TABLE OF CONTENTS

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ABOUT EUROCHAM

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

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

EuroCham is a member of the European Business Organisation Worldwide Network ASBL (EBOWWN), representing European businesses in almost 40 countries across the globe and addressing common trade and investment-related issues to the European Commission. Regionally, EuroCham is a member of the EU-ASEAN Business Council. Since the end of 2015, EuroCham has been the implementing partner of the South East Asia IPR SME Helpdesk, providing free-of-charge advice and support on intellectual property protection when entering and expanding in the ASEAN market. EuroCham is also a consortium partner of the EU-Vietnam Business Network (EVBN), an EU co-funded project under the ICI+ programme which aims to support EU Small and Medium Enterprises interested in doing business in Vietnam, while promoting the country and ASEAN's business opportunities in Europe. In 2017, EuroCham was awarded Best Large Chamber of the Year at the Asia Pacific International Chambers of Commerce Awards.

For more information about EuroCham: www.eurochamvn.org
To download the Whitebook: www.eurochamvn.org/Whitebook
To download the Greenbook and access the Greenbook website: www.greenbookvietnam.com

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Nicolas Audier
Co-Chairman
European Chamber of Commerce in Vietnam

Dr. Gellért Horváth
Co-Chairman
European Chamber of Commerce in Vietnam

MESSAGE FROM THE CO-CHAIRMEN

This is a special edition for two important reasons. Not only is it the 10th edition of the Whitebook, but it is published in the year of EuroCham's 20th anniversary. Coincidentally, it is also the 30th anniversary of the Law on Foreign Investment, which decisively marked Vietnam's effective return to the global market. Over the last decade, the Whitebook has been the flagship product of our chamber. It is the culmination of our members' advocacy work, be it sectoral, cross-sectoral, technically specific or more general policy and regulatory recommendations.

The Whitebook reaches all levels of decision making in Vietnam and in Europe, and its impact is undoubtable. From the simplest positive feedback to being an inspiration behind the enactment of more business-friendly regulations in Vietnam, the Whitebook's achievements are numerous and wide-ranging. In essence, it has both amplified the work of the chamber and encapsulated EuroCham's mission: to be the voice of European business in Vietnam.

This year is a milestone for EuroCham, Europe and Vietnam itself, as we anticipate that the EU-Vietnam Free Trade Agreement (EVFTA) will be ratified. After a successful mission to Brussels in September 2017, EuroCham received clear signals from the European Commission and the European Parliament's highest representatives that the EVFTA is a priority for Europe. The views of EuroCham members about this process were relayed directly to European institutions and presented alongside both the Whitebook itself and EuroCham's interim EVFTA report published in September 2017.

In this edition, we dedicate an entire chapter to the EVFTA and its importance for both business and Government. EuroCham is a respected partner in the negotiation and implementation of this historic agreement, or in the words of Deputy Prime Minister Vuong Dinh Hue: "EuroCham is regarded as a key factor enhancing cooperation and investment between the EU and Vietnam" (August 2017). We want our members to be at the heart of discussions about how the EVFTA is implemented, and their collected thoughts are outlined in this chapter.

We believe that not only is the EVFTA Vietnam's reference point in terms of its global trade relations, but that Europe itself is its best partner; one that upholds inclusiveness, responsibility and sustainability as the key guiding principles of its businesses. Indeed, Europe has a lot to offer Vietnam in terms of green and environmental solutions. In recognition of this, we published our Greenbook in 2017, to highlight the opportunities and benefits European companies and partners can bring to boost sustainable development in Vietnam.

As in previous years, the Whitebook gathers key concerns and recommendations from the European business community in Vietnam. It is a collective message that cuts across several industries and companies, providing an accurate picture of the expectations and recommendations of EuroCham members and partners. This publication is a snapshot of the continuous work we engage in within our Sector Committees and in constant dialogue with the Central Government, Provincial Governments and other stakeholders towards an ever progressing business environment in Vietnam. As per the usual format, the Whitebook discusses key issues highlighted by our Sector Committees which they believe should be prioritised by the Government in 2018.

Vietnam is the most promising business destination for European companies in Southeast Asia and 2018 is a year of opportunity. The business environment in Vietnam has come a long way and much has changed in the past 10 years. The issues and recommendations highlighted in this Whitebook are proof of the level of discussion we have today, now in the context of a country with great potential, increasingly connected to the global market, and with immense opportunity to develop equitably, sustainably and responsibly.

EuroCham is certain that this 10th Whitebook can be a useful tool to constructively show where positive steps can be taken towards making sure Vietnam achieves its full potential as a top global business, trade and investment destination.

Bruno Angelet
EU Ambassador,
Head of the EU Delegation to Vietnam

MESSAGE FROM THE EU AMBASSADOR

2017 has been a fantastic year for Vietnam in terms of macroeconomic performance. With a GDP growth of 6.8%, Vietnam is one of the most dynamic economies in the region. In relation to trade, Vietnam's global exports rose dramatically by more than 21%. From an investment perspective, Vietnam managed to attract nearly USD30 billion, a 44.2% rise against 2016. Such conditions make Vietnam an attractive destination for foreign investment. As an open economy, the economic growth of Vietnam relies considerably on the health of its main partners including the European Union.

The European Union (EU) also did very well. As shown in a recent report published by the European Political Strategy Centre in January 2018 ("Europe is back"), the EU-27 is on a solid path of growth, job creation, investments, innovation and inclusion. The figures are impressive: economic growth has returned to a stable 2% since 2014, surpassing other advanced economies; total investments are on the rise, with €424 billion worth of Foreign Direct Investment (FDI) in 2016 which has been instrumental in increasing the productivity, competitiveness and efficiency of the European economy. The so-called 'Juncker investment plan' (European Fund for Strategic Investments) has certainly helped this recovery. The EU remains a global trading superpower, with 45 comprehensive trade agreements already covering 76 countries. The euro is close to the US dollar as the major global means of payment (over 36% vs the US dollar which stands at 39%). The fiscal situation in the EU has significantly improved with a careful reduction in budget deficits. The EU employment is at historic highs. Its world-class manufacturing provides a springboard for the development of Industry 4.0. Investment in R&D is on the rise. As an example, the EU's Horizon 2020 is the world's largest public funding programme for research and innovation, which is now also open for third countries. Last but not least, the EU is world leader in inclusive growth and quality of life and is the leader on clean economy transition.

The above figures illustrate how much the EU can offer to Vietnam to achieve its goals for a sustainable economic development. The upcoming implementation of the EU-Vietnam Free Trade Agreement will further boost our relationship. Already the EU is the second-largest overseas market for Vietnam, a destination for 18% of its exports just behind the US. With a two-way trade worth USD50.3 billion, the EU was the thrid-biggest trading partner of Vietnam. Vietnam enjoys a large trade surplus with the EU (USD31.8 billion). In terms of investment, European investors poured USD915.5 million into 151 projects in Vietnam. The EU is also active in key sectors of Vietnam such as energy and health through development cooperation.

I would like to welcome again the contribution from EuroCham to the reform process in Vietnam. The recommendations enshrined in this new edition of the Whitebook can certainly help to create an enabling business environment, so necessary to ensure a smooth implementation of the EVFTA. The Whitebook, together with the Joint Indicative Roadmap where independent experts have been working on a set of recommendations related to the EVFTA commitments, will guide our work in the upcoming months.

MESSAGE FROM THE BUSINESS ASSOCIATIONS

Jan Segers
Chairman of BeluxCham

BeluxCham is a non-profit, non-governmental professional organisation providing and promoting trade relations between Belgium, Luxembourg and Vietnam.

BeluxCham offers its assistance and market-knowledge to its members and/or potential companies from Belgium, Luxembourg and Vietnam that want to establish trade, business or open an office in one of these countries.

Besides business activities and events, BeluxCham also provides social-oriented events where the Belgian, Luxembourg and Vietnamese communities can gain a better knowledge about each other's cultural heritage.

BeluxCham also promotes and supports the economic trade missions from Belgium and Luxembourg to Vietnam, as well as supporting companies that want to have a better economic relationship with Belgium, Luxembourg or Vietnam.

All Vietnamese, Belgian and Luxembourg companies that want to build strong ties are always welcome as BeluxCham members.

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

Marko Moric
Chairman of CEEC

The Central and Eastern European Chamber of Commerce (CEEC) was established in 2015 to enhance cooperation and develop and promote economic, finance, commerce, investment and trade relations between Vietnam and CEE countries.

In almost three years of operation, we have been creating opportunities for professionals and social exchange in both Hanoi and Ho Chi Minh City. Our relations with Governmental Agencies, Diplomatic Bodies and Business Associations have been constantly extended through various Memoranda of Understanding (MoU).

We have been providing businesses with related services to our members. The "Soft-Landing" program, that includes market entry strategy, site selection, company formation and business development, was launched last year and it is considered as an active, professional tool for newcomers to support companies' establishment in Vietnam.

To increase knowledge and understanding of the business environment in Vietnam, we introduced a "Doing Business in Vietnam" booklet. It is a diverse tool to facilitate outreach to companies by highlighting the potential in the Vietnamese market in general and with a special focus on some sectors.

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

For more information, visit our website: www.ceecvn.org, or contact us via email: office@ceecvn.org

MESSAGE FROM THE BUSINESS ASSOCIATIONS

Pavel Poskakukhin
Chairman of DBAV

The Dutch Business Association (DBAV) has been active in Vietnam's business community since its establishment in 1999. Our membership comprises many large Dutch multinational companies, medium-sized enterprises and smaller, entrepreneurial outfits focused on local or regional markets. Our aim is to serve our great variety of members with a very personal and customised touch so that each one benefits from our network, know-how and platform.

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

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

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

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

Henri-Charles Claude
President of CCIFV

The French Chamber of Commerce in Vietnam (CCIFV) is a non-profit organisation created in 1998. It gathers 280 members and offers its services in Hanoi as well as in Ho Chi Minh City. CCIFV is part of a worldwide network which is composed of 115 French Chambers in 85 countries. The missions of the CCIFV are:

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

For more information, visit our website: www.ccifv.org

Thomas N. Debelic
Chairman of GBA

GBA
German Business Association

The German Business Association (GBA), founded in 1995, approved and licensed by the People's Committee of Ho Chi Minh City in 1998, is the voice and advocate of German businesses in Vietnam, fostering bilateral socio-economic relations between the two countries.

The GBA is one of the longest established business associations and a founding-member of EuroCham in Vietnam. It represents more than 228 German corporations and works for the best possible market environment and operating conditions for German companies in the country. It acts as a competence centre for its members, facilitating helpful information on business in Vietnam and establishing new contacts within the local community.

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

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

Michele D'Ercole
Chairman of ICham

ICHAM
Italian Chamber of Commerce in Vietnam
Camera di Commercio Italiana in Vietnam

The Italian Chamber of Commerce in Vietnam (ICham) started its activities at the end of 2008 and is now in its 10th year of operation. The Chamber currently has 2 offices based in Ho Chi Minh City and Hanoi with 78 members, among which are well-known Italian names: ENI, Generali, Ariston Thermo, Intesa Sanpaolo, Unicredit, UBI Banca, Piaggio, Banco Popolare, Datalogic, Bonfiglioli, Ghella, Perfetti Van Melle, Danieli, CAE, Carvico, Tenova, Pacorini, Interglobo, Cigisped, Savino del Bene, Segis, Microlys, GIVI, Boncafe and Segis, to name a few.

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

For more information, visit our website: www.icham.org

MESSAGE FROM THE BUSINESS ASSOCIATIONS

Soren Roed Pedersen
Chairman of NordCham Vietnam

NORDIC CHAMBER OF COMMERCE VIETNAM

On behalf of the Nordic Chamber of Commerce in Vietnam (NordCham Vietnam) and the Nordic business community in Vietnam, we are excited to support the launch of the 10th edition of the important EuroCham Whitebook.

NordCham's members see and support the great value of the Sector Committees and with our increasing member base and thus influence, not only on EuroCham Board Level but also in the sector committees, we aim together with our partner EuroCham to be involved and make a difference for all Nordics involved in the Vietnamese Business environment.

The Whitebook addresses many issues of particular concern to Nordic businesses present in Vietnam, including sectors such as Industrial Products & Engineering, Manufacturing, Information Technology, Pharmaceutical & Healthcare, Green Growth, Sustainability and many more.

NordCham Vietnam's outreach now includes all of Vietnam as we are approaching 50 members and we will be celebrating our 20th anniversary in 2018.

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

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Ana Arribas
Secretariat of the Spanish Business Group

Vietnam
Spanish Business Group

The Spanish Business Group is currently under renovation to improve the services and benefits it offers to its members.

The overarching target is to strengthen the commercial and social ties among the Spanish society and our Vietnamese friends and partners. In order to fulfil this objective, over the next year we will be launching networking and social events, workshops, trade missions, and seminars for the Spanish community in Vietnam, with the ultimate goal of constituting the first Spanish Chamber of Commerce in Vietnam.

If you are a Spanish individual or the representative of a Spanish company based in Vietnam and would like to participate in this endeavor, feel free to contact us at hochiminhcity@comercio.mineco.es!

OVERVIEW OF EUROCHAM ADVOCACY SERVICES

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

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

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

In 2016, two new Sector Committees were established, and throughout 2017 three were restructured to make them more efficient, showing increased engagement in advocacy activities. Sector Committees' scope of work includes meeting and discussing common topics and drafting EuroCham's position papers, which subsequently form the basis of our Whitebook and advocacy mandate. Other works also include contributing to the report containing the analysis on the implementation of the EU-Vietnam Free Trade Agreement and other EuroCham publications and attending and speaking at EuroCham's regular meetings and advocacy events and dialogues with Government and authorities.

We continued to bring the European business community and the high-level and provincial Vietnamese Government together in 2017 and expanded our partners' network in the ASEAN region. Through our engagement with the EU-ASEAN Business Council, EuroCham members can also voice their concerns in regional position papers that are presented to ASEAN and EU authorities. Over the course of the year, we organised more than 60 events including training, seminars, conferences and advocacy activities. Throughout 2017, we provided our members with opportunities to talk directly with many high-level Government officials at meetings and seminars. We also organised a number of in-depth dialogues with the Government, Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR) and Ministries to follow up on the Whitebook issues.

SECTOR	CHAIR
CropLife Vietnam	Mr. Kohei Sakata
Food, Agri and Aqua Business	Mr. Thierry Rocaboy
Human Resources and Training	Ms. Mai Lan Anh
Green Growth	Mr. Tomaso Andreatta
Intellectual Property Rights	Ms. Nga Nguyen
International Quality Generics	Mr. Torben Minko
Medical Devices and Diagnostics	Mr. Fabrice Leguet
Information and Communication Technology	Mr. Amanuel Flobbe
Legal	Mr. Antoine Logeay
Mobility	tbc
Nutritional Foods Group	Mr. Arnaud Renard
Pharma Group	Mr. Mathieu Fitoussi; Mr. Roeland Roelofs
Taxation and Transfer Pricing	Mr. Thomas McClelland
Transportation and Logistics	Mr. Juergen Weber
Tourism and Hospitality	Mr. Pavel Poskakukhin
Wine and Spirits	Mr. Shivam Misra; Mr. Paul Auriol

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

SOUTH-EAST ASIA
IPR SME HELPDESK

Free South-East Asia IPR advice for European SMEs

- The South-East Asia IPR SME Helpdesk provides **free information and services** in the form of **jargon-free first-line confidential advice on intellectual property and related issues, plus training, materials and online resources.**
- The Helpdesk **raises awareness** about IPR matters in South-East Asia affecting European SMEs, and helps them make **informed IPR decisions**.

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

Helpdesk Enquiry Service – Confidential Advice

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

Training Materials

Industry and business-focused guides and training materials address IPR issues in the South-East Asia region by:

- **IP specific guides,** e.g. patents & trade marks
- **Country IP factsheets**: IP overviews of each of the 10 South-East Asia countries
- **Industry specific guides**, e.g. textiles, machinery, creative industries
- **Business guides**, e.g. technology transfer, manufacturing

The Helpdesk can also supply intermediaries with **articles** about IPR in the South-East Asia region written by IP experts for partners' newsletter content or other publications.

Online Services

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

Training Events and Webinars

The Helpdesk organises **training events and webinars** in Europe and South-East Asia on **South-East Asia IPR protection and enforcement** , tailored to the needs of SMEs:

- **General IPR issues**, including IP registration and establishing an IP enforcement strategy.
- **Practical business challenges**, e.g. choosing business partners, attending trade fairs, licensing.
- **Industry specific trainings**
- **One-to-one sessions**: free 20 minute one-on-one consultations with an IP expert are available at most training events.
- **Webinars**: 45 minute online presentations + 30 minute live Q&A, from the convenience of your own office or home. All recordings are available for free download from our website post-session.

