



**Investing in Vietnam**

# Redrawing the horizon

2018 and beyond

# KPMG was established in Vietnam in 1994, at a time when Vietnam was reopening its doors to investment.

KPMG is the largest professional services firm in Vietnam with offices in Hanoi, Ho Chi Minh City, Da Nang, and Thanh Hoa. KPMG also has an office in Cambodia's capital city Phnom Penh. With more than 1200 professionals in Vietnam, KPMG is proud of its ability to deliver international standard professional services encompassing:

- Audit
- Tax & Legal
- Consulting
- Deal Advisory

KPMG is recognised by the Ministry of Finance (MOF) and Vietnam Association of Certified Public Accountants (VACPA) as Vietnam's largest Audit and Advisory firm in terms of revenue, partner numbers, and overall human resources. KPMG has also received awards and accolades from the Vietnamese government for its contribution to the nation's audit, tax, legal and advisory professions.

As a leader in the professional services industry, KPMG regularly advises the Government of Vietnam and international organisations in support of Vietnam's reform and integration programmes.



# Table of contents

Introduction  
to vietnam

**05**

Vietnam  
economy

**08**

Integration  
to global  
economy

**10**

Investment  
climate for  
foreign direct  
investment

**12**

Taxation

**16**

Banking  
and foreign  
exchange  
control

**20**

Accounting  
and reporting

**22**

Employment

**24**

Land

**28**

Intellectual  
property

**30**



## Climate

Vietnam is located in the tropical monsoon zone

## North

temperate climate with four distinct seasons: spring (from February to April); a hot and humid summer (from May to July); autumn (from August to October) and a cold and humid winter (from November to January)

## South

tropical climate with only two major seasons: a rainy season from May to October and a dry season from November to April

## Major cities

**Hanoi,  
Ho Chi Minh City,  
Hai Phong,  
Da Nang,  
Can Tho**

## Landscape

Mainly mountainous country, with mountains and forests covering

**75%** of the land area

## Main cultivated areas

Red River Delta (North)

**15,000** square kilometer

Mekong River Delta (South)

**40,000** square kilometer

## Land area

Approximately

**330,000**

square kilometer

## Provinces & Cities

**63**

## Capital

**Hanoi**

## Coastline

Approximately

**3,400 km**

along the Pacific Ocean

## Neighboring countries

**China, Laos,  
Cambodia**

(Source: General Statistic Office)

# Introduction to Vietnam

“

The Socialist Republic of Vietnam is a Southeast Asian country with a rich history and a long track record of political, civil and commercial achievements.

”

## Warrick Cleine

Chairman & CEO

KPMG in Vietnam and Cambodia



A key turning point was Vietnam's accession to the World Trade Organization ("WTO") in 2007, followed by its participation in the ASEAN Economic Community ("AEC") in 2015.

In addition, Vietnam successfully held APEC in November 2017 has positioned the country to more investment opportunities.

### 1.1 Key Factors

Located in the heart of South East Asia and along the coastline of the Pacific Ocean, Vietnam offers numerous advantages in providing access to the world's major trade routes.

Natural resources and conditions allow Vietnam to develop the fundamental and seasonal structure of agricultural products and application of different cultivation in regions.

With its rapid economic growth and development, the workforce is gradually shifting towards industry in manufacturing and services from agricultural in terms of % of the total employment.

The south has been the traditional centre of manufacturing and trade, and a major logistics hub. However, the northern region has become

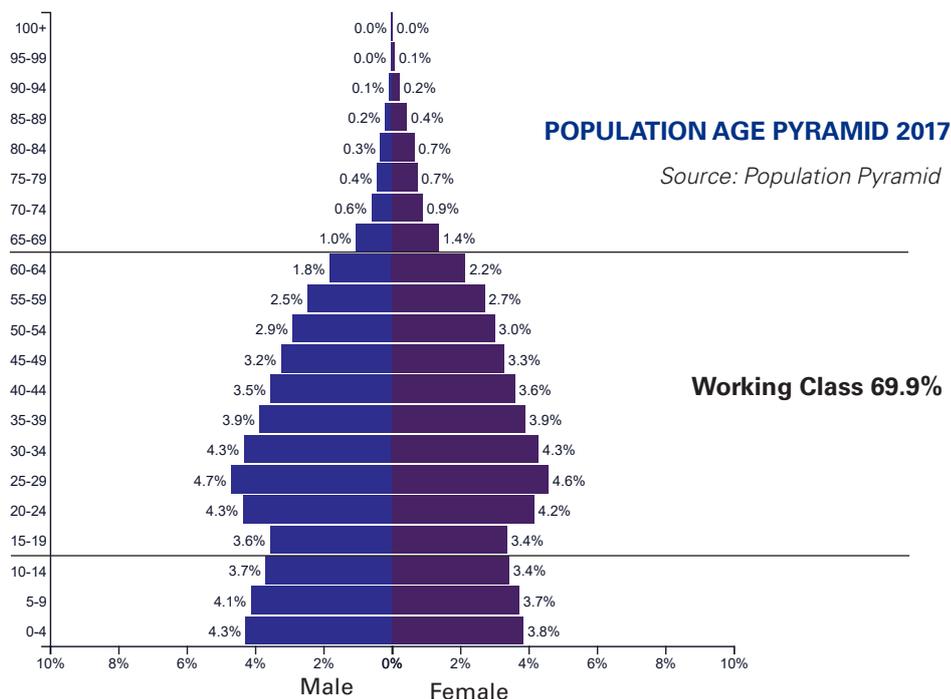
an increasingly popular destination for foreign manufacturers looking to diversify their production bases, notably for South Korean and Japanese companies.

### 1.2 Population

Vietnam's total population reached 93.7 million in 2017 and is estimated to increase to 98 million by 2020. Vietnam enjoys what is known as the "golden population structure", which means for every two people or more working, there is only one dependent person. This demographic bonus provides Vietnam with a unique socio-economic development opportunity to take advantage of the young labour force and push its economic growth.

The average population density is about 308 people per square kilometer in 2017. Approximately 65.3% of the population resides in rural areas, while 1/3 of the remaining urban resides in Ho Chi Minh City and Hanoi.

Vietnam is a multi-nationality country with 54 ethnic groups, of which 86% are Viet (Kinh) and the remaining 14% are ethnic minorities, for instance the Tay, Thai, Hoa (Chinese), Khmer, Hmong and others.



### 1.3 Language and Religion

The national language is Vietnamese, which is widely spoken throughout the country by all ethnic groups. More than 76% of the Vietnamese population aged 15 and older is literate, as a result of the Government's continued efforts to prioritise development of a quality training and educational system.

English is the most popular foreign language and is commonly used in major urban areas. English study is obligatory in most schools. Other common foreign languages are French, Chinese, and Japanese.

Vietnam's population practices a variety of religions. These include religions based on popular beliefs, religions brought to Vietnam from other countries, and several indigenous religious groups. Buddhism is the largest of the major world religions in Vietnam, followed by Catholicism, Cao Dai, Hoa Hao and others.

### 1.4 Government

Vietnam is a one party state. The Politburo and Central Committee of the Communist Party of Vietnam decide on major policy issues, which are then implemented by the Government. Constitutional and legislative powers are vested in the National Assembly, which is "the highest organ of state power". The National Assembly has the power to approve and revise the Constitution and Laws, make important decisions on national matters (policies on internal and foreign affairs, socio-economic factors, political factors, security factors, operations of state bodies) and supervise all operations of state bodies.

The President, as Head of State, represents the Socialist Republic of Vietnam in internal and foreign affairs. The Government is the highest administrative state body, and responsible for executing and managing political, economic, cultural, social, national defense, security and foreign affairs of the country.

Ministries are responsible for the execution of state power in a certain industry or sector. The People's Committee (province, district and commune) governs management affairs within its administrative location.

The People's Committee manages, directs and operates daily activities of local state bodies, and executes policies issued by the relevant People's Council and higher state bodies.

### Political Stability

Vietnam, as a single-party country, enjoys political stability and certainty that supports economic growth and development and is a major attraction for foreign investments. According to the Country Watch report, Vietnam exhibits a high level of political stability with an average political stability index of 4.5 in 2017, relatively high compared to other Asian countries such as Thailand (6), India (7), Philippines (6), Indonesia(8), and China (7).

### 1.5 Infrastructure

The Vietnamese Government recognises the importance of an efficient infrastructure for economic development. Recent years witnessed ambitious plans from the Government to expand and upgrade the existing transportation infrastructure system.

#### Road Infrastructure

In addition to the major national road, Highway No. 1A, stretching from the border with China in the north to the Mekong Delta Provinces in the south via Ho Chi Minh City and the Trans-Asia highway, the country is also progressing with the completion of Ho Chi Minh Road (known as Ho Chi Minh Trail during war time).

This 3,167 km long road will run parallel to the existing national road No. 1A to connect the North with the South. Other notable highways linking key economic regions have also been upgraded.

#### Railway Infrastructure

Vietnam's railway is 2,600 km long, 60% of which is in the Northern provinces. The rail network includes 15 main routes and branches connecting 35 provinces and cities, of which the North-South route is the longest and most important route. In addition, several railway lines have been proposed for construction in recent years, notably the high speed North-South Express Railway.

The Metro systems which are under construction in Hanoi and Ho Chi Minh

City are expected to alleviate pressure on existing road transportation and boost economic growth. The first metro lines are expected to commence operation in Ha Noi by 2018 and in Ho Chi Minh City by 2020.

#### Airport Infrastructure

In recent years, the country has also witnessed a significant increase in air transportation. As the economy expands both domestically and internationally, the volume of freight and passengers carried by air transport has been increasing sharply. The government is expanding and modernising the airport infrastructure, most notably the construction of Long Thanh airport in the southern province of Dong Nai when completed. When completed, Long Thanh Airport will become the largest airport in Vietnam accommodating up to 25 million passengers and 1.2 million tons of cargo a year.

#### Seaport Infrastructure

Sea transportation remains a significant component of the Vietnamese infrastructure system. There are over 100 ports throughout the country, of which the major ones are located in Hai Phong, Da Nang and Ho Chi Minh City. In an effort to address the increasing demand of exporters, plans to upgrade and expand the existing capacity are underway, most notably the plan to develop the mega-port Hon Khoai in Ca Mau province, which is expected to be completed by 2020. Once completed, the port will accommodate ships with a capacity of up to 250,000DWT.



# Vietnam economy

## 2.1 Overview

Vietnam is considered to be one of the fastest and relatively stable-growing economies in Asia over the past years. The country was seen to have weathered the global financial crisis well with encouraging macro-economic indicators observed in 2009 and 2010.

Recent years observed the effort of the Vietnamese Government in boosting international economic integration through the participation into many free trade agreements/communities such as the World Trade Organization (WTO), the Eurasian Economic Union, the European Union, and the ASEAN Economic Community (AEC). This led to a significantly increasing FDI year on year.

