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Vietnam: Law & Practice and Trends & Developments

Thang Nguyen, Stanley Boots, Minh Nguyen and Nguyet Le
ACSV Legal



VIETNAM



Law and Practice

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ACSV Legal is a vibrant and dynamic Vietnam-based law firm located in HCMC with unparalleled domestic expertise. It has one of the premier corporate/M&A practices in Vietnam and has extensive experience in private equity transactions with a strong commercial focus. Its lawyers have advised various clients on (re-)structuring their businesses in light of investments in or outside Vietnam. The firm's clients are typically businesses within South-East Asia that are experiencing significant growth, as well as leading international and local corporations that need advice on a broad array of multi-juris-

ditional transactions. **ACSV Legal** has advised its clients on matters in a wide range of sectors and industries such as healthcare, beauty and fitness, pharmaceutical, food and beverages, IT and technology, hospitality and leisure, education, retail, manufacturing and distribution, apparel and fashion, fintech and payment services. It has a team of more than 30 experienced lawyers who are qualified in Vietnam and the UK in civil and common law jurisdictions. The languages spoken at **ACSV Legal** include Vietnamese, English, German, Italian, Dutch and French.

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1. Legal System

1.1 Legal System and Judicial Order

The legal system in Vietnam follows the civil law tradition and is noticeably influenced by continental European codifications of civil law (particularly the French Civil Code). The Vietnamese legal system consists of a constitution, codes, laws, ordinances, decrees, decisions, circulars, directives and resolutions. Legal texts are published in the Official Gazette. Decrees and circulars contain guidelines on how to implement laws, codes and ordinances. Local governmental agencies may also issue official letters further guiding the implementation of any of these pieces of legislation.

The people's courts are the judicial bodies of Vietnam and exercise judicial power. The people's procuracies exercise the power to prosecute and supervise judicial activities. Vietnam's court system is separated into local, regional and national levels. Usually, a civil case brought before a competent Vietnamese court will undergo a maximum of two instances: the first instance and the appellate instance. The constitution of Vietnam governs the Vietnamese judicial system, together with the Law on the Organisation of People's Courts and the Law on the Organisation of People's Procuracies.

The Supreme People's Court is the highest court. Below that, there are three levels of people's courts: the High People's Courts, the Provincial-Level People's Courts and the District-Level People's Courts. The High Courts in Hanoi, Da Nang and Ho Chi Minh City are appellate and cassation courts and are responsible for the northern, central and southern regions of the country, respectively. The Provincial Courts are both trial and appellate courts, and the district courts are trial courts.

Business, commerce or labour-related cases where one party or the related asset is located offshore, or which require judicial assistance by an overseas representative agency of Vietnam, foreign court or other foreign competent authority, are generally subject to the jurisdiction of the Provincial Court.

2. Restrictions on Foreign Investments

2.1 Approval of Foreign Investments

Foreign investment into Vietnam requires approval and licensing by the local authorities, with the scope and shape largely dependent on the nature of the envisaged business. The 2020 Law on Investment, which entered into force on 1 January 2021 and was amended in 2022, retains a clear distinction between foreign and Vietnamese investors. A variety of different procedures apply to foreign investors, defined by the volume and type of their desired Vietnamese engagement. Foreign investors are required to register their investment or obtain certain documents before they can start with their investment projects.

According to the law, when assessing the investment conditions and procedures, a foreign investor is, or is considered as such:

- an individual with a foreign nationality;
- an organisation incorporated in a foreign jurisdiction; or
- a Vietnamese-incorporated enterprise in the following cases:
 - (a) more than 50% of its charter capital is held by a foreign investor(s), or a partnership has a majority of partners who are foreign individuals in the case of a partnership enterprise;

- (b) more than 50% of its charter capital is held by an enterprise(s) prescribed in (a) above;
- (c) more than 50% of its charter capital is held by a foreign investor(s) and an economic organisation(s) prescribed in (a) above.

From the perspective of a foreign investor, Vietnamese investment law makes a general distinction between “conditional/restricted” and “unconditional/unrestricted” business lines. The conditional/restricted lines, to which certain additional requirements may apply, are foreign activities in Vietnam in industries that are considered “sensitive” or “crucial to the national interests of Vietnam”. Some restricted business lines may not be performed under foreign ownership at all.

Under the 2020 Law on Investment, there are currently 229 conditional business lines which include, among others:

- accounting services;
- insurance services;
- securities trading;
- betting and casinos;
- oil and gas;
- healthcare-related businesses;
- businesses related to transport;
- real estate businesses;
- educational businesses;
- banking and finance related businesses;
- agriculture-related businesses.

A foreign investor in the market to purchase an existing (Vietnamese) entity – depending on the nature and scope of that entity’s business – may need to obtain prior approval from the Department of Planning and Investment (DPI) (“M&A

Approval”) before capital can be contributed to or acquired in an existing enterprise.

2.2 Procedure and Sanctions in the Event of Non-compliance

A foreign investor generally needs to undergo a two-step procedure to obtain a licence to operate in Vietnam. In the first step, the investor applies for an Investment Registration Certificate (IRC). In the second step, through the issuance of an Enterprise Registration Certificate (ERC), a new (foreign-owned) company is born.

For local investment by means of M&A, there is a special rule set, which requires the investor to announce the acquisition to the competent authorities and obtain their approval.

Due to the close monitoring of the local business landscape through the competent authorities (DPI) and the tight grip of the State Bank of Vietnam on compliance with strict foreign exchange regulations, investing in Vietnam without authoritative approval is hard to imagine in practice.

Should a foreign investor find a way to pour his/her money into a local business illegally, possible consequences may include mandatory termination of part of or the entire operations of the investment project.

2.3 Commitments Required From Foreign Investors

Commitments from investors (in addition to the investment capital they promise to deploy during their engagement in Vietnam) are not generally regulated. In practice, there are situations where the Vietnamese licensing authority will, at its discretion, make its agreement dependent on certain commitments from the investor (eg, contribution to infrastructure developments in the location of the business, etc). There are,

however, no generally imposed commitments for foreign investors, outside of the general obligation to comply with all the laws of Vietnam while doing business there.

2.4 Right to Appeal

There may be possibilities for a foreign investor to challenge the negative decision of an investment-related authority (mostly DPI) in court under the 2015 Law on Administrative Procedures. However, such a challenge is not likely to have a positive result, since this will only occur when the investor is able to prove that the decision affects its legitimate rights and benefits. This is likely to be difficult as, due to the absence of relevant laws and regulations, any dispute over the requirements of an investment endeavour or the legality of an intended corporate structure and business model will generally be solely governed by the discretion of the competent authority. Vietnamese investment law, therefore, grants the authorities a high level of decision power, which can pose an obstacle to the feasibility or efficacy of some investment types. In these situations, in which the DPI or another authority communicates that it deems an investment to be problematic, investors will often be given the chance to – through their local counsels and advisers – restate their intentions and amend their business plans according to the competent authority's opinions.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entity

A foreign investor will usually choose one of two main types of legal entities to carry out a project. Currently, typical options for a foreign-owned legal entity include:

- a limited liability company (LLC) in the form of either a single-member LLC or a multiple-member LLC; and
- a shareholding or joint stock company (JSC).

There are two other types of common commercial presences that could be established to represent foreign investors in Vietnam:

- a representative office; and
- a branch.

The activities these presences can perform depend on the treaties that exist between Vietnam and the country in which the head office is based. For business activities that are outside the scope of a treaty or where no treaty exists, an authorisation from the competent Vietnamese authorities is needed. Considering that these are not independent legal entities, the parent company is liable for various aspects such as debts and obligations. Legal claims can be brought against the parent company.

Representative Office

If a foreign investor desires to have a presence in Vietnam but does not wish, or is not ready yet, to invest in Vietnam, it may set up a representative office if certain conditions are met. In general, setting up a representative office is quicker and less complicated than acquiring licences and approval for the setting up of a commercial company. One of the conditions is that the business of the foreign investor must have been in operation for at least one year before the foreign investor can submit an application.

Vietnamese law prohibits a representative office from performing activities that generate profit. It cannot conclude agreements for selling or providing products, but it can, for example, conduct business enhancement or marketing activities

such as displaying goods or services at its office. A representative office can also play an important role in facilitating operations and business objectives on behalf of the offshore company by liaising with the authorities.

The head of the representative office can sign economic or commercial contracts with businesses in Vietnam on behalf of the offshore company on the condition that there is a specific power of attorney from the offshore company for each contract. A representative office can employ foreign and Vietnamese staff to work at the representative office in accordance with the law of Vietnam.

Branch

Foreign investors in certain business sectors, such as banking, IT, construction, franchising, non-life insurance and some securities services, could set up a branch as an alternative to establishing a new company. However, certain requirements need to be met. A foreign investor must have operated its offshore business for at least five years before the foreign investor can establish a branch in Vietnam.

Branches are permitted to conduct a wide range of commercial activities including the purchase and sale of goods, unless this is specifically prohibited in the licence granted to the branch or under the local laws.

Definitions of Independent Legal Entities

- A single-member LLC is an enterprise under the ownership of an organisation or individual;
- A multiple-member LLC is an enterprise under the ownership of two to 50 organisations or individuals; and
- A JSC is an enterprise with at least three shareholders. There is no restriction on the

maximum number of shareholders. Shareholders may be organisations or individuals.