Working together

For more information and to discuss how we can work together, please contact us:

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Online: www.ipr-hub.eu
Blog: www.yourIPinsider.eu

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South-East Asia IPR SME Helpdesk

The EU-Vietnam Business Network (EVBN)

The EU-Vietnam Business Network (EVBN) project was established in 2013 and is co-founded by the European Union (EU). EVBN's overall objective is to increase EU exports & investments to Vietnam, with a special focus on SMEs, while facilitating market access to strengthen the EU Business sector in Vietnam.

WE OFFER

Events & Business Services

- Trade mission: 3-4 day B2B matchmaking meetings with potential Vietnamese partners
- Events: exhibitions, trade shows, business luncheons
- Tailored services for individual companies

Pre-market Consultation

- Free-to-download market studies and reports
- "Ask the expert" is accessible on the website
- Free database of service providers in Vietnam

Business Incubation

- Unique comprehensive startup facilities for European companies

EVENTS COMING UP

The European Art of Living Exhibition

18 - 20 May, 2018

White Palace Convention Center, Ho Chi Minh City

www.eurosphere.com.vn

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EUROCHAM
ICHAM
Czech Chamber of Commerce
Polish Chamber of Commerce
Unioncamere Emilia-Romagna

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USER'S GUIDE

The structure of the Whitebook is designed to provide a concise view of the business environment and the issues affecting European businesses in Vietnam. In line with this objective, the Whitebook is divided into 3 Parts. The Whitebook 2018 also assesses how these concerns specifically affect Vietnam, for example, through impact on trade, growth or employment. For each chapter in the Whitebook, EuroCham has asked members engaged in our 16 Sector Committees to focus on the discussion of key issues they believe the Vietnamese Government should address as a priority. Finally, the chapters put forward specific recommendations to help improve the current situation or resolve relevant challenges.

The 2018 Whitebook has one (1) dedicated chapter on the EU-Vietnam Free Trade Agreement (EVFTA) which includes all the EVFTA-related issues raised by EuroCham's Sector Committees to the Government. It also has one (1) chapter describing some of the highlights of our advocacy work over the last decade.

There are twenty-eight (28) chapters in total; including one (1) chapter on the EVFTA, eleven (11) cross-sectoral chapters and thirteen (13) sectoral chapters. These are organised in alphabetical order.

KEY ISSUE

Relevant Government authorities

Issue description: summary of the key concerns.

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

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

DISCLAIMER

The European Chamber of Commerce in Vietnam (EuroCham) is grateful to all contributing members of the Sector Committees for their input and support in making this 10th edition of the EuroCham Whitebook (Whitebook) possible. The Whitebook is a collective expression of the views of EuroCham's members, represented by the Sector Committees, on specific aspects of the business environment in Vietnam. It does not explicitly represent the views of one or more individual companies. The information and views put forward in the Whitebook are solely intended to promote a constructive dialogue and offer recommendations for the improvement of European–Vietnamese business relations. Furthermore, the Whitebook is strictly intended for the use of EuroCham's members and other interested parties, and not for a particular company and/or institution.

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Furthermore, in no event shall EuroCham, its members, its executive committee and/or the members of its executive committee be liable for any direct, indirect, special, incidental, or consequential damages (including lost profits) directly or indirectly relating to or arising out of the publication of the Whitebook, regardless of the form of action, whether in contract, tort, strict liability, or otherwise, and whether or not such damages were foreseen or unforeseen, even if one has been advised of the possibility thereof. In case of any discrepancy between the English and Vietnamese versions of the Whitebook, the English version shall prevail.

Links to third-party publications and websites in the Whitebook are provided for convenience only to you. EuroCham does not control and is not responsible for any of these third-party publications or their content. Any reliance you place on such information is therefore strictly at your own risk.

The 2018 Whitebook was produced by January 2018

HIGHLIGHTS OF
10 YEARS OF ADVOCACY
AT EUROCHAM

HIGHLIGHTS OF 10 YEARS OF ADVOCACY AT EUROCHAM

OVERVIEW

The last two decades have been a period of profound change for Vietnam. Economic growth has been among the strongest in the world, with average annual GDP growth of 6.4% in the 2000s.[1] This has transformed Vietnam from one of the poorest countries on earth to one of middle-income status.[2]

That spectacular growth has created new jobs and raised standards of living. In 1993, more than half of the population lived on less than USD1.90-a-day. Now, that figure is 3%.[3] Meanwhile, GDP per capita has risen from USD360 in 1998 to over USD2,000 in 2018.[4] It has also encouraged Foreign Direct Investment (FDI) from major international companies throughout the EU. These companies have brought with them the skills, knowledge and experience of European business, which, in turn, further contributes to economic growth and improved living standards.

We have seen these changes unfold first hand: as Vietnam has grown, so have we. Two decades ago, EuroCham was formed with just 60 members. Now, we count almost 1,000, including some of the world's leading enterprises. Over this time, we've seen how European business succeeds when Vietnam succeeds. The Government has made huge improvements to the domestic business environment since the 1990s. These developments are welcome, but there is still much more to do. Our role as the voice of European business is to work with relevant Ministries and State agencies to help them go further. Together, we can do more than improve legislation and reduce barriers to trade – essential though this is. We can also increase the knowledge, skills and living standards of Vietnamese people.

That's what we've been doing since 1998. It's also the reason we began publishing the Whitebook, now in its 10th edition: to better communicate the issues that matter to European business and to put their concerns at the heart of national and local decision making. In this 10th edition of our Whitebook, we celebrate some of the 'success stories' of our work over the last decade. These changes, achieved with and on behalf of our members across all sectors, highlight the fundamental principle at the centre of our work: that European businesses can achieve far more together than would ever be possible on their own.

I. IMPROVING THE BUSINESS ENVIRONMENT IN VIETNAM

One of the most important methods of improving the trade and investment environment for European businesses in Vietnam is reducing international tariffs and trade barriers. Of course, the EU-Vietnam Free Trade Agreement (EVFTA), which should be ratified soon, is a historic moment in bilateral trade between Vietnam and EU Member States. EuroCham has been pushing hard for this agreement since it was first put forward, and we have been meeting with EU representatives at the highest level to make sure it is high on their agenda, alongside other trade and investment issues for European business in Vietnam.

For instance, in 2012 we held a special dialogue with the President of the European Council, the EU Delegation and 130 delegates, most of them EuroCham members representing large and multinational companies in Vietnam, where the president highlighted our role in strengthening business ties between the EU and Vietnam.[5] In March 2014, we visited Brussels to engage in conversations with various stakeholders, from both European Institutions and Vietnam's Ambassador to the EU and relevant Trade Associations.[6] Then, in 2014, we hosted a lunch with

1 "The World Bank in Vietnam: Overview", *The World Bank*. Available at: <http://www.worldbank.org/en/country/vietnam/overview> accessed on 10 January 2018.
2 "Asia's next tiger", *The Economist*, 6 August 2016. Available at: <https://www.economist.com/news/finance-and-economics/21703376-having-attained-middle-income-status-vietnam-aims-higher-good-afternoon-vietnam> accessed on 5 January 2018.
3 *Op.cit*. The World Bank.
4 Data from The World Bank. Available at: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> accessed on 6 January 2018.
5 "EuroCham special dialogue with President of the European Council, H.E. Herman Van Rumpoy", *EuroCham*. Available at: <https://www.eurochamvn.org/News/EuroCham_News/EuroCham_Special_Dialogue_with_President_of_the_European_Council_HE_Mr_Herman_Van> accessed on 5 January 2018.
6 "EuroCham mission to Brussels a big success" EuroCham. Available at: <https://www.eurochamvn.org/node/12951> accessed on 7 February 2018.

the President of the European Commission where he met with European businesses to discuss the progress of the EVFTA.[7] In June 2016, EuroCham and EVBN hosted an EVFTA conference where the chief negotiators from both sides shared insights about the negotiations. Most recently, in September 2017, we brought a delegation of 25 EuroCham members to Brussels to discuss and promote Vietnam and the ratification of the agreement. Our delegation met with Commissioners and officials from a range of departments, and culminated in a meeting with the President of the European Commission, and Vice-President of the European Parliament.[8]

While much progress has been made in this area, and while the Free Trade Agreement will bring huge benefits to both the EU and Vietnam, there is still more to do. We will discuss it further in the dedicated EVFTA Chapter in the first part of our Whitebook.

II. A STRONGER VOICE FOR EUROPEAN BUSINESS

EuroCham has grown from just 60 members in 1998 to almost 1,000 in 2018. Our growing membership, including multinational and market-leading companies from across the EU, strengthens our hand as the advocate for European business with the Government in Vietnam. This gives us the chance to raise the issues and concerns of our members at the highest levels. Since our formation, we have hosted events and briefings where our members have met with officials and Ministers from across the Government.

For instance, in 2015, we organised a special Dialogue event with the Deputy Prime Minister of Vietnam. He shared the Government's reform agenda, and our members were able to ask him about the issues that affect their business.[9] In the last 12 months alone, we gave our members the chance to meet face-to-face with officials across Government in over 20 meetings and seminars, involving the most relevant Departments and the highest circles of Government.[10]

In 2016, EuroCham joined together with the EU-Vietnam Business Network (EVBN) to strengthen our advocacy work in Ho Chi Minh City and our Government engagement in Hanoi. As a result, EuroCham has regular dialogue with all key Ministries and the Office of Government. We also conduct regular activities with other research and development institutions. Moreover, we have promoted our core values of integrity, transparency and compliance as well as the importance of Corporate Social Responsibility (CSR) and sustainability within EuroCham itself and our member companies.

In 2016 and 2017, EuroCham began to raise issues at the highest levels, with the Party's Central Economic Commission, Deputy Prime Ministers, the Prime Minister, Office of Government and National Assembly to promote the EVFTA and raise members' recommendations. Close cooperation was fostered with other EU-ASEAN Business Networks, as well as EU Member State representatives in Vietnam where EuroCham had a pivotal role facilitating dialogues between regional partners and the Vietnamese Government.

In 2017, EuroCham was invited to join the Advisory Council for Administrative Procedures Reform (ACAPR) under Prime Minister Nguyen Xuan Phuc. We continued to expand our activities and facilitate trade and investment into more provinces through close collaboration with Ministry of Foreign Affairs and to develop our regional chapters to promote the EVFTA and its implementation at ground level. In August 2017, EuroCham's efforts were recognised by Deputy Prime Minister Vuong Dinh Hue, who hailed the chamber as the "key driving factor of EU-Vietnam trade and investment relations". In 2017, EuroCham also published two new reports: an Interim EVFTA Report analysing the implementation of the EU-Vietnam Free Trade Agreement[11], and the Greenbook, promoting sustainable development and European green solutions.[12] We presented both these publications, alongside the

7 "H.E. Mr. Jose Manuel Barosso, President of the European Commission, meets with key players of the European business community in Vietnam", *EuroCham*. Available at: <https://www.eurochamvn.org/node/13542> accessed on 5 January 2018.

8 "EuroCham concludes mission to Brussels and delivers EVFTA report, Greenbook and Whitebook to EC President", *EuroCham*. Available at: <https://www.eurochamvn.org/node/16870> accessed on 5 January 2018.

9 "EuroCham organised the special dialogue with Deputy Prime Minister Vu Van Ninh" *EuroCham*. Available at: <https://www.eurochamvn.org/node/14400> accessed on 5 January 2018.

10 "Chairmen messages: Membership renewal 2018", *EuroCham*. Available at: <https://www.eurochamvn.org/node/17038> accessed on 5 January 2018.

11 The Report compiles perceptions from the European Business Community in Vietnam and the expectations and recommendations towards the implementation of the EU-Vietnam Free Agreement. The Report was prepared in August 2017 to be submitted to the Committee on International Trade INTA of the European Parliament in September 2017. It was prepared based on the assumption that it will be continued in view of implementation and monitoring procedures that EuroCham can play a key role in these procedures.

12 It is the first publication dedicated to offering an overview of the state of affairs in Vietnam regarding renewable energy, water and waste management, smart cities and green building. The Greenbook is dedicated to showcasing Europe's longstanding expertise in providing solutions and creative alternatives towards sustainable and inclusive development. It highlights the opportunities and benefits European companies can bring to boost green growth, and includes not only business opportunities, but also recommendations to improve the green business environment. The electronic version can be found on the website: <https://www.eurochamvn.org/node/16988>

Whitebook 2017, to Brussels, as mentioned above.

Looking ahead to 2018, we will continue to use the growing strength of our Business Associations, Sector Committees, members and partners to make the voice of European business heard. This year, EuroCham will take on the chairmanship of the Vietnam Business Forum (VBF). In this role, we will continue to work with other Business Associations to raise common issues of FDI in Vietnam to the Government. Furthermore, the EVFTA is set to be ratified in 2018. EuroCham will continue to fulfil its role of principal contributor and advocate for the implementation process as well as trade and investment facilitator, in bringing Europe to Vietnam and also Vietnam to Europe and other regions.

III. POSITIVE LEGISLATIVE CHANGE

Advocacy is at the heart of EuroCham's work. Together with, and on behalf of, our members, we seek to address the key issues facing European businesses and secure legislative change to further enhance the trade and investment environment in Vietnam. In this section, we discuss a few select highlights to illustrate our work over the last decade.

1. Reducing high port charges

In two letters[13] dated 5 April 2010 and 18 August 2010, EuroCham highlighted to Ministry of Finance (MOF) that various port fees at Cai Mep/Thi Vai were 2 to 4 times higher than those at other ports in the region. The charges were a major concern to shipping lines whose vessels called at Cai Mep. EuroCham suggested that MOF significantly reduce the port charges/tariffs in order to make the port more competitive in the region. In a letter to EuroCham dated 7 September 2010[14], MOF said that the local authority was considering an adjustment of the port policies and fees which could be applied to all ports in Vietnam, once approved, and that MOF was preparing a proposal to reduce port and maritime fees for vessels whose DWT is more than 50,000 calling at Cai Mep–Thi Vai port. The proposed fees would be lower than those applied based on previous regulations. MOF also assured EuroCham that it would co-operate in order to adjust port policies and fees in Vietnam to a more reasonable level in the future.[15]

2. Relaxing the conditions for work permit issuance for foreign employees[16]

EuroCham Human Resources and Training Sector Committee has long advocated for an easing of the conditions surrounding work permits for foreign employees, in particular those outlined in Resolution 47/NQ-CP of the Government dated July 8, 2014 (Resolution 47). Following close and persistent work with the Government and stakeholders including VBF, our campaign paid off when the Government agreed to loosen the conditions to issue a work permit for foreign employees who fall into one of the following categories: (i) foreigners who are experts or technicians that satisfy requirements for professional training qualification or have acquired at least 5 years work experience in the field in which they are expecting to work in Vietnam; (ii) foreigners who have a diploma certificate or equivalent and above and who have specialised training suitable to their majors at foreign language training centers (foreign language centers), preschools; (iii) foreigners who have a bachelor degree or equivalent and above and who have specialised training suitable to their majors at general educational institutions. Indeed, the requirement was set as either bachelor degree, with a diploma certificate even accepted in some specific sectors, or 5 years of experience.

3. Visa exemption for 5 European countries to Vietnam

EuroCham, and our Tourism and Hospitality Sector Committee in particular, has long advocated for visa-exemptions for European visitors to Vietnam – as long ago as 2010 we called for visa-free travel to be expanded.[17] Following constructive dialogue[18], we were delighted when, in June 2015, Prime Minister Nguyen Tan Dung signed

13 Available at EuroCham's website: <https://www.eurochamvn.org/sites/www.eurochamvn.org/files/uploads/Documents/Letter%20to%20MoF%20re%20Port%20dues_05041010_Scan.pdf> last accessed on 6 February 2018.

14 Available at EuroCham's website: <https://www.eurochamvn.org/sites/www.eurochamvn.org/files/uploads/Documents/MoF%20Letter%20re.%20port%20dues_EN_Sept%202010.pdf> last accessed on 6 February 2018.

15 "EuroCham receives MOF letter promising future reduction in port charges", *EuroCham*. Available at: <https://www.eurochamvn.org/News/EuroCham_receives_MOF_letter_promising_future_reduction_in_port_charges> accessed on 7 February 2018.

16 More information is available at: <https://www.eurochamvn.org/node/13465> accessed on 7 February 2018.

17 "EuroCham urges visa exemption for more markets", *Vietnam Tourism*, 10 February 2010. Available at: <http://www.vietnamtourism.com/en/index.php/news/items/2680> accessed on 5 February 2018.