With a stable political environment, low labour and operating costs, as well as promising economic prospects, Vietnam presents a dynamic market and an attractive destination for both foreign and private investors to participate in the economy.

## 2.2 Economic growth

Vietnam's real GDP achieved an average growth rate of 7.3% in period of 2005-2009 before it declined to 5.3% in 2009 due to the global financial crisis which started in 2008. Recovery began in 2012, with GDP growth gradually increasing and reaching 6% in 2014. Despite the global trade recession and China's economic growth slowing down, which impacted most parts of Southeast Asia, Vietnam proved to be resilient to the turbulences and still scored a growth rate of 6.8% in 2017, highest rate in nearly 10 years.

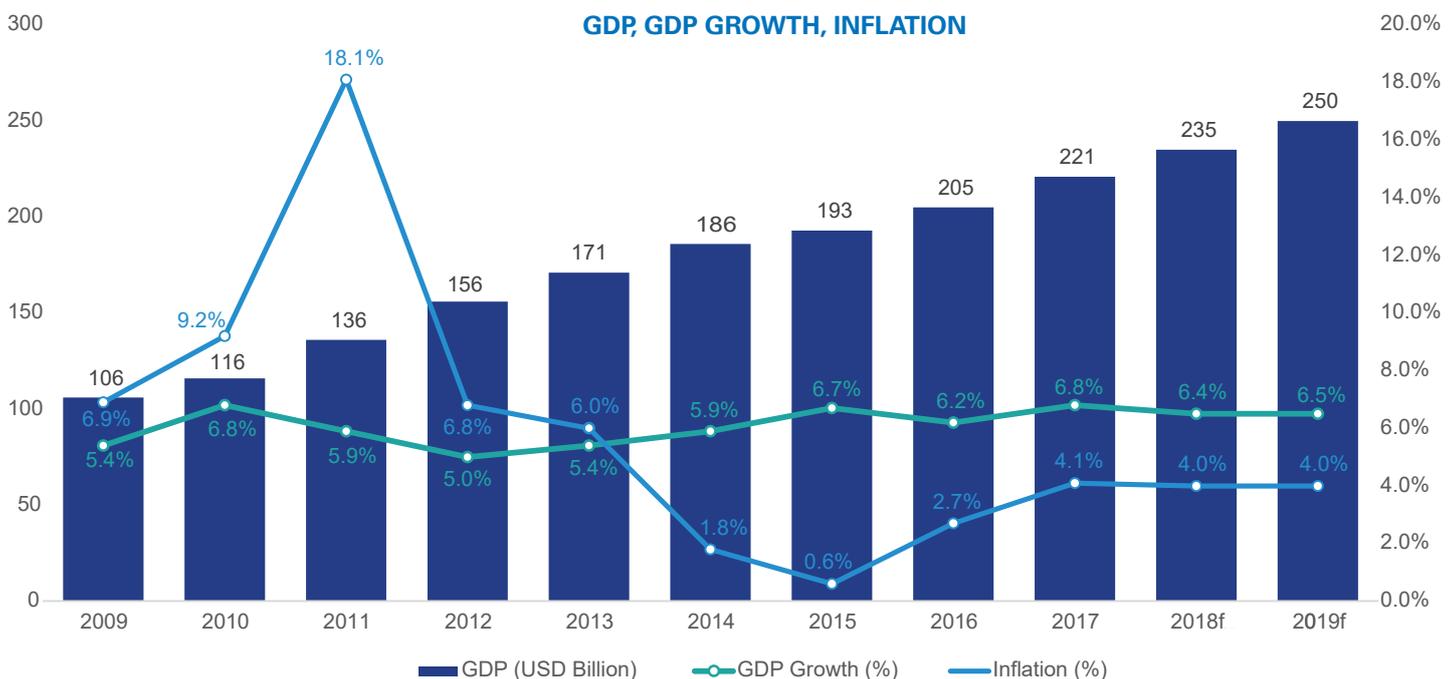
Vietnam's economic growth prospects are forecast to remain positive in the forthcoming years. According to the EIU report, the growth rate is forecast to accelerate at a rate between 6.4% and 6.5% during the period of 2018-2019. The country's economic growth will be underpinned by rising consumption, increased foreign direct investment, robust export performance, deeper integration into global economy and improvements of the regulation system.

## 2.3 Inflation

The consumer price index (CPI) increased to a record 22.9% in 2008 due to the effects of the global financial crash and internal imbalances. The Vietnamese Government had implemented various monetary and credit tightening measures. This coupled with a drop in the world's food and fuel prices after the crisis resulted in a slower growth rate of CPI of 7.4% in 2009. The economy was once again under great inflation pressure in 2011 with an inflation rate at 18.1% before reducing down to 6.8% in 2012, and 6.6% in 2013 as various inflation control measures from the Government came into effect. The rate further fell to 0.6% in 2015 and 2.7% in 2016 on the back of the drop in the oil price.

However, the rapid increase in demand for goods and services, increasing credit issuance and investment from the country's economic growth pushed up inflation rate to 4.1% in 2017.

According to the forecast, the average rate of price rises between 2016-2020



Source: Economist Intelligence Unit ; World Bank (2017)

will be estimated to remain modest at 4% which is well below the figure of 7% in 2011-2015.

#### **2.4 Economic structure**

Over the years, Vietnam has seen a boom in the number businesses in - and an increase in the role of - the private sector in the economy, especially since the promulgation of the Enterprise Law and Investment Law in 2005. There are more than 535,000 businesses operating in accordance with the Enterprise Law, 96% of them are privately run mostly in trade, services, construction, industry and craft production. Private business sector contributes approximately 40% of the country's GDP.

The economic structure has seen a gradual shift from agriculture to industry-services. This transition has resulted in wealth creation growth and rising consumption which is a fundamental indicator to attract foreign investors to expand business in Vietnam, particularly in the domestic retail market.

#### **2.5 Labour force**

Labour force remains a key competitive advantage of Vietnam to attract foreign investment as well as sustaining future growth. Vietnam is famous for its young, hard-working, highly a literate and easy-to-train labour force.

In 2017, Vietnam's work force were approximately 65 million people representing 69.9% of total population. Better quality training provided by professional experts is required for Vietnamese workers to meet increasingly sophisticated requirements of investors.



# Integration to global economy

Vietnam officially became the WTO's 150th member on 11 January 2007. WTO accession has created both opportunities and challenges for Vietnam to become an attractive investment destination. In addition, Vietnam's participation in the ASEAN Economic Community (AEC), as well as the Comprehensive and Progressive agreement for Trans-Pacific Partnership (CPTPP) and the conclusion of several free-trade agreements (FTAs) such as the EU-Vietnam FTA (EVFTA) and the Vietnam – Korea FTA has shown the nation's efforts to further integrate into the world economy.

### 3.1 Goods schedule, services schedule and Vietnam's further liberalised market

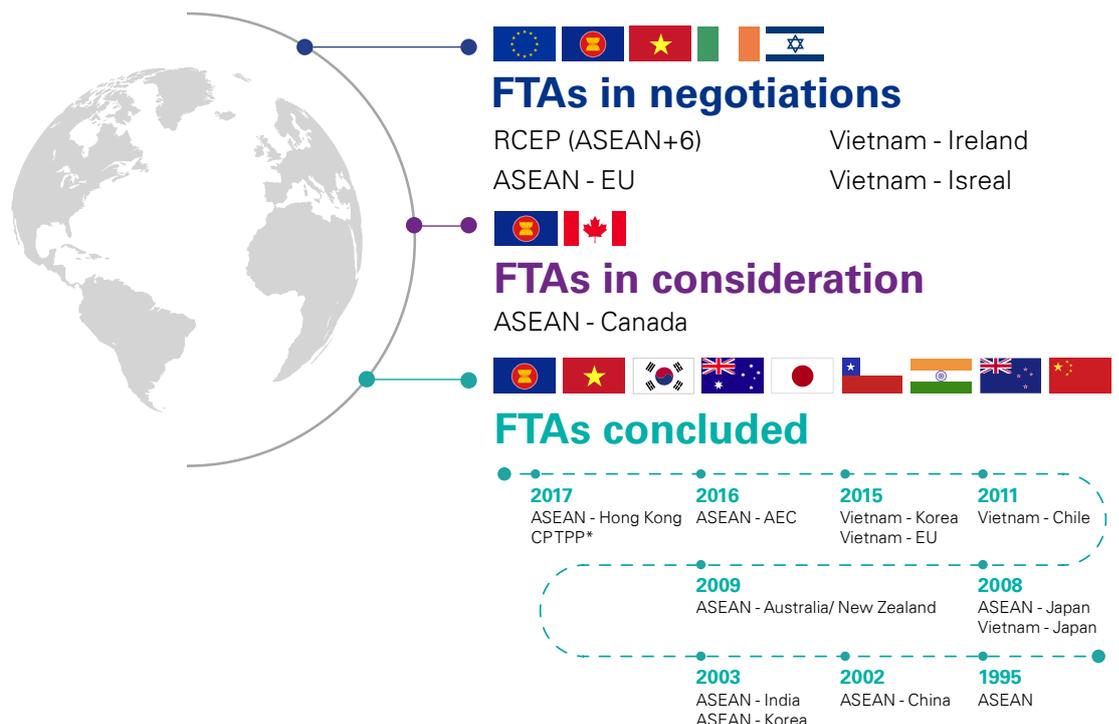
Even without the US, CPTPP will still contribute to the Vietnam's economy and trade and lead to numerous institutional reforms such as labor reforms, improving regulations, introducing administrative reforms.

In addition, Vietnam will have access to markets including Canada, Mexico, and Peru which Vietnam has not signed any trade agreements with.

