been gradually legalised in Vietnam and the country has expanded its legal framework for commercial mediation.\(^14\) The Government formally announced Decree 22 on Commercial Mediation.\(^15\) This Decree encourages the business community to refer to commercial mediation as an alternative dispute resolution process. The Mediation Decree provides, in detail, the principles, conditions, and procedures of commercial mediation. This includes certifying settlement agreements through the courts, as well as conditions for the establishment of mediation centers in Vietnam.\(^16\) The Decree recognises two distinct modes of operation for foreign mediation institutions. First, ‘branches’ of foreign commercial mediation institutions may provide mediation services in Vietnam. Second, ‘representative offices’ may conduct business development, and promote mediation practice in Vietnam.\(^17\) The Decree also permits the operation of foreign mediation institutions and centres within Vietnam. However, the parties’ appointment of commercial mediators, who have not registered with the Justice Department or commercial mediation centre, would be in breach of provisions in Decree 22. In the absence of an agreement on the commercial mediation procedure, the mediator(s) may apply the procedure that is most appropriate to the nature of the dispute, as long as the parties approve the procedure.

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16. The Decree also specifically governs: the process of commercial mediation and the process to register as a mediator in the following steps; the registration and range of disputes which can be referred to commercial mediation; the style of mediation to be used and the recognition of settlement disputes; the qualifications of commercial mediators namely, the procedure for the establishment of commercial mediation institutions.
Recent developments in Vietnam have shown that mediation training and international accreditation are supported. The IFC, in partnership with the Swiss Secretariat for Economic Affairs (SECO), has been recently supporting capacity building by offering mediation training for a select group of participants. With the IFC’s support, over 60 participants have been accredited by the well-known London-based Centre for Effective Dispute (CEDR) the largest conflict management and resolution consultancy in the world. The World Mediation Organisation has also been involved in accrediting mediators in Vietnam through pro bono initiatives in the business community and with law students as part of clinical legal education programs.

To date, there are only two registered mediation centres in Vietnam: The VMC in Hanoi and Chambers Mediation in HCMC18, both reporting only one successfully mediated case at the VMC for 2018.19 EuroCham, together with the Italian Chamber of Commerce in Vietnam (ICham), recently partnered with the Asia Pacific Mediation Forum and Hue University in Vietnam to convene the largest international mediation conference ever held in Vietnam, with over 40 domestic and international speakers and over 15 professional development workshops.20 There have also been some efforts to promote a court-annexed style of mediation in Vietnam through pilot projects in various court jurisdictions.21

International developments on mediation have also been made. On the 26th of June 2018, the United Nations (UN) Commission on International Trade Law UNCITRAL, the final drafts of the Convention on the Enforcement of International Settlement Agreements were approved. This development is significant as it facilitates, for the first time, the enforcement of international commercial settlement agreements resulting from mediation.

The UN Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention, is similar to The New York Convention and the Hague Convention, which deal with settlement agreements in international arbitrations. This new Convention will promote the use of mediation as an option for businesses to resolve their disputes. It lists specific conditions to be fulfilled in order for a State to enforce a mediated settlement agreement. It excludes settlement agreements which (a) have been approved by a court or have been concluded in the course of court proceedings, (b) are enforceable as a judgment in the state of that court, or (c) that have been recorded and are enforceable as an arbitral award.22 A signing ceremony for the Singapore Convention on Mediation is expected in Singapore in 2019.23

Potential gains/concerns for Vietnam

Mediation procedures for labour disputes are outlined in Article 164 of the Labour Code, which states that: Within 7 days from the date of receipt of the request, the labour conciliatory council of the enterprise shall commence the resolution process of a labour dispute. Both parties and their authorised representatives must be present at the conciliation meeting.24 However, some shortcomings have arisen from the mediation of labour disputes, namely that the members of the mediation council include employer-related persons (representatives of enterprises). Thus, the true meaning of mediation sessions is not ensured. Also, the enforceability of mediation settlement agreement is not clearly provided for in the legal regulations.25

The Singapore Convention

Vietnam is not one of the signatories to the Singapore Convention. Our concern is that Decree 22 requires that the parties apply their mediated settlement agreements to Vietnamese Courts. Parties that certify their dispute with the Vietnamese courts will not be protected by provisions of the International Convention. The Convention does not apply to settlement agreements that: (i) have been approved by a court or have been concluded in the course

19 As was recently reported by Le Net, Mediator of the VMC, at a Court Annexed Mediation Seminar November 2018 given by Thomas G. Giglione at the National Economics University Faculty of Law.
20 More information available at: <https://apmf2017.mediation.vn>
23 More information available at: <https://bit.ly/2Rq303n>
of court proceedings; (ii) are enforceable as a judgment in the state of that court; or (iii) have been recorded and are enforceable as an arbitral award.\textsuperscript{26}

**Recommendations:**

Vietnam’s participation in the Singapore Convention would strengthen the country’s stature in the international community. Moreover, as the current Decree 22 does not recognise foreign mediated settlements, participation in the Convention will then become a viable option for foreign investors and traders when the Vietnamese courts recognise mediation settlements from overseas proceedings.

**II. COURT-ANNEXED MEDIATION**

**Issue description**

There are currently several pilot projects involving court-annexed mediation being introduced in various jurisdictions in Vietnam. In a recent European Commission report\textsuperscript{27} on the application of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, respondents seemed to agree that mediation achieves significant cost savings in a wide range of civil and commercial disputes and, in many cases, significantly reduces the time required to resolve a dispute. Whilst it is acknowledged that due to the ‘unofficial’ nature of mediation compared to formal court proceedings, it is more difficult to obtain comprehensive data on mediation, a more solid data basis would be of significant importance to further promote the use of mediation. The European Judicial Network in civil and commercial matters has started work to improve national data collection on the application of Union instruments in civil and commercial matters, including Directive 2008/52/EC.\textsuperscript{28} A problem arises with a court-annexed process, however, when the parties to a dispute appoint a commercial mediator who has not registered with the Department of Justice or an approved commercial mediation centre. This will automatically be in breach of Decree 22 and the settlement agreement will not be approved through the courts.

**Mediation Centres**

Currently, there are only two registered mediation centres in Vietnam run under the auspices of arbitration centres, with no formal requirements or application procedure for being selected as a mediator. Selection appears to be by appointment of a select group of arbitrators at the arbitration centre. It has also been observed by some members of EuroCham’s Legal Sector Committee that there are some bureaucratic impediments to register any further mediation centres in Vietnam, despite submitting the appropriate mandated documentation.

**Confidentiality and Mediation Contract Clauses**

No mediation centre in Vietnam can assure confidentiality of the mediation process nor do the courts assure that a mediator cannot be subpoenaed as a witness in litigation, since this assurance is not stipulated in Decree 22. As it stands, no mediator can assure his or her clients of confidentiality. The Chartered Institute of Arbitrators has issued a Practice Guideline\textsuperscript{29} for assuring confidentiality in Mediation. It would be prudent that the Decree be amended to include a similar provision assuring confidentiality.\textsuperscript{30}

**Foreign Commercial Mediators**

There is no stipulation in Decree 22 regarding whether practicing foreign commercial mediators are subject to the same qualification requirements as Vietnamese mediators. Decree 22 sets out how Vietnamese nationals must fulfil the basic conditions; however, these conditions may not apply to non-Vietnamese conducting commercial

\textsuperscript{26} Article 1, Scope of Application, Singapore Convention
\textsuperscript{27} More information available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0542&from=EN>
\textsuperscript{28} More information available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A542%3AFIN>
\textsuperscript{29} “Practice Guideline 1: Confidentiality in Mediation”, Chartered Institute of Arbitrators. Available at: <https://www.ciarb.org/media/1336/1-guidelines-on-confidentiality-in-mediation.pdf> last accessed on 5 February 2019.
\textsuperscript{30} “The regulations to ensure the confidentiality of the mediation process; - The regulations on the legal validity of mediation clause: in cases where parties have agreement in selecting the mediation method (before or after the dispute happens), they shall have responsibility to conduct the mediation process before filing a suit in court or arbitration centre. “The regulations on the legal validity of mediation clause: in cases where parties have agreement in selecting the mediation method (before or after the dispute happens), they shall have responsibility to conduct the mediation process before filing a suit in court or arbitration centre.
mediation in Vietnam. The Decree also does not detail how commercial mediators should conduct the mediation process.

Training mediators is costly, with fees exceeding several thousand dollars for a 40-hour accredited training course. The IFC and USA Aid have subsidised mediation to a select group of hand-picked arbitrators only. Mediation and conflict resolution training should be encouraged as part of the legal training curriculum at Law Universities through pro-bono clinical legal education. Law faculties should be encouraged to certify mediation training programs domestically, as have other international law faculties for their law students and extending certification to the legal community, so as not rely on costly mediation training programs.

**Recommendations:**

It is recommended that a code of conduct is established for mediators in Vietnam in alignment with the European Code of Conduct for Mediators or ICC Rules Code of Conduct, as that would compliment the dispute resolution mechanism in the EVFTA.

The Rule of Law Dialogue is a joint declaration signed by the Foreign Ministers of Germany and Vietnam in February 2008, which covers many important areas of public and private law with the goal of modernising Vietnam’s legal framework and facilitating the country’s integration into the international legal environment. The declaration furthermore assigns the task of coordinating the Rule of Law Dialogue to the Justice Ministries of the two countries. This declaration can become the basis for developing mediation and incorporating similar court-connected mediation programs.

**Mediation Clauses in Commercial Contracts**

The vast majority of commercial contracts lack mediation clauses that will automatically be in effect should a dispute arise. Future lawyers should be trained to draft such clauses in both domestic and commercial contracts. In addition, professional development programs in drafting contracts should be promoted through the Vietnamese Bar Association and related law associations. The International Chamber of Commerce (ICC) issued ‘Mediation Guidance Notes’ for use by parties, whether or not they are members of the ICC. Decree 22 is certainly a positive development for the business community, despite some drawbacks. However, there are no legal restrictions for commercial disputes to be dealt with outside the restrictive boundaries of the Decree. It should be noted that such agreements would not be enforced internationally under the new Singapore Convention. In fact, there are many advantages for the business community to choose a private facilitative mediation process rather than attempting to resolve disputes through a court-annexed system or through the courts. One of the advantages is that private facilitative mediation tends to move more quickly because it can take place when the parties choose to move forward rather than based on a court’s schedule. It also gives businesses the flexibility to determine when meetings will take place rather than adhere to bureaucratic guidelines. Most judges worldwide follow the convention that mediations are confidential and that mediators cannot be subpoenaed as a witness. There are no guarantees of confidentiality in the Decree or in a court-annexed or litigation process, which opens proceedings up to the public. It is often in the interests of a business to keep conflicts private, as even a hint of trouble could tarnish a company’s reputation. Moreover, private mediation allows greater autonomy because it enables parties to have a bigger say in the outcome. Overall, a confidential mediation process allows businesses to find some common ground more quickly and develop an agreement with a ‘win-win’ approach, rather than a ‘win-lose’ situation.

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33 For the convenience of users, they have been translated into several languages and can be downloaded from the ICC website (www.iccwbo.org).
34 IFC Alternative Dispute Resolution Manual: Implementing Commercial Mediation Appendix A: Compendium of Case Studies
35 Op. Cit. ASEAN Law Association
Recommendations:

It is recommended that established policies be developed for individual stakeholders to initiate particular measures to develop mediation and implement measures to increase the awareness of mediation in the business and academic community as a viable option to resolve disputes. For example, academic institutions can be part of a community outreach to resolve minor community disputes without giving legal advice, or become sponsors for the establishment and operation of mediation centers under Decree 22. These institutions could also implement an internship program through their existing clinical education programs to train law students with an accredited mentor through apprenticeship programs developing practical skills in negotiation and mediation.

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CHAPTER 8 MERGERS AND ACQUISITIONS

OVERVIEW

The Mergers and Acquisitions (M&A) market in Vietnam is strong and vibrant. M&A transactions are widely considered one of the most effective means for market entry and business expansion in Vietnam. Numbers and value of completed M&A transactions in Vietnam have grown steadily during recent years, and are expected to grow further during 2019 (especially if the EVFTA is ratified and enters into force as anticipated).

In 2017, the total value of M&A deals in Vietnam reached a record of US$10.2 billion and increased by 75 per cent compared to 2016.

Within the first six months of 2018, the total value of M&A deals in Vietnam reached US$3.35 billion (an increase of 39 per cent compared to 2017).

The three sectors in which M&A activity was strongest in 2017 and 2018 were consumer goods manufacturing, real estate, and banking & finance.

Investors from Thailand, Singapore, Japan and Korea played a crucial role in the M&A scene in Vietnam during 2017 and 2018, with impressive transaction completion volumes having been achieved. These figures are expected to increase further during 2019, as many foreign investors try to position themselves in Vietnam in order to benefit fully from the Free Trade Agreements expected to enter into force during the next few years.

Vietnam’s Law on Investment 2014 (LOI) and Law on Enterprises 2014 (LOE) represent significant milestones in the development of the legal framework for M&A activities in Vietnam. The implementing legislation issued pursuant to these new laws has also contributed to the simplification and streamlining of relevant administrative and regulatory procedures in Vietnam. At the same time, a number of key issues under the new LOI and LOE and their implementing legislation remain unresolved and in need of further clarification by relevant State authorities.

In order to address some of these outstanding issues, in December 2017 the Ministry of Planning and Investment (MPI) published for public comment a first draft of a proposed new Law on Amendment of some articles of the LOI and LOE, which is expected to be submitted to the National Assembly (NA) for review and adoption in October 2019.

Set out below is a brief overview of some of the main legal impediments to effective M&A in Vietnam, presented in the form of our recommendations to the Government as to how to address these issues. We welcome the opportunity to work alongside regulators to facilitate growth and efficiency in the M&A market.

The following is our summary of the key impediments and our recommendations as to how to overcome them:

- Continue to reduce the number of ‘conditional’ business sectors;
- Remove the requirement for foreign investors to obtain both an Investment Registration Certificate (IRC) and an Enterprise Registration Certificate (ERC) in order to establish an entity in Vietnam;
- Remove the requirement for foreign investors to obtain an ‘M&A Approval’ before implementing any private M&A transaction;
- Reduce the degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions;


3 Ibid.

4 Ibid.

5 Resolution 57/2018/QH14 of the National Assembly of Vietnam, adopted by the National Assembly at its 14th Session on 8 June 2018, on Law and Ordinance formulation programme of 2019; amending Law and Ordinance formulation programme of 2018.
CHAPTER 8 MERGERS AND ACQUISITIONS

CROSS-SECTORAL ISSUES

Improve the clarity and consistency of the procedures applicable to M&A transactions;

Reduce the overall degree of State control over flows of foreign currency into and out of Vietnam, including the clear abolition of any requirements to use direct investment capital accounts and indirect investment capital accounts in connection with M&A transactions;

Ensure faster and smoother processing of the tax clearance procedures necessary for implementing M&A transactions and the transfer of purchase consideration;

Further clarify the basis for calculating the market share of a target company in relation to a possible ‘economic concentration’, for the purposes of the new Vietnamese competition law;

Define more clear and precise criteria for determining what constitutes the ‘relevant market(s)’ in relation to ‘economic concentration’ transactions, for the purposes of the new Vietnamese competition law; and

Ensure that the Vietnam Competition Authority has the power and capability to scrutinise ‘economic concentration’ transactions and make decisions in a more efficient and timely manner.

MARKET ACCESS AND LICENSING PROCESS

Relevant Ministries: Ministry of Planning and Investment (MPI)

Issue Description

Conditional business sectors and other restrictions to market access

Market access remains subject to heavy limitations (for example, the existence of 243 ‘conditional’ business sectors, wide-ranging foreign ownership caps, the ‘economic needs test’ for opening retail outlets, etc.) The rules governing the acquisition by foreign investors of equity interests in domestic Vietnamese entities have liberalised significantly in recent years, but require further liberalisation in order to stimulate a more developed and sophisticated M&A market in Vietnam.

We welcome the dialogue between the relevant State authorities (e.g. MPI and provincial People’s Committees) and the investment community which have occurred recently, with a view to eliciting public comments on draft amendments to the LOI and LOE. The aim of such dialogue has been to tackle outstanding M&A-related issues, such as the difficulties inherent in applicable licensing processes, investment conditions, and general requirements.

We welcome the simplifications recently introduced by the Government in October 2018 with respect to the application dossiers, sequence and procedures for enterprise registration. We also appreciate the efforts of the Vietnamese Government in endeavouring to reduce further some of the key restrictions as well as the disparity of treatment between Vietnamese and foreign investors.

We appreciate the issuance of Law 03/2016/QH14 Amending the List of Conditional Business Sectors under the Law on Investment, under which the number of ‘conditional’ business sectors has been reduced from 267 to 243, and the further removal of 26 conditional business sectors proposed in the recent draft of the Law on Amendment of some articles of the LOI and LOE.

We also welcome the move of the Ministry of Industry and Trade (MOIT) in issuing Decision 3720, which provides a plan to cut and simplify a number of business and investment conditions from 2019 to 2020. Specifically, in eight areas, this Decision proposes to eliminate a total of 111 business and investment conditions, simplify 60 business

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7 Decision 3720/QD-BCT dated 11 October 2018 of the Ministry of Industry and Trade (MOIT) issuing the solution to reduce and simplify business and investment conditions subject to the management of MOIT for 2019-2020 period.
and investment conditions and shift 31 business and investment conditions from the pre-licensing inspection to post-licensing inspection mode, thus leaving 178 conditions remaining under the authority of MOIT. Decision 3720 represents a further significant reduction of investment conditions after the elimination of 675 business and investment conditions under Decision 3610A\(^8\) which provided the plan on removal and simplification of business conditions for 2017-2018. Many observers expect that this MOIT Decision will give rise to a significantly improved business and investment landscape for the entirety of Vietnam.

Despite the above, in our view, it would be very much in Vietnam's best interests to continue to minimise the number of 'conditional' sectors and to implement tight controls over the creation of any new 'conditional' sectors, in order to enhance Vietnam's status as a desirable foreign investment destination of choice.

**Unnecessarily complicated licensing procedures**

One significant issue, which unfortunately was not tackled by the new LOI and LOE, is the requirement to undergo a double approval process for establishing a Foreign-Invested Enterprise (FIE) in Vietnam. The current requirement to obtain both an IRC and an ERC makes the FIE establishment procedure not only slower, but also more complicated and ultimately uncertain. This double requirement also negatively affects the M&A market, since M&A transactions targeting private companies often necessitate amendments to the ERC and/or IRC held by the target company or its investors. It goes without saying that requiring one single certificate should be more than sufficient for establishing any FIE, and is considered standard practice in most jurisdictions around the world.

Ultimately, the key conceptual and structural change which would need to occur in order to streamline foreign investment processes and stimulate the M&A market would be to abolish the concept of registered investment projects in connection with the establishment of FIEs. Foreign investors should be able to establish subsidiaries and joint ventures in Vietnam, without needing to formulate and obtain approval of registered investment projects. Abolition of the requirement to register foreign investment projects would make redundant the concept of and requirement for IRCs.

**M&A approval**

Specific considerations apply in the context of M&A deals targeting private companies. For these deals the target company is now required, in a number of circumstances, to obtain from the relevant provincial or municipal Department of Planning and Investment (DPI) the issuance of a specific ‘M&A Approval’ as a condition precedent to any M&A transaction involving a foreign purchaser. This requirement is burdensome, having regard to standard practice worldwide, which in most cases requires M&A transactions only to be registered with – rather than pre-approved by – the relevant governmental authorities.

The requirement to obtain ‘M&A Approvals’ once again increases the degree of discretionary scrutiny which State authorities exercise over private M&A transactions, thereby making the M&A process more uncertain, more risky, and less appealing, from the perspective of the foreign investors involved. In addition, the various DPIs (on a province-by-province or city-by-city basis) apply the ‘M&A Approval’ requirement in an inconsistent manner, thereby making this process non-uniform, unpredictable, and confusing for foreign investors.

While we appreciate that the current draft Law on Amendment of some articles of the LOI and LOE provides for clearer guidelines on the requirement for foreign investors to obtain an ‘M&A Approval’, the reality is that before taking the responsibility of issuing an ‘M&A Approval’, local DPIs usually consult with a number of relevant Ministries at central level with respect to the specific proposed M&A transaction, resulting in the ‘M&A Approval’ process in many cases being excessively lengthy (weeks or even months) and ultimately uncertain (in circumstances where M&A transactions entered into by foreign investors in most cases require speed and certainty).

**Potential gains/concerns for Vietnam**

Other countries in the region with similar advantages to Vietnam, such as young and low-cost labour forces, are competing for investors. It is therefore important that Vietnam remains attractive by offering a clear, simple, and efficient licensing process. This would help to boost the M&A market and consequently attract capital inflows. It

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8 Decision 3610A/QD-BCT dated 20 September 2017 of the Ministry of Industry and Trade issuing the solution to reduce and simplify business and investment conditions subject to the management of MOIT for 2017-2018 period
would also serve to reduce the administrative burden on enterprises and licensing authorities alike.

**Recommendations:**

Our specific recommendations are:

- Continue to reduce the number of ‘conditional’ business sectors;
- Remove the requirement for foreign investors to formulate and have approved registered investment projects in order to establish a subsidiary or joint venture entity in Vietnam (thus obviating the need for IRCs); and
- Remove the requirement for foreign investors to obtain an ‘M&A Approval’ before implementing any private M&A transaction.

**PAYMENT OF THE PURCHASE PRICE IN M&A TRANSACTIONS**

Related Ministries: Ministry of Planning and Investment (MPI), Ministry of Finance (MOF)

**Issue description**

**Documentation issues**

Pursuant to Decree 78⁹, in many cases, the parties to an M&A transaction are required to provide the relevant local licensing authority with ‘documents proving completion of the transfer’ in order to obtain an amended ERC and/or IRC (where applicable) and to complete the transaction. The current provisions, however, do not specify what documents qualify as ‘documents proving completion of the transfer’. Therefore, while some local licensing authorities accept documents executed by the parties self-certifying that the transaction has been completed, other local licensing authorities interpret the requirements differently and require an official document issued by a bank, evidencing that the purchase price was in fact paid and received. This latter interpretation is particularly inconvenient when it arises in complex M&A deals where, as a practical matter, the parties normally wish to apply specifically-negotiated arrangements for the payment (for example, with the use of staggered instalments, retention amounts, and/or escrow accounts).

**Payment issues**

Pursuant to the applicable regulations, the purchase price payable in an M&A transaction involving a foreign investor is required to be transferred through a specific bank account which, depending on the circumstances, must be either a “direct” (DICA) or “indirect” (IICA) investment capital account. However, the lack of clear guidelines on the use of a DICA or an IICA in relation to M&A transactions has resulted in banks having conflicting interpretations as to the applicable DICA or IICA requirements. This makes the transfer of purchase prices a cumbersome and time-consuming process which often gives rise to material delays in transaction implementation timetables. This is particularly the case in the context of M&A transactions involving target companies that were previously treated by the law, the State Bank of Vietnam (SBV) and relevant commercial banks as being “indirect investment” companies (thus requiring the use of IICAs for M&A transactions) but are now regarded as being “direct investment” companies (thus requiring the use of DICAs for M&A transactions).

In our view, the distinction between “direct investment” and “indirect investment” transactions and bank accounts is unnecessary, gives rise to confusion, and should be abolished, as should the necessity to route purchase prices through any particular type of legislated bank account. In particular, foreign buyers should be free to pay M&A purchase prices to foreign sellers outside of Vietnam, without any need to route the funds through Vietnam at all. Routing M&A purchase prices through DICA or IICA accounts in Vietnam is hugely inconvenient and cumbersome for foreign investors, particularly now that the banks have started to require foreign currency purchase prices to be converted into VND upon deposit by the purchaser and then re-converted back into foreign currency before being transferred to the seller outside of Vietnam. These sorts of requirements are costly, cumbersome, time-consuming, and frustrating for foreign M&A transaction parties.

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⁹ Decree 78/2015/ND-CP dated 14 September 2015 of the Government on enterprise registration
Indeed, it would be hugely advantageous for Vietnam, in order to enhance its desirability as a foreign investment destination, if the overall degree of State control over the movement of foreign currency into and out of Vietnam was to be materially reduced. The degree of scrutiny which is placed on all foreign currency in-flows and out-flows into and out of Vietnam makes banking in Vietnam difficult, inefficient, burdensome, and undesirable for foreign investors.

**Tax declaration issues**

In addition, the tax clearance procedures necessary for implementing M&A transactions and transferring purchase prices are in many cases very slow and often delay the completion of M&A transactions to a problematic extent.

For example, in relation to M&A transactions, the current legislation requires that, “The tax declaration must be submitted within 10 days from the day on which the relevant authority ‘approves’ the capital transfer or the transfer date agreed by all parties in the transfer contract (if the transfer is not subject to approval).” The legislation, however, does not clearly define what constitutes a relevant ‘approval’ in a private M&A transaction (not involving acquisition of State-owned enterprises), and, in practice, the tax authorities often adopt the view that the declaration and payment of the relevant capital gains tax must be undertaken within 10 days as from the date of the signing the relevant transfer contract (Signing).

This interpretation is particularly inconvenient with respect to complex M&A deals where, as a practical matter, the completion of the M&A (Completion) transaction can only take place several weeks after the signing of the transfer contract (i.e. completion usually takes place only at a later stage, once all the conditions precedent agreed by the parties are satisfied). In practice, therefore, sellers in an M&A transaction would not receive the purchase price (and thus any income to be subject to capital gains tax) until the completion where payment by the buyer is paid. It is, therefore, unrealistic to require the relevant parties to declare and pay tax within 10 days as from the date of signing the relevant transfer contract.

**Potential gains/concerns for Vietnam**

A clear and transparent regulatory framework is essential for planning and implementing M&A transactions. The excessive level of discretion enjoyed and applied by local licensing authorities to question and require changes to the commercial aspects of M&A transactions plays a significant role in the continuing existence of uncertainty and procedural inconvenience in relation to Vietnam-based M&A transactions.

**Recommendations:**

We recommend the Government:

- Reduce the degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions;
- Improve the clarity and consistency of the procedures applicable to M&A transactions;
- Abolish the distinction between “direct investment” and “indirect investment” transactions and the corresponding special-purpose bank accounts;
- Liberalise Vietnam foreign exchange control laws, in order to facilitate more easy and efficient transfers of foreign currency into and out of Vietnam, including in the context of M&A transactions;
- Amend the deadline for submitting the tax declaration as well as tax payment for M&A transactions to “10 days from the day on which the registration of the capital transfer with the licensing authorities has been completed in accordance with the relevant law”; and
- Ensure faster and smoother processing of the tax clearance procedures necessary for implementing M&A transactions and the transfer of purchase prices.

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10 Article 12.8(b) of Circular No. 156/2013/TT-BTC dated 6 November 2013 of the Ministry of Finance providing guidance on some articles of the Law on Tax Management, the Law on the amendments to the Law on Tax Management and the Government’s Decree 83/2013/ND-CP.
III. ANTI-TRUST RESTRICTIONS

Relevant Ministries: Ministry of Planning and Investment (MPI), Ministry of Industry and Trade (MOIT)

Issue description

When structuring an M&A deal it is often necessary for the parties to consider the applicable provisions of Vietnamese competition legislation.

In particular, pursuant to the Vietnamese competition legislation, an M&A transaction may require specific approval or may be prohibited, if certain degrees of ‘economic concentration’ will result from the transaction. In June 2018, the National Assembly passed a new Law on Competition\(^\text{11}\) which will come into force on 1 July 2019 and will replace the former Law on Competition 2004 which had been in place for almost 14 years.

The New Law on Competition now removes the former thresholds applicable under the previous legislation, and adopts a more flexible (but also more vague) approach which prohibits merger transactions which “cause or are capable of causing a significant impact in restraint of competition in the Vietnam market”. Merger control determinations are to be made by the National Competition Committee (NCC) under MOIT, taking into account a number of criteria such as: (i) total assets in the Vietnam market of the enterprises participating in the ‘economic concentration’; (ii) total turnover in the Vietnam market of the enterprises participating in the ‘economic concentration’; (iii) transaction value of the ‘economic concentration’; or (iv) combined market share in the relevant market of the enterprises participating in the ‘economic concentration’.

Although key concepts such as ‘economic concentration’, ‘relevant market’, and ‘market share’ are defined in the applicable legislation, the bases for determining whether or not an ‘economic concentration’ will occur, what is/are the ‘relevant market(s)’, and calculating ‘combined market shares’, remain ambiguous and controversial. Ultimately, therefore, the New Law on Competition leaves it to the discretion of the NCC to interpret and apply the key concept of ‘...significant impact in restraint of competition...’ within guidelines which will be set out in a future implementing Decree (whose available drafts, however, still do not set out adequately clear criteria). This lack of clarity gives rise to uncertainty amongst investors, and material delays often result from the relevant competition authorities taking longer than the statutory review periods to apply the applicable tests within vague and poorly-defined parameters.

Potential gains/concerns for Vietnam

Given the ambiguity inherent in the legislation, parties to M&A transactions often file an informal submission with the relevant competition authorities, in order to obtain a ‘comfort letter’ to the effect that the proposed M&A transaction is not prohibited by and/or does not require specific approval under the Vietnamese competition legislation. This is a cumbersome and time-consuming process which often gives rise to material delays in transaction implementation timetables. This issue is likely to remain unresolved even after the entry into force of the New Law on Competition. Better-defined rules in the competition area would promote more effective protections against ‘economic concentration’ transactions which do or are likely to have a detrimental impact on competition.

Recommendations:

It is critical that the implementing legislation of the New Law on Competition provides clearer and more precise guidance on precisely how to determine whether or not an ‘economic concentration’ is to occur, calculate ‘market share’ (for the purposes of ‘combined market share’ analyses), and determine precisely what are the ‘relevant market(s)’ which must be analysed from a New Law on Competition perspective. Furthermore, the review process applied by the NCC should be streamlined, in order to avoid unnecessary delays in achieving the timely and orderly completion of M&A transactions.

Specifically, we recommend the following:

\(^{11}\) Law 23/2018/QH14 dated 12 June 2018 of National Assembly on Competition
To further clarify the tests for determining whether or not any M&A transaction will give rise to an ‘economic concentration’;

To further clarify the basis for calculating the ‘market share’ and ‘combined market share’ of the participants in an M&A transaction which constitutes an ‘economic concentration’, for the purposes of assessing such ‘economic concentration’ transactions and for triggering the obligation to notify a transaction to the NCC;

To define clear and precise criteria for determining what constitutes the ‘relevant market(s)’ in relation to any particular M&A transaction; and

To ensure that the NCC can scrutinise transactions and make decisions in an efficient and timely manner.

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CHAPTER 9 PUBLIC-PRIVATE PARTNERSHIPS

OVERVIEW

Modern, efficient infrastructure is vital to continued economic growth and lowers the costs of doing business for all investors in Vietnam. Rapid economic growth and urbanisation is driving high demands for roads, electricity, ports, waste and wastewater treatment, hospitals and other public infrastructure for goods and services. However, Vietnam’s infrastructure development needs are estimated at US$480 billion in the period from 2016 to 2030\(^1\), while the 2016 – 2020 mid-term State budget reportedly allocated only US$6.6 billion for this sector.\(^2\)

Although there has been significant spending on infrastructure projects in Vietnam over the past 20 years, the vast majority of the funding has been supported by Official Development Aid (ODA), the State budget and State guarantees of external debt provided by Ministry of Finance (MOF). This is recognised as not being sustainable in the mid- to long-term, particularly as Vietnam achieves middle-income status with the consequent reduction of available ODA funding. In addition, the Government of Vietnam appears to be intent on reducing its exposure to foreign creditors under MOF guarantees, which results on a further tightening of amounts of external credit available for financing infrastructure.

Although local Vietnamese banks are increasingly funding infrastructure, the liquidity in the domestic market is not sufficient to cover the massive finance requirements in this sector. The costs of funding are also extremely high, reducing the attractiveness of infrastructure investment to both foreign and local private developers. The balance of funding for these requirements therefore needs to be accessed from external sources, willing to offer attractive terms and eager to participate in the Vietnamese market. These funding sources however require more structured solutions in terms of risk allocation such as those that can be derived from private investments in the form of Public-Private Partnerships (PPPs).

In recent years, the Government has conducted continuous legal reform process aimed at increasing foreign and private investment in the country. Most recently the Government issued Decree 63 on Public-Private Partnerships\(^3\) (or the PPP Decree) which took effect on the 19\(^{th}\) of June 2018 as the principle current effective regulation on PPP projects in Vietnam (replacing a previous Decree 15\(^4\)). Decree 63 co-exists with Decree 30.\(^5\)

In November 2017, the Ministry of Planning and Investment (MPI)’s Public Procurement Department announced a proposal for a new Law on Public and Private Partnership (the Proposed Law on PPP)\(^6\) to replace the current PPP Decree and other ancillary regulations. The Proposed Law on PPP is expected to be submitted to the National Assembly in 2019.\(^7\) Decree 63 might therefore become redundant in a short space of time, which may well result in little progress being made in furthering concrete projects under this piece of legislation in view of the uncertainty as to the timing and content of the Proposed Law on PPP.

In terms of practical reliance on PPP legislation by investors, over the course of the past 20 years, outside the handful of successful foreign invested large scale Build-Operate-Transfer (BOT) thermal power plants including the Mong Duong 2 power project which reached financial close in 2011, the Nghi Son 2 power thermal power project which began construction in 2018, or more recent projects expected to reach financial close in 2019,

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3  Decree 63/2018/ND-CP dated 4 May 2018 of the Government on public private partnership
4  Decree 15/2015/ND-CP dated 14 February 2015 of the Government on investment in the form of public-private partnership (Decree 15).
5  Decree 30/2015/ND-CP dated 17 March 2015 of the Government on implementing the Law on Tendering regarding investors selection
6  Note that the proposal is in its early stages and there is currently no draft text available.
such as Vung Ang 2\(^8\) or Van Phong 1\(^9\), successful private investment in the public infrastructure sector has been the exception rather than the rule, particularly in the case of private investment in PPP form. The few reported cases of such BOT or PPP investments are usually implemented under relatively basic project contracts and arrangements with the State which, while acceptable to the local market, are insufficient in terms of risk allocation and legal protections to form the basis of significant foreign cross-border investment and financing.

Up until now, due to difficulties with the existing PPP regime, investors, and particularly foreign private investors, have, in several cases, simply either (i) relied on constituting an investment project under the Law on Investment or (ii) implemented Build–Transfer (BT) projects, whereby the construction of public infrastructure, most often expressways, is rewarded by the State granting the investor rights to implement a private project, usually for urban development or real estate development.\(^10\) These options are limited by their nature and there is clear realisation that a more robust regulatory environment for PPPs is needed to encourage private, and especially foreign private, investment in the massive infrastructure needs of Vietnam.

Although the PPP Decree, Decree 30, and the implementing regulations constitute important legal developments – and it is hoped that the Proposed Law on PPP will build on these developments if and when it comes into force – this will not by itself translate into a series of successful privately invested infrastructure projects. In this chapter, we will discuss recommendations to promote the PPP program in Vietnam which can be broadly categorised as follows:

- Developing a pipeline of visible projects;
- Improving the capacity and coordination amongst relevant Government agencies; and
- Streamlining, and, where necessary, moving towards the practical implementation of a comprehensive regulatory framework for PPP projects in Vietnam.

## I. DEVELOPING A PIPELINE OF VISIBLE PROJECTS

### Relevant Ministries: Ministry of Planning and Investment (MPI), authorised State bodies, and other related authorities.

### Issue description

As has been highlighted previously\(^11\), the success of the PPP legislative framework largely depends on the Government’s ability to bring about and promote viable projects, and there has only been limited progress in this regard.

**Clarifying prioritised projects for a PPP project pipeline**

Decision 631\(^12\), which lists 127 national projects seeking foreign investment including around 35 to be developed under the PPP regime, has not been amended in almost five years to include an updated list of PPP projects based on further developed investment criteria. While certain important projects or categories of projects do feature in sectoral master plans, such as the Power Development Master Plan issued in March 2016\(^13\), a comprehensive list of

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\(^10\) Examples: (i) the project to construct the Pham Van Dong Road in Ho Chi Minh City connecting Tan Son Nhat airport to industrial zones in Binh Duong and Dong Nai, in which the Government entered into an agreement with the investor (GS Engineering & Construction) in which the investor finances and develops the infrastructure in exchange for the development rights and land use rights of certain lots of land in Districts 2, 9 and 10 for real estate development, or (ii) the project in which the investor (Gamuda International) constructed Yen So sewage treatment plant in Hanoi in exchange for a lot of land for real estate development in the city.


\(^12\) Decision 631/QĐ-TTG dated 29 April 2014 of the Prime Minister

\(^13\) Decision 428/QĐ-TTG dated 18 March 2016 of the Prime Minister approving master plan on the national electricity development in the period of 2011 to 2020 with vision to 2030.
national and regional projects inviting foreign investment and including details such as the proposed form of the project, the amount and form of the State’s contribution, and any other incentives available to investors, would shed some light on the Government’s priorities.

Clear and practical guidance about which projects will be prioritised as a “first in type” in which sectors and the support available from the Government (such as assurances regarding revenue streams and incentives) will be critical in attracting cross border funding. This may require a sector-oriented approach including sector-specific regulations.

At a regional level, by way of example, it is reported that Ho Chi Minh City will call for 243 projects in the form of PPP, with the total estimated investment capital of around VND 869,420 billion (approx. US$37 billion).14 Regional level projects would also benefit from a similar prioritisation and a systematic approach to the market if they are to attract capital from foreign investors.

Unsolicited proposals

Unsolicited projects are permitted by the Vietnamese tendering regulations, but to date no such projects have been publicly reported as having been accepted and the legal aspects of the process are still largely untested. Pending the development of a pipeline of projects to be tendered, the clarification of the rules applicable to unsolicited projects could be a helpful tool to get projects “off the ground” and help develop institutional PPP capacity.

Currently, unsolicited project proposals must be approved by the relevant authorised State agency, following which the project proponent must carry out the feasibility study. The project must be put to tender based on the feasibility study prepared by the project proponent, who will be entitled to bidding incentives, including an increase of the price proposed by other bidders by an additional 5 per cent when evaluated against that of the project proponent. This has historically not been enough of an incentive for investors to propose projects in view of the risk that an investor who develops and proposes an unsolicited project may not be selected as the ultimate investor.

In addition, unsolicited projects cannot benefit from the Project Development Facility (PDF) and are only entitled to State capital investment if such State capital is funded by ODA or preferential loans of foreign donors, which is another disincentive for potential project proponents. It also appears that projects included in Decision 631 cannot qualify for being proposed on an unsolicited basis, although the regulations are not entirely clear.

While a move away from direct appointment is welcomed, objective criteria where this might be permitted would be helpful if it can launch a first in kind pilot project with sophisticated foreign debt and equity investors off the ground pending the development of more refined regulations of PPP and tendering and the furtherance of capacity building (see Section II below).

Conversion of existing State funded projects to PPP form

Clarifications are also needed in relation to the regime for converting State-funded projects into PPP form, if existing brownfield State-run projects are to attract outside investment, liberating funds for the State to undertake new greenfield investments. While the process for conversion has broadly been set out in Decree 63 and Circular 88,15 these provisions remain new and untested. In particular, the application of Decree 63 relates to “projects currently being invested by funds sourced from State capital”, however, the scope of this requirement is unclear, as the definition does not explicitly include projects where construction has not commenced. Clarifications are therefore necessary if investors are to have visibility of the State-funded projects that are eligible for investment under this regime and it would be helpful to see this potential mechanism actually implemented through one or more test projects.

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15 Circular 88/2018/TT-BTC dated 28 September 2018 of the Ministry of Finance on the financial management of PPP projects
The Project Development Facility (PDF)

The PDF, a facility sponsored by the Asian Development Bank, Agence Française de Développement and the Australian Agency for International Development to assist the authorised State bodies in preparing and assessing potential PPPs, may go some way towards addressing these issues. The PDF will be administered by MPI in cooperation with MOF. Selected investors in a PPP project will be required to refund the preparation costs for their projects to the State, who will repay them to the PDF. However, to date there is no detailed guidance on the management and eligibility of the PDF. In July 2017, the Deputy Prime Minister and Head of the Steering Committee assigned MPI, in coordination with other Ministries, sectors and localities, to prioritise projects within the scope of the PDF. However, there is yet no news on whether the PDF will be launched whether locally or nationally in the near future.

Potential gains/concerns for Vietnam

Having tangible projects identified and announcing them to the market (whether they are greenfield or brownfield) continues to be of the highest priority to kick-start Vietnam’s PPP program. It is critical that the existing regulations be tested by implementing PPP projects, which in turn should develop the capacity of relevant Government bodies and increase the confidence of investors; gaps in the legislative framework may also be clearly identified and corrected by further legislation if necessary.

Recommendations:

The Legal Sector Committee would like to recommend the following to the Government:

- Update Decision 631 with a new list of key national and regional projects, particularly in sectors which have a good track record in other jurisdictions with well-trodden models and which are highly sought after by foreign investors such as transportation, prioritising economically viable projects as those slated to be implemented as PPPs;
- Clarify the bidding process for unsolicited projects and the process for converting State-funded projects into PPP format, and submit selected projects to a competitive, transparent tender as contemplated under Decree 30 and/or allow projects to be developed by leading global sponsors on the basis of unsolicited proposals/direct appointment as pilot projects in specified high priority sectors in order to develop a baseline standard of documentation and risk allocation which would be bankable in the international markets;
- Implement the PDF and put potential projects through a rigorous assessment (with the help of international technical and financial consultants) involving homogenous international standard screening procedures; and
- Provide incentives and attractive measures for sectors struggling to attract PPP investment.

II. IMPROVE CAPACITY AND COORDINATION AMONGST GOVERNMENT AGENCIES

Relevant Ministries: Ministry of Planning and Investment (MPI), authorised State bodies, and other related authorities.

Issue description

The lack of capacity, coordination and the lack of unified approach amongst Vietnamese Government authorities continue to be the issues most frequently cited by potential international project investors and sponsors as major difficulties for carrying out projects, including PPP projects, in Vietnam.

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Gap in the approach between Government authorities and foreign parties

This issue is compounded by the fact that although BOT, BT and BTO regimes have been in place for 20 years, the legal framework for carrying out PPP projects is not yet fully developed. The PPP Decree, in particular, does not fully address a number of key risk allocation and commercial issues (including, for example, assurances regarding the certainty and quantum of revenues, change in law and convertibility risk) and also fails to provide detailed procedures for contract/project assignment rights, resulting in uncertainty for the implementing authorities and, in turn, delay in project contract conclusion and practical project implementation.

There are also only very limited precedents of financed and completed privately invested projects. The Government authorities, therefore, often do not have sufficient legal and practical guidance to smoothly manage the implementation of projects, particularly outside the conventional power sector.

It appears that there is often some confusion on the side of authorities discussing projects with foreign investors between the traditional public investment and the PPP regime. The former focuses more on input elements instead of outputs, does not require a sophisticated project assessment process and a rigorous risk management and allocation mechanism. Government authorities therefore often appear not to have sufficient experience and/or understanding of the commercial drivers concerning private investors, such as elements relating to the financial viability of a project and risk sharing mechanisms between the private and public sector. In addition, limited exposure to international practice has also led to a substantial gap in the approach between Government authorities and foreign parties in PPP projects, the former appearing more concerned with administrative procedures and the latter with practical and commercial realities.

Lack of coordination amongst related authorities

Finally, the lack of coordination by Government and amongst related authorities has also caused confusion for investors. The institutional structure and the roles of various Government authorities in the PPP legal framework are set out in the PPP Decree (with minor changes from the prior regulations). The PPP Decree contemplates a centrally planned and monitored program for managing PPP projects, centred on the Inter-Ministerial Steering Committee for PPP investments, currently led by Deputy Prime Minister Trinh Dinh Dung, which acts as a coordinator amongst the various Ministries and provincial People’s Committees involved in PPP projects. The Minister of Planning and Investment is the Deputy Head of the Steering Committee, and the MPI also hosts its standing office. However, in practice, foreign investors have observed that the practice of central and provincial Government authorities is not unified and different branches may take different views on the key issues relating to the feasibility to invest in a project. Provincial governments, especially in more remote provinces, continue to be left outside the reform process.