18 "An achievement of Tourism and Hospitality Sector Committee: Visa exemption for five European countries to Vietnam", *EuroCham*. Available at: <https://www.eurochamvn.org/node/14743> accessed on 5 February 2018.

a Decision to waive visa requirements for people from an additional 5 European countries. This Directive added French, British, German, Spanish and Italian citizens to those European nationals from Norway, Sweden, Denmark and Finland granted visa-exemption, as well as visitors from Belarus, Japan, Russia and South Korea.[19] Visitors from these countries were granted up to 15 days in Vietnam. The regulation for the 5 new nations was effective for 12 months from 1 July, 2015. Then, on 30 June 2016, the Government issued Resolution 56/NQ-CP on visa waiver programmes for citizens coming from a number of countries in Europe (Resolution 56). The visa exemption was applied regardless of passport type or immigration purpose, as long as the travellers met the requirements of relevant Vietnamese laws and visit Vietnam for no more than 15 days. This Resolution, designed to attract more European citizens to Vietnam, boost tourism, facilitate business travel and foreign investment, extended the Prime Minister's Directive for a further 12 months.[20]

While this is a positive development, we continue to advocate for further extension of visa-free travel for EU citizens[21] – an issue that Tourism and Hospitality Sector Committee will discuss in detail in their chapter of the Whitebook 2018.

4. Tax incentives for business expansion and working on new regulations on transfer pricing

Tax and Transfer Pricing Sector Committee has raised a number of issues in both the Whitebook and in discussions with the Government and relevant Ministries which have come to a successful resolution through changes to relevant regulations and official guidance. These positive developments include:

- The full deductibility of advertising and promotions expenses, made in accordance with the law;
- The reduction in the withholding tax rate on interest from 10% to 5%;
- The re-introduction of Corporate Income Tax (CIT) incentives for business expansion;
- The recognition of hypothetical tax as a deduction not subject to Personal Income Tax (PIT);
- The CIT deductibility of healthcare expenses, life insurance and voluntary health insurance premiums, if they are provided in the labour contract and fiscal policy, as well as voluntary pension contributions, up to a cap;
- No VAT claw-back on unsuccessful oil and gas upstream projects; and
- No FCWT application to contracts for the supply of machinery and equipment with a warranty clause attached.

In addition to the above, there have been a number of improvements in tax administration, such as the re-introduction of tax incentives for business expansion from 2014. The application of tax incentives in the 2009-2013 period is one that affected several EuroCham members and taxpayers generally and was something that EuroCham particularly focused on.

Tax incentives are an important factor encouraging businesses to expand and grow.[22] However, from 2009-2013, there were no incentives for business expansion of domestic investments. EuroCham raised this issue in 2015[23], and as a result of our persistent and proactive campaigning, MOF raised it with the Prime Minister for further directions. Official Letter 4769/BTC-TCT of General Department of Tax (GDT) dated 7 April, 2016 regarding the policies for regular investment activities, provided guidance that companies which had already paid tax could apply for this to be offset or refunded. While we appreciated this re-assessment and re-application of tax incentives, in practice, it was not applied consistently. So in 2016 we continued to pursue this issue. In response, MOF reiterated and reaffirmed their guidance. The responsiveness and support of MOF in this matter are welcome, and we hope that the Government and MOF will further monitor the implementation of this guidance in 2018.

In 2016, EuroCham's Tax and Transfer Pricing Sector Committee worked with MOF and GDT to provide our input and recommendations on draft Decree 20/2017/ND-CP prescribing tax administration for enterprises engaged in

19 "Official: Vietnam to scrap visas for five European countries in July", *Tuoi Tre*, 18 June 2015. Available at: <https://tuoitrenews.vn/business/28764/official-vietnam-to-scrap-visas-for-five-european-countries-in-july> accessed on 5 February 2018.

20 "Visa exemption for 5 EU nationalities extended to June 2017", *EuroCham*. Available at: <https://www.eurochamvn.org/node/15766> accessed on 5 February 2018.

21 "EuroCham urges Vietnam to relax visa requirements", *Saigon Times*, 23 January 2018. Available at: <http://english.thesaigontimes.vn/58143/EuroCham-urges-Vietnam-to-relax-visa-requirements.html> accessed on 5 February 2018.

22 The General Department of Taxation, Ministry of Finance released Dispatch 4769/BTC-TCT in response to EuroCham's request regarding tax reimbursement, available on EuroCham website at: <https://www.eurochamvn.org/node/15492> accessed on 6 February 2018

23 The Tax and Transfer Pricing Sector Committee has raised the issues in its 2015 and 2016 Whitebook chapters.

transfer pricing (Decree 20) which was issued on 24th February 2017 and entered into force on 1 May, 2017.[24] We have also contributed to the draft Circular (currently known as Circular 40/2017/TT-BTC) guiding some Articles in Decree 20.[25] Both EuroCham and Tax and Transfer Pricing Sector Committee would like to express our sincere appreciation to MOF and GDT for their continuous efforts in developing the legislative framework and supporting European businesses in Vietnam. It is our honour to be part of the process of building and commenting on these important legislative documents.

5. Eliminating the price ceiling cap for children's powdered milk products

Since 2009, EuroCham has been advocating for the abolition of price stabilisation measures. There is no need to regulate pricing, because the vast majority of products and brands offer consumers choice depending on their needs. We strongly believe that the first principle of price stabilisation is to let the market decide based on the rule of 'supply and demand'.

EuroCham also raised concerns about the draft regulations being considered by MOF to implement price controls on a long list of products, including many kinds of milk and other food products. Our concern was that the draft Circular would impose significant new reporting and administrative burdens on enterprises throughout the production and distribution chain and make it difficult for our member companies to operate with predictability.

EuroCham also proposed an alternative solution to the price control mechanism - greater transparency in the whole supply chain for distribution and retail. In two letters to MOF and the Prime Minister, EuroCham underlined the importance of Vietnam's aspirations to graduate to "market economy status" and restated that EuroCham, along with the rest of the international community, stands ready to work together with MOF and the rest of Vietnam's Government and administration to find alternative ways to keep prices in check.[26]

However, in 2014, MOF introduced price caps on powdered milk products for children under 6 years-old.[27] Decision 1079/QD-BT dated 20 May 2014 of MOF detailing the imposition of price stabilisation measures for milk products for children under 6 years of age (Decision 1079) runs counter to the Government's aspiration to achieve a full market economy. In particular, it risks affecting business performance in the short-term, as well as trade and investment in the long term.[28] Indeed, the market for formula milk for children aged under 6 fell 11% in volume in the 12 months after Decision 1079 was implemented.[29] Furthermore, since this cap was introduced, the business environment has changed: the price of labour has increased, as have other essential business costs, such as electricity.[30] These measures were prolonged through Decision 857/QD-BTC dated 12 May 2015. EuroCham's Nutritional Food Group Sector Committee raised this issue in the 2015 edition of the Whitebook[31], and since then has continued to advocate for a change in the law.[32]

On 1 April, 2017, the Government decided to remove the price cap. On 26 June, 2017 Circular 08/2017/TT-BCT on price registration, price declaration of milk and functional foods for children under 6 years (Circular 08) was issued and took effect from 10 August, 2017. EuroCham welcomes Circular 08 as it no longer manages prices through price ceilings. We hope that the price declaration and price notification procedures stipulated in Circular 08 will be implemented in a simple way to reduce the administrative burden on businesses compared with the previous price declaration procedure. It will also help to achieve State management objectives, that is, to ensure market transparency and the interests of consumers while upholding the right of businesses to self-determine prices and

24 In response to Official Letter 15994/BTC-TCT dated 9 November 2016 calling for comments on the draft Decree of the Government prescribing tax administration for enterprises engaged in transfer pricing.

25 In response to Official Letter 3795/BTC-TCT dated 23 March, 2017 of GDT calling for comments on the draft Circular guiding some Articles in Decree 20/2017/ND-CP dated 24 February, 2017 of the Government prescribing tax administration for enterprises engaged in transfer pricing.

26 "EuroCham opposes draft circular on implementation pf price control mechanism", *EuroCham*. Available at: <https://www.eurochamvn.org/News/EuroCham_opposes_Draft_Circular_on_Implementation_of_Price_ControlMechanisms>; "Draft Circular on price registration from the Ministry of Finance – comments requested in consultation period until 22 February", *EuroCham*. Available at: <https://www.eurochamvn.org/News/Draft_Circular_on_Price_Registration_from_the_Ministry_of_Finance_MOF_Comments_Requested_in> accessed on 8 February 2018; "EuroCham expresses to Prime Minister concerns about the proposed Circular on price management", *EuroCham*. Available at: <https://www.eurochamvn.org/News/EuroCham_expresses_to_Prime_Minister_ concerns_about_the_proposed_Circular_on_Price_Management>, accessed on 6 February 2018

27 "EuroCham suggests lifting milk price cap", *The Saigon Times*, 2 March 2017. Available at: <http://english.thesaigontimes.vn/52648/EuroCham-suggests-lifting-milk-price-cap.html> accessed on 5 February 2018.

28 "The Whitebook 2017", *EuroCham*, p. 136.

29 "Powdered milk sales fall in major cities", *The Saigon Times*, July 24 2015. Available at: <http://english.thesaigontimes.vn/42096/Powdered-milk-sales-fall-in-major-cities.html> accessed on 5 February 2018.

30 *Op.Cit*. The Saigon Times.

31 "Whitebook 2015", *EuroCham*, p.141.

32 "Whitebook 2016", *EuroCham*, p. 111; "Whitebook 2017", *EuroCham*, p.136.

other fundamental principles of the market economy. This is a positive and much-needed step in the context of Vietnam's active pursuit of the European Union's recognition of its market economy status as well as its pursuit for innovation and product development.[33]

6. Reforming legislation guiding the Food Safety Law, especially for pre-packaged products

Food safety risks arising from pre-packaged, industrially-processed food products are particularly low in Vietnam. These products were responsible for just 2.2% of cases of food poisoning in 2016, according to a Government report.[34] Nevertheless, for many years, these products have been subjected to stringent and unnecessary inspection and registration procedures. These procedures have brought no value to food safety but have proven to be burdensome and costly to businesses. Examples of such requirements include the certification of conformity with food safety regulations prescribed in Decree 38/2012/ND-CP dated 25 May 2012 of the Government detailing some Articles of the Law on Food Safety (Decree 38).

EuroCham's Nutritional Food Group Sector Committee (NFG) has long argued that these regulations should be amended, and the Government has listened to their concerns. Mr. Mai Tien Dung, Minister, Chairman of the Office of the Government and Chairman of the Advisory Council for Administrative Procedures Reform (ACAPR), said at a recent ACAPR meeting, co-organised by EuroCham, that the Government, Ministry of Agriculture and Rural Development (MARD) and other Ministries were working to draft a new Decree which would replace Decree 38, and which would allow businesses to self-certify on safety standards.[35] The Government issued the new Decree 15/2018/ND-CP detailing the implementation of some articles of the Law on Food Safety on 2 February, 2017 with immediate effect. Now, organisations and individuals producing and trading can self-certify regulation conformity for processed food packed availably; food additives; food-processing supporting substances; and equipment, packaging materials and food containers. Besides, products and raw materials for production and importation which are used only for production or processing of export goods or for internal production, which are not consumed on the domestic market, are exempt from the procedures of self-certification of regulation conformity.

EuroCham appreciates the Government's continued efforts to drive for positive change. We are committed to continue supporting and cooperating with the Government, MOH and other Ministries to ensure Decree 15 is effectively implemented, not only in terms of self-certification and creating favourable conditions for business but also in assigning one Ministry (MOH) to be in charge of coordinating food safety and to ensure smooth inter-Ministerial cooperation and simplification of administrative procedures.

The positive developments described above are just a few examples of our recent achievements. But as we continue to grow as one of the largest chambers in the world and develop our work across Vietnam, including through our new regional chapters and extended international network, we will build on this success and become an even stronger advocate for improving the trade and investment environment in Vietnam. Looking ahead, just as the last two decades were a period of profound change; so will the coming decades. Vietnam is not standing still, and as the country continues to move up the value chain and further reform its domestic regulations and international relationships, we will continue to contribute to Vietnam's growth and prosperity and further promote the country as a great partner of European business and the European Union for the upcoming EU-Vietnam Free Trade Agreement and grasp the opportunities that the FTA will bring.

ACKNOWLEDGEMENTS

Laurence Newman, EuroCham Whitebook Editor
Le Thanh Binh, Senior Advocacy Manager

33 "Vietnam removes price ceiling for dairy products", *Viet Nam News*, 12 April 2017. Available at: <http://vietnamnews.vn/economy/374412/viet-nam-removes-ceiling-price-for-dairy-products.html#ieyX35xMG0SU5hcD.97> accessed on 5 February 2018.

34 Report 37/BC-CP dated 3 February 2017 of the Government on the implementation status of food safety management policies and laws during 2011-2016.

35 "Dialogue meeting on the mechanisms, policies, and administrative procedures related to business operation and activities of European enterprises in Vietnam", EuroCham Dialogue report, 23 January 2018. Available at: <https://www.eurochamvn.org/node/17134> accessed on 6 February 2018.

OVERVIEW

CONTEXTUAL INTRODUCTION

OVERVIEW

2017 marked a significant milestone for Vietnam. Over the last 12 months, the country has further integrated into the global economy and the international community. This was highlighted in November when Vietnam hosted the 25th Asia-Pacific Economic Co-operation (APEC) Economic Leaders Meeting in Da Nang. The visit of National Assembly Chairwoman, Mdm. Nguyen Thi Kim Ngan, to Europe and the visits of the Prime Minister to the Netherlands and to the G20 Summit in Germany further emphasise Vietnam's growing international integration. This is the second time the Prime Minister of Vietnam has been invited to the G20 to discuss global issues, especially business and trade, finance and climate change.

The country also showed its continued dedication to open markets and international trade in 2017. Prime Minister Nguyen Xuan Phuc issued Directive 38/CT-TTg dated 19 October 2017 to guide on enhancing the effective implementation of the ratified Free Trade Agreements (FTAs). The country's involvement in 12 bilateral and multilateral FTAs with 56 economies around the world is set to be the foundation of Vietnam's global economic integration.[1] Vietnam championed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the successor to the Trans-Pacific Partnership[2], and the EU-Vietnam Free Trade Agreement (EVFTA), a historic agreement between Vietnam and the European Union, is set to be ratified in 2018. By 2020, when all 16 of Vietnam's FTAs come into effect, Vietnam will be among a huge economic network of 59 partners, including 5 permanent members of the United Nations (UN) Security Council, 15 members of the G20 and other emerging economies.

Indeed, Vietnam has some of the highest levels of public support for globalisation in the world. More than 90% of people in Vietnam believe globalisation is a force for good, according to data from YouGov published in late-2016.[3]

REFORM AND PROGRESS

Over the past three decades, Vietnam has been on a successful and rapid path of development. This has triggered major socio-economic changes for both the country and its people. Starting with reforms under Doi Moi in 1986, Vietnam has become one of the fastest-growing economies in the world, with average annual growth of 6.4% in the 2000s.[4]

This growth has had a profound impact on the Vietnamese population. Vietnam has gone from a poor, developing country to a middle-income country in just a few short decades, and this has led to a drastic reduction in poverty levels.

In the 1980s, Vietnam had a GDP per-capita income of just USD100. Today, this has risen to over USD2,000.[5] Moreover, infrastructure improvement has led to a dramatic improvement in living conditions: in 1993, less than half of households in Vietnam had access to electricity; today, access is almost universal. Even in the most rural areas and islands, electricity is available. More than 75% of people now have access to clean water and sanitation, up from less than half the population. Vietnam has also achieved several of its Millennium Development Goals (MDG) ahead of time.[6]

1 "Golden key to Vietnam's economy", *WTO Center*, 25 April 2017. Available at: <http://www.trungtamwto.vn/tin-tuc/chia-khoa-vang-cho-kinh-te-viet-nam> last accessed 31 January 2018.

2 "Sustainable growth foundations were laid in 2017: president" *Viet Nam News*, 2 January, 2018. Available at: <http://vietnamnews.vn/politics-laws/420387/sustainable-growth-foundations-were-laid-in-2017-president.html#yS07V0dJrrEDrVsr.97> accessed on 31 January 2018.

3 "What your country thinks about globalization" *World Economic Forum*, 13 November 2017. Available at: <https://www.weforum.org/agenda/2017/11/what-your-country-thinks-of-globalization> accessed on 31 January 2018.

4 "Vietnam Overview" *The World Bank*, 26 September 2016. Available at: <http://www.worldbank.org/en/country/vietnam/overview> accessed on 31 January 2018.

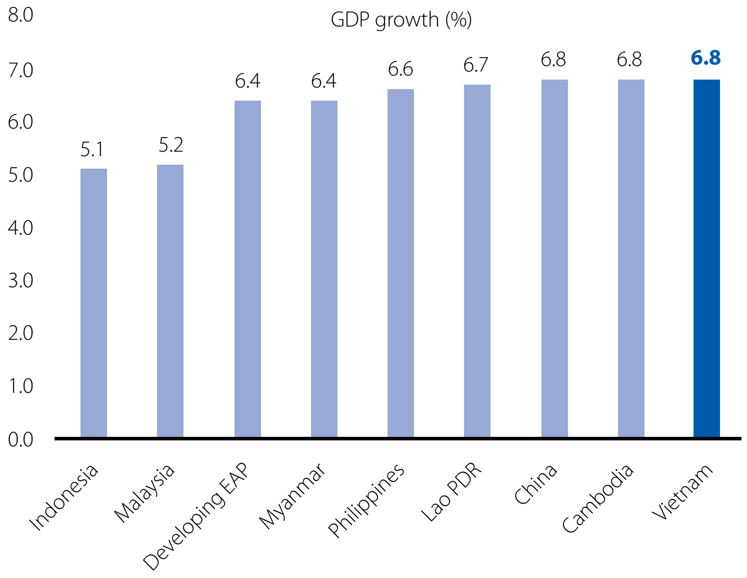
5 Data from the World Bank. Available at: <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> accessed on 6 January 2018.