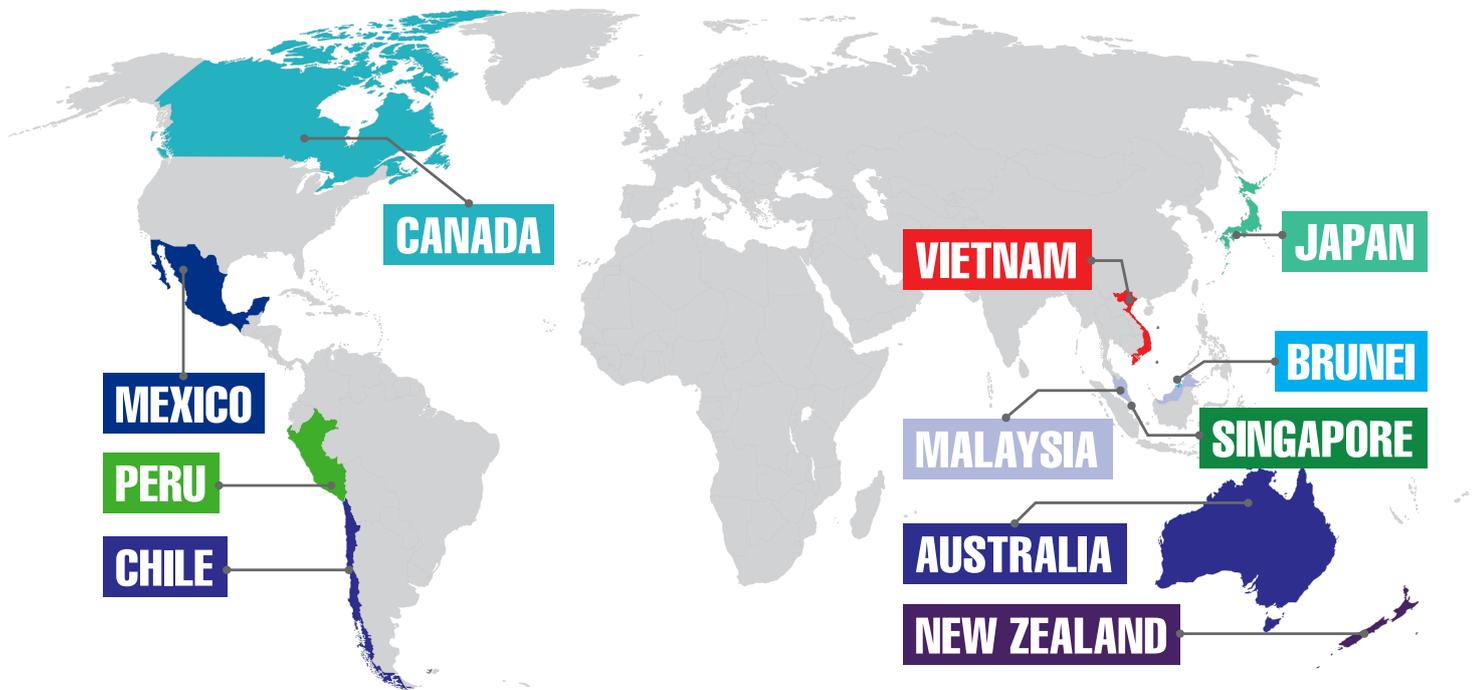
Under the EU-Vietnam Free Trade Agreement (EVFTA), both the EU and Vietnam have pledged to abolish over 99% of import duties on a wide range of goods. Depending on the goods, Vietnam will have 10 years to liberalise its tariff regime, while the EU will liberalise over a 7-year period. The EVFTA will open up Vietnamese markets to EU companies and it also could boost Vietnam's booming economy.

### 3.2 Moving up the value chain

FTAs also play an important role in helping Vietnam move up the value chain in a number of sectors and supporting high-skilled jobs and knowledge transfer. Vietnam is expected to have a more significant contribution to the global and regional manufacturing landscape with regards to textiles, garments and apparel, as well as hi-tech sectors like electronics. Yet, moving up the value chain will further increase the sophistication of production processes, require additional capital investment, cause a growing demand for high-skilled labour, and an array of other considerations to take into account such as sourcing.



\* Countries remaining in the CPTPP are exploring ways to move the trade deal forward after the U.S. formal withdrawal.



**11 members of CPTPP**

### 3.3 Regulatory reform

Policy development will be focused on further economic liberalisation. During preparations for accession to the WTO and other FTAs, Vietnam revamped much of its legal system, making revisions to major legal frameworks, specifically the Labour Code, Land Law, Competition Law, Enterprise Law, Investment Law and Tax Laws in order to make the investment environment more transparent. Indeed, - further integration into the global economy with associated challenges relating to MNC's market entries has helped revise the Vietnamese legal framework toward more transparency to conform with international standards.

Recently, the residential property market and the stock market went through major reform to open up for foreign investment. Under the new regulations, foreigners are now allowed to purchase rights in land, apartments and houses and hold a 100% stake in public companies in most industries. The new laws on investment and enterprises provide a more business friendly regulatory framework for both domestic and foreign players. Although some restrictions remain, the regulatory changes illustrate a progressive approach, which is typical for developing countries.

Policy is also built around strengthening the banking sector, with focus on restructuring non-performing loans (NPLs), transparency in reporting, and consolidation of the lenders towards international standards in reporting, and consolidation of the lenders towards international standards.

# Investment climate for foreign direct investment

## 4.1 Investment climate

Vietnam is one of the leading investment destinations in Southeast Asia. With the advantages of geography, natural resources, and an affordable labour force, Vietnam attracts a large amount of capital each year. Vietnam has a number of unexplored sectors and a growing consumer market.

In 2007, Vietnam's FDI increased to more than US\$21 billion from US\$12 billion in 2006. The country's FDI hit a record high in 2008, trebling 2007's figure, reaching almost US\$72 billion in registered capital. Due to the global financial crisis, the FDI registered in the 2009 – 2012 period decreased, yet the disbursement - both in terms of value and percentage - improved compared to 2007, indicating the continued confidence of foreign investors in Vietnam. Vietnam experienced a decline in FDI in 2012.

Following the decline in 2012, FDI in Vietnam increased again from 2013 and reached US\$22.8 billion in 2015. In 2017, FDI sector contributed 40% of GDP of Vietnam. In 2017, there were over 2,500 new investment projects with a total registered capital of US\$21.3 billion. Japan and South Korea were the most remarkable investors into Vietnam. Energy and Natural resources accounts for 46% among sectors invested.

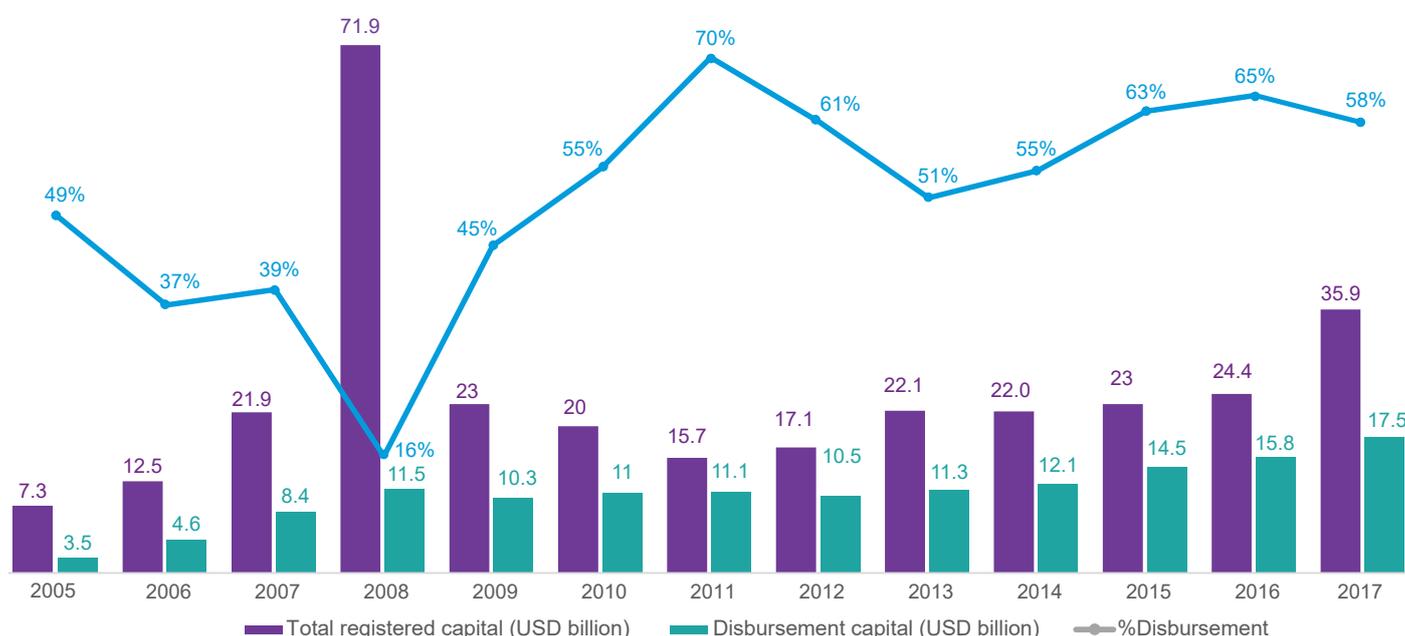
The Vietnamese Government has made considerable efforts to improve the business and investment climate in Vietnam, for example by issuing favourable laws and regulations. Combined with the accession to the WTO in January 2007 these efforts have significantly paved the way for FDI in the country.

Vietnam's success in attracting FDI should be measured not only by the amount of registered capital or disbursements but also by the efforts to improve the investment climate.

Vietnam's Government has issued many resolution as well as action plans in order to realise the commitment to improve the investment climate and business community for investors. A revised Law on Corporate Income Tax has been included in the terms of the expansion project that are also entitled to investment incentives. Investment incentives on industrial parks have been restored. The adjusted tax rate of Corporate Income Tax has been reduced to 20%, effective 1st January 2016.

The role of the private sector and foreign investors in the Vietnamese economy has increasingly been emphasised. "Business forum" meetings and dialogues between the Government and the private sector and foreign investors are frequently held, and provide great opportunities for businesses - especially in the foreign sector - to make themselves heard on important legislative issues.

**FOREIGN DIRECT INVESTMENT IN VIETNAM (2005 – 2017)**



Source: Ministry of Planning and Investment

## 4.2 Forms of investment

Foreign investors may carry out the following forms of investment in Vietnam:

Direct investment	Indirect investment
<ul style="list-style-type: none"> <li>– Establishment of a new legal entity;</li> <li>– Investment by way of contractual arrangement:</li> <li>– Business Cooperation Contracts (BCC) signed with other local or foreign investors;</li> <li>– Public Private Partnership (PPP) contracts with Vietnamese state bodies (e.g. Build Operate Transfer (BOT), Build Transfer Operate (BTO) and Build Transfer (BT) Agreements); and</li> <li>– Invest by way of share/capital acquisition of an existing entity</li> </ul>	<ul style="list-style-type: none"> <li>– Purchase of shares, share certificates, bonds and other valuable papers traded on the stock exchanges;</li> <li>– By way of securities investment funds; and</li> <li>– Investment through other intermediary financial institutions.</li> </ul>

## 4.3 Forms of commercial presence

The forms of commercial presence that foreign investors are allowed to take in Vietnam are the following:

### Representative Office (RO)

RO is a common form of early or initial establishment for foreign organisations looking to invest or to do business in Vietnam. From legal perspective, the RO is a dependent unit of a foreign business entity, and allowed to survey the market and undertake a number of commercial promotion activities

permitted by the laws of Vietnam. The key limitation of the scope of activities of the RO is that it's not allowed to engage in any "direct profit-making" activities.