The Government has made some efforts to reduce this problem by instructing the Ministries to issue various implementing Circulars and organising numerous conferences and seminars to strengthen understanding and form a consistent approach among authorities. In particular, Ministries have been requested by the Deputy Prime Minister to review and complete the legal system for BOT and other PPP contracts, including in relation to the scale, investment cost, and toll collection modalities of projects in the transportation sector. The Government has also been tasked through Resolution 437 to improve the investment and operation of BOT contracts in the transportation sector, following the public outcry against the misplacement of road toll stations in various provinces.

Potential gains/concerns for Vietnam

The institutional and practical capacity and coordination issue will, in our view, outside the commercial and...
economic realities of individual PPP projects, continue to be the single most important factor reducing the competitiveness of Vietnam’s PPP program. It will continue to cause delay and it will increase costs for projects when compared with projects in other jurisdictions, including in the Association of Southeast Asian Nations (ASEAN), potentially resulting in a loss of investor patience and interest in the Vietnamese PPP program. Given the robust PPP program in some other markets in Southeast Asia (such as Thailand in particular at the current time), failing to timely address this issue will make it even more difficult for Vietnam to develop a competitive and visible project pipeline, particularly when interest in other jurisdictions which have been less active in the recent years is revived, which is expected in the near future. We understand, however, that work is being undertaken on some of these aspects with some of Vietnam’s development institutions and this is encouraging.

Recommendations:

› Continue to organise regular and quality workshops and capacity building sessions for relevant Government authorities, especially officials at provincial levels. Updated legislation, including the Proposed Law on PPP, should be developed in consultation with relevant Government authorities (as well as outside stakeholders), and the Government should organise capacity building sessions centered around the new legislation at an appropriate time to ensure that it is implemented by authorities in a cohesive manner;

› Continue to develop implementing regulations as well as project manuals to assist the authorised State bodies in carrying out projects;

› Develop (with the help of international consultants with experience in other markets) sets of approved bidding documents, including project contracts containing internationally acceptable risk allocation models as a basis for bidding to reduce the potential for delay;

› Bring in tangible projects in line with international best practice to provide the authorised State bodies with hands-on experience; and

› Require a participative implementing process with involvement of all key Ministries and authorities for a unified practice in developing projects, potentially leveraging of those individuals who have gained experience of bankability and financeability issues in the power context.

III. RATIONALISING DETAILED IMPLEMENTING REGULATIONS

Relevant Ministries: Ministry of Planning and Investment (MPI), authorised State bodies, and other related authorities.

Issue description

The Government’s recent efforts in rationalising the PPP framework, notably through the issuance of the PPP Decree and Decree 30, have generally brought further consistency and improved investment conditions.

The regulatory changes brought about by Decree 63, and the removal of the requirement for a PPP project to have an Investment Registration Certificate (IRC) issued by the MPI as the final licensing step, which should simplify administrative procedures.

The conflict between the PPP regime and the Law on Enterprises (which requires that the charter capital of a project company must be fully contributed within 90 days after the company’s Enterprise Registration Certificate (ERC) is issued) was also patched up. Decree 63 now provides that equity capital may be contributed according to an agreed schedule set out in the project contract, which is welcomed by projects with large investment capital requirements. However, more clarification on this would be welcome as, on the face of the law, foreign investors may still confuse this as an inconsistency between the Law on Enterprises and Decree 63.

Notwithstanding these efforts, the overlap and the gaps in the existing regulations remain a major obstacle to the sound development of PPP projects. Foreign investors in PPP projects need to comply with a large set
of regulations.\textsuperscript{20} Cross references between these pieces of legislation are bound to induce inconsistencies, although MPI has informally confirmed that the Proposed Law on PPP will remove irrelevant and unnecessary references to Law on Public Investment. Furthermore, current provisions under the PPP Decree still do not address the key host country issues identified in developing and financing infrastructure projects in Vietnam, and there are gaps which need to be filled that were not addressed by Decree 63. We list some examples below:

\textbf{Security over land and assets attached to the land}

The current regulations are ambiguous as to the right to mortgage land use rights in the case of an investor having benefited from exemptions of land use fees or rent (as one of the incentives available to investors in PPP projects). Under the Law on Land and its implementing regulations, land use rights can only be mortgaged if the rent or fees have been fully paid by the investor (and this position is not varied by the PPP Decree), meaning that an investor having benefited from an exemption of the land use or rental fees may not be entitled to mortgage the exempted land. This inability to mortgage project land unfortunately undermines the land use incentives set out in the PPP Decree and limits the bankability of PPP projects, rendering the PPP framework less efficient. Thus, the inconsistency between the PPP Decree and the Law on Land remains an important obstacle to lenders supplying PPP investors with loans.

\textbf{Foreign exchange}

Foreign exchange considerations also continue to affect the bankability of PPP projects in Vietnam from the perspective of investors relying on foreign lending. The Government guarantee of foreign exchange rates is a central issue for investors (and their foreign lenders) seeking to remit capital overseas. The PPP Decree does provide for a general Government guarantee of foreign exchange rates.\textsuperscript{21} However, no clear guidance exists regarding the ratio of the foreign exchange rates guaranteed by the State and no such guarantee has been given, to our knowledge, outside the context of thermal BOT power plants.\textsuperscript{22} This is a key issue in the context of projects whose revenues are in Vietnamese dong. Regarding BOT thermal power projects, Letter 1604\textsuperscript{23} (which is still effective) contains assurances regarding the investment climate generally and specifically the availability of Government guarantees in relation to the pricing of power in U.S. Dollars, even if it is payable in Vietnamese Dong. Importantly, this text also contains the provision specifying that the Government shall guarantee the conversion into U.S. Dollars of 30 per cent of the revenue of the project from Vietnamese dong after deducting expenditures in Vietnamese Dong.

\textbf{Viability Gap Funding (VGF) and minimum revenue guarantees}

Another key area affecting the future development of PPP projects is the absence of any guidance and practice relating to VGF. The initial references to the possibility of VGF under Decree 15 and in connection with proposed pilot projects marked an encouraging step forward for foreign participants in the PPP market. Despite suggestions that VGF of up to US$1 billion will be made available to support non-viable projects, detailed guidance on the management of and eligibility for VGF has yet to be issued. MPI has, however, affirmed that it has conducted research on VGF with the intention of issuing a separate Circular (although no timeframe has been specified). Decree 63, unfortunately, has not provided for any detailed guidance on the VGF. In practice, without detailed guidelines in place regarding the quantification of the state investment capital in a given PPP project, it has not been possible to implement a project with VGF terms.

Similarly, the absence of any framework for developing State support in the form of minimum revenue guarantees, which could ensure the financeability of otherwise unviable economic projects in the long term is a major structural hurdle and one that the international community hopes will be resolved in forthcoming legislative developments.


\textsuperscript{21} Article 64 of Decree 63, which is a change from the three specific categories provided by Article 60 of Decree 15.

\textsuperscript{22} Official Letter 1604/TTg-KTN dated 12 September 2011 of Prime Minister on primary contents of build operate transfer (BOT) contracts and governmental guarantees applying to thermal power plant projects invested under BOT contracts.

\textsuperscript{23} Ibid.
CHAPTER 9  PUBLIC-PRIVATE PARTNERSHIPS

The upcoming legal framework on PPP

In July 2017, MPI announced a proposal for the Proposed Law on PPP, and an outline was submitted to various Ministries, branches of Government and local authorities for their opinions and recommendations.

Until the end of 2018, no draft text of the Proposed Law on PPP has been released for the public to comment and the proposal is in its early stages, meaning that there is currently little visibility of the issues that the law might eventually address. However, in principle, a comprehensive Law on PPP is to be welcomed as an opportunity to consolidate and clarify, and, where necessary, complete the existing regulations in a cohesive framework.

Providing a balanced and practical legal framework around the bigger picture issues relating to financial viability of infrastructure projects to be assisted through the public part of the “public-private partnership” should also be a focus of the legislative exercise.

Potential gains/concerns for Vietnam

The existing and proposed legal regulations on PPP demonstrate a concerted effort by the Government to update and clarify the PPP framework over recent years. However, issues persist which limit the attractiveness of PPP projects to foreign investors, including lack of clarity of existing regulations, conflict with other legislative regimes that serve to undermine incentives for PPP investors and key structural gaps relating to State support (the “public” side of PPP). The Proposed Law on PPP should aim to address these issues. The Government should also consider to ensure avoiding introducing further conditions or limitations that may affect foreign investors’ appetite, as cohesive and tested laws and regulations that comply with international norms would lay a solid framework upon which to convert foreign interest in PPP projects to a steady stream of investment in the coming years.

Recommendations:

- Continue to streamline the policies and guidelines related to PPPs to attract foreign investors looking to invest in infrastructure in the country, focusing on certain key elements such as the availability and disbursement of VGF and minimum revenue guarantees;
- Test these regulations with actual projects so that investors can get comfortable with how they will be interpreted in the context of developing a PPP;
- Take advantage of legislative momentum behind the Proposed Law on PPP in order to clarify and complete existing regulations to an international standard so as to increase the attractiveness of Vietnamese PPP projects to foreign investors.
- Publishing on MPI website the full text of draft Law on PPP for the public to provide opinions

Looking forward, in 2019, Legal SC is committed to further working with Government and MPI, other relevant authorities and our partners to contribute our expertise and experience, EU and international practices to successful build an effective legal framework on PPP.

ACKNOWLEDGMENTS

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Samantha Campbell, Legal SC member, Partner, Hogan Lovells Vietnam and Singapore.
CHAPTER 10 TAXATION

OVERVIEW

The EuroCham Taxation and Transfer Pricing Sector Committee continues to recognise the many positive developments in relation to Vietnam’s tax laws and regulations. Among many positive developments in the tax laws, there have been reductions in the time it takes taxpayers to comply with their tax obligations. We also welcome the efforts of the Government and the relevant competent authorities in reviewing and updating the tax regulations in providing guidance on transfer pricing, including provisions reflecting the OECD’s Base Erosion and Profit Shifting Action Plan. This evidences Vietnam’s commitment towards transparency and global integration.

In 2018, the Ministry of Finance issued Decision 2141 approving the decrease and simplification of 176 administrative procedures to support making business more efficient. We look forward to seeing the concrete results of such decisions as well as the Government’s active role in building towards E-Government and digitalisation economy.

We nevertheless observe that the practical implementation of the regulations in general continues to be challenging. A narrow interpretation of what qualifies as comparable companies is a common issue arising on transfer pricing audit and we raise a particular concern in relation to this. Likewise, we also discuss tax incentive transition policy for projects manufacturing prioritised supporting industry products implemented before the 1st of January 2015 more specifically in this year’s Whitebook. Another area that is challenging is the application of tax treaties. While we have also raised this previously, important cases involving EuroCham members over the past year have reinforced the fact that practical implementation of the benefits under tax treaties is increasingly difficult.

I. TAX INCENTIVE TRANSITION POLICY FOR PROJECTS MANUFACTURING PRIORITISED SUPPORTING INDUSTRY PRODUCTS IMPLEMENTED BEFORE THE 1ST OF JANUARY 2015.

Relevant Government authorities: Office of Government (OOG), Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Justice (MOJ), General Department of Taxation (GDT)

Issue description

Law 71, which took effect from the 1st of January 2015, supplements (i) the regulation on Corporate Income Tax (CIT) incentives for projects manufacturing prioritised supporting industry (SI) products.

In addition, Law 71 also supplements the (ii) regulation on CIT incentive transition to guarantee the fairness and uniformity of CIT policy and consistency with the regulation on securing the investment and business operation in case regulations change under Investment Law 67. Accordingly, in case CIT regulations have changes and enterprises satisfy the tax incentive conditions (incentivised business sectors or incentivised locations), the enterprises are allowed to enjoy tax incentives including preferential tax rate and tax holiday under the newly amended and supplemented regulations for the remaining period.

Under such regulations, enterprises who have projects implemented before 2015 in incentivised locations (e.g. expansion projects in the period 2009-2013 in industrial zones) are entitled to the CIT incentive transition for

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1. Specifically, the issuance of Decree 20/2017/ND-CP and Circular 41/2017/TT-BTC dated 24 February 2017 and 28 April 2017
2. Decision 2141/QĐ-BTC dated 20 November 2011 of the Ministry of Finance approving the solution to reduce and simplify administrative procedures under the state management of Ministry of Finance
3. Law No. 71/2014/QH13 dated 26 November 2014 issued by the National Assembly amending, supplementing a number of articles of Tax Laws, took effect since 1 January 2015
4. Law No. 67/2014/QH13 dated 26 Nov 2014 of National Assembly on Investment
the remaining period. Similarly, enterprises who have projects implemented before 2015 in incentivised business sectors (e.g. projects manufacturing prioritised SI products implemented before 2015) could enjoy the CIT incentive for the remaining period.

However, recently we acknowledge that the Ministry of Finance (MOF), General Department of Taxation (GDT), has issued official letters and guidance to enterprises that the CIT incentives for the business sector of manufacturing prioritised SI products are not applied to the projects manufacturing prioritised SI products implemented before the 1st of January 2015. Such a viewpoint is contrary to the viewpoints of the Ministry of Industry and Trade, which has issued the Incentive Confirmation certificate of project manufacturing prioritised SI products to a number of projects implemented before the 1st of January 2015. Moreover, the MOF guidance is also not aligned with the Ministry of Justice’s Official Letter responding to an enterprise that the aforementioned viewpoint of MOF and tax authorities are inappropriate with Law 71 and Investment Law 67.

**Potential benefits/concerns for Vietnam**

From the perspectives of legitimacy, investment, as well as development policy of prioritised SI sector of the National Assembly and Government of Vietnam, we have followed concerns on the viewpoint above of MOF and GDT:

- The guidance of MOF/GDT is inconsistent with the prevailing regulations on CIT incentive transition;
- This is inconsistent with the instruction of the National Assembly and Government of Vietnam on the promotion, development of the prioritised SI sector;
- This creates discrimination on the CIT incentive transition application (not only discrimination among investors on the prioritised SI sector itself but also discrimination among incentivised business sectors and incentivised locations (e.g. industrial zones, areas with difficult social-economic conditions, etc.), and;
- This discourages the investors to remain or further expand their projects and creates negative impacts on the investment environment in Vietnam.

**Recommendations:**

To guarantee transparency and consensus among authorities upon the implementation of investment attraction incentive policy, we propose the Vietnamese Government, with the role of constructing the development and accompanying with enterprises, to consider taking the leading coordination role and giving directions to the relevant Ministries and agencies (Ministries of Finance (GDT), Industry and Trade, Justice, and Planning and Investment) to have consistent, timely, and appropriate conclusion on the application of incentive transition policy for projects manufacturing prioritised SI products implemented before the 1st of January 2015, which was introduced under Law 71.

**II. TRANSFER PRICING**

Relevant Ministries: Ministry of Finance (MOF), General Department of Taxation (GDT), State Auditor (SA)

**The use of comparables in transfer pricing audits**

**Issue description**

In the EuroCham WhiteBook 2018 we raised the issue of the use by the tax authorities of comparables that are not accessible to taxpayers. We have seen increasing challenges to taxpayers’ own benchmarking studies and continued and widespread reference by the tax authorities to their own database. The Law allows taxpayers to use information and data from a variety of public sources to perform benchmarking studies for transfer pricing purposes. The Law also provides that the tax authority may refer to the same sources of information as taxpayers but also allows the use of certain sources of non-public information including the tax authority’s database in certain circumstances. Such database is collected, analysed, and regulated by multiple sources and may comprise Vietnamese local private companies, whose financial data is not publicly available.
Vietnam’s growing economy is largely dependent on inbound investment, with a very large percentage of Multi-National Enterprises (MNEs) amongst the taxpayers. Most MNEs have related-party transactions which are under the purview of Transfer Pricing (TP) regulations in Vietnam. These have been covered under Circular 66; Decree 20; and Circular 41.

The TP regulations mentioned above stipulate five TP methods which can be used by taxpayers to test the arm’s-length nature of their inter-company transactions. The most common is the use of the Comparable Profits Method (CPM) which involves testing the overall profit ratio, stated as a percentage over cost, sales or assets of the taxpayer with that of identified comparable companies. A scientific analysis using an external database is often used by the taxpayer to carry out such testing.

**Potential benefits/concerns for Vietnam**

However, we are aware that during transfer pricing audits, enterprises commonly find that the tax authorities reject such taxpayer analysis and propose a different arm’s length margin based on other taxpayers’ data or ‘secret comparables’. Usually, the secret comparable companies are based on the data of other Vietnamese taxpayers which is only accessible to the tax authorities. In most countries, comparables are selected through a scientific and technical analysis where both the taxpayer and tax authority have an opportunity to present the rationale for the selection or rejection of a comparable. We find various concerns on the use of secret comparables, the most significant of which are briefly discussed below:

- The taxpayer is required to use publicly available data at the beginning of the transaction. However, the tax authority disregards public data and uses secret comparables. This makes defending the arm’s-length nature of their related party transactions an impossible task for the taxpayer. It also gives a very large amount of discretion to the tax authorities.

- Using secret comparables has, in our view, high potential to be arbitrary and unfair to taxpayers. The data for secret comparables is not shared with taxpayers, who are therefore unable to defend their own comparables or challenge the basis of those the tax authority selected. This is a breach of the ‘Principles of Natural Justice’ - the rule against bias and the principle that the taxpayer has a right to a fair hearing before any transfer pricing adjustment is made.

**Recommendations:**

With the introduction of Decree 20 and the new TP regulations, we would like to recommend that the tax authorities adopt a more forward-looking approach. Decree 20 is now in line with internationally accepted TP regulations and the administration of the law should also be based on international standards. The United Nations (UN) Practical Manual on Transfer Pricing and the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines both caution against the use of secret comparables for transfer pricing comparability purposes.

Tax authorities should give due consideration to the analysis undertaken by the taxpayer. Challenges should be based on the merits and features of the taxpayer’s comparables and adequate rationale should be provided for rejecting their comparable companies. If comparables are rejected, authorities should propose a better set based on the same database or another public database, rather than resorting to data which is not accessible to the taxpayer.

We understand that the tax authorities have taken into the consideration of subscribing to international databases of comparable data for both private as well as listed and unlisted public companies and the Tax & TP SC would encourage this.

If the above recommendations are addressed, the results would create a level playing field for both involved parties. They would create a conducive environment for taxpayers to encourage investment and ensure their business continuity in Vietnam while allowing the Government to protect its tax base. A scientific approach to this

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5 Circular 66/2010/TT-BTC dated 22 April 2010 of the Ministry of Finance guiding the determination of markets prices in business transactions between associated parties
6 Decree 20/2017/ND-CP dated 24 February 2017 of the Government guiding on tax management on transfer pricing in enterprises
7 Circular 41/2017/ND-CP dated 28 April 2017 of the Government guiding the implementation of Decree 20
Issue would be a welcome development for MNEs operating in Vietnam and will also increase the overall level of compliance.

**Limitation on the deductibility of interest expense**

**Issue Description:**

Decree 20 provides a limitation on the deductibility of interest expenses for tax purposes based on 20 per cent of earnings before interest, taxes, depreciation and amortisation ("EBITDA"). These provisions are based broadly on the OECD’s recommendations under Action 4 of the BEPS project. Specifically, Clause 3, Article 8 of Decree 20 provides for the deductible loan interest when determining taxable income, “for enterprises engaged in particular related party transactions”.

"3. Taxpayers’ deductible loan interest incurred in a tax period shall not exceed 20% of total net profit generated from business activities plus loan interest and depreciation cost incurred within the same period. This regulation shall not apply to taxpayers who are regulated by the Law on Credit Institutions or the Law on Insurance Business."

**Potential benefits/concerns for Vietnam**

This provision has led to concerns from a number of taxpayers. Our members have concerns regarding whether total deductible loan interest mentioned in Clause 3, Article 8 of Decree 20 refers to total loan interest incurred in a tax period (i.e. whether it applies to unrelated and party debt as well as related party debt) and the fact that companies incurring losses, in particular in the start-up phase suffer a complete denial of an interest deduction by simple operation of the formula in Decree 20 due to their EBITDA being less than or equal to 0.

In both cases there is no profit shifting between related parties and likely double taxation due to the limitation on the interest deduction. The second issue places an additional financial burden on companies in losses in particular in the start-up phase and is a disincentive to investment. There also appears to be no logical reason that a company with only unrelated party debt but other related party transactions should have its interest deduction partially or fully denied but a company that has no related party transactions and is, therefore, outside of the scope of Decree 20 obtains a full interest deduction.

There have been a number of official letters issued by both local tax authorities as well as the GDT in response to these concerns. For an example, in Official Letter 3790 the GDT confirmed that loan interest expenses subject to the statutory cap include both related party and third party loans. With respect to the issue of the application of the limitation to companies with nil or negative EBITDA the letter stated that the issue would be sent to MOF and the Prime Minister for consideration and further instruction.

**Recommendations:**

We would like to suggest measures to address the concerns of taxpayers mentioned above including:

- The interest limitation would only apply to unrelated party debt, unless a related party provides a guarantee to the lender or deposits an equivalent amount with the lender.

- The interest deduction that is denied is able to be carried to subsequent years. The OECD suggested that counties may wish to allow the carry forward or carry back of the deduction and this has been implemented in the equivalent laws of other countries.

The implementation of the above recommendations would address the issue of double taxation where the interest deduction is fully or partially denied but the lender is taxed on the interest income and would not disincentivise new investment in by both local and foreign enterprises. At the same time, they would be consistent with the purpose of these provisions in preventing profit shifting between related parties.

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8 Official Letter 3790/TCT-DNL dated 5 October 2018 of the General Department of Taxation on addressing concerns of businesses during the implementation of the Decree 20/2017/ND-CP
III. THE APPLICATION OF TAX TREATIES

Relevant Ministries: Ministry of Finance (MOF), General Department of Taxation (GDT), State Auditor

Issue description

Vietnam has entered into more and more tax treaties with other countries as an attempt to create a fair and efficient tax and business environment for foreign taxpayers to come and do business in Vietnam. Yet there are still many obstacles to really bring the treaty benefits into real business life, one of which we would like to raise here is the lack of a comprehensive and concrete set of guidance from the tax authorities in order for taxpayers to self-assess the tax treaty application.

Currently, tax authorities and taxpayers base on the tax treaties themselves in determining the relevant treatments/benefits by virtue of the treaties, such as the determination of permanent establishment which defines the rights of Vietnam to tax on foreign companies’ business profit derived in Vietnam (except for some other specific kinds of profit as specified in the treaties). However, the treaties themselves only contain short/concise provisions, for which there have been in place commentaries and guidance issued by international organisations that are widely acknowledged and accepted by the tax authorities all over the world (the OECD Commentaries on Articles of The Model Tax Conventions are the most relevant to the tax treaties that Vietnam entered into, and Vietnam, though not binding, was among countries which have attended and contributed to the issuance of the commentaries).

The reality in Vietnam, however, is that a reference to such OECD commentaries has not been accepted by the Vietnamese tax authorities. In fact, Vietnamese tax authority would mostly refer to Circular 205\(^9\) as a local guidance in interpreting the tax treaties for taxpayers in Vietnam, which, in many cases, contains gaps with international practices (mostly in a negative way to the taxpayers) and hence creates confusion and non-transparency to the taxpayers. For an example, Point 1.2, Article 11 of Circular 205 provides definition of Permanent Establishment, in which Example 14 regarding the Permanent Establishment in case of airplane maintenance services seems to go quite beyond the understanding in international practices on the topic and enlarge the cases where the Vietnamese tax authorities would consider that a permanent establishment has been created.

Potential gains/concerns for Vietnam

These difficulties in applying the tax treaties would forfeit the efforts and commitments of the Vietnamese Government when negotiating and entering into the treaties. This would, in turn, make the business environment in Vietnam less competitive and attractive to foreign companies and individuals who want to do business in Vietnam (due to the double tax impact they have to suffer), or, alternatively, add up to the burden of the Vietnamese companies if the tax (and penalty, interest) is eventually borne by them.

Recommendations:

We strongly suggest the revision and amendment of the current Circular 205 in order to better provide guidance to taxpayers in apply tax treaties. In addition, reference to international practices/OECD Commentaries should be included as an official and effective source of interpretation for the taxpayers. We believe that this would bring much more transparency and adequacy for both the self-assessment of the taxpayers and the perusal of the tax authorities in interpretation and understanding of the treaty treatments.

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\(^9\) Circular 205/2013/TT-BTC dated 24 December 2013 of the Ministry of Finance guiding the implementation of the Agreement on double taxation avoidance and prevention of tax evasion with respect to taxes on income and property between Vietnam and other states or territories and in force in Vietnam.
CHAPTER 10 TAXATION

IV. CORPORATE INCOME TAX – INCOMPLIANCE OF NON-TAX REGULATIONS LEADING TO NON-DEDUCTIBLE EXPENSES

Relevant Ministries: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), General Department of Taxation (GDT), State Auditor (SA)

Issue description

Current Corporate Income Tax (CIT) regulations state that except for certain non-deductible expenses specifically mentioned in the regulations, enterprises are entitled to deduct all expenses if they satisfy the three conditions being (i) actually incurred in relation to the business operations; (ii) supported by legitimate invoices, documents; (iii) supported by non-cash payment in respect of invoices having value from VND20 million inclusive of VAT.\(^\text{10}\)

However, in practice, the tax authorities are increasingly claiming incompliances by companies relating to non-tax regulations as reasons to deny deductible expenses, even when remedial actions are already taken to comply with laws. For an example, late registration of loan contract, technology transfer contract or late work permit will result in non-deductible of related expenses during the period of late registration. Non-compliance of promotional program notification also result in the non-deductible promotion expenses, just to name a few.

Potential gains/concerns for Vietnam

Companies operating in Vietnam are subject to various non-tax compliance requirements. Where they fail to comply with any of those, they shall be subject to administrative penalties set out under the respective laws and regulations. The penalties are purposely set at different levels in correspondence with the facts, nature and seriousness of the violations of law and damage done to society.

Under the current CIT regulations, administrative penalties are non-deductible expenses.\(^\text{11}\) However, the tax authorities have gone beyond the regulations and arbitrarily interpreted to reject also the associated expenses of the non-tax incompliant transactions. Such treatment will increase the cost of incompliance for actions which are already penalised under other laws and regulations, creating uncertain tax risks and distorting economic transactions.

Recommendations:

We recommend that MOF and GDT, in the next CIT regulation review, state clearly the types of expenses which shall be treated non-deductible where the related compliant requirements to other non-tax regulations are not met. Other than that, all expenses which meet the basic conditions for deduction should not be treated otherwise. Moreover, in the interim until the regulations are revised, tax authorities should observe that unless tax regulations specifically govern, any incompliance with non-tax regulations which only give rise to administrative fines should not be a reason to reject an expense’s deductibility.

ACKNOWLEDGMENTS:

Tax & Transfer Pricing Sector Committee

\(^{10}\) Article 11 of Circular 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance guiding the implementation of the Government’s Decree 218/2013/ND-CP of 26 December, 2013 detailing and guiding the implementation of the Law on Corporate Income Tax which has been amended from time to time.

\(^{11}\) Point 2.36, Article 6 of Circular 78/2014/TT-BTC.
CHAPTER 11 TRANSPORTATION AND LOGISTICS

OVERVIEW

The Transportation & Logistics Sector Committee of EuroCham highly values the continuous efforts of the Government in recent years to improve Vietnam’s transportation infrastructure and its import-export procedures. Vietnam, with its favourable conditions in terms of geographic location, labour force, and stable political environment, has seen a strong growth of its manufacturing sector and corresponding import and export volumes.

In the first ten months of 2018, compared to the same period the previous year, the total import and export turnover of the country reached US$396.85 billion, increasing 13.8 per cent. Of this, the value of exports reached US$202.03 billion, increasing 15.2 per cent, and imports reached US$194.82 billion, increasing 12.4 per cent.1 In light of this rapid development, Vietnam has a valuable opportunity to position itself as a key player not only in the manufacturing industry, but also in the transportation and logistics industry.

High-quality logistics infrastructure, along with effective and efficient customs procedures, are two key elements Vietnam needs to achieve in order to continue to attract foreign direct investment; to increase its competitiveness compared to other countries in the region; to connect local Vietnamese companies into global supply chains; and to become a transportation hub for ASEAN.

I. INFRASTRUCTURE

Relevant Ministries: Ministry of Transport (MOT), Ministry of Finance (MOF), Ministry of Planning and Investment (MPI)

Transport infrastructure has been identified as one of the key factors the Government should address in order to reduce logistics costs. Indeed, the cost of logistics in Vietnam is relatively high compared to others in the region and the world, as described in Figure 7. This makes Vietnam less attractive as a rising logistics hub. Therefore, businesses in the transportation and logistics industry are encouraged by Directive 21.2 Acknowledging that there are certain drawbacks with the current transport infrastructure system in terms of uniformity, synchronism and connectivity, this Directive has shown the determination of the Vietnamese Government to improve logistics infrastructure in the country.

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1 “The situation of export and import of goods of Vietnam in October 2018 and 10 first months of 2018”, Vietnam Customs, 2018. Available at: <https://www.customs.gov.vn/Lists/ThongKeHaiQuan/ViewDetails.aspx?id=1509&Category=Ph%C3%A1n%20t%C3%ADch%20k%E1%BB%8Bnh%20k%E1%BB%89%23&Group=Ph%C3%A1n%20t%C3%ADch%20k%E1%BB%8Bnh%20k%E1%BB%89%23> last accessed on 24 February 2019

2 Directive 21/CT-TTg dated 18 July 2018 of the Prime Minister promoting the implementation of solutions to reduce logistics costs and effectively connect transport infrastructure.
However, the journey to improve transport infrastructure in Vietnam will be long and challenging. There are key aspects that need to be addressed urgently with further and focused investment. In 2018, we conducted an internal online survey, with questions adapted from the World Bank’s logistics performance index studies, to conduct an overall evaluation of the current situation of Vietnam’s transport infrastructure from the perspective of business. The survey results show that most issues are under the management and direction of the Government, while the private sector can contribute to certain other issues. Therefore, the development of transport infrastructure in Vietnam needs to involve tight cooperation between the Government and the business community.

### Issue description

Our 2018 survey points out that most businesses are concerned about safety when using the logistics infrastructure systems within Vietnam as well as the limited capacity of the systems, resulting in congestion or delays in movement. Matters such as solicitation, informal payments and paying under the table have been positively changed in recent years thanks to the effort of the Government, but still, they remain an area of concern for businesses.
Regarding the service quality of the infrastructure system, the survey results show that most infrastructure in Vietnam, from road to railway, from aviation to waterways, has not completely met the expectations of business. In particular:

- **For roads:** Although there are many new expressways being constructed under Public-Private Partnerships, the quality of these expressways, their operation and management (e.g., fee systems), have resulted in their under-utilisation, and not alleviated the issue of congestion on subsidiary/alternative routes. More attention needs to be given by the Government to these important issues.

- **For waterways:** The ports and ICDs in Vietnam, especially in the South, have generally fulfilled the current demand of business. However, the congestions at ports, typically at Cat Lai terminal during peak periods or after long holidays, has created extreme difficulties for businesses in terms of costs and timings.

- **For railways:** The designed system and geographical coverage still need to be improved. They do not meet international standards in terms of speed, quality of service and so on. In practice, railways should be one of the most efficient and commonly used means of transport. Therefore, we are delighted to know that in July 2018, the National Assembly Standing Committee allocated VND 7,000 billion for 4 projects, aiming to upgrade rail and rail-bridges in Vietnam.³

- **For aviation:** Although currently Vietnam has in total 21 airports, only 4 among them have separate cargo terminals. The lack of logistics service centers in, or close to, airports also prevents Vietnam from taking full advantages of freight transport.

- **For telecommunications and IT infrastructure:** The implementation of the National Single Window and the ASEAN Single Window has initially been a success. The VNACCS/VCIS system has contributed greatly to the customs clearance processes in terms of shortening time, simplifying paperwork and minimising the risk of solicitation and informal payments though these do still occur during direct interactions with Customs officers. However, we observe that there continue to be delays caused by the administration in connecting their specialised procedures to the National Single Window and the ASEAN Single Window.⁴ These delays have created negative impacts compared to the ultimate goals of the Government of reforming specialised inspection for imported and exported goods and customs and trade facilitation from 2018 to 2020.

![Figure 9: Service quality evaluation for transport infrastructure in Vietnam](image)

Source: EuroCham Transportation and Logistics Sector Committee 2018 Survey

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Potential gains/concerns for Vietnam

Vietnam has great potential and an ideal location to capitalise on further investments and improvements in logistics infrastructure. This could drive Vietnam into a stronger competitive position, within the upper quartile of regionally competing countries. Positioning Vietnam as the new ASEAN transportation hub compliments and aligns with the Government’s policies both economically and socially.

However, the relatively low-level of priority for improving the current infrastructure systems, results in the reduced effectiveness of Vietnam’s transportation and logistics industry, and has caused a comparative increase in costs. If planned new projects lack conformity and connectivity between different modes of transport, then the infrastructure system will still not be optimised. A large-scale infrastructure improvement plan requires effective implementation. Management and oversight by Government is critical, but quality management of the construction projects should be the top priority for Vietnam, to ensure resources and finances are effectively, and efficiently, allocated.

All the above matters prevent Vietnam from reaching its significant positioning within ASEAN both in terms of transport, logistics management and other aspects.

Recommendations:

- Inland waterways, railway and aviation development are important to release the pressure on road transport. Considering future developments, equal priority should be given to the effective movement of both passengers/commuters and transported goods. The inefficiencies in coordination of one area will immediately impact the other.

- We request the Vietnamese Government conducts in-depth research on the connectivity between different modes of transport among the infrastructure systems. Inter-ministerial cooperation is crucial in terms of planning and locating new manufacturing and distribution areas to optimise the usage of the future intermodal transport infrastructure;

- The supervision role of the Government is emphasised in order to not only ensure the effective allocation of resources, but also ensure the safety and the sustainability of these constructions. This would also contribute to the trust of business and society, as well as elevate the image of Vietnam for further FDI investment;

- The implementation of high-tech solutions in transport infrastructure, typically the National Single Window and the ASEAN Single Window, needs to be synchronised across all engaged Ministries to ensure optimal solutions for reducing logistics cost. We propose a clear deadline, ideally at the end of 2019, for all involved Ministries to finish incorporating their procedures to the common system, and;

- For the long-term planning, the Vietnamese Government should consider applying new technologies such as Blockchain, e-DO (electronic delivery order) for LCL shipments, e-Ports, e-tolls etc. to simplify import, export & transport procedures and support business.

II. CUSTOMS

EuroCham members welcome Vietnam’s notification, in late 2018, on Category commitments under the WTO’s Agreement on Trade Facilitation. We see this as a vital step in the continued drive towards a lean, efficient, and transparent trade environment. We also believe that Vietnam’s proactive actions in implementing these commitments will support the approval of the EVFTA. EuroCham, and its members, are keen to support Vietnam’s fulfillment of such commitments; especially those listed in Category C in the schedule, and would welcome opportunities for on-going dialogue on these issues.
1. Customs valuation

Relevant Ministries: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue description

The issuance of Circular 39\(^5\) was welcomed by EuroCham members, as it provides clarity on the basis for customs value verification and on the grounds for rejection of declared customs values. However, the shifting of the verification process from post-clearance to border Customs appears to have had little impact on improving the quality of Customs’ assessments.

In a recent survey on customs conducted by TLSC among EuroCham members, nearly 40 per cent of respondents reported frequent challenges from Customs at the import border point. A particular concern was seen in the assessment of the quality of the price consultation process conducted by border Customs, which was only rated as slightly above average, with lowest marks given to the “Technical knowledge of Customs officers on the valuation methodology”.

Circular 39 requires declarants of imported goods to prove to border Customs that they qualify for the Transaction-Value method by presenting documents prescribed in the Circular. In general practice, enterprises are only able to evidence their qualification for the Transaction-Value method with reference to accounting records, which is unrealistic to provide at the border clearance point.

During the price consultation process, several issues remain unresolved. Specifically, our members have reported that:

- There were no clear explanations provided by border Customs on what “grounds” they have to reject the declared value, or on how the new customs value (that Customs thinks should be applied) has been determined.
- Customs reject the declared value based on the “form” rather than “substance” (please refer to the Wine & Spirits Chapter on Customs Valuation for more detail), or Customs simply state that “presentation and supporting documents were not sufficient” without providing any evidence that the transaction values were not acceptable; and
- For non-commercial goods (where there is no formal price consultation process) arbitrary values are often advised to the importer. Importers do not receive any explanation as to the basis of this value, and seemingly there is no recourse to challenge it.

Potential gains/concerns for Vietnam

Transparency, predictability and the consistent application of Customs regulations are key factors when enterprises, especially MNCs, are considering making long-term investments in Vietnam.

Border Customs’ lack of knowledge on valuation methodology makes the price consultation process inefficient. This makes the customs process very time-consuming and costly for business, instead of being a helpful channel for improving the declarants’ compliance in the future.

The lack of certainty as to whether the declared values will be accepted by Customs makes it difficult for enterprises to plan financially. This also leads to a failure to have an open, and formally documented price negotiation process. Furthermore, it leaves the door open for individual Customs officers to take advantage of grey areas, and for resolving pending issues through informal payments by declarants.

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Recommendations:

We would like to recommend that increased focus should be given to improving the quality and consistency of the price consultation process. Specifically, it is suggested that:

- Further regulations/guidelines should be issued by the Customs:
  - Stipulating what type of documents the declarants should present in the price consultation process (in comparison to the documents presented at post-clearance audit) to support their use of transaction value, particularly, where trade is between parties with a special relationship;
  - Clarifying that the burden of proof for determining and declaring the customs value initially lies on the declarant, but also stating that:
    + Customs can only reject Transaction Value where they have grounds (supported by evidence) that the parties have not traded as if they were unrelated;
    + The evidence that Customs have identified is formally shared with the declarant, and;
    + Business practices adopted by enterprises in determining the Transaction Value of imported goods should be respected, and assessed as genuine practice, unless Customs can provide evidence that it is not.
- Border Customs undergo further capacity training to raise their understanding of valuation methodology and sector and industry practice, to ensure the price consultation process is more equitable and effective;
- The Government should offer a more practical scheme to support enterprises obtain rulings on customs valuation;
- Customs should, when assessing the acceptance of Transaction Values, formally take into consideration corporate tax transfer pricing policies and documentation, and;
- The price-consultation procedure should be extended to cover non-commercial imports.

2. HS Code classification

Issue description

Certainty of treatment on the HS classification codes that will be accepted by Customs is another key issue for enterprises. Importers of finished goods into Vietnam are particularly impacted by changes to the HS codes that result in an increase in duty liabilities. The retrospectively-applied charges (covering duties, late payment interest, and penalties) are often backdated 5 years, can rarely be passed on by the importers to their customers, and so have a direct impact on the viability of the enterprise.

We recognise the recent efforts of Vietnam Customs in driving consistency in the application of HS codes nationally, through (i) regular reviews on the application and declaration of HS codes at all border points, and (ii) centralised issuance of classification Rulings.

However, despite these positive steps, our members still have serious concerns regarding the following:

- Inconsistencies in the classification opinions provided by Vietnam Customs. Specifically, there have been many instances where Customs have issued classification opinions, but have subsequently changed their opinions, and sought to collect retrospective tax duties, late payment interest, and penalties.
- Significant differences in the classification opinions of Vietnam Customs when compared to the HS codes accepted by Customs in the exporting countries. This has particular impact where Vietnam Customs have a
different opinion on the acceptable HS code (at even 2- or 4-digit level) to that stated on the Certificate of Origin (COO) issued and accepted in the exporting country. Although differences of opinion on HS codes has been considered a minor issue, and one which should not affect the validity of the COO, in practice we are increasingly facing rejection by Customs on the validity of COO due to the HS differences.

Potential gains/concerns for Vietnam

Aggressive re-classification and collection by Vietnam Customs would make the business environment less secure for investors to maintain and/or expand their business in Vietnam. Meanwhile, limited classification guidance/reference are published by Vietnam Customs to facilitate the self-assessment of applicable HS codes of the declarants.

Recommendations

Determining the applicable HS code classification for goods is often a challenging process for both enterprises and Customs. In order to support enterprises to classify their goods, and improve compliance, it is recommended that:

- Vietnam Customs publish on their official website (in both Vietnamese and English) all the legal reference sources of classification (issued within the last 5 years) and, at a minimum, those that were listed and committed to be published in Article 6 of Circular 14/2015/TT-BTC dated the 30th of January 2015;6
- The Classification Ruling database should incorporate a search tool to facilitate research by enterprises;
- Until the legal sources committed to under Article 6 of Circular 14 are published and accessible to enterprises, Customs should waive retroactive collection of duties, late payment interest and penalties;
- With respect to the verification of COO, to comply with Article 15.6 of Circular 38/2018/TT-BTC,7 clear instructions from GDC should be issued regarding HS code differences which should not be the basis of COO rejection (regardless at which digit level) by Customs, unless there is clear evidence that different goods are presented at import;
- Where Customs change their opinion on the HS code to be applied to a product, they must provide the declarant with their decision in writing, with clearly stated rationale/grounds for changing their opinion, and;
- Customs regulations should be revised to regulate that, where all information requested by Customs was provided by the declarant at the time the original opinion was being considered and issued:
  - Any revised opinion(s) would apply from the date of issuance, and will not have retrospective effects; and
  - Customs would not seek to recover any historic additional duties, penalties and late payment interest arising from a change in Customs opinion.

3. On-the-spot export manufacturing/processing

Issue description

It is recognised by both the Ministry of Finance (MOF) and General Department of Customs (GDC) that Decree 1348 did not provide clear guidance on the customs duty treatment of goods when traded under the on-the-spot export-import model.9

Recent rulings from GDC (including Official Letter 582610) state that on-the-spot export is not regarded as an

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6 Circular 14/2015/TT-BTC dated 30 January 2015 of the Ministry of Finance on customs procedures, customs supervision and inspection, export duty, import duty, and tax administration applied to exports and imports.
7 Circular 38/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance on regulations on identification of origin of imported and exported goods.
10 Official letter 5826/TCHQ-TXNK dated 5 October 2018 of the General Department of Customs on tax consequences for the on-the-spot exports.
“export activity” and, therefore, is not entitled to enjoy duty relief (or refund). This has been seen by EuroCham members as a harsh interpretation of Decree 134 and one which is in direct conflict with the VAT regulations.

The interpretation adopted by GDC has resulted in a large number of members facing significant potential exposure to retrospective collection of exempted/refunded duties on imported materials for export manufacturing and processing, and application of late-payment interest and penalties.

Potential gains/concerns for Vietnam

Inconsistency in customs and tax regulations (both governed by MOF), and treatment by GDC of on-the-spot export creates confusion and uncertainty to enterprises. The approach of GDC also results in double taxation of import duty, namely on both input (i.e. materials at importation) and output (i.e. finished goods from such materials upon on-the-spot import) of one production process.

The rigid and narrow interpretation of “export activities” by Customs limits enterprises’ ability to engage with local Vietnamese companies within their supply chain; increases production costs; and results in products being less competitive on the global market. A number of our members indicate that their expansion plans are being seriously re-considered due to the harsh approach of Vietnam Customs.

Recommendations

EuroCham members welcomed the statement by the Vice-Minister of Finance, Ms. Vu Thi Mai, on the 27th of November 2018 that the MOF, following the issuance of Official Letter 5826 of GDC, had taken note of enterprises’ concerns and, as a consequence, MOF has included in the revision of Decree 134 a proposal to the Government that import duty relief (or import duty refund) is permitted on materials/components imported under the on-the-spot export-import model.11

We look forward to seeing the issuance of the new Decree revising Decree 134 soon, and EuroCham additionally requests that, when the new Decree is published, it is accompanied by a clear statement from MOF and GDC that this interpretation will apply to all exports made under the on-the-spot export-import mode since September 2016.