6 *Ibid.*

VIETNAM'S ECONOMIC GROWTH

Vietnam's economy grew 6.8% in 2017, thanks in part to higher domestic demand and strong export earnings.[7] That was a similar rate of growth to China, and a faster growth rate than other countries in the region, including Indonesia (5.1%) and Malaysia (5.2%), as the graph below shows.[8] This growth is set to remain steady at around 6.5% in the medium term, while inflation is projected to remain low, according to The World Bank.[9]

Figure 1: GDP growth 2017



Source: Sustaining Growth Momentum, The World Bank Vietnam, January 2018, p.5.

Indeed, the Asian Development Bank also predicts strong short-term economic growth for Vietnam at 6.5%.[10] Over the long-term, professional services firm PricewaterhouseCoopers (PWC) predicts that Vietnam will see the fastest economic growth in Asia over the next few decades, with a projected average annual growth rate of 5% from 2014 to 2050.[11] This growth is predicted to make Vietnam the 20th-largest economy in the world, and in the top 10 in Asia, by 2050. However, to achieve this, Vietnam needs sustained economic reforms, stronger macroeconomic fundamentals, public bodies and education.[12]

Vietnam's share of world trade is growing, too. Vietnam has overtaken Southeast Asian nations such as Malaysia, Indonesia and Thailand to take the second-largest share of world trade in the ASEAN region (1.36% in 2016, up from 0.6% in 2012), behind Singapore (2%).[13]

Vietnam also performs well in terms of education compared to other countries in the region. It ranked 19th out of 72 countries in the Organisation for Economic Cooperation and Development's (OECD) latest Programme for International Student Assessment (PISA) results.[14]

7 "Record exports help lift Vietnam's 2017 GDP growth to 6.81%" *The Business Times*, 27 December 2017. Available at: <http://www.businesstimes.com.sg/government-economy/record-exports-help-lift-vietnams-2017-gdp-growth-to-681> accessed on 31 January 2018.

8 S. Eckardt *Sustaining Growth Momentum*, The World Bank, January 2018, p.5.

9 "Vietnam sees stronger growth momentum", *The World Bank*, 11 December 2017. Available at: <http://www.worldbank.org/en/news/press-release/2017/12/11/vietnam-sees-stronger-growth-momentum> accessed on 31 January 2018.

10 "Vietnam: Economy", *Asian Development Bank*. Available at: <https://www.adb.org/countries/viet-nam/economy> accessed on 21 February 2018.

11 "The World in 2050", *PWC*, February 2015, p.17. Available at: <https://www.pwc.com/gx/en/issues/the-economy/assets/world-in-2050-february-2015.pdf>accessed on 31 January 2018.

12 "Spotlight on Vietnam: the leading emerging market", *PWC*, October 2017, p.10.

13 C. Dordi *Vietnam foreign trade 2018: a brief outlook*, p.5.

14 "Vietnamese student achievements rank in top 20: OECD survey", *Viet Nam Net Bridge*, 27 January 2017. Available at: <http://english.vietnamnet.vn/fms/education/171638/vietnamese-student-achievements-rank-in-top-20--oecd-survey.html> accessed on 3 February 2018.

Today, this economic growth, combined with favourable geography and a large, youthful and highly-educated working-age population, makes Vietnam a promising destination for foreign investors.[15] Over 60% of Vietnam's population is aged under 35[16], and Vietnam's urban population is predicted to rise from 33 million in 2016 to 54 million (or 50% of the population) in 2035. This demographic dividend will help to fuel the labour market in the future.[17]

The Government of Vietnam, through the Socio-Economic Development Strategy 2011-2020 (SEDS), aims to make Vietnam a modern, industrialised nation by 2020. With this in mind, SEDS has put the focus on structural reforms, environmental sustainability, social equity and emerging issues of macro-economic stability. This requires changes in the banking system, market institutions and State-Owned Enterprises (SOEs)[18], accelerating a trend that has seen SOEs fall from over 1,300 in 2011 to around 950 in 2015. The Government plans to further reduce the number of SOEs to 190 in 2020.[19] Vietnam has also issued specific plans to enhance its competitiveness and attractiveness through a number of Resolutions and Directives.[20]

VIETNAM AS AN ATTRACTIVE FDI DESTINATION

Vietnam has put in place sound macro-economic policies with inflation remaining in the single digits. This stable environment has led to investor confidence which has encouraged Foreign Direct Investment (FDI).[21] Since entering the World Trade Organisation (WTO) in 2007, Vietnam has been changing its legislation to meet international standards and both market access and investment incentives have continued to open up.

Indeed, a recent report from PWC highlighted that Vietnam's low-cost environment, strong economic prospects, growing middle class and deregulated economy make it an attractive investment destination.[22] Indeed, Vietnam jumped 14 places in the latest World Bank Doing Business report, rising to 68 out of 190 economies around the world for ease of doing business in 2017.[23]

In short, Vietnam has a number of competitive advantages that make it an attractive FDI destination, including competitive production costs, a favourable location at the centre of Southeast Asia, strong economic performance and growing domestic consumption.[24]

Vietnam has seen significant growth in FDI since it first allowed foreign investment in 1988.[25] In the first 11 months of 2017, total FDI capital reached over USD33 billion; an increase of more than 82% on the same period in 2016. The processing and manufacturing sector received the largest share of this foreign investment – USD14.95 billion (or 45.2%) – followed by electricity production and distribution with USD8.37 billion and real estate with USD2.5 billion.[26]

Among foreign investors, the EU is an increasingly important source of FDI for Vietnam. Figures from Ministry of Planning and Investment (MPI) show that, as of August 2017, European firms had almost 2,500 registered investment projects worth USD44 billion. These projects account for 10% of total FDI and 14% of total attracted FDI capital.[27]

15 *Op. Cit.* The World Bank.
16 "Doing Business in Vietnam", *PWC*, July 2017, p. 5. Available at: < https://www.pwc.com/vn/en/publications/2017/dbg-2017.pdf> accessed on 31 January 2018.
17 "Spotlight on Vietnam: the leading emerging market", *PWC*, October 2017, p.14.
18 *Op.Cit.* The World Bank.
19 "Investing in Vietnam: Going for gold", *KMPG*, p.15.
20 Resolution 35/NQ-CP; Resolution 19/2017/NQ; Resolution 10-NQ/TW dated 3 June 2017 on the market economy with socialism orientation in terms of developing and supporting more private business; Resolution 11-NQ/TW dated 3 June 2017 towards institutional changes; Resolution 06/NQ/TW dated 5 November 2016 and Directive CT-TTg dated 19 October increasing effective implementation of signed Free Trade Agreements.
21 "Vietnam and ADB", *Asian Development Bank*, 2017. Available at: <http://www.adb.org/countries/viet-nam/main> accessed on 31 January 2018.
22 *Op.Cit.* PWC.
23 "Doing Business: Measuring business regulations", *The World Bank*. Available at: <http://www.doingbusiness.org/data/exploreeconomies/vietnam> accessed on 1 February 2018.
24 "Vietnam highlights 2017: Investing in Vietnam, approaching the world", *Deloitte*, p.3.
25 "Vietnam: Foreign Investment", *Santander*. Available at: <https://en.portal.santandertrade.com/establish-overseas/vietnam/investing?&actualiser_id_banque=oui&id_banque=0&memoriser_choix=memoriser> accessed on 3 February 2018.
26 "Vietnam: FDI strategy for 2018-2023", *Dezan Shira & Associates*, 7 December 2017. Available at: <http://www.vietnam-briefing.com/news/vietnam-fdi-strategy-2018-2023.html/> accessed on 3 February 2018.
27 T. Thu, "EU inflows to ride out EVFTA delays", *Vietnam Investment Review*, 18 September 2017. Available at: <http://www.vir.com.vn/eu-inflows-to-ride-out-evfta-delays.html> accessed on 3 February 2018.

VIETNAM AND THE EUROPEAN UNION

2018 is set to be another watershed moment for stronger relations between Vietnam and the European Union. The EU-Vietnam Free Trade Agreement (EVFTA), which we discuss later in the Whitebook, is set to be ratified in the coming months.

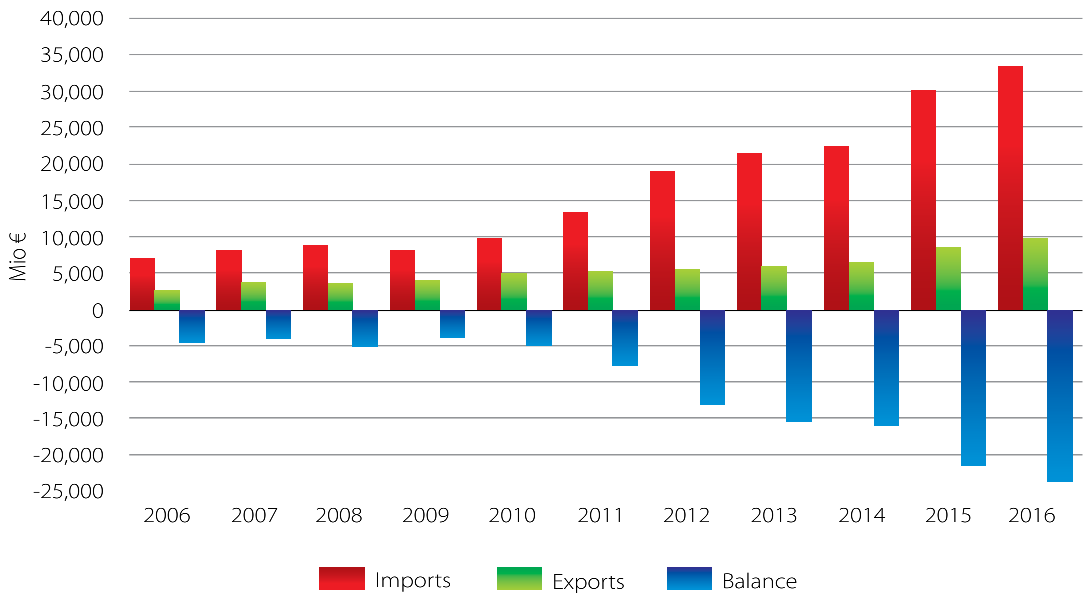
EU-Vietnam in numbers

The EVFTA will build upon decades of growing Vietnamese integration with the international marketplace, including the increasing liberalisation of trade and capital markets. The EU is one of the biggest foreign investors in Vietnam. European investors committed FDI worth USD1.3 billion in 2015, reaching a total investment stock of USD21.7 billion. Meanwhile, Vietnam is the EU's second most important trading partner in ASEAN, after Singapore.[28]

The most popular EU exports to Vietnam are high-tech products such as pharmaceuticals, electrical machinery and equipment, aircraft and vehicles. On the other hand, Vietnam's most prominent exports are items such as footwear, textiles, electronic products, coffee, food and beverages and furniture.

Both imports and exports had an average annual growth rate of over 15% between 2012 and 2016. In 2016, EU-Vietnam trade in goods was worth over €42 billion - €33.1 billion of that came from imports from Vietnam into the EU, with the remaining €9.3 billion made up of exports from the EU to Vietnam.[29]

Figure 2: European Union trade with Vietnam



Source: "European Union, Trade in Goods with Vietnam" European Commission DG Trade[30]

28 "Countries and regions: Vietnam", *European Commission*. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/vietnam/> accessed on 31 January 2018.

29 *Ibid.*

30 "European Commission, Trade in Goods with Vietnam", *European Commission*, p.3. Available at: <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113463.pdf> accessed on 31 January 2018.

Figure 3: Total goods: EU trade flows and balance

Period	Imports			Exports			Balance	Total trade
	Value Mio €	% Growth*	% Extra-EU	Value Mio €	% Growth*	% Extra-EU	Value Mio €	Value Mio €
2005	5,585		0.5	1,895		0.2	-3,690	7,481
2006	6,935	24.2	0.5	2,381	25.6	0.2	-4,554	9,317
2007	7,903	14.0	0.5	3,596	51.0	0.3	-4,307	11,498
2008	8,628	9.2	0.5	3,383	-5.9	0.3	-5,245	12,012
2009	7,852	-9.0	0.6	3,765	11.3	0.3	-4,087	11,617
2010	9,625	22.6	0.6	4,683	24.4	0.3	-4,942	14,308
2011	12,993	35.0	0.8	5,193	10.9	0.3	-7,800	18,186
2012	18,622	43.3	1.0	5,369	3.4	0.3	-13,253	23,991
2013	21,255	14.1	1.3	5,778	7.6	0.3	-15,477	27,034
2014	22,220	4.5	1.3	6,174	6.9	0.4	-16,046	28,395
2015	29,983	34.9	1.7	8,449	36.8	0.5	-21,534	38,432

% Growth: relative variation between current and previous period
% Extra-EU: imports/exports as % of all EU partners i.e. excluding trade between EU Member States

Source: "European Union, Trade in Goods with Vietnam" European Commission DG Trade[31]

The future for EU-Vietnam business looks bright for Vietnam. Once ratified and implemented, the EVFTA will provide a huge boost to both Vietnam and the European Union, triggering a gradual tariff reduction across a range of products. In particular, Vietnam is predicted to see stronger growth as a result of this agreement, with economic growth estimated to be 2.5% higher in 2020, 4.6% higher in 2025 and 4.3% higher in 2030 than otherwise would have been the case. To put that in perspective, compared to the business as usual baseline, the predicted gains are USD3.2 billion (2020), USD6.7 billion (2025) and USD7.2 billion (2030).[32] This will also boost both real wages and household income in Vietnam.[33]

In short, the EVFTA will accelerate Vietnam's growth and development across all industries and sectors. It will improve the legal framework, strengthen the trade and investment environment, reduce tariffs and barriers to trade, improve safety and quality standards and boost exports to the EU. This will benefit not just businesses, but also the welfare, wages and living standards of the Vietnamese people.

ACKNOWLEDGEMENTS

Laurence Newman, EuroCham Whitebook Editor
Le Thanh Binh, Senior Advocacy Manager

31 *Ibid.*
32 Extract of EVFTA Impact Assessment Study, 2017, kindly provided by Prof. Claudio Dordi. *MUTRAP*, p.1 and p.48-60.
33 *Ibid.* p.48.

EXECUTIVE SUMMARY

OVERVIEW OF VIETNAM'S BUSINESS CLIMATE

2017 was a milestone for Vietnam, marking 30 years of Foreign Direct Investment (FDI) in the country. FDI contributes over 50% of the value of the manufacturing industry, and over 70% of Vietnam's export turnover - both signs of breakthrough changes. EuroCham members acknowledge the efforts of the Government to enhance the competitiveness of Vietnam and improve the business environment in order to attract more FDI. The Chamber also appreciates the continued constructiveness and openness of the Government in understanding the essential role of business and treating them as partners in increasing trade, investment and economic development.

126,000 new businesses opened in 2017. That is an annual increase of 6,000 businesses compared with 2016. Meanwhile, provincial authorities have cut over 5,000 procedures, creating opportunities for Small and Medium-Sized Enterprises (SMEs) to enter the market. Relevant Ministries, such as Ministry of Planning and Investment (MPI) and Ministry of Industry and Trade (MOIT) continue to improve administrative procedures and remove business conditions in line with the Law on Investment. On 20th September, 2017, MOIT Minister Tran Tuan Anh signed Decision 3610a/QĐ-BCT issuing the project of reducing and simplifying 675 business conditions (55.5% of total business conditions) in 2017-2018. EuroCham also welcomes the new structures of MOIT, namely Departments of Electricity and Renewable Energy and Electricity Regulatory Authority of Vietnam.

Ministry of Finance (MOF) has continued its efforts to reduce customs administrative procedures and increase trade facilitation, working closer with the business community both at Central and provincial levels. At the provincial level, EuroCham regularly cooperates with Departments of Customs in major cities such as Ho Chi Minh City and Haiphong through regular dialogues, workshops and trainings on customs valuation, HS Code and so on. There have been initial and more regular meetings and alignment on pharmaceutical issues with Ministry of Health (MOH), however, to date, no positive outcomes have been reached and further coordination by the Office of Government is needed.