### Branch

Technically speaking, a branch of a foreign business entity in Vietnam is a dependent unit of the foreign business entity, established and conducting commercial activities in Vietnam in accordance with the law of Vietnam or an international treaty to which Vietnam is a member. However, in practice

a branch is not a common form of presence in Vietnam because it is only open for foreign investors in certain sectors like banking, financial and construction services.

### Legal entity

Depending on the business industry, the number of investors, and whether there is any intention to list the entity, a foreign entity may establish its presence in Vietnam as a limited-liability company, a joint-stock company, or a partnership.

Feature	Limited liability company (LLC)	Joint stock company (JSC)	Partnership
Required number of members/ shareholders	One (for single member LLC); Two or more members, but not exceeding fifty members (for multi-member LLC)	At least three shareholders; no restriction on maximum number of shareholders	<ul style="list-style-type: none"> <li>– Unlimited liability partners: At least two general partners (individuals)</li> <li>– Limited liability partners (optional): (organizations or individuals)</li> </ul>
Liability of members/ shareholders	Limited to the extent of the registered capital contributions into the company	Limited to the extent of the registered capital contributions into the company	<ul style="list-style-type: none"> <li>– Unlimited liability partners: Unlimited</li> <li>– Limited liability partners: Limited to the extent of the registered capital contributions into the company</li> </ul>
Issuing bonds	Allowed	Allowed	Not allowed
Issuing shares	Not allowed	Allowed	Not allowed
Listing on stock exchange	Not allowed	Allowed	Not allowed

#### 4.4 Conditional business lines

The new Law on Investment, which came into effect on 1 July 2015, as amended on 22 November 2016, provides a consolidated and unified list of 243 conditional business lines, amongst which there are ones especially conditional for foreign investors such as trading/distribution, logistics services. This list, together with the business conditions thereof are publicly posted in the National Portal on Business Registration at <https://dangkykinhdoanh.gov.vn/> and <https://dautunuocngoai.gov.vn/>

Companies doing business in conditional business industries are required to fully satisfy the applicable conditions (i.e. minimum capital, foreign ownership limitation, requirement on facilities and personnel, operation license, etc.). Failure to comply with these requirements will

result in the penalties imposed by the state bodies and unfavorable tax treatment to expenses incurred from these businesses.

#### 4.5 Investment incentives

Investment incentives are granted to investment projects based on the following criteria:

- Location: investment projects located in areas with difficult or especially difficult socio-economic conditions or special purpose zones;
- Business industry: investment projects engaged in encouraged business activities such as high-tech businesses, socialised businesses (e.g. education, medical), infrastructure development businesses, etc.;
- Others: investment projects with large investment capital or engaging

in the manufacture of support industry products.

Investment incentives granted to qualified investment projects include:

Corporate income tax (CIT) incentives: Preferential CIT rate (i.e. lower CIT rate in comparison with the standard CIT rate of 20%) for a definite period or for the entire duration of the investment project; exemption from CIT and reduction of CIT for a definite period (see table below);

Import duty incentives: Exemption from import duty in respect of goods imported to form fixed assets, raw materials and components for implementation of an investment project; and

Incentive relating to land rental and land use tax: Exemption or reduction of land rental and land use tax.

No.	Condition	CIT incentive
1.	<ul style="list-style-type: none"> <li>– Projects in specially difficult locations specified by Government;</li> <li>– Hi-tech; biotech, specific supporting industries;</li> <li>– Important infrastructure projects, socialized projects in education, sporting, health care.</li> <li>– Large manufacturing projects (e.g. investment capital of VND6,000 billion and number of labor 3000, capital of VND12,000 billion).</li> <li>– Projects of manufacturing or processing agricultural products in difficult locations.</li> <li>– Software production, environment protection</li> </ul>	<ul style="list-style-type: none"> <li>– Tax rate of 10% for 15 years or for whole life for special projects</li> <li>– CIT Exemption: 4 years</li> <li>– 50% CIT Reduction: 5 to 9 years</li> </ul>
2.	Projects in difficult locations, manufacturing of agricultural machinery and equipment, high quality steel	<ul style="list-style-type: none"> <li>– Tax rate of 17% for 10 years</li> <li>– Exemption: 2 years</li> <li>– Reduction: 4 years</li> </ul>
3.	Projects of manufacturing or processing agricultural products in normal locations	– Tax rate of 15% for whole life
4.	Investment projects located in industrial zones (except for those located in areas having favorable socio economy conditions)	<ul style="list-style-type: none"> <li>– Exemption: 2 years</li> <li>– Reduction: 4 years</li> <li>– No preferential tax rate is given</li> </ul>

#### 4.6 Investment procedures

Foreign investors who invest in Vietnam for the first time must have investment projects. The investment procedures vary, depending on each investment form:

No.	Investment form	Investment procedure	Licensing authority	Statutory timeframe <sup>(*)</sup>	Note		
1	Establishment of a legal entity	(i) Application for an Investment Registration Certificate (IRC)	– Investment Registration Division of provincial Department of Planning and Investment (DPI); or – Management Board of special purpose zones	15 days	The In-principle approval of the National Assembly, Prime Minister, or provincial People’s Committee before the issuance of IRC shall be required in case of investment projects which make significant economic-social impacts as stipulated at law.		
		(ii) Application for an Enterprise Registration Certificate (“ERC”)	Business Registration Division of provincial DPI	3 working days			
2	Investment by way of contractual arrangement	BCC	(i) Application for an IRC	Investment Registration Division of provincial DPI; or Management Board of special purpose zones	15 days	The In-principle approval of the National Assembly, Prime Minister, or provincial People’s Committee before the issuance of IRC shall be required in case of investment projects which make significant economic-social impacts as stipulated at law.	
			(ii) Application for a Certificate of Operation Registration (“COR”) for the foreign investors’ project offices	Business Registration Division of provincial DPI	15 days		
		PPP	(i) Approval of project proposal	– Ministry / provincial People’s Committee	30 days		
			(ii) Assessment of feasibility study	Assessment Committee of the State, or as assigned by a Minister or Chairman of a provincial People’s Committee	30 - 90 days		
			(iii) Application for an IRC	Ministry of Planning and Investment; or Provincial People’s Committee	25 days		
			(iv) Application for an ERC	(iv) Application for an ERC	3 working days		
		3	Investment by way of share/capital acquisition	(i) Application for approval for share/capital acquisition	Investment Registration Division of provincial DPI	15 working days	This step is required in the following cases:  (i) The target company operates in conditional business for foreign investors; OR  (ii) As a result of the share transfer, the foreign ownership ratio in the target increases to 51 % or more
				(ii) Application for updating the new shareholding members	Business Registration Division of provincial DPI	3 working days	
(iii) Application for updating the new investor	Investment Registration Division of provincial DPI			3 working days			

(\*)Where the investment projects are subject to the In-principle approval of the National Assembly, Prime Minister or provincial People’s Committee; and/or subject to evaluation by various competent authorities, the above timeline will be longer

# Taxation

“

Investors should consider conducting a comprehensive risk assessment and readiness analysis for the regulatory change related to domestic and international tax treaties.

”

## Do Thi Thu Ha

Senior Partner, Head of Hanoi office

KPMG in Vietnam



### 5.1 Overview

The Vietnamese taxation system has undergone (and is expected to continue undergoing) many major transformations that include major changes in Corporate Income Tax, Value Added Tax, Foreign Contractor Tax and Personal Income Tax. The changes generally occur frequently, however, the enforcement mechanism as well as the ruling process is often limited in capacity.

The main categories of tax imposed in Vietnam are as follows:

- Corporate Income Tax (“CIT”);
- Value Added Tax (“VAT”);
- Personal Income Tax (“PIT”);
- Foreign Contractor Tax (“FCT”);
- Special Sales Tax (“SST”); and
- Import and Export Duties (“IED”).

Furthermore, other taxes may apply to certain businesses:

- Natural Resources Tax;
- Property Tax; and
- Environmental Protection Tax.

All taxes are national taxes and administered locally. There are no local, municipal or provincial taxes in Vietnam.

### 5.2 Corporate Income Tax

The Law on CIT applies to all domestic and foreign entities that invest in Vietnam. The Law expands the taxpayer pool to include all foreign enterprises that have income from Vietnam, regardless of whether they have a permanent establishment in Vietnam or not.

#### 5.2.1 Tax Year

A Corporate Tax-payer can elect to adopt a calendar year, or a fiscal year ending on a quarter of a calendar year, as the basis for the tax year.

#### 5.2.2 Taxable Income

Taxable income is defined as income derived from production, operation, trade of goods and services and other sources from all business sectors and industries.

#### 5.2.3 Deductions

In general, deductible expenses for corporate income tax purposes are reasonable expenses actually incurred that relate to the activities of production and business of the enterprise and are accompanied by legal and complete invoices and vouchers as required by law.

#### 5.2.4 Losses Carried Forward

Tax losses may be carried forward for a maximum of five (5) consecutive years. Ordinary losses may be offset against income that does not enjoy tax incentives and vice versa. Losses from transfer of real estate, transfer of investment projects and transfer of the right to participate in investment projects can be offset against profits from the main business activities. After offsetting, any losses from such activities will be consecutively carried forward for a maximum period of five years to taxable income of those activities in the following years.

Losses of prior years may be rolled over and offset against provisional quarterly taxable income of the subsequent year, subject to year-end reconciliation.

Carry-back of losses is not permitted and there is no provision for transfer of losses within the group.

### 5.2.5 Tax Rates

The corporate tax rates are classified into the following three categories:

	From 1 January 2016
Standard tax rate	<b>20%</b>
Preferential tax rates	<b>17%, 15% or 10%</b>
Other tax rates (e.g. oil & gas operations, natural resources industry)	<b>32% - 50%</b>

### 5.2.6 Tax Incentives

Preferential tax treatments such as tax exemption, tax reduction, and preferential rates (17%, 15% or 10%) are limited to:

- Encouraged sectors such as: healthcare, education, training, sports, art activities, environment, scientific research, high-tech, infrastructure development and software.
- Economic zones, industrial zones without favourable conditions or locations with difficult socio-economic conditions.

In particular, CIT rate of 10% for 15 years will be applied to:

- Income of enterprise from performance of new investment project in the area with extremely difficult socio-economic conditions.
- Income of enterprise from performing new investment project in the high technology field.
- Income of enterprises from performing new investment projects in the field of environmental protection.
- High-tech enterprises and agricultural enterprises applying high-tech.

The income of an enterprise from the implementation of a new investment project in production if the conditions on scale of investment, disbursement time and total annual revenue or labour usage are satisfied.

Enterprises currently applying a CIT rate of 20% as mentioned above will apply a CIT rate of 17% from 1 January 2016. Tax exemption for 4 years and a 50% reduction of tax payable for 9 subsequent years will also be applied in such cases.