4. Transparency of customs procedures

Issue description

In our recent survey of EuroCham members, enterprises recognise the efforts of Vietnam Customs in making customs regulations more transparent. However, some issues remain in need of resolution, specifically where import practices do not meet the expectations of the business community. In particular, several members have reported that:

› There is a continued use of unofficial communication channels to address import/export issues, despite the existence of E-customs; and

› Some regulations are still vague and hard to understand, leaving room for different interpretation of border Customs officers.

› In some instances it had been indicated to them that unless informal fees were paid, their customs declarations could be subject to more rigorous processing checks and there could be delays in clearance of their shipments.

Potential gains/concerns for Vietnam

EuroCham recognises that the practices can vary according to local conditions, and we acknowledge that some Department of Customs are more advanced in fighting against those practices particularly thanks to a greater use of e-customs.

That said, lack of transparency in import regulations, and inconsistency in the application of customs procedures, are major difficulties for enterprises (especially FDI firms). These also create harmful effects to the economy of Vietnam, as they:

- Discourage enterprises from developing and promoting good compliance practice;
- Reduce confidence to invest in and trade with Vietnam; and
- Result in the benefits of FTAs (including the upcoming EVFTA) not being fully utilised.

Recommendations

EuroCham members encourage GDC to take further actions to enforce transparency in the implementation of customs laws nationwide. Specifically, we recommend that:

- Each provincial Customs department should have their own anonymous hotline for enterprises to report issues of concern (separate to the GDC hotline) so that GDC will not be overloaded and issues can be resolved in a shorter timeframe at the local level first;
- GDC publishes an Annual Account on cases reported through the hotlines, and the outcomes (anonymous). This would raise awareness and provide confidence to businesses that actions are being taken; and
- The E-customs declaration system should be revised to facilitate documented communication between all levels of Customs authorities and the business community, thereby reducing unofficial channels of communication, and opportunities for unofficial payments.

ACKNOWLEDGEMENTS

EuroCham Transportation and Logistics Sector Committee
SECTORAL ISSUES

PART TWO
CHAPTER 12 EUROCHAM HEALTHCARE FORUM

OVERVIEW

Vietnam continues to attract great interest from leading international companies in the life sciences sector. The EuroCham Healthcare Forum – with members from the innovative pharmaceutical industry (Pharma Group), the international quality medicines - Generic and Biosimilar industry (IQMED - Generic & Biosimilar), and the Medical Devices and Diagnostics industry (MDD SC) – applauds the continued efforts of the Government to improve the healthcare sector in Vietnam.

The EuroCham Healthcare Forum sees an opportunity to further strengthen dialogue and partnership with the Government, developing an attractive investment environment and a top-tier healthcare system for Vietnamese patients.

In order to achieve this vision, the EuroCham Healthcare Forum identifies three key elements:

1. Working together towards life sciences sector development
2. Enabling Public-Private Partnership to deliver high-quality healthcare services and a sustainable healthcare system for Vietnam
3. Continue strengthening ethical standards in healthcare to enhance trust and integrity

I. WORKING TOGETHER TOWARDS LIFE SCIENCES SECTOR DEVELOPMENT

Relevant Government authorities: Office of Government (OOG), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Finance (MOF), Vietnam Social Security (VSS)

Description

Through dialogue with the Vietnamese Government, the international healthcare industry is encouraged by (a) Vietnam’s openness for foreign investment and fair access to the Vietnamese market (b) the acknowledgement of our critical role in bringing high-quality products for prevention, diagnosis, treatment and monitoring (c) the emerging incentives to transfer global knowledge and capabilities to local and domestic enterprises in Vietnam.

Potential gains/concerns for Vietnam

Vietnam has the opportunity to build a high-value, self-sustaining life sciences sector and position itself as an attractive investment destination in ASEAN. The EuroCham Healthcare Forum stands ready to have a solution-oriented dialogue with the Government on the above enablers, with the overarching objective to develop an attractive investment environment and a sustainable healthcare system.

Recommendations:

The following are needed to make such a strategy a reality:

1. Strengthen the dialogue between Government, industry and relevant stakeholders to identify holistic policies that, on the one hand, address short-term issues that arise and, on the other hand, ensure benefits for patients, Government and industry alike, while simultaneously and jointly implementing recent international trade agreements successfully;
2. Create a predictable and outward-looking legal framework for foreign companies to operate and become long-term partners in Vietnam. This should include incentives that encourage long-term investment from MNCs for local manufacturing, technology transfer, investments in local capabilities and medical education;

3. Establish an inter-Ministerial Taskforce under the leadership of an appointed senior Government representative to develop a Roadmap for sector development. Such a roadmap can be based on existing country strengths while examining the success of similar initiatives from Ireland and Singapore. Bringing together key actors including regulators, industry, academia, and economic experts to work with the Government toward this goal will stimulate new investment in the short- to medium-term, and upgrade the quality standards and capability of Vietnam’s healthcare in the long-term.

II. ENABLING PUBLIC-PRIVATE PARTNERSHIP TO DELIVER HIGH-QUALITY HEALTHCARE SERVICES AND A SUSTAINABLE HEALTHCARE SYSTEM FOR VIETNAM

Relevant Government authorities: Ministry of Health (MOH), Ministry of Planning and Investment (MPI), Ministry of Justice (MOJ)

Description

With a fast-ageing population, the healthcare sector in Vietnam is at an inflection point: as incomes rise, access to Universal Healthcare Coverage (UHC) continues to expand, infrastructure investments by the Government are increasing, and demand for quality health products and services will continue to rise. This creates an increasing need for a more active private sector and for Public-Private Partnerships (PPPs) to develop healthcare services that enhance capabilities and capacity of delivering effective disease management.

Potential gains/concerns for Vietnam

Service-based Public Public-Private Partnerships (PPPs) can unlock further contribution from the private sector towards an inclusive, forward-looking and sustainable healthcare system for the benefit of Vietnamese people.

Homecare is an emerging topic which should be given more attention. The number of patients needing treatment and the overcrowded hospitals are a challenge that MOH aims to overcome. With the limited bed capacity of Vietnamese hospitals, there is an imbalance of 'supply and demand'. Even healthcare systems with greater bed capacity have established home care services to improve the follow-up of chronic and long-lasting diseases for patients who return to their homes to continue treatment after being discharged from hospital. Patients in Vietnam are currently overburdened with high out-of-pocket payments and, therefore, require affordable treatment options. However, affordable treatment should not be at the cost of quality.

Recommendations:

1. Service-based Public Public-Private Partnerships (PPPs)

Enable a legal framework (guiding Circular of MOH) for innovative (Service-based) PPPs in healthcare and integration into the National Healthcare Financing Strategy. Three main areas of focus are recommended:

   i. Capability building and development of human resources (including nursing staff, pharmacists, labs physicians) and healthcare facilities management (specifically at the grassroots and provincial level);

   ii. Capacity building (including diagnostics, monitoring, patient records, community health stations, dialysis etc.);
iii. Efficient delivery (i.e.: Disease management for communicable and non-communicable diseases; multidisciplinary teams), and;

iv. Enhance the role of disease prevention.

As a pilot phase and in order to identify potential shortlisted feasible projects as well to lay the foundation for this partnership, a Memorandum of Understanding between MOH and the EuroCham Healthcare Forum could be signed in 2019.

2. Homecare

We believe that Vietnam should support the creation and development of a professional homecare scheme that empowers patient access to treatment with the involvement of healthcare professionals, in order to reduce the number of hospital visits, especially by patients with chronic diseases. Homecare can empower patient access to treatment, can help to address the problem of overcrowded hospitals, optimise public spending on chronic diseases and mitigate out-of-pocket healthcare spending for households. At the same time, it can help to improve quality of life for all patients suffering from chronic diseases. We are willing to support the development of a homecare scheme together with the Government.

III. CONTINUE STRENGTHENING ETHICAL STANDARDS IN HEALTHCARE TO ENHANCE TRUST AND INTEGRITY

Relevant Government authorities: Ministry of Health (MOH), Vietnam Medical Association (VMA), Vietnam Women Union (VWU), Vietnam Pharmaceutical Companies Association (VNPCA), Vietnamese Pharmaceutical Association (VPA), Vietnam Medical Equipment Association (VMEA)

Issue description

The Vietnamese healthcare landscape is evolving rapidly. Together, trust and integrity in Vietnam play an increasingly important role in shaping relationships between healthcare professionals and the pharmaceutical and medical devices industry that truly serve the best interest of patients. EuroCham Healthcare Forum members believe that, with our global experience, our strong ethical values and practices, we can bring meaningful contributions in promoting high ethical standards, fairness, integrity and transparency amongst all actors in healthcare.

Through our industries’ self-regulated Codes of Ethics, Pharma Group, IQMED - Generic and Biosimilar and MDD SC have established and upheld international ethical standards as the basis for our members’ activities in Vietnam. We continue to proactively monitor global standards, and have updated our respective Codes in the recent months, to set the bar even higher. These Codes are not only in line with Vietnamese laws and ethical guidelines, but also (i) put patients as our first priority, and (ii) promote scientific and educational activities with the highest ethical global standards. The new Codes of Pharma Group and IQMED - Generic and Biosimilar, took effect in Quarter 1/2019, and the MDD SC’s Code is expected to take effect in 2019.

Potential gains/concerns for Vietnam

We trust that commitments to high ethical standards amongst all actors in healthcare will not only benefit patients, but also promote responsible and fair competition, leading to a more attractive investment environment in Vietnam.

Recommendations:

We thank the Ministry of Health and the Government for their attention, and seek support to our efforts in promoting high ethical and compliance standards, towards the development of a higher-quality healthcare system in Vietnam, through:
1. **Industry associations – foreign and local – to adopt industry self-regulated Codes of Ethics with the same high ethical standards.** PG, IQMED - Generic and Biosimilar, and MDD SC look forward to sharing our best practices and new Codes of Ethics with other partners in healthcare;

2. **Enhance dialogues with all stakeholders in healthcare, including the medical community, to promote high ethical standards.** The Consensus Framework for Ethical Collaboration in Vietnam that we have proudly signed with the Vietnam Medical Association, Vietnam Women Union, Vietnam Pharmaceutical Companies Association, Vietnamese Pharmaceutical Association and the Vietnam Medical Equipment Association will be the perfect platform for this joint effort.

**ACKNOWLEDGEMENTS**

Eurocham Healthcare Forum
PART 1: GENERIC

OVERVIEW

The International Quality Medicines – Generic and Biosimilar is a pharmaceutical Sector Committee established under the EuroCham Healthcare Forum in August 2016. The IQMED - Generic and Biosimilar Sector Committee includes FDI or foreign pharmaceutical companies with head offices based in ICH countries and Representative Offices in Vietnam. Our companies all have products marketed in a minimum of 10 countries in Asia Pacific (APAC), the EU and North America and have 50 per cent of their portfolio revenue categorised in Originator, Generic Group 1, Group 2 as current tender regulation or with Bio-Equivalence/Bio-Availability (BE/BA) from the EU.

All the IQMED - Generic and Biosimilar members are strongly committed to the common mission of delivering affordable, high-quality, sustainable and trusted off-patent medicines and services to Vietnamese people. Key activities of the IQMED - Generic and Biosimilar Sector Committee focus on policy advocacy and collaboration with key healthcare stakeholders such as the Government, providers and payers in Vietnam in order to build efficient legal frameworks and implementation platforms.

I. OFF-PATENT PHARMACEUTICAL DIFFERENTIATION THROUGH HEALTH TECHNOLOGY ASSESSMENT (HTA) METHODOLOGY

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly (NA) – Committee on Social Affairs.

Issue description

Universal coverage is the most critical healthcare priority in Vietnam today. The Government aims to reach 90 per cent of the population with access to public healthcare insurance by 2020. Transforming healthcare to provide universal coverage highlights the need for high-quality generic pharmaceuticals and efficient management of Government funds.

The majority of patients in Vietnam are treated with Off-Patent Pharmaceuticals (OPP) which include off-patent originators, branded and unbranded generics. OPP currently holds 87 per cent volume and 73 per cent value of the total pharma market, according to the latest Total Vietnam Pharma Audit published by IQVIA in February 2018.

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1 EuroCham’s Healthcare Forum is a coordination platform for Sector Committees operating in the Healthcare industry— at present International Quality Medicines – Generic and Biosimilar (IQMED - Generic & Biosimilar), Medical Devices and Diagnostics (MDD SC) and Pharmaceuticals (Pharma Group).
3 Prime Minister Nguyen Xuan Phuc’s speech at the National Health Insurance Teleconference on 3 June 2016.
However, there are value differences within OPP. These include Manufacturing Certification (EU or PIC/S Good Manufacturing Practice (GMP) and WHO GMP)
6, Stringent Bio-Equivalence Criteria, Value in Use (Persistence and Adherence), Clinical Outcome and Additional Drug Cost.

For example, there are regulatory-based differences when comparing sub-quality generics. Active Pharmaceutical Ingredients (APIs) used in high-quality OPP products should come from sources with either Drug Master File (DMF) or a Certification of Sustainability to the monographs of the European Pharmacopoeia Procedure (CEP). Facilities are regularly audited by the European Directorate for the Quality of Medicine and Healthcare (EDQM)
7 as well as local authorities of related EU countries, and the United States Food & Drug Administration (USFDA). There are OPP manufacturers who do run international pharmacovigilence systems, including in Vietnam, to continuously monitor the safety of their marketed products. All finished formulations of those OPP are considered as original or as having BA/BE studies with the reference product in the related countries. This means that the quality of those OPP is always measured to the reference/original product and cannot be inferior. These manufacturers have production sites in the EU, U.S. or other PIC/S countries and their products are marketed in these markets as well. Generics manufacturers who cannot fulfil the above-mentioned criteria are considered as manufacturers of sub-quality generics.
Unfortunately, there is limited OPP differentiation in Vietnamese healthcare decision making, specifically in the areas of registration, reimbursement, formulary listing, and pricing. Therefore, the IQMED-Generic and Biosimilar Sector Committee initiated the evidence-based Health Technology Assessment (HTA) for OPP to sustain the accessibility of affordable and good quality medicine for the Vietnamese population.

**Potential gains/concerns for Vietnam**

The proper approach to OPP differentiation in Vietnam’s healthcare decision making will not only achieve early patient access to high-quality OPP products but also ensure efficient public spending on healthcare management. Key positives for Vietnam’s healthcare industry could be derived from adopting best practice in other markets. These include:

1. Ensuring comprehensive patient outcome and safety;
2. Sustaining high-quality OPP for Vietnamese patients with reliable pricing;
3. Ensuring efficiency in Government spending;
4. Increasing quality standards within OPP manufacturers;
5. Ensuring the reliability of manufacturers for Vietnamese patients.

**Recommendations:**

Evaluating current infrastructure conditions, the IQMED - Generic and Biosimilar Sector Committee proposes that the Government implement 3 important activities which will support the initiative of universal healthcare coverage:

- Upgrade differentiated category mechanisms in hospital tenders, taking into consideration the real-life patient outcome benefit factor. Differentiated categories will ensure medicine with the same quality level is reimbursed and evaluated in the same lot. This will sustain access to quality medicine in hospital tenders.

- Implement the Multi-Criteria Decision Analysis (MCDA) evaluation in drug decision making, i.e. the National Reimbursement Drug List (NRL), as this will ensure a comprehensive and transparent mechanism. Given the importance of the NRL and the comprehensive dossier required in its evaluation, MCDA would be the best-fit solution for an evaluation mechanism. The implementation should be based on the outcome of the workshop that took place in Hanoi on the 13th of July, 2017. Participants in this workshop included 19 key stakeholders from the Ministry of Health (MOH) such as Drug Administration of Vietnam (DAV), Health

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9 "IQGx Workshop on Multi-Criteria Decision Analysis (MCDA) Methodology and Applications in Decision-Makings for Off-Patent Pharmaceuticals (OPP)" EuroCham Advocacy Update. Available at: <https://www.eurochamvn.org/node/16779> last accessed on 22 December 2018.
Economics Association, National Centralised Drug Procurement Center, Finance and Planning Department, Medical Service Administration Department, Health Insurance Department and Vietnam Social Security.

Following discussion during the Conference, adopting the MCDA framework is strongly recommended in order to support drug decision making in Vietnam, especially in the Drug Procurement (tender) process of OPPs. The next steps should include committee member finalisation and criteria selection, weighting and scoring for tender decisions. This should be followed by a customised framework for manufacturers to present their products for consideration.

Table 3: Initial MCDA, Definition and Performance Categories (Outcome)

<table>
<thead>
<tr>
<th>Name of criterion</th>
<th>Intended definition</th>
<th>Performance categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalence with the reference (original) product</td>
<td>To capture evidence on health outcomes from pharmaceutical, bioequivalence and clinical trials (efficacy data from controlled clinical settings)</td>
<td>▶ No data on pharmaceutical equivalence&lt;br▶ Pharmaceutical equivalence&lt;br▶ Interchangeability defined based on local criteria&lt;br▶ Bioequivalence proven based on local criteria&lt;br▶ Bioequivalence proven based on European EMA or U.S. FDA criteria&lt;br▶ Therapeutic equivalence proven in clinical trial&lt;br▶ Improvement in efficacy and/or safety based on clinical trial data</td>
</tr>
<tr>
<td>Real world clinical or economic outcomes such as adherence or non-drug costs</td>
<td>To capture evidence on health outcomes (effectiveness) and costs from real-world data</td>
<td>▶ No real-world data on equal a) tolerability, b) adherence and persistence, c) non-drug cost&lt;br▶ International real world data on either equal a) tolerability, b) adherence and persistence, c) non-drug cost&lt;br▶ Local real-world data on either equal a) tolerability, b) adherence and persistence, c) non-drug cost&lt;br▶ International real-world data on improvement in a) tolerability, b) adherence and persistence, c) non-drug cost&lt;br▶ Local real-world data on improvement in a) tolerability, b) adherence and persistence, c) non-drug cost</td>
</tr>
<tr>
<td>Product stability and drug formulation</td>
<td>To capture evidence on stability and drug formulation</td>
<td>▶ No data on product expiry or stability&lt;br▶ Data on non-inferior product expiry or stability in the local environment&lt;br▶ Data on improved product expiry&lt;br▶ Data on improved product stability in the local environment&lt;br▶ Data on improved product expiry and stability in the local environment</td>
</tr>
<tr>
<td>Quality assurance</td>
<td>To capture evidence on manufacturing, product quality and standardisation</td>
<td>▶ Limited information on quality assurance&lt;br▶ Local/non-GMP quality assurance only for active product ingredient&lt;br▶ Local/non-GMP quality assurance for the entire manufacturing process&lt;br▶ WHO GMP certification&lt;br▶ EU or PIC/s GMP</td>
</tr>
</tbody>
</table>

Macroeconomic benefit

| To capture wider economic benefits of selecting the medicine (e.g. tax, investment, employment etc.) | The manufacturer has no local investment in the country
| | The manufacturer has minor local investment in the country
| | The manufacturer has moderate local investment in the country
| | The manufacturer has significant local investment in the country

Reliability of drug supply

| To capture the stability and reliability of drug supply (history and future guarantee) | Major and multiple problems in the last 5 years
| | Minor and fairly frequent problems in the last 5 years
| | Single precedence of supply problems in the last 5 years
| | No precedence of supply problems in the last 5 years
| | Manufacturer is financially capable and willing to guarantee supply

Pharmacovigilance

| To capture data collection and assessment on adverse events of pharmaceuticals | No pharmacovigilance system
| | Qualified person for pharmacovigilance
| | Qualified person and sophisticated system to collect pharmacovigilance data

Added value service related to the product

| To capture extra services provided alongside the drug with quantifiable and demonstrated outcomes/benefits | No program or service
| | Availability of value-added service
| | Major value-added service with demonstrated outcomes

Price

| Acquisition cost of the pharmaceutical product compared to the lowest price available | N/A

Introduce a faster registration timeline for high-quality OPP and an effective product introduction and visa approval process to ensure such products are being introduced in a timely manner.

The IQMED - Generic and Biosimilar Sector Committee is strongly committed to further collaborating with the Government to bring global expertise, best-practice sharing, models and tools in planning and implementing these activities.

II. AFFORDABLE TREATMENT OPTIONS FOR VIETNAMESE PATIENTS

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly (NA) – Committee on Social Affairs.

Issue description

One of the key healthcare objectives of the Vietnamese Government is universal coverage. According to Vietnam Social Security (VSS), by the end of July 2018, 87.2 per cent of the Vietnamese population has been enrolled and given access to the healthcare reimbursement system. The coverage expansion not only enrolls more patients but also provides better benefits and reduces patients’ self-pay if it is clearly defined with 3 dimensions aligning with WHO guidance.

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In practice, patients in Vietnam are currently overburdened with high out-of-pocket payments due to a shortage of quality healthcare facilities and long waiting times. Therefore, affordable treatment options are required. However, affordable treatment should not be at the cost of quality. MOH is considering alternative treatment options for the largest number of Vietnamese patients, whilst containing cost. Formulating policies for complex affordability issues requires strong collaboration between the Government and the industry.

The affordability of treatment is managed at multiple levels: First, at a product/drug level through the Government selection and assessment process; and second, at a service level through patient out-of-pocket costs during a hospital visit.

Affordability is not limited to price. It requires a proper assessment of the real cost of delivering the service in its entirety. The cost of using low-quality therapeutic solutions and the consequences of a medical error or infection has to be taken into consideration. Frequent hospital visits by a patient not only increases the pressure on hospital resources, but also exposes the patient to additional service fees, especially for those who have a chronic disease.

**Potential gains/concerns for Vietnam**

Vietnam is considered to have a high share of out-of-pocket payments, which means that a high proportion of households face severe difficulties managing their income and subsequently their health. Empowering patients to manage their health at home and developing home-care services will reduce the pressure on already crowded hospitals and reduce the out-of-pocket payments incurred by patients during hospital visits.

Opportunities exist to develop a process that assesses the merits of drugs or products using criteria over and above pricing. This will result in the establishment of a sustainable model of care, based on affordability.

Locally produced drugs or products do not automatically mean lower prices, and an equally branded/innovative product does not always mean value for money. That is why it is necessary to assess each product on its own merits, regardless of its origin, provided that quality standards are met.

**Recommendations:**

In our view, the Government should review product categorisation, such as branded or generics, in light of experience and data collected in recent years. The process should be revised to ensure that it is delivering the desired objectives, whilst ensuring continuous improvement in cost containment. The introduction of

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pharmaco-economy-based assessment will ensure that the cost/effect relationship of products and drugs has been taken into consideration and this, in turn, is more likely to deliver a better distribution of funds.

We also believe that MOH should further facilitate the home treatment concept (out-patients) through favourable reimbursement schemes in order to reduce the number of hospital visits, especially by patients with chronic diseases. This will limit out-of-pocket payment for patients.

### III. SUSTAINABLE SUPPLY SOURCE FOR LOCAL DEMAND

**Relevant Government authorities:** Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly (NA) – Committee on Social Affairs.

**Issue description**

The Government aims to have 80 per cent of domestic demand met by local producers by 2020, as specified in Decision 68. The current ratio of domestic demand is 50 per cent, therefore, in order to achieve this objective, it is clear that a strong focus on investment in local ‘quality’ manufacturing from foreign organisations is needed.

Another critical aspect to accomplish this objective is to put in place a transparent and robust tender process, ensuring the Government achieves value for money. However, there are two key issues with the current tender process as it stands. First, the tender result for each category only includes one choice of supplier. It does not include alternative suppliers or a commitment on tender quantities, which can result in critical shortages. Moreover, based on current product categorisation for the procurement process, products in the same or different categories may not necessarily reflect the true overall value of each product.

**Potential gains/concerns for Vietnam**

The IQMED - Generic and Biosimilar members could offer long-term, affordable medical solutions with guaranteed quality standards for the Vietnamese healthcare market. However, local regulations, policies and guarantees should be put in place to ensure local long-term investment. Meanwhile, long-term commitments for marketing authorisations should be curtailed to supply the market with more choice in terms of price and quality. Both are important factors contributing to the improvement and efficiency of spending on State budgets and health insurance funds. Not only will this secure stable supplies, but it will also increase the number of Vietnamese working in the production sector, thus creating employment opportunities for the Vietnamese population.

**Recommendations:**

- The Government should have clear policies and guarantees to strongly support the long-term presence and investment of foreign investors in the Vietnamese market, ensuring 80 per cent of domestic demand can be met by local qualified producers in the coming years;
- Continue an advanced categorisation of the procurement process in Vietnam that will present opportunities for improvement, deliver benefits to the Government and control the budget. Both relevant authorities and key stakeholders have now obtained adequate experience of and insight into the current process of procurement, including the categorisation of drugs. The IQMED - Generic and Biosimilar member companies recommend further detailed discussions about the identified gaps in the process and opportunities for improvement;
- The relevant authorities shall have measurements for the actual volume which suppliers must strictly commit to deliver; and
- A mechanism should be set up to allow hospitals to buy a 2nd choice, and for the insurance to reimburse the same value as the winning tender – in cases of limited supplies or unavailability.

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13 Decision 68/QD-TTg dated 10 January 2014 of the Prime Minister approving the National Strategy for development of the pharmaceutical industry in the period to the year 2020 and vision to 2030.
PART 2: BIOSIMILAR

OVERVIEW

Biological medicines, also known as first-generation biopharmaceuticals, have been produced for the last 30 years and are in clinical use for a number of diseases. Recently, the expiry of many of these product patents led to the development of other similar biologics at lower costs, with the same safety, purity and potency as their original (reference) medicines. These similar biologics are generally referred to as biosimilars.

Biosimilar medicines are not the same as generic medicines (a medicine which contains exactly the same molecule as an existing chemical medicine, such as aspirin). This is because, unlike chemical medicines, biological medicines cannot be exactly copied. Biosimilar medicines also have nothing to do with complementary or natural medicines nor with herbal medicines. However, biological medicines (including biosimilar medicines) come from living organisms, such as living cells that have been modified using biotechnology. This allows these living organisms or cells to produce the active substance of the biological medicine. This active substance is then harvested from the cells. These active substances (e.g. proteins) are usually larger and more complex than those of chemical medicines.

BIOSIMILAR: INCREASING PATIENT ACCESS TO STATE-OF-THE-ART THERAPIES

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly (NA) – Committee on Social Affairs.

Issue description

The development of biosimilars is an attempt to improve access challenges faced by patients, generate cost savings for healthcare systems and increase treatment options for healthcare professionals.

Potential gains/concerns for Vietnam

Benefit for patients:

The introduction of affordable, high-quality biosimilars improves access to life-changing medicines for patients worldwide. The EU saw a 100 per cent increase in the use of biologic treatments after the introduction of biosimilars in the EU.¹⁴

Benefit for HCPs:

Introduction of biosimilars drives competition, resulting in increased treatment options and value-added services to support patient care and the healthcare community. Between 2016 and 2020, 225 new active substances are set to come to market worldwide, with 30 per cent expected to be biologics.

Benefit to Payors

Biosimilars introduce competition, increasing the affordability of biologics which delivers savings for healthcare systems, helping to liberate resources that can be used to improve care and fund next-generation medicines. Cumulative savings over the next five years (2016-2021) in the EU5 and the U.S. combined could range from 49 billion EUR to 98 billion EUR.

Health economic benefit from biosimilar medicines (in the EU)

Aging is accelerating in the EU. In supporting the growing elderly population, EU countries will be obliged to spend an increasing proportion of their GDP to provide the required level of healthcare coverage. New and innovative therapies offering irrefutable advances, will continue to escalate costs and increase patient expectations. Healthcare expenditure is high on the agenda of every Member State in the EU, with all governments being tasked to deliver the best and most-up-to-date patient care, while at the same time trying to limit the potentially huge increases in associated costs. Over the past 10 years, the introduction of high-quality biosimilar medicines has made a significant impact in reducing healthcare expenditure across EU. This reduction has helped to manage the budgets and have allowed better access to important medicines for a greater number of patients.15

Recommendations:

Based on EU experience, the IQMED - Generic and Biosimilar recommends the Government to consider and facilitate the introduction of high-quality biosimilar medicines to reduce the health expenditure and balance the healthcare expectations.

ACKNOWLEDGEMENTS

EuroCham International Quality Medicines – Generic and Biosimilar Sector Committee

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CHAPTER 12B MEDICAL DEVICES AND DIAGNOSTICS

OVERVIEW

Vietnam’s healthcare infrastructure has developed rapidly over the past few years. This is thanks to the significant efforts of the Vietnamese authorities to improve public infrastructure across the country and to open the market to private healthcare providers. The related double-digit growth of the Medical Devices and Diagnostics market, which consists of around 90 per cent imports, has stimulated Multi-National Companies (MNCs) to better serve the market through investments in a solid local network of partners. This has involved the set-up of representative offices or, very often, the creation of local Vietnamese branches employing and training highly-qualified Vietnamese experts. It has also created opportunities for some of the MNCs to establish local production.

This has enabled substantial improvements in the access to innovations and knowledge for the Vietnamese healthcare community, as well as an increase in pre-sales and post-sales service levels to healthcare providers, for the benefit of Vietnamese patients. Decree 36, which has been largely aligned to international standards, is a significant milestone for the improvement of the regulatory landscape. Its consistent implementation will foster a more efficient and quality-oriented supply of medical devices and diagnostics solutions in Vietnam. However, a number of issues still need to be addressed in order to keep on the path to a state-of-the-art healthcare system, giving efficient access to innovative and high-quality healthcare to all citizens. The EuroCham Medical Devices and Diagnostics Sector Committee (MDD SC) has identified several key areas of improvement which it would like to address with the authorities, such as:

- Improving regulations on management of medical devices and diagnostics;
- Improving ‘not-new’ device management;
- Improving regulatory, budgetary and administrative frameworks to optimise usage, quality and costs of medical devices throughout their life cycle;
- Increasing efficiency in post-marketing surveillance and quality management systems to ensure product and service safety;
- Accelerating customs processes for critical spare parts as committed under the EVFTA regulation on Release of Goods (Chapter 5, Article 5);
- Preventing counterfeiting and illegitimate imports;
- Controlling enablement of pre-licensing promotion and marketing or sale registration;
- Increasing transparency, ensuring a level playing field and fair competition in public procurement of medical devices and diagnostics;
- Focusing more on ‘homecare’ to foster efficiency in the healthcare system;
- Improving awareness and control on utilisation of single-use devices, and;
- Giving a better access to wound care innovations through a clear reimbursement system.

The following sections focus on three of these issues. We remain available for further dialogue and cooperation with Ministry of Health (MOH) and relevant authorities.

1 Decree 36/2016/ND-CP dated 15 May 2016 of the Government on medical device management
2 Established from 1 April 2016 under EuroCham HealthCare Forum.
I. MANAGEMENT OF MEDICAL DEVICES IN VIETNAM

Relevant Ministries: National Assembly (NA) of Vietnam, Government of Vietnam (GOV), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT)

Issue description

Medical devices is a sector diverse in types, complex in technology, and constantly updated and modified to improve the effectiveness and safety for medical examination and treatment. To manage such a diverse sector is a major challenge for State management agencies, and Vietnam is no exception.

The promulgation of Decree 36 is the first step to help the medical device sector be strictly managed while still in harmony with the region and the world. High-quality and prestigious manufacturers and suppliers of medical devices are very happy and feel assured to develop and invest sustainably in the Vietnamese market.

On the 31st of December 2018, the Government issued Decree 169 amending Decree 36 to update and revise some management principles and requirements to further improve management efficiency and overcome inconsistencies in implementation in the past. This once again proves the consistent efforts made by the Government and MOH to create a strict, appropriate and transparent management mechanism, bringing high-quality products to the people.

With the recent issuance and implementation of management regulations on medical devices, we recognise that Vietnam’s management is on the right track and has a clear roadmap. It starts with the stricter management of circulation registration, risk management and classification in accordance with the principle of harmonisation with the result recognition mechanism of some developed countries, development of regulations on circulation and use management, establishment of a mechanism for unprecedented types of service in the field of medical devices, and full application of online circulation registration towards full application of circulation registration dossiers in accordance with ASEAN templates (ASEAN Medical Device Directive, ASEAN Common Submission Dossier Template) and focus on post-sales management. The receptors, such as businesses and relevant management agencies, also regularly update and give comments on the upcoming draft management regulations in order to develop legal documents consistent with reality.

Potential gains/concerns for Vietnam

Although the management regulations have been quite comprehensive in meeting the needs of practical management, some problems, limitations, and difficulties remain. Specific issues are addressed by the MDD SC as follows:

The first matter relates to the appraisal and approval of circulation licenses for more than 8,000 dossiers of registration for circulation of medical equipment submitted under Decree 36. This is the number of dossiers to be appraised and approved by MOH in 2019, not to mention the number of dossiers that will continue to increase in the coming time. This is a very challenging task for the MOH management agency, especially the technical parts, which are intensively specialised and new to them, such as the appraisal of research dossiers, clinical development or quality dossiers. With a similar or larger volume of dossiers than other ASEAN countries, they need more time – from 3-6 years – with much more manpower to deal with this issue.

As an example, the MOH of Singapore has more than 80 employees officially working in the field of medical device management, and Malaysia has 65 employees, including 40 official employees and 25 contracted employees, for the appraisal and approval department. In addition, Malaysia also hires a third-party (16 units) to support the appraisal of technical dossiers. These third parties are allowed to receive and charge for technical dossier appraisal, issue certificates for qualified dossiers and businesses will submit these certificates in the dossiers for circulation registration to MOH of Malaysia. Therefore, we hope the Government of Vietnam and MOH will consider supplementing skilled human resources, and investing in an upgrade of the current infrastructure of online circulation registration software to deal with the large volume of work to be implemented in 2019.
The second issue that is crucial, but not mentioned in Decree 169, includes the issues related to the registration of changes and supplements to medical devices having been licensed for circulation. Because medical devices are always innovated and developed in order to better upgrade the disease development models, as well as better improve the products, there is often a lot of information in need of adjustment compared to the original registration dossiers. Decree 169 specifies the cases of changes and supplements, but these are not comprehensive and do not cover all changes which are currently being implemented by businesses and have not been specifically regulated. Therefore, the promulgation of detailed management regulations on product changes in the circulation process is essential for both State management agencies and businesses.

The third issue relates to the temporary import for re-export of 'used' medical devices for display or training purposes as described in a previous edition of the Whitebook. The definition of 'used' means being exhibited in conferences, seminars or training sessions in other countries before being temporarily imported to Vietnam for non-clinical use. Currently, the temporary import for re-export of these goods is prohibited under the Commercial Law and Decree 69.

Medical devices are generally expensive, complicated, and constantly being improved and updated. Health officers need to be well-informed when purchasing medical equipment and users of these devices also require specialised training. In order to maximise economic efficiency and effectiveness in product introduction, medical equipment manufacturers in the world often provide activities such as: (i) Display to introduce and explain the benefits of a certain medical device (at conferences, seminars or sales presentations or internal conferences), (ii) Organisation of training courses for many people in association with ‘trial use’ of a certain medical device (at events such as ‘consumer conferences’, ‘classroom application training’, etc.)

These used devices must not be used for patient care but for the purpose of providing information and training to health officers. In Vietnam, these devices are essential in introducing medical advances that are beneficial to patients in Vietnam, ensuring health care providers make the right decisions when procuring medical devices, improving use efficiency and making best use of device functions through this form of professional training. With such medical benefits, devices serving this purpose are re-used at many events and in many countries. As Vietnam is not the first country to participate in the ‘series’ of display or training events, the equipment needs to be imported in ‘used’ condition and then re-exported immediately after the event ends. The ban on the import of used medical devices for display and training purposes has led to a number of barriers and limitations. This provision hinders the introduction of advanced medical devices and technologies to health professionals and thus reduces patient access in Vietnam.

Recommendations:

We respectfully recommend the Government and the Medical Device Management Agency to consider:

1. Supplementing human resources with professional qualifications and experience, improving the online circulation registration system to timely appraise and approve all circulation registration dossiers submitted before the 31st of December, 2019.

2. Promulgating regulations on registration of changes to products that have been and are in the circulation licensing process.

3. Implementing a special licensing mechanism, allowing ‘used’ medical devices to be temporarily imported into Vietnam for the above specific purposes. The Government can deploy control measures through tightening the monitoring of import and re-export of these devices along with severe sanctions.

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4 Law 36/2005/QH11 dated 14 June 2005 of the National Assembly on Commercial
II. MEDICAL DEVICE SOCIALISATION AND MACHINE INSTALLATION MODEL IN HOSPITALS

Relevant Ministries: Ministry of Health (MOH), Ministry of Finance (MOF), Vietnam Social Security (VSS)

Issue description

The socialisation of medical devices is a major national policy in Vietnam. It aims to create more resources to share with the State budget and help hospitals with modern machines to improve the examination and treatment that patients receive. According to Vietnam Social Security (VSS), more than 3,420 machines have been installed in 59 provinces and cities in the country in various forms of medical device socialisation. The introduction of machines in operations has helped hospitals to improve the efficiency of diagnosis, treatment. Meanwhile, some new medical techniques have helped Vietnam to reach the same level as other countries in the region.

We welcome the Vietnamese Government raising the issue of medical socialisation and machine installation model in hospitals in the meeting with representatives of the Ministries and agencies of Health, Finance, Planning and Investment, Government Office, Vietnam Social Security (VSS), Justice and Home Affairs on the 19th of April 2018 and proposing that policies should be developed to ensure medical socialisation has a legal basis for implementation. This will ensure transparency, publicity and harmony of interests between medical examination and treatment establishments, patients and health insurance funds.

Potential gains/concerns for Vietnam

However, EuroCham Medical and Diagnostic Device companies have received a lot of feedback from their domestic partners about the inconsistency of policies for the machine installation model in public hospitals among management agencies including the Ministry of Health (MOH), Ministry of Finance (MOF), and VSS.

Particularly, in March 2018, VSS sent Official Letter 701 on ‘Payment for technical services performed using borrowed or installed machines’. Accordingly, VSS does not have a basis to pay for services performed using borrowed or installed machines at public medical establishments. In April 2018, with Official Letter 2009, MOH proposed that VSS should continue to pay for medical examination and treatment costs, subject to health insurance, of technical services performed using the machine lent or installed by the units which have won the bid for supplies or chemicals, to ensure the benefits of people entitled to health insurance. However, in May 2018, MOF issued Official Letter 6009 requesting VSS to work with MOH on guiding health establishments not to borrow or allow installed equipment, and requesting MOH to guide on renting equipment via bidding. Later, in October 2018, MOH and VSS issued Notice 1039 to continue to pay for medical examination and treatment costs, subject to health insurance, of technical services performed on the machine lent or installed by the units which have won the bid for chemical supplies until contract termination. After the contract termination, if the services are continued, they should follow the guidance of Decree 151. But, according to our records, Decree 151 has not prescribed the forms of lending or installing machines and does not specifically guide the implementation for some forms of socialisation such as leasing.

Inconsistent documents issued from VSS, MOH, and MOF on the model of placing equipment in health establishments has caused challenges for companies and health establishments when choosing the appropriate model of placing equipment in line with the current demand. In addition, both companies and health

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7 Official letter 701/BHXH-CSYT dated 2 March 2018 of Vietnam Social Security regarding payment for technical services performed using borrowed or installed machines
8 Official letter 2009/BYT-KHTC dated 12 April 2018 of the Ministry of Health regarding the payment of technical services using lent machines and machines, the units which have won the bid for supplies, chemicals.
9 Official Letter 6009/BTC – QLTS dated May 2018 of the Ministry of Finance
10 Joint Notice 1039/TB-BYT-BHXH VN dated 2 October 2018 of Vietnam Social Security and the Ministry of Health on conclusion of the Vice Minister Pham Le Tuan and Deputy Director of VSS Pham Luong Son at the cross-sectorial briefing.
11 Decree 151/2017/ND-CP dated 26 December 2017 of the Government guiding a number of articles of Law on Management and use of public assets
establishments are facing difficulties in managing equipment and machines which are currently installed, putting continuity of care in these establishments at high risk.

We are very concerned by the potential risk of delayed diagnostic tests and treatment, especially those which are urgent and vital to patients, i.e. hemodialysis, sample collection, and surgery. Along with the risk, health establishments would lose the opportunities for technology transfer from developed countries. Moreover, both the Government and health establishments would face increased capital expenditure and financial burden when investing in and purchasing medical devices. From a business perspective, this issue causes difficulties in the management and maintenance of medical devices which have been and will be installed in health establishments.

Recommendations:

We respectfully suggest the Government and competent authorities:

- Examine the public-private model for the healthcare sector and provide diverse and feasible socialisation models;
- As soon as possible, issue official documents of consistent policy from relevant Ministries (MOH, MOF, and VSS) regarding the model of placing equipment in public health establishments, to create an open and transparent legal framework, and;
- Circulate the documents and provide training for relevant Ministries to allow better understanding of the policy as well as full compliance with the law.

### III. REGULATIONS ON VALUE-ADDED TAX FOR IMPORTED MEDICAL DEVICES

Relevant Ministries: Ministry of Health (MOH), Ministry of Finance (MOF), General Department of Vietnam Customs (GDC), General Department of Taxation (GDT)

**Issue description**

Imported medical devices play an important role in Vietnam’s health sector. In 2016, investments in medical devices in Vietnam totalled US$950 million. In 2017, this figure increased to US$1.1 billion. The growth of investment in medical devices has averaged 18 per cent a year for the last 5 years. In particular, 90 per cent of medical devices have been imported from foreign countries to meet medical examination and treatment needs of hospitals, of which public hospitals account for 70 per cent of the market share.

Therefore, it is possible to see the importance of imported medical devices to Vietnam’s health sector. However, recently, the import of medical devices has encountered a number of policy barriers, which has had a considerable impact on the operation of the sector, including the issue of applying Value Added Tax (VAT) to imported medical devices. According to Clause 8, Article 1 of Circular 26, medical devices are entitled to a VAT rate of 5 per cent. Accordingly, medical equipment and devices and specialised medical supplies under MOH’s certification are entitled to this tax rate.

Decree 36 provides that goods or products which meet the requirements as specified in Article 2 and are classified into one of the four types (A, B, C or D) by medical device classification organisations are considered medical equipment. After being granted circulation registration numbers, medical equipment traders have the right to import medical equipment without restriction on the number of times of import and quantity of imported products.

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14 Circular 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance providing guidance on value added tax
items and do not have to request MOH to grant import licenses or certify that such products or goods are medical equipment.

For medical devices of Type A, application standards shall be announced at Departments of Health and the number of the receipt of dossiers for application standard announcement is the circulation registration number of such medical equipment from the 1st of July, 2017.

For medical equipment of Types B, C and D manufactured in foreign countries, circulation registration numbers or import licenses granted by the Ministry of Health must be obtained before being imported into the Vietnamese market from the 1st of January, 2018. However, according to Clause 11 of Resolution 131\textsuperscript{16}, the Government allowed the issuance and effect of circulation registration numbers for medical equipment of Types B, C and D to be delayed to the 1st of January, 2019. Therefore, for medical equipment classified as Type B, C, or D and included on the list in Appendix 1 of Circular 30\textsuperscript{17}, an import license issued by the Ministry of Health is required. However, for medical equipment which is classified as Type B, C, or D but not included on the list in Appendix 1 of Circular 30, an import license and certification issued by the Ministry of Health are not required when importing this medical equipment.

However, at present, the Customs authorities take the basis of Circular 26 to require imported medical equipment to be certified by the Ministry of Health so that enterprises can enjoy the VAT rate of 5 per cent. This is because the Customs authorities have no basis for applying Decree 36 and guiding documents to apply VAT rate of 5 per cent to specialised medical devices and equipment.

**Potential gains/concerns for Vietnam**

As mentioned above, 90 per cent of medical equipment is imported from foreign countries to meet medical examination and treatment needs of hospitals, of which public hospitals account for 70 per cent of the market share. The inconsistency in the implementation of legal regulations related to the import of medical equipment, especially the issue of VAT rate for these items, has caused great difficulties for importers as well as public hospitals over the last few months. Currently, importers are paying a VAT rate of 10 per cent on imported items which, according to Decree 36, are defined as medical equipment and should therefore enjoy 5 per cent VAT rate.

**Recommendations:**

We respectfully recommend the Government:

1. Ensures consistency in the management of imported medical devices among related Ministries and sectors;
2. Ensures consistency in the application of the VAT rate of 5 per cent to imported medical equipment, and;
3. Promulgates documents guiding the application of VAT rates to imported medical equipment in the shortest time.