We also appreciate a number of positive developments in policies and regulations in the sectoral issues we raised in the Whitebook 2017. Firstly, since 2010, the Government has issued many regulations to control prices: Ministry of Finance (MOF) issued Decision 1079/QD-BTC dated 20 May 2014 detailing the imposition of price stabilisation measures for milk products for children aged under 6. These measures were prolonged through Decision 857/QD-BTC dated 12 May 2015. Under both Decisions, the price ceiling had been imposed from 1 June 2014 and in force for more than 36 months until Circular 08/2017/TT-BCT on price registration, price declaration of milk and functional foods for children under 6 years (Circular 08) was issued on June 26, 2017 and took effect from 10 August, 2017. EuroCham welcomes Circular 08 as it means that prices are no longer managed through price ceilings. We hope that the price declaration and price notification procedures stipulated in Circular 08 will be implemented in a simple and straightforward way to help reduce the administrative burden on businesses compared with previous price declaration procedures. It will also help to achieve State management objectives, in particular, ensuring market transparency and the interests of consumers while upholding the right of businesses to self-determine prices and other fundamental principles of the market economy. This is a positive and much needed step in the context of Vietnam's active pursuit of European Union recognition of its market economy status.

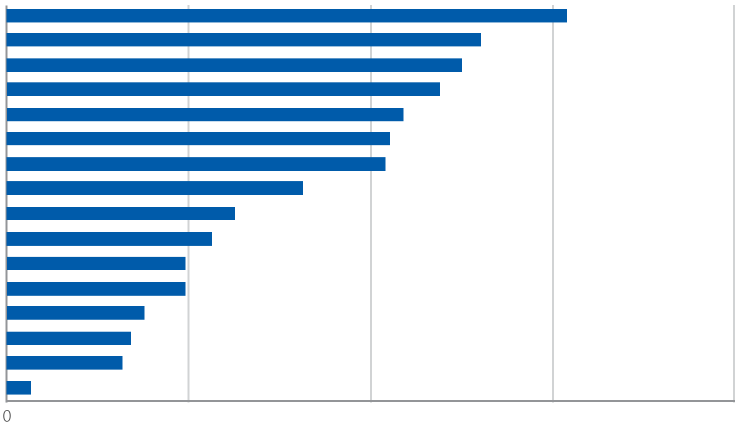
In a further positive development over the last 12 months, EuroCham joined the Advisory Council for Administrative Procedures Reform (ACAPR) and has proactively engaged with the ACAPR to contribute and deliver business recommendations. We recognise the enormous efforts and open, innovative approach of the Government and ACAPR, who recently organised a Dialogue with EuroCham together with Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH) and other Ministries to issue new Decree 15/2018/ND-CP dated 2 February 2018 guiding implementation of the Law on Food Safety (Decree 15) which replaces Decree 38/2012/ND-CP. Decree 15, which takes immediate effect, allows organisations and individuals producing and trading to self-certify regulatory conformity for processed, packed food; food additives; food-processing supporting substances; equipment, packaging materials and food containers. EuroCham will continue to support and cooperate with the Government, MOH and other Ministries to ensure the Decree is effectively implemented.

These positive legislative changes are being reflected on the ground. Indeed, Vietnam jumped 14 places in the latest World Bank Doing Business report, rising to 68 out of 190 economies around the world for ease of doing business in 2017. The World Bank report found that, alongside Indonesia, Vietnam has implemented the greatest number of reforms over the last 15 years[1] and it is now performing above the regional average for ease of doing business.[2]

However, despite these positive steps, more remains to be done. The World Economic Forum's (WEF) Global Competitiveness report highlights some areas where Vietnam needs to further improve. These include basic requirement factors, higher education and innovation.[3] The WEF also pinpoints the most problematic factors for doing business in Vietnam, as the table below shows.

Figure 4: Most problematic factors for doing business in Vietnam

Access to financing	12.3
Inadequately educated workforce	10.4
Corruption	10.0
Poor work ethic in national labor force	9.5
Tax regulations	8.7
Policy instability	8.4
Inadequate supply of infrastructure	8.3
Tax rates	6.5
Inflation	5.0
Inefficient government bureaucracy	4.5
Foreign currency regulations	3.9
Crime and theft	3.9
Government instability	3.0
Restrictive labor regulations	2.7
Insufficient capacity to innovate	2.5
Poor public health	0.5



Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Source: World Economic Forum Global Competitiveness Report 2017-18.[4]

Through our Business Climate Index (BCI), we have been tracking the sentiment of European businesses in Vietnam since 2010. The BCI consolidates the European business community's different perceptions of the business environment in Vietnam. Through our quarterly survey, representatives of EuroCham's member companies give their view of the business situation and outlook in the Vietnamese market. Our most recent BCI data shows that European businesses were positive about the business environment in 2017, and that while sentiment has been more or less consistent since 2014, it was lower in Q2, 2017 than at the same point in 2016, as the table below shows.

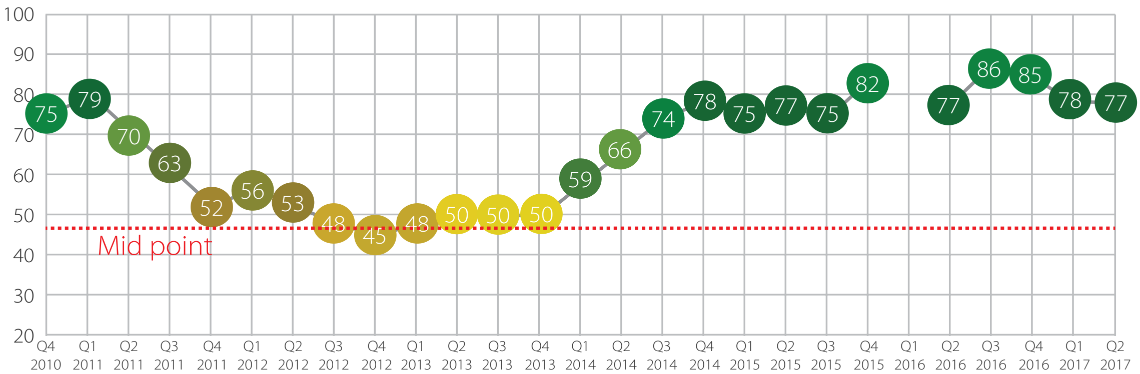
1 "Vietnam improves significantly in ease of doing business: World Bank", *Nhan Dan*, 1 November 2017. Available at: <http://en.nhandan.com.vn/business/economy/item/5608702-vietnam-improves-significantly-in-ease-of-doing-business-world-bank.html> accessed on 1 February 2018.

2 "Doing Business: Measuring business regulations", *The World Bank*. Available at: <http://www.doingbusiness.org/data/exploreeconomies/vietnam> accessed on 1 February 2018.

3 "The Global Competitiveness Report 2017-18" *World Economic Forum*, p.308. Available at: <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf> accessed on 1 February 2018.

4 *Ibid.*

Figure 5: EuroCham Business Climate Index



The EuroCham Business Climate Index ranges from 0 to 100 index points, with 100 index points representing the highest and 0 the lowest confidence level. Midpoint or "neutral" is 50 index points

Source: EuroCham Business Climate Index, Q2 2017.[5]

In the future, Vietnam's development and international integration will continue to grow. 2018 stands out in this regard, in that the EU-Vietnam Free Trade Agreement (EVFTA) is expected to be ratified and implemented. EuroCham, our Sector Committees and members are keen to build on the recent positive legislative developments and to work with the Government to address the barriers still remaining to further improve the business and investment environment and to contribute to Vietnam's development and international integration. Below, we briefly describe the concerns of each of our Sector Committees, and then give a short summary of their recommendations.

SUMMARY OF KEY ISSUES AND RECOMMENDATIONS

I. IMPROVING THE LIVING CONDITIONS OF THE PEOPLE

1. EuroCham Healthcare Forum[6]

a. Compliance issue

Ministry of Health (MOH) should encourage all stakeholder signatories to the Consensus Framework to implement its code of ethics, and those who have not done so to engage with it as soon as possible. MOH should also support multinational companies who have to follow and implement their international industry code in Vietnam as well as in their communication activities towards Government-related stakeholder groups.

b. Legal certainty for operations and partnership

Healthcare Forum Sector Committees propose a number of models that would provide companies with the legal certainty and business scope required to accelerate FDI in the pharmaceutical industry, to expand existing operations and to engage in technology and knowledge transfer activities.

5 "Business Climate Index", *EuroCham*. Available at: <https://www.eurochamvn.org/bci> accessed on 1 February 2018.

6 The EuroCham Sector Committees included in the HCF are: International Quality Generics (IQGx), Medical Devices and Diagnostics (MDD) and the Pharma Group. The names of the Sector Committees and their respective chapters are presented in alphabetical order.

2. International Quality Generics (IQGx) Sector Committee

a. Off-patent pharmaceutical differentiation (OPP) through HTA methodology

The Government should implement activities to support universal healthcare coverage: upgrade differentiated category mechanisms in hospital tenders; implement MCDA evaluation in drug decision making; adopt the MCDA framework in order to support drug decision making in Vietnam, especially in the Drug Procurement (tender) process of OPP; and introduce a faster registration timeline for high-quality OPP and an effective product introduction and visa approval process to ensure such products are being introduced in a timely manner.

b. Affordable treatment options for Vietnamese patients

The Government should review product categorisation, such as branded or generics. The process should be revised to ensure that it is delivering the desired objectives, whilst ensuring continuous improvement in cost containment. The introduction of pharmaco-economy-based assessment will ensure that the cost/effect relationship of products and drugs has been taken into consideration and this, in turn, is more likely to deliver a better distribution of funds. MOH should also further facilitate the home treatment concept (out-patients) through favourable reimbursement schemes in order to reduce the number of hospital visits, especially by patients with chronic diseases.

c. Sustainable supply source for local demand

The Government should strongly support the long-term presence and investment of foreign investors in the Vietnamese market. It should also continue an advanced categorisation of the procurement process that will present opportunities for improvement, deliver benefits to the Government and control the budget. IQGx recommends further discussions about the gaps in the process and opportunities for improvement. The relevant authorities shall have measurements for the actual volume which suppliers must strictly commit to deliver, and a mechanism should be set up to allow hospitals to buy a 2nd choice, and for the insurance to reimburse the same value as the winning tender – in cases of limited supplies or unavailability.

3. Medical Devices and Diagnostics Sector Committee

a. Regulations on medical device management

Medical Devices and Diagnostics Sector Committee recommends a number of changes to how dossiers are appraised and approved and the periods in which these processes should take effect.

b. Management of 'non-new' medical devices

The Government should introduce a strict legal framework and enforce sanctions to protect against the unauthorised import of used medical equipment. The Government should open the healthcare market to goods refurbished by certified companies according to international quality guidelines, implement a special authorisation mechanism for 'used' devices to be temporarily imported for training or demonstration purposes, and introduce new legislation covering the import of spare parts.

c. Home care

Ministry of Health should support the development of a home care model. In particular, it should support the creation of an official system of home care by trained professionals, introduce education programs for patients and their families, ensure trained professionals facilitate care outside hospitals while providing them with support policies, and support the registration of medical devices.

4. Pharma Group

a. Fast access to innovative pharmaceuticals for Vietnamese patients

Pharma Group recommends the effective exemption of local clinical trial requirements at all stages for the purpose of Marketing Authorisation (MA) application of chemical drugs, vaccines and biologics that have been approved by stringent international authorities for registration in Vietnam. There should be no extra, Vietnam-specific requirements going beyond ICH guidelines, in line with EU-Vietnam Free Trade Agreement commitments.

b. Government procurement

Holistic solutions to Government procurement that preserve quality, doctor choice and patient access and facilitate a sustainable environment that encourages trade and investment while addressing short-term State budget concerns can be identified through Government-industry dialogue.

c. Innovative Life Sciences sector development

Viable operating models and a clear legal framework for multinational pharmaceutical companies to establish legal entities in Vietnam with associated rights that make business sense and maximise economic resources, coupled with adapted investment incentives, will provide Vietnam with the opportunity to develop a high-standard pharmaceutical sector.

d. Intellectual Property Rights (IPR) protection

If implemented, IPR protection gives local companies the confidence to develop patentable pharmaceuticals over time and encourages the innovative pharmaceutical sector to invest in local industry, including technology transfer in the short term.

5. Nutritional Food Group Sector Committee

a. Reforming food safety management

The Government should adopt a risk-based food safety management system and move away from the 'command and control' approach based on inspection and punishment. The Government should also promulgate the list of HS codes corresponding to the categories of terrestrial animal and animal products subject to quarantine controls.

b. Removing barriers to consumer access to healthy and nutritious products

The Government should assign relevant Ministries and organisations to conduct a scientific assessment of the effectiveness of the advertisement ban on breast-milk substitute milk products for children up to 24 months old, and Ministry of Finance should clarify the term 'sugary beverage' subject to the Special Consumption Tax.

6. Food, Agri and Aqua Business Sector Committee

a. Anti-Microbial Resistance (AMR)

The Government should engage with local and foreign private sectors to reduce AMR, encourage research on alternative treatments to antibiotics and increase awareness and educate farmers on the risks associated with the misuse of antibiotics. Good husbandry practices should also be applied to reduce demand for antibiotic treatment in farms through agricultural extension programs and related activities.

b. Management of plant protection products

A risk-based assessment should be applied when registering products and their use, and there should be a partnership between the Government, crop protection product industry and relevant stakeholders to jointly promote the safe use of products and practices. The application of Circular 21 with regard to GHS and PHI criterion should be abolished, and continued efforts should be made to monitor domestic markets in terms of consumer safety.

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

An animal identification and recording system containing a traceability component should be financed and set up, starting with a product in which Vietnam is competitive and which has export potential. The Government should roll out the Ho Chi Minh City pilot nationwide to increase the reputation of Vietnamese products, food safety and exports; draft regulations to prevent the sale of products that are being tested; look at best practice from around the world; and improve food safety through involving producers and committing them to supply safe food products.

d. Banned substances

The Government should enforce existing regulations on the use of banned hormones, provide easy access to products to be used in livestock production imported from countries with which a Free Trade Agreement exists, and increase awareness of the use of banned antibiotics, especially as a growth promoter.

7. Green Growth Sector Committee

a. Energy and Electricity - Made in Vietnam Energy Plan (MVEP)

The Government should pursue a more sustainable energy path that attracts new investment. This requires enacting fundamental policy and regulatory reforms, in particular: adopting energy efficiency measures, promoting private sector investment into renewable electricity generation and developing off-shore gas potential.

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

A taskforce should be created to enforce water treatment standards, conflicting regulations should be aligned and there should be a focus on industrial parks that dump untreated wastewater. There should be a move towards a demand-driven pricing model for wastewater treatment and sustainable conditions for investment in water State-Owned Enterprises (SOEs). For waste management, there should be a mandatory collection quota of the annual put-to-market volume. Regarding waste management, there should be clear, enforceable guidelines and timelines for the approval of waste-to-energy projects. To address air quality, policies should be introduced to tackle pollution and improve public transport and major polluters should be taxed according to their socio-economic and health impacts. The Government should also introduce urgently-needed measures to curb plastic waste.

c. Sustainable buildings and energy efficiency

The use of Green Building standards should be promoted, and the Government should provide effective encouragement for building owners to certify their buildings. In addition to international green building certifications, we would support a move to recognise multiple systems for use in Vietnam. Non-fired brick solutions should be enforced and promoted, buildings should become more energy efficient, and a clear urban planning showcase should be produced.

II. INCREASING CONSUMER CHOICE

1. Wine and Spirits Sector Committee (W&S SC)

a. Special Consumption Tax (SCT)

W&S SC would welcome greater transparency in the evaluation of SCT regime reforms by Ministry of Finance (MOF) since 2016, requests that public consultations on any proposed changes to the regime happen as early as possible, and would like to engage with the Government, MOF and others to initiate a positive dialogue and explore a sustainable and evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption. W&S SC also encourages a dialogue between Centre for Customs & Excise Studies (CCES) and the Government, MOF and others to consider how it could help in exploring a rational and sustainable tax environment for the imported wine and spirits industry in Vietnam.

b. Alcohol social policy

The Government should support an evidence-based, proportionate and targeted policy intervention to effectively manage individual consumption and reduce harmful use of alcohol without excessively restricting market access and legitimate business activities. It should also adopt a comprehensive and integrated approach to manage harmful use of alcohol, coupled with a rigorous evaluation of all strategies implemented based on nationally-agreed targets, and consider alternatives to the Health Improvement Fund (HIF).

c. Customs valuation framework

W&S SC urges a focus on substance over form, and requests that the Government share its rationale and evidence as to how decisions are reached with affected businesses.