Liability

- The single-member LLC's owner is liable for debts and other liabilities up to the single-member LLC's charter capital;
- The members of a multiple-member LLC are liable for debts and other liabilities to the extent of their contributed capital; and
- The shareholders of a JSC are liable for the debts and other liabilities of the JSC to the extent of their own contributed capital.

Minimum Investment Capital

General

There is no defined minimum investment capital in unconditional businesses. However, a certain amount of capital contribution might be required in particular fields, where investment requires a high cash flow or poses large financial liabilities and risks upon the investment vehicle:

- The charter capital of a single-member LLC and a multiple-member LLC shall be the total value of capital contributed by the member(s) to the company.
- The charter capital of a JSC consists of the total aggregated par value of shares of all classes sold by the company.
- At the time of the registration of establishment, the charter capital is the total value of assets or capital that the owner or members undertake to contribute to an LLC, or the total aggregate par value of shares of all classes which have been registered for subscription by shareholders of a JSC, and stated in the charter of such company.

Capital contribution can be in the local currency (VND, Vietnamese dong), freely convertible foreign currency, gold, land use rights, intellectual

property rights, technology, technical know-how, or other assets which can be valued in VND.

Capital contribution time limit

- The owner of a single-member LLC and the members of a multiple-member LLC must contribute assets or capital as registered with the relevant authorities within 90 days from the date of issuance of the ERC.
- The shareholders of a JSC must pay, in full, the number of shares registered for subscription within 90 days from the issuance date of the ERC unless the company's charter or share subscription agreement stipulates a shorter time limit.

In case the capital is not contributed within the required or agreed period, the following procedure will apply:

- The owner of a single-member LLC must register an adjustment of the charter capital equal to the actual value of the contributed capital within 30 days from the last day on which the charter capital should have been fully contributed. The owner is responsible to the extent of the capital he/she has undertaken to contribute for the financial obligations of the company arising before the adjustment of the charter capital is registered.
- A member of a multiple-member LLC who fails to contribute all the capital as undertaken automatically ceases to be a member of the company; a member of a multiple-member LLC who fails to pay part of the capital as undertaken shall have the rights corresponding to the capital already paid. The capital of a multiple-member LLC that has not been contributed will be offered for sale pursuant to the decision of the members' council. The multiple-member LLC must register adjustment of the charter capital in aforesaid cases

within 30 days from the last day on which the charter capital should have been fully contributed.

- A shareholder of a JSC who fails to contribute capital for all the number of shares registered automatically ceases to be a shareholder of the company, and the shareholder of a JSC who fails to pay for part of the number of shares registered for subscription will have rights in proportion to the number of shares paid.
- In case shares have not been fully paid, the shareholder of a JSC who did not pay in full has the shareholder's rights and duties equivalent to the paid shares, and cannot assign the right to purchase the number of unpaid shares to someone else; the shares of the JSC that have not been paid for are deemed unsold shares, and the Board of Management has the right to sell such shares. The JSC must register adjustment of the charter capital and founding shareholders in aforesaid cases within 30 days from the last day on which the shares should have been fully paid.

3.2 Incorporation Process

A foreign investor must generally apply for an investment registration certificate (IRC), which is issued by the competent DPI, before an economic organisation can be incorporated. The economic organisation must be incorporated in accordance with the laws on enterprises or other local laws corresponding with its form.

ERC

All private business enterprises in Vietnam must have an ERC, and some also require an IRC. For instance, domestic investors or enterprises where foreign investors hold 50% or less of equity only need an ERC for a newly established enterprise. The ERC is issued by the DPI. It con-

tains information about the company registration, such as the name of the enterprise; enterprise code number, which serves as its identification number for its entire corporate life cycle; address of the head office of the enterprise; information of the owner or members in the case of an LLC; full name, permanent residential and contacting address, nationality and identity card or passport number of legal representatives; and charter capital.

IRC

Foreign investors and companies in which foreign investors hold more than 50% of equity may, in addition to the ERC, be required to obtain an IRC for a newly established enterprise. Foreign investment in an existing enterprise through an M&A transaction does not require an IRC. Instead, application for an M&A Approval may be required in certain cases.

The IRC is also issued by the DPI, except for certain projects within the industrial/economic/export processing/high-tech zones, which are issued by the management board of those zones. The IRC is required in case a foreign investor, or enterprise treated as a foreign investor, carries out an investment project by establishing a company in Vietnam. When investors apply for an ERC, the IRC must be included in the file. It contains information registered by the investors about an investment project, such as information of the investors, economic organisation implementing the investment project, investment capital, location for implementation of the investment project, and scale and objective of the project.

Timeline and Required Documentation

ERC

In general, it takes about three business days to obtain an ERC.

IRC

The preparation of the application dossier for an IRC, including the translation and execution of all documents, might take from two to four months.

Investors will need a variety of documents translated, legalised and notarised to be included in the application file. Documents such as a copy of the foreign investor's passport, corporate documents and financial documents may also need to be legalised. It is important to note that the Vietnamese licensing authorities only accept foreign documents complying with Vietnam's constitution and laws on territory and national sovereignty over seas and islands. Accordingly, foreign passports with a "U-line" thereon (eg, Chinese passports) will not be accepted in Vietnam.

Once the file has been submitted, the IRC should, in principle, be issued within 15 days of the submission of the complete file in simple cases (eg, those not subject to any investment policy decision).

In practice, it might take longer to obtain an IRC and ERC.

Post-Establishment Formalities

Once the ERC has been obtained, several administrative formalities need to be fulfilled within the respective time limits, such as payment of licence tax and publication on the national enterprise registration information portal.

A company will also need to open bank accounts and make company seals to be able to initiate its operation. A foreign-invested company incorporated by foreign investors via issuance of IRC or having more than 50% charter capital owned by foreign investors is required to open a direct investment capital account.

3.3 Ongoing Reporting and Disclosure Obligations

Changes of Business Registration Contents

Any changes to the information specified on the ERC (eg, owner or members of LLC) or the business registration contents (eg, foreign shareholders of JSC) must be registered or notified by the company to the DPI within ten days from the day on which the change occurs.

Changes of Investment Projects

Investors must conduct procedures to amend the IRC if any amendment of the investment project changes the contents of the IRC.

Periodical Investment-Related Report Obligations

Investors and economic organisations implementing investment projects (companies incorporated via IRC) are subject to the investment-related report obligations under the laws of Vietnam (eg, periodical investment supervision and assessment reports, online investment project implementation reports).

Tax Declarations

A company has to submit monthly or quarterly reports to the regional tax office for value-added tax (VAT) return, corporate income tax (CIT) return, personal income tax (PIT) returns and a report of using the VAT invoices. Reports for VAT and CIT may also need to be submitted on a receipt basis in certain circumstances, such as when transferring real estate. A company has to pay VAT, CIT and PIT by the deadline when the reports have to be submitted. If the reporting or payment is not done before the deadline, a fine can be imposed.

Auditing

Foreign-owned entities, credit institutions, insurance enterprises, public companies and institu-

tional securities traders must be audited at least once a year, and the audit must be completed within 90 days from the end of the calendar year. All auditing activities will follow the Vietnam Accounting Standards, which differ from the International Financial Reporting Standards (IFRS). These Vietnam standards are issued by the Ministry of Finance based on the international standards on auditing.

Vietnam is expected to adopt the IFRS shortly, which will likely impact the current way of doing business in Vietnam.

3.4 Management Structures

The two most common legal entities in Vietnam are the LLC and the JSC. They are distinguished by a defined management structure under the Vietnamese Law on Enterprises, which prescribes the following bodies of corporate governance:

LLC

- With respect to a single-member LLC, the management structure must include a president or a members' council and a director or general director if owned by an organisation, or a president and a director or general director if owned by an individual. As for those owned by a state-owned entity (SOE), the structure must also include an inspection committee.
- With respect to a multiple-member LLC, the management structure must include a members' council, a chairperson of the members' council and a director or general director. As for SOEs or their subsidiaries, the structure must also include an inspection committee.

JSC

- With respect to a JSC, except for public ones, which may need to be managed under

another structure if stipulated in the Law on Securities, the management structure must include a General Meeting of Shareholders, a Board of Management (BOM), and a director or general director.

- If a JSC has at least 11 shareholders or the corporate shareholder(s) hold at least 50% of total shares, the structure must also include an inspection committee. Otherwise, at least 20% of the BOM's members must be independent and there must be an audit committee under the BOM.

The director or general director is the person who manages the day-to-day business operations of the company. Vietnamese laws do not set out a terminological difference between a director and general director. In practice, an enterprise can opt to appoint this person as either director or general director based on its business models and management requirements. He/she usually is also the (only) person endowed with legal representation rights for the company, which makes him/her the entity's most important executive organ in practice.

Within the permissible realm of Vietnamese laws, investors can structure their investment vehicle according to their needs and preferences. Their choices will be recorded in the company charter, which will also specify the timing and procedure of (obligatory, annual) board meetings and other organisational standards.