And, a CIT rate of 20% for 10 years will be applied to:

- Income of an enterprise from performing a new investment projects in the areas with difficult socio-economic conditions.
- Income of an enterprise from performing a new investment project in production of equipment, high-quality steel and other products.

Tax exemption for 2 years and a 0% reduction of tax payable for the 4 subsequent years will be applied in such cases.

Effective from 1 January 2012, following Vietnam's WTO commitments, export-based tax incentives are no longer available to exporters. Exporters who have lost export-based tax incentives may elect an alternative tax incentive scheme (if eligible) and must notify the tax authorities of the election. The taxpayer must self-assess the applicable incentives in accordance with the current tax regulations.

### 5.3 Value Added Tax

The VAT system in Vietnam applies to goods and services used for production, business and consumption in Vietnam. Two methods can be used

to calculate VAT payable. Taxpayers meeting the requirements can apply the credit method. VAT payable under the credit method is calculated on the difference between output VAT (VAT collected for sales) and input VAT (VAT paid on purchases). Taxpayers that do not qualify for the credit method can apply the direct method. Under the direct method, the taxpayer will pay VAT by applying a deemed rate on the added value of the transaction. A Corporate Tax-payer is required to file and pay VAT on a monthly basis, or on a quarterly basis if relevant conditions are met. The standard VAT rate is 10%, but the rates are classified into four groups: exempt, 0%, 5% and 10%.

### 5.4 Special Sales Tax ("SST")

Special Sales Tax is imposed on a selected number of goods and services, either at the stage of production, provision of services or import. Export products are exempted from SST. The tax is calculated based on the selling price at the place of production excluding this tax and VAT.

Imported goods liable to SST shall also be subject to SST upon importation from overseas and sales to the domestic market, accordingly:

- SST taxable price at the import stage = taxable price for import duty calculation + import duty

$$\begin{array}{l}
 \text{SST taxable price at the trading stage} \\
 = \frac{\text{Selling price exclusive of VAT} - \text{Environmental protection tax (if any)}}{1 + \text{SST rate}}
 \end{array}$$

Taxpayers producing SST goods from SST inputs are entitled to claim a credit for the amount of SST paid on the materials imported or purchased from local suppliers.

## 5.5 Personal Income Tax (“PIT”)

Both foreigners working in Vietnam and Vietnamese citizens are subject to PIT. For tax residents, a progressive taxing system, where the marginal rate ranges from 5% to 35%, is applied to worldwide income.

For tax non-residents, a flat rate of 20% is applied to the income derived from Vietnam. In general, a tax resident is a person:

- Present in Vietnam for at least 183 days in a tax year; or
- Having a regular place of abode in Vietnam, i.e. an individual rents a house in Vietnam according to legislation on housing under a contract that lasts 183 days or longer in the tax year; or
- Not a tax resident of another country (subject to applicable double tax agreement).

If an individual has a regular place of abode in Vietnam, but is actually only present in Vietnam for less than 183 days in the tax year and fails to prove their residence in any other country, that individual will be considered to be a tax resident of Vietnam.

## 5.6 Import and Export Duties

All goods entering Vietnam are generally subject to import duty. Import duty rates vary depending on the nature of goods involved and origin of the goods. There are three import duty rates applicable (ordinary, preferential and especially preferential), based on the trading relationship between Vietnam and the exporting country.

A partial or full exemption from import duty may be granted on application.

Raw materials and components imported into Vietnam for the manufacture of goods for export are usually exempt from import duty provided that the goods are actually exported within 275 days.

Enterprises with foreign-invested capital and parties to a BCC in especially encouraged projects are exempt from import duty in respect of certain imported goods which form part of their fixed assets.

Most exports are duty-free, except for a certain natural resources such as sand, chalk, marble, granite, ore, crude oil, forest products and scrap metal.

## 5.7 Foreign Contractor Tax

Foreign organisations and individuals carrying out permitted businesses in Vietnam without a legal entity are subject to Foreign Contractors Tax (“FCT”) comprising VAT and CIT.

Applicable tax rates vary depending on whether a foreign contractor registers to use the Vietnamese Accounting System (“VAS”) or not. The standard FCT rate is 10% but different rates can apply depending on the transactions and taxpayer’s tax filing status.

## 5.8 Natural Resources Tax

Natural Resources Tax (also known as royalty tax) is imposed on the exploitation of Vietnam’s natural resources including petroleum, mineral resources, forest products, seafood and natural water. Tax rates vary depending on the specific classification of natural resource and are applied to the production output at a specified taxable value per unit.

## 5.9 Property Tax

Property Tax in Vietnam is levied in the form of a “land use fee” or “land rental”. A foreign investor requiring land for an investment project may apply to the land management authority by way of an allotment and paying the land use fee or by way of lease and paying the land rental. The land rental rates vary depending on the location, infrastructure and industrial sector where the business operates.

Effective from 1 January 2012, owners of houses and apartments are required to pay land tax charged on a square metre basis at progressive rates from 0.03% to 0.15%.

## 5.10 Environment Protection Tax

Effective from 1 January 2012, Vietnam introduced Environment Protection Tax (“EPT”) which is aimed to impose tax on goods that may cause damage to the environment.

EPT is in effect an indirect tax applicable to the production and importation of certain goods such as petroleum, coal, plastic bags and restricted chemicals.

## 5.11 Relief from tax

Vietnam has now signed DTAs with 73 countries, out of which 61 DTAs are currently in force. Generally, these DTAs follow the basic principles contained in the OECD Model Convention.

For a country which has a DTA with Vietnam, a foreign tax credit is also available to resident taxpayers in respect of foreign taxes paid.

Under current regulations, if a taxpayer fails to submit the DTA notification dossier within 3 years from the tax payment deadline, the DTA entitlements will be forfeited.

Generally, provisions of DTAs prevail over the domestic tax laws. The amount of credit given is the lower of the tax suffered in the foreign country and Vietnamese CIT attributable to the foreign income. There is no provision in Vietnamese tax law allowing excess foreign tax credits to be carried forward.

The application of a DTA clause is not automatic. An official approval for tax relief must be obtained from the tax authorities.

We set the standard  
in the industry



**International Tax  
Review, 2017**



**Global M&A  
Professionals, 2017**



**Global Sourcing  
Association, 2017**



**Vietnam Ministry  
of Planning and  
Investment, 2017**



**International Tax  
Review, 2017**



# Banking and foreign exchange control

“

Foreign banks can immediately take advantage of the local bank's network, operating systems, and existing customer portfolio.

”

## Tran Dinh Vinh

Partner, Head of Financial Service

KPMG in Vietnam



## 6.1 Bank accounts

### 6.1.1 Direct investment

Foreign invested enterprises and foreign parties to business co-operation contract must open a direct investment capital account (DICA) at an authorised credit institution to undertake the following transactions:

- Receipt of capital contributions, funds from assignment of capital contribution, and receipt of foreign loan;
- Disbursement outside Vietnam of principle, interest and fees on a foreign medium or long-term loan;
- Disbursement outside Vietnam of capital, profit and other legal revenue of a foreign investor; and
- Other revenue and disbursement transactions relating to foreign direct investment activities.

Of note, all transfer of capital for a direct investment project in Vietnam and to other countries must be conducted via such DICA opened at an authorised credit institution.

Foreign invested enterprises may open current accounts and transaction accounts in foreign currency and Vietnamese Dong at authorised banks in Vietnam for their daily business transactions.

In addition, foreign invested enterprises may be permitted to open offshore foreign currency bank accounts subject to approval by the State Bank of Vietnam (“SBV”).

### 6.1.2 Indirect investment

Non-resident foreign investor must open an Indirect Investment Capital

Account (IICA) in Vietnamese Dong at an authorised credit institution to conduct indirect investment in Vietnam. Investment capital in a foreign currency must be converted to Vietnamese Dong before the indirect investment is carried out.

An IICA will be used to implement carry out the following transactions:

- Receipt of funds from the assignment of capital contribution, from the sale of securities, dividends and other items of revenue arising from indirect investment activities;
- Disbursement of, for purchase of capital contribution of securities or payment of other expenses relating to indirect investment activities;
- Other revenue and disbursement transactions relating to indirect investment in Vietnam.

## 6.2 Foreign exchange control

The Vietnamese Dong is not freely convertible and the market is still heavily dependent on foreign currencies, especially the U.S. dollar.

The Government has implemented measures to gradually reduce its reliance on the dollar.

All monetary transactions in Vietnam must be made in Vietnamese Dong, except for a limited number of transactions allowed by law to be made in foreign currencies (i.e. salary payment to foreign employees). Foreign invested enterprises may, subject to certain conditions, buy foreign currency from banks to carry out a number of obligations in foreign currencies from their transactions.

Generally speaking, the flow of foreign currencies into Vietnam is less constrained by the SBV compared to the outflow, which has been restricted to certain transactions such as payment for imports of goods and services, repayment of loans contracted abroad and payment of interest accrued thereon.

Only banks, non-bank credit institutions and other authorised institutions are eligible to provide foreign exchange services.

### **6.3 Foreign currencies and exchange rate**

The VND is the country's official currency; foreign currencies may be chosen as a means of payment and remittance in the following circumstances.

- Payment and remittance of money relating to import and export of goods and services;
- Income generated from direct and indirect investments;
- Money transfers when the decrease of direct investment capital is permitted;
- Payments of interest on and installment repayments of principal of foreign loans;
- One-way payments for consumption purposes; and
- Other similar transactions.

Residents and non-residents who would like to transact in foreign currencies in Vietnam will be responsible for presenting supporting documents to the authorized credit institutions. Individuals are allowed to

buy foreign currencies from banks to settle current transactions and other permitted transactions only if relevant documents proving their demand for foreign currencies are fully submitted.

From early 2016 onwards, the SBV has announced a central exchange rate every day for the VND/USD, which would be used by financial institutions authorised to trade in foreign currencies with margin limit at +/-3%.

This regime has facilitated stronger performance in the foreign currency derivatives market, meeting the requirements for risk prevention in exchange rates and increase liquidity in the market.

### **6.4 Capital transactions of foreign investors in Vietnam**

Foreign invested enterprises are required to open DICAs in VND or foreign currencies, at banks permitted to operate in Vietnam or foreign banks with the approval of the SBV, which is a bank account used for all transactions in regard to capital transactions, foreign loans, profits and other legitimate types of income of foreign investment.

Foreign investors are now permitted to open non-resident payment accounts in a foreign currency at an authorised bank in Vietnam. Through this account, foreign investors will transfer money to Vietnam in order to conduct pre-investment activities before the issuance of an investment certificate.

Offshore borrowings may now be used to finance the investment project in Vietnam and only offshore medium or long term loans are required to be registered with the SBV.