**ACKNOWLEDGEMENTS**

EuroCham Medical Devices and Diagnostics Sector Committee

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\textsuperscript{16} Resolution 131/ND-CP dated 6 December 2017 of the Government at Government annual session in November

\textsuperscript{17} Circular 30/2015/TT-BYT dated 12 October 2015 of the Ministry of Health on the import of medical equipment
OVERVIEW

Introductions

Pharma Group (PG) represents the voice of the innovative pharmaceutical industry in Vietnam. PG and our 25 members all share the same mission: To ensure Vietnamese patients have fast and sustainable access to safe, high-quality and innovative medicines.

PG strongly appreciates the ongoing dialogue with the Ministry of Health (MOH), in particular during the recent development of key legislation in the pharmaceutical sector. We applaud MOH’s efforts in drafting regulations that enhance patient access, and welcome the fact that key recommendations towards this objective raised by PG in previous editions of the Whitebook were taken into account during the legislative development process.

With the growing demand for high-quality healthcare products and services, the Government’s objectives to modernise the healthcare system, targeting Universal Healthcare Coverage and development of local capabilities, PG sees the role of the innovative pharmaceutical industry in not only providing inputs to the Government during the development of patient-centric legislation, but also supporting the development of a sustainable healthcare ecosystem. PG believes that the recommendations outlined in this chapter will assist the Government in enhancing the quality of care for patients, innovative industrial development and sustainable State financing that are in line with the 2030 healthcare objectives of Vietnam.

Summary of Pharma Group recommendations

1. Fast and sustainable patient access to innovative medicines through effective implementation of key legislations

An optimised drug registration process that harmonises regulatory requirements with international guidelines (ICH, WHO) and regional practices, and a frequent review mechanism of the reimbursement list, will accelerate access to new innovative medicines for Vietnamese patients. Given the sizable role that Government procurement plays in Vietnam, the price negotiation mechanism identified for off-patent brand name medicines with multiple generics from group 1 (or from ICH countries) will help to ensure their continued availability in the hospital channel, secure doctors’ choice and medicine availability for patients, and also help incentivise companies to come onshore and invest in localised manufacturing (whether through tech transfers, toll manufacturing, building local know-how and capabilities or through manufacturing essential drugs in Vietnam). PG commits to support the effective implementation of the new Registration, Reimbursement, Tender and Toll Manufacturing Circulars.

2. Role and contributions of the innovative pharmaceutical industry to the development of a vibrant and innovative healthcare sector

Further to the innovative pharmaceutical industry’s mission to bring high quality medicines to Vietnam, the industry has a role to play in the development of a modernised healthcare system and healthcare sector, which also includes realising the vision of Vietnam as a regional hub for innovative pharmaceutical manufacturing.

The support of the Government and relevant Ministries in facilitating a smooth transition, without disruption, from the current Representative Office operating model to the establishment of Foreign Invested Enterprises (FIEs), i.e. legal entities, will enable and – likely – be a condition for companies to extend and expand investments. Such investments include, but are not limited to, investments in patient assistance programs, medical education, clinical trials etc. Over and above a smooth transition, further incentives in legislation

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1 Some of the contents of this chapter are Pharma Group recommendations based on the draft legislations which are not yet issued at the time of writing, and are not considered Pharma Group’s legal analysis and interpretation.

2 The International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use
relating to market access and Government procurement will attract further investments, including the enhancement of Vietnamese manufacturing and export capabilities.

The study, “Social and Economic Impact Assessment of Innovative Pharmaceutical Industry in Vietnam”, which is being conducted by KPMG and which is expected to be completed in 2019 will support the Government in informed policy-making towards the above vision.

3. Working together for an inclusive, forward-looking and sustainable healthcare financing system for Vietnam

In the mid- to long-term, a sustainable environment that encourages investment and sector development while addressing short-term State budget concerns is needed and can be achieved through continuous Government-industry dialogue. PG looks forward to exploring policy solutions to balance the budget realities and long-term sector development objectives in the upcoming Health Insurance Law revision. PG also believes future discussions to enable a legal framework for innovative (Service-Based) Public-Private Partnership in healthcare can support such solutions and contribute to solving State budget concerns.

I. FAST AND SUSTAINABLE PATIENT ACCESS TO INNOVATIVE MEDICINES THROUGH EFFECTIVE IMPLEMENTATION OF KEY LEGISLATION

Relevant Government authorities: Ministry of Health (MOH), Ministry of Finance (MOF), Vietnam Social Security (VSS)

Description

Vietnam has managed to reach 87.2 per cent Universal Healthcare Coverage in 2018, with an ambitious target for 90 per cent coverage by 2020. In terms of pharmaceuticals, Government procurement has reached 96 per cent generic penetration (locally produced and imported medicines), while brand-name medicines represent the remaining 4 per cent of volume in public hospitals. Although Vietnam has a fast-growing middle class with increased income and a rising need for high-quality healthcare, Vietnam is also facing a challenge of a rapidly aging population.

In order to meet the demands of a modern universal healthcare system and achieve the Government’s objectives, ensuring a holistic approach across regulations for the registration, procurement and reimbursement of pharmaceutical products is key. The patient-centric Pharma Law provides a strong foundation and an opportunity to streamline these regulations. PG supports the issuance of guiding Circulars that ensure: (i) quality assurance for patient safety, (ii) harmonisation of regulatory requirements, (iii) reduction of unnecessary administrative burdens, and (iv) fair and equal access to the market.

PG appreciates the opportunity to provide inputs and work in tandem with MOH on the development of the Registration, Reimbursement and Tender Circulars. We have seen concrete and positive signals during the consultation process that would bring great benefits to patients, most notably:

Requirements for the registration of new drugs, vaccines and biologics are heading in the same direction as the EVFTA. In particular, the removal of previous requirements for local clinical trials or 5-year existing authorisation outside of Vietnam, coupled with a shorter timeline for Marketing Authorisation approval, would enable innovative medicines to become available for patients significantly faster, bringing

4 Law 105/2016/QH13 dated 6 April 2016 of the National Assembly on Pharmacy
5 Circular 30/2018/TT-BYT dated 30 October 2018 of the Ministry of Health promulgating the List of Drugs subject to reimbursement, ratios and conditions required for reimbursement for health insurance participants
6 The Circular guiding Drug Registration and Circular guiding Tender in public healthcare establishments (guiding the implementation of the Pharma Law and Decree 54) are not yet issued at the time of writing this chapter.
the country closer to parity with leading countries in the region;

- **A further optimised process for the brand-name list.** The draft Registration Circular enables the review of innovative medicines’ eligibility for inclusion in the brand-name list to be conducted in parallel with the registration process, as well as recognises the continued status of current products on the list;

- **The addition of new medicines in the recently updated National Reimbursement List (NRL) through Circular 30/2018/TT-BYT**, which represents significant progress in ensuring patients will have access to new medicines through the public hospital channel; and

- **The identification of a price negotiation mechanism for Government procurement of off-patent brand name medicines with multiple generics from group 1** is a ‘win-win-win’ policy for patient health outcomes, Government budget objectives and a sustainable investment environment for industry.

**Potential gains/concerns for Vietnam**

An optimised drug registration and reimbursement process will accelerate Vietnamese patient access to new molecules, bringing the country closer to parity with leading countries in the region, and reduce incidences of existing pharmaceuticals being out of stock. To effectively benefit from this, it is important to ensure the administrative process for dossier submission in the Registration Circular is harmonised with international guidelines (ICH, WHO) and improve capacity in dossier review and management.

In particular, for brand name drugs, with the already low volume in the public hospital channel, enabling price negotiation while keeping brand names in a separate Government procurement package will help to ensure continued availability of brand name medicines, preserving doctors’ choice for patient treatment. As a result, this will counteract the overcrowding in central hospitals, contribute to the overall effectiveness of treatment, and improve the efficiency of State budget and health insurance fund spending. When combined with upcoming regulations that enable faster patient access to new innovative medicines, it will create a sustainable and predictable business environment. It will also incentivise companies to continue investing in bringing new medicines to Vietnam and strengthen local capabilities through technology transfer and technical know-how.

Finally, the harmonisation of Vietnam’s regulations with international guidelines and practices in the region will reduce administrative burdens for MOH, companies and other health authorities (from specific and uncommon requests), in line with the Government’s objectives for administrative reform.

**Recommendations:**

1. **Registration:**
   - Ensure the harmonisation of administrative requirements in the Registration Circular with international guidelines (ICH, WHO) and regional practices to reduce unnecessary administrative burdens;
   - In terms of practical implementation, propose to improve capacity in dossier review and management, such as organising more frequent dossier review sessions and improving the e-submission system. PG is willing to support MOH and looks forward to discussions on initiatives to further optimise the registration process.

2. **Reimbursement and Health Technology Assessment:**
   - More frequent review of the National Reimbursement List (for example, every 12 months or on a rolling basis);
   - Introduce a clear, centralised, and seamless process based on Health Technology Assessment best practice to support the decision of new additions / withdrawals.

3. **Government Procurement:**
   - Ensure fair and transparent principles for effective implementation of price negotiations;
   - Build a predictable and favourable investment environment by ensuring sustainability and stability of the brand name bidding package, whilst incentivising locally-manufactured originator brands and tech transfers.

PG is committed to support MOH towards effective implementation of the above-mentioned Circulars.
II. ROLE AND CONTRIBUTION OF THE INNOVATIVE PHARMACEUTICAL INDUSTRY IN THE DEVELOPMENT OF A VIBRANT AND INNOVATIVE HEALTHCARE SECTOR

Description

Vietnam has experienced rapid economic progress and significant social transformation over the past few years, alongside integration into the global economy. As a rapidly developing and fast-growing ASEAN economy, the demand for quality health products and services, particularly innovative medicines, will see robust growth in the next few years. Furthermore, with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) taking effect from the 14th of January 2019, and the expected ratification of the EVFTA – which will send positive signals to attract further investment from foreign companies – there is an opportunity for Vietnam to develop a high-value, modern and self-sustaining pharmaceutical sector.

To make such vision a reality, a predictable and outward-looking legal framework that enables and encourages FDI and partnership between foreign industry and local actors is required. The innovative pharmaceutical industry sees its role in supporting the Government on this journey. We are encouraged by the recent progress to introduce policies that enables further contributions from the pharmaceutical sector, in particular:

- **Patient Assistance Programs:** the issuance of Circular 31/2018/TT-BYT dated 30 October 2018 now provides a legal framework for pharmaceutical companies to implement patient assistance programs which sponsor drugs to medical service establishments for the treatment of patients, which were only possible in the past via a foreign non-governmental aid scheme;

- **Incentives for local manufacturing and technology transfer drugs:** a number of incentives, such as fast-track registration, are seen in recent draft Circulars, providing foreign companies with a positive outlook for future investment. This, in turn, will help to develop local capabilities and export capacity for Vietnam’s pharmaceutical sector.

With these opportunities, the establishment of FIE legal entities will be a key enabler for foreign pharmaceutical companies to further invest and become long-term partners in Vietnam. There is strong interest from the industry, and in order to facilitate the smooth establishment of FIEs while ensuring continued safety and quality of medicines, the attention and support from Government, MOH and relevant Ministries is needed.

In addition to legal presence, effective IPR protection will give innovative pharmaceutical companies the confidence to bring new medicines to Vietnam, and encourage investment in local manufacturing and technology transfer. Furthermore, with the economy moving more toward research and innovation, IPR becomes more relevant and a strong enforcement framework will also benefit the emerging local industry, in the pharmaceutical sector as well as others.

Anticipating the rapid changes in the pharmaceutical sector in the coming years, and with the opportunities provided for foreign companies to come on-shore, further invest in technology transfer, value and local know-how, and produce essential drugs at the highest quality in Vietnam, PG is collaborating with KPMG to conduct an independent study on the “Social and Economic Impact Assessment of Innovative Pharmaceutical Industry in Vietnam” which is expected to be completed and presented to the Government in 2019. The study will measure and quantify the impact and value that the innovative sector can bring to healthcare in Vietnam in terms of health, economic and social outcomes, and aims to provide concrete data to support the Government in designing holistic policies benefiting patients, Government and industry development.

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7 Circular 31/2018/TT-BYT dated 30 October 2018 of the Ministry of Health regulating the implementation of patient assistant programs for drugs sponsored by pharmaceutical business establishments to medical service establishments for the treatment of patients
Potential gains/concerns for Vietnam

Taking a sectoral approach to pharmaceuticals with incentives for foreign pharmaceutical companies to further invest will stimulate the development of a healthcare eco-system in Vietnam consisting of not only manufacturing, but also of service providers, clinical research organisations, entrepreneurs in (digital) healthcare and others, thus creating a spill-over effect, beneficiing local companies and strengthening an entire sector. This will attract sustainable FDI and PPPs which, over time, will enable exports and create a self-sustainable healthcare sector.

Recommendations:

1. **Foreign Invested Enterprises, i.e the establishment of a pharmaceutical legal entity**: Support from the Government, MOH and relevant Ministries for pharmaceutical companies will help to ensure the smooth establishment of FIEs, while fulfilling obligations on safety, quality and pharmacovigilance.

2. **Enablers and incentives in legislation relating to market access, Government procurement and others**: Commitments should be provided on toll manufacturing, technology transfer, investments in facilities and capability development, in patient education etc. This would facilitate long-term commitments from MNCs, leading to an enhancement of Vietnamese manufacturing capabilities and eventually export.

3. **Effective implementation and enforcement mechanisms for Intellectual Property (IP) and data protection rights**: As Vietnam is revising legislation relating to IP, it would be important to ensure commitments in the EVFTA are honoured, including but not limited to the adoption of patent protection, a strong enforcement system, automatic Regulatory Data Protection (RDP), patent term adjustment for Marketing Approval delays, and other IP protections that conform to international standards, in order to create a more predictable environment for investment, promote innovation, and help address the critical health issue of counterfeit medicines.

4. **An inter-ministerial task-force to form and implement the sector development strategy**: This should include not only MOH but also other relevant Ministries such as Ministry of Planning and Investment (MPI), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST), Office of Government (OOG) and Ministry of Finance (MOF) as well representatives from industry stakeholders.

III. WORKING TOGETHER FOR AN INCLUSIVE, FORWARD-LOOKING AND SUSTAINABLE HEALTHCARE FINANCING SYSTEM FOR VIETNAM

Relevant Government authorities: Ministry of Health (MOH), Ministry of Planning and Investment (MPI), Vietnam Social Security (VSS), Ministry of Finance (MOF)

Description

The healthcare sector in Vietnam is at an inflection point: As incomes rise, access to Universal Healthcare Coverage (UHC) continues to expand, infrastructure investments by the Government increase, and demand for quality health products and services – particularly innovative medicines – will continue to grow. At the same time, debt load is high and the State budget is becoming more of a concern. This creates an increasing need for a more active private sector and for Public-Private Partnerships (PPPs) to develop the healthcare sector in general, and a sustainable healthcare financing model in particular, which is not an easy transition to make. Meanwhile, this provides the industry with an excellent opportunity to further strengthen partnership with the Government of Vietnam.

The dialogue between MOH and the industry at a workshop, “Public-Private Partnership for a Prosperous Vietnam” on 31 May 2018, followed by the drafting of a Circular guiding PPP in healthcare, present opportunities for all stakeholders from the public and private sector to work on a modern PPP framework for Vietnam, which includes service-based PPPs that focus on (i) capability building, (ii) capacity building and (iii) healthcare delivery.

A sustainable environment that encourages investment and sector development while addressing short-term...
State budget concerns can be achieved through continuous Government-industry dialogue. The upcoming revision of the Health Insurance Law represents an opportunity for Government-industry dialogue to identify practical policy solutions to balance the budget realities and long-term sector development objectives.

**Potential gains/concerns for Vietnam**

- Sustainable service-based PPPs can unlock the total value (social and economic) that the innovative pharmaceutical industry can further contribute to Vietnam's healthcare system.

- Identification of the role of Private Health Insurance (PHI) – in the form of providing Complementary (CompHI) and Supplementary Health Insurance (SuppHI) in addition to the public health insurance scheme – will support UHC implementation by improving financial protection, access to quality health services and satisfaction of key stakeholder groups.

**Recommendations:**

We recommend a continuous open dialogue and consultation to:

- Enable a legal framework (guiding Circular) for innovative (service-based) PPPs in healthcare and integration into the National Healthcare Financing Strategy;

- Integrate in the upcoming revision of the Health Insurance Law a framework to adjust and determine the role of private health insurance to UHC via political, direct and indirect financial objectives. Meanwhile, pilot disease and therapeutic areas providing CompHI and SuppHI should be selected to facilitate alignment in the short run.

PG looks forward to continuing the dialogue with the Government of Vietnam on the development and implementation of a patient-centric regulatory framework, taking the country's healthcare system to the next level of development.

**ACKNOWLEDGEMENTS**

EuroCham Pharma Group Sector Committee
CHAPTER 13 FOOD, AGRI AND AQUA BUSINESS SECTOR

OVERVIEW

The Food, Agri and Aqua Business sector experienced a slow recovery in 2018 after difficulties linked to the pork market and the global vitamin supply environment. Encouragingly, many agricultural products have seen an increase in exports even if tougher times may come. At the same time, increasing economic integration and the consequences of climate change have made this transforming sector even more vulnerable. We, therefore, noted that a new Law on Animal husbandry will be added to the legal existing framework on Cultivation, Fisheries and Forest. Vietnam now has four laws on its primary industries.

The path to a safe and sustainable food production and supply sector is challenging, as the recent pig crisis and exposure to imports on raw materials has shown. Therefore, we strongly believe restructuring is particularly important. Fluctuations increase the difficulty of restructuring the sector, as farmers and producers are not able to take any risks due to the lack of visibility and market regulation. Those elements may lead to shortages, if external events impact global production, as with the outbreak of African Swine Fever. In 2017, the industry responded to the Government’s appeal to save the swine sector, but this helped only in the short-term. A truly sustainable organisation of agricultural markets must be implemented - based on good practices - in order to limit the effects of market volatility and Vietnam’s huge exposure to global trade. This organisation should be global, as we have seen in the past that troubles and short-term measures in one particular sector have had huge consequences on substitution products.

Dependence on China for export - the growth rate of fruit and vegetable exports reached an average of over 70 per cent each year from 2014-2017 - is one of the main causes of problems in agricultural products, which seemed to slow down in 2018. Previously, Vietnamese enterprises encountered obstacles such as export/import tariffs and quarantine requirements when exporting to neighbouring countries. These obstacles, combined with a lack of information, resulted in the use of unofficial import and export channels, despite greater risks and huge consequences such as the swine-sector crisis. Integration with the global economy must be the channel to make exchanges official, traceable and controlled. The implementation of the upcoming EVFTA must be an example of quickly removing barriers between the two entities, enabling both parties to enjoy growth in exchanges.

The upcoming implementation of the EU-Vietnam Free Trade Agreement should facilitate trade between both parties while fostering sustainable growth and economic development. Below are the key matters that FAABS firmly believes can be improved with an efficient implementation of the EVFTA, especially in the field of Sanitary and Phytosanitary (SPS) measures.

The objective of Chapter 6 of the EVFTA on SPS measures is to protect human, animal or plant life or health while facilitating trade and to ensure that the implemented SPS measures are not unjustified obstacles to trade. In this context, the FTA Chapter aims to encourage the development and adoption of international standards, guidelines and recommendations, and to promote their implementation by the Parties. The chapter also refers to the SPS Agreement of the WTO. The key provisions developed under this Chapter for SPS purposes are: the EU as a single entity, regionalisation and pre-listing.

Vietnam needs to make the necessary internal adjustments to be ready for the effective implementation of the provisions included in the SPS chapter from day one of entry into force of the EVFTA. First of all, Vietnam should recognise the EU as a single entity through a single, predictable and transparent procedure for all imports coming from the EU, which clearly defines the import requirements common to all EU Member States and sets clear timeframes. This will ensure that the requests for approval stemming for the EU are approved swiftly and not confronted with long, burdensome procedures as is currently the case. Applications from EU Member States would be done through the EU, no longer bilaterally.

For this purpose, Vietnam should ensure full transparency on its import requirements and procedures and find solutions to the problem of work overloads and limited human resources capacities. In this context, it would be advisable that Vietnam simplifies its institutional set-up or its implementation procedures within the framework of its right to determine its appropriate level of protection.

Furthermore, Vietnam should develop a system for gaining confidence about the control system of the exporting Party (EU Member States) based on risks, either by conducting verification visits to the exporting Party auditing a representative number of establishments and/or by information requests to the exporting Party, and ensuring that the expenses of such verifications are borne by Vietnam.

Vietnam also has to introduce a procedure for the approval of EU establishments (pre-listing) submitted by the exporting Party within 45 working days (that can be extended up to 30 days) without prior inspection of individual establishments. Instances of rejection alongside its justification must be communicated promptly and without delay.

Finally, Vietnam has to accept the concept of regionalisation which means that, when an outbreak occurs in the territory of an EU Member State trade measures should only be applied to the affected area. The information from competent authorities in the EU Member States on the status of plant pests and animal diseases (including information on areas free or information on the area affected by an outbreak) should be accepted by Vietnam, so that following the notification of a pest or disease only the affected zone or region is subject to the relevant import restrictions and not the entire country or the EU. This approach shall be risk-based and risk-proportionate, allowing imports into Vietnam of animals, animal products, plants and plant products from the regions, areas or zones which have been recognised and accepted as disease-free or pest-free.

The rationale for such adjustments is as follows: animal and plant health requirements, feed and food safety requirements are defined at EU level. Member States produce and export on the basis of the same EU standards and controls (Art. 12 of Regulation 178/2002 Food law). Therefore, Vietnam should set import conditions common to all EU Member States and ensure that exports of products produced under similar or comparable conditions from the Member States are all treated equally. In a nutshell, Vietnam should apply the same procedure that the EU applies for Vietnamese exports. Indeed, when Vietnam exports to the EU, it has access to the single market and the same import requirements. Therefore, the same sanitary standards apply to all EU Member States and trade partners exporting to the EU in a non-discriminatory manner.

In our view, this should be an opportunity to increase the food safety levels of the country. These are increasing, albeit slowly.\(^{11}\) Indeed, we recognise many positive initiatives in the right direction, including those mentioned in the World Bank report.\(^{12}\) However, nationwide progress should be encouraged under a centralised body. We discussed this subject in past editions of the Whitebook, and we strongly believe that this “centralised food safety agency” can be the cornerstone of a safe and sustainable agribusiness sector in coordination with industry


initiatives through public-private schemes. Recently, it was stated that improving food safety standards can avoid huge productivity losses - estimated at US$700 million each year - due to contaminated food.\textsuperscript{13}

Under the Government’s strategic agenda to embrace Industry 4.0, accelerating the digital transformation of all industries including Agriculture, we would like to share some views about precision production systems. For years, global production was done using trial and error, receiving advice through wise observations and multiple studies, allowing the sector to make huge progress. Many revolutions took place, replacing human with animal labour and then, more recently, with machines. Those revolutions led, step-by-step, to an increase in the size of the production units. Nowadays, we are entering a new revolution of “Agriculture 4.0”, through the adoption of new technologies including positioning systems, smart sensors but also IT application, combined with high-tech machines. Agriculture 4.0 is a highly dynamic and rapidly evolving concept, and will offer great improvements in a short space of time. Agriculture 4.0 will be a success only for those who will understand its value, and it is, therefore, essential to consider information-sharing. The innovations that will remain over time and that will really impact this revolution are those that will not forget the human being and will promote the reconciliation between human work and the data it generates. So far, some weaknesses have been identified for Vietnam to overcome, in order to take full advantage of those dramatic changes.\textsuperscript{14} It also implies that farmers and producers have quick access to new and innovative products and knowledge. Those two matters will be addressed in sections I (traceability) and II (registration process) of this chapter.

The control of goods entering Vietnam is understood as all countries want to protect their population from unqualified and unknown products. The use of tariffs and quotas are usually used to organise this control, but as we shift towards a more open global economy, we are increasingly experiencing the use of non-explicit trade barriers. Whilst many requirements are legitimate, we are seeing how regulations and red-tape are being manipulated and used as a deliberate tool to distort trade flows and protect domestic industries. We would like to see the recognition of the customs code applied within the EU – following REGULATION (EC) No 1831/2003 – as an integral part of the implementation of the EVFTA. Many companies have experienced HS code requalification, sometimes even after more than 10 years of imports under a given HS code. A cooperation program between EU and Vietnamese customs could be implemented to share experiences in that matter.

The yellow card recently given to Vietnam by the EU in October 2017 for not having demonstrated sufficient progress in the fight against Illegal, Unreported and Unregulated (IUU) fishing worldwide will also likely have an impact on exports. This subject is still currently under scrutiny\textsuperscript{15} and the Vietnamese Government has taken measures to answer the EU warning and follow its recommendations.\textsuperscript{16} Another issue, already mentioned briefly in the 2017 edition of the Whitebook, is Antimicrobial Resistance (AMR), caused by irresponsible use of antibiotics, which in Vietnam is already one of the highest in the world.\textsuperscript{17}

The opening up of several ‘difficult’ markets, such as Japan and Australia, prove that it is possible for Vietnam to comply with high-level food safety requirements.\textsuperscript{18} In our view, the Government should use these successes to show farmers and producers the benefits of improving standards, as this will increase the competitiveness of Vietnamese products as well as open up more markets, especially the EU. We share the view of the Vietnam Association of Seafood Exporters and Producers that improving quality and ensuring food safety is the best method to increase exports.\textsuperscript{19} However, while the focus on increasing exports is important, we believe the long-term focus


\textsuperscript{17} "Viet Nam Takes Action to Remove EC Yellow Card on Fisheries", Vietnam News, 4 August 2018. Available at: <https://vietnamnews.vn/politics-laws/463178/viet-nam-takes-action-to-remove-ec-yellow-card-on-fisheries.html> last accessed on 8 December 2018.


should prioritise transforming the domestic agricultural sector to be stronger and more self-sufficient. This should include upgrading, diversification, developing high-end products, and improving food safety. Transforming the sector along these lines would help it to export more.

To further increase quality and address issues of food safety, traceability is a solution that should be further developed. We also believe that it is important that current regulations are reviewed and that a value agricultural and food production and supply chain is created. This includes developing new market opportunities, reducing AMR and the sector’s dependence on imported materials. In our view, cooperation and coordination of the various parts of the sector is key to its success in domestic and foreign markets, and that is what should be focused on.

We also wish to stress the importance of developing a sustainable sector that provides farmers with a stable income and reduces their carbon footprint while meeting consumer demands. For example, farmers need to become more business-minded. Today, farmers often react impulsively when choosing what to grow and do not look for buyers or gather market intelligence before deciding on products. Farmers also need to learn what products they should use to increase yields, but which use less water and other natural resources while keeping the soil fertile. This can be done by creating trust and developing agricultural extension groups and veterinary services. We share the view of the Prime Minister that the size of land plots needs to be increased and high-tech needs to be applied, alongside more investment and better policies.

Hereafter, we will address some of these issues more in detail.

I. LEGAL ENFORCEMENT: TRACEABILITY AND ACCOUNTABILITY THROUGH AN ANIMAL IDENTIFICATION AND RECORDING SYSTEM

Releva Relevant Ministries: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST)

Issue description

Currently, there is no mandatory traceability system, even though the Food Safety Law prescribes it. There have been some local ‘voluntary’ traceability systems for eggs and vegetables set up in recent times. This is a good first step, but in our view, the Government should start introducing mandatory systems. It could begin with the introduction of a mandatory animal registration system, as the lack of such a system causes a two-fold risk for food safety at the moment.

Firstly, when a serious disease breaks out – one which can be transmitted from animals to humans (zoonotic disease) – it is not possible to trace the disease back to its origin. Not being able to accurately identify the source of an infection makes effectively eradicating the disease incredibly difficult, if not impossible. This reduces confidence both in the sector and in Vietnam, causing a drop in prices and irrevocable reputational damage.

We also believe that it is important that current regulations are reviewed and that a value agricultural and food production and supply chain is created. This includes developing new market opportunities, reducing AMR and the sector’s dependence on imported materials. In our view, cooperation and coordination of the various parts of the sector is key to its success in domestic and foreign markets, and that is what should be focused on.

Hereafter, we will address some of these issues more in detail.

21 Whitebook 2016, Chapter 11 (I): “Food Safety – importance of traceability and legal enforcement” p. 80
Secondly, not having an identification system in place actually increases the likelihood of serious food safety issues occurring. For example, when a problem such as the illegal use of hormones or antibiotics is detected, it is often impossible to identify and punish the offender because the source of the product is unknown. This lack of accountability makes it more likely that offences will occur, since perpetrators know that the chances of being caught are very low. For instance, at a session of the National Assembly in June 2017, it was revealed that only 20 per cent of the detected 680,000 violations have been punished.26 However, we welcome the new Decree on fines for food safety violations which is being drafted.27 In our view, this will have a positive impact. The Government has also recognised that offenders should be punished more severely28 and we are pleased with the decision of the Ho Chi Minh City (HCMC) authorities to do this.29 In earlier editions of the Whitebook, we raised the issue of strict(er) enforcement of existing regulations.30 Of course, legislation could be improved, but we believe that more effectively enforcing the current regulations would be a good first step. This will increase food safety, competitiveness and export possibilities while lowering the negative economic impact significantly by reducing health costs and rejections of Vietnamese products by importing countries.

We also believe that an identification and recording system containing a traceability component would change this and be a useful tool to prosecute offenders. At the same time, it would improve the food safety reputation of Vietnam. This system would allow each animal product to be traced back to the farm where it was born, the places it stayed during its lifetime and after, as well as the companies responsible for its transport. Since the reputational damage of a serious disease outbreak is extremely high for the sector and the country, we believe that the costs of such a registration system should be borne jointly. The initial investment to design and set up the system should be borne by the Government. However, the operational costs of running the system should be paid for by fees levied on the sector. Each producer, transporter and handler should be required to pay a fixed annual fee to be registered. Then, an additional fee should be levied per animal, meaning larger businesses would pay extra. Below, we briefly describe a pilot currently running in HCMC. The pilot has shown that the costs of the scheme are relatively easy for the users to cover.

Monitoring animal movements will allow MARD, through the Department of Animal Health, to better protect against trade-limiting diseases such as Foot and Mouth Disease. These diseases currently restrict the ability to develop official health protocols with China and cost millions of dollars of losses to farmers every year. The Department of Livestock Production of MARD and MOIT require improved monitoring systems to better protect against and regulate the unofficial import of livestock and products from other countries and to improve market access and competitiveness in foreign markets. We are aware that the fresh food traceability system is now operating in HCMC with the support of the HCMC authorities.31 This system ensures the traceability and integrity of all pig and pork movements into HCMC from 22 surrounding provinces.32 It is now being extended to chicken and poultry33 and eggs34 with projects in beef, vegetables and fruits also in the pipeline. The decision of the HCMC authorities to only accept traceable pigs is a good step. However, it is important that this is strictly implemented, which we believe will be done soon.35

This program could effectively improve the Government’s ability to monitor the movement of animals and

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31 For more information, please refer to <https://te-food.com/use_case.html> last accessed on 22 November 2018.
32 Decision 6079/QD-UDBND dated 21 November 2016 of HCMC People’s Committee promulgating regulations on implementation of the plan on management, identification and traceability of pork under the pilot market of food safety in Ho Chi Minh City during the period of 2016 – 2020
33 Decision 3584/QD-UDBND dated 8 July 2017 of HCMC People’s Committee approving the plan on management, identification and traceability of poultry under the pilot market of food safety in Ho Chi Minh City
34 Decision 3583/QD-UDBND dated 8 July 2017 of HCMC People’s Committee approving the plan on management, identification and traceability of eggs under the pilot market of food safety in Ho Chi Minh City
products. It provides a reliable system that will allow stricter enforcement of regulations and decrease the impact of corruption. The minimal cost of the system is paid for by users rather than the authorities, or reliance on international support. For this program to be successful, the authorities should accept, support and implement it at all Government levels. It would also be helpful if an annual report could be published detailing how issues will be followed-up. In this light, it is also important that authorities prevent the sale of products that are suspected of being unsafe while waiting for test results. This is currently not possible and therefore we suggest drafting regulations to make it possible.36

In 2017, a problem was detected in Europe with the use of a pesticide which resulted in eggs becoming unsafe. This caused large financial losses for many companies. However, the fact that the tainted eggs were traceable prevented a negative impact on human life and resulted in the arrest of the persons responsible.37 This incident shows that it is sometimes not easy to control food safety. But, with the right tools in place, the issue can be addressed efficiently and quickly with the responsible persons held accountable. The Vietnamese Government could learn from this and other international best practices to avoid making the same mistakes, and introduce these in Vietnam where not applied yet.38 As we mentioned in the previous edition of the Whitebook,39 referring to the report of the World Bank Group40, food safety should be assessed in a risk-based manner. In our view, this can be best achieved through involving the producers and ensuring their commitment to supplying safe food products.

Potential gains/concerns for Vietnam

The introduction of an identification and recording system containing a traceability component would make it easier to find and punish offenders. This would ensure that fewer offences occur as there would now be a more effective system to identify the people responsible. At the same time, food safety standards would rise and the reputation of Vietnamese products would increase both nationally and internationally. Increased food safety would lead to more export opportunities for Vietnam to the EU and other markets.

Recommendations:

- Finance the setting up of an identification and recording system containing a traceability component;
- Start with a product, such as pig, in which Vietnam is competitive and has export potential;
- Roll-out the HCMC pilot nationally;
- Raise awareness of the importance of implementing the HCMC program to increase the reputation of Vietnamese products, food safety and exports;
- Encourage the Government at all levels to accept, support and implement this system;
- Introduce an annual registration fee for this system and a fee per animal, or follow the HCMC finance model;
- Draft regulations to prevent the sale of products that are being examined and tested;
- Look at international best practice for traceability and use this where necessary to improve the situation in Vietnam; and
- Improve food safety through involving the producers and committing them to supply safe food products.

Traceability solutions need to, start small but have global ambitions, and must also be designed to restore trust and facilitate the work of farmers, not as a constraint which is important for user adoption.

II. REGISTRATION PROCESS - INITIAL AND RENEWAL

Relevant Ministries: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST)

Issue description

Companies which want to sell products in Vietnam must register the products at MARD; the requisite processes are slightly different if companies are under the Livestock or Fisheries department. The processes prescribed by the law and circulars under MARD41 aim to maintain a high quality level within the animal feed sector in Vietnam. In addition to the length of the process, the complexity and uncertainty of the rules and registration procedures do not often allow for a clear application of the directives and respective follow-up. This leads to significant delays in the provision of innovative products in Vietnam. We would like to suggest that processes be simplified and transparent, especially for companies that have been operating in Vietnam for a long time. Products from countries recognised for their know-how and seriousness in terms of food safety should enjoy special treatment. We hope that this is realised under the EVFTA.

Decree 3942 has improved the legal framework on management of animal feed in Vietnam. However, we still see that the length of the registration is variable, but never lasts less than 6 months and may reach over one year if communication is not smooth between companies and MARD. Usually, a lot of exchanges happen in order to understand and respond properly to the requests. Once done, the process will allow an enterprise to import a product for 5 years, after which the certificate must be renewed in order to continue importing.43 The processes for initial and renewal registration are quite burdensome, and many companies are worried about the lack of transparency of the whole process, leading to delays in the availability of products to the Vietnamese market.

Potential gains/concerns for Vietnam

If this issue could be addressed, it would be a ‘win-win’ for both Vietnam and the companies. Vietnam and Vietnamese farmers and producers would have quicker access to new innovative products and solutions, while companies could sell their products faster in the market. As explained in the Guide to the EVFTA prepared by the EU Delegation about the single entity concept: “The purpose of this Chapter is to set up a single and transparent procedure for the approval of EU exports of food products into Vietnam.” We fully support this as it will accelerate the approval of EU export applications and avoid discriminatory treatment. Regionalisation is also important as it means that in case of diseases, trade restrictive measures shall only be applied to the affected area(s), while the rest of the country can continue to export. Finally, the principle of pre-listing is important to facilitate imports because prior individual inspections of exporting establishments are no longer required and will therefore speed up the process.

Pre-listing means that once Vietnam has approved a category of food product from the EU and is confident about the capacity of the competent authority of that particular EU Member State to control the compliance of EU food safety requirements, imports from all the other establishments submitted by that country will automatically be allowed. This does not mean that Vietnam gives up control of food safety checks, because if there are doubts about a specific establishment, Vietnam could still undertake an inspection visit but – as stated in the EVFTA – the costs of such an inspection should be borne by Vietnam. We also believe that the to-be-established SPS Committee will help to address some of the current issues caused by the existing division of responsibility under the three Ministries.

42 Decree 39/2017/ND-CP dated 4 April 2017 of the Government providing the regulatory framework for animal feeds and aqua feeds
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Recommendations:

› Create a one-stop shop for products dedicated to animal nutrition, regardless of species.

› Lighten the registration process – possibly using an online platform - especially when products are registered and freely sold in the country of origin.

› Effectively prepare for the implementation of the SPS commitments under the EVFTA upon day one of entry into force. Recognise the EU as a single entity and put in place a single and transparent procedure for all agro-food imports from the EU, irrespective of the EU Member State. This could be done through a specific circular or decision covering EU imports.

III. FERTILIZER LAW

Relevant Ministries: Ministry of Agriculture and Rural Development (MARD), Plant Protection Department (PPD).

Issue description

We believe some new requirements in Decree 108\(^44\), particularly in terms of nutrients analysis and product development, are not fully realistic and we would suggest that these are reviewed.

Potassium tolerance in NPK (compounds and blends)

While nitrogen and phosphorus local tolerance have remained at 90 per cent, the new Decree is now different for the potassium (K\(_2\)O) tolerance levels.

K\(_2\)O is now separated into two cases:

› If the content of K\(_2\)O in NPK fertilizer is $\geq 10\%$, the tolerance level is 97\% (-3\%)

› If the content of K\(_2\)O in NPK fertilizer is $\leq 10\%$, the tolerance level is 93\% (-7\%)

Technically, such levels of tolerance are extremely challenging to handle for compound NPKs as well as blended NPKs. To reach those levels, production may have to ‘overdose’ and this would have significant cost impacts.

New product development and trial requirement

Before launching a new product in the market, the new Decree now requires 1- to 2-year trials as part of the NPK blend product registration. In our view, fertilizers are made of nutrients of which the effects on the plants/crops are already well known from different scientific results. One product can be applied on many different crops, and the results will be different. Also, there is no ‘residue’ impact from fertilizer versus pesticides.

Potential gains/concerns for Vietnam

While we need to control the quality of the fertilizers used in Vietnam, those new requirements in particular strongly challenge the production in terms of cost, and this would impact Vietnamese farmers. Also, it can slow down the development and availability of new technologies and innovations in the market.

Recommendations:

Potassium tolerance in NPK

We suggest reviewing tolerance levels of K\(_2\)O and recommend not to differentiate between the K\(_2\)O levels in the products in order to harmonise K\(_2\)O tolerance to 90 per cent or 93 per cent at most for all NPKs.

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\(^{44}\) Decree 108/2017/ND-CP dated 20 September 2017 of the Government on fertilizer management
New product development and trial requirements

We propose not to do field trials, but rather focus on physical and chemical checks/analysis as part of the registration process.

Other recommendations

› Oxide form of secondary nutrients in NPKs: For NPKs, we propose to restore the declaration of Calcium and Magnesium values to oxide forms (CaO, MgO) as before. Farmers and dealers have been familiar with this oxide form for a long time, instead of elemental forms (Ca, Mg). This change is creating confusion at farmer and dealer levels. This will also harmonise secondary nutrients declaration with Calcium Nitrate products as this product uses oxide forms.

› Moisture analysis: We recommend moisture analysis methods should follow international standards like the International Fertilizer Association (IFA). The use of Vacuum Thermogravimetric (heating method, thermal method) to measure the moisture of fertilizers that contain thermally labile substances such as Magnesium Sulphate is not recommended by IFA. Results from this method will not match with international producers’ specifications. The suitable method, recommended by IFA in this case, is the chemical reaction method.

› Product sampling at market: The market surveillance units belong to MOIT and are organised from central to local levels. The analytical labs are accredited by MARD, usually at the national level, such as Quatest 3 and Vinacontrol. There are two inspection organisations/units allowed to do inspections in the market including the Department of Agricultural & Rural Development and Market Management Unit at provincial and district levels. However, there is almost no link between these two organizations.

When the market surveillance unit takes samples of fertilizer in the market, the relevant company is not informed, unless the analysis results are not in accordance with specifications. We would suggest a few adjustments in order to make the surveillance activity more transparent and accurate:

. The surveillance unit must inform the staff (sales or agronomists) of relevant fertilizer companies to be present at the time of sampling.

. The Government (with the support of fertilizer companies) should train the dealers and the surveillance staff about the sampling method so they can all monitor the sampling process.

. Re-tests should be allowed if requested by the companies.

ACKNOWLEDGEMENTS

Food, Agri and Aqua Business Sector Committee

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45 Ordinance 11/2016/UBTVQH13 dated 8 March 2016 of Standing Committee of National Assembly on market surveillance
OVERVIEW

Vietnam’s export turnover of agricultural products was projected to reach US$40-41 billion in 2018, according to the Ministry of Agriculture and Rural Development (MARD). Around half of this – over US$21 billion – was made up of the export turnover of crop products. In 2017, Vietnam’s agro-fishery-forestry exports reached over US$36 billion, up 13 per cent year-on-year.¹ According to the UN Food and Agriculture Organisation (FAO), global demand for rice, fruits, and fish products will continue to increase. This will be key for Vietnamese agricultural exports to maintain a high growth rate and reach the export turnover target set in 2018.² China, Japan, the U.S. and South Korea are the four leading markets to import Vietnamese fruits and vegetables. Meanwhile, the quality of Vietnamese fruits has gradually been confirmed, and the products have been able to enter hard markets such as the U.S., the EU, Japan, Canada, Australia, and New Zealand.³ Further, the growing application of technology, promotion and investment, and the impact of various free trade agreements, continues to play a key role in the increasing pace of Vietnamese agriculture.

Looking ahead, Vietnam needs to further diversify its production, move to high added-value products, build a brand strategy, create more Geographical Indications, introduce traceability, minimise material loss during harvesting and post-harvest production, increase quality, and open up new markets in neighbouring countries.⁴ Achieving this export goal also depends on mitigating national food safety-related issues, ensuring farmers are enabled through the responsible use of technology, and ensuring that importing countries strengthen technical barriers and apply stricter regulations on food safety, quality and origin.⁵

High-profile examples calling into question the essential safety of key crops, fish, meat, and other products across the food value chain in Vietnam have littered the media landscape in recent years. While this drumbeat coverage has led to the positive development of society taking a greater interest in how food is produced, in addition to its safety and sustainability, harmful fallout has been realised as well. Specifically, misinformation around what is and isn’t safe as it relates to human and environmental health has unfortunately led to an erosion of public trust in the food supply, spurred regulatory reaction, and hindered national trade.

Overuse or misuse of agricultural inputs, poorly regulated or illegal imports, substandard products, and a lack of traceability are important factors in assuring safe food along with ensuring national smallholder farmers engage in Good Agricultural Practices (GAP).⁶

With the global population projected to reach 9.8 billion in 2050⁷, Vietnam’s smallholder farmers are being increasingly looked to as part of the solution in producing more food for a growing population. With less access to arable land and water as well as more pests and disease to combat, this makes the job for our smallholder

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2 Ibid.
farmers that much more daunting. According to a December 2016 World Bank ‘Taking Stock’ report, Vietnamese agriculture is at a turning point – it’s agricultural sector needs to generate “more from less”; generating more economic value as well as farmer and consumer welfare, using less natural and human capital.\textsuperscript{8}

Vietnam’s smallholder farmers rely on crop protection products to prevent pests, disease and weed pressures from damaging their crops and limiting their harvests. Between 26 and 40 per cent of the world’s potential crop production is lost annually because of weeds, pests and diseases. Without crop protection, these losses could easily double. Specifically, crop protection products prevent nearly 40 per cent of global rice and maize harvests from being lost every year.\textsuperscript{9} And, as the impacts of climate change in Vietnam and across Asia grow, the various pressures will become more extreme – making effective use of crop protection products more important than ever.