3.5 Directors', Officers' and Shareholders' Liability Overview

As of 1 January 2018, a new Criminal Code came into force, bringing Vietnamese laws more in line with international standards. A broad range of Criminal Code violations can lead to criminal liability for a business. Certain violations, par-

ticularly ones committed by individual employees, may not lead to criminal liability; however, they may still damage the business's reputation. It is important to note that violations in relation to tax, competition, environment, business and trading that are not crimes can still be administratively sanctioned both for an individual and for a corporate entity. The main difference between the two systems is that the statute of limitations under the administrative procedure is much shorter, and the punishments are lower.

The Criminal Code applies to both foreign and Vietnamese commercial juridical persons. However, for a subsidiary, the parent company will not be responsible as it is an independent entity, but for a representative office or branch, the parent company could be responsible as they are not independent legal entities. Under the Criminal Code, there is no provision on criminal offences committed in a corporate group (parent and subsidiary). So, it is not yet clear under what conditions the foreign parent company could be held criminally responsible for offences committed by directors, managers or representatives of local Vietnamese entities.

If a convicted commercial juridical person is divided, separated, consolidated or merged, the succeeding corporate legal entity inherits rights and duties from the convicted corporate legal entity and will be responsible for any pecuniary penalties and damages.

The fact that a corporate legal entity is criminally liable does not exempt an individual from criminal liability.

Liability of Legal Representatives

Legal representatives shall represent the enterprise to exercise the rights and perform the obligations arising out of transactions of the

company, and represent the enterprise to act as the person lodging a petition for resolution of a civil matter, as a plaintiff, defendant or person with related interests and obligations in arbitration proceedings or courts and to exercise other rights and perform other obligations in accordance with law.

In case a company is subject to the execution of judgments, decisions or compulsory enforcement of an administrative decision regarding tax management, the legal representative of such company may be subject to postponement of exit from Vietnam's territory in accordance with the law on entry and exit.

Besides this, a legal representative may be charged with certain violations of the 2019 Labour Code regarding the dismissal or laying off of staff, forcing someone to resign, anti-competitive behaviour, or evasion of social, unemployment or health insurance payments. Further to this, it is important to realise that in Vietnamese law there is no relevant provision dealing with the liability of directors or managers for not having adopted (intentionally or negligently) measures to prevent a crime. However, according to the Criminal Code, any person (with some exceptions) who conceals a crime or who knows that a crime is being prepared, is being carried out or has been carried out but fails to report it could be criminally liable.

Liability of Shareholders

Shareholders' liability is generally limited to the extent of their capital contributions to a company. This means that shareholders are not personally liable for the debts or obligations of the company beyond the amount they have invested or agreed to contribute. However, there are specific circumstances wherein shareholders may assume liability surpassing their capital contri-

butions. In cases where shareholders have used the corporate structure to engage in fraudulent activities, abuse their powers or evade legal obligations, the courts may "pierce the corporate veil" and hold shareholders personally liable. This allows the courts to look beyond the company's legal entity and hold shareholders accountable for their actions.

It is essential to recognise that shareholders can also incur liability for specific statutory violations or breaches of regulatory requirements. For instance, shareholders who participate in unlawful activities or contravene laws pertaining to the company's operations may be subject to legal actions and potential liabilities. Furthermore, shareholders who provide personal guarantees or undertake obligations on behalf of the company may bear personal liability for fulfilling those obligations.

Consequences

Depending on the offence and the person or entity having committed the offence, the punishment can be a monetary fine, restraining measures, a forced suspension or termination of business operations, or a ban on conducting certain business activities and/or raising capital. In the case of aggravating circumstances such as recidivism, committed in a professional way or by a group, in the case of abuse of power and position, committed in the name of an agency or organisation, punishments can be higher.

Additional measures that can be applied include:

- compulsory dismantlement of works;
- compulsory removal from Vietnam's territory;
- destruction of goods; and
- bans and confiscatory measures.

4. Employment Law

4.1 Nature of Applicable Regulations Governing Law

The 2019 Labour Code, which came into effect on 1 January 2021, applies to all individuals – foreign and Vietnamese – working for Vietnam-based organisations or Vietnamese individuals, but also to Vietnamese nationals working overseas. Exceptions to this rule exist where an international treaty to which Vietnam is a party states otherwise.

The 2019 Labour Code sets out provisions to protect the rights of employees and employers. Its provisions define the nature of the employment relationship and list the permissible clauses of labour contracts.

Labour Contracts

A labour contract sets out an agreement between an employee and an employer on a paid job, that details the wage, the working conditions and the rights and obligations of each party. An agreement, though agreed by the parties to be named otherwise, still remains a labour contract as long as it has contents demonstrating a paid job with wage, administration, management and/or supervision by a party.

Minimum Wage

The wage rate of an employee working in the private sector must not be lower than the minimum wage rate stipulated by the government. There are various regional minimum wage rates which might have to be considered in the investment decision when scouting for ideal locations within Vietnam. The minimum wage rate of a region is linked to the respective cost of living there and the pricing structure of the commercial environment, both of which are under regular review by the government.

4.2 Characteristics of Employment Contracts

Under Vietnamese law, there are two types of labour contracts:

- definite-term labour contract (term of up to three years); and
- indefinite-term labour contract (no duration defined).

Labour contracts can only be concluded and terminated in written form, except that a labour contract with a term of less than one month may be concluded and terminated verbally in certain cases. Definite-term contracts (depending on the employed individual) may not be subject to additional limitations. Generally, Vietnamese law is in favour of indefinite-term labour contracts and does not allow employers to renew definite-term labour contracts more than one time with one individual.

4.3 Working Time

The regular working time is a maximum of eight hours a day and 48 hours a week. With respect to work requiring contact with dangerous and/or harmful factors, employers are responsible for applying the work time limits in accordance with national technical regulations and related laws.

Employers are entitled to require employees to work overtime under the following conditions:

- the employee agrees; and
- overtime hours will not exceed 50% of the normal working hours per day, with a maximum of 12 hours per day, 40 hours per month and 200 hours per year.

In some special sectors and industries, such as textiles and garments, leather, electronic products, aquaculture processing and telecommu-

nications, and in extraordinary cases such as a lack of necessary workforce for urgent work, overtime is higher and capped at 300 hours per year.

An employer is required to notify the relevant Department of Labour, Invalids and Social Affairs (DOLISA) in writing of the implementation of an overtime policy exceeding 200 hours per year.

4.4 Termination of Employment

Contracts

No At-Will Employment

Vietnam does not follow at-will employment practices. Accordingly, an employer cannot unilaterally terminate a labour contract with an employee early without cause and without following mandatory procedures. Subject to the cause of labour termination, the employer must follow a strict procedure as set out in the 2019 Labour Code to validate the unilateral labour termination.

Cases of unilateral labour termination by an employer

According to the 2019 Labour Code, the cases of termination of an employment contract by an employer are limited to the following:

- unilateral termination of an employee based on objective reasons, including but not limited to a situation of continuous sickness, injury or treatment lasting over six or 12 months or over a half of contract term (dependent on the type of employment contract) where the ability to work has not recovered, or force majeure events necessitating workforce reduction regardless of mitigation efforts, or due to employee fault;
- retrenchment where the employer can lay off multiple employees without their consent on the grounds of a change in organisational

structure, technology or products; economic depression; or changes in government policies;

- termination of multiple employees due to a change of control; and
- disciplinary action of dismissal.

Financial compensation for the terminated employee

To lawfully terminate the employment relationship, the employer needs to settle all payables to the employee until the effective date of the termination, including:

- wages, benefits and compulsory contributions (ie, social insurance, health insurance and unemployment insurance); and
- job loss allowance or severance allowance subject to the cause of termination (where applicable).

Retrenchment

To ensure the validity of retrenchment, the following significant procedures and requirements must be fulfilled by the employer:

- substantiate the grounds for retrenchment and establish its correlation with the need for layoffs;
- develop a comprehensive labour usage plan;
- engage in consultation with employee representatives through a workplace dialogue process;
- provide affected employees with offers for new positions (if available), and only after their rejection, include them in the list of employees to be laid off in the labour usage plan;
- publicly inform employees about the labour usage plan within 15 days of its approval;

- provide a 30-day advance notice to the provincial People's Committee and the affected employees.

Termination of multiple employees due to a change of control

Below are the significant procedures and requirements that must be satisfied to validate the termination. The employer must:

- substantiate the grounds for termination and establish its connection to the need for layoffs;
- develop a comprehensive labour usage plan;
- engage in consultation with employee representatives through a workplace dialogue process;
- provide affected employees with offers for new positions (if available), and only after their rejection, include them in the list of employees to be laid off in the labour usage plan;
- publicly inform employees about the labour usage plan within 15 days of its approval;
- provide a 30-day advance notice to the provincial People's Committee and the affected employees.