2. Mobility Sector Committee: Automotive

a. Taxation - Special Consumption Tax (SCT)

For imported passenger car brands, the SCT cap for the calculations should be raised from 7% to 12% or even 15%. Moreover, either the definition of 'related parties' applied to SCT calculations should be clarified, or the SCT should become a standard calculation regardless of the ownership of the distribution channel. Potentially costly SCT liabilities due to late penalty charges should be waived as unclear SCT guidelines generate confusion and possible misinterpretation of tax regulations made in good faith.

b. Homologation tests

The Government should consider and accept continuing existing homologation procedures with no requirement for testing again the same imported vehicle type, and keep the current practice of accepting UNECE/ECE certificates for parts that completely align with existing Vietnam Technical Standards.

c. Manufacturing quality standards

Vietnam should join the New Car Assessment Program (NCAP) for Southeast Asia for safety certification and to increase the possibility to export its cars to ASEAN countries under ATIGA. Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles should include IATF 16949:2016 for better automobile quality management, and an independent organisation should monitor the application of the certifications and safety testing, to ensure all the certificates obtained are objective, genuine and value adding.

3. Mobility Sector Committee: Motorcycles

a. VAT rate of vehicles, spare parts and accessories

The Government should thoroughly consider the proposal to increase VAT for vehicles, spare parts and accessories. In particular, it should have a longer roadmap for increasing the rate of VAT in harmonisation with the broader economy and income of the people.

b. Ban on motorcycle circulation in big cities by 2030

Local authorities should consider other, more effective solutions to address the issues of traffic congestion, pollution and traffic accidents in big cities. This should include adopting international best practice, raising awareness about traffic safety and taking the needs of people into account. The Government should consider only banning older, out-of-date motorcycles.

c. Intellectual Property Rights (IPR) protection

The Government should provide in detail the implementation of IPR enforcement legislation, strengthen the protection and enforcement of industrial and product designs and promote a proactive attitude at competent authorities to prevent IP violations. Competent authorities should introduce a mechanism to reduce domain name registrations 'in bad faith' and cooperation between enforcement bodies and relevant agencies should be improved. The Government should also consider establishing specialised tribunals to handle IP matters.

III. LEGAL FRAMEWORK

1. Judicial and arbitral recourse

a. The Vietnamese courts

The Law on Lawyers should be amended to allow fully qualified Vietnamese lawyers to represent clients before Vietnamese courts, even if she or he is working for a foreign law firm. The judgments of all court levels should be published without further delay, as should the decisions of the Vietnam Competition Authority, in particular the decisions relating to economic concentration.

b. Arbitration in Vietnam

The Supreme People's Court and the Chief Justice could provide more and better instructions to lower level courts to consistently limit court interventions during arbitration proceedings. Learning from, and exchange with, foreign countries may lead to best practice being integrated in Vietnam, and the introduction of a right of appeal to first instance court decisions on jurisdiction or on the validity of an arbitral award could help make dispute settlement through arbitration more popular.

c. Recognition and enforcement of foreign arbitral awards

The implementing regulations of the 2015 Civil Proceedings Code should provide for the strict application of the provisions of the New York Convention including the confirmation that the burden of proof rests with the award debtor. An automatic referral to the relevant appeal court should be introduced in all cases where an application has been rejected by the courts of first instance, and training courses could be organised to ensure that judges are properly trained.

2. Mediation

a. Alternative Dispute Resolution (ADR)

International mediation rules should be chosen when selecting mediation or conciliation for resolution of commercial disputes. It is therefore advisable to use the United Nations Commission on International Trade Law (UNCITRAL) mediation rules, with added supplementary provisions to make up for the shortcomings of Decree 22. Decree 22 allows for the creation of private mediation centers. The creation of a center in Vietnam would enable disputes to be resolved before the legal route is pursued.

3. Mergers and Acquisitions (M&A)

a. Market access and licensing process

The requirement for foreign investors to formulate and have approved registered investment projects to establish a subsidiary or joint venture should be removed, as should the requirement for foreign investors to obtain 'M&A' approval before implementing any M&A transaction. The number of 'conditional' business sectors should continue to be reduced.

b. Amount and payment of the purchase price in M&A transactions

The degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions should be reduced, the clarity and consistency of the procedures applicable to M&A transactions should be improved and the distinction between 'direct' and 'indirect' investment transactions should be abolished. There should also be faster and smoother processing of tax clearance procedures.

c. Anti-trust restrictions

The Law on Competition and its implementing legislation should provide clearer and more precise guidance on precisely how to determine whether or not an 'economic concentration' is to occur, calculate 'market share' (for the purposes of 'combined market share' analyses), and determine precisely what are the 'relevant market(s)' which must be analysed from a Competition Law perspective. Furthermore, the review process applied by the Vietnam Competition Authority should be streamlined, in order to avoid unnecessary delays.

4. Public-Private Partnerships (PPP)

a. Developing a pipeline of visible projects

Decision 631/QD-TTg should be updated with a new list of key national and regional projects, particularly in sectors which have a good track record in other jurisdictions with well-trodden models and which are highly sought after by foreign investors. The bidding process for unsolicited projects and the process for converting State-funded projects into PPP format should also be clarified, and/or or allow projects to be developed by leading global sponsors on the basis of direct appointment as pilot projects in specified high priority sectors. The Project Development Facility (PDF) should be implemented and potential projects should be put through a rigorous assessment and incentives and attractive measures should be provided for sectors struggling to attract PPP investment.

b. Improve capacity and coordination amongst Government agencies

The Government should organise capacity building sessions centered around the new legislation and updated legislation should be developed in consultation with relevant Government authorities. Sets of approved bidding documents should be developed, tangible projects should be brought in line with international best practice, and a participative implementing process with involvement of all key Ministries and authorities should be required.

c. Rationalising detailed implementing procedures

The Government should continue to streamline the policies and guidelines related to PPP to attract foreign investors, test these regulations with actual projects and take advantage of legislative momentum behind the Draft Decree and the Proposed Law on Public-Private Partnerships.

5. Corporate organisation

a. Unclear provisions on legal representation for Single-Member LLCs (SMLLCs)

Some provisions of the Law on Enterprises are confusing because they imply that the members' council and the director may act on behalf of the SMLLC. Therefore, Articles 79.1 and 81.2(e) of the Law on Enterprises should be deleted.

b. The percentage required to pass ordinary decisions in multiple-member LLCs

It should be clearly stated that members of a multiple-member LLC may provide for a percentage of less than 65% (but at least 51%) to pass ordinary decisions.

c. Effectiveness of shareholders' agreements

Specific provisions or case law should be promulgated to recognise the effectiveness of shareholders' agreements in Vietnam.

6. Real estate

a. The lawful right of an Apartment Building Management Board (ABMB) to participate in litigation on behalf of apartment owners

Competent authorities should clarify whether ABMB have the right to participate in litigation on behalf of apartment owners, where authorised to do so, and this should be regulated in the Law on Housing and other relevant legal documents.

b. 'Condotel', 'Hometel' and 'Officetel'

The Government should promulgate legal provisions with specific standards and guidance, clarify the land-use term and amend legal provisions on the classification and mechanism of using land for mixed-use apartments.

c. Protecting project housing clients in cases of insolvency or bankruptcy of developers

State Bank of Vietnam (SBV) should promulgate legal provisions with specific standards and guidance for the finance abilities of real estate developers, and regulate the penalties for developers who do not sign bank guarantee contracts with competent commercial banks.

IV. INCREASING VIETNAM'S COMPETITVENESS

1. Taxation and Transfer Pricing Sector Committee

a. Capital Gains Tax (CGT) in cases of internal restructuring

Ministry of Finance and General Department of Tax, when developing taxation mechanisms for CGT, should consider not imposing CGT in cases of internal restructuring and/or provide a CGT exemption mechanism on internal re-structuring activities.

b. VAT

There should be a broader interpretation of 'overseas consumption' so more cases qualify for 0% VAT, alongside a clearer definition to give service providers the confidence to apply the 0% rate. We would welcome specific written confirmation that services provided in relation to goods that are exported are subject to 0% VAT, and recommend that credible tax is allowed to be offset against outstanding tax, including other tax types.

c. The application of tax treaties

Tax treaty notification dossiers should be reviewed upon receipt by local tax authorities, and further requests should be notified in a specific timeframe. If there are no issues raised within the set timeframe, this should be considered as acceptance by the taxpayer.

d. The use of comparable companies in transfer price audits

The tax authorities should adopt a more forward-looking approach. Decree 20/2017/ND-CP is now in line with internationally accepted transfer pricing regulations and the administration of the law should also be based on international standards. Tax authorities should give due consideration to analysis undertaken by the taxpayer. Challenges should be based on the merits of the taxpayer's comparables and adequate rationale should be provided for rejecting their comparable companies.

2. Information and Communication Technology (ICT) Sector Committee

a. Cybersecurity

The Government should collaborate with innovators to provide real-world, standards-based cybersecurity capabilities; provide guidelines to establish hardware and software infrastructure with practical ways to implement cost-effective, repeatable and scalable cybersecurity solutions; use these guidelines to support organisations to adopt cybersecurity technology with reduced cost of ownership; and establish a single privacy law which protects end-consumers' private information.

b. Education and training

The Government should cooperate with high-performing foreign universities and learn from best practice to create an international, relevant curriculum; a national standard technical skills exam should be developed; soft skills and English communication should be encouraged; students should complete a practical internship; and universities should collaborate with industry to understand the demands of jobs on students after graduation.

c. Internet cost and international Internet bandwidth

ISPs should be allowed to set their own tariffs, competition should be introduced in services provision, prices should be benchmarked against regional and national averages, and more local content should be developed.

3. Transport and Logistics Sector Committee

a. Customs

A modern customs bond system should be introduced in order to improve customs clearance; Ministry of Finance (MOF) and General Department of Customs (GDC) should consider introducing clearer procedures and information on customs valuation; and the Government, MOF and GDC should consider recognising Express Customs Sub-Departments as Import Border Gates.

b. Specialised management exemption for low-value goods imported through express delivery services

The Government and relevant Ministries should not require the specialised management or inspection of low-value imported goods under VND1 million sent using express services. The Government should allow Customs to perform specialised inspections of low-value goods sent using express services at Express Customs Sub-Departments. Moreover, mutual recognition mechanisms should be applied to international brand name goods already certified by well-known global trademarks.

c. Implementing National Single Window (NSW) and ASEAN Single Window (ASW)

The Government, Ministries and GDC should accelerate implementation of all NSW procedures in 2018 for commodities which require a specialised licence. The requirement for original documentation or copies should be removed, and the Government should set targets for relevant Ministries to evaluate their performance on NSW and ASW implementation.

4. Human Resources and Training Sector Committee

a. Expansion to employer's rights to terminate employees

More legal grounds than those provided under Article 38.1 of the Labour Code should be added to allow employers to unilaterally terminate their employees, the scope of acts of misconduct subject to immediate dismissal should be expanded, the restrictions applied to the dismissal of female employees should be removed, the statute of limitations for settling a disciplinary action should be extended, and the disciplinary process should be simplified. Employers should also be allowed to terminate an employee who recidivates while subject to wage increase deferment, and the threshold for 'seriously detrimental' damages should be specified.

b. Managing foreigners working in Vietnam

There should be greater flexibility for foreign workers and employees regarding the participation of foreign workers in statutory insurance, and the term of labour contracts to which it is applied should be increased. Pension and survivorship regimes should not be applied to foreign workers. Regarding work permits, the Government and MOLISA should apply fast-track options, supplement the definition of 'intra-corporate' transferees, broaden the definition of 'manager' and 'executive director' and ensure legislation is applied consistently.

c. Technical and vocational training and educational practice

The Government should consider increasing the proportion of Vietnamese students permitted to study at international schools, and with regards to technical and vocational training, leverage the expertise of the private sector.

5. Tourism and Hospitality Sector Committee

a. Entry visa policy

The list of visa-exempt countries should be extended to all countries with which Vietnam has a Free Trade Agreement. The period of exemption should be increased, as should the length of time tourists can visit. The rules allowing visa-exempt visitors to return within 30 days should be urgently clarified, and the e-visa website should be improved. Moreover, the list of countries eligible for e-visa application should be increased, and transit visas should be able to be issued on arrival for passengers with connecting flights.

b. Destination marketing

More funds should be allocated for destination marketing, including developing public-private partnerships. Marketing should be more coordinated, focused on high-value markets, include more use of digital marketing, and focus on long-term objectives of the industry such as environmental conservation and infrastructure improvement.

c. Development of sustainable tourism

The authorities should understand the importance of heritage assets as natural resources, promote sustainable development, support local people and raise tourists' awareness of local customs.

d. Human resources and vocational training in tourism and hospitality

Businesses and training institutions should collaborate to develop and implement the National Occupation Skill Standards across the industry. Government and the private sector should also collaborate to improve vocational training, including inviting more international companies to open offices in Vietnam.

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EU-VIETNAM FREE TRADE AGREEMENT

PART ONE

EU-VIETNAM FREE TRADE AGREEMENT

EXECUTIVE SUMMARY

On 2nd December, 2015, after almost three years and 14 rounds of negotiations, President Donald Tusk, President Jean-Claude Juncker and Prime Minister of Vietnam Nguyễn Tấn Dũng announced the conclusion of the negotiations of the EU-Vietnam Free Trade Agreement (EVFTA). Both parties are now taking the necessary steps to finalise the ratification process. We hope the agreement will be ratified this year, and enter into force in 2019. Together with the trade deal between the EU and Singapore, the EVFTA will be an important building block for future regional trade negotiations and integration. EU Commissioner for Trade Cecilia Malmstroem and many other speakers at the EU-ASEAN Business Summit 2018 held on March 2 in Singapore re-iterated the vision for a future region-to-region trade deal between ASEAN and EU.[1]

The EVFTA will bring enormous benefits to the investment and trade environment between the EU and Vietnam: Vietnam's GDP is expected to increase 0.5% each year, and exports are predicted to rise between 4% to 6% annually. If this trend continues until 2020, Vietnam's exports to the EU will rise by USD2.6 billion, and until 2025, it is estimated that the EVFTA will generate an additional 7% to 8% of GDP above the current trend growth rate.

Meanwhile, the real wages of skilled labourers could rise up to 12%, while the real salaries of common workers could increase 13%.[2] Once the EVFTA is ratified and implemented, and once Government policies and institutional reforms begin to take effect, Vietnam's business activities will boom. However, issues still remain. In this chapter, our Sector Committees will raise the issues relevant to their particular industries, and make specific recommendations in order to address these concerns.

I. LEGAL ENVIRONMENT

(A). GENERAL MARKET ACCESS FOR GOODS AND SERVICES

The EVFTA is considered one of the most comprehensive and ambitious trade and investment agreements that the EU has ever concluded with a developing country. It is the second agreement in the ASEAN region after Singapore and it will intensify the bilateral relations between Vietnam and the EU. Vietnam will have access to a potential market of more than 500 million people and a total GDP of USD15,000 billion (accounting for 22% of global GDP)[3]. Meanwhile, exporters and investors from the EU have further opportunities to access one of the largest and fastest-growing countries in the region. According to a report released in early 2017 which covers 134 cities all over the world conducted by Jones Lang LaSalle[4], a financial and professional services firm specialising in commercial real estate services and investment management, Hanoi and Ho Chi Minh City are ranked among the top 10 most dynamic cities due to their low costs, rapid consumer market expansion, strong population growth and transition towards activities attracting significant amounts of Foreign Direct Investment (FDI). Statistics show that the total registered FDI in the first nine months of 2017 reached USD14.56 billion, increasing 30.4% compared with the same period the previous year. Vietnam's GDP growth in 2016 was 6.21% and the World Bank projects that the growth will continue to reach 6.3% in 2017.[5] However, Vietnam surpassed its target, reaching a growth rate of 6.81% in 2017, the highest level in the past 10 years.

In addition, Vietnam has the fastest-growing middle class in the region. It is predicted to almost double in size between 2014 and 2020 (from 12 million to 33 million people) according to the Boston Consulting Group.[6]

1 "EU hopes trade pact with S'pore will go into effect this year", The Straits Times, p. 11, 3 March 2018. Available at: <http://www.straitstimes.com/singapore/eu-hopes-trade-pact-with-spore-will-go-into-effect-this-year> accessed on 6 March 2018.

2 The European Trade Policy and Investment Support Project (MUTRAP), Sustainable Impact of the EU-Vietnam FTA, 2014.

3 "EU population up to almost 512 million at 1 January 2017", *EuroStat*, 10 July 2017. Available at: <http://ec.europa.eu/eurostat/documents/2995521/8102195/3-10072017-AP-EN.pdf/a61ce1ca-1efd-41df-86a2-bb495daabdab> accessed on 6 February 2018.

4 "JLL City Momentum Index", *Jones Lang LaSalle*. Available at: <http://www.jll.com/cities-research/City-Momentum> accessed on 6 February 2018.

5 The World Bank data. Available at: <http://www.worldbank.org/en/publication/global-economic-prospects#data> accessed on 6 February 2018.

6 "Vietnam and Myanmar: Southeast Asia's New Growth Frontiers", *The Boston Consulting Group*. Available at: <https://www.bcg.com/publications/2013/globalization-vietnam-myanmar-southeast-asia-new-growth-frontiers.aspx> accessed on 6 February 2018.