Beyond the increased yields, crop protection products also play a key humanitarian role in aiding Vietnam’s smallholder farmers. In particular, the responsible and safe use of herbicides helps lift the burden of the traditional practice of hand weeding. In the absence of herbicides, hand weeding just one hectare takes roughly 140 hours\textsuperscript{10} and requires walking about 10 km in a stooped position. Eliminating the need for this back-breaking practice has been a giant leap forward, thus, has been greatly beneficial to the health of many of Vietnam’s 24.5 million smallholder farmers as well as their families. The protection that advanced crop protection products provide is not limited to the field. These products also help prolong the viable life and prevent post-harvest losses of crops while in storage.

Additionally, biotech crops increased the production of food, feed and fibre from 1996 to 2016 around the globe by 659 million tons and helped slow the advance of climate change by reducing carbon emissions. In 2016 alone, it’s estimated that biotech crop plantings lowered carbon dioxide emissions equivalent to removing 16.7 million cars from the road for an entire year. At the same time, 90 per cent of the roughly 18 million risk-averse farmers benefitting from biotech crops annually were small resource, poorer farmers.\textsuperscript{11}

The Central Highlands and the Mekong Delta are important for agricultural production in Vietnam. The droughts in the Central Highlands and salt intrusions and drought in the Mekong Delta have made it clear though that concrete actions to reverse the impact of climate change are needed. It is not possible for Vietnam to stop climate change on its own, but the country can support farmers to find out what seeds, traits, good farming practices, and agrochemicals are needed to deal with these changes.

Hereafter, we will discuss some of these topics in more detail as we believe these are paramount to the success of Vietnam as a global agricultural player.

The plant science industry, comprised of leading R&D companies and members of CropLife Vietnam – a EuroCham Sector Committee – has contributed to this chapter.\textsuperscript{12}

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\textsuperscript{12} CropLife Vietnam Sector Committee members: Arysta, BASF, Bayer, Cortiva, Isagro, FMC, Summit Agro, Sumitomo Chemical and Syngenta.
I. FOOD SAFETY: RESIDUE MANAGEMENT ON AGRI-PRODUCTS

Relevant Ministries: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT)

### Issue description

Food safety related to pesticide residues in agricultural products is a common topic of high public concern. The presence of pesticide residues in agricultural products has sometimes been exaggerated by the media. This has raised questions among consumers about the safety of the food supply chain, and about the Government’s rules on the use of pesticides to ensure food safety without sacrificing an essential farming tool. Crop protection products play an essential role in agricultural production to ensure productivity and food security. Therefore, the management method of the production, trade and use of crop protection products in order to avoid exceeding pesticide Maximum Residue Limit (MRL), and to ensure food safety to meet domestic consumption and grow export turnover, is important.

Managing the issue of pesticide residues in agricultural products requires a comprehensive solution with the participation of all stakeholders in the agricultural production chain, including relevant authorities, growers, and enterprises, though this issue cannot be solved in a short time. However, within this proposal, CropLife would like to outline three points that, if addressed, would greatly improve the problem of residues in agricultural products.

**Hazard Base Management vs. Risk Base Management**

Recent decisions to impose restrictions on certain crop protection products seem to have been based on the products’ perceived hazard.

Circular 21\(^\text{13}\), which came into effect on the 1\(^{st}\) August 2015, poses a potential threat to Vietnam’s farmers, economy, environment and consumers. Particularly, point (dd), clause 3 of Article 6 provides pesticide products banned for registration in Vietnam:

- Chemical pesticides having the acute toxicity of active ingredients or formulations classified into class III and IV in the GHS used for fruit trees, tea plants, vegetables; or
- Chemical pesticides subject to quarantine in more than 07 days used for fruit trees, tea plants, vegetables.

The Globally Harmonised System (GHS) was developed by the United Nations to ensure commonality around the world with respect to chemical classification and hazard communication, mainly via labelling and safety data sheets. Using the GHS classification to restrict the registration of vegetables, fruit trees, and tea plants is not in accordance with international standards that use risk-based assessment methodology. This regulation is not based on scientific grounds and Vietnam is the first nation in the world to adopt it. This regulation limits or bans the number of technologies available to Vietnam’s vegetables, fruit trees, and tea plant farmers. This also means restricting their access to the most technologically-advanced tools and safest options to combat pests and diseases and to overcome climate-related issues.

**Improving effective legal enforcement**

In our view, the importance of law enforcement in Vietnam is a critical concern. There are many reasons leading to exceedant MRL in agricultural products. It may be due to the irresponsible use of growers, sub-standard crop protection products, or counterfeit products. Currently, administrative penalties are set for these violations, but are usually mild and do not have a punitive effect. In addition, there is a need to strengthen the enforcement of the relevant authority at the market ground. One factor that we believe is still missing is a legal framework on growers using plant protection products. Currently, the grower’s responsibility to ensure food safety is unprecise.

**Enhance awareness and training on the responsible use of crop protection products among farmers**

The high use of agricultural inputs such as crop protection products and chemical fertilisers, poorly regulated...
or illegal imports, substandard products, and a lack of traceability are important factors in assuring safe food. However, the biggest challenge lies in changing the practices of vast numbers of small farmers. Small-scale agricultural production, and farmers with a lack of knowledge about the products and technologies in farming and agricultural production lead to irresponsible use, misuse and overuse of crop protection products. Therefore, the role of training farmers on the responsible use of these products should be further promoted. Although this activity has been jointly implemented by many partners, especially authorities and crop protection companies, the impact on user behaviour is still limited because it is not meeting farmers’ expectations as a suitable, normal practice.

**Potential gains/concerns for Vietnam**

Globally Harmonised System (GHS) and Preferred Internal Index (PHI) are not intended to be used as an alternative risk assessment methodology in determining the toxicity or safe consumer use of pesticides. If fully realised, these developments would put Vietnam’s farmers, consumers, environment, and national economy at greater risk. Moreover, it could ultimately bring about significant competitive disadvantages to the agriculture sector compared to its ASEAN neighbours and other economic partners, including the European Union. We believe that food safety is a major concern for the public, with high levels of anxiety each time there is a high-profile food safety incident. Vietnam’s reputation amongst its trading partners as a major exporter of food products is vulnerable to trade statistics showing levels of contamination. Without appropriate regulation and functional enforcement, food safety issues are likely to worsen. In particular, food safety concerns are highly topical and each case is likely to be exploited by the media, and international trade will become increasingly competitive with new Sanitary and Phytosanitary (SPS) technical trade barriers.

**Recommendations:**

- Develop a functioning legal framework based on scientific grounds and in harmonisation with international standards;
- Registrations of any pesticide product and their use should be allowed unless there are unacceptable risks to consumers, operators’ exposure, or environmental safety. Their use should not be restricted by unprecedented and unreasonable criteria such as use of GHS classification for cut-off and use of PHI for restrictions on specific crops;
- Vietnam is currently utilising CODEX and ASEAN EWG-MRLs for setting/establishing national MRLs (Circular 50). EuroCham and CropLife are willing to support Vietnamese authorities (Ministry of Agriculture and Rural Development and its Department of Plant Protection) to develop internationally-aligned regulation to manage residues not exceeding national MRLs;
- Develop an MRL database and requirements for agricultural commodities in importing countries to make it easy for growers/exporters to access;
- Partnership and collective efforts among the Government, national crop protection industry, and relevant stakeholders to promote correct and safe use of crop protection products and GAP should be sustained and strengthened, and;
- The Government should undertake a modern and comprehensive strategy to monitor domestic markets in terms of consumer safety, including residue-related issues among agricultural commodities, and to developing appropriate regulations for effective enforcement in line with international practices.

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14 Circular 50/2016/TT-BYT dated 30 December 2016 of the Ministry of Health regulating on maximum residue levels of pesticides in food.
II. A SUSTAINABLE AGRICULTURAL SECTOR

Relevant Ministries: Ministry of Agriculture and Rural Development (MARD), Ministry of Industry and Trade (MOIT), Ministry of Natural Resources and Environment (MONRE)

Issue description

In this section, we will raise some issues that need to be addressed to create a sustainable agricultural sector, including MARD’s processes on cutting off crop protection products, and approval of advanced technology.

1. Crop protection products

Crop protection products play a critical role in producing more safe, affordable and nutritious food using fewer resources. Without this tool, more than half of the world’s crops would be lost to insects, diseases and weeds, leading to enormous economic and environmental damage.15

Cutting off crop protection products

We are aware that MARD is currently reviewing crop protection products registered in Vietnam and is expected to make a recommendation towards the ban of these products. A non-science based decision to ban would remove safe, effective, and critically-important weed/insect/disease management tools from the toolbox of Vietnam’s 25 million farmers. This would have devastating impacts on the nation’s agricultural sector, consumers, and economy.

At the same time, we recognise the roster of crop protection products registered for use in Vietnam has simply grown too large, is littered with chemicals that are outdated and rarely used, and has become a worrisome management issue for MARD. We have scientific and international standards-based solutions towards achieving the Government’s objective of a 30 per cent reduction of product registrations by 202116 without sacrificing the sustainability and competitiveness of Vietnamese agriculture and looks forward to working further with Government to implement this objective.

The process of cutting off crop protection products should be consistent, scientifically rigorous, and in line with international standards

While we appreciate that MARD has expressed its commitment to a review process that includes consultation with industry, there are still some pending concerns. We hope the Government will ensure that cutting off crop protection products are properly assessed through a consistent, scientifically rigorous process in line with internationally accepted methods and standards. Such assessments need to be conducted by scientific experts and a suitable timeline should apply to allow for a thorough review. This is consistent with the direction recently set by the Prime Minister for the removal of unnecessary Government procedures that can stifle production and trade while reinforcing the need for transparency.

2. Genetically modified technology

Turning to delays in the reviewing-approval process for Genetically Modified (GM) hybrids and GM food feed: To date, a remarkable number of GM product submissions are still pending approval for food and feed use. Among those, some submissions have been unresolved for over 2 years. There are also some GM traits application dossiers waiting for MARD approval, in which the majority have successfully completed the technical review process and are now waiting for the final approval. A few dossiers have been submitted to MARD over the last 12 months, in compliance with the regulatory framework. The total time from submission to approval should only be about 45-60 working days.

Potential gains/concerns for Vietnam

Prime Minister Nguyen Xuan Phuc recently called for Vietnam’s agriculture sector to become one of the top 15 most developed in the world in just ten years and utilise scientific and technological advances. The Prime Minister further emphasised that more innovation is needed to generate new drivers for growth to ensure macroeconomic stability. Such an ambitious agenda can be achieved only if the Government embraces agricultural innovation.

To achieve the Government’s objective of a sustainable agricultural sector, it is important that farmers have access to high-quality agrochemicals with space to innovate during the process. If the issues mentioned above are addressed, it will result in a sufficient quantity of high-quality agrochemicals available for farmers to increase the quality and quantity of produce using fewer natural resources, less harm to the soil and a reduction in CO₂. Unleashing the possibilities of modern agriculture to support sustainable, inclusive development requires enormous investment, collaboration and a stable policy and regulatory environment. All three factors are critical when Vietnam harnesses cutting-edge technology to accelerate its development. To increase the competitiveness of Vietnamese farmers, as well as to ensure future investment in innovation, farmers should be encouraged to have access to safe crop protection products, and new, higher performing hybrids. This will ensure the Government can achieve its agriculture restructuring goals and support Vietnamese farmers continue producing safe, affordable and nutritious food for the community and export.

Recommendations:

A clear, science-based and predictable regulatory process is very important to attract much needed FDI to ‘import’ know how and innovation:

- The sector can support and discuss a regulatory roadmap towards the Government’s goal to achieve a 30 per cent reduction without sacrificing the sustainability and competitiveness of Vietnam agriculture;
- The sector requests a proper assessment of cutting off pesticide products. This needs to be conducted by scientific experts and a suitable timeline should apply in line with internationally-accepted methods and standards;
- Instead of banning farmers from using crop protection products, the Government should provide support so that farmers are steered towards safe and effective crop protection products and given appropriate training;
- The Government should accelerate the recognition approval process for 10 new GM hybrids as all regulatory requirements have been met and the legislative timeframe for approval ended;
- The Government should accelerate the approval process for the aforementioned GM products for food and feed use to ensure no restrictions on imports which lead to severe long-term economic consequences for traders and customers, including millions of Vietnamese farmers and producers of pork, poultry, and aquaculture, as well as food manufacturers, and;
- We recommend fostering opportunities for constructive dialogue to address any outstanding topics or concerns the Government may have about these issues.

III. COUNTERFEIT AND SUB-STANDARD PRODUCTS

Relevant Ministries: Ministry of Agriculture and Rural Development (MARD), Ministry of Industry and Trade (MOIT), Ministry of Finance – National 389 Committee (MOF)

Issue description

Illegal products, counterfeits, and low-quality products

The use of counterfeit crop protection products, crop protection products with lower percentages than indicated on the label, or crop protection products with hidden Active Ingredients (AI) is increasing. This causes loss to farmers, food safety issues, products being returned at importing destinations, and also limits the possibility to develop a sustainable agricultural sector. A severe shortage of funds and personnel has resulted in such loose management of crop protection products in the southern region that most of the market is out of control. In fact, crop protection products carrying fake labels of famous brands have been in the market for a long time. This problem is considerably worsened when the pesticide itself is of spurious, low quality and is sold cheaply. Some Cultivation and Plant Protection divisions in the Mekong Delta have recognised that there is a need for an increase in the detection of fake crop protection products of poor quality.

Besides, there is a need to improve the system of legal enforcement and mechanisms on the ground, as well as the knowledge of intellectual property law among enforcement authorities have also worsened the problem. Moreover, the increasingly common trick used by some companies of adding unregistered AIs into products without having declared it in the label (called hidden AIs) has caused a danger to food safety and unexpected crop protection products residue. The case has been alarming the Vietnam Tea Association due to export cargoes being returned by importing countries.

Potential gains/concerns for Vietnam

The counterfeit of pesticide products has created a problem for society. Not only does it have negative effects on crop yields and farmers’ lives, but it also damages enterprises’ reputation and intellectual property rights. Counterfeit activities have been increasing with more sophisticated tricks. This not only causes great damage to farmers’ health and well-being, to the market, and to Vietnam’s agricultural reputation in international trading, but also raises challenges for State management agencies and legitimate enterprises.

Combatting counterfeit, substandard crop protection products requires urgent action and needs to be enforced and enhanced by relevant authorities. Better enforcement, combined with increased awareness and training, will ensure that Vietnam becomes a global agricultural and food products producer and exporter. Meanwhile, illegal products adversely impact the economy and discourage innovation, while agricultural innovation plays a key role in driving agricultural productivity, rural development, as well as environmental sustainability.

Recommendations:

▶ Improve knowledge and responsibility of ground staff on the Law on Intellectual Property Rights and guiding regulations to support the identification and avoidance of IP violations at market;
▶ Introduce strong punishment to combat the criminal production and trade in counterfeit pesticides;
▶ Enhance the monitoring and supervision of crop protection materials;
▶ Implement stricter inspection, control and management of problematic cases;
▶ Increase enforcement of existing regulations on the use of counterfeit and illegal products;

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› Increase enforcement of existing regulations on the clear labelling and content of instructions for the correct and safe use of crop protection products;

› Increase the awareness of farmers, producers, and retailers about the irresponsible use of counterfeit and sub-standard products, and;

› Work with the private sector to organise training for farmers, producers, and retailers to reduce the use of counterfeit and sub-standard products.

ACKNOWLEDGEMENTS

EuroCham CropLife Vietnam Sector Committee

Kohei Sakata, Chairman
CHAPTER 15 INFORMATION & COMMUNICATION TECHNOLOGY

OVERVIEW

The Information & Communication Technology (ICT) Sector Committee provides a well-organised, robust and strong ICT community offering dedicated and quality support to Vietnam’s long-term ICT development by working on a common set of topics related to European ICT businesses operating in Vietnam. The ICT Sector Committee’s aims are:

› To contribute to the improvement of ICT education and training in order to improve the skills of Vietnamese employees and graduates.

› To create a knowledge-based community, which researches and shares its knowledge and experience together.

› To ensure a safe and secure Internet environment.

› To cooperate on Industry 4.0 and provide information to ICT-related companies.

I. EDUCATION AND TRAINING

Relevant Government authorities: Ministry of Information and Communication (MIC), Ministry of Education and Training (MOET), Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

Information Technology (IT) is a key growth industry in Vietnam. The Government recognises this, and has set a target to have 1 million employees meet international skills and education standards in the ICT sector by 2020, set out in Decision 1755.1 However, the availability of skilled and trained labour remains an immediate obstacle to the industry’s growth. There are 142 universities and 112 colleges with IT faculties in Vietnam, according to Ministry of Information and Communications (MIC) data. While there is a huge demand for IT workers, and while companies often offer high salaries for IT positions, many universities and colleges struggle to enroll enough students in their IT courses.2 On top of this, Vietnam does not have a standardised IT education skills set or curriculum, based on international criteria, which would meet the requirements of local and foreign technology companies in compliance with the objectives set out in Decision 1755 to develop the ICT industry. Therefore, IT companies in Vietnam have to make substantial investments in fresh graduates from universities and vocational training schools to develop their technical, soft and English language skills. On average, it can take a year to prepare the workforce for the professional requirements of their roles.

Potential gains/concerns for Vietnam

Developing a highly-skilled workforce will help support Vietnam’s objectives as set out in the plan on development of IT HR. This is a key requirement if Vietnam wants to continue the development and growth of its IT industry, as well as foster local innovation and entrepreneurship. A well-trained labour force would also help the country transition to an advanced, knowledge-based economy. There are around 250,000 people employed in the ICT

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1 Decision 1755/QĐ-TTg dated 22 September 2010 of the Prime Minister approving National Strategy on "Transforming Vietnam into an advanced ICT country.

industry in Vietnam, according to the Vietnam Software and IT Services Association. Around 50,000 of those work in the software and digital technology development industry. This large demand is difficult to fulfill and if supply growth remains low, Vietnam will face an annual shortage of 78,000 IT workers. To put that in perspective: Vietnam needs about 1.2 million people in the IT sector by 2020, according to a 2017 MIC report. If the current rate of growth is maintained, Vietnam will have a deficit of around 1 million IT workers in 2020. However, a recent survey by the National Institute of Information and Communications found that 70 per cent of IT graduates need to be retrained to meet firm requirements. It also uncovered that the majority of IT students were not even aware of their field of practice, 72 per cent lacked practical experience, while 42 per cent showed poor teamwork. Among fresh graduates, only 15 per cent met the requirements of businesses, while 80 per cent of graduate computer programmers needed re-training.

Recommendations:

In order to address the above mentioned issues, we would like to make the following specific recommendations:

- The Government should cooperate with high-performing foreign universities and learn from best practice to create an international, relevant curriculum. A national standard technical skills exam should be developed for the IT industry, in close cooperation with national and foreign industry associations, and a minimum qualification course should be designed to enhance soft skills and strengthen English communication;

- The Ministries of Information and Communication (MIC), Education and Training (MOET) and Labour, Invalids and Social Affairs (MOLISA), should require students from IT universities and specialised IT vocational training institutions to complete a practical internship. This should be carried out at any IT company of their choice for a period of between 6 and 12 months, as part of their curriculum;

- Universities should collaborate closely with the ICT sector to understand technological trends and the practical demands of jobs in the industry for students after graduation. For example, offering inter-disciplinary courses such as ‘Computer Engineering with Embedded Systems’, and adding engineering processes and methods like problem solving skills and failure mode analysis to engineering subjects would be a positive outcome for the ICT industry;

- A longer mandatory internship at IT companies would allow students to acquire sufficient first-hand, practical experience and apply their technical and soft skills in an international environment. Simultaneously, IT companies would have the chance to identify and recruit talent for future vacancies and therefore potentially reduce overhead costs that would stem from training new employees;

- IT training should reflect the reality of the industry. For example, instead of focusing on two main occupations (software engineers and IT helpdesk technicians), as many public universities currently do, their programs should reflect the fact that there are 23 specialised IT occupations in the sector. Moreover, students need to understand, choose and study one or more specialised IT occupation program from their 2nd year, which will develop their professional competence, and;

- Students should have better soft-skills training and a results-oriented mind-set in order to bring practical value and technical knowledge to enterprises. The Government should also facilitate support for organisations and companies specialising in postgraduate IT training, since at present most IT-intensive training centers are foreign, with high costs.

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II. INTERNET COST AND INTERNATIONAL INTERNET BANDWIDTH

Relevant Government authorities: Ministry of Information and Communications (MIC)

Issue description

Vietnam is one of the major emerging markets in the ASEAN region, with some of the fastest rates of growth in economic development and consumer demand. The number of Internet users in Vietnam has grown to over 50 million, bringing the number of Internet users per 100 people to 54.19. Meanwhile, the total International Internet connection bandwidth reached over 3,816,027 Mb/s, an increase of almost 128 per cent compared with 2015. One of the underpinnings of this growth has been the expansion of telecommunications networks. Vietnam is a relative newcomer to the Internet, obtaining its first permanent international connection in December 1997. This late start can be partly explained by the Government’s hesitation. The Internet is a powerful tool for research and economic development but it can also be perceived as a potential threat, since it can open up access to views and opinions that are not always consistent with those of the Government.

Regarding pricing, the re-balancing of prices towards regional norms is an urgent priority. Vietnam has some of the world’s highest prices for domestic and international leased lines. This is inevitably passed on in higher prices for local Internet Service Providers (ISPs) and therefore customers’ Internet access prices are also among the highest in the region. While clearly of great significance for Vietnamese society, the operation of a national firewall has the effect of slowing Internet communication and exacerbating problems of congestion. In any case, the perceived need for content control should be dealt with in a way that does not exclude ISPs from eventually having their own international gateways.

From an infrastructure point of view, we notice that the country’s Internet has repeatedly been affected by breaks in the submarine cables system that connects it with international systems, especially the Asia-America Gateway (AAG). The connection is one of only 5 pipes and is the network entry point for local providers.

Potential gains/concerns for Vietnam

The forces that are changing the global ICT (including International Internet Bandwidth) market context, and its openness, create visible opportunities for a potential competitor. Improving this International Internet Bandwidth, by decreasing the cost and improving the quality of services, provides opportunities for Vietnam to attract foreign companies as part of a sustainable and long term growth plan.

Recommendations:

We would like to make the following specific recommendations:

- ISPs and other operators should be allowed to set their own tariffs. In the short term, Directorate General of Posts and Telecommunications (DGPT) could set an upper limit on prices. It should not be necessary to set lower limits for prices;
- Some degree of competition should be introduced in services provision, for instance, by allowing foreign services providers to get their full service distribution rights in Vietnam;
- Telecommunications and Internet prices should be benchmarked against regional and national averages; and
- Efforts should be directed towards developing more local content, especially in the Vietnamese language.
- There should be a stricter policy for requiring ISPs to accept compensation for internet incidents that greatly affect Enterprise activities, in their Service Level Agreement (SLA).

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III. CYBER SECURITY


Issue description

EuroCham and its ICT Sector Committee take note of the Law on Cyber Security which was passed by the National Assembly on the 12th of April 2018 with an effective date of the 1st of January 2019. This legislation is an effort to ensure secure and reliable networks at a national level. As such, the industry is ardently advocating the need for the healthy implementation of the Cyber Security Law, since the Government is currently consulting on draft legislation to implement these regulations.

Potential gains/concerns for Vietnam

Cyberspace presents many opportunities, such as the sustained economic growth generated from the free use of the Internet, as well as challenges that relate to cyber-espionage. Cyber security requires a sensitive and pragmatic balance between people’s right to privacy and national security and public safety. Cyber security threats are relatively new to the world, and each country is trying to address this unprecedented challenge in a way that best strikes this balance, and Vietnam is no different.

The law will evolve over time, as most laws do – particularly when addressing new, unprecedented challenges. EuroCham hopes, therefore, to see Vietnam’s Cybersecurity Law increasingly aligned over time with international cyber security standards and norms developed by international organisations to which Vietnam is a party, such as the United Nations (and UN Office on Drugs and Crime), Interpol or ASEAN. EuroCham welcomes the opportunity to share European experience with the Vietnamese Government at any time, as a valued and trusted strategic partner.

Some notable provisions under the Cybersecurity Law that are continuing to raise concerns among EU-based companies doing business in Vietnam include: i) the data localisation and local office requirement; (ii) the broad power of Vietnamese authorities to conduct a cyber-security audit of information systems of enterprises, and; (ii) content restriction rules that are more detailed than that of existing laws.

We hope that with the Law, the implementation will reflect its purpose to give the ability to secure information, information systems and human activities on cyber space without harming national sovereignty, national interests and security, social order and safety, State secrets, and importantly: the legitimate rights and interests of organisations and individuals.

As EuroCham has been following the Law, we also have seen positive changes in the provisions since its initial draft, following comments by EuroCham and other stakeholders. In particular: Removing the requirement for businesses to be licensed for the provision of network security services. Instead, foreign and domestic Internet companies will have to have their head office or representative offices under Article 26. Accordingly, Foreign-Invested Enterprises will have to confirm the data of users, save a database of users in Vietnam, provide information to the Ministry of Defense when needed, remove or block the forbidden information following a request from the Ministry of Defense or Ministry of Information and Communication and act in accordance with Ministries’ requests in case of violations.

Recommendations:

- Many other provisions of the Cybersecurity Law and of the proposed implementing Decree are expressed in unprecise and unclear terms, and thus many key questions remain unanswered. For example, the scope of the data localisation and local office requirements remain unclear, and for the time being, is termed in such a way that it covers all offshore businesses having users in Vietnam. Mr. Hoang Phuoc Thuan, Director of the
Cybersecurity Department under the Ministry of Public Security (MPS), has declared that MPS will carefully limit the enterprises that would be subject to the data localisation and local office requirements and will issue very detailed guidance to bring full clarity. We look forward to having further guidance of the Government and MPS on this.

EuroCham and ICT SC would like to share the new General Data Protection Regulations (GDPR) of the European Union on the protection of privacy which came into effect on the 25th of May 2018. Article 8 establishes the Charter of Fundamental rights of the EU on the protection of personal data, under which everyone has the right to the protection of their personal data. This data must be processed fairly for specified purposes and subject to the consent of the person concerned or to other legitimate grounds regulated by law. Everyone has the right to access data which has been collected concerning them, and the right to have it rectified. The EU data protection regime shows that it is possible to foster an open regime that facilitates international transfers while ensuring a high level of protection.

It is important that Vietnam adopts and reflects such a spirit for its own application of GDPR, ensuring principles such as: “Lawfulness, fairness and transparency; Purpose limitation; Data minimisation; Accuracy; Storage limitation; Integrity and confidentiality or security as well as Accountability”. This will help Vietnam to take significant steps towards greater alignment with the EU’s new standards in the implementation of the upcoming EVFTA as well as in enhancing E-Commerce opportunities.

The Cybersecurity law provides an opportunity for public and private organisations to work together without losing the knowledge or freedom that the Internet has brought us. The legal implications should not lead to an undue increase in the cost of doing business or limit the easy use of the Internet. We recommend the Government works with innovators to provide standards-based cybersecurity capabilities which should balance both national security and business needs. This will accelerate the adoption of security technologies across industries; provide guidelines to establish hardware and software infrastructure with practical ways to implement cost-effective cybersecurity solutions. Moreover, a Single Data Privacy Law which protects end-consumers’ private information stored on their systems should also be developed.

As the EVFTA is positively progressing and is expected to be signed and implemented soon, we would like to see the implementation of the new Cybersecurity Law brought in line with the commitments and spirit of the EVFTA and commitments to ensure the stability of the national economy as well as bilateral trade. Regarding the transparency of the adoption process, it is important to enable a public and transparent re-transmission of authorities, especially on such important topic for the public and the privacy of citizens. EuroCham also looks forward to commenting and working on the further draft regulations guiding the implementation of the Cybersecurity Law to ensure its consistent implementation through the guiding Decrees and other upcoming regulations.

IV. DEVELOPMENT OF INDUSTRY 4.0

Issue description

Vietnam has embraced the Internet since it was first introduced around two decades ago. More than 50 million people now have access to the Internet (over half of the population) up from just 17 million in 2007. That’s above the global average of 46 per cent, putting Vietnam in the top 20 in the world. Meanwhile, 53 per cent of people in Vietnam now own a smartphone. That figure has more than doubled since 2014, putting Vietnam far ahead of
other countries in South East Asia like the Philippines (44 per cent) and Indonesia (27 per cent), according to the Pew Research Centre.10

This growth in communications and interconnectivity was the driving force behind Vietnam’s last phase of socio-economic development. Looking ahead, the development of the ICT sector and, in turn, the digitalisation of Vietnam’s economy, will be the driving force behind the next. Therefore, EuroCham welcomes the Government’s strong and positive focus on the Fourth Industrial Revolution – encompassing cloud computing and robotics, automation, Artificial Intelligence (AI), big data and super-fast 5G telecommunications.

The role of the ICT sector will be essential in this regard. The Fourth Industrial Revolution will have a deep and profound impact on all industries and sectors in Vietnam, from transport & logistics (driverless cars) to healthcare (remote surgical procedures). This will not only make the country more productive and competitive, but it will also help to attract new foreign investment from high-tech, world-leading European ICT enterprises.

**Potential gains/concerns for Vietnam**

The jobs and investment of the future will come not from labour-intensive, low-cost industries as in the past, but from the digitalisation of all sectors and industries driving future economic growth and creating new jobs. The Fourth Industrial Revolution should help to make Vietnam more competitive, productive and forward-thinking; better able to compete in the global marketplace; and improve the lives and living standards of its citizens.

The decision of the Government to embrace the Fourth Industrial Revolution is a true ‘win-win’ for both Vietnam and European enterprises. It will allow our members to grow their investment footprint in Vietnam, and ride the next wave of internet-enabled economic growth. Digital transformation either through technology adaptations or through advanced analytics will boost both assets / machines and labour productivity. This would accelerate time to market, sustaining and delivering with global standards of quality, and further unleashing huge additional business opportunities like services, altering business models, and creating new streams of revenues.

Industries are today able to see these benefits by observing the global players, through consulting / experts, and they are truly appreciating the enormous potential. Meanwhile, Vietnam’s ICT sector and economic infrastructure will benefit from Europe’s world-leading expertise, knowledge transfer and new technologies.

However, despite Vietnam’s clear and undoubted progress in developing its ICT sector, challenges still remain. For instance, the World Bank’s 2016 Development Report on Digital Dividends report scored Vietnam’s Digital Adoption Index at 0.46 on a scale of 0 to 1. To put this in perspective: While it is above the global average for lower-middle-income countries, it is below the average for the region.11 Furthermore, Vietnam’s strong track record of success could be at risk if measures are put in place that undermine the country’s competitiveness relative to its neighbours, conflict with enterprises’ international data-storage obligations, or increase the burden on business.

**Recommendations:**

EuroCham and ICT Sector Committee are dedicated to working with and supporting the Government to achieve its ambitious and progressive modernisation agenda. Our members remain committed to sharing their international expertise and best-practice insights from around the world, for the benefit of Vietnam and its future socio-economic development.

In order to become even more productive and competitive within the region, the Government should accelerate the digitalisation of Vietnam’s economy, and further adopt ICT applications in production as well as in other industries. Globally we observe, new production approaches like, advanced robotics and 3D printing.

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In particular, the Government and universities should work together to increase the digital skills of the workforce, with a particular focus on education and training to equip students for the high-tech jobs of the future. Indeed, a recent report from PricewaterhouseCoopers found that insufficient skills and talent in the labour market was the second-biggest challenge facing Vietnam. If the Government can address this challenge, it will further contribute to Vietnam’s economic development as it moves up the value chain.

To start with 4.0 adaptation, Government can work together with Industries to start implementation with Scalable solutions like, operations management, predictive maintenance, Inventory optimization, energy efficiency, traceability. These solutions can bring efficiencies, and productivity improvements, thereby enhancing competitiveness.

The Government should also continue to roll out positive initiatives such as E-Government, digital economy and digital society, streamlining and modernising administrative processes for businesses and citizens.

ACKNOWLEDGEMENTS

Information and Communication Technology Sector Committee
CHAPTER 16A  AUTOMOTIVE

OVERVIEW

Automobile companies in Vietnam can be divided into two groups. The first consists of manufacturers and Complete Knocked-Down (CKD) assemblers which includes 17 members of the Vietnam Automotive Manufacturers’ Association (VAMA).\(^1\) The second group consists of authorised Complete Built-Up (CBU) importers regrouped under the Vehicle Importers Vietnam Association (VIVA), which is in the process of being established. In 1958, the first made-in-Vietnam automobile, Chien Thang (Victory), rolled off the lines in the north. Down south, the first La Dalat-branded vehicles were launched in 1970. Between 1955 and 1975, Vietnam mainly manufactured auto parts for maintenance and repair. Thanks to the Law on Foreign Investment in 1987, two joint-venture companies, Mekong Auto Corporation and Vietnam Motors Corporation, were licensed.\(^2\) Vehicle assembly in Vietnam began in 1992, followed by traders importing new and used vehicles on a larger scale in 2003. For twenty years until 2018, the Vietnamese automotive industry has been protected by import taxes (15–70 per cent from WTO members on CBUs). To overcome tariff barriers, Original Equipment Manufacturers (OEMs) set up assembly factories there in the 1990s after Vietnam started in 1986 to liberalise its planned economy under Doi Moi. Official importers\(^3\) started operations after Vietnam joined the WTO in 2007. Many VAMA members are involved in both CKD manufacture/assembly and CBU importation. Unofficial importers were the major importers of new and used vehicles until the Ministry of Industry and Trade (MOIT) issued Circular 20.\(^4\)

At the end of 2016, the National Assembly classified the automotive industry as a conditional business. The resulting Decree 116\(^5\) defined the conditions for manufacturing, assembly and importation of motor vehicles and trade in motor vehicle, warranty and maintenance services. On the 25\(^{th}\) of January 2018, the Ministry of Transport (MOT) released Circular 03, effective from the 1\(^{st}\) of March 2018.\(^6\)

### Table 4: Import Tax deduction from 2016 to 2019

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATIGA</td>
<td>40%</td>
<td>30%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>MFN</td>
<td>70%</td>
<td>70%</td>
<td>70%</td>
<td>70%</td>
</tr>
<tr>
<td>EVFTA</td>
<td>78%</td>
<td></td>
<td></td>
<td>Reduced over 9-10 years in 11 equal steps - 10 for 4WD from entry into force(^7)(^8)</td>
</tr>
</tbody>
</table>

1. VAMA members represent the following brands: BMW, Chevrolet, Ford, Hino, Honda, Hyundai, Isuzu, Kia, Lexus, PMC, Mitsubishi, Mazda, Mercedes-Benz, Mini, Nissan Peugeot, Suzuki, Toyota, Samco, Thaco, Veam, MAZ, and SYM.
3. Brands represented by official importers in 2018 include: Audi, Bentley, Infiniti, Jaguar, Lamborghini, Land Rover, Maserati, Porsche, Renault, Rolls Royce, Subaru, Volkswagen and Volvo.
6. Circular 03/2018/TT-BGTVT dated 10 January 2018 of the Ministry of Transport regulating on quality inspection of technical safety and environmental protection for imported cars subject to Decree 116/2017/ND-CP.
Following the import tax elimination on CBU imported from ASEAN, Decree 116, introduced on the 1st of January 2018, brought in strict measures on quality, technical safety and emissions standards for vehicles entering Vietnam. Vehicle importers in Vietnam must have their service facilities audited to get the warranty and maintenance certificate to be awarded a Car Import Permit (CIP) by MOIT. Since CIP is mandatory to open the customs clearance declaration online, all incoming shipments and CBU imports were stuck for months until service facilities could be audited and CIP could be released. Decree 116 and Circular 03 require that each and every incoming vehicle must obtain Vehicle Type Approval (VTA) certification from authorities in the exporting countries, which detail the imported vehicles’ quality, safety, and environmental protection. Once the vehicles arrive in Vietnam, a sample is selected from each different model in every batch of imports to run tests for emissions, quality, and technical safety. The inspection is repeated shipment after shipment even if it is for the same car model. These stringent requirements have created additional costs for auto importers and delays at ports. This has resulted in automakers in neighbouring South-East Asian countries, notably Thailand and Indonesia, suspending their exports to Vietnam. As a result, importers in Vietnam have not had enough vehicles to meet domestic demand. This tough regulation led to a 56.1 per cent year-on-year fall in motor vehicle imports in the first eight months of 2018.9

Decree 116 and Circular 03, without notice for CBU implementation and without prior notification to trade partners through the WTO TBT Committee, resulted in all imported vehicles arriving at seaports from January 2018 onwards becoming stuck pending homologation. Consequently, Toyota stopped all production from Thailand, Indonesia and Japan for export to the Vietnamese market. Honda switched production of the CR-V, its mainstay SUV model, for the Vietnamese market to Thailand. Previously, parts shipped from Thailand were assembled and finished in Vietnam. Honda thought it would take advantage of the zero tariffs to consolidate all production of the SUV in Thailand to save costs. Production of the vehicles that it was supposed to release into the market from early January has been suspended. Mitsubishi suspended production in Thailand of its Pajero Sports SUV for the Vietnamese market.

Only in July 2018 could imported CBU vehicle homologation resume, after Vietnam’s Government Office instructed MOT to accept Vehicle Type Approvals available and manufacturers’ documents. Imports from ASEAN regained momentum after Thai and Indonesian authorities consented to issue Vietnam-specific Vehicle Type Approval documents. The CBU vehicle bottleneck at homologation benefited CKD vehicle sales, as assemblers were granted 18 months to comply with Decree 116. However, Decree 116’s stricter requirements will be felt on local CKD assemblers from April 2019 when it becomes effective, and VAMA is petitioning for amendments to the most drastic new requirements such as test drive tracks. On the 17th of December 2018, Ford Vietnam announced that, after seven years, they would stop Ford Fiesta local assembly in Vietnam and were considering importing from their plant in Thailand.10

Last year marked a turning point for the local assembly industry which had been struggling with its low localisation rate and growing competition in Vietnam from vehicles assembled in ASEAN exempted from import tax. By 2018, there were 173 manufacturing and assembling enterprises, mostly small and medium-sized, representing the domestic automobile industry. However, with over 20 companies and 40 vehicle brands, the development of the local automobile industry is still far below an installed capacity of 500,000 vehicles per annum, 47 per cent being foreign-invested.11 Despite Government policies to protect local automotive production since 1992, the production cost of a locally-manufactured car could still be 20 per cent higher than the cost of a similar vehicle made in Thailand or Indonesia. One CKD assembler producing a compact car with automatic transmission in the B segment both in Malaysia and Vietnam measured the higher cost as US$6,000 per car.12

Moreover, passenger cars made in Vietnam still do not reach the 40 per cent local content value threshold to benefit from zero per cent ASEAN Trade in Goods Agreement (ATIGA) import tax for export within the ASEAN region. According to MOIT, commercial vehicles achieved the highest localisation rates at 50 per cent. At present, the localisation ratios for Thaco-branded CVs are 40-45 per cent for trucks and up to 60 per cent for buses that meet regulations on made-in-Vietnam products by the Ministry of Science and Technology (MOST).13 However,
the localisation rate for passenger cars under 9 seats, which was initially set to reach 40 per cent in 2005 and 60 per cent in 2010, is only 10 per cent, except Thaco, which reached 15 to 20 per cent and Toyota Vietnam which reached 37 per cent, but only for the Innova model.13

Domestic automakers are disadvantaged due to small-scale production, according to a Vietnam Business Forum (VBF) report.14 Local supporting industry remains limited, with almost all components for assembly being imported. Localised automotive parts like tubes, tires, seats, mirrors, glasses, wires, batteries and plastic elements still have low technological content. Up to 80-90 per cent of the main raw materials for the production of such components, like aluminum and steel alloy, plastic resin, and high-tech rubber are imported as well as moulded materials. This is costly in transport, packaging and import taxes. The weak capacity of supporting industry enterprises is also a concern. The mould makers either do not have a large scale or lack coordination for development, while the casting industry precision is low with a high rate of defects not up to standard.15

The lack of coherent Government automotive policies over time, combined with Government incentives considered weak by CKD assemblers and poor supplier presence, has resulted in a local manufacturing environment in Vietnam less attractive for automakers than other ASEAN countries. Because multinationals invest in projects producing vehicles in large scale within ASEAN, MOIT estimates that Vietnam’s market size is equal to one-tenth of Thailand’s and one-fifth of Indonesia’s, therefore foreign-invested, large-scale investment projects are unlikely to take place in Vietnam. Thus, MOIT focuses on supporting domestic enterprise projects like Truong Hai Automobile (Thaco), Thanh Cong Group and VinFast to increase automobile production and assembly.16

Decree 12517 applies zero per cent import duty on CKD components that cannot be produced in Vietnam for manufacturers who can achieve a high-production volume within 5 years. The minimum volume to qualify in 2018 is 16,000 vehicles in general, including 6,000 of a specific type in Euro 4 emission level: For instance, Passenger Cars (PC) less than 2,500 cc with fuel consumption below 7.5 litres per 100km. This increases in 2019 to 17,000 vehicles, including 7,000 of a specific type, and reaches 27,000 vehicles, including 10,000 of a specific type in Euro 5 emission level. Amongst local assemblers and manufacturers, Truong Hai (THACO), Toyota Vietnam, Ford Vietnam and Hyundai Thanh Cong are the only four major automobile companies that may qualify.

Decree 116 and Decree 125 appear the most aggressive actions yet from the Government to boost an underdeveloped industry. The market is set to grow significantly due to Vietnam’s large population, and the application of new Decrees has pushed those manufacturers possibly qualifying to expand their local production capacity. Trung Hai recently launched two factories for Mazda and THACO buses with capacity respectively at 50,000 and 20,000 vehicles per year. Toyota Vietnam, initially expected to reduce production and switch to CBU import, is now upgrading its factory to 90,000 vehicles per year in 2023. Mitsubishi plans to open a second factory to produce up to 50,000 vehicles per year by 2020. The most striking recent factory is Vinfast – Vingroup’s new automotive subsidiary – opening with 250,000 vehicles per-year and with a capacity of up to 500,000 vehicles in its second phase. Hyundai Thanh Cong announced investment in a second factory, doubling their capacity to 120,000 initially, expandable to 240,000 vehicles per year.20

The increase in production capacity described above must be put in perspective. Vietnam’s automobile market peaked at over 300,000 vehicles in 2016, including used imports, as customers rushed to buy before SCT increases. New vehicles grew by 22 per cent to 293,500 units, split between 180,500 PCs and 113,000 Commercial Vehicles (CVs). Of these, 76 per cent were locally assembled CKD and 24 per cent imported CBU.21

14 "Ibid.
21 VAMA reports, excluding 51,930 Hyundai passenger cars sales.
In 2017, despite intensive discount and sales promotions, the market dropped 7 per cent to below 273,750 new vehicles as customers waited for the 1st of January 2018 when import tax would be 0 per cent for CBUs imported from ASEAN (with 40 per cent local content) and SCT cuts on passenger cars with engines below 2.0 litres. In 2018, new passenger cars - CKD and CBU - increased by 37 per cent to over 209,732 cars, representing a new record for Vietnam. 22

Some CKD assemblers switched to CBU imports from ASEAN – mostly Thailand and Indonesia – to exploit the full implementation of ATIGA from 2018. While imported CBU passenger cars increased by 69 per cent with imports from ASEAN representing the bulk, CBU imports from European brands decreased by 14 per cent over 2017. Due to the massive technical disruption in Vietnam, out of 17 CBU brands imported from Europe, one importer stopped operations, seven brands have changed already or are in the process of changing their official importers. The market share of European CBU dropped from 10 per cent down to only 5 per cent of new passenger cars in 2018 versus 2017. Total CBU imports from EU in 2018 could only reach 3,000 new passenger cars from 14 brands. However, the tax value contribution is sizable as for the same base value CBU cars imported from the EU generate 2.7 to 3 times more total tax value than the ASEAN equivalent model imported from ASEAN under ATIGA at no import tax. 23

The EVFTA contains an Annex which is devoted to facilitate trade in the car sector and avoid unnecessary trade barriers. Its entry into force of the EVFTA should supersede the application of the Decree and its implementing legislation. Under the EVFTA, Vietnam commits to accept UNECE regulations applicable to passenger cars and parts and equipment without further requirements in terms of testing and certification.