Unilateral termination by the employer

An employer is entitled to unilaterally terminate a labour contract in the following circumstances:

- (a) the employee repeatedly fails to perform work in accordance with the terms of the labour contract as determined based on the assessment criteria of work performance level in the rule issued by the employer upon consulting opinions of an organisation representing employees at the grassroots level, which includes the trade union at grassroots level and other organisation of

- employees at an enterprise (labour union), if any;
- (b) the employee is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months (indefinite-term contract) or six consecutive months (definite-term contract with a duration between 12 and 36 months), and more than half of the contract duration (definite-term contract with a duration less than 12 months);
- (c) the employer, although having taken all measures to remedy the problem, has to reduce the number of jobs due to natural disasters, fire, epidemics or other force majeure reasons;
- (d) the employee fails to attend the workplace within 15 days from the expiry of the suspension of the labour contract;
- (e) the employee reaches retirement age;
- (f) the employee arbitrarily leaves his/her work without proper reason for five consecutive working days or more; or
- (g) the employee provides untruthful information affecting his/her recruitment.

In the case of (a), (b), (c), (e) and (g) above, the employer must send the employee a written notice of termination as detailed below; at least:

- 45 days for indefinite-term contracts;
- 30 days for definite-term contracts with a duration between 12 and 36 months; and
- three working days for definite-term contracts of less than 12 months; or three working days for termination of the contract due to illness or injury of the employee.

Unilateral Termination by Employee

An employee may unilaterally terminate the labour contract prior to its expiry by sending a prior notice of at least 45 days for indefinite-

term labour contracts, 30 days for definite-term contracts with a duration between 12 and 36 months, or three working days for definite-term contracts with a duration less than 12 months.

The prior notice is, however, not required in the following cases:

- the employee is not assigned to the job or workplace, or is not provided the working conditions as agreed upon in the labour contract, except for extraordinary cases where the employer is permitted under laws to assign jobs other than those agreed in the labour contract;
- the employee is not paid in full or on time, except for force majeure cases where the payment is delayed as permitted under law;
- the employee is maltreated or is subject to forced labour or other behaviour affecting his/her health, dignity or honour, including sexual harassment at the workplace;
- a female employee is pregnant and must quit the job as prescribed by a competent health establishment;
- the employee reaches retirement age; or
- the employer provides untruthful information affecting the implementation of the labour contract.

Collective Labour Agreements

Vietnam also recognises the concept of collective labour agreements. These are written agreements which have been agreed between the employer and the labour collective following a collective bargaining session. The labour collective only needs a simple majority to vote in favour of the collective labour agreement. It is binding, and both the employers and employees, whether starting work prior to or as from the binding date, must implement it, and comply with it, when it has been signed by legal repre-

sentatives of the employer and the labour collective.

The collective labour agreement shall prevail over labour contracts and other rules of the employer if it stipulates greater rights, obligations and interests for the parties. In Vietnam, sector-specific agreements, known as industry collective labour agreements, exist. An industry collective labour agreement may also apply to a non-member enterprise if it has a scope of application covering more than 75% of employees or enterprises in the same industry in the industrial zone, economic zone, export processing zone or high-tech zone as decided by the competent authority.

Trade Unions

A trade union at an enterprise is the most common type of labour union in Vietnam. According to the Law on Trade Unions, the trade union is formed on a voluntary basis as a grassroots-level unit of the national trade union, and together with state agencies, economic and social organisations, cares for and protects the legitimate and legal rights and interests of the employees at the company (labourers).

The trade union can also participate in investigating and monitoring operations of the company. All employees are entitled to form a trade union, and the employer is required to acknowledge the status of a legally established trade union, and on request, to assist with the formation and provide facilities for the trade union to function.

An employer, whether in the public or private sector, is required to contribute to a fund for trade union activities with a contribution that is equal to 2% of the employer's salary fund, which serves as the basis for the social insurance (SI) contribution for its employees, irrespective of

whether a trade union has been established at the workplace.

Workers' Union

Aside from the trade union, employees may also establish, access and take part in operations of a workers' union at an enterprise, which is a new type of labour union introduced under the 2019 Labour Code, if granted a registration certificate by the competent authority.

A workers' union can operate in parallel with, and with the rights and obligations equal to those of, a trade union protecting the legitimate and adequate rights and interests of employees in the labour relationship at the enterprise. It cannot, however, at the same time, have both members who are ordinary employees and members who are employees directly involved in making decisions on working conditions, labour recruitment, labour discipline, termination of labour contracts, or assigning employees to do other work.

At the time of registration, a workers' union must have at least the number of members who are employees working at the enterprise as stipulated by the government.

4.5 Employee Representations

Other than the powers and rights given to trade unions, it is not mandatory for employees to be represented, informed or consulted by management in Vietnam.

For the sake of clarification, under the 2019 Labour Code, while a representative organisation of employees at the grassroots level (ROE), including a grassroots trade union or workers' union at an enterprise, is voluntarily established by employees to protect their legitimate rights and interests in labour relations with their

employer, the involvement of the ROE is required in certain circumstances, specifically:

- circulation of the performance improvement plan;
- retrenchment;
- termination with multiple employees due to a change of control;
- establishment of pay scales, payrolls and labour productivity norms;
- circulation of bonus regulations;
- issuance or amendment of internal labour regulations; and
- application of disciplinary measures.

If an ROE is not established within the company, the employer may be required to seek the involvement of a trade union at a higher level. However, this process can be time-consuming and may prolong the overall process of addressing the matters that require ROE participation.

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

PIT

Scope

PIT law applies, in principle, to both Vietnamese and foreign individuals who are residents in Vietnam or have income sourced from Vietnam. An individual is considered a resident if he/she:

- (a) is present in Vietnam for 183 days or more in a calendar year or during a period of 12 consecutive months from the date of entry into Vietnam (can be checked from entry/exit stamps in passport);
- (b) holds a temporary or permanent resident card with respect to foreigners, or a regular residential location registered as a perma-

nent residence address in Vietnam with respect to Vietnamese citizens; or
(c) has an irregular residential location or locations in Vietnam such as a hotel room(s) and/or leased house(s) in Vietnam with an aggregated lease term of 183 days or more in a tax year.

If these criteria are not met, an individual will be considered a non-tax resident in Vietnam. In cases (b) and (c) above, an individual may be considered a non-resident if he/she is present in Vietnam for less than 183 days in a tax year and able to prove that he/she is considered a resident of another tax jurisdiction.

Taxable Income

Generally, taxable income comprises ten main types: income from employment, business, capital investments, capital transfers, real estate transfers, winnings or prizes in excess of VND10 million, inheritances in excess of VND10 million, copyrights in excess of VND10 million, franchising royalties in excess of VND10 million, and gifts in excess of VND10 million.

Tax Rates

For employment incomes of residents, a progressive system applies ranging from 5% to 35% depending on the annual or monthly taxable income. As for non-tax residents, a flat rate of 20% is imposed on the income derived from Vietnam.

For non-employment-related income, the rates vary from 0.1% to 20% subject to whether the taxpayer is a resident or non-resident and depending on the type of income; the way PIT is calculated also depends on the type of income.

Nevertheless, if a resident performs services but does not have a labour contract, or the labour

contract is of a term under three months with payments each time amounting to VND2 million or more in total, in general, 10% will be withheld and paid directly to the tax authorities.

Mandatory (Social) Insurance

Vietnamese employees and their employers are required to contribute to SI, healthcare insurance (HI) and unemployment insurance (UI). Foreign employees, together with their employer, are not required to contribute to UI, but are subject to the SI and/or HI in certain circumstances.

The rates of SI, HI and UI contributions paid for Vietnamese employees are:

Employee:

- SI: 8.0%
- HI: 1.5%
- UI: 1.0%
- Total: 10.5%

Employer:

- SI: 17.5%
- HI: 3.0%
- UI: 1.0%
- Total: 21.5%

The salary used for the calculation of the contributions consists of the monthly salary rate and certain allowances prescribed in the labour contract. However, the contribution amount is subject to a cap of 20 times the minimum salary for SI/HI contributions, as well as 20 times the minimum regional salary for UI contributions. It is important to note that the minimum salary and minimum regional salary are determined by the government and undergo an annual review.

Statutory employer contributions are tax-exempt for employees and are not counted as taxable income or additional compensation. Employee contributions to statutory obligations are tax-deductible, reducing their taxable income and potentially lowering their tax liability.

Certain foreign employees who are internally transferred within a group, as well as employees who have reached the statutory retirement age, are exempt from mandatory SI contributions.

5.2 Taxes Applicable to Businesses

CIT

Scope

CIT law applies to a corporate taxpayer in Vietnam. Unlike PIT law, CIT law does not explicitly include the concept of resident or non-resident. Instead, it adopts the principle that a corporate taxpayer, whether located in Vietnam or overseas, must pay CIT for its incomes raised in Vietnam, or raised worldwide through its business facilities in Vietnam, unless otherwise stipulated in treaties to which Vietnam is a party.

For instance, if a foreign investor has a subsidiary company incorporated in Vietnam or has a permanent establishment in Vietnam, this foreign investor must pay the CIT to the Vietnamese authorities on its worldwide income earned through the Vietnamese subsidiary company or in connection with operations of the permanent establishment. However, CIT law also applies to companies without a permanent establishment in Vietnam. If this is the case, the company is only required to pay tax on income raised in Vietnam.

CIT is also imposed on earnings obtained through the production and trading of goods or services, or from other activities such as capital transfers or real estate transactions, etc.