All medium and long term foreign loan transactions that a foreign invested firm undertakes must be conducted via the DICAs.

### **6.5 Profit Remittance Regulations**

Lawful revenue in VND derived from foreign direct investment as well as foreign indirect investment will be permitted to be converted into foreign currency for the remittance abroad via authorised credit institutions. There is no tax imposed on profit remittance.

Under the current regulations, profit remittances can be made as follows:

- Annual remittance of all profits at the end of financial year provided that the foreign invested enterprises do not have any accumulated losses and are able to pay the due debts after profit remittance; and
- Profit remittance upon termination of business activities and investment projects in Vietnam.

A foreign investor is required to submit a notification of profit remittance abroad to tax authority at least 7 working days prior to the date of profit remittance. Accordingly, the foreign investor may go to its banks in Vietnam and buy foreign currency to repatriate the profits. Please note that although it has a right to buy foreign currency, the bank does not have an obligation to sell. The availability of foreign currency would depend on the market liquidity from time to time. Having a good relationship with a bank is therefore important and this is an issue that should be negotiated when selecting which bank to use in Vietnam.

# Accounting and reporting

“

Enterprises need to establish an effective internal control system to ensure its assets are safeguarded and protected.

”

## Chong Kwang Puay

Managing Partner

KPMG in Vietnam



### 7.1 Accounting requirements

#### 7.1.1 Vietnamese accounting standards & system and the Law on Accounting 2015 (“the Law”)

Enterprises with foreign-owned capital, foreign parties to business co-operation contracts and foreign contractors that have a resident base in Vietnam (collectively “FIE”) are required to adopt Vietnamese Accounting Standards, the Vietnamese Accounting System for enterprises and their interpretive guidance (“VAS”).

The Vietnamese Accounting System for enterprises is issued by the Ministry of Finance (“MOF”) in the form of a bookkeeping manual that provides a standard chart of accounts, financial statements template, accounting books and voucher templates as well as detailed guidance on accounting double entries for each specific account. The requirements of VAS and the Law include:

- If a foreign language is used on an accounting voucher, both the Vietnamese language and foreign language should be used simultaneously in the preparation of accounting records and financial statements. And minimum content of accounting voucher should be translated into Vietnamese, but not mandatory to translate all supporting documents except for specific request from a competent authority;
- VND is the default currency unit in accounting. An FIE is permitted to use a “foreign currency” as the currency unit in their accounting records if certain criteria are met. However, in such cases the financial statements submitted to local authorities must be converted into VND and must be audited.
- Electronic vouchers and accounting books are not required to be printed out for retention.

However, enterprises must ensure information security and ensure data is accessible during the retention period; The enterprises shall print the electronic accounting documents and have them signed and stamped by the legal representative or chief accountant (or acting chief accountant) whenever a competent authority requests them for inspection or audit purposes.

- Accounting documents and accounting books of an FIE must be stored at the enterprise’s premises in Vietnam or in an external archive facility in Vietnam over its operating period specified in its certificate of investment, certificate of enterprise registration, etc. When the enterprise ceases its operation in Vietnam, its legal representative will decide the place where the accounting documents are stored, unless otherwise prescribed by law.
- Companies, and branches of foreign companies that are required to submit financial statements to parent companies or use the same management software with the parent companies, are allowed to use the comma (,) as the digit grouping symbol and the dot mark (.) as the decimal symbol. However, for those financial statements to be submitted to the tax authority, statistical authority and government agency, the dot mark (.) must be used as the digit grouping symbol and the comma (,) must be used as the decimal symbol.
- The prescribed VAS chart of accounts and forms of financial statements must be complied with.

There are some industry-specific VAS besides the general one for enterprises such as those for credit institutions, insurance companies, securities

companies, fund managers and investment funds.

### **7.1.2 Fiscal year**

The fiscal year applicable to FIEs in Vietnam is normally 12 months, commencing on 1 January and ending on 31 December. FIEs with specific operation characteristics may adopt their own 12-month fiscal year, commencing from the first day of a solar calendar quarter and ending on the last day of the previous solar calendar quarter in the following year and have to inform the local tax authority of the adoption of such a fiscal year.

Where the first fiscal year is of shorter duration than 90 days, it will be permitted to add this period to the following fiscal year in order to make up one fiscal year.

### **7.1.3 Appointment of Chief Accountant or person in charge of accounting**

The enterprise is required to appoint a Chief Accountant who must satisfy the criteria and conditions stipulated by the Law on Accounting and guiding regulation (or if not ready, a person in charge of accounting, but only for a period not exceeding 12 months).

A very small enterprise may appoint a person in charge of accounting instead of a Chief Accountant.

Foreigners may be appointed to act as the Chief Accountant of the enterprise, provided that they have a certificate of accounting expertise or an accounting/auditing certificate issued by a foreign professional body recognised by the MOF; or an accounting/auditing professional practicing certificate issued by the MOF; or a Chief Accountant certificate obtained after having passed the chief accountant's training course as prescribed in regulations of the MOF; and they

must have at least 2 years' working experience in practicing accounting with at least 1 year experience in practicing accounting in Vietnam.

The Law prohibits any individual responsible for direction and management of the entity to assume the role as accountant, storekeeper, cashier or the responsibility for purchasing and sales.

### **7.1.4 Annual Financial Statements**

Within 90 days following the close of the fiscal year, enterprises operating in Vietnam are required to prepare and file Annual Financial Statements to relevant local authorities.

For those enterprises operating in export processing zones (EPZs) or industrial zones (IZs), Annual Financial Statements may be required to be filed with the management board of the respective EPZs or IZs.

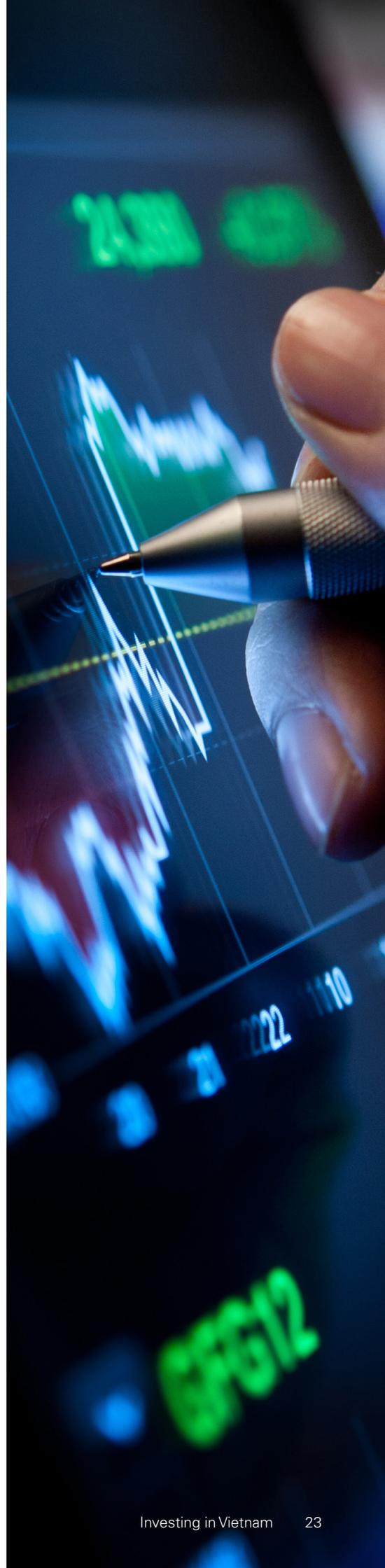
### **7.1.5 Retention of accounting records and supporting documents**

Types of accounting documents are accounting vouchers, sub-ledgers, general ledgers, financial statements. Accounting documents archived should be original except for copied accounting documents specified in the Law.

Retention duration depends on the type of documents with minimum periods of five and ten years. And certain types of documents must be retained perpetually.

### **7.1.6 Internal control system**

The enterprise must establish an internal control system to ensure its assets are safeguarded and protected from inappropriate and inefficient use; and transactions are approved by authorised persons and completely recorded to serve as the basis for preparation and presentation of the financial statements that give a true and fair view.



# Employment

## 8.1 Recruitment

Under the Labour Code, an FIE may either directly recruit Vietnamese employees or recruit via an authorised labour agency. The FIE is then required to register the list of recruited employees with the local labour department and submit reports on the utilisation of and changes to staff to the labour department on a periodic basis.

## 8.2 Labour contract

According to the Vietnamese Labour Code, labour contracts signed by and between employer and employee must be made in one of the following forms:

- Labour contract with an indefinite term;
- Labour contract with a definite term (of no less than 12 months and no more than 36 months); and
- Labour contract for seasonal jobs or specific jobs with a term of less than 12 months.

An employer will be entitled to sign a maximum two subsequent definite labour contract with an employee. After that, if that employee continues to work for the employer, an indefinite labour contract must be signed.

### 8.2.1 Notice for termination

Employers will be entitled to unilaterally terminate labour contracts in the following cases:

- The employee repeatedly failed to perform the work in accordance with the terms of the labour contract;
- The employee is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months for an indefinite term contracts, 6 consecutive months for definite term contracts

and more than half of contractual duration of seasonal term contracts;

- The employer has to narrow production and reduce the number of jobs due to natural disasters, fire or other force majeure reasons as prescribed by law; and
- The employee failed to attend the workplace within 15 days from expiry of temporary suspension of the labour contract

When unilaterally terminating the labour contracts, employers must inform the employees in advance:

- At least 45 days in the case of an indefinite term labour contract;
- At least 30 days in the case of a definite term contract; and
- At least 3 working days in case the employee is ill or injured and remains unable to work for a long time, or in the case of a seasonal or specific job labour contract with a duration of less than 12 months.

### 8.2.2 Working Hours

Normal working hours are eight hours per day (or 48 hours per week based on a six-day working week). Employers are entitled to schedule working hours on an hourly or daily or weekly basis. For heavy, noxious or dangerous jobs, working hours will be 6 hours per day.

Overtime hours will not exceed 50% of the normal working hours or 30 hours per month or 200 hours per year. In case a company wishes to extend the amount of overtime to more than 200 hours a year, it must seek the approval from the local Department of Labour, Invalids and Social Affairs (“DOLISA”). However, any approval is subject to a cap at 300 hours a year.

## 8.2.3 Wage Rates

The wage costs in Vietnam are generally low. However, the cost of Personal Income Tax (PIT) and other mandatory contributions such as Social Insurance, Health Insurance and Unemployment Insurance as mentioned below may significantly increase total labour costs.

In respect of expatriates, these costs depend on the residency status and the remuneration structure of the expatriates. There are other administrative costs associated with the employment of expatriate staff such as work permits, residency registration and insurance.

The minimum wage of Vietnamese employees working for FIEs or other foreign organisations will vary depending on different zone classifications set forth by the Government.