I. TAXATION ISSUES

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF).

1. Special Consumption Tax (SCT)

Issue description

Over the period 2016-2018, SCT rates have changed drastically and SCT calculations have also changed frequently, exposing importers to possible post-interpretations.

Table 5: SCT rates on passenger cars

<table>
<thead>
<tr>
<th>Engine capacity</th>
<th>01/01-30/06/2016</th>
<th>From 01/01/2017</th>
<th>From 01/01/2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 1.5 l</td>
<td>45%</td>
<td>40%</td>
<td>35%</td>
</tr>
<tr>
<td>1.5 l and below 2.0 l</td>
<td>45%</td>
<td>45%</td>
<td>40%</td>
</tr>
<tr>
<td>2.0 l and below 2.5 l</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>2.5 l and below 3.0 l</td>
<td>50%</td>
<td>55%</td>
<td>60%</td>
</tr>
<tr>
<td>3.0 l and below 4.0 l</td>
<td>60%</td>
<td>90%</td>
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</tr>
<tr>
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</tr>
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<td>6.0 l and over</td>
<td>60%</td>
<td>150%</td>
<td>150%</td>
</tr>
</tbody>
</table>

Source: Tax Law 106/2016/QH13


23 Import Tax + Special Consumption Tax + Value Added tax + Registration Tax calculations in 2018

24 Tax Law 106/2016/QH13 dated 6 April 2016 of National Assembly amending a number of articles of the Law on Value-Added Tax, the Law on Special Excise Duty and the Law on Tax Administration
To provide guidance on Law 106/2016/QH13, the Government issued Decree 100\textsuperscript{25} with immediate effect on 1 July 2016. Decree 100 specifies that where manufactured or imported goods are subsequently sold by a trading entity which has one of the following relationships with the manufacturer or importer: (i) parent–subsidiary; (ii) same parent; or (iii) related party, the Streamlined Sales Tax (SST) taxable price cannot be less than 7 per cent of the average selling price of trading entities purchasing goods directly from the manufacturer or importer. Related companies, where one directly or indirectly holds at least 20 per cent of the other, are also subject to the 7 per cent rule. The basis of this calculation is the price charged by the dependent or related trading entity selling to independent or non-related trading entities or customers. This is applicable to both single-level and multi-level, dependent or related trading entities. MOF issued Official Letter 10315/BTC-TCT dated 25 July 2016 to provincial tax authorities providing guidance on the implementation of Law 106/2016/QH13 which removed the 105 per cent rule from Circular 195\textsuperscript{26} and changed the selling price base for the SCT calculation. An Official Letter should not supersede the Law and Circular, however, conflicting internal guidance to tax authorities adds to the confusion resulting in unfair tax liabilities.

**Potential gains/concerns for Vietnam**

Official vehicle importers must ensure their dealers invest in world-class standards facilities. However, sales volume of imported CBU PC from Europe is limited. In the first eleven months of 2018, CBU PCs from Europe decreased by 8 per cent while new CKD and CBU increased by 33 per cent. Therefore, the 7 per cent margin level in the SCT calculation is too low in overall value, due to the small volume of cars sold – down to 3,000 CBU passengers cars from 14 European brands in 2018 - and high operation cost for dealers to comply with all standards and ensure profitable operations. Vietnamese authorities will gain from SCT calculations that ensure a growing market which generates dependable tax revenue and allows automotive dealers to develop and invest. However, unclear SCT guidelines generate confusion and possible non-compliance and misinterpretation of high-level tax regulations. Regardless of their lower volume, CBU PCs imported from Europe – unlike PCs imported at 0 per cent import tax under ATIGA, which represent 80 per cent of the volume – generate a sizable tax revenue – 2.7 to 3 times more in value than ASEAN CBU - for the Government due to the higher import tax. These, therefore, should be facilitated to support smaller-scale operations within the context of the upcoming EVFTA.

**Recommendations:**

- For imported passenger car brands, the SCT cap for the calculations should be raised from 7 to 15 per cent for dealers selling low-volume to generate the necessary profit to comply with brand standards and maintain operations;
- The definition of ‘related parties’ in the Customs regulations on SCT is still open to interpretation. It should follow the specific regulations on transfer pricing, under which SCT becomes a standard calculation regardless of the ownership of the distribution channel, and;
- Late penalty charges, which can be potentially costly from SCT liabilities, should be waived due to the unclear SCT guidelines over the period 2016-2018.

2. **Import Duty (ID) scheme for CKD components**

**Issue description**

Article 7.a. of Decree 125 provides a zero-duty incentive scheme for auto components yet to be produced domestically with knockdown-level satisfaction only for manufacturers who meet specific requirements (CVs and PCs, not including PCs with engines larger than 2,500cc). This incentive scheme is available for automakers over a 5-year period from 2018 to 2022.

\[25\] Decree 100/2016/ND-CP dated 1 July 2016 of Government providing guidelines on some articles of the Law on amendment of the Law on value added tax, the Law on special consumption tax and the Law on tax administration

Potential gains/concerns for Vietnam

To be eligible for the scheme, the total production volumes of the product group and the specific committed model must be at least as high as the regulated targets. Consider, for example, the PC group: The total production volume for each 6-month sub-period must reach 8,000 units of all PCs less than 2,500 cc, of which the volume of one committed model with fuel consumption of less than 7.5 litres/100km must be more than 3,000 units. These requirements mean that most automakers in Vietnam are not eligible for this scheme which could, in practice, be limited to just a few big companies. Moreover, this incentive scheme would allow a multiple-brand company – which qualifies for the volume of one brand or a combination – to have the benefits of even a low-volume brand. Meanwhile, other companies with remarkable volumes still do not reach the required figures, and would therefore not benefit from this scheme.

Recommendations:

In our view, the program should be designed in a fair and non-discriminatory way to all automakers who invest in Vietnam. ID for CKD components should be eliminated without condition regardless of their source. For the development of the industry in general, support to grow volume is essential in Vietnam. Diversification of suppliers in the market will facilitate sustainable development and meet increasing consumer demand.

II. HOMOLOGATION REQUIREMENTS FOR AUTOMOTIVE BUSINESS

Relevant Ministries: Office of Government (OOG), Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry Of Transport (MOT).

On the 17th of October 2017, Decree 116 was issued, regulating the requirements for manufacturing, assembly and import of motor vehicles and trade in motor vehicle warranty and maintenance services. The Ministry of Transport (MOT) released the final Circular 03 on the 10th of January 2018, coming into effect on the 1st of March 2018.1. CBU homologation lot by lot.

Issue description

While CKD assemblers had an 18-month implementation period, CBU importers had only two months to have their service facilities inspected and awarded a warranty/maintenance certificate to apply for a new import license from MOIT. Article 6.2.a of Decree 116 requests each imported CBU model to pass emissions and safety homologation tests not only once – as is customary for CKD models – but again and again for each shipment, even for an identical model.

Potential gains/concerns for Vietnam

CBU importers’ experience in 2018 confirmed that the new constant homologation increased homologation costs and generated longer delays for customers in Vietnam. The overall actual testing cost for CBU imported from the EU per model at least doubled per unit in 2018. The VBF Automotive Working Group reported in December 2018 that, while ASEAN CBU homologation takes two weeks, homologation lasts 42 days for CBU from Europe. While imported CBU PCs in 2018 increased by 69 per cent – imports from ASEAN represented the bulk of it – CBU imports from European brands decreased by 14 per cent over 2017. In terms of tax collection, such delays are counterproductive, as one CBU imported from Europe generates 2.7 to 3 times more tax value overall than an equivalent imported from ASEAN at 0 per cent.

There have been weeks when VR’s testing equipment is not in operation – including at the peak sales season – for maintenance, meaning homologation cannot proceed. Furthermore, MOT’s additional VR testing centre for 4WD vehicles, promised at a June 2018 meeting has not materialised. Meanwhile, the cost of financing and storing the stock on hold pending homologation of each shipment keeps rising.

Repetitive testing of identical models generates costs and unnecessary obstacles, contrary to Article III of the General Agreement on Tariffs and Trade (GATT) 1994 regarding national treatment. Furthermore, the Authorities’
request that imported CBU vehicles undergo emissions and safety tests for every shipment, while CKD vehicles produced in Vietnam only undertake tests every 36 months, is a discriminatory treatment between imported and domestically-produced vehicles according to Article III of the WTO Agreement.

**Recommendations:**

Both EuroCham and the VBF Automotive Working Group highly appreciate Decision 1254.\(^{27}\) We strongly recommend that MOT implements the assignment revising current homologation process for imported CBU. The homologation process for imported CBU should be allowed after customs clearance and with the possibility to test one model in different shipments instead of the lot-by-lot homologation currently required.

In order for Vietnam to maintain quality control on imported CBU vehicles, while also facilitating trade for the period 2018-2020, EuroCham’s Mobility Sector Committee recommends that MOT:

- Instructs VR that only vehicles typical for each model type in all shipments – instead of each one – must be inspected for the first homologation only until a change of model or model year occurs, making new homologation necessary;
- Requests that VR aligns the homologation time to two weeks for all CBU vehicles;
- Optimises VR’s human resources by issuing transparent risk-management tools. We acknowledge that the Vietnam Customs authority is working on a mechanism which could be adopted by VR classifying businesses into high-compliance, medium-compliance, and low-compliance businesses and non-compliant companies. Based on the level of legal compliance assessment of importers, Customs will apply preferential policies and management measures.\(^{28}\)
- Similarly, we propose that high-compliance importers should homologate new models only once for 36 months like CKD vehicles, medium-compliance importers should homologate once per year with additional random-sampling homologation. Meanwhile, low-compliance and non-compliant businesses should have to homologate each model in each shipment. This will help to reduce both processing time and costs for VR and enterprises.

2. Certification of automotive safety parts

**Issue description**

Circular 41\(^{29}\) stipulates that vehicles and safety parts (for production and service purposes) are to be certified and/or their technical regulation compatibility announced after customs clearance, but before being sold to the market. The procedure is applicable for both locally-produced and imported products. However, the practical implementation of the Circular has caused great concern for the industry:

- **Huge numbers of service part types required for testing:** Taking the front-vehicle light as an example, following Circular 41, up to 1,951 spare parts of a single front-vehicle light require certification. If all parts regulated under Circular 41\(^{30}\) are taken into account, along with other certification processes required by Decree 116 for lot-by-lot imported CBU and CKD vehicles, it may put both VR’s certification centres and businesses under considerable time pressure when testing and certifying.
- **Increasing homologation costs:** The requirement to certify service-purposed spare parts can mean many parts will have to go through duplicate certification. For example, a single front-vehicle light, when imported for production or when imported as part of a CBU, has been certified. However, when only one component (among 1,951 such parts) needs to be replaced, it must go through the certification process.

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\(^{27}\) Decision 1254/QD-TTg dated 26 September 2018 of the Prime Minister on approval for action plan to improve the national/ASEAN single window mechanism, the specific inspection for imported/exported goods, and trade facilitation from 2018-2020.


\(^{30}\) Including front-vehicle lights (Appendix II, Paragraph I, Section E/9), mirrors (E/10), automobile glass (E/11), tires (E/12), car interior parts (E/13), wheels (E/14), fuel tanks (E/15) etc.
again. Furthermore, for typical spare parts such as plastic fuel tanks, windshields or headlights, due to their durability, they are imported in limited numbers, even only one set, for accidental repair, technical recall or warranty. If such spare parts are all required to be certified, businesses have to import an excess number to have sufficient samples to apply for certification. Because of these additional imports, the price of the product must increase significantly.

- **Unclear procedures for certification process:** during the implementation of Circular 41, the business community has faced some unclear situations which need the guidance, specifically:
  - In Appendix II of Circular 41, there is a list of commodities subject to certification or declaration of conformity. However, in practice, businesses are confused because they do not know in which situations they should apply for certification or declaration of conformity. We understand that there are options for the commodities in the list of Appendix II, but we do not know who is authorised to decide which option should be taken in each specific situation.
  - Unclear scope of application of the Circular. Some listed QCVNs are for CKD kit, which could be applicable for production imports but not for its single parts, which are mostly used for service purpose (including technical recalls, customer warranty and repairs). Take an example, HS Code 7009.10.00 listed in Annex 2 of the Circular names mirror kit and separated mirror glass, while applicable QCVN 33:2011/BGTVT is for the kit only. Therefore, both the Customs authority and businesses are confused and need further guidance from MOT.

**Potential gains/concerns for Vietnam**

In practice, car manufacturers need 6 months to track with the manufacturer new documents and have them released systematically with the invoice when Circular 41-related parts are shipped to Vietnam. Since mid-September 2018 to date, the enforcement remains unclear and continues to delay the availability of certified spare parts and accessories relating to safety and prevention of technical recalls, customer warranty and repairs requested by Decree 116, Articles 4 and 5. Vietnamese customer dissatisfaction is at an all-time high, since no repair can be made until such parts become homologated.

CBU and CKD components are now to be tested in Vietnam according to Articles 6.1.b and 6.1.c. of Decree 116. These include safety parts, tires, lamps, mirrors, glass, wheels and fuel tanks. That means parts imported from the EU with UNECE/ECE certificates or test reports will no longer be accepted for test exemption unless the certificate or test report provided is from a country which has signed a Mutual Recognition Agreement (MRA) with Vietnam. This is despite the fact that Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles refer to UNECE/ECE standards and regulations. Furthermore, Decree 154 is to make testing compulsory by VR in Hanoi from April 2019 for safety parts relating to Circular 41. As the Circular guiding the implementation of Decree 154 is still not available, initial input from VR is pointing at a number of parts to be tested with each imported shipment for homologation. The same homologation and testing is to be repeated a few times with each new shipment until a two-years only homologation validity is granted for that part. This is clearly against the FTA commitments that provide for Vietnam’s acceptance on its market, without any further requirements of testing and certification, of EU parts and equipment complying with UNECE Regulations.

**Recommendations:**

We propose MOT revise Circular 41 in order to support enterprises as well as the Vietnam automobile industry and its customers by revising the scope of this Circular:

- Customs should be allowed to release partial shipment for all parts not related to Circular 41 instead of having the whole shipment blocked as is the case currently; this will shorten the clearance time for businesses, expedite tax collection for Vietnam and increase Vietnamese customers’ satisfaction of repairs;
- Because each new CBU is always homologated in each shipment, our position is that when a CBU car is homologated by VR, all its constituent spare parts are already de facto homologated, including safety-related

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31 Decree 154/2018/ND-CP dated November 09 2018 of the Government amending, supplementing and repealing certain regulations on investment and business conditions in sectors under the management of Ministry of Science and Technology and certain regulations on specialized inspections
parts affected by Circular 41. To re-certify such safety-related parts for CBU models again is unnecessary. We strongly recommend that all parts already homologated by VR for the corresponding imported CBU be exempted from additional certification;

- We recommend that homologation under Circular 41 and Decree 132 applies only to spare parts not mounted in the imported CBU models – or those which are different from the OEM description for those models. This will exempt spare parts with the purpose of repairing and replacing and allow importers to comply with their legal obligations to technical recall and warranty under Decree 116. We recommend that such certification should be done once only, the first time such commodities are imported.

- In case Circular 41 applies in practice to all components and spare parts, we would like to propose MOT issue a practical roadmap with a 6-month transition time and limit certification to new models of spare parts manufactured after the implementation time of this Circular. During this transition period, spare parts and accessories related to safety, which have already been imported since the 15th of September 2018, should continue to be sold to both dealers and customers without interrupting further the continuous provision of spare parts and accessories for vehicles repair, technical recall or warranty;

- To maintain dependable after-sales service by workshops in Vietnam, we recommend that VR commits to a concrete deadline from the receipt of an application at VR Hanoi to the issuing date of the certificates, and; accept the available sample format from manufacturers for the parts to be tested. To maintain an acceptable cost of repair safety related spare parts for Vietnamese customers, we request the Government to instruct MOT to limit homologation to one test once only, Customs to void all taxes on parts imported for such homologation tests and MOF to accept fiscal deduction of such costs without restriction.

- We strongly advise the Government to accept UNECE/ECE certificates for CBU as well as CKD parts that completely align with existing Vietnam National Technical Standards. For imported parts and equipment, a valid UNECE/ECE-type approval and/or test report attached to a product should be considered sufficient evidence of a valid certificate in line with the EVFTA commitments. This will help businesses to cut costs and administrative workload, align with the target of administrative reforms in Vietnam as well as the objectives and principles of the EVFTA, namely promoting mutual recognition and eliminating and preventing non-tariff barriers to bilateral trade. Once the EVFTA Annex on cars is in force, it will supersede the Decree and its implementing provisions.

- And for those parts used for vehicle models no longer in production, should the confirmation from vehicle OEMs about technical conformity be accepted.

### 3. Homologation for CKD components

**Issue description**

MOT is preparing a draft regulation on homologation for CKD products and CKD components, in which tests are to be done in Vietnam and ECE test reports/certificate will no longer be accepted for test exemption.

**Potential gains/concerns for Vietnam**

- Homologation cost and lead time for parts provided with ECE certificates, which is a mandatory process for the whole vehicle certification, may increase;

- The special testing samples required for glass (requiring a hole in the sample which part suppliers do not often provide) and high-technology headlamp (requiring a control module for switching on/off) are big challenges for part testing, and;

- Interruption of production is a potential risk if the published draft regulation is approved. It is a fact that the supply of parts can change during the production of a car model, and it takes around 6 months for part-certification from the point part samples are ordered for testing.
Recommendations:

› ECE certificates should be accepted for parts to avoid unnecessary cost due to double tests/audits.

› A proper implementation roadmap is necessary. The implementation of Decree 116 for CKD production will come into effect on the 17th of April 2019, however, the Circular providing implementation guidance has not yet been issued. We would propose a transition time of at least 1 year for parts certification requirement.

III. IMPORTATION OF RE-MANUFACTURED PARTS:

Relevant Ministries: Ministry of Industry and Trade (MOIT)

Issue description

Currently, there is no regulation providing a definition of so-called ‘re-manufactured’ parts. Vietnam Customs interprets any part which is not ‘brand new’ as a ‘used part’ and hence make importation of re-manufactured parts impossible.

Potential gains/concerns for Vietnam

Re-manufacturing parts saves energy, cut CO₂ emissions, conserves resources, and benefits customers and consumers in Vietnam.

Recommendations:

We recommend the Government allows the import of re-manufactured parts with the same treatment as that provided to new-like goods, with specific labelling of remanufactured goods in order to prevent deception of consumers.

IV. STANDARDS FOR ELECTRIC VEHICLES

Relevant Ministries: Ministry of Transport (MOT), Ministry Of Finance (MOF), Ministry of Science and Technology (MOST).

Issue description

Vietnam’s middle-class is rising, urbanisation is increasing and people are switching from motorbikes to cars. With over 50 million motorbikes in the country already, electric vehicles have become a strategic solution to develop mobility in environmentally-friendly cities. Electric vehicles involve a complete chain of suppliers and associated services from power supply and distribution; charging stations and interfaces; and batteries including charging, recycling and disposal. While the Ministry of Science and Technology (MOST) is drafting standards for electric vehicles, various initiatives from different companies have been initiated without coordination.

Four years ago, Renault Vietnam imported electric vehicles for a project with a taxi company in Ho Chi Minh City. However, due to an unclear fiscal definition of electric vehicles, this project stopped when Vietnam Customs rejected its fiscal classification as an Electric Vehicle and the resulting high import tax meant that the electric vehicle was not financially viable in Vietnam. By nature, electric vehicles are much more expensive to produce than petrol or diesel-powered vehicles. Thus, tax incentives determine the viability and development of such businesses. In 2017, Mitsubishi initiated in Da Nang a small fleet of i-MiEV and electric-charging stations, in partnership with Electricity of Vietnam (EVN) using Japanese standards. Towards the end of 2018, Vinfast announced that they had signed two MOUs, one with PetroVietnam Oil Corporation and another with Petrolimex, to jointly develop a network of electric charging stations in the country; the objective is sizable at up to 50,000 service stations nationwide.
Potential gains/concerns for Vietnam

Electric Vehicles will contribute positively to the development of car parks in the country and preserve the environment, especially in large cities. However, a clearer understanding by motorists of the different eco-friendlier propulsion methods is necessary to allow the authorities to create a more level playing field for Propellant Types that emit low emissions.

1. The future in Vietnam is becoming electric and the investment cost in infrastructure will be sizable but visibility on upcoming electric standards and tax incentives, including the definition and the import tax rates for electric vehicles, are still unclear. Defining processes and standards for Electric Vehicles (EV) and Plug-in Hybrid Electric Vehicles (PHEV) will pave the way for future electric mobility in full confidence for Vietnamese customers and create a level playing field to ensure fair treatment of all technologies within the automotive market.

2. On a global level, the world is now currently split between a few competing charging plug standards differentiated by region. It is essential to align the charging plug standard with Singapore, Malaysia and even ASEAN wide to avoid different standards in different countries. In addition, an alignment of standards could increase export business from VN to other ASEAN countries (Intra-ASEAN FTA) and would additionally might have a positive impact on FDI as well as employment. Charging plug standards harmonised within a geographical region bring multiple economic benefits as they will:
   a. Encourage investment in and maximise the utility of charging infrastructure;
   b. Reduce business uncertainty and accelerate market entry of new EV models;
   c. Enable economies of scale and reduce cost barriers of potential EV purchasers; and
   d. Improve consumer confidence in Evs.

Recommendations:

First of all, the definition and corresponding import tax rate of Electric Vehicles following HS code remains vague in the Vietnam Tax book 2018 edition. Both need to be clarified for importers to get the most suitable electric solutions to benefit Vietnamese customers. We recommend reclassifying the Propellant Types to suit the various powertrain configurations that automobile manufacturers will be introducing, such as Battery Electric Vehicles (BEV), Plug-in-Hybrid Electric Vehicle (PHEV), Extended-Range Electric Vehicle (EREV) and Fuel Cell Vehicle (FCV). The definitions of each type can be specified using existing terminology as understood in the European Commission, and in line with the various types recognised by the global automobile industry and governments. MOF needs to clarify the fiscal definition and HS Codes for each car definition which applies precisely to which import tax rate and update the SCT rates accordingly.

Secondly, as a consistent national charging plug standard will benefit standardisation and improve EV acceptance, we recommend that MOT designates one of the two major IEC implementations as the mandatory standard for Vietnam:

- IEC type 1 implementation comprising single-phase AC charging (SAE J1772) and its variant Combined Charging System 1 (CCS1) which supports both type 1 AC charging (SAE J1772) and DC fast charging, or;
- IEC type 2 implementation comprising single-phase or three-phase AC charging and its variant Combined Charging System 2 (CCS2) which supports both type 2 AC charging and DC fast charging.

Moreover, the homologation process must align with international practice and reduce time to market. We recommend avoiding additional power testing and CO2. As the maximum power output results have already been reported by independent third-party test laboratories according to UNECE Reg. 85, subjecting these models to additional testing locally will generate additional costs to consumers, and difficulties for the industry to

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32 The International Electrotechnical Commission maintains the IEC 62196 which is the international standard for the electrical connectors and charging modes for electric vehicles
plan ahead. The same applies for the CO2 emission measurements as reported by an independent test laboratory following Regulation (EC) No. 715/2007 which should be accepted without additional testing. Furthermore, such extraneous power testing will be perceived as a Technical barrier to Trade (TBT) in light of the upcoming EVFTA.

Advance preparation and planning are crucial in building an effective public charging infrastructure in Vietnam to bring access to mobility on a par with that enjoyed by conventional technologies. It is recommended that car parks install appropriate power infrastructure suitable for subsequent flexible deployment of charging stations when needed. Standard designs and guidelines for EV charging signs and parking lots are necessary to create an effective environment for EV adoption. EV-charging-ready, eco-friendly buildings should be identified and incentivised. Future car parks must be equipped with the appropriate power infrastructure to handle future demand and with enough power supply (min. 63 A) to cater for future generations of EVs and PHEVs. Ideally, 10 electrified car lots for every 100 parking lots are recommended, expandable according to the EV growth rate. Finally, promotion of EVs/PHEVs in Vietnam for a greener transport system should be supported. We propose that MOT involves all manufacturers interested in contributing to further open and fair discussions regarding this strategic topic.

V. IMPORTATION-EXPORTATION

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry Of Finance (MOF), Ministry of Science and Technology (MOST).

Issue description

Vietnamese authorities have signed a record number of free trade agreements, welcomed foreign direct investment and are willing to develop the automotive industry in Vietnam. However recent decisions prevent foreign-owned automotive companies to proceed to import for export or transshipment, specifically Decree 69. Decree 74 complicates trade further by requesting vehicles imported for export to proceed in Vietnam to basic homologation without local test even though those vehicles are not intended for use in Vietnam. Vehicle importers with a valid business license already including transshipment can only proceed until the expiration of their business license as per Article 72 of Decree 69, Point 2. However, transshipment of their vehicles must now take place within thirty days and Circular 38 restricts them to proceed to transshipment from the same customs checkpoint.

Potential gains/concerns for Vietnam

Vietnamese authorities want to develop the automotive industry and become a regional hub. To the contrary, recent decisions restrict the trade rights of foreign-invested automotive companies registered in Vietnam jeopardising such regional development from Vietnam. Foreign-invested companies in the automotive sector should be allowed to undertake transshipment without restrictions. Transshipment should continue to be allowed from the Customs entry point so that vehicles arriving to Vietnam by boat should be allowed to transship by truck or boat to their final destination. Multimodal transport to transship or export to landlocked Laos or Cambodia by truck or boat should also be allowed with no restriction.

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37 “2. Licenses issued by Ministries and ministerial-level agencies to traders as prescribed in the Government’s Decree No. 187/2013/ND-CP dated November 20, 2013 on guidelines for the Law on Commerce in respect of international trade of goods and activities of agency for sale and purchase, processing and transit of goods involving foreign parties and guiding documents before effective date of this Decree shall keep valid until their expiration date,” point 2, Article 72 of Decree 69/2018/ND-CP dated 15 May 2018 of Government providing guidelines of Law on Foreign Trade Management
38 Circular 38/2015/TT-BTC, Article 89
Recommendations:

In line with FTA commitments, to handle automotive as an open international trade for foreign invested companies in Vietnam, we recommend that the Vietnam authorities:

- Allow transshipment as well temporary import for export for foreign invested automotive companies;
- Remove the new restrictions to trade on transshipment limitation for vehicles such as basic homologation for transshipped vehicles as their final destination is not Vietnam, and;
- Instructs Customs that multimodal transportation for transshipment is allowed.

ACKNOWLEDGEMENTS

EuroCham Mobility Sector Committee.
Motorcycles continue to be the most popular means of transport in Vietnam. There were nearly 56 million motorcycles in the country in 2017, with average ownership of 2.4 motorcycles per household. Motorcycles serve over 70 per cent of travel needs, and will continue to be the main means of transportation in Vietnam in the coming years. Between 1995 and 2016, total motorcycle sales increased 13 times, from 4 million to 52 million units. Vietnam is also the 4th largest market for motorbikes in the world (after China, India and Indonesia) and the market continues to see strong and steady growth both in quantity and quality. Whilst other countries’ markets are saturated, demand is expected to remain high in Vietnam. Nearly 3.4 million motorcycles were sold in 2018 – a 3.5 per cent increase compared to 2017, according to data from the Vietnam Association of Motorcycle Manufacturers (VAMM).

This strong market demand means that many investors are still largely committed to the motorcycle industry. More than 60 enterprises are engaged in this sector, according to the Ministry of Planning and Investment (MPI). This includes 50 companies directly involved in production, with the rest involved in assembly. However, only around 10 are strong enough to compete in the market, including giant manufacturers from Japan (Honda, Yamaha and Suzuki), Italy (Piaggio) and Taiwan (SYM). Rising income levels are also stoking demand, and current consumer preferences tend to favour more modern, fashionable bikes. For instance, the market share of scooters rose from 18 per cent in 2012 to 33 per cent in 2017. In fact, scooter sales overtook motorbikes as long ago as 2015. New models with additional functions and modern designs are now launched in a much shorter time, and investment in Research and Development (R&D) is also on the rise.

Motorcycle manufacturers have made significant investments in Vietnam in recent years. This has contributed to economic growth, created jobs and transferred technology and knowledge to the local population. For example, in 2012, Piaggio Vietnam announced investment in an engine-manufacturing plant with an annual capacity of 300,000 units, which has been in operation since early 2013. Furthermore, with US$120 million, Honda Vietnam opened its third manufacturing plant in November 2014, with an annual production capacity of 500,000 units. Since September 2017, Vinfast – a newly-emerged giant in the automotive industry – was established to produce e-scooters and cars. In November 2018, Vinfast inaugurated its e-scooter factory in the Vinfast Factory Complex in Hai Phong with a capacity of 250,000 vehicles a year.

The Vietnamese motorcycle market will remain a promising industry for manufacturers, with high future growth rates both in revenue and consumption, particularly if supported by a clear and transparent development strategy from the Government. Regarding its social contribution, the motorcycle industry has created a significant number of jobs for local workers. It has also conducted various activities contributing to social development, with a particular focus on improving road safety in Vietnam. Nonetheless, the motorcycle industry still faces some challenges. In the following paragraphs, we discuss three of the most important issues facing the sector, and outline our recommendations to address each of them.
I. BAN ON MOTORCYCLE CIRCULATION IN BIG CITIES BY 2030

Relevant Ministries: Prime Minister’s Office, Ministry of Transportation (MOT), Hanoi People’s Committee, Da Nang People’s Committee, Ho Chi Minh City People’s Committee

Issue description

Hanoi

The Hanoi People’s Committee has approved Resolution 04⁹, which aims to deliver the following:

1. Managing the number of Units in Operation (UIO)
2. Managing the quality of UIO
3. Managing the operation scale of UIO
4. Finding solutions to develop and improve the effectiveness of public transportation
5. Finding solutions to apply information technology in traffic management and control (smart transportation)
6. Finding solutions to strengthen the capability of relevant State agencies regarding transportation system management

The roadmap to banning motorcycle circulation in Hanoi’s inner-city districts in order to strengthen the management of UIO and reduce congestion and pollution is set out in the table below:

Table 6: Timeline for implementing Hanoi’s motorcycle ban

<table>
<thead>
<tr>
<th>No.</th>
<th>Task</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Publicity on banning motorcycle circulation in Hanoi by 2030.</td>
<td>Yearly</td>
</tr>
<tr>
<td>2</td>
<td>Research and sum-up total number of UIO (based on production year)</td>
<td>2017-2020</td>
</tr>
<tr>
<td>3</td>
<td>Research and set regulations on technical and emission standards in order to manage the quantity of motorcycles in operation</td>
<td>2017-2020</td>
</tr>
<tr>
<td>4</td>
<td>Recall and destroy out-of-date and unqualified motorcycles*</td>
<td>2017-2030</td>
</tr>
<tr>
<td>5</td>
<td>Pilot to ban motorcycle circulation during set hours and on set dates on selected main roads and in the city centre</td>
<td>2025-2029</td>
</tr>
<tr>
<td>6</td>
<td>Ban motorcycles in inner-city-districts in Hanoi</td>
<td>2030</td>
</tr>
</tbody>
</table>

* When legal regulations and required technical and emission standards are on the ground

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⁹ Resolution 04/2017/NQ-HDND dated 4 July 2017 of Hanoi People’s Council on strengthening transportation management to reduce congestion and pollution in Hanoi from 2017 to 2020 and vision to 2030 (Resolution 04).
Da Nang

On 7 July 2017, authorities in Da Nang approved a proposal for the “improvement of public transportation, management of individual vehicles in circulation, control and management of traffic flows in the City”. The proposal includes the following objectives:

1. Developing mechanisms and regulations for urban-traffic planning
2. Investing in and developing proper urban-traffic infrastructure
3. Improving and expanding the public transportation system
4. Introducing the application of IT and smart management of traffic control
5. Managing individual vehicles
6. Managing traffic in the city centre
7. Implementing solutions to traffic-management issues

Ho Chi Minh City

In 2017, Ho Chi Minh City authorities discussed a proposal to limit and ban motorcycles in order to solve traffic congestion and pollution. So far, there has been no further official decision on this issue.

Potential gains/concerns for Vietnam

The motorcycle is essential to the daily lives and livelihoods of millions of people. It has become the most economical, convenient and flexible mode of transportation, particularly in cities like Hanoi and Ho Chi Minh City, where streets are narrow and there are very few alternative methods of transport. Now and in the near future, public transportation infrastructure in large cities might not be sufficient to meet public demand. Therefore, banning motorcycles could create significant difficulties and inconvenience for people in large urban areas; Jakarta is a case in point here. The Indonesian government banned motorcycles, but this met public opposition and was later overturned because Jakarta’s infrastructure and public transportation were insufficient to meet public demand.

Banning motorcycles, on its own, is therefore not an effective solution to improve traffic congestion and pollution and reduce traffic accidents in big cities. The causes of these issues include a lack of effective management of UIO, poor driving skills and low road-safety awareness. The proposed ban may also cause significant challenges to the motorcycle manufacturing industry which, over the last decade, has established long-term investment in Vietnam for both domestic and international markets and made a great contribution to the economic and social development of the country, not least through tax contribution and local job creation.

Recommendations:

Local authorities could consider other, more effective solutions to address the issues of traffic congestion, pollution and traffic accidents in big cities, including:

- Undertaking research, referring to and adopting best practice from other motorised countries such as Taiwan, where advanced public transport and traffic infrastructure are used in harmony with motorcycles, and European well developed cities such as Milan and Paris, successfully implementing limited traffic zones;
- Taking into consideration peoples’ needs in order to propose a feasible master plan, minimise disturbances to people’s daily life and work and avoid negative economic consequences;
- Only manage or ban out-of-date motorcycles which are the main cause of air pollution, following the example of India, where the government only banned motorcycles over 20 years old; and
- Raise awareness about and compliance with traffic regulation and safety.
II. MANAGEMENT OF IMPORTED MATERIALS FOR EXPORT PRODUCTION

Relevant Ministries: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue description

Under current regulations\textsuperscript{10}, when an enterprise imports components for its production activities, there are two types of import procedure:

1. Raw materials are registered as imports for production of exported goods (NSXXK, import code as E31): From the 1\textsuperscript{st} of September 2016, these imported E31 goods are exempted from import tax and VAT. In case an enterprise uses any E31 for production for local sale (i.e. there is a change of the usage purpose of exempted goods), the enterprise shall be required to declare the change and pay the related taxes at the time of change. In addition, by the end of March of the following year, the enterprise shall do the finalisation report to declare the import, use for export and inventory in respect of the imported E31.

2. Raw materials are registered as imports for commercial purposes (such as for production of goods for local sale (NKD, import code as A12)): Under this, the enterprise shall pay import tax and VAT in full upon importing. For any imported goods of A12 type that the enterprise then uses for the production of export products, the enterprise shall be entitled to apply for an import tax refund.

As per Circular 39,\textsuperscript{11} it is also required that imported materials shall be managed for the accounting purpose per each type of import (import for processing, import for export production, or import for commercial purpose) as declared in the customs declaration and incoming documents. The above leads to a lot of difficulties and risks for enterprises in the process of their materials management.

Potential gains/concerns for Vietnam

As the import is made based on the production plan and, as a matter of fact, the production plan and the actual production will never be matched, there will always be changes in usage purpose for E31 and/or A12 in most enterprises using the scheme of importing materials under both E31 and A12. It is difficult for enterprises in materials management at all stages to track by import sources. It is also difficult to meet the requirement to manage for the purposes of accounting each type of import and to declare in a timely manner the change in usage purpose and pay the required taxes for E31, which lead to a lot of risks. If the enterprise wants to avoid this risk, they must import all taxable A12 then request a tax refund, which leads to significant cash flow/workload/financial cost burdens.

Recommendations

We propose the Government considers revising the current customs rules in order to enable the simplification of the management process required for enterprises who import both E31 and A12. A custom declaration and reconciliation mechanism, feasible for implementation in complex production contexts, is needed. This is important to encourage exports and to align with recent Government policy on administration and tax procedure reform.


\textsuperscript{11} Circular 39/2018/TT-BTC dated 20 April 2018 of Ministry of Finance on amendments to circular 38/2015/TT-BTC dated 25 March 2015 of Ministry of Finance on customs procedures, customs supervision and inspection, export duty, import duty; and tax administration applied to exports and imports
III. INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Relevant Ministries: National Office of Intellectual Property of Vietnam (NOIP) under Ministry of Science and Technology (MOST), Vietnam Competition Authority of Ministry of Industry and Trade (MOIT), Vietnam Internet Network Information Centre (VNNIC) under the Ministry of Information and Communications (MIC), National Steering Committee 398 under the Ministry of Finance (Committee 398)

Issue description

Intellectual Property Rights (IPR) infringement in Vietnam still remains a serious and widespread problem. Since infringers become smarter and craftier, and infringement activities are becoming ever more complicated and increasingly difficult to discover and control, a strong protection and enforcement of IPR is essential to encourage foreign investment in Vietnam, especially at a time when Vietnam is part of major international treaties such as the EVFTA.

Potential gains/concerns for Vietnam

In line with our IPR position, we note with concern that high-profile motorcycles manufactured by motorcycle companies are copied. Preferring to ‘imitate rather than innovate’, some companies are plainly trying to trade on the goodwill associated with the appearance of our products and confuse the public with the originals. In many cases, the manufacturer of copied products do not completely copy but make some minor decorative changes. This creates difficulties for IPR owners to protect their IPR rights as, currently in Vietnam, there is only one evaluation centre, namely the Vietnam Intellectual Property Research Institution (VIPRI) under MOST, to do the evaluation and define whether the copied products significantly differ from the original. This evaluation result is very important since it will be considered as evidence for bringing the claim to court. However, evaluation results of VIPRI are sometimes found unreasonable and it is hard for IPR owners to appeal. Without a positive result from the evaluation centre, IPR owners seem not be able to protect and/or enforce their IPRs in Vietnam and, as such, the registration of IPRs seems to be meaningless.

Recommendations:

The Government should implement effectively the IPR enforcement legislation, strengthening the protection and enforcement of industrial and product designs through some basics steps such as:

- The creation of a different and independent centers of evaluation of IP-infringing cases;
- The authorization to other IP-relevant authorities (such as NOIP) to have stronger voice on the IP issues;
- The implementation of a mechanism for IPR owners to appeal VIPRI’s evaluation;
- The establishment of specialized tribunals on IP matters, improving the IP knowledge of judges;
- The enchantment of cooperation between enforcement bodies and relevant agencies in fighting against smuggling, commercial fraud and counterfeit goods.

ACKNOWLEDGEMENTS

EuroCham Mobility Sector Committee
CHAPTER 17 NUTRITION AND MILK FORMULA PRODUCTS

OVERVIEW

The EuroCham Nutritional Foods Group (NFG) is a non-profit, non-governmental representative body of 5 of the world’s leading multinational dairy companies operating in Vietnam. NFG was established to improve the nutritional well-being of the Vietnamese people and remains committed to fostering international industry best-practice to cultivate a responsible and sustainable market for milk and nutritional products in Vietnam.

Our objectives include:

1. Promoting science-based nutrition knowledge to support the development of effective policies and practices on safe and good nutrition for Vietnamese people;

2. Promoting the highest food quality and global harmonisation standards;

3. Fostering robust business ethics in the dairy and nutrition sector through observation of strict and comprehensive self-regulation policies;

4. Contributing to the development of science-based regulations governing the industry;

5. Participating in open discussions with the Government and other stakeholders to facilitate broad-based industry support for stakeholder efforts to encourage breastfeeding and to improve the nutrition of the Vietnamese people; and

6. Raising awareness and capacity-building in the field of nutrition to support the public health goals of good nutrition.

Vietnam currently has around 7.5 million children, of whom 24.6 per cent are stunted and 14.1 per cent are underweight, according to the National Institute of Nutrition.\textsuperscript{1} Malnutrition has been declining more slowly in the past few years, while the number of children with micronutrient deficiencies has remained high.\textsuperscript{2} Therefore, accessibility to nutritional foods that improve nutritional status and physical development, as well as the health of Vietnamese, must be ensured. Accordingly, Government policies and regulations should create favourable conditions for these products to be widely consumed.

NFG would like to raise the issue of the proposed Special Consumption Tax (SCT) on sugar-sweetened beverages by the Ministry of Finance (MOF) in draft amendments to the Law on Special Consumption Tax (please see below for more details). The proposal should be reconsidered for amendments to avoid conflict with the country’s nutrition strategy as it directly or indirectly restricts consumers’ access to healthy and nutritious products. We hope that our perspectives can benefit the Government as it pursues strong, evidence-based public policies that are both grounded in the local Vietnamese context and international best practice. Such policies will both benefit the people of Vietnam and support the country’s economic development goals.

NFG remains hopeful that the persistent efforts of the Government to improve the business environment will yield more positive and concrete results in the coming year. NFG members are committed to working alongside the Government and relevant Ministries on reforms as Vietnam pursues sustainable development and economic integration with the world.

\textsuperscript{1} Databank on Child nutrition situation in Vietnam (from 1999 to 2015), National Institute of Nutrition.

I. PROPOSED EXCISE TAX ON SUGARY DRINKS

Relevant Ministries: Ministry of Finance (MOF), Ministry of Health (MOH)

Issue description

In August and November 2017, the MOF released draft amendments to the Law on value-added tax, SCT, corporate income tax, personal income tax and natural resource tax. The drafts proposed introducing an SCT of 10 per cent on ‘sugar-sweetened beverages’ (SSBs). The subject of the latest draft amendments (in November 2017) is “sugar-sweetened beverages, except for milk products.” Such a definition is too broad and vague, which may lead to serious difficulties during implementation.

First, the term “sweetened beverage” is not an official term used within Vietnam’s legal documents. Instead, defined terms within existing law are “thirst quenching beverage” (TCVN 5042:1994) or “non-alcoholic beverage” (QCVN 6-2:2010 or TCVN 7041:2009). The Vietnamese Dictionary also describes “sweetened beverage” as “thirst quenching beverage”.

Additionally, the proposed scope also contains sugar products with health benefits, use of which needs to be encouraged, such as:

- Pharmaceuticals in liquid form (e.g. cough syrup) and nutritional medical drinks for patients (e.g. those with diabetes): These products play an important role in medical treatment;
- Formula products, food for special medical purposes/medical food in liquid form for children in general and particularly, malnourished children: Formula products are not made from milk but from soya or whey protein, used for lactose-intolerant children (lactose is a sugar found in raw milk). At present, these products are categorised by the Ministry of Health (MOH) as supplementary food, not as milk;
- Dietary supplements in liquid form: Those containing vitamins, minerals, amino acids, fatty acids, enzymes, probiotics and other biologically active substances to prevent the deficiency of these substances in public health;
- Other functional foods in liquid form: Those includes nutritional liquid products for special dietary use for dieters, the elderly, or pregnant women, among others.

Potential gains/concerns for Vietnam

NFG shares the Government’s desire to tackle public health challenges, including issues such as non-communicable disease (e.g. diabetes and obesity). However, international experience has shown that the criteria for determining which products are subject to an SCT must be clearly specified to ensure transparent and smooth implementation. This is particularly true in the context of Vietnam’s legal framework, where certain products are regulated by relevant technical standards and may have different names to those commonly used by business, the public and non-specialised management agencies.

The national strategy of promoting and improving public health and nutritional status as indicated in Resolution 20 and the National Health Program stipulated in Decision 1092 may be damaged due to the broad coverage of SSBs under the current draft amendments. Subjects of the latest draft amendments, “sugar-sweetened beverages, except for milk products,” as mentioned, cover any drinkable beverages with any type of sugar, which is beneficial for people’s health, e.g. milk, baby formula and functional foods for children under 6.