Tax Rates

The general tax rate is 20% and applies to all companies, except for those prospecting, exploring and extracting oil, gas and other rare resources which are subject to higher tax rates. Tax incentives of a 10% or 17% CIT rate may be applied under certain conditions.

Calculation

CIT is calculated based on the taxable profit of a company. The elements needed for this calculation are:

- total revenue that is domestic or foreign sourced;
- deductible expenses;
- non-taxable income; and
- carry-forward losses and other assessable income.

For expenses to be deductible, the following criteria need to be satisfied:

- the expenses arose from and are related to the activities of production and business of the enterprise; and
- the expenses are supported by complete invoices, source vouchers and/or bank statements as stipulated by law. Note that it is necessary to provide non-cash payment source vouchers if the expenses reach or exceed VND20 million.

Fines, penalties and taxes are not deductible. Under certain conditions, and sometimes limited to a maximum duration, start-up expenses, charitable contributions, payments to foreign affiliates (royalties, loan interest and service fees), depreciation and amortisation of tangible and non-tangible assets, and interest expenses can be deducted; net operating losses can be carried forward for a certain amount of time.

Capital Gains Tax

It is important to realise that under Vietnamese law, gains on the disposal of capital or securities in a Vietnamese entity, such as an LLC or JSC, are subject to CIT or PIT.

For a corporate entity disposing of capital or securities in a Vietnamese entity, the gain is treated as other income and will be taxed at the standard rate of 20%.

However, for a foreign corporate entity that has not had a permanent establishment in Vietnam, performs business in Vietnam for a period of under 183 days, or has not adopted Vietnamese accounting regimes or been issued with a tax code, the CIT tax rate is 0.1% of the proceeds when disposing of securities of a JSC; and when capital of an LLC is disposed, CIT on gains from transfers of capital will be levied at a rate of 20% on the respective income.

An emerging trend is the introduction of taxation not only on the transfer of interests in Vietnamese entities but also on the transfer of interests in overseas parent companies (both direct and indirect) of Vietnamese companies.

Foreign Contractor Tax

Foreign organisations and individuals carrying out business in Vietnam or deriving income raised in Vietnam may be subject to foreign contractor tax (FCT). Generally, FCT is composed of CIT and VAT. The FCT tax rates, and the income used for calculating FCT, vary depending on the transaction and taxpayers' tax filing status.

The applicable tax rates and taxable incomes may be different from those stated above where the taxpayer fails to meet any of the following requirements:

- the taxpayer possesses a permanent establishment in Vietnam in case of a corporate one, or is a tax resident in Vietnam in case of an individual one;
- the taxpayer performs business in Vietnam for a period of 183 days or more; or
- the taxpayer has adopted Vietnamese accounting regimes, registered with a tax authority and been issued with a tax code.

The foreign contractors may benefit from double taxation agreements between Vietnam and their home country.

5.3 Available Tax Credits/Incentives Tax Incentives

Vietnam grants tax incentives to its foreign investors in order to attract more investment and to be more competitive for investors on the global stage. The existing regimes for these incentives vary greatly and differ between sectors and industries.

Industries and Sectors

Tax and land use incentives can be granted to new investment projects, or projects extended from the existing ones, in "investment-encouraged" geographical areas located across the country or business sectors including, among others, education, healthcare, high technology, scientific research, environmental protection, infrastructural development, or projects with capital of at least VND6 trillion (USD240 million) in which at least VND6 trillion is paid within three years from the date the IRC or in-principle approval was granted and satisfies either of the following criteria: the total revenue is at least VND10,000 billion per year within three years from the year in which the revenue is earned or the project has more than 3,000 employees.

Incentives are also given to high-tech companies and producers of high-priority products, which include accessories, components and spare parts used for assembling goods in the textile and garment industry, footwear and leather industry, electronics industry, agricultural machinery industry, automobile industry, shipbuilding industry or prioritised mechanical sector, and supporting products used in high-tech industries. Investors can also be entitled to certain incentives where investing in product distribution chains, technical or other purpose facilities or co-working spaces supporting small and medium-sized enterprises and start-ups.

Auxiliary Industrial Zone

Projects on the infrastructure development of an Auxiliary Industrial Zone, including subzones, can be entitled to tax exemption and reduction of land rent, a land lease term of up to 70 years, and priority access to loans from the Vietnamese State, Official Development Assistance funds, foreign loans under government guarantees and other kinds of loans.

Investment projects related to manufacturing supporting industry products, as listed in Decree No. 111/2015/ND-CP of 3 November 2015, might enjoy certain tax incentives relating to CIT, export and import duties. Additionally, these projects may have priority to participate in training or assistance programmes for start-ups, small and medium-sized enterprises, and relevant other programmes of competent authorities.

Eco-industrial Zone

Eco-enterprises in Eco-industrial Zones (EIZs) can enjoy preferential loans from the Vietnam Environment Protection Fund, the Vietnam Development Bank and/or other financial sources related to clean industry. They will have

priority to participate in technical support or investment enhancement programmes. Finally, they shall be given priority in providing information related to the technology market and the possibility of co-operating in effecting industrial symbioses in the scope of production and business activities of these enterprises.

Specific Areas

Investors that invest in areas with poor socio-economic conditions, such as areas which have weak infrastructure or a lack of experienced labour force, or in remote rural areas, can qualify for tax reduction and exemption.

Tax Holidays

Tax holidays can consist of tax rate reductions of 10% and 17% for 15 years and ten years respectively, starting from the commencement of the operation. It can also consist of a 50% reduction for two to nine years; or consist of a tax exemption for two to four years, followed by a tax rate reduction.

Other Incentives

If they meet the relevant criteria, enterprises may qualify for participation in training or assistance programmes, and other programmes organised by the competent authorities. Qualifying enterprises may also receive preferential loans, participation in technical support or investment enhancement programmes, information on the technology market and co-operation opportunities, exemption from import duty on goods imported, and exemption from and reduction of land rental fees and non-agricultural land-use tax.

5.4 Tax Consolidation

There is currently no regime in place which allows for tax consolidation.

5.5 Thin Capitalisation Rules and Other Limitations

Except for certain sectors such as securities companies, Vietnam does currently not have any thin capitalisation rules or similar limitations in place. However, the Government of Vietnam is currently considering the implementation of a debt-equity ratio, which is under discussion and may be implemented in the near future.

5.6 Transfer Pricing

The Vietnamese government has released tax administration regulations applicable “to enterprises having controlled transactions” – Decree No. 20/2017/ND-CP (“Decree 20”) in April 2017, which was replaced by Decree 132/2020/ND-CP (“Decree 132”) as from 20 December 2021. Before Decree 20 was issued, transfer pricing rules in Vietnam were considered to be rather lax. Investors could enter the market without any major concerns about their transfer pricing policies.

Today, companies that are considering investment in Vietnam, as well as those companies that are already operating in the country, need to comply with the stricter regulatory requirements of Decree 132. It makes an attempt to replicate the standards set forth by Organisation for Economic Co-operation and Development guidelines and base erosion and profit shifting (BEPS) actions.

5.7 Anti-evasion Rules

Under the current Law on Tax Administration of Vietnam (No. 38/2019/QH14), tax authorities have been endowed with additional enforcement powers, which directly translates into more stringent and successful prosecution of tax evaders. Specifically, in cases where there is suspicion of tax evasion, tax authorities may exercise the following powers during tax inspection:

- Collection of information related to tax evasion.
- Impoundment of documents and exhibits related to tax evasion.
- Inspection of premises for documents and exhibits related to tax evasion.

6. Competition Law

6.1 Merger Control Notification

The Competition Law defines the concept of economic concentration, which covers mergers, consolidations, acquisitions of control stocks, and joint ventures between enterprises.

An economic concentration is prohibited if it causes or potentially causes substantial anti-competitive effects on the Vietnamese market. Enterprises must file a dossier of notification to the Vietnam Competition Commission (VCC) regarding their planned economic concentration, if it falls within any of the following circumstances:

- Total assets in the Vietnamese market of the enterprise or a group of affiliated enterprises to which such enterprise is a member are valued at VND3,000 billion (USD120 million) or more in the fiscal year preceding the expected year of the economic concentration;
- Total sales or purchase volume in the Vietnamese market of the enterprise or a group of affiliated enterprises to which such enterprise is a member are valued at VND3,000 billion (USD120 million) or more in the fiscal year preceding the expected year of the economic concentration;
- Transaction value of the economic concentration is valued at VND1,000 billion (USD40 million) or more; or

- The combined market share of the enterprises planning to participate in the economic concentration accounts for 20% or more of the total share in the relevant market in the fiscal year preceding the expected year of the economic concentration.

Where the economic concentration is carried out outside the territory of Vietnam, the same threshold for notification of domestic economic concentration applies, except in cases where the transaction value of economic concentration is valued at VND1,000 billion or more.

Greater thresholds are applied with respect to the economic concentration performed by enterprises that are credit institutions, insurance enterprises and securities companies.

6.2 Merger Control Procedure

The aforementioned economic concentration may only be implemented after the VCC's confirmation has been obtained, stating that the economic concentration is not prohibited under the Competition Law. Certain economic concentrations, though not prohibited, can only be performed and maintained where relevant conditions are satisfied as stipulated in the confirmation of the VCC.