Vietnam's super-rich population is also growing faster than anywhere else, and there is no doubt that it will continue growing in the next ten years.

Market access for goods

Nearly all customs duties – over 99% of the tariff lines – will be eliminated. The small remaining number will be partially liberalised through duty-free quotas. As Vietnam is a developing country, it will liberalise 65% of the value of EU exports to Vietnam, representing around half of the tariff lines, at entry into force. The remaining duties will be eliminated over the next ten years. This is an unprecedented, far-reaching tariff elimination for a country like Vietnam, proving its aspiration for deeper integration and trading relations with the EU.

From the EU's side, the EU agreed to eliminate duties for 84% of the tariff lines for goods imported from Vietnam immediately at the entry into force of the FTA. Within 7 years from the effective date of the FTA, more than 99% of the tariff lines will have been eliminated for Vietnam. In the ASEAN region, Vietnam is the top country exporting goods to the EU. Vietnam will benefit more from the EVFTA compared with other FTAs since Vietnam and the EU are considered to be two supporting and complementary markets: Vietnam exports goods that the EU cannot or does not produce itself (i.e., fishery products, tropical fruits, etc.) while the products imported from the EU are also those Vietnam cannot produce domestically.

In the region, besides Vietnam, Singapore also concluded an FTA with the EU in 2014. However, this does not affect the competitiveness of Vietnam in trading with the EU. This is due to the fact that Vietnam mainly exports textiles, footwear, agricultural products and so on, while Singapore's main exports are machines, chemical products and transport equipment. Moreover, while the EU is accelerating procedures to negotiate FTAs with different countries in the ASEAN region, Vietnam should take advantage of this window of opportunity before FTAs with others in the region are concluded and take effect to become a regional hub.

Market access for EU service providers

Although Vietnam's World Trade Organisation (WTO) commitments are used as a basis for the services commitments, Vietnam has not only opened additional (sub)sectors for EU service providers but also made commitments deeper than those outlined in the WTO, offering the EU the best possible access to Vietnam's market. (Sub)sectors that are not committed under the WTO but under which Vietnam has made commitments include: interdisciplinary Research & Development (R&D) services; nursing services, physiotherapists and para-medical personnel; packaging services; trade fairs and exhibitions services and building-cleaning services. Moreover, it is noteworthy that the FTA contains a Most Favoured Nation clause that means neither the EU nor Vietnam can be treated less advantageously than other countries with whom the signatories also have an agreement.

Government procurement

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

The FTA commitments on Government procurement mainly deal with the requirement to treat EU bidders, or domestic bidders with EU investment capital, equally with Vietnamese bidders when a Government purchases goods or requests a service worth over the specified threshold. Vietnam undertakes to publish information on tender in a timely manner, allow sufficient time for bidders to prepare for and submit bids and maintain the confidentiality of tenders.[7] The FTA also requires its Parties to assess bids based on fair and objective principles, evaluate and award bids only based on criteria set out in notices and tender documentation and create an effective regime for complaints, settling disputes, and so on.[8] These rules require Parties to ensure that their bidding procedures match the commitments and protect their own interests, thus helping Vietnam to solve its problem of bids being won by cheap but low-quality service providers.

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

7 EVFTA text as of January 2016, Chapter 9 on Public Procurement, available at: <http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154216.pdf> accessed on 5 February 2018

8 Please refer to the rules and principles

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

Enforcement of ISDS

In disputes regarding investment (for example, expropriation without compensation or discrimination of investment), an investor is allowed to bring the dispute to the Investment Tribunal for settlement (Investor-to-State dispute settlement mechanism - ISDS). The final settlement is binding and enforceable without question from the local courts regarding its validity, except for a five-year period following the entry into force of the FTA for Vietnam (please refer to further comments in Part B on Dispute Settlement Mechanisms).

Conclusion

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

(B). DISPUTE SETTLEMENT MECHANISMS

The text of the EVFTA released on the website of the European Commission[9] provides for an innovative mechanism for the settlement of disputes related to investment between States and investors. The EVFTA is to establish a permanent tribunal ('Tribunal') which aims to address the criticisms levelled against the current arbitration-based system, including that the system is unfairly balanced in favour of investors.

Our members welcome this EU-promoted mechanism. However, we have noted a number of potential issues that may impact on the potential benefits of the Tribunal. We would like to raise one of them in this section: the application for a five-year period of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC).

9 The EU-Vietnam Free Trade Agreement. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437> accessed on 6 February 2018.

Under the current text of the EVFTA[10], Vietnam and the EU have agreed to enforce any final 'award' of the Tribunal 'as if it were a final judgement of [its] court'. However, the text of the EVFTA also provides that, for a period of five years (as from the entry into force of the Tribunal), 'the recognition and enforcement of a final award in respect of a dispute where Viet Nam is the respondent shall be conducted pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10th June, 1958 [i.e. the NYC]'.

Our members are concerned about this five-year period during which awards of the Tribunal will be enforced in Vietnam based on the NYC. Our current experience of the implementation of the NYC by the Vietnamese courts is not positive (an issue we discuss further in Chapter 6 on Judicial and Arbitral Recourses).

We also note that the 'Trade Committee' (a body of representatives of Vietnam and the EU established under the EVFTA) has the ability to extend this five-year period for 'a longer period' which is not defined.

During this five-year period (or extended period), Vietnamese investors will be granted with awards directly enforceable in the EU Member States with no review of the conformity of the award with international public policy, etc. This is an improvement on Vietnamese investors' current situation based on bilateral investment treaties with individual EU Member States (where the arbitral awards are not directly enforceable because Vietnam is not a party to the Washington Convention establishing the International Center for Settlement of Investment Disputes - ICSID).

In comparison, the situation of European investors will not be improved. This is a real concern, given the fact that the current situation is not satisfactory and should be improved. Potentially, the international community in general might even be concerned due to the lack of reciprocity of such a mechanism.

We understand that the reason for this five-year period in favour of Vietnam is that Vietnam needs time to reform its national legal framework to adapt it to the new requirement of direct enforcement of awards. However, we believe that such legal reform might be conducted in less than five years. In addition, we note that EU member countries will also need to reform their national legal framework to allow the direct enforcement of awards of the Tribunal under the EVFTA.

We recommend Vietnam implements measures to improve its record of enforcement under the NYC. We also recommend Vietnam agrees to enforce Tribunal awards as if they were final judgments of its courts as soon as the five-year period under the EVFTA has expired and should not apply for any prolongation of this period to the Trade Policy Committee.

II. OTHER INDUSTRIES

(A). FOOD, AGRICULTURE AND AQUA BUSINESS

The Food, Agri and Aqua Business Sector Committee (FAABS) believes that the EVFTA presents unique opportunities in regard to the topics we raise in this chapter. Below are just some of the matters that FAABS firmly believes can be improved under an efficient implementation of the EVFTA. Many of the issues and recommendations FAABS has been working on are equally elaborated on in the text of the EVFTA itself, while others, despite not explicitly treated, will fall indirectly under its scope and are relevant to discuss.

In recent years, FAABS has concentrated its efforts on improving the competitiveness of the Food, Agri and Aqua Business sector in Vietnam. The Sector Committee has worked extensively to improve the safety of food for human-beings and of feed for animals through a supply chain approach. Given that many companies in our sector are SMEs and cooperate closely with local producers, we aim to create a level playing field for small, large, local and international companies regardless of legal entity, size and nationality. Workshops with Vietnamese business associations and seminars in provinces reflect this inclusive approach.

10 Article 31 of Section 3 ("Resolution of Investment Disputes") of Chapter II ("Investment") in "TRADE IN SERVICES, INVESTMENT AND E-COMMERCE"; text available at: <http://trade.ec.europa.eu/doclib/html/154224.htm> as of January 2016, accessed on 6 December 2017.

Vietnam has high potential to further grow in this sector, but the country is vulnerable to rising sea levels, salination, typhoons and land erosion. Therefore, our main objectives are to participate in the creation of a sustainable Food, Agri and Aqua Business sector in the long term and in the increase of efficiency and climate resilience of Vietnam in the sector.

With the EVFTA, the volume of Vietnamese products like pepper, coffee, seafood and cashew nuts – to name a few key export items – will surely increase significantly. The safety of imported food that European consumers buy is of critical importance. We strongly believe that the requirement to abide by the high hygiene and food safety standards set by EU regulations will also have a positive impact for Vietnam's internal market. Together with Vietnamese citizens, the many Europeans working in Vietnam are entitled to have access to safe food in their daily meals. FAABS strongly believes that resolving the challenges mentioned below is not only fundamental for the success of the EVFTA, but crucial to ensure a trade facilitation framework with adequate conditions towards safer food, water and agricultural products for citizens of the EU and of Vietnam.

1. Capacity building in laboratory testing and quality control

We are in regular contact with local authorities, including the National Agro-Forestry-Fisheries Quality Assurance Department (NAFIQAD) which is in charge of quality accreditation in Vietnam.[11] Thanks to donors like the EU and United Nations Industrial Development Organisation (UNIDO), there is a fair amount of adequate equipment to carry out standard laboratory testing and quality control. However, this equipment is not put to proper use due to the lack of adequately qualified personnel with up-to-date knowledge and a lack of coordination between involved stakeholders. We therefore suggest providing practical support in the area of capacity building, i.e. vocational training to ensure that laboratory testing and quality control are carried out reliably.

With the only recently (end of June 2017) introduced guidelines and rules on organic farming in the EU, controls on imported organic products will also be tougher: private control bodies in non-EU countries that certify organic products will have to comply with EU standards when deciding whether a product to be exported to the EU market is organic or not. This is certainly an attractive growth market, yet one where both Vietnamese authorities and producers lack expertise on how to implement and control those rules which are so important for consumer confidence when paying a premium for organic products.

2. Clearance procedures

Vietnam, like any other country, must control the goods entering its territory. However, this process should not excessively penalise companies in terms of time and cost. Unfortunately, many companies trading European foods (as well as wines and spirits) that comply with the highest European quality standards still encounter major administrative challenges, delays and additional costs both for regular imports and special imports for promotional trade fairs into Vietnam. In the spirit of the EVFTA, FAABS recommends that imported products from the EU should benefit from simplified customs clearance procedures as soon as possible. Introducing a grievance procedure or a body to file complaints with if rules are violated would ensure enforcement of simplified customs clearance procedures under the EVFTA and would increase the confidence of particularly European SMEs to tap into Vietnam's growing consumer market.

3. Requalification HS codes

We would like to see the recognition of the customs code applied within the EU as an integral part of the implementation of the EVFTA. Many companies have experienced HS code requalification, sometimes even after more than 10 years of imports under a given HS code. A cooperation program between EU and Vietnamese customs could be implemented to share experiences in that matter.

11 This is an institution assisting the Ministry of Agriculture and Rural Development to carry out the state governing of quality and safety of agricultural, forestry, fishery products and salt nation-wide. More information about NAFIQAD can be found on the website: <http://nafiqad.gov.vn/en-us/enhome.aspx> last accessed 22nd August 2017.

4. Registration of products

In addition to the length of the process, the complexity and uncertainty of the rules and registration procedures do not often allow for a clear application of the Directives and respective follow-up. This leads to significant delays in the provision of innovative products in Vietnam. We would like to suggest that processes be simplified and transparent, especially for companies that have been operating in Vietnam for a long time. Products from countries recognised for their know-how and seriousness in terms of food safety should enjoy special treatment. We hope that this is realised under the EVFTA.

As explained in the Guide to the EVFTA prepared by the EU Delegation about the single entity concept: "The purpose of this Chapter 77 is to set up a single and transparent procedure for the approval of EU exports of food products into Vietnam." We can fully agree with and support this as it will accelerate the approval of EU export applications and avoid discriminatory treatment. Regionalisation is also important as it means that in case of diseases, trade restrictive measures shall only be applied to the affected area(s), while the rest of the country can continue to export. Finally, the principle of pre-listing is important to facilitate imports because prior individual inspections of exporting establishments are no longer required and will therefore speed up the process.

Pre-listing means that once Vietnam has approved a category of food product from the EU and is confident about the capacity of the competent authority of that particular EU Member State to control the compliance of EU food safety requirements, imports from all the other establishments submitted by that country will automatically be allowed. This does not mean that Vietnam gives up control of food safety checks, because if there are doubts about a specific establishment, Vietnam could still undertake an inspection visit but – as stated in the EVFTA – the costs of such an inspection should be borne by Vietnam. We also believe that the to-be-established Sanitary and Phytosanitary (SPS) Committee will help to address some of the current issues caused by the existing division in responsibility under three Ministries.

Please note that the issues described above will have an impact on the export and import position of Vietnam when the EVFTA enters into force. This particularly applies to food safety, diversification, high-end manufactured products and the sustainability and modernisation of the agricultural sector.

5. Sanitary and Phytosanitary Measures (SPS)

In the SPS field, Chapter 775 of the EVFTA on SPS measures stipulates that the objective of the chapter is to eliminate implemented SPS measures that are unjustified obstacles to trade. Another objective is to encourage the development and adoption of international standards, guidelines and recommendations, and promote their implementation by the Parties. The chapter also refers to the SPS Agreement of the WTO. We would like to highlight some of the important principles with regard to SPS, being: the EU as a single entity, regionalisation and pre-listing.

Please note that the issues described above will have an impact on the export and import position of Vietnam when the EVFTA enters into force. Vietnam needs to start preparing to implement the provisions included in the SPS chapter of the EVFTA to ensure it is fully in compliance upon entry into force.

First of all, Vietnam needs to implement the concept of single entity through a single, predictable and transparent procedure for all imports coming from the EU, which clearly defines the import requirements common to all EU Member States and clear timeframes. This will ensure that requests for approval stemming for the EU are approved swiftly and not confronted with long, burdensome procedures as is currently the case. Applications from EU Member States would be done through the EU, no longer bilaterally.

Vietnam should give full transparency on its import requirements and procedures and find solutions to the problem of work overloads and limited human resource capacities. In this context, it would be advisable for Vietnam to simplify its institutional set-up or its implementation procedures within the framework of its right to determine its appropriate level of protection.

Vietnam should develop a system for gaining confidence about the control system of the exporting Party (EU Member States) based on risks, either by conducting verification visits to the exporting Party (auditing a representative number of establishments) and/or by information requests to the exporting Party, and ensuring that the expenses of such verifications are borne by Vietnam.

Vietnam also has to introduce a procedure for the approval of EU establishments (pre-listing) submitted by the exporting Party within 45 working days (that can be extended up to 30 days) without prior inspection of individual establishments and inform without delay in case of rejection explaining the reasons.

Finally, Vietnam has to accept the concept of regionalisation so that trade measures are only applied to the affected area when an outbreak occurs in the territory of an EU Member State. The information from competent authorities in EU Member States on status of plant pests and animal diseases (including information on areas free or information on the area affected by an outbreak) should be accepted by Vietnam, so that following the notification of a pest or disease only the affected zone or region is subject to the relevant import restrictions and not the entire country or the EU. This approach shall be risk-based and risk-proportionate, allowing imports into Vietnam of animals, animal products, plants and plant products from regions, areas or zones which have been recognised and accepted as disease-free or pest-free.

The rationale for such adjustments is as follows: animal and plant health requirements, feed and food safety requirements are defined at EU level. Member States produce and export on the basis of the same EU standards and controls (Art. 12 of Regulation 178/2002 Food Law). Therefore, Vietnam should set import conditions common to all EU Member States and ensure that exports of products produced under similar or comparable conditions from the 28 Member States are all treated equally. When Vietnam exports to the EU, it has access to the EU single market and the same import requirements.

(B). GREEN GROWTH

EuroCham's Green Growth Sector Committee (GGSC) advocates for renewable energy, an efficient and sustainable energy market and sustainable, energy-saving and environmentally friendly buildings. These topics are covered by Chapters 14 and 15 of the EVFTA.[12]

The EVFTA is expected to be ratified in 2018. In order to be well prepared for its implementation, the Government should raise awareness among the authorities and society on the issues described below.

Article 1, Chapter 14 of the EVFTA states that: "To this effect, the Parties shall cooperate towards removing or reducing non-tariff barriers and fostering cooperation, taking into account, where appropriate, regional and international standards". We recommend the Government removes non-tariff barriers and fosters cooperation in accordance with EVFTA commitments.

The Government or the National Assembly should also introduce clear and practical legislation, so as to facilitate and incentivise investment in renewable energy. The general principles with respect to renewable energy found in the EVFTA should be addressed in a new and comprehensive Renewable Energy Law (e.g., the definition of 'renewable energy' in accordance with Article 2(f), Chapter 14 of the EVFTA). The new Law should supersede current conflicting regulations, which are scattered over several laws and a myriad of secondary legal documents.