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3 TCVN 5042:1994 dated 1 January 1994 of the Ministry of Science and Technology on beverages - hygiene requirements and testing methods.
5 TCVN 7041:2009 of the Ministry of Science and Technology on technical regulations for non-alcoholic beverages.
7 Resolution 20-NQ/TW dated October 25, 2017 of the Party Central Committee.
8 Decision 1092/QD-TTg dated 2 September 2018 of the Prime Minister.
According to the Law on Price and its guiding documents, milk, baby formula and functional foods for children under 6 are goods on which price stabilisation and declaration measures are imposed, as these items have a significant impact on the physical development of Vietnam’s future generations. The imposition of SCT on products with health benefits will not help to reduce or prevent health problems but will make it harder for Vietnamese to access to nutritional products. This, therefore, has a detrimental effect on realising the Government’s goals of Resolution 20 and Decision 1092.

While an SCT on SSBs would create a new revenue stream for the Government, it would also negatively impact sales, company profits, and employment in Vietnam – all of which contribute to State taxes through value-added, corporate, and personal income taxes. Additionally, the increase in the price of milk and functional foods as the result of SCT may contribute to increased cross-border smuggling, especially given that China does not impose an SCT on sugar-sweetened beverages. Any increase in illicit flows of these products into Vietnam would lead to tax loss and damage to local industry.

**Recommendations:**

- **Replace the term “sugar-sweetened beverage“ with “sugar-sweetened thirst-quenching beverage” in the draft amendments.** As mentioned, “sweetened beverage” is not an official term used within Vietnam’s legal frameworks, while the proposed replacement, “thirst-quenching beverage,” is a standard term already in use in the Vietnam Standards. In addition, the term “thirst-quenching beverage” clearly communicates the products’ use, making it easy for State management bodies to distinguish thirst-quenching beverages from products with different uses (such as nutritional supplements and medical foods). This replacement facilitates the implementation of the Law and aligns with the requirement of specifying product uses stipulated in Decree 43. Furthermore, it truthfully reflects the purpose of the SCT, which is to tax sugar-sweetened thirst-quenching beverages with the aim of reducing consumption of unhealthy products.

- **Exclude “Milk, milk products and functional foods” from the coverage of SCT’s taxable items.** These exclusions should seek to clarify tax coverage and facilitate the implementation of the tax as well as ensuring there is no negative impact on health-related products. Milk and milk products (such as formula nutritional products for children) are clearly defined, having been listed in the Vietnam Standards. A definition of “functional foods” is provided in the Law on Food Safety and Circular 43. Existing legal provisions also contain certain adjustments, particularly for each category of nutritional medical foods, health supplements, and foods for children. “Milk, milk products and functional foods” play a critical role in achieving national goals of improving public health in Resolution 20 and Decision 1092.

**ACKNOWLEDGEMENTS**

EuroCham Nutritional Foods Group

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12 Functional food means a food used to support a function of the human body, relax the body, boost the immunity against diseases, including supplements, health protection QCVN 5-2:2010/BYT food and medical nutritious food.
CHAPTER 18 REAL ESTATE

OVERVIEW

As a result of encouraging investment policies and the increased participation of new investors, the Vietnamese real estate market has been rising over the last four years. Vietnam finds itself in a favourable position to improve its infrastructure and economic competitiveness, with Free Trade Agreements such as the EVFTA set to be ratified. In addition, the real estate market has also been stimulated by important laws passed recently, such as the Law on Construction 2014 (LOC), the Law on Housing 2014 (LOH), and the Law on Real Estate Business 2014 (LOREB). Nonetheless, if more administrative reforms and transparent procedures are not put in place, it is likely that capital flow will move to neighbouring countries. We believe that there are some regulatory barriers hindering the sustainable operation and development of the real estate market which should be considered, and we wish to share our concerns with the Government in order to maximise the favourable climate in which Vietnam finds itself.

First, the LOH and Circular 021, which regulates management and use of apartment buildings, include several provisions regarding the Apartment Building Management Board (ABMB). However, it is not clear whether the ABMB has the lawful right to participate in the litigation process on behalf of apartment owners to protect their legal rights and benefits.

In addition, it is necessary to establish a legal framework for new hybrid types of property in real estate projects, such as "condotel", "hometel" and "officetel", which have attracted more investment capital. Currently, there are conflicting interpretations from house buyers, real estate developers and regulatory authorities. Therefore, establishing a legal background to systematically regulate these new types of property is essential for dealing with all related legal issues in a timely manner, to develop the real estate market, and also to attract foreign investment capital.

Furthermore, protecting buyers of housing projects from cases of insolvency or bankruptcy of real estate developers is vital because when developers become insolvent or bankrupt, there are many legal risks for house buyers who are the ultimate victims.

Moreover, the delay in issuing the Land Use Right Certificate (LURC) for foreigners by the relevant authorities because of the current lack of a list of residential housing developments where foreign ownership of residential housing is prohibited (Foreign Ownership Prohibited Projects List) seriously affects foreign buyers’ rights and brings several legal risks.

Additionally, Resolution 422 which regulates the transferring of real estate projects to handle bad debts, tightening credit capital injected into real estate and promoting the development of social housing with low prices, will create more incentives for a low-cost housing market where low-income people in big cities will have more opportunities for home ownership.

Although improvements have been seen in the legal system and administrative reforms made to previous legislation, several inadequacies related to regulations for real estate projects still remain. Therefore, we would like to highlight certain legal shortcomings and provide some recommendations from EuroCham members. We welcome the opportunity to cooperate with legislators to facilitate the growth and efficiency of the real estate market.

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1 Circular 02/2016/TT-BXD dated 15 February 2016 of Ministry of Construction regulating on management and use of apartment buildings
2 Resolution 42/2017/QH14 dated 21 June 2017 of the National Assembly on piloting bad debts of credit instututions.
I. THE LAWFUL RIGHT OF AN APARTMENT BUILDING MANAGEMENT BOARD TO PARTICIPATE IN THE LITIGATION PROCESS ON BEHALF OF APARTMENT OWNERS

Relevant Authorities: Ministry of Construction, Ministry of Planning and Investment, Ministry of Justice, Vietnamese Courts

Issue description

The LOH and Circular 02 are an improvement in clearly regulating ABMBs. In particular, pursuant to Article 103 of LOH, if the apartment building has fewer than 20 apartments, regardless of whether it is a single-owner or multi-owner building, homeowners and occupiers of the building shall decide whether or not to set up an ABMB. Apartment buildings with 20 apartments or more are required to set up an ABMB.

The ABMB of multi-owner buildings shall be organised in a model similar to that of a Board of Directors of a joint-stock company or that of a Chairman of a Board of Cooperatives, which has legal status and a seal. The ABMB has eleven rights and obligations outlined under Article 104.1 of LOH. For a single-owner building, the ABMB has fewer rights and obligations than that of a multi-owner building under Article 104.2 of LOH.

While there are many legal rights and obligations regarding the ABMB, the lawful right to participate in the litigation process on behalf of apartment owners is not clearly specified under the law. In addition, under Article 104.1(l) of LOH, the ABMB has the right to perform other tasks assigned by the apartment building meeting in accordance with legal regulations. Even if all apartment owners authorise the ABMB to participate in litigation on their behalf, it is not clear whether the ABMB can actually do so.

It is very disadvantageous for apartment owners when they wish the ABMB to represent them to participate in litigation. If a dispute which is related to all such owners occurs, the number of petitioners will be numerous and related legal procedures will be more complicated. The most important purpose of establishing an ABMB is to protect the legitimate interests of apartment owners in the use of apartments. Therefore, the lack of provisions regarding ABMB’s rights to participate in the litigation process on behalf of apartment owners seriously affects such owners’ rights and benefits to represent themselves in litigation. This purpose is extremely important and necessary, especially when a dispute occurs and directly affects such owners.

Potential gains/concerns for Vietnam

The lack of legal provisions granting the lawful right of an ABMB to participate in the litigation process on behalf of apartment owners also creates difficulties for the competent authorities when settling disputes regarding a large number of petitioners. This is because the ABMB could perhaps represent all such owners, but does not have the right to participate in the disputes process.

In addition, the apartment owners will waste more time, money and other fees directly participating in the litigation process rather than having an authorised representative. As a consequence, the courts will waste more time and resources, and become burdened by the number of individual legal actions of the same type, which could be represented collectively by the ABMB.

Recommendations

The competent authorities need to clarify whether Article 104.1(l) of LOH regulating the ABMB’s right to perform other tasks assigned by the apartment building meeting in accordance with legal regulations consists of the right to participate in the litigation process on behalf of the apartment owners, when the ABMB is authorised by such owners. The lawful rights of an ABMB to participate in the litigation process on behalf of the apartment owners needs to be regulated in the LOH and other relevant legal documents.

3 Article 103.3 of the LOH 2014.
II. “CONDOTEL”, “HOMETEL” AND “OFFICETEL”

 Relevant Authorities: Ministry of Construction (MOC), Ministry of Planning and Investment (MPI)

Issue description

At present, new hybrid types of property in real estate projects have arisen in the real estate market, which include the building of “condotels”, “hometels” and “officetels”. However, there are a lack of provisions in Vietnam’s legal framework to regulate such types of real estate projects. “Condotel”, “hometel” and “officetel” are very popular as they meet customer demand. “Condotel” (a combination of “condominium” and “hotel”) is a term that is understood as a type of hotel-apartment. Owners of a “condotel” have the right to temporarily reside, sell or rent. A “condotel’s” main function is that of a hotel (short-stay and not forming a unit of residence) so it is usually located near a beach or in a tourist resort. “Hometel” (a combination of “home” and hotel”) is understood as a type of luxury house catering for a long-term residence. A “hometel” inherits all the services and facilities of a five-star hotel, ensuring a comfortable living environment for homeowners as well as for renters. A “hometel” is located in a big city and usually built in the form of adjacent villas. “Officetel” (a combination of an “office” and “hotel”) is understood as a type of office with the function of accommodation.

Therefore, “condotel”, “hometel” and “officetel” are apartments which combine many different functions with a living environment. Article 3.4 of Decree 43 regulates that, in case of land on which a condominium for mixed purposes is built before July 1, 2014, with the floor area partly used as offices, commercial or for services, the main use purpose shall be determined as residential. However, “condotel”, “hometel” and “officetel” combine many functions in each apartment’s area without having the separate parts of the apartment building’s area purpose prescribed by the Law.

Under Article 5.1 of the LOI, investors are entitled to make investments in business lines that are not banned under the laws. These new hybrid types of property in real estate projects such as “condotel”, “hometel” and “officetel” are not regulated by laws. This creates confusion among the competent authorities in the management of construction investment, and use of these property types of real estate. Thus, there are many legal risks for investors who invest into new real estate projects, which have such hybrid property types, especially in the issuance of certificates of land use right, ownership of houses and other assets attached to the land.

In addition, under Article 126 of the LOL, a residential apartment has a long and stable land-use term, but a land-use term for an apartment which is used for trading and services shall not exceed 50 years. Therefore, there is a gap between using land, and use of residential, trading and services apartments. It is thus unclear if the “condotel”, “hometel” and “officetel” should have a long and stable land-use term, or one which does not exceed 50 years?

The Department of Construction, Department of Natural Resources and Environment, Ho Chi Minh City Real Estate Association, and Ho Chi Minh City People’s Committee, have reported to the Ministry of Construction (MOC) and the Prime Minister about requiring regulations on “officetels”. According to the Department of Housing and Real Estate Management, MOC, by the end 2018/early 2019, there will be some clarifications on these types of property.

We believe that establishing a legal framework for new hybrid property types is important not only for the development and demands of the real estate market, but also for attracting and protecting the legitimate rights and benefits of investors in line with Vietnamese laws.

Potential gains/concerns for Vietnam

Without such legal provisions, there might be negative impacts on the housing project investors’ investment decisions. “Officetels”, “hometels” and “condotels” can encourage more investment projects and, therefore, protection of the rights and benefits of the investors is necessary.

For the Vietnamese people, an increase of real estate investment projects will create more revenue, jobs and economic benefits for the property market and, therefore, contribute to the general long-term sustainability of social security in Vietnam.

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4 Decree 43/2014/ND-CP dated 15 May 2014 of Government detailing a number of articles of the Law on Land
Recommendations

We recommend promulgating legal provisions with specific standards and guidance for “condotels”, “hometels” and “officetels”; clearly regulating the land-use term; amending legal provisions on the classification and mechanism of using land of mixed-used apartments; and granting certificates of land-use right and ownership of houses and other assets attached to land for “condotels”, “hometels” and “officetels”.

III. PROTECTING PROJECT HOUSING CLIENTS IN CASE OF INSOLVENCY OR BANKRUPTCY OF REAL ESTATE DEVELOPERS

Relevant Authorities: Ministry of Construction (MOC), Ministry of Planning and Investment (MPI), State Bank of Vietnam

Issue description

On the 24th of February 2017, the People’s Court of Ho Chi Minh City granted a Decision on the initiation of bankruptcy proceedings for PVC Land, which is the real estate developer of the PetroVietnam Landmark project. If PVC Land was declared bankrupt by the People’s Court of HCMC, the reasonable rights of buyers of this apartment project would seriously be affected.

On the 13th of March 2017, PVC Land submitted the entire amount of 2.327 billion VND, including interest, for the delayed execution of the project to the Civil Judgment Enforcement Authority of District 2 of HCMC. The People’s Court of HCMC cancelled the decision on the initiation of bankruptcy proceedings for PVC Land, according to the request of the high-level People’s Procuracy of HCMC.

In reality, when buying a real estate project apartment, the house buyer must pay for the project apartment in full before it is completed, then a certificate of land use right ownership of houses and other assets attached to land for the apartment is granted. In many cases, the real estate developers prolong the length of time for ownership of apartments or delay construction due to financial losses, and the buyer is likely to be unable to lawfully receive the apartment and lose money. The project apartments are the off-plan property under Article 108.2 of the Civil Code. Thus, under Article 4.4 of the LOB, if the real estate developers are declared insolvent or bankrupt, the project housing buyers will be creditors of unsecured debts, because the project housing buyers are paying for their future apartments and these are used as secured assets which the real estate developers use to secure their financing of the project.

Under Article 54 of the LOB, the project housing clients are the last in line for redistribution of assets. In such cases, if the value of assets is not enough for payment, each object of the same sequence of redistribution of assets shall be paid according to the percentage corresponding to the debt amount. In case of the lack of real estate developers’ assets for payment, the project apartment owners will be paid an amount in accordance with the percentage corresponding to the money which such project housing buyers paid for their apartments. The buyers will have no chance to own their apartments which were paid for.

Article 56 of the LOREB and Article 1.3 of Circular 13 requires real estate developers to acquire bank guarantee

7 Article 4.4 of the Law on Bankruptcy 2014: “A creditor of unsecured debts (hereinafter referred to as unsecured creditor) is an individual, an agency or an organization entitled to request the debtor to pay the debts that are not secured against assets of the debtor or a third party.”
8 Article 54.1 of the Law on Bankruptcy 2014: “When the judge gives the Decision on the declaration of bankruptcy, the assets of the insolvent entity shall be redistributed in the following sequence:
   a) Cost of bankruptcy;
   b) The unpaid salaries, severance pay, social insurance and medical insurance to employees, other benefits according to the labor contracts and collective bargaining agreements;
   c) Debts incurred after the initiation of bankruptcy which are used for resuming the business operation;
   d) Financial obligations to the Government; unsecured debts payable to the creditors on the list of creditors; secured debts which are not paid because the value of collateral is not enough to cover such debts.”
contracts before pre-selling apartments. If the real estate developers fail to transfer the apartment buildings on schedule as committed to the project housing buyers, the commercial bank of the bank guarantee contract will perform the financial obligations on behalf of such developers by refunding the money received from the customers under the previously signed future sales apartment contracts. This is one solution to protect the benefits of project housing buyers.

However, Circular 13 does not clearly state that real estate developers cannot sell future apartments if they do not have the bank guarantee contracts in effect. Obtaining such bank guarantee contracts may cause the cost of the future apartments to rise up to 2 or 3 per cent, so it reduces the competitiveness of these projects in the real estate market. As a result, many real estate developers refuse to sign bank guarantee contracts with commercial banks. If the real estate developer becomes insolvent or bankrupt and does not have an executed bank guarantee contract, the project housing buyers will lose their payments and have no resource to own their intended project apartments.

**Potential gains/concerns for Vietnam**

Under Article 4.1 of the LOB, after three months of non-payment, the creditor shall have the right to request bankruptcy. This regulation is mechanical, easily turning debt disputes into bankruptcy requests. If a precedent is set that real estate developers can declare bankruptcy, the numbers doing so will rise and, as a result, a huge number of project apartment owners will be seriously affected.

Article 56 of the LOREB and Article 1.3 of Circular 13 requires real estate developers to acquire bank guarantee contracts before pre-selling the apartments for project house buyers. This might be a good solution to protect such buyers if a real estate developer with a bank guarantee contract becomes insolvent or bankrupt.

**Recommendations**

- We recommend that SBV promulgates legal provisions with specific standards and guidance for the finance abilities of the real estate developers; and
- SBV should regulate the penalties for real estate developers who do not sign bank guarantee contracts with competent commercial banks.

**IV. NEW REGULATIONS FOR PROMOTING THE DEVELOPMENT OF THE REAL ESTATE MARKET**

**Relevant Authorities:** Ministry of Construction (MOC), Ministry of Justice (MOJ), State Bank of Vietnam

**Issue description**

**Transferring security assets of bad debts which are real estate projects**

Under Resolution 42, banks and organisations dealing with bad debts are allowed to transfer security assets of bad debts which are real estate projects. This provision promises to create conditions for restarting real estate projects that are security assets for bad debts which are currently “projected”. However, the real estate projects can only be transferred to handle bad debts if they meet four conditions:

1. The project has been approved by the competent authorities according to the law;
2. A decision on land allocation or land lease has been issued by the competent authority;
3. The project is not in dispute over the land-use right in a case that has been accepted, but remains unsolved, or is being resolved at a competent court; the project is not distrained for judgment enforcement or observance to

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administrative decisions of the competent authorities;

(4) No decision on revocation of project or land expropriation has been issued by the competent authorities.

When applying Resolution 42, a number of bad debts related to real estate from banks have been transferred to the Vietnam Asset Management Company (VAMC) through debt bonds to handle directly. In Article 16.7 of Decree 5311, VAMC may initiate or authorise a lawsuit, or transfer the right to the debt-selling credit institution to initiate a lawsuit against the borrower, the debtor, the guarantor to the court; authorise or transfer the right to the debt-selling credit institution to exercise VAMC’s rights and responsibilities in executing the judgment.

However, under Article 189 of the Civil Procedure Code 2015 (CPC), at the end of the petition, the plaintiff or their legal representative must sign and seal. The law does not allow the plaintiff’s authorised person to sign on behalf of the plaintiff on the petition.

As a result, despite the fact that credit institutions have authorised VAMC to settle bad debts, VAMC cannot sue for bad debts on behalf of these institutions. Moreover, the District Court is still confused with regulations on the operation of VAMC, debt purchase and sale contracts when considering the petition and bringing these parties into the case.

The Council of Judges issued Resolution 0312, which allows credit institutions the right to authorise one another or to authorise another individual or legal entity to initiate lawsuits or participate in legal proceedings at the competent court to request the settlement of the dispute on the handling of bad debts. The individual authorised to initiate a lawsuit at the end of the petition, the legally authorised person to initiate a lawsuit, the person’s legal representative or the legal person shall sign the end of the petition. In addition, credit institutions, foreign bank branches, trading organisations, and authorised individuals do not have to sign and seal the petition.

Resolution 03 has helped VAMC and credit institutions become more efficient in the process of dealing with bad debts related to real estate in order to reduce the pressure of such bad debts.

**Tightening credit capital injected into real estate**

This year may be difficult for real estate businesses, as the flow of credit capital into the market is tightening. Under Resolution 0113, the Government has strictly directed the control of credit in potentially risky areas, including the real estate sector.

Following the issuance of Resolution 01, SBV issued Official Letter 563/NHNN-TTG - SNH requiring credit institutions and branches of foreign banks to restructure their credit facilities by concentrating their capital allocation for manufacturing and business and restricting credit focused on the real estate sector. In particular, according to the requirements of Circular 1614, a bank only needs to maintain a maximum ratio of short-term funds used for medium- and long-term loans at 45 per cent, instead of 60 per cent as in previous years.

**Promoting the development of low-priced social housing**

According to Resolution 01, Government policy is to promote the development of social and low-priced housing, effectively implement housing development programs and especially housing support programs for poor households. This is a good sign, which creates more incentives for a low-price housing market. Thus, low-income people in big cities will have more opportunities to own houses.

**Potential gains/concerns for Vietnam**

Real estate firms, facing the challenge of tightening credit in the real estate market, will have to step up their investment capital options.

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12 Resolution 03/2018/NQ – HDTP dated 15 May 2018 guiding on how to settle disputes relating to bad debts, security assets at the competent courts.

13 Resolution 01/ND-CP dated 1 January 2018 of the Government on main tasks, solutions for the implementation of the socio-economic development plan and the estimated State budget in 2018

In order to handle bad debts, it is imperative to have foreign investments. Meanwhile, the LOL has not yet allowed foreigners to own real estate. Under this Law, foreign organisations and individuals are not allowed to receive land-use rights, while overseas Vietnamese can only receive land-use rights in industrial zones and export processing zones. Foreign investors can only joint venture with businesses and individuals in Vietnam, so Vietnamese organisations and individuals can buy back those debts.

For Vietnam, current resources to handle debt are very limited. Therefore, allowing foreign investors to buy and sell debt would help to create better resources and help partially accelerate the purchase and sale of debt. On the other hand, the involvement of quality foreign investors will contribute to the creation and development of the debt trading market. Therefore, it is suggested that the Government consider allowing foreigners to own houses and land.

Recommendations:

- MOC may need to study, formulate and propose mechanisms, policies and models to mobilise resources to promote the development of social houses in urban areas and houses for industrial park workers to encourage the development of rental housing and low-price commercial housing in big cities and industrial zones;
- The legal framework for the debt trading market needs to be improved. At the same time, it is necessary to develop a strict and strong sanction mechanism to ensure fair and transparent operation of the debt trading market. Besides, there should be tax incentives and administrative procedures to create favorable conditions and attractive conditions for the debt trading market;
- It is necessary to create a favourable legal framework for domestic and foreign financial and economic organisations, especially foreign financial institutions, which will enable them to engage in debt purchasing and sale activities, and to participate in the process of handling bad debts of Vietnamese credit institutions; and

V. DELAYS IN ISSUING LAND USE RIGHT CERTIFICATES (LURC) FOR FOREIGNERS

Relevant Authorities: Ministry of Construction (MOC), Ministry of Public Security (MPS), Ministry of National Defense (MOND), Ministry of Planning and Investment (MPI), Provincial People’s Committees

Issue description

Decree 99 regulates that foreigners and foreign entities may only own houses (including apartments and detached houses) in commercial housing construction projects, except for those with national defence requirements in security areas prescribed by Vietnam’s laws and regulations specified under Article 75.1. Furthermore, pursuant to Article 75.2 of Decree 99, the MOND and the MPS are responsible for specifying areas with national defence and security requirements in each province and sending written notification to the relevant People’s Committee as the basis for the provincial DOC to compile a list of commercial housing construction projects where houses must not be owned by foreigners or foreign entities. The MOC, MOND and MPS have sent official dispatches to the People’s Committees of the provinces and municipalities to identify the areas requiring national security and defense and the list of projects where the competent authorities must not allow foreign entities and individuals to own houses.

However, up until December 2018, the Foreign Ownership Prohibited Projects List has not been issued from the provincial DOC’s side. Therefore, the HCMC LRO has stopped issuing certificates of land use rights, house ownership and other assets attached to land for foreigners who have signed house purchase contracts after December 10, 2015.

Potential gains/concerns for Vietnam

This long delay in the issuance of the LURC for foreigners by the relevant authorities significantly affects the ownership of housing rights of foreigners because those who bought residential houses without the LURC could become victims if disputes arise between them and the sellers who have the LURC.

In addition, the current delay in the issuance of the LURC for foreigners could also make foreign investors who are interested in buying houses in Vietnam hesitate to invest in the real estate market. This causes a number of risks for foreign investors who need to obtain the LURC and protect their legal rights and benefits. After investing money into the real estate market by buying houses, if the foreign investors do not have the LURC, they will not have any evidence to prove their house ownership right. Therefore, they will not have the right to sell their houses to other buyers. That leads to the return or non-use of the investment capital and any profits earned of the foreign investor if cancelled or delayed.

In addition, without the Foreign Ownership Prohibited Projects List, the competent authorities may be confused about or delay issuing the LURC for foreigners. The Foreign Ownership Prohibited Projects List needs to be issued in accordance with the instruction of the provincial People’s Committee because this is the final step in the issuance of the LURC for foreigners by the competent authorities.

Recommendations:

› Issue the Foreign Ownership Prohibited Projects List to enable the LURC to be issued for foreigners who have bought residential houses in Vietnam.

› Issue the Foreign Ownership Prohibited Projects List in accordance with the instructions of the provincial People’s Committee.

VI. AMBIGUITY IN GUIDANCE UNDER DECREE 99 TO FOREIGN HOMEBUYERS

Issue description

Decree 99\(^\text{18}\) prohibits foreign individuals and entities from purchasing housing units and selling them for the purpose of profit.\(^\text{19}\) This seems to conflict with the principles under the Law on Housing that allows foreign buyers to own housing units in Vietnam (including the right to dispose of such units at their discretion within the ownership duration).

Potential gains/concerns for Vietnam

Article 79.8 of Decree 99 conflicts with Article 161 of the LOH. Under the LOH, if foreign individuals and entities satisfy the conditions under Article 161 of the LOH, they will be entitled to exercise homeowners’ rights similar to Vietnamese citizens. One of the most important rights of homeowners under Article 10 of LOH is the ability to purchase and sell housing units. Decree 99 is the legal document guiding the LOH, but it contains a provision which conflicts with the LOH legislation which has higher legal value.

The phrase “purchase of housing units and sale for profit purpose” contains a number of unclear issues which need guidance, such as:

i. How to evaluate criteria for identifying cases in which the foreign homeowner purchases housing units and these are sold for the purpose of profit;

ii. If the foreign homeowner sells only one house with a price higher than the purchasing price, whether it is considered “purchasing of housing” and “selling for profit purpose” or not; and

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\(^{19}\) Article 79, Clause 8 of Law on Housing 2014.
iii. In case the foreign homeowner purchases housing units and sells to another individual with the same or lower price than they bought them before, whether it is considered as violating Article 79.8 of Decree 99.

This general provision has caused much confusion to foreign homebuyers due to its ambiguity. They are almost always at risk of violating this provision because they may gain profit from the sale of the purchased housing unit even though they have fulfilled their financial obligations as required under the tax law, i.e. paying personal income tax (2% of the sale price) as currently required.\(^\text{20}\)

This may also lead to arbitrary interpretations by authorities when applied to foreign homebuyers and may be relied on to prevent foreign homeowners from purchasing and selling houses. This seriously affects not only the foreign homeowners but also the other relevant parties of the real estate transaction because the related contracts will be considered invalid as they go against acts prohibited by law.\(^\text{21}\)

**Recommendations**

We recommend abolishing the provision prohibiting the “purchase of housing units and sale for profit purpose” under Article 79.8 of Decree 99, as it is not in line with regulations in the Law on Housing. As a result, there is a need to issue a new, clear and practical legal document with guidance to ensure that the legitimate rights of foreign homeowners and other relevant parties are protected.

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\(^{21}\) Article 123 of Civil Code 2015.
CHAPTER 19 TOURISM AND HOSPITALITY

OVERVIEW

Vietnam welcomed over 15 million foreign visitors in 2018, a 33.6 per cent increase compared to 2017. The number of inbound visitors from China continues to grow strongly, as do those from Korea. This represents an opportunity, but also a risk of unbalanced sources of visitors, causing the tourism industry in Vietnam to become over-reliant on Chinese tourists for economic growth.

These developments are considered to be the result of industry solutions regarding visa policy over the past two years and the Government’s adoption of an e-visa program. Specifically, we welcome the fact that the 5 European countries that continue to be granted visa exemption recorded an increased tourist volume to Vietnam during 2018.

Vietnam ranked 67th in the World Economic Forum’s latest global Travel and Tourism Competitiveness Index in 2017, 8 places higher than in 2016. However, Vietnam still has more to do in order to enhance its competitiveness in South-East Asia.

Tourism continues to be a major contributor to GDP and employment in Vietnam. In 2018, the sector’s direct and total contribution was around 8 per cent of GDP. Its direct and total contribution to employment in 2018 was 4,117,000 jobs (7.6 per cent of total employment). By 2028, Travel & Tourism is forecast to support 4,790,000 jobs (8.0 per cent of total employment), an increase of 1.5 per cent pa over the period. This will create further challenges for the industry.

We welcome Resolution 08, which sets a number of targets for developing tourism through to 2020. Some of these targets have been accomplished, however, several important issues remain. We believe these need to be addressed for the travel and tourism industry to reach its full potential and for Vietnam to achieve its development plan for 2020 and vision to 2030.

Before addressing these, however, we would like to highlight the continued success of the temporary visa waiver program for 5 European countries. This has significantly increased the number of higher-spending long-haul visitors.

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2 Korea saw a massive increase of almost 55%, representing 21.8% of total international tourists to Vietnam, just behind China. With an impressive continued increase of more than 45% compared to 2016, reaching more than 3.6 million visitors in November, Chinese tourists make up 36.4% of all foreign tourists in Vietnam op.cit. Vietnam National Administration of Tourism, 4 December 2017.


8 Resolution 08-NQ/TW dated 16 January 2017 of the Political Bureau regarding the development of the tourism industry in Vietnam up to 2020

9 In particular to: (i) attract 17-20 million international tourists, (ii) serve 82 million domestic tourists, (iii) increase tourism revenue to US$35 billion and contribute to 10% of GDP and (iv) create 4 million jobs with 1.6 million direct jobs Resolution 08-NQ/TW of the Political Bureau dated 16 January 2017 regarding the development of the tourism industry in Vietnam up to 2030. Available at: <https://thuviencaphatluat.vn/van-ban/Thuong-mai/Nghi-quyet-so-08-NQ-TW-phat-trien-du-ich-tro-thanh-nga-nh-nh-nhanh-te-mui-nhon-2017-338542.aspx> last accessed on 15 February 2019.
Vietnam has proved to be one of the most improved countries in terms of travel and tourism competitiveness in 2017, rising 8 places compared to 2016. This is a prime example of sound Government policies benefiting the industry and, ultimately, the country. Furthermore, we also appreciate the Law 09/20-17/QH14 dated 19 June 2017 on Tourism, which sets out a clearer policy path to enable the favourable conditions to develop tourism in Vietnam, aiming to enhance the quality and competitiveness of this industry.

However, as stated above, necessary improvements still need to be made. Some of the major issues we would like to address with the Government and relevant authorities include the entry visa policy, destination marketing and vocational training in the tourism industry. Last but not least, we would like to raise the need to promote responsible and sustainable tourism in Vietnam.

I. ENTRY VISA POLICY

Relevant Government ministries: Ministry of Foreign Affairs (MOFA), Ministry of Public Security (MPS), Ministry of Culture, Sports and Tourism – Immigration Department

Issue description

Whilst the addition of 5 European countries, along with Belarus and Chile, to the list of visa-exempted countries is welcome, there are still several issues in this area that require modification. Moreover, the strict visa policy for most countries requiring a visa prior to travel or a visa on arrival, together with the relatively high cost, is deterring higher-spending Free Independent Travellers (FITs) visiting the country, not least those from European countries without a visa exemption. The benefits for Vietnam of easier access for European tourists is clear. In 2018, visitors from the 5 visa-exempt countries saw strong growth. Inbound traffic from Spain was up 10.8 per cent, with a 7.1 per cent increase from Germany, 13 per cent from Italy, 5.1 per cent from the UK and 9.5 per cent from France. Entry visa policy is one of the Government policies that has the biggest impact on international tourist flow. International tourists consider visa procedures as an additional barrier in terms of cost and time. If the cost of visiting a destination exceeds tourists’ budget, they will choose a more convenient alternative. To increase competitiveness, attract direct investment and international tourist flows – in order to increase foreign currency income and create jobs – many countries are considering incrementally increasing visa exemption. Vietnam grants an entry visa exemption to 24 countries, far fewer than other ASEAN nations. Moreover, Vietnam’s most common visa exemption (15 days) is much shorter than that granted to tourists elsewhere in ASEAN (usually 30 days). Not only does this create time constraints for travellers, but also difficulties for tour operators in designing travel plans for tourists. This is particularly true for European visitors. Direct, long-haul flights from Europe last, on average, 12 hours and take place overnight. In practice, this reduces their exemption period in Vietnam to just 13 days.

European tourists tend to stay for a long time and spend a good sum of money during their visits to Vietnam, according to a Tourism Advisory Board report in the Dialogue with the Prime Minister on the 31st of July 2017. Specifically, their average length of stay in Vietnam ranges from 14 to 16 days, with an average expenditure of US$1,200 to US$1,600. Meanwhile, tourists from China, Taiwan and South Korea only stay between 7 and 9 days on average. Their average spending is also lower – from US$500 to US$950. In short, even though European countries may not make up the highest number of foreign tourists in Vietnam, their contribution to the country’s economy should be considered just as important.

Therefore, we believe that the list of visa-exempt countries should be further expanded, so that tourism can fulfill its key role to develop into a spearhead sector of Vietnam’s economy. Furthermore, we believe that it is inconsistent to have FTAs with countries while still maintaining that tourists from those countries require a visa. In particular, with the EVFTA expected to be ratified in 2019, we hope the Government will extend visa exemption

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10 op cit. World Economic Forum
from 5 EU countries to all Member States as a tool to enhance the competitiveness of Vietnam’s tourism industry.

**Potential Gains/Concerns for Vietnam**

Vietnam ranked 116\(^\text{th}\) out of 136 countries for visa requirements in 2017, scoring 17 out of a possible 100 points according to the World Economic Forum.\(^\text{13}\) Therefore, Vietnam’s travel and tourism sector needs to do more to compete with other ASEAN countries. A report published by the United Nations World Tourism Organisation (UNWTO) and the World Travel and Tourism Council (WTTC) highlighted that international tourist arrivals increased from 5 per cent to 25 per cent as a direct result of visa facilitation.\(^\text{14}\)

**Recommendations:**

- Expand the list of visa-exempt countries to include all those with whom Vietnam has FTAs, including all EU countries, significant trading or investment partners and targeted inbound tourism markets;
- Extend the period of recently announced visa exemptions and new exemptions from a 1-year period to a 5-year period;
- Extend the visa exemption period from 15 to 30 days. This will enhance the competitiveness of Vietnam’s tourism sector by enabling travellers to visit for long enough to discover Vietnam’s culture and natural beauty;
- Urgently clarify the procedures and rules allowing returns within 30 days for visa-exempt travellers. The problem seems, in part, to have been resolved with the imposition of a US$5 administration fee. However, it is not yet clear how this will operate in practice. This is a major hindrance to visitors who take flights to Vietnam and return from Vietnam, but who want to visit neighbouring countries such as Cambodia or Laos during their trip. Clear regulations and guidance on implementation needs to be issued;
- Improve the appearance, access speed and procedures of the current E-visa website. For example, we suggest not requiring foreigners to upload their passport data page image and photograph. Instead, travellers should be required to enter the necessary data only. We also recommend that the current website’s name should be simplified to avoid misleading travellers and facilitating the easier identification of the official online portal;
- Extend the list of countries eligible for E-visa application to help visitors acquire a visa and save time, as well as reducing administrative dossiers for both the Government and visitors;
- Allow transit visas to be issued on arrival for up to 72 hours for passengers with connecting flights. With Vietnam Airlines upgrading its aircraft on its European routes there is an opportunity to attract transit traffic and passengers to stop over in Vietnam when in transit from other Asian destinations, and;
- Make greater efforts to allow international airlines to fly into Vietnam’s airports (Hanoi, Ho Chi Minh City, Da Nang, Nha Trang and Phu Quoc) to ease travel time for international guests. This could also include creating stopover programs.

\(^{13}\) op.cit. World Economic Forum.

II. DESTINATION MARKETING

Relevant Government authorities: Ministry of Culture, Sports and Tourism (MCST), Vietnam National Administration of Tourism (VNAT).

Issue description

From 2018, Tourism promotional campaigns in Vietnam will be boosted with the establishment of the Vietnam Tourism Development Fund (VTDF).15

1. Public-private partnerships and destination competitiveness

The business of tourism is complex and fragmented. From the time visitors arrive in a destination until the time they leave, delivering excellent value depends on many organisations working together and sharing resources where possible. This is a key challenge in a region where, at present, there is limited cooperation and communication between the public and private sectors and between competing private sector companies.

Most destination management issues arising in the region need to be addressed at the provincial level. This is where existing structures of Government should be strengthened. It is therefore important that effective governance structures for tourism are put in place locally, especially in the timely budgeting and clarification of empowerment level. It is at the local destination level that many services vital to tourism are delivered and where the positive and negative socio-economic and environmental impacts of tourism are most apparent, requiring sound local planning and management. Therefore, local teams empowered to deliver a task should also receive the budget to do so in a timely manner in order to exercise their empowerment rights, develop action plans and ensure the project is delivered. In terms of destination marketing, public-private partnerships have been implemented around the world and are proven to provide mutual benefits for both parties.16

2. Online marketing as a key channel to promote tourism

Digital and social marketing via Facebook, Google, YouTube and Instagram is more cost effective than traditional marketing, and enables tourist-driven content. More and more people around the world are going online for planning and selection of where they intend to enjoy their holidays.17 Indeed, smartphones are now an essential part of travel and tourism, and family and social circles are important influencers of travel decisions.18 Online reviews and Internet advertisements are also top drivers for travel demand.19 In Vietnam, information and communication technology has improved a lot, both in terms of capacity and usage.20 Such developments show that Vietnam’s online presence is growing.

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15 Mr. Nguyễn Văn Tú, General Director of the Viet Nam National Administration of Tourism (VNAT), said the Ministry of Culture, Sports and Tourism had submitted a project on the establishment of the VTDF to the Prime Minister for approval “The budget for tourism development activities will be between VND400-500 billion (US$17.5-21.9 million) each year, about ten times of current budget. It is expected that together the formation of the fund, the improvement in advertisement approach and organisation will help create breakthroughs for tourism promotion activities,” Ngọc Lào Dồng (The Labourer) newspaper, available at: <https://vn.vietnam+, accessed on 15 February 2019.

16 For example, the Singapore Tourism Board has partnerships with Lyft and Pandora to promote destination awareness in the U.S. Meanwhile, Tourism Australia works with non-travel brands such as Sony, Samsung and Quicksilver as well as banking partners on market-specific campaign activities, and The Netherlands Board of Tourism & Conventions has partnered with Expedia to promote tourism. Furthermore, airlines are also key strategic partners that can support Vietnam’s destination marketing plan.

17 Internet and mobile penetration have now crossed the 50% global threshold. Meanwhile, the number of active social media users reached 2.8 billion in 2017, representing 37% global penetration “Digital in 2017: Global Overview”, We Are Social, 24 January 2017. Available at: <https://wearesocial.com/special-reports/digital-in-2017-global-overview> accessed on 15 February 2019.

18 Global statistics show that 50% of travellers use their smartphone for planning, research and bookings while on a trip; almost 25% of travellers over 55 use a smartphone to research a trip; 81% of travellers use peer-to-peer reviews when researching a trip; and 42% of travellers acknowledge the importance of sharing travel experiences on social media. “The Global Digital Traveler Research”, Travelport, November 2017, p. 3. Available at: <https://marketing.cloud.travelport.com/gdtr-en-uk-download> accessed on 15 February 2019.

19 In Asia Pacific, 47% of travellers share their experiences on social media. Ibid.


21 47% of people in Vietnam are influenced by friends and family, just below the APAC average of 48% Ibid, p. 32.

22 In particular, 3G signal now covers over 94% of Vietnam. Meanwhile, Internet usage has risen from 44% to 53% in 2017. Op cit. World Economic Forum
We appreciate the recent efforts of Vietnam National Administration of Tourism in developing its website (http://www.vietnam-tourism.com). It now has a more professional appearance and useful content for travellers. This is also a positive sign that the Government is developing a digital strategy. However, joint efforts from both Government and the private sector still need to be improved to enhance tourism promotion in Vietnam. Advertisements or short and impressive clips about the country, people and culture of Vietnam on friendly-to-use applications would be more helpful to spread the beautiful and friendly image of Vietnam in the eyes of foreign visitors.

Vietnam is ranked 80th in the world for the effectiveness of its marketing and branding in attracting tourists, according to the World Economic Forum. Vietnam scored 4 out of a possible 7 in the Travel and Tourism Competitiveness Report 2017. To put that in perspective: Vietnam is a long distance behind other ASEAN countries such as Thailand, Indonesia and the Philippines regarding destination marketing and branding.

3. Unlock the potential of new sources of tourism

China, Korea, Russia, Europe (the United Kingdom, France and Germany), the U.S., Japan, Australia and ASEAN countries (Malaysia, Thailand and Singapore) represent two-thirds of total foreign visitors to Vietnam. These tourists have strong purchasing power, tend to visit frequently and stay for a long period of time. While Vietnam is successful in attracting visitors from China and Korea, who together represent half of the total foreign visitors to Vietnam, this might be a double-edged sword as the tourist sector risks becoming over-dependent on visitors from these countries. Therefore, we believe that focused investment promoting Vietnam in other important markets could help to reduce the stress and stretch of resources.

Potential gains/concerns for Vietnam

To put this in perspective: the Department of Tourism in Thailand had an annual budget of US$80 million in 2015. Malaysia’s Ministry of Tourism and Culture had a similar budget of US$81.6 million in 2015. Meanwhile, the Philippines Department of Tourism received US$54.2 million in 2015. More significantly, Hong Kong allocated US$240 million for marketing, Meetings, Incentives, Conferences and Exhibitions (MICE) and other industry improvements in 2016/17.

We cannot emphasise enough the importance of travel and tourism to Vietnam’s economy: The industry indirectly generates almost 10 per cent of GDP. Furthermore, in light of the Government’s ambitious goal to develop tourism into a spearhead of the economy, it is imperative to recognise the sector’s contribution to the socio-economic welfare of the State in order to properly support it through an effective strategic plan for international tourism marketing.

Recommendations:

- Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion;
- Facilitate public-private partnerships to manage and effectively operate the tourism promotion fund, aiming to promote Vietnam as a top destination in ASEAN;
- Focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long time, visit regularly and spend more when travelling in Vietnam;
- Strengthen Vietnam’s visibility while saving costs using digital, friendly-to-use applications on smart phones, and social marketing channels to develop a professional appearance as well as comprehensive and useful information for tourists;

23 op.cit. World Economic Forum
24 op.cit. Vietnam National Administration of Tourism
25 op.cit. Vietnam National Administration of Tourism
Contribute funding towards not only promotional activities, but also initiatives that support the long-term objectives of the industry. These include cultural and environmental preservation, product development and infrastructure improvements;

Establish improved mechanisms for communication between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organisational structures;

Put in place region-wide coordination structures to focus and maximise the actions of cooperating provinces and facilitate cooperation, and;

Open tourism information and promotion centers, possibly using virtual technology, around the world once visa restrictions are improved to raise awareness of Vietnam. The Vietnam tourism website standards should be improved.

III. DEVELOPMENT OF SUSTAINABLE TOURISM

Relevant Government authorities: Ministry of Natural Resource and Environment (MONRE), Ministry of Culture, Sports and Tourism (MCST).

Issue description

Vietnam has enormous potential to become a popular tourist destination, attracting visitors from around the world. Vietnam’s unique cultural and natural heritage is already a huge draw and, with recent and continued investment in infrastructure development, it appears to be well placed to cater to the growing demand. As Vietnam moves beyond the period of ‘exoticism’ and into the tourism mainstream, there is a need to focus on the projection of a sophisticated cultural and natural heritage destination, with high preservation and sustainability attributes.

Vietnam’s development of cultural and sustainable tourism has lagged behind the development of tourism infrastructure and national development. Moreover, natural and heritage tourism are some of the most lucrative sectors in global tourism. Tour operators have recorded significant sales increase for sustainable travel offers such as local and community-based tourism excursions, certified ‘green’ accommodations, local organic food and restaurants, responsible wildlife experiences and responsible volunteer experiences. Vietnam is a natural fit for these desirable market segments.