6.3 Cartels

Under the regulations of Vietnamese competition law, there are several agreements that restrict competition and therefore risk illegality. To determine whether an agreement is legal, it is important to look at the relevant contents of the agreement, the relevant market of the parties to the agreement, the trade life cycle of the parties' products and services, and/or the level of restrictive effect on competition assessed by the VCC.

Such agreements are absolutely prohibited if they:

- prevent, restrain and disallow other enterprises from entering the market or developing business;
- abolish from the market enterprises other than the parties of the agreements; or
- conspire in biddings.

If the parties have the same relevant market, prohibited agreements include:

- directly or indirectly fixing prices;
- distributing outlets, sources of supply of goods, or provision of services; and
- restricting or controlling produced, purchased or sold quantities or volumes of goods or services.

If the parties have the same relevant market and the agreements may cause an appreciable restrictive effect on competition, prohibited agreements are those that:

- restrict technical or technological development and investments;
- impose conditions or unrelated obligations on the signing of purchase or sale contracts for goods or services;
- prevent transactions with parties other than the parties thereto;
- limit consumption or supply of goods or services of parties other than the parties thereto; or
- may cause other restrictive effects on competition.

If the parties have different production, distribution or supply businesses constituting a trade life cycle of a product or service and the agreements may cause an appreciable restrictive effect on

competition, prohibited agreements are those that:

- directly or indirectly fixed prices;
- distribute outlets, sources of supply of goods, or provision of services;
- restrict or control produced, purchased or sold quantities or volumes of goods or services;
- restrict technical or technological development and investments;
- impose conditions or unrelated obligations on the signing of purchase or sale contracts for goods or services;
- prevent transactions with parties other than the parties thereto;
- limit consumption or supply of goods or services of parties other than the parties thereto; or
- may cause other restrictive effects on competition.

In case the agreement benefits consumers and certain criteria are met, such as leading to technical innovation, an exception may be granted.

6.4 Abuse of Dominant Position

An enterprise or a group of enterprises with a dominant or monopoly position in the market is prohibited from performing the following acts:

- (a) selling goods or services at prices below the total cost price resulting in eliminating competitors;
- (b) imposing unreasonable purchase or sale prices of goods or services, or fixing minimum resale prices, causing damage to customers;
- (c) restricting production or distribution, limiting the market, or hindering technical or technological development, causing damage to customers;

- (d) applying different commercial terms on similar transactions, causing restrictions to market entry or expansion by other enterprises or elimination of other enterprises;
- (e) imposing conditions or unrelated obligations on the signing of sale or purchase contracts, causing restrictions to market entry or expansion by other enterprises or elimination of other enterprises;
- (f) preventing competitors from entering or expanding the market; or
- (g) other acts abusing the dominant position as prescribed by other laws.

An enterprise or a group of enterprises with a monopoly position is prohibited from performing acts mentioned in (b) to (f) above and from imposing adverse conditions on consumers, taking advantage of the monopolistic position to unilaterally change or cancel an executed contract without legitimate reasons or performing other acts abusing the monopolistic position as prescribed by other laws.

7. Intellectual Property

7.1 Patents

Generally, Vietnam allows protection for the following subject matters of patent rights:

- process or method; and
- products.

Vietnamese regulations distinguish two types of patents, namely:

- utility solutions (petty patent); and
- patent for invention.

A patent in Vietnam can be filed in one of the three following ways:

- Direct filing: A foreign patent applicant could file their patent in Vietnam directly.
- PCT Patent: Within 31 months from the first filing date to the International Bureau of the World Intellectual Property Organization or from the priority date, the applicant must submit the PCT application to Vietnam's National Office of Intellectual Property (NOIP).
- Paris Convention: Within 12 months from the first filing date in a country which is a signatory of the Paris Convention Treaty, the applicant must submit the patent application to the NOIP.

Vietnamese regulations stipulate that a patent shall be locally protected if it meets the following requirements:

- novelty step;
- inventive step (not applicable to utility solution); and
- industrial applicability.

The validity for patents for utility solutions is ten years from the filing date.

The validity for patents for inventions is 20 years from the filing date. In order to maintain the validity of a Vietnamese patent, the owner must pay the annuity fee annually, subsequent to the granting of the patent.

Documentation required to file a Vietnamese patent:

- specification of the patent. If it is a PCT patent, we could download it from WIPO's website;
- claims of patent or amended claims, if any;
- drawing (if any);
- certified copy of priority document (if any); and

- name and address of inventor and applicant.

7.2 Trade Marks

The trade mark system in Vietnam protects visible letters, numerals, words, pictures, images, including three-dimensional images or their combinations, or graphically representable sound trade marks that are used to identify a business's products or services.

Trade name rights are established through persistent and public use rather than having to be formally registered. With respect to online domains, these are handled on a first-come, first-served basis by the respective authority.

Locally registered trade marks last for ten years and can be renewed indefinitely for further ten-year periods. Costs related to the maintenance of these assets are low. The registration of a trade mark can take up to 15 months to complete. Trade marks can either be registered in Vietnam or by employing the mechanisms of the Madrid Protocol.

7.3 Industrial Design

Industrial design means the outward appearance of a product embodied in three-dimensional configuration, lines, colours or a combination of such elements. Under Vietnamese law, industrial property rights to an industrial design shall be established based on a decision of the competent state body. This authority grants a protection title in accordance with the registration procedures stipulated in the Law on Intellectual Property of Vietnam or the recognition of international registration pursuant to an international treaty to which Vietnam is a member.

Generally, an industrial design is eligible for protection when it satisfies the following conditions:

- it is novel;
- it is of a creative nature; and
- it is susceptible to industrial application.

However, the following items are ineligible for protection as industrial designs:

- outward appearance of a product which is necessarily due to the technical features of the product;
- outward appearance of civil or industrial construction work; and
- shape of a product which is invisible during the use of the product.

Generally, the following organisations and individuals have the right to register industrial designs:

- authors who have created industrial designs through their own labour and at their own expense; and
- organisations or individuals who have supplied funds and material facilities to authors in the form of job assignment or hiring, unless otherwise agreed by the parties involved.

Applications for registration of industrial designs under the Law on Intellectual Property of Vietnam must be prepared in a regulatory template and accompanied by certain documents and photos describing the registered subject matter and specifying the registration rights. The application should be submitted to the Intellectual Property Office of Vietnam (“IP Office”). The IP Office will examine and consider whether the applications are valid. By law, it shall take one month from the submission date for formality examination, and it shall take seven months from Vietnam’s IP Gazette publication for substantive examination. In practice, it could take longer and normally will take from one year to 1.5 years from the filing

date to receive the outcome of the registration. For applications which are considered valid, the IP Office will issue a notice of acceptance of the valid application or carry out procedures for granting a protection title.

Per the applicable “first to file” principle, where two or more applications for registration are filed by different parties for registration of industrial designs identical to or insignificantly different from each other, a protection title may only be granted to the valid application with the earliest priority or filing date amongst applications which satisfy all conditions for the granting of a protection title.

Where there are two or more applications that satisfy all the conditions for the granting of a protection title and have the same earliest priority or filing date, a protection title may only be granted to a single application from such applications with agreement from all applicants. Without such an agreement, all such applications shall be refused the granting of a protection title.

A protection title, also known as an industrial design patent, shall recognise the owner of the industrial design; the author of the industrial design; and the subject matter, scope, and term of protection. An industrial design patent shall be valid throughout the entire territory of Vietnam as from the grant date until the end of five years after the filing date and may be renewed for two consecutive terms, each of five years.

7.4 Copyright Registration of Copyright

The registration of copyright is conducted at the National Copyright Office, which is the competent authority for all copyright issues within the Vietnamese jurisdiction. In Vietnam’s definition of the term, “copyright” also applies to comput-

er programs, which cannot be patented instead because they lack one or more of the requirements for being granted a patent. Vietnam's copyright IP is governed by the Berne Convention on copyright, which states that the minimum period of protection from publication will be (i) 75 years for cinematographic works, photographic works, works of applied art and anonymous works from the first publication date and (ii) the author's life plus 50 years after the death of the author for other types of works.

While no copyright registration is required in Vietnam, most patent experts suggest registering copyright with the country's copyright authorities.

7.5 Others

Software, databases and trade secrets can also be protected under the Law on Intellectual Property of Vietnam, provided that they meet the criteria for protection.

Specifically, software can be considered a "computer program" as defined by the Law on Intellectual Property of Vietnam, which is a set of instructions that are expressed in the form of commands, codes, diagrams or other forms, when attached to a medium or device operated by a computer programming language, and that enable the computer or device to perform a specific task or achieve a specific result. A computer program can receive copyright protection as a literary work, whether expressed in the form of source code or machine code.

Trade secrets are an object of industrial property rights and are defined as information obtained from financial and intellectual investment activities which have not yet been disclosed and are able to be used in business. Intellectual property rights over trade secrets are established based

on legally obtaining a trade secret and maintaining its confidentiality, rather than formal registration, due to its confidential nature.

Databases, per se, are not considered intellectual property under the Law on Intellectual Property of Vietnam unless they meet the conditions to be classified as an IP rights object, such as literary, artistic and scientific works or trade secrets.