### 8.2.4 Annual Leave

In addition to having time off on public holidays with full pay, an employee working for a full 12 months under normal conditions is entitled to 12 days of annual leave with full pay, with one additional day for every five years of service. Employees working in certain areas, of a certain age or who have been with an enterprise for a certain time, may be eligible for longer periods.

### 8.2.5 Severance Allowance

From 1 January 2009, the Law on Social Insurance has introduced the unemployment insurance scheme to replace severance payments.

The company is required to make a severance payment to an employee at

the time of termination of employment if an employee has worked for the company for twelve (12) months or more and is not covered by the unemployment insurance scheme (including working periods before 31 December 2008).

Severance allowance paid by the employer will not be less than 50% of the average monthly salary during the 6 months prior to termination for each year of employment.

Odd lengths of employment will be calculated as follows:

- Period of under one month will not be counted;
- Period of over one month but less than six months will be counted as 6 months; and
- Period of from six full months but less than 12 months will be counted as a full year.

### 8.3 Other issues

#### 8.3.1 Trade Unions

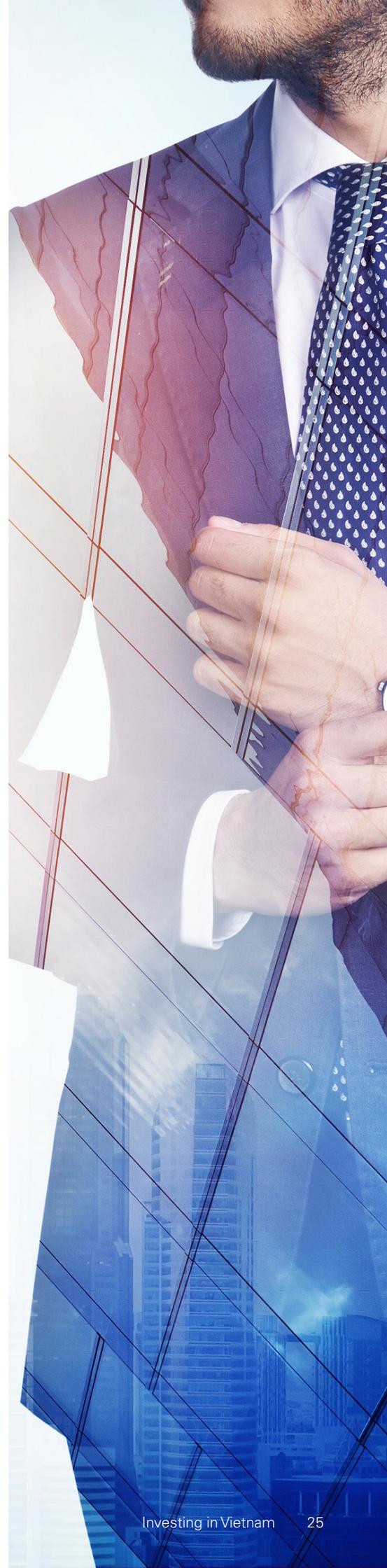
Within six months after an enterprise commences operation, trade unions could voluntarily be organised to represent and protect the legitimate rights and interests of individual labourers and labour collectives. All enterprises, regardless if they are domestic or foreign invested, have to submit a remittance of 2% of their salary fund which is used as the basis for social insurance payment for employees. This salary fund will be the total salaries of employees under objects payable social insurance in accordance with the law on social insurance. Enterprises can claim back 65% of the fund for its trade union membership activities only if trade unions are organised.

All acts of obstructing the setting up and operation of trade unions at enterprises are strictly forbidden.

#### 8.3.2 Statutory Insurance

Regulations state that both employers in Vietnam and Vietnamese employees with a labour contract of one month or more (effective 1st January 2018) are required to make statutory Social Insurance (“SI”), Health Insurance (“HI”) and Unemployment Insurance (“UI”) contributions.

- Expatriates contractually employed for 3 (three) months or more are required to make statutory HI contribution.
- Expatriates who have work permits or practising licences-issued by a Vietnamese State authority will be required to make SI contribution effective 1 January 2018.
- The basis for statutory SI and HI contributions is the contractual salary and is capped at 20 (twenty) times the national statutory minimum monthly salary which is adjusted from time to time (currently the cap being VND26,000,000 and to be increased to VND27,800,000 from 1 July 2018).
- The basis for calculating statutory UI contribution is contractual salary and is capped at 20 (twenty) times of the regional statutory minimum monthly salary which is adjusted from time to time (currently the cap being VND VND 79,600,000).
- Statutory SI, HI and UI contributions shall be deducted, withheld and paid to the local social insurance authority on a monthly basis by the employer.



The rates for statutory SI, HI and UI contributions are as below:

Contributed by	SI	HI	UI
Employee	8%	1.5%	1%
Employer	17.5%	3%	1%
<b>Total</b>	<b>25%</b>	<b>4.5%</b>	<b>2%</b>

### 8.3.3 Visa/Temporary Residence Card

To visit Vietnam, foreigners, except for those from exempted countries like ASEAN, require visas which must be obtained in advance from an overseas Vietnamese embassy or consulate. Visas are only issued at the border gate on entry to the country in exceptional circumstances, such as for funerals of relatives, for visits to seriously ill relatives, urgent technical support for specific programmes, projects or departure from a country that does not have a Vietnamese Consulate or any diplomatic representatives.

There are certain countries whose citizens are not required to obtain a Vietnamese entry visa for stays of specified periods in accordance with the bilateral treaties signed between Vietnam and such countries.

Foreigners who temporarily reside in Vietnam for employment with a valid work permit are able to apply for temporary residence cards (TRC) which will be issued by the Immigration Division of the Department of Public Security ("DOPS"). The duration of each temporary residence card will follow validity of the work permit (maximum 2 years). A foreigner who

has a temporary residence card will be exempted from applying for a visa when entering and leaving Vietnam during the period of validity of the temporary residence card.

### 8.3.4 Work Permits

Foreigners working for business entities and organisations in Vietnam must have a work permit either under the classification of "expert", "management/executive" or "technician", except for limited exempted cases specific cases stipulated by the law.

Enterprises which will recruit foreigners must explain their need to recruit an expatriate for each job position before applying for work permit for the foreigners at least 30 days before the foreigners commence work in Vietnam.

After obtaining the approval on the recruitment of foreigners, enterprises can apply for work permit for the foreigners at least 15 working days before the foreigners commence work in Vietnam. The application for work permit must include amongst other documents, qualifications, experience certificate, criminal record, health check. The work permit remains valid for up to 24 months and may be extended under specific circumstances as indicated by law. Also, in case an expatriate is exempt from having to apply for a work permit, the employer is still required to notify the local DOLISA for administrative management purposes.



# Meet our experts



Consumer & Retail

**Chong Kwang Puay**  
Managing Partner



Consumer & Retail

**Ditty, John**  
Managing Partner



Infrastructure & State-owned enterprises

**Do, Thi Thu Ha**  
Senior Partner



Real Estate

**Ninh, Van Hien**  
Partner



Private Business

**Lam, Thi Ngoc Hao**  
Partner



Financial Services

**Tran, Dinh Vinh**  
Partner



Manufacturing

**Casihan, Nelson**  
Partner



Energy & Natural resources

**Ta, Hong Thai**  
Partner



Automotive

**Hoang, Thuy Duong**  
Partner



Healthcare

**Treloar, Luke**  
Director

# Land

The Vietnamese Constitution stipulates that land in Vietnam belongs to the people with the State acting as the representative owner and exerting its control over the land in practice on the people's behalf.

Although private ownership of land is technically not permitted, legal ownership can in essence be derived through the right to use land (i.e. the land use right ("LUR")). The State may allocate or lease LURs to individuals, households and organizations to use land for a defined or undefined term.

Vietnam's legal framework for the management and administration of LURs is composed of: various key laws and in particular the Land Law which was amended in 2014 for some important reforms relevant to Foreign Invested Enterprises (FIE's); supplementing laws including the Civil Code which provide clarity on areas not specifically addressed in the key laws and including areas relating to foreign investment; and, auxiliary rules and regulation.

The ownership of LUR and other assets attached to land is evidenced by the Certificate of Land Use Right, Ownership of House and Other Assets Attached to Land (the "LURC"). This LURC sets out fundamental information on the land use, including the term and purpose of the land use, and the assets attached to the land (if any).

The State's power over land construction activities is exercised by the following government bodies: at the national level, by the Ministry of Natural Resources and Environment, an administrative body of the State for land management, and the Ministry of Construction, an administrative body of the State for construction activities; and, at local level by the People's Committees, supported by

their administrative bodies such as the Department of Natural Resources and Environment and the Department of Construction .

## 9.1 Foreign investor ownership of Land and Assets attached to land

In order to be a "land user" and be allocated, leased or recognized to hold LUR, the foreign investor must establish a "foreign invested enterprise" or "FIE" in Vietnam, which may be granted ownership and quasi-ownership interests in respect of land and assets attached to land. An FIE can be a wholly owned subsidiary, a joint venture company (JVC) or a majority stake acquired in a Vietnamese company. The choice of FIE will depend on the investment being considered.

An FIE may obtain LUR's as follows:— Allocation of land from the State for investment purposes

- Lease of land from the State
- Lease of land from specified lessors (including local or FIE developers licensed to engage in infrastructure development for sub-lease)
- Assignment of the LUR by way of capital contribution to a JVC by the local Vietnam partner
- Acquisition of the LUR as part of the purchase of an entire Real estate project or project encompassing an LUR .

### 9.1.1 Allocation from the State for investment purpose

Under current prevailing regulations the allocation of land by the State to an FIE is limited. An FIE can be allocated land for the construction of residential housing for sale or lease according with its granted investment registration certificate. In this case, the maximum term of the allocated land is 50 years, but limited by the duration of corresponding investment project. The FIE has the right to assign, lease,

donate and mortgage the allocated land as well as contribute its rights as capital into a JVC.

### 9.1.2 Lease from the State

Both Vietnamese local company's and FIE's can lease land from the State for agriculture, production and business purposes, which includes infrastructure construction, manufacturing facilities, hotels and resorts, mining and residential housing for lease. The land is leased for a definite period up to a maximum of 50 years (70 years for projects of national importance), but limited to the duration of the relevant investment project. The lessees can seek extensions on the term of the lease. However, the term of the extension will be capped at the original term.

The lessee is required to pay rental fee for the leased land. The rental fee will be structured either as an annual payment or a lump sum payment determined from the lease commencement date.

A lump sum payment gives much more flexibility to the lessee of the LUR. The lessee who has paid the rental fee as a lump sum payment has the right to assign, lease, donate and mortgage the LUR as well as contribute the LUR as capital into a JVC. By contrast, a lessee who makes an annual payment for the rental fee does not have the same rights other than to potentially assign, lease, mortgage and contribute assets attached to the land, not the LUR itself.