Wellness, culture and the environment are massive segments in the tourism industry. They embrace everything from walking, spas, diving and beach holidays to marathons and natural attractions like Ha Long Bay and Phong Nha. They can also embrace cultural activities such as photography festivals, food festivals, film festivals and writers’ festivals. Vietnam has an enviable supply of destinations suited to these activities, including the mountains of the far north, Ha Long Bay, Phong Nha Ke Bang, the spectacular coastline, mountainous Truong Son Range, the Mekong Delta and Central Highlands. These assets are used to different degrees across Vietnam’s tourism sector. Almost without exception, there are concerns that these assets face mild or serious environmental threat or the threat of over-development.

Natural beauty, heritage and a vibrant culture are national assets that have contributed to the continuous growth of Vietnam’s tourism over the last decades. Poor natural resources and destination management, lack of attractive and especially sustainable tourism products and services can, however, jeopardize Vietnam’s competitive advantages and slow down tourism growth in the coming years. Even though Vietnam ranks 34th out of 136 in the category “Tourism related natural resources” according to the World Economic Forum Tourism Competitiveness Index 2017, Vietnam’s ranking fell behind to 113 in the category “Tourism services infrastructure.”


CHAPTER 19 TOURISM AND HOSPITALITY

1. Heritage sites and architecture

Vietnam’s heritage sites face many threats. All across the country, heritage sites are being demolished or facing heavy-handed destructive renovation or upgrade. The degradation of heritage assets poses a risk to a lucrative existing tourism market and the future development of mid and high-value tourism. Most of Vietnam’s museums have barely evolved since the 1990s. There is widespread under-estimation in Vietnam’s tourism sector of the appetite of travellers for heritage and historical engagement. Vietnam’s museums are well behind international and regional standards. Many of the problems facing museums concern the craft of storytelling rather than the more expensive questions of infrastructure and collections. Museums often occupy valuable but under-utilised heritage spaces.

2. Overdevelopment

All over Vietnam, there are concerns that the country is over-developing its tourism assets and in the process devaluing them. Tourism infrastructure development is essential. So is the delicate balance between development, protection of fragile environments and enhancing their economic potential. Across Vietnam, this balance is being missed. There is a real risk of serious degradation to the country’s natural environment and the economic opportunities this presents.

The present trajectory of Vietnam’s coastal development risks over-allocating precious coastal land to high-intensity development.29 This development has poor sustainability qualities and risks pigeonholing Vietnam as a mass tourism destination at the expense of cultivating other important and lucrative markets. Over the past decade, more and more international cruise companies have included Vietnam’s destinations in their cruise itineraries. While the cruise tourism segment is growing double digits worldwide and offers Vietnam’s coastal destinations opportunities to welcome more high-yield international, especially non-Asian guests, adequate regulations, cruise terminals, human resources and cruise-related facilities need to be developed simultaneously to avoid air pollution and “over-tourism” in port of calls and popular sites such as HCMC, Halong Bay, Da Nang and Hoi An.

A holistic, cooperative and more inclusive tourism development based on sustainability, rigorous segmentation, strengths of each destination and diversification of activities and services will prove to be crucial for the next growth phase of the tourism sector.

3. Green tourism as an attractive and responsible initiative

Hotels are at the forefront of tourist destinations, while small-scale, low-impact resorts and successful integration into the local environment are unfortunately rare in Vietnam. Over-development and excessive land use in hotel construction, especially along the coast, are damaging the environment and its limited resources. To reduce this impact, tourism hotspots should be mixed with lower-scale organic development of preserved destinations. Furthermore, hotel management should be held responsible for reducing the environmental impact of mass tourism, with special attention paid to the use of chemicals and hazardous waste, waste management and recycling and the use of natural resources.

4. Pollution and degradation

Excessive and wasteful use of plastics is a serious environmental problem and Vietnam has been identified as a major source of global plastic waste. Tourists and the tourism industry are large producers of plastic waste (though small in the grand scale of the problem). The industry also suffers from the impact of Vietnam’s plastic waste on beaches and in other natural environments.30

Another issue is water quality. The lack of adequate water treatment, waste management and recycling options has resulted in polluted waterways and beaches. Beyond the environmental implications, the recent use of toxic chemicals released into the ocean has not only affected the fishing industry but also negatively affected the


brand image of Vietnam as a tourist destination. Moreover, in the last 6 to 8 years, concerns about the natural environment in Ha Long Bay have become more pressing. Ha Long Bay is Vietnam’s signature natural attraction. Its reputation for being polluted and unsafe represents a threat to its appeal to international travellers, causing subsequent reputational damage.\(^{31}\) Similar concerns are mounting along Vietnam’s coastline.\(^{32}\)

5. Unfair distribution of tourism profits to local communities

Tourism activities have the potential to positively impact local communities. However, there is currently a lack of adequate vocational training and employment opportunities for local communities and entrepreneurs. The heritage of Vietnamese contemporary society should be protected and promoted to generate income for local communities. Operators need to be empowered and encouraged to play a more active role in local development. Training, and especially vocational training facilities, need to be supported and subsidised to create better access to employment opportunities in the tourism industry for local people.

Tourism can support and give back to local communities. However, it must be done in a meaningful way. Children, orphans and vulnerable people must not become tourist attractions. Vietnam’s civil society needs financial resources and support, but not at the expense of its beneficiaries. Social enterprises, local associations and non-profit networks are gaining voice and recognition. In order to protect the most disadvantaged, operators and tourists must be educated to further support such initiatives and be transparent and accountable for their actions.

To respond to the needs of the more environmentally and socially conscious modern traveller, and to preserve national resources for the coming generations, principles of “responsible travel” should be incorporated and safeguarded at every phase and level of the tourism product development and become guiding principles of the national tourism development strategy. VNAT can play a more active role in promoting international and national certifications for environmental protection, public recognition of best practices and sanction of wrongdoing to enhance transparency and raise environmental and social standards of the industry.

Potential gains/concerns for Vietnam

Vietnam’s tourism planning and development to date has not adequately recognised the economic and environmental value of managed sustainable development. It has often failed to acknowledge the tourism, lifestyle and economic value of Vietnam’s rich, diverse heritage and historic assets. With careful planning and sustainable development, the tourism industry has the potential to not only attract more travellers to Vietnam but also act as a window to the world. The rise of civil society and the expansion of grassroots social entrepreneurs is a step towards local development, to which many tourists are eager to contribute. This can be an asset for the country, but it needs to be handled with care, especially to avoid negative effects on Vietnam’s social development structure. Tourists will need to be educated and given the chance to learn more about Vietnam’s societal challenges and contribute to the solution. International brands and local stakeholders in the luxury travel market are already embracing sustainability and applying its main principles.\(^{33}\)

Recommendations:

- City urban planners and tourism management authorities need to understand the importance of heritage assets as significant economic and national resources and recognise their economic value and fragility. There is also a need to invest in world-class storytelling at museums, historical and heritage sites (Hue, Hoi An, Dien Bien Phu etc.);
- Keep beaches clean and prioritise sustainable, diverse development;
- Ensure a more systematic approach to sustainable development in tourism. Promote incentives for responsible commitments and actions taken by stakeholders;

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\(^{31}\) “MONRE highlights severe seawater pollution”, Viet Nam News, 14 October 2016. Available at: <http://vietnamnews.vn/society/344438/monre-highlights-severe-seawater-pollution.html#x8r3r8m7DV6v7v1DR.97> last accessed on 15 February 2019.

\(^{32}\) op.cit., VN Express

\(^{33}\) According to a recent survey, ‘today’s consumers expect travel companies to build sustainability into their product offer’. A majority of respondents (70%) believe companies should be committed to preserving the natural environment and 55% to fair working conditions. Meanwhile, 75% of consumers want a more responsible holiday and 66% would like to easily identify a ‘greener’ holiday. Op.cit., CREST p.2.
Support local people through training and economic empowerment. Promote activities directly benefiting local people and promoting their authentic local cultures;

- Strengthen the capacities of local non-profit organisations and create a framework for ‘voluntourism’ activities;

- Spread useful tips to tourists including information on sensitive social issues, such as behaviours to adopt towards children selling souvenirs in the street or begging, sexual exploitation, visiting schools or orphanages etc.;

- Provide guidelines, such as ‘dos and don’ts for travellers’, in heritage locations and spiritual sites to ease interactions with locals and raise foreign tourists’ awareness of local customs;

- Reduce demand for endangered wildlife species and limit uncontrolled interactions with wildlife to protect the limited number of species in Vietnam. Information in National Parks or natural areas could be developed in order to encourage tourists to respect and protect these sensitive locations;

- Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives;

- Strengthen the capacity of stakeholders involved in responsible tourism and support initiatives led by and for locals, in order to develop income-generating activities as a by-product of tourism, and;

- The high-yield MICE tourism segment has been widely neglected and none of Vietnam’s major tourism destinations has developed specific and adequate promotion strategies or holistic infrastructure such as integrated transportation systems and conference, shopping and entertainment centres to welcome large-scale international meetings and conferences. Tourism and urban planners need to understand the complex linkages, interconnectedness, specific requirements, opportunities and challenges of the fast-growing global meetings and events industry to harvest its benefits with regard to destination marketing, multiplicator effects, job creation and urban infrastructure development.

### IV. HUMAN RESOURCES AND VOCATIONAL TRAINING IN TOURISM AND HOTELITY

Relevant Government authorities: Ministry of Labour; Invalids and Social Affairs (MOLISA), Ministry of Culture, Sports and Tourism (MCST), Ministry of Education and Training (MOET).

**Issue description**

Resolution 08 has set a target for the tourism sector to create 4 million jobs with 1.6 million direct jobs in 2020. It also includes a detailed action plan to develop human resources in the tourism sector up to 2020, which is: (i) to initiate policies to attract investment in vocational training for the travel industry, (ii) to enhance the capacity of training centres/institutions by promoting international cooperation, (iii) to diversify training methods with the application of high technology and (iv) to focus on improving technical skills, foreign language and ethics for labourers. These initiatives indicate that tourism is one of the key sectors that require a sustained effort from both the Government and private sector.

Even though Vietnam is becoming more integrated within the ASEAN Economic Community (AEC), the tourism and hospitality sector continues to suffer from skills shortages at all levels compared to other countries in the region. With the current pace of development in Vietnam’s tourism sector, and in light of its key contribution to the economy, it is more important than ever to develop a highly-qualified labour force in this industry.

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34 Session II, III, Resolution 08-NQ/TW dated 16 January 2017 of the Political Bureau regarding developing tourism industry into the spearhead of Vietnam till 2030

Certain measures aimed at resolving the issue have been put in motion. These Decisions meet with the current demands of tourism in Vietnam, as well as conforming with the ASEAN Common Competency Standards for Tourism Professionals (ACCSTP) under the Mutual Recognition Arrangement on Tourism Professionals (MRA-TP). However, efficiently implementing these standards requires cooperation between Government, businesses and training institutions to develop a proper methodology to make them a reality.

**Potential gains/concerns for Vietnam**

Increasing the number of trained and qualified personnel in the tourism and hospitality industry would enhance the quality of products and services on offer. This, in turn, would have a positive impact on Vietnam’s reputation. Better services also translate into greater competitiveness and more visitors, increasing potential GDP contribution and Government revenue. Tourism is a significant sector for the country, so there might also be positive knock-on effects for other industries, improving overall skill levels across the supply chain. This is likely to increase employment and wages for the local population.

**Recommendations:**

- Businesses and training institutions should collaborate to raise awareness and provide procedures to efficiently implement the National Occupation Skill Standards for housekeeping and front door operation;
- National Occupation Skill Standards should be developed for other sectors in the tourism and hospitality industry to enhance service quality and increase the competitiveness of Vietnam as a tourist destination in the region;
- The role of Vietnam Tourism Certification Board (VTCB) should be enhanced in assessing, training and providing certification for workers who have gained practical experience, but have not received formal training;
- Cooperation between the Government and private sector should be reinforced to improve vocational training activities in the tourism sector for both learners and instructors;
- Ensure that cooperation between training institutions and businesses is sustainable by creating mechanisms, policies and awards to honour businesses that are actively involved in tourism training;
- Review and restructure the network of tourism training institutions to ensure that they have adequate competencies to provide quality training;
- Facilitate language education for workers in the tourism industry. This will not only contribute to high-quality service in the tourism industry, but also help ensure locals are qualified to gain important positions in the sector;
- Invite more educational companies to open their offices in Vietnam with more internationally-oriented teaching methods and give Vietnamese students the chance to earn an international certificate in tourism and hospitality. The Government should financially support such projects which are so important for professional development in the tourism and hospitality sectors, and;
- Facilitate cooperation and know-how transfer between training institutions and the hospitality and tourism industry, i.e. enhance dual vocational training opportunities to provide practice-oriented “learning by doing” training curricula to respond quickly to the growing demand for skilled workers in the hospitality, tourism and event industry.

**ACKNOWLEDGEMENTS**

EuroCham Tourism and Hospitality Sector Committee
CHAPTER 20  WINE AND SPIRITS

OVERVIEW

The population of Vietnam is estimated at around 94 million people.1 The legal drinking age is 18 years old and, every year; a million new consumers enter the legal-drinking-age bracket.

Regarding the alcohol consumption market trend and size, the World Health Organisation (WHO) report published in 2014, highlighted market specificity: the high proportion of unrecorded alcohol accounting for around 70 per cent of domestic alcohol consumption;2 and estimated at around 275 million litres.3 This similar data was presented in a survey report by the Institute for Population and Social Studies under the National Economics University,4 which has provided analysis of recorded alcohol (including locally made and imported beer, spirits and wines) and unrecorded alcohol (including homemade, counterfeit, and smuggled and substitute alcohol)5 in Vietnam.

Beyond this aspect, the consumption of alcohol is dominated by the beer category. In 2017, Vietnam sold 4 billion litres of beer, an average of 45 litres per person. The beer industry has set a target to produce 4.1 billion litres by 2020, and 5.5 billion litres by 2035. The Vietnamese beer sector is dominated by four brewers: Habeco, the 100 per cent Carlsberg-owned Hue Brewery, Sabeco, and Heineken NV. These four entities hold 90 per cent of the market, while the remaining 10 per cent is divided among Masan Brewery, Sapporo, AB InBev, and Carlsberg-owned Southeast Asia Brewery. While Habeco, Hue Brewery, and Sabeco dominate the market in the northern, central, and southern regions respectively, Heineken NV dominates the high-end and medium beer segments.6 Thai Beverage (Thai Bev) bought a US$4.84 billion majority stake in Vietnam’s top brewer Sabeco, giving them control of brands like Saigon Beer and 333. The Sabeco deal will also help Thai Bev tap into Vietnam’s beer market, worth about US$6.48 billion last year, where a young population and booming economy are an attractive lure, despite political resistance, a high minimum bid price and a cap on foreign ownership.7

In this context, the formal spirits market was estimated at around 5.499 million nine-litre cases – about 46.79 million litres – in 20178 (+5 percent vs 2015) mainly driven by the local spirits accounting 85% and growing at +7 percent over the same period. However, consumption of imported spirits has witnessed a decline by -5 percent to reach 857 thousand nine-litres cases – 7.7 million litres – in 2017. It was not an expected trend, given Vietnam’s rapid economic growth and urbanisation, but Special Consumption Tax (SCT) increase since January 2016 has generated a major non-favourable impact on pricing and informal product inflow. Meanwhile, the formal wine market was estimated at around 1.681 million nine-litre cases – about 15.13 million litres9 to reach +5 percent growth over 2015 as well.

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3 “Assessment on status and proposals on management food safety of some traditional alcohol products” Vietnam Ministry of Health.
5 Classification of types of alcohol as recorded and unrecorded was made in accordance with IARD’s Alcohol Taxonomy and informed by IARD’s Toolkit for Assessing the Unrecorded Alcohol Market.
7 “Thai beer magnate extends SE Asia push with $4.8 billion Sabeco deal”, Reuters, 17 December 2017. Available at: <https://www.reuters.com/article/us-sabeco-m-a-sale/thai-beer-magnate-extends-se-asia-push-with-4-8-billion-sabeco-deal-idUSKB1TEB00M> last accessed on 26 January 2019.
9 Ibid.
EU-Vietnam Free Trade Agreement (EVFTA)

The EVFTA, expected to be ratified in 2019, will eliminate import tariffs on 99 per cent of all traded goods within a decade and allow Vietnamese manufacturers greater access to the large and wealthy European consumer market. Meanwhile, the EU will get increased access to Vietnam and the ASEAN region once they enter into bilateral agreements with the individual countries. The Agreement will deliver significant market access improvements for spirits products. Many of the provisions set out in the Agreement would directly and positively impact the spirit market in Vietnam, and as a result, Vietnam is one of the most promising markets in Asia.

First and foremost, the EVFTA foresees the full elimination of the import tariff after seven years. And the Rules of Origin (ROO) will allow for the use of logistic hubs, provided there is no “alteration” of the goods in the third-party hub country. EU exports depend in large part on the reputation of our high-quality products. It is, therefore, good to see that Vietnam has agreed to improve its Intellectual Property Rights legislation to protect a list of wine and spirits products covered by European Geographical Indications (GIs) such as Cognac, Scotch Whiskey, and Champagne. Furthermore, the EVFTA contains strong provisions to improve the legal framework in Vietnam for enforcement of IPR. Vietnam has also committed not to apply any discriminatory quantitative and/or qualitative vertical or horizontal restrictions on licensing. More generally, the FTA will provide a framework for cooperation, regulatory discussion and a dispute settlement mechanism. We respectfully request that the Vietnamese Government does all it can to ensure a speedy and smooth ratification and implementation of the EVFTA.

The business environment in Vietnam remains very challenging for European importers, who compete with a growing local industry. Since 2016, we have had to face a sharp increase of the Special Consumption Tax (SCT) burden creating serious difficulties for business operations. There are no winners in this situation: Business operators have no prospect of growth, the high price of taxed goods means that consumers are more exposed counterfeit or smuggled goods, sometimes of dubious quality, and Government revenues are adversely impacted. This is not in line with the spirit of the FTA and Vietnam’s commitment to a fair and balanced regulatory regime.

We appreciate the opportunity to discuss with relevant authorities the development of legal documents for implementing the ROO principles established in the EVFTA for getting the agreed tariff concession where EU wines and spirits are shipped directly to Vietnam or indirectly through a non-Party country. It is our understanding that self-certification by EU exporters could, in principle, be acceptable to Vietnam. This means that it would be acceptable that the origin declaration is made out on the invoice or other commercial documents by an EU exporter with an authorised exporter number. We, therefore, understand that the use of the Hub Model, and the non-alteration operations carried out under Customs supervision in the hubs (i.e. non-Party country), as well as the use of a Non-Party Invoice, would still allow EU goods to remain eligible for tariff concessions provided in the future EVFTA. We appreciate the opportunity for an in-depth exchange and discussion with the Vietnamese authorities on the subject.

We strongly support the reform and simplification of administrative requirements and conditions in some sectors, including the wines and spirits industry. In particular, Decree 15\textsuperscript{10}, which simplifies certification of product

\textsuperscript{10} Decree 15/2018/ND-CP dated 2 February 2018 of the Government detailing the implementation of some articles of the Law on Food Safety.
conformity with technical regulations of non-risk products like wines and spirits and reduces some procedures on State examination for imported products – from obtaining approval of authority to self-declaration and self-responsibility. We also welcome Decree 81\textsuperscript{11}, which confirmed the removal of the trade and payment discount from proposed new promotional forms.

Technical regulations for alcoholic beverages and labelling requirements should be harmonised with international practices that assure product quality and safety for consumption without imposing unnecessary technical barriers to trade. We recommend consultative dialogue with industry if there are any changes relevant to these areas.

Below, the EU wines and spirits industry outlines three key challenges. We would like to gain further support from Government and relevant authorities to create more favourable conditions for EU wines and spirits, without undermining Government revenue, and encourage a responsible drinking environment.

I. ALCOHOL SOCIAL POLICY

Relevant Ministries: Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Justice (MOJ) and Ministry of Culture, Sports and Tourism (MOCST)

Issue description

The EuroCham Wines and Spirits Sector Committee ("W&S SC") appreciates the efforts of Vietnam’s National Assembly in developing the Law on Prevention and Countering Harmful Effects of Beer and Liquors (the “Draft Law”). We acknowledge and appreciate the transparency and openness shown throughout the process of drafting the Law, with the participation of various relevant stakeholders. We support Vietnam in developing legislation to control and reduce the harmful use of alcohol. Nevertheless, in order to make the law effective and feasible, its provisions should be based on a non-discriminative approach and address the issues of alcohol abuse rather than restriction of legitimate business activities or products. We hope that the Draft Law will be reviewed and revised along these lines, and therefore not affect responsible consumers and legitimate business activities, which make a positive contribution to Vietnam’s economic development and improve the quality of life for Vietnamese people.

While we highly appreciate the positives changes in the latest draft, we are still concerned with the further burden and restrictions which are only imposed on legitimate commercial activities, especially the name of the Law; the ban on alcohol sales via e-commerce for products of 15 per cent abv. and above; health warning label requirements; and ban on brand promotion and sponsorship.

Unrecorded alcohol represents a substantial proportion of total alcohol consumption in Vietnam. This alcohol is untaxed and unregulated. According to a report by the Institute of Population and Social Issues, the consumption of unrecorded alcohol accounted for 75 per cent of total alcohol consumption, of which 74 per cent are home-made liquor. The report also indicates that this consumption is closely associated with harmful drinking behaviours.

We believe that the Draft Law should focus on addressing three key sets of objectives and solutions. The first is the protection of public health through strengthening the control of production and circulation of unrecorded alcohol (mainly home-made liquor in Vietnam), which could directly harm consumers’ health. The second is changing the mindset and behaviours of consumers through education and communications, especially at the grassroots level. The third is the prevention of violations caused by alcohol abuse through strict penalties and enforcement.

Regardless of the alcohol type, abuse or excessive use could cause equal harms to people’s health and society. Therefore, the Draft Law and its proposed regulations should be non-discriminatory, realistic and enforceable, to support Vietnamese consumers to consume responsibly. Therefore, we would like to work with the Government and share international experience to prevent the harmful effects of alcohol abuse through regulations, enforcement and other effective education and intervention programs.

\textsuperscript{11} Decree 81/2018/ND-CP dated 22 May 2018 of the Government on elaboration of regulations of commercial law on trade promotion.
Potential gains/concerns for Vietnam

Even though unrecorded alcohol occupies a large proportion of the market, this segment is not affected by any regulations or control measures related to food safety, labelling, declaration and accountability, price, taxation or other commercial restrictions. The impact of these measures is restricted to the recorded wine and spirits market, which only accounts for around 3 per cent of the total legal consumption of alcohol in Vietnam. Therefore, if the Draft Law imposes any obligatory contribution, increased tax or limit on advertising and promotion, the problems related to unrecorded alcohol and alcohol abuse would not be addressed. This would also deepen the discrimination between recorded and unrecorded alcoholic beverages or create an environment for the latter to further grow and harm consumers’ health.

The Draft Law introduces some overly restrictive measures on legitimate alcohol trading, such as bans and restrictions on sales time, marketing, and sponsorship. This will negatively impact tourism and ultimately reduce tax revenues while increasing public health risks, driving consumers towards the black market. Therefore, we believe that effective enforcement of a fair and balanced regulatory regime will help reduce harmful alcohol use across Vietnam, while protecting Government revenue, commercial freedoms, and economic activity.

While drinking alcoholic beverages in moderation is considered part of a balanced lifestyle, we recognise that the abuse of alcohol, regardless of strength or category, would result in economic and social costs. Therefore, we share the Government’s objectives to manage the harmful effects of alcohol abuse through appropriate policies and actions. We have also dedicated resources and investments in Corporate Social Responsibility programs, aimed at managing the harmful use of alcohol through education against alcohol abuse, raising awareness of responsible drinking and strengthening drink-driving enforcement.

Recommendations:

We understand that, following the debate at the 6th Session of the National Assembly, the Draft Law will be passed at 7th session. We have seen significant progress in the latest version of the Draft Law which has addressed, in part, some key issues such as the protection of public health and control of illicit, low-quality alcohol. With the aim of contributing to the finalisation of the Draft Law, we would like to comment on a few outstanding issues.

1. Specific comments on the Draft Law

1.1 Name of the Law: We recommend that the name of the Draft Law should be “Law on prevention and fighting against the harmful effects of alcohol abuse” to be consistent with Decision 244/TQ-TTg dated 12 April 2014 regarding “national policies on prevention and fighting against the harmful effects of alcohol abuse”. Legislation should be consistent to be enforceable and avoid misunderstanding.

1.2 Ban of e-commerce for beer and liquor of above 15 per cent abv (Article 5): More details in item III below.

1.3 Health Warning Label (HWL):

The mandatory inclusion of HWLs on alcoholic products would be insufficient to deter excessive consumption, while creating an additional cost burden on business. We recommend keeping it as encouraged information on the harmful effects of excessive consumption. Furthermore, we suggest the Government works with legitimate alcohol traders to identify self-regulatory initiatives to raise consumers’ awareness of harms associated with excessive consumption of alcohol by adopting effective tools and programs targeted at reducing alcohol-related harm. EuroCham’s W&S SC would like to suggest further concrete proposals to achieve this aim.

1.4 Brand sponsorship

Brand sponsorship, or the provision of branded products, is a common form of corporate assistance,
especially for food festivals or culinary cultural exchange events which are normally organised by international organisations, embassies and associations. The focus of these events is cultural and gastronomic exchange, facilitating greater knowledge and friendship between Vietnamese and foreigners. Therefore, we recommend that the ban of brand sponsorship should be removed from the Draft Law or exempted for occasions such as food festivals or culinary cultural exchange events.

2. Strengthening Remedies and Enforcement

We recommend that the Draft Law should include stricter penalties and enforcement provisions. For instance, with regards to penalties against counterfeit, smuggled and low-quality products, besides confiscation, the Draft Law should impose other measures such as destruction of the products, withdrawal of the producers’ and distributors’ business license, or criminal charges in serious cases where damage to health has occurred. Similarly, drink driving should be subject to stricter penalties such as higher fines, withdrawal of driving license, confiscation of vehicles, or criminal charges in serious cases casualties have been caused.

3. Changing consumer behaviour through education and communication

The Draft Law lacks specific provisions on education and communication on responsible drinking and the harmful use of alcohol. Education on responsible drinking should be the mission of not only local People’s Committees but also stakeholders such as schools, local civil society, media, families, law enforcement authorities, producers, and traders. Some specific initiatives for consideration include:

- Secondary and high schools should include workshops on legal drinking age, health and other negative effects of harmful use of alcohol and how to deal with peer pressure or when offered drink outside of school;
- Producers should be encouraged to inform consumers on legal drinking age and risk levels of drinking through warning messages on their official websites, labels or advertisements;
- Advertisements should be encouraged to include education on responsible drinking and the risk levels of drinking liquor and beer;
- Traders should be encouraged to show messages on legal drinking age and warning messages against drinking driving. They should also be encouraged to undertake age checks if there is doubt about the age of the customers.

CORPORATE SOCIAL RESPONSIBILITY ACTIVITIES

W&S SC, its member companies and international spirits industry organisations such as the International Alliance for Responsible Drinking (IARD) and the Vietnam Alliance for Responsible Drinking (VARD), in partnerships with various Ministries, NGOs and researchers, have carried out a number of programs on prevention and fighting against alcohol abuse in Vietnam. So far, these programs have reached 39 provinces in all three regions of Vietnam. From 2010 to 2017, 1.2 million students have been educated about the negative consequences of underage drinking and drink driving. The industry has also trained trainers who rolled out training at commune and district level: 1,134 traffic police officers on drinking-driving enforcement and 926 local officials on communication on responsible drinking. These programs have contributed to the 11.6 per cent reduction of traffic accidents deaths and the 42.1 per cent reduction in traffic injuries between 2013 and 2017. In provinces where specific interventions took place, good results were achieved, such as reductions in road crashes of 40 per cent in Da Nang, 37 per cent in Bac Giang and 35 per cent in Binh Thuan between 2013 and 2015. We are proud to be part of the national efforts against the harmful effects of alcohol abuse.

In 2018, we continued our commitments by expanding comprehensive actions through enhanced partnerships with the National Traffic Safety Committee, Vietnam Women’s Union, the National Centre for Health Communications and Education (Ministry of Health), the People’s Police Academy and the National Traffic Police Department (Ministry of Public Security), and the Vietnam Traffic Safety Association.
In cooperation with the National and Provincial Women’s Unions, 40 “Women speak up for responsible drinking” clubs were established, 2,000 union members were trained to properly educate their community on the dangers of underage drinking, drink driving, binge drinking, drinking during pregnancy, methanol poisoning and domestic violence against women. Group discussion and community talk shows targeting 10,000 residents are being organised all over 10 provinces in the Red River.

Working closely with the National Centre for Health Communications and Education via the Women’s Union, communication sessions are being organised in 5 high schools in Hanoi and will reach 2,000 students on underage drinking.

In cooperation with the Police Academy, 120 students were trained on how to design and organise communication activities as they will be working closely with provincial authorities on responsible drinking and drink-driving communications during their political practice. 240 traffic police in 6 provinces are training to improve drink-driving enforcement. This will mark the completion of drink-driving enforcement training in all 63 provinces of Vietnam. Accordingly, the trained officers will continue to roll out trainings to district police and check-point campaigns will be organised with two clear objectives: education and enforcement.

In cooperation with the National Traffic Safety and Vietnam Traffic Safety Association, research on drink driving behaviours of motorbike riders in Vietnam is being conducted. This aims to get accurate data on the percentage of drink-driving road crashes and to educate policymakers on the root cause of drink driving: The behaviour of consumers, not the alcoholic beverage itself. Proposals on stricter enforcement and more budget allocation to such important work will be sent to leaders and policymakers in due course.

This year, VARD played a very important role in spreading messages on responsible drinking and sales to the public and to targeted shops through impactful events co-organised with local authorities and public influencers. In addition, replication of good practices by member companies also complimented the good work on the ground. The “My Story – Your Lesson” program, where a diverse group of communicators including drink-driving victims, traffic police, rehabilitation doctors and youth union leaders, was a great example. It reached 19,000 high school and university students in Hanoi and Bac Giang Province.

These efforts resulted in saving 258 lives from drink-driving traffic accidents in the first 8 months of 2018. We are proud to be acknowledged as part of the solution and will continue to prevent and fight against the harmful use of alcohol while promoting responsible drinking as part of a healthy, balanced lifestyle.

II. SPECIAL CONSUMPTION TAX

Relevant Ministries: Ministry of Finance (MOF)

Issue description

The European wine and spirits industry has suffered from successive SCT reforms, combining a progressive increase of the rate (from 25 to 35 per cent for wine and 50 to 65 per cent for spirits) and a change of the taxable price (from the import price, i.e. CIF, to the importers’ selling price) since January 2016. The negative impact of these reforms on our operators is very significant as the tax burden on importers has, in some instances, more than doubled.

The amount of SCT payable under the new regime is substantially higher than the total taxes (SCT and import duty) payable under the old SCT law. In practical terms, this means that - even assuming a zero-import duty from full implementation of the EVFTA from the 7th year - there will be no improved access to the Vietnamese market for legitimate importers, despite the achievement of the EVFTA negotiation. Indeed, successive increases of SCT on wines and spirits fully nullify the good outcome of this Agreement. It would, therefore, lead to even further increase in cross-border activities, consumption of unrecorded alcohol as well as counterfeit of popular, high-value items, and thus exacerbate revenue loss from tax leakage and increase the risks to public health.
Potential gains/concerns for Vietnam

The European wine and spirits industry had been supportive of an ambitious FTA with Vietnam from the very beginning, as it expected to benefit from a mutual opening of markets. Unfortunately, the SCT reforms fully nullify the benefits of the tariff reductions negotiated under the FTA. We believe a stable domestic tax policy is critical for maintaining and attracting foreign investments in Vietnam.

Recommendations:

We would like to engage with the Government and MOF to initiate a positive dialogue and explore a sustainable and evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption, including a roadmap to bring unrecorded alcohol into the formal economy.

Predictability and stability help businesses plan for the long-term and benefits revenue collection in Vietnam. To that end, we would like to request greater transparency in MOF’s evaluation and impact assessment of SCT regime reforms since 2016 before moving to any new proposal, including plans in Ho Chi Minh City. We believe public consultations on any proposed change to the SCT regime would bring sustainability to our members’ industry in Vietnam.

The European wine and spirits industry is prepared to positively engage with the Government, MOF and other relevant Ministries to create dialogue to examine different options for an alcohol tax regime that address the fiscal and public health objectives.

III. RESTRICTION ON E-COMMERCE

Relevant Ministries: Ministry of Industry and Trade (MOIT)

Issue description

The sale of wines and spirits is allowed in the market but is prohibited on the Internet under Decree 105.\(^\text{14}\) With the rapid development of the Internet and e-commerce, the prohibition of e-commerce for any commodities which are not otherwise prohibited goes against the common market trend and is not feasible.\(^\text{15}\)

In addition, according to the Draft Law No. 5 dated 27 December 2018, the “sale of beer and liquor of above 15% abv on the Internet” is among the prohibited activities stipulated under Article 5. We are very concerned about the prohibition of legitimate business activities being undertaken on the Internet, since the sale of beer and liquor is not prohibited by any Vietnamese legislation. Moreover, no items on the List of Restricted Business Products (including cigarettes) are prohibited from being sold on the Internet, which is merely a distribution tool for business activities. Thus, we are very concerned that legitimate businesses could be prevented from using the Internet to perform business activities, especially in a country like Vietnam, which has been actively promoting the 4th Industrial Revolution.

- This prohibition is only aimed at products which account for less than 3 per cent of total alcohol consumption in Vietnam, according to a recent report by the World Health Organisation (WHO).\(^\text{16}\) There is no rational basis for prohibiting this small segment of the alcoholic beverages market if the objective is to decrease availability and address harmful consumption.
- The ban on e-commerce currently exposes consumers to products of dubious origin. Although e-commerce ban of wines and spirits was stipulated in Decree 94,\(^\text{17}\) and later in Decree 105, it is still possible to find and purchase alcohol products online and it has only deterred legal and official sales. Therefore, consumers are at


\(^\text{17}\) Decree 94/2012/ND-CP dated 12 January 2012 of the Government on wine production and wine trading.
risk of not being offered the same certainty about the origin of the products as those buying from authorised retailers. This exposes them to greater risk of purchasing smuggled, unclear origin, low-quality or counterfeit products which could have severe health implications for consumers. To date, there has been no assessment of the impacts or effectiveness of this prohibition on controlling liquor consumption.

- Currently, many countries allow e-commerce of alcohol regardless of the strength of the products. Among these countries are France, Germany, the United Kingdom, and the United States. Within Asia, these countries include China, Cambodia, Hong Kong, Japan, Malaysia, the Philippines, and Singapore. The prohibition of e-commerce on any alcohol product would not be consistent with common regional and international trends and make Vietnam an anomaly in the region.

- In countries which allow e-commerce sales of alcohol, experience reveals that it helps to improve transparency and tax collection, when payments are made by bank cards or transfer, thus improving the integrity of the tax system. E-commerce allows governments to track alcohol sales and helps authorities to develop a more holistic understanding of total alcohol consumption.

**Potential gains/concerns for Vietnam**

Currently, despite the ban on selling wines and spirits on the Internet, any consumer can easily find and purchase any wines and spirits products online. However, most products are illegally imported and circulated, because legitimate producers and traders comply with the laws. The permission for legitimate producers and traders of alcohol to sell their products on the Internet will help the Government to control alcohol consumption and collect more tax compared to the alcohol trade at physical retail shops, because the payments must go through banks.

**Recommendations**

Instead of an absolute ban, allowing e-commerce sales of alcohol with specific business conditions should be considered. EuroCham’s W&S SC would readily collaborate with the Vietnamese authorities to contribute to the achievement and enforcement of appropriate tools to control and monitor those online sales. Specifically, e-commerce sales of liquor should be allowed for distributors or retailers which meet the conditions for a liquor business, have a liquor trading license, and take payments by credit cards or bank transfer. The e-commerce websites should have the tools to verify the age of customers and the shippers should be responsible for checking their ID for age verification. Transactions must be transparent and convenient for relevant competent agencies to inspect and check when needed. Therefore, we would like to recommend that Article 5 of the Draft Law be amended to remove the ban on e-commerce of alcohol of above 15 per cent abv; and Article 17 regarding the conditions for e-commerce of beer and liquor be amended to be applicable for all alcoholic beverages instead of only alcohol below 15 per cent abv.

**IV. CUSTOMS VALUATION FRAMEWORK**

**Relevant Ministries:** Ministry of Finance (MOF), General Department of Customs (GDC)

**Issue description**

Our members have found that administrative errors (e.g. checking the wrong box on a declaration form) increasingly seem to be the focus of many tax and customs audits. The nature of these administrative errors, such as inconsistencies in a customs declaration or what is considered a failure to follow a non-tax procedure, is simply an administrative mistake, which does not change the nature and substance of the transaction. Therefore, it should not be used as the pretext for the customs or tax authorities to apply tax arrears and penalties or deny a tax refund.
We highly appreciate the promulgation of Decree 59\(^\text{18}\) and Circular 39\(^\text{19}\) which stipulates the case of declaration of a special relationship (failure to declare or declaration that the special relationship has no impact on transaction value). For both cases, the Customs authority shall audit the influence of this relationship to the transaction price and should not use it as a legal basis to apply tax arrears and penalties or to deny a tax refund. However, we are still very concerned about the customs framework, and the different interpretation and application by Customs authorities.

**Potential gains/concerns for Vietnam**

We are keen to co-operate with and support the Government. However, precious resources that could be used to this end are instead being diverted to dealing with overly-punitive interpretations of current regulations. This practice undermines confidence in Vietnam’s investment environment and puts our business at high risk of unpredictable and unplanned operations.

**Recommendations:**

We would like to co-operate with and support the Government to apply the same tax management direction, focusing on substance over form in the Customs valuation process. This ensures compliance with WTO rules, improves transparency, and allows companies to set the right price for the market which benefits consumers and ultimately boosts imports and Customs revenue.

The Government should assess the long-term impact of these practices vis-à-vis business confidence. Our members would like to work with and support the Government to achieve its tax-management ambitions. In addition, we seek more transparency from the Government to share their rationale and evidence as to how they come to their decisions with affected businesses. This will create a friendlier and more sustainable way of working with the private sector to promote growth in Vietnam. In the long run, we hope to work closely with the Customs authorities to champion their role not only as regulators, but also as facilitators for businesses. This would create conditions for a more predictable and consistent source of tax revenue for the Government and a pro-business environment.

**ACKNOWLEDGEMENTS**

EuroCham Wine and Spirits Sector Committee

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\(^{18}\) Decree 59/2018/ND-CP dated 20 April 2018 of the Government amending Decree 08/2015 / ND-CP detailing the implementation the Customs Law on customs procedures, inspection, supervision and control.

\(^{19}\) Circular 39/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance amending some articles of Circular 38/2015/TT-BTC on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods.
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<td>OPP</td>
<td>Off-Patent Pharmaceuticals</td>
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<td>PDF</td>
<td>Project Development Facility</td>
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<td>PDP</td>
<td>Power Development Plan</td>
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<td>PG</td>
<td>EuroCham Pharma Group</td>
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<td>PHI</td>
<td>Pre-Harvest Interval</td>
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<td>PIC/S</td>
<td>Pharmaceutical Inspection Co-operation Scheme</td>
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<td>PISA</td>
<td>Programme for International Student Assessment</td>
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<td>PIT</td>
<td>Personal Income Tax</td>
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<td>PPP</td>
<td>Public-Private Partnerships</td>
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<tr>
<td>PVC Land</td>
<td>PetroVietnam Construction Land Joint Stock Company</td>
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<td>PwC</td>
<td>PricewaterhouseCoopers</td>
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<td>R&amp;D</td>
<td>Research and Development</td>
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<td>RDP</td>
<td>Regulatory Data Protection</td>
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<td>RO</td>
<td>Representative Office</td>
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<td>ROO</td>
<td>Rules of Origin</td>
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<td>Sawaco</td>
<td>Saigon Water Corporation</td>
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<td>SBA</td>
<td>Swiss Business Association</td>
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<td>SBG</td>
<td>Spanish Business Group in Vietnam</td>
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<td>SBV</td>
<td>State Bank of Vietnam</td>
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<td>SCT</td>
<td>Special Consumption Tax</td>
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<td>SDR</td>
<td>Special Drawing Right</td>
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<td>SESD</td>
<td>Socio-Economic Development Strategy</td>
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<td>SGS</td>
<td>Société Générale de Surveillance</td>
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<td>SIAC</td>
<td>Singapore International Arbitration Centre</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>SIMC</td>
<td>Singapore International Mediation</td>
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<td>SME</td>
<td>Small and Medium-Sized Enterprises</td>
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<td>SMLLC</td>
<td>Single-Member Limited Liability Company</td>
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<td>SOE</td>
<td>State-Owned Enterprise</td>
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<td>SoH</td>
<td>Service of Health</td>
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<td>SPN</td>
<td>Simplified Price Negotiation</td>
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<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
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<td>SSB</td>
<td>Sugar-Sweetened Beverage</td>
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<td>SST</td>
<td>Streamlined Sales Tax</td>
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<td>Tourism Advisory Board</td>
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<td>Trading Across Borders</td>
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<td>TFA</td>
<td>Trade Facilitation Agreement</td>
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<td>Transfer Pricing</td>
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<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of IP Rights</td>
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<td>UDRP</td>
<td>Uniform Domain-Name Dispute-Resolution Policy</td>
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<td>UIO</td>
<td>Units in Operation</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNECE/ECE</td>
<td>United Nations Economic Commission for Europe</td>
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<tr>
<td>UNICITRAL</td>
<td>United Nations Commission on International Trade Law</td>
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<td>UNIDO</td>
<td>United Nations Industrial Development Organisation</td>
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<td>USFDA</td>
<td>United States Food and Drugs Administration</td>
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<td>USGBC</td>
<td>United States Green Building Council</td>
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<td>VABM</td>
<td>Vietnam Association of Building Materials</td>
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<td>VAMA</td>
<td>Vietnam Automotive Manufacturers’ Association</td>
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<td>VAMM</td>
<td>Vietnam Association of Motorcycle Manufacturers</td>
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<td>VARD</td>
<td>Vietnam Association for Responsible Drinking</td>
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<td>VAS</td>
<td>Vietnamese Accounting Systems</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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<td>VCA</td>
<td>Vietnam Competition Authority</td>
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<td>Vietnam Environment Administration</td>
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<td>VEEBC</td>
<td>Vietnam Energy Efficiency Building Code</td>
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<td>VFA</td>
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<td>VGBC</td>
<td>Vietnam Green Building Council</td>
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<td>Viability Gap Funding</td>
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<td>VGU</td>
<td>Vietnamese-German University</td>
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<td>VIAC</td>
<td>Vietnam International Arbitration Centre</td>
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<td>VIPRI</td>
<td>Vietnam Intellectual Property Research Institute</td>
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<td>VIVA</td>
<td>Vehicle Importers Vietnam Association</td>
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<td>VNAT</td>
<td>Vietnam National Administration of Tourism</td>
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<td>VNNIC</td>
<td>Vietnam National Internet Centre</td>
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<td>Vietnam Social Insurance Agency</td>
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<td>VSS</td>
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<td>Vietnam Tourism Certification Board</td>
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<td>VTIP</td>
<td>Vietnam Trade Information Portal</td>
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<td>W&amp;S SC</td>
<td>Wines and Spirits Sector Committee</td>
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<td>WEF</td>
<td>World Economic Forum</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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<td>Waste-to-Energy</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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GREEN GROWTH
EuroCham Green Growth Sector Committee

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EuroCham Medical Devices and Diagnostics Sector Committee

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EuroCham Pharma Group

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EuroCham Food, Agri and Aqua Business Sector Committee

CROPLIFE VIETNAM
EuroCham CropLife Vietnam Sector Committee
Kohei Sakata, Chairman

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EuroCham Information and Communication Technology Sector Committee

AUTOMOTIVE
EuroCham Mobility Sector Committee

MOTORCYCLE
EuroCham Mobility Sector Committee

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