IP protection, though it has improved over the last few years, has always been one of Vietnam's biggest issues and a strong reason for hesitation over foreign direct investment into the country. Despite recent efforts by Vietnamese lawmakers to close the gaps in the regulatory framework, it is the implementation that still causes issues in practice. Lacking an appropriate IT infrastructure and specialised training, the competent authorities lag behind in trying to implement the laws and enforce powers to protect the intellectual property of registered owners.

8. Data Protection

8.1 Applicable Regulations

In February 2021, the Ministry of Public Security (MPS) released the initial draft of the Decree on Personal Data Protection ("Draft PDP Decree") for public consultation. This Draft PDP Decree marked a significant milestone as it represented the first comprehensive legal framework for personal data protection (PDP) in Vietnam. Throughout the development process, the Draft PDP Decree underwent various revisions to address numerous concerns from the public. On 7 March 2022, the government issued Resolution 27/2022, approving the then-latest version of the Draft PDP Decree, and entrusted the MPS to share it with the Standing Committee of the

National Assembly (SCNA) for further consultation. Subsequently, on 7 February 2023, the Government issued Resolution 13/2023, approving the then-latest version of the Draft PDP Decree and seeking the SCNA's appraisal. After a thorough review period, the Draft PDP Decree was officially adopted on 17 April 2023, and became Decree No. 13/2023/ND-CP ("Decree 13"), which came into effect on 1 July 2023. Decree 13 represents the first-ever unified regulation on PDP in Vietnam.

Decree 13 is divided into four chapters and 44 articles, providing comprehensive coverage of PDP and some brand-new requirements. Notable contents of Decree 13 include the following regulations:

- recategorisation of personal data into basic personal data and sensitive personal data;
- new data processing requirements, including new legal bases for data processing and disclosure without consent; specification of the forms of consent; time limits for data processors and/or data controllers and/or data controllers cum data processors to respond to the requests from the data subject with regard to data provision, data deletion and data modification;
- new data protection measures, including de-identification/encryption requirements, appointment of data protection officers, data accessibility from government authorities, and registration for cross-border transfer of data;
- mandatory impact assessments for data processing and cross-border transfer of data; and
- the right of individuals to access their personal data, to correct or delete their personal data, to object to the processing of their personal data, and to port their personal data to another controller.

Decree 13 stipulates several cases where personal data can be processed without the data subject's consent, including:

- protecting the life and health of the data subject or others in an emergency. The personal data controller, data processor and any third party must prove this applies;
- when publicising personal data in accordance with the law;
- when state agencies handle data during a declared state of emergency regarding national defence and security, social order and safety, natural disasters or dangerous epidemics;
- when there is a risk threatening security and national defence but short of declaring a state of emergency;
- preventing and combating riots, terrorism, crimes and legal violations as prescribed by law;
- fulfilling the data subject's contractual obligations with relevant agencies, organisations and individuals according to the law; and
- for activities of state agencies as specified in specialised legislation.

Moreover, Decree 13 establishes provisions for handling children's personal data. Children's rights and best interests must always be guaranteed. Children's personal data requires consent from seven-year-olds and older, and from parents or guardians, except in specified cases.

Decree 13, however, is silent on administrative sanctions for violations. The administrative sanctions for violations in the field of PDP are now integrated into the Decree on Administrative Sanctions for Cybersecurity Violations, of which the latest draft is still pending final approval. Its tentative date of enforcement is the end of 2024.

It is noteworthy that in late February 2024, the MPS released a dossier proposing the development of a PDP Law. This signals the Vietnamese Government's efforts to accelerate the finalisation of the PDP legislative framework in Vietnam. The draft law remains pending.

8.2 Geographical Scope

Decree 13 binds foreign and local companies based in Vietnam to the same standards of protection. Decree 13, however, does not directly apply to offshore companies. However, when there is a cross-border transfer of data, Decree 13 requires the transferor to submit the contact details of the transferee to the MPS.

8.3 Role and Authority of the Data Protection Agency

The MPS and its Department of Cybersecurity and Hi-tech Crime Prevention (A05) are in charge of the execution and implementation of Decree 13.

9. Looking Forward

9.1 Upcoming Legal Reforms Draft Amended Law on Commercial Arbitration

In November 2021, the Standing Committee of Vietnam's National Assembly assigned the Vietnam Lawyers' Association to be responsible for reviewing and examining the implementation of the 2010 Law on Commercial Arbitration and proposing a draft amendment to the 2010 Law on Commercial Arbitration. The purpose of the draft amendment is to address shortcomings observed during the enforcement of the existing law, such as ensuring the impartiality and independence of arbitrators and improving the recognition and enforcement of foreign arbitral awards in Vietnam, etc, to align with international

standards in the practice of international arbitration. It appears that the draft amendment is still being refined through public consultations before its submission to the National Assembly.

New Land Law

On 18 January 2024, the National Assembly of Vietnam approved Land Law No. 31/2024/QH15 ("2024 Land Law"), which will take effect from 1 January 2025, replacing the prevailing land law adopted in 2013. The 2024 Land Law aims to address the shortcomings of the 2013 Land Law and introduce important changes to boost the growth of the real estate market. The adoption of the new land law complements the new Real Estate Business Law (adopted on 28 November 2023) and the new Housing Law (adopted on 27 November 2023), both of which will also come into effect on 1 January 2025. To warm up the real estate market, the Vietnamese Government has proposed that the National Assembly expedite the effective date of the 2024 Land Law, the 2023 Real Estate Business Law and the 2023 Housing Law to 1 August 2024.

Notably, the 2024 Land Law allows disputes between parties arising from land-related commercial activities to be resolved by Vietnamese commercial arbitration institutions according to the regulations of Vietnam's commercial arbitration law. This provision is considered one of the striking points in the new Land Law, as opposed to referral to the exclusive jurisdiction of the Vietnamese courts under the 2013 Land Law. This change encourages parties' autonomy in deciding which dispute resolution forum will resolve their disputes. However, it appears that, according to this provision, the disputants are not allowed to resort to a foreign arbitration institution such as the Singapore International Arbitration Centre or Hong Kong International

Arbitration Centre for resolving land-related commercial disputes.

Draft Decree on Administrative Sanctions for Cybersecurity Violations

To enforce Decree 13 on personal data protection (as mentioned in **8. Data Protection**), the MPS has been working on a draft Decree on Administrative Sanctions for Cybersecurity Violations (“Sanctioning Decree”), which also provides sanctions for personal data violations. The initial version of the draft Sanctioning Decree was made available for public consultation in September 2021. Currently, the latest version of the draft Sanctioning Decree is the fourth draft, which was released to the public in May 2024 (“Fourth Draft Sanctioning Decree”). According to the Fourth Draft Sanctioning Decree, the most

severe administrative penalty is still a fine of up to 5% of the total revenue in Vietnam of the violator for the preceding fiscal year, for:

- multiple personal data violations in marketing and advertising business;
- multiple personal data violations in illegal collection, transfer, purchase and sale of personal data; or
- causing disclosure or loss of personal data of five million Vietnamese citizens or more due to violations in personal data processing impact assessment and cross-border transfer of personal data.

With the introduction of the Fourth Draft Sanctioning Decree, we expect the final version to be passed in the near future.

Trends and Developments

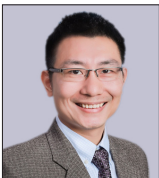
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ACSV Legal

ACSV Legal is a vibrant and dynamic Vietnam-based law firm located in HCMC with unparalleled domestic expertise. It has one of the premier corporate/M&A practices in Vietnam and has extensive experience in private equity transactions with a strong commercial focus. Its lawyers have advised various clients on (re-) structuring their businesses in light of investments in or outside Vietnam. The firm's clients are typically businesses within South-East Asia that are experiencing significant growth, as well as leading international and local corporations that need advice on a broad array of multi-juris-

dictional transactions. ACSV Legal has advised its clients on matters in a wide range of sectors and industries such as healthcare, beauty and fitness, pharmaceutical, food and beverages, IT and technology, hospitality and leisure, education, retail, manufacturing and distribution, apparel and fashion, fintech and payment services. It has a team of more than 30 experienced lawyers who are qualified in Vietnam and the UK in civil and common law jurisdictions. The languages spoken at ACSV Legal include Vietnamese, English, German, Italian, Dutch and French.

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Thang Nguyen is a partner at ACSV Legal and joined the team in February 2022. He has more than 20 years of experience practising corporate and commercial law with leading

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Vietnam remains an attractive destination for foreign direct investment, contributing to the country's sustained annual growth. The World Bank reports that Vietnam is showing mixed signs of recovery and anticipates growth to reach 5.5% in 2024, with a gradual rise to 6% by 2025. The International Monetary Fund forecasts that Vietnam's economic growth will let it maintain its position as the fifth-largest economy in South-East Asia. The top destinations for foreign investment within Vietnam are Quang Ninh, Hai Phong, Bac Ninh and Binh Duong provinces and Ho Chi Minh City.