### 9.1.3 Lease from the specified lessors

An FIE is also able to sub-lease from licensed local or FIE developers of specific zones for development, i.e. industrial, export-processing or high-tech zones. As above, the sub-lessees can pay the land rental fee in either

annual payment or one-off lump sum payment to the developers that pay land rental fee on a lump sum basis.

For the developers making land rental payment annually, the same payment method, i.e. annually, is required to apply to the sub-lessees. The sub-lessees may be also subject to other fees including management or infrastructure fees in accordance with their lease contract. They are entitled to be issued with an LURC.

#### **9.1.4. Assignment by way of capital contribution**

Vietnamese laws allow a Vietnamese entity, which is established and incorporated under Vietnam Law on Enterprise, to make a capital contribution in the form of the value of the LUR in the following circumstances:

- It has obtained the land under the allocation regime and the land use fee is fully paid; or
- It has obtained the land under the lease regime including the LUR transfer from another organisation and fully paid the land rental for the entire lease term.

Once contributed, the JVC has the same rights as the land users who were allocated or leased directly from that State with full payment of land use fee or rental fee. The JVC may assign, lease, donate, mortgage or contribute as capital the LUR to a JVC.

#### **9.1.5. As part of the purchase of a Real estate project or an investment project with an LUR encompassed as part of the project**

An FIE who receives an LUR by way of acquisition of a Real Estate project or an investment project with an LUR encompassed within the project will

reserve the same rights as those held by the person/ organisation initiating the transfer. Of note, the land use form of the LUR must be “land leased by the State with collection of one-off rent payment for the entire lease term”.

#### **9.2. Purchase of residential property by foreigners**

Since the effective date of Law on Housing 2014, 1 July 2015, the new regulations have eased the restrictions on the purchase of residential houses by the foreigners.

A foreign individual may now purchase and own a house in Vietnam, provided that he is allowed entry into Vietnam.

Foreigners should be aware the regulatory limit on housing purchase as follows:

- a. 30% of the total units within one condominium complex;
- b. 10% of the total separate landed homes within one residential compound; or
- c. 250 homes within an administrative unit equivalent to a ward.

Generally, the foreign owners have the same rights as the owners who directly allocated land from the State, including the rights to sell, mortgage, lease, donate, or contribute as capital. Foreign individuals are limited to own their house for a maximum duration of 50 years unless they are married to a Vietnamese citizen.

Three months prior to the expiry of ownership duration, foreign homeowners can apply for tenure renewal which must not exceed fifty (50) years. They can also sell or bequest their property. If the foreign homeowner fails to do so before the expiry date, his property will be converted into State property.



# Intellectual property

“

To become integrated into the world economy, Vietnam has taken many steps to modernize legal systems with the help of international donors.

”

## **Richard Arthur Mark Stapley-Oh**

**Partner, Head of Legal Services**

KPMG in Vietnam



### **10.1 Protection of intellectual property**

#### **10.1.1 Types of intellectual Property Right to be protected in Vietnam**

Under the Law on Intellectual Property, “Intellectual Property Rights” (“IPRs”) means the rights of an organisation or individual (either a Vietnamese or foreign organisation/ individual who satisfies the conditions stipulated by the laws) to possess intellectual assets comprising copyright and copyright related rights, industrial property rights and rights to plant varieties. Intellectual property that is protected under the prevailing Vietnamese laws include:

- Copyright in literary, artistic and scientific works, and derivative works; copyright-related rights in performances, audio and visual recordings, broadcasting programs, satellite signals carrying encrypted programs.
- Industrial property including inventions, industrial designs, layout-designs of semi-conductor integrated circuits, business secrets, trademarks, trade names and geographical indications.
- Rights to plant varieties including reproductive and harvested materials.

The protection of IPRs is further reinforced under the TPP Agreement including the following obligations:

- In addition to civil and administrative remedies, the TPP insists the application of criminal procedures and penalties to protect IPRs. Accordingly, each member country shall ensure that criminal liability for aiding and abetting is available under its law.

- Geographical indications may be protected through a trademark or Sui generis system or other legal means.
- Member nations must establish policies on monitoring Internet service providers to prevent IPRs infringement transmitted through network
- Reduction/simplification of administrative procedures and conditions for registration of IPRs.

#### **10.1.2 Term of protection on a number of typical IPRs**

##### **(i) Patent**

Patent means a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws. The patent will be protected for 20 years commencing from the date of submitting application but such protection period will not be extended.

##### **(ii) Copyright**

Copyright means rights to the works created or owned by an organisation or an individual. “Works” means a creation of the mind in the literary, artistic or scientific sector, expressed in any mode or form.

Copyright will comprise moral rights and economic rights. The copyright will enjoy the following terms of protection:

Copyrights to cinematographic works, photographic works, applied art works and anonymous works will have a term of protection of 75 years from the date it was first published. If a cinematographic work, photographic work or applied art work has not been published within 25 years from the date of its formulation, the term of protection will be 100 years calculated from the date of its formulation.

Copyright to any works not subject to the above mentioned list will be protected during its author's life plus 50 years after their death. In case the works have been created by joint authors, the term of protection will expire in the 50 years after the death of the last surviving co-author.

Works whose term of protection has expired shall belong to the public. All organisations and individuals shall have the right to use such works with respect to moral rights of the author.

### **(iii) Trade name**

Trade name means the designation of an organisation or individual used in business activities in order to distinguish the business entity bearing the trade name from other business entities in the same business sector and geographical area. Industrial property right to trade name is established on the practice usage responding to the business territory and area without registration procedures. The trade name protection is for the duration of use of said trade name.

### **(iv) Mark**

Mark means any sign used to distinguish goods or services of different organisations or individuals. A certificate of registered mark will be valid from the grant date until 10 years after the filing date and may be renewed for an unlimited number of consecutive terms, each of 10 years. For well-known marks, the industrial property right is established based on the actual widespread use of such a mark without having gone through.

### **(v) Industrial design**

Industrial design means the outward

appearance of a product embodied in three dimensional configurations, lines, colours or a combination of such elements. An industrial design patent will be valid for 5 years from the date of filling the application dossier for registration of such a design and may be renewed for two consecutive terms, each of 5 years. Under the prevailing laws, each type of intellectual property protected under the laws of Vietnam, must satisfy the appropriate conditions provided by the laws.

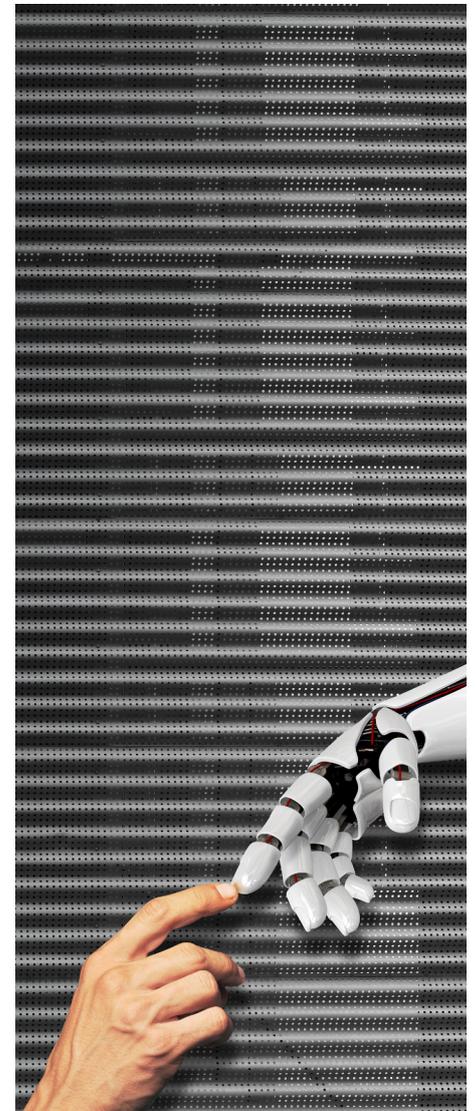
## **10.2 Registration of IPRs in Vietnam**

To be protected against IPRs infringement, it is mandatory for the IPR holders to register their IPRs, except for copyright, with the competent authorities.

Copyright will be protected under the principle of automatic protection. This means that copyright will arise the moment a piece of work is created and presented in a particular material form regardless of its content, quality or format, and whether or not it has been published or registered. However, to protect a piece of work effectively, it is highly recommended that authors or copyright owners register the works at the relevant Department of Copyright under the Ministry of Culture Sports and Tourism, or Department of Culture, Sports and Tourism.

For other IPRs, the holders are only protected on their IPRs by law upon having been granted the protection certificate for the same, as a result of regulatory formal and substantial examination on their proper filing to respective licensing authorities. In Vietnam, the Ministry of Science and Technology, via the National Office of Intellectual Property, will be

responsible before the Government to carry out State administration of Industrial Property, the Ministry of Culture and Sports and Tourism will - within the scope of its duties and powers - carry out State administration of copyright and related rights and the Ministry of Agriculture and Rural Development will be responsible for plant varieties.





# Contact us



## **Warrick Cleine**

**Chairman & CEO**

KPMG in Vietnam and Cambodia



## **Do Thi Thu Ha**

**Senior Partner**

Head of Ha Noi



## **Dr. Nguyen Cong Ai**

**Senior Partner**

Head of Ho Chi Minh



## **Hoang Thuy Duong**

**Partner**

Head of Da Nang

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2018 KPMG Limited, KPMG Legal Limited, KPMGTax and Advisory Limited, all Vietnamese limited liability companies and member firms of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.



## **Hanoi**

46<sup>th</sup> Floor, Keangnam Landmark 72  
E6 Pham Hung Road, MeTri Ward  
South Tu Liem District, Hanoi, Vietnam

T: +84 (24) 3946 1600

F: +84 (24) 3946 1601

E: [kpmghanoi@kpmg.com.vn](mailto:kpmghanoi@kpmg.com.vn)

## **Ho Chi Minh City**

10<sup>th</sup> Floor, Sun Wah Tower  
115 Nguyen Hue Street, Ben Nghe Ward  
District 1, Ho Chi Minh City, Vietnam

T: +84 (28) 3821 9266

F: +84 (28) 3821 9267

E: [kpmghcmc@kpmg.com.vn](mailto:kpmghcmc@kpmg.com.vn)

## **Da Nang**

Unit D3, 5<sup>th</sup> Floor, Indochina Riverside Tower  
74 Bach Dang Street, Hai Chau 1 Ward  
Hai Chau District, Da Nang, Vietnam

T: +84 (236) 351 9051

E: [kpmgdanang@kpmg.com.vn](mailto:kpmgdanang@kpmg.com.vn)