High Potential Sectors

Technology

Strong M&A activity within the technology sector in Vietnam in the years 2022 and 2023 accounted for almost 40% of the total M&A transaction value in that period. Vietnam's strategic geographical proximity to China and the available and competitive technical workforce make it attractive to international technology companies to set up manufacturing operations here. The government also issued a decree in February 2024 covering establishing and expanding high-tech zones, investment incentives, and support policies for projects within these zones. Other key areas within the technology sector that are

on the rise include software development, IT outsourcing, artificial intelligence, e-commerce and cybersecurity.

Healthcare

The ageing population and declining birth rates have boosted demand for healthcare services and related products. With a growing middle class, healthcare spending is expected to increase. The Ministry of Health estimated that approximately 40,000 Vietnamese seek out medical services abroad each year, for a total of approximately USD2 billion.

Public hospitals, which form the backbone of the Vietnamese healthcare system, face significant challenges, including chronic overcrowding, insufficient and obsolete equipment, budgetary constraints and a shortage of qualified medical staff. The private healthcare sector shows significant investment potential, as demonstrated by the recent acquisition of FV Hospital by Thomson Medical Group and the strategic partnership between American International Hospital and Raffles Medical Group from Singapore.

Renewable energy

The Prime Minister has issued the implementation plan for the National Power Development

Plan No. 8 (PDP8), an important milestone as PDP8 sets out the country's power mix that sees it shifting from coal-fired power generators to renewable energy sources. The Ministry of Industry and Trade (MOIT) has also released a draft amendment to the Electricity Law that specifically addresses the development of renewable energy and new energy and includes high-level provisions regulating offshore wind power projects. It is expected that MOIT and the Government will continue to issue new regulations, including tariff frameworks, direct power purchase agreements and carbon credit market development mechanisms.

Increase in Business Restructuring Transactions

However, in the face of a challenging 2023, several sectors in Vietnam have seen an uptick in restructuring exercises, eg, manufacturing, fast-moving consumer goods, real estate, hospitality, retail, food and beverages, etc. Business restructuring is an option for underperforming companies to weather through the stagnation resulting from economic challenges and to regain their competitive position in the market through optimisation of operations, finances and corporate structure.

Corporate restructuring options in Vietnam include:

- **Divestiture:** divesting underperforming businesses or assets that do not generate satisfactory profit in the group.
- **Spin-off:** dividing underperforming businesses or assets to form new separate companies for better management and a more streamlined corporate structure.
- **Merger and consolidation:** merging or consolidating different companies within the group to optimise expenses and debts.

- Acquisition of desirable businesses or assets.
- Debt restructuring (including coming to agreement with creditors on conversion of debt into equity, or receiving new debt for refinancing).
- Internal personnel restructuring/rearrangements.

The decision-making process should centre around the desirable outcomes sought to be achieved (ie, efficient operations, reduced expenses, optimised debt structure, retention of key high-performing employees, etc). Several companies have seen successful turnarounds due to a well-planned and well-executed business restructuring exercise that took into account legal, financial and practical priorities and challenges.

Commitment to Improving Vietnam's Business Environment

The Vietnamese government has expressed its commitment to improving Vietnam's business environment in 2024 in line with international standards. The Ministry of Planning and Investment has been tasked with overseeing institutional reform to achieve this, including removing legal barriers to project implementation, streamlining inspection activities and deploying the National Single Window. Other government objectives include increasing access to capital and promoting investment, innovation, digital transformation, green conversion and quality of business services.

Developments in the Financial Sector

Banking transaction security and foreign exchange transactions are prominent topics in 2024, drawing significant attention and scrutiny from authorities. In line with data privacy trends, the State Bank of Vietnam (SBV) has consistently issued directives to banks to enhance the

security and safety of payment activities. These directives require credit institutions and payment intermediaries to review internal processes and regulations, particularly post-audit e-KYC. Additionally, the SBV has collaborated with the Ministry of Public Security to inspect the security of information systems and the opening and use of payment accounts at various credit institutions and payment intermediary service providers.

E-money regulation

Notably, there has been a remarkable surge in cashless payment transactions in 2024. The first four months of 2024 saw an increase of 57% in the volume of cashless payment transactions and a 40% increase in total transaction value compared to the same period in 2023. In contrast, ATM transactions continued a downward trend. These statistics underscore the accelerating shift towards digital and mobile payment solutions, highlighting the rapid transformation in consumer behaviour with cashless payments.

Decree 52/2024/ND-CP, which governs the use of non-cash payments, will come into effect in 2024. This decree defines electronic money (e-money) in Vietnam as “the equivalent value in VND stored electronically” based on prepaid funds provided to banks or payment service organisations offering electronic wallet services. According to the decree, e-money can be stored through electronic wallets (e-wallets) and prepaid cards. However, virtual currencies remain excluded from the scope of this decree as they are not regulated by the country’s financial authorities.

The SBV emphasised that Decree 52, which provides a clear definition of e-money in Vietnam for the first time, will play a crucial role in preventing and eliminating illegal payment methods issued by unauthorised organisations. It will also sup-

port competent agencies in combating related legal violations. The SBV explained that these regulations will strengthen the management role of relevant state agencies in international payment activities. Additionally, the regulations encourage collaborations in delivering cross-border payment services amidst rapid technological developments and innovations that support e-commerce.

These developments are leading to a closer review and management of foreign exchange transactions from commercial banks regarding foreign loan use. The SBV is making determined efforts to elaborate on the criteria for foreign borrowing by local businesses. Clearly, the SBV aims to balance its policy objectives with the needs of relevant stakeholders, moving towards a more rigorous foreign borrowing management regime. Going forward, this regime may significantly impact financing, capital markets and M&A transactions in Vietnam.

Cybersecurity Concerns and Governmental Action

Vietnam saw a significant increase in cyberattacks in 2023, which intensified around March and April of 2024. The Department of Cybersecurity and Prevention of High-Tech Crime under the purview of the Ministry of Public Security anticipates that cybersecurity attacks aimed at disrupting business operations and stealing sensitive information will become increasingly complex. The Vietnamese Police warn that such attacks will target key essential infrastructure, such as economic, financial and energy institutions. Institutional victims of large-scale cybersecurity attacks now include VNDirect, Vietnam’s third-largest securities company; PVOIL, a subsidiary of state-run giant Petrovietnam; and Vietnam Post.

This led the Vietnamese Prime Minister to issue a directive on 8 April 2024 mandating Vietnamese ministries and sectoral and local government agencies to review and assess the current cybersecurity measures. The Ministry of Justice has released the latest draft decree on administrative sanctions for cybersecurity violations, including for breaches of the Law on Data Privacy (see immediately below). The latest draft sanction decree is still in discussion in May 2024 and likely to be issued at the end of this year.

Data Privacy

With the issuance of the long-awaited Decree 13 on data privacy in 2023 and the proposition submitted in early 2024 on building and passing a Law on Data Privacy, it appears that the Vietnamese government has taken pivotal steps to tighten the regulations governing the processing and cross-border transfer of personal data, especially that of the Vietnamese citizens. This is in line with the direction of the Vietnamese government in building up and strengthening a digital government.

Real Estate

In the real estate arena, market sentiment is optimistic for a recovery, particularly in the second half of 2024. The Vietnamese government has made a concerted effort through effective policy deployment to resolve ‘bottlenecks’, including the introduction of new legislation, and the SBV is reforming the legal framework and procedures and increasing preferential credit packages to allow individuals and enterprises easier access to bank loans.

The introduction of the 2024 Land Law, the 2023 Real Estate Business Law and the 2023 Housing Law is anticipated to untie the difficulties of the real estate market, which has slowed down post-COVID. Among many positive legal reforms

enshrined in these laws, the rule allowing Vietnamese people who have settled abroad permanently but still retain Vietnamese nationality to be entitled to the same land use rights as those residing in Vietnam is most positively welcomed.

Sustainable Development Aspirations

Vietnam is boldly pursuing environmental sustainability, aligning with the ambitious Sustainable Development Goals and embracing the green revolution. With a robust economy and steadfast commitment to sustainability, the nation is focusing on initiatives like carbon credits and green investments to drive positive change. Legislative measures are being drafted and implemented to bolster the energy sector, improve economic efficiency, curb carbon emissions, and address global climate change challenges through mitigation and adaptation strategies.

Recent years have seen Vietnam make remarkable progress in slashing carbon emissions, expanding renewable energy sources and strengthening conservation efforts. Embracing carbon credits has emerged as a key strategy, supporting projects combating greenhouse gas emissions and earning credits that ignite international markets. This incentivises environmentally friendly endeavours and generates revenue for sustainable development. Therefore, the demand and opportunities for establishing a carbon credit market are closely linked to Directive 13/CT-TTg.

The visionary Decision No. 165/QĐ-TTg, issued on 7 February 2024, outlined Vietnam’s Hydrogen Energy Development Strategy until 2030, aiming for 100–500,000 tons of hydrogen production per year by 2030 and 10–20 million tons by 2050. Additionally, Decision 13/2020/QĐ-TTg encourages solar power development, while Decision 39/2018/QĐ-TTg promotes wind

VIETNAM TRENDS AND DEVELOPMENTS

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power. Despite Vietnam's attractive investment environment, financing and investment barriers persist, posing challenges to renewable energy projects. Access to affordable capital, long-term financing and a stable regulatory framework are crucial to attract foreign investors.

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