Article 4(1)(e), Chapter 14, of the EVFTA provides that: "A Party shall ensure that the terms, conditions and procedures for the connection and access to electricity transmission grids are transparent and do not discriminate against suppliers of the other Party." We recommend the Government adopt a faster timeline for the implementation of the Competitive Wholesale Market (CWM), so that EU suppliers can participate in the market. Renewable energy should be adopted in this CWM as equal or even given preferential treatment as opposed to coal, gas and oil.

Article 15, Chapter 15 of the EVFTA states: "The Parties shall establish a Specialised committee on Trade and

12 The agreed text as of January 2016 of EU-Vietnam Free Trade Agreement available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437> accessed on 31 January 2018.

Sustainable Development. The Specialised committee on Trade and Sustainable Development shall comprise senior officials from the relevant administrations of each Party or officials they designate. [. . .] Each Party shall convene new or consult existing domestic advisory group(s) on sustainable development with the task of advising on the implementation of this Chapter."

We suggest that an overseeing mechanism and institution is set-up in accordance with the EVFTA commitments. This could work by the appointment of a 'higher authority' of the Vietnamese Government to supervise and rule on investments involving sustainable development (e.g., renewable supplier and off-taker issues). The higher independent authority would be in charge of coordinating regulations and implementation between the Ministries and EU partners. It would help to secure objective, transparent, non-arbitrary, non-discriminatory procedures and capacity building with respect to the renewable energy market. Moreover, foreign direct investors should have the right to directly appeal decisions from local authorities to this higher authority, which should have the power to overrule the decisions of local authorities. EuroCham's GGSC would be pleased to cooperate, support and be part of this new authority.

Article 2.2, Chapter 16, of the EVFTA states that: "to achieve the objectives referred to in Article 1, the Parties attach particular importance to cooperating in the following areas: [. . .] (e) Sustainable development, notably in its environmental and labour dimensions". The Government should provide such capacity building activities and organise joint workshops and seminars between the Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Finance (MOF), Ministry of Construction (MOC), Ministry of Natural Resources and Environment (MONRE) and other related Vietnamese Governmental bodies with EuroCham's GGSC. EuroCham is also keen to exchange information on other levels, such as providing studies and investor surveys on renewable energy and have direct meetings with Vietnamese Governmental agencies and regulators.

(C) HEALTHCARE

1. International Quality Generics Sector Committee[13]

International Quality Generics (IQGx) members appreciate the opportunity to share our input in relation to the EVFTA. IQGx member companies support the current objectives listed in the agreement under the 'pharmaceutical products and medical devices' annex.[14] In particular, articles related to international standards and transparency.[15]

Below are the key issues common to all members of IQGx, along with our recommendations.

Government procurement

EVFTA relevant text

Article IV General Principles National Treatment and Non-Discrimination:

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of both Parties, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers;

2. With respect to any measure regarding covered procurement, a Party, including its 7 procuring entities, shall not:

13 International Quality Generics Sector Committee is a member under EuroCham HealthCare Forum, which is a coordination platform for Sector Committees operating in the Healthcare industry - at present International Quality Generics (IQGx), Medical Devices and Diagnostics (MDD SC) and Pharmaceuticals (Pharma Group). The Healthcare Forum enables industry representatives to discuss, share and advocate on common interests and topics. Given its inherently diverse nature, it also covers different interests of those industry representatives. All Sector Committees are equally supported by EuroCham

14 Annex 2-a: Pharmaceutical products and medical devices, EVFTA, text as of January 2016 available at: <http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154197.pdf> last accessed 31st January 2018.

15 Article 2 and Article 3, Annex 2-a: Pharmaceutical products and medical devices, EVFTA text as of January 2016 available at: <http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154197.pdf> last accessed 31st January 2018.

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Description of current Vietnamese regulations

The Government has introduced reforms to improve the drug procurement process and ensure that Government funds are spent effectively. Through many amendments introduced in recent years, the process has improved in many areas. However, there are still areas for improvement.

As per the latest Circular 11/2016/TT-BYT of MOH dated 11 May 2016 on bidding for supply of drugs for public health facilities (Circular 11), products are categorised into different categories based on Good Manufacturing Practice (GMP) certification as the main criteria. This supports product quality differentiation. However, in order to achieve the Government's objective of better patient treatment outcomes and budget efficiency, it is required to have additional parameters in the assessment, such as Stringent Bio-Equivalence Criteria, Value in Use (Persistence and Adherence), Clinical Outcome and Additional Drug Cost.

Another potential issue in the Government procurement process, considering the draft Circular under preparation, also concerns product grouping based simply on the manufacturing location. The categorisation of products based simply on their country of manufacturing could lead to an unfair assessment or lack of assessment for high quality generic products.

In order to avoid any kind of discrimination of locally established supplier's product(s) versus another locally established supplier which has the quality specification on the basis of the EVFTA commitments on National Treatment and Non-Discrimination, IQGx recommends the Government review the current process by analysing available data and information in order to identify potential gaps. Specific areas that require a review relate to the categorisation of pharmaceutical products and the transparency of the process.

IQGx believes that the categorisation of products may not be delivering the intended real value as set out by the Government. We, therefore, recommend that products should be reviewed based on their own merit and total value proposition through the application of a comprehensive Multiple Criteria Decision Analysis (MCDA) process no matter to which category they belong, either branded or generic, and no matter where they are manufactured, provided they comply with the registration process.

2. Pharma Group

Pharma Group (PG)[16] - the Foreign Research-Based Pharmaceutical Manufacturers Association in Vietnam - represents the voice of the innovative pharmaceutical sector in Vietnam. PG and our 26 members all share the same Mission of cooperating with the Government of Vietnam in order to ensure that Vietnamese people have fast and sustainable access to high quality, safe and innovative pharmaceuticals.

The EVFTA will bring a number of benefits to Vietnamese patients, the Government of Vietnam and the pharmaceutical industry. It would seem that a number of commitments from the Vietnamese Government go a long way towards improving patients' access to innovative medicines, whilst providing international companies with a stronger legal framework for their operations.

In particular, it should be noted that Vietnamese patients would enjoy faster and more sustainable access to new, innovative medicines because the local clinical trial requirement will be lifted and administrative procedures shortened. At the same time, gradual access for foreign companies to Government procurement – which represents roughly 60% of the Vietnamese market – through competitive bidding, will enable Vietnamese patients to have greater access to high-quality, innovative, life-saving medicines.

16 EuroCham's Healthcare Forum is a coordination platform for Sector Committees operating in the Healthcare industry– at present International Quality Generics (IQGx), Medical Devices and Diagnostics (MDD SC) and Pharmaceuticals (Pharma Group). The Healthcare Forum enables industry representatives to discuss, share and advocate on common interests and topics. Given its inherently diverse nature, it also covers different interests of those industry representatives. All Sector Committees are equally supported by EuroCham

Furthermore, the reiteration of Vietnam's WTO commitment to provide foreign pharmaceutical companies with the right to establish Foreign Invested Enterprises (FIEs) with associated rights – a commitment which was supposed to have been implemented in 2009 – will be of great importance in providing companies with the legal clarity needed to establish themselves in the Vietnamese market. The EVFTA has gone even further by securing additional rights (including the right to provide medical information) for pharmaceutical companies.

However, the real challenge now lies in the implementation. Decree 54 guiding the implementation of the Pharma Law came into effect on July 1st, 2017 and unfortunately is not in line with the EVFTA commitments. Most significantly, it finally appears to allow setting up an importing entity, but with severe restrictions on its activities, by expanding the definition of distribution above and beyond the UN definition. This limits the attractiveness of setting up a legal entity (importing FIE). We acknowledge Vietnam's reservation of distribution rights for 100% Vietnamese-owned companies, within the limits of the definitions in WTO and relevant FTAs. However, by expanding the definition of 'distribution', FIEs providing warehousing and transportation services that have been operating in Vietnam for over 20 years may be forced out of business. As a result, it would be challenging for pharmaceutical MNCs to identify partners that meet international quality and compliance requirements, and supply continuity and product quality may be at risk

As such, this creates a situation of serious concern for PG and its members. In addition, with a significant number of pending legislations being drafted, including the Tender Circular (which governs public procurement of pharmaceuticals), and Circulars related to clinical trials, GSP and others, all of which should be finalised this year, it remains to be seen if the positive developments signaled by the new Pharma Law and the EVFTA will become reality.

Pharma Group remains a committed partner as Vietnam establishes itself as strong trade partner with the EU, building on the overarching objective to develop a high-standard, patient-centric healthcare sector and pharmaceutical industry.

EVFTA commitments and the associated 'win-win-win' opportunities

Over the coming 3-6 months, as Vietnam revises an extensive range of legislation under the new Pharma Law (effective since 1st January, 2017), Vietnam has a great opportunity to introduce amendments building on its international commitments. The table below provides an overview of Vietnam's commitments in the EVFTA as well as how these commitments are currently addressed in legislation.

	Summary of EVFTA commitments	Addressed in VN legislations
Legal Entity & Rights	Pharmaceutical companies can establish Legal Entities to: › perform importation › sell to distributors or wholesalers › build own warehouses (or use 3rd parties) › provide information to Healthcare Professionals (HCPs) › undertake clinical study/testing	**Partly,** with further clarification required (Pharma Law 105/2016/QH13 and Pharma Decree 54/2017/ND-CP) and significant obstacles created for existing and new FIE

Fast Patient Access	› Amendments to the existing legislation in order to abolish (i) the requirement of a minimum period of existing authorisation in the territory of the EU, prior to the submission of a request for a marketing authorisation in Vietnam, and (ii) any extra requirements related to clinical studies going beyond those stipulated in international practices (in particular, ICH guidelines) for the granting of marketing authorisation of pharmaceuticals (including drugs, vaccines, biologics).	**Partly** - local clinical trial partly addressed for drugs and biologics, not vaccines (Pharma Law 105/2016/QH13), further clarification required through Registration Circular, under revision.
Sustainable Patient Access: Government Procurement & Reimbursement	For each calendar year following the date of entry into force of this Agreement, Vietnam may set aside from the obligations of this Chapter the **respective percentage of contract value of pharmaceutical products** as below: Year 1-2 : 100% for VN — Year 10-15 : 60% for VN Year 3-9 : 65% for VN — Year 16 onward: 50% for VN **34 MoH hospitals & HCMC + HN SoH** (plus direct MOH purchases, plus Ministry of Defense purchases). This Chapter does not cover procurement of distribution services of pharmaceutical products that form a procurement contract or form a part of, or are incidental to, a procurement contract. In case these services form a part of, or are incidental to a procurement contract, the successful supplier of that procurement shall have the right to choose any licensed pharmaceutical distributor in Vietnam. **Transparency:** › Negative decisions require a statement of reasons based upon objective and verifiable criteria that is sufficiently detailed to understand the basis of the decision. › Provisions on transparency in pricing and reimbursement and reference to international standards and guidelines (WHO and OECD).	**Not yet** (Tender Circulars issued in 2016, currently under revision: Circular 11/2016/TT-BYT, Circular 09/2016/TT-BYT and Circular 10/2016/TT-BYT)
Intellectual Property	› **Regulatory Data Protection (RDP):** non-reliance by applicants other than the person submitting the data for a "reasonable period", which "shall normally mean not less than five years from the date on which the Party granted" marketing authorisation for the product. › Reaffirmation of obligations under the Patent Cooperation Treaty and simplify and **develop patent registration procedures using the Patent Law Treaty** as reference point. › A **patent term restoration system for a period of up to two years.** › A yearly IPR special committee will be set up	**Not yet** (Pharma Law 105/2016/QH13) Legislations under revision: IP Law, Registration Circular (relating to RDP)

Pharma Group resubmits the below recommendations to the Vietnamese authorities with a view to ensuring fast and sustainable patient access and the development of a high-standard, patient-centric healthcare sector.

Summary of Pharma Group recommendations

1. The right to establish a legal entity with all of its associated rights: The rights for foreign investors already committed under WTO, and reconfirmed in the EVFTA, have yet to be fully and completely implemented. This includes the right to establish a legal entity which can carry out, or contract to a third party to carry out, all activities granted under international commitments, including importation, but excluding distribution. The newly-issued Decree allows importation, but also introduces a long list of restricted activities that render an import FIE dysfunctional and puts in jeopardy the continuity of existing businesses.

We would like to recommend the Government review and revise Decree 54 (in particular Article 32.2.b and Article 91.10), to ensure its compliance with the EVFTA.

- Establishment of Legal Entities (FIE): In order to establish an FIE, companies must obtain a Certificate of Satisfactory Conditions (CSC), which requires the FIE to lease/build and operate a GSP-certified warehouse. This creates a potential situation, whereby dozens of companies would each need their own warehouse, and therefore a loss of scale will occur. PG requests that companies have the option either to have the GSP certificate under their own names, or can use GSP-qualified warehouse services of a 3rd party (including the logistics FIEs) in order to be granted the CSC.
- For existing foreign investors licensed to provide warehousing services and transportation in Vietnam: the new Decree redefines "distribution" beyond what is defined in the WTO and UN Provisional Central Product Classification, to include regular supply chain activities such as warehousing services, transportation and order-taking as "distribution activities". Such activities are reserved for local companies under the new regulations and would be contrary to the objective of ensuring the quality and safety of pharmaceuticals following global requirements. As a consequence, (1) existing FIEs active in warehousing and transportation services provision may be forced out of business, thus losing hundreds of millions of euro and (2) it would be challenging for pharmaceutical MNCs to find qualified and compliant partners to manage the supply chain of imported products or be forced to work with local parties. PG requests the continuation of existing rights of foreign investors, legitimately recognised at the time of negotiations, in order to ensure continued operations.
- Representative Offices (RO): It has been standard practice for decades that RO's hire medical representatives to provide drug information and Continuous Medical Education (CME). Clear regulations on this subject are absent. PG requests that ROs can continue to directly hire medical representatives for such activities. We are currently receiving signals to the contrary, which would cause pharmaceutical MNCs to have to lay off large numbers of people, and which would effectively cripple their ability to provide drug (safety) information.

2. Fast patient access - full removal of the Local Clinical Trial requirement

The EVFTA has removed extra requirements relating to clinical studies going beyond ICH guidelines for all pharmaceuticals including drugs, vaccines and biologics. The Pharma Law also heads in this direction by removing the previous 5-years of existing authorisation requirement, as well as the local clinical trials requirement, which is a major improvement in accelerating patient access to high quality, innovative pharmaceuticals. However, this exemption is currently not yet extended to include vaccines. Furthermore, it is important to avoid introducing new technical barriers, which are misaligned with the EVFTA and international Guidelines (ICH and WHO). Industry has submitted detailed comments and recommendations to facilitate patient access to new, innovative pharmaceuticals. Therefore, it is very important to ensure that the implementing regulation goes in line with Vietnam's EVFTA commitments, in particular through extension of the exemption to also include vaccines from the local clinical trial requirement, and harmonisation of regulatory standards following ASEAN and global requirements.

3. Effective implementation and enforcement mechanisms for Intellectual Property (IP) and data protection rights

As Vietnam is revising legislations relating to IP, it would be important to ensure commitments in the EVFTA are honoured, including but not limited to the adoption of patent protection, a strong enforcement system, automatic Regulatory Data Protection (RDP), patent term adjustment for Marketing Approval delays, and other intellectual property protections that conform to international standards, in order to create a more predictable environment for investment, promote innovation, and help address the critical health issue of counterfeit medicines. Pharma Group recommends ensuring the inclusion of relevant EVFTA provisions in both the Registration Circular and the IP Law.

(D). HUMAN RESOURCES AND TRAINING

The EVFTA contains a robust and comprehensive chapter on Trade and Sustainable Development, which deals, inter alia, with labour matters relevant to trade relations between the EU and Vietnam. The objective is to promote mutual supportiveness between trade, investment and labour policies as well as to ensure that increased relations do not come at the expense of workers' rights. Article 3.2 of the Chapter on Trade and Sustainable Development provides that each Party re-affirms its commitments to respect, promote and effectively implement the principles concerning the fundamental rights at work, namely:

(a) the freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

These rights would need to be supplemented and reflected in Vietnamese regulations, particularly in the Labour Code, the Trade Union Law and the Statutes of Vietnamese Trade Unions.

Regarding the establishment of trade unions, according to ILO Convention No. 87 (Art. 2), both employers and employees are allowed to freely establish and join organisations of their own will. Under Vietnamese law, employees may establish, join and operate trade unions. However, the order and procedures for establishing, joining and operating must comply with the Statutes of the Vietnamese Trade Union.

According to ILO Convention No. 87 (Art. 2), employees' organisations have the right to draw up their own rules and be subject to such rules. They also have the right to organise their administration and activities/programmes. Also, employees' organisations shall have the right to establish and join federations and confederations and any such organisations, federation or confederation shall have the right to affiliate with international organisations of employees. Under Vietnamese law, trade unions are allowed to establish domestic federations and confederations. However, there are still no provisions on such affiliation with international representative organisations of employees, as Vietnam has signed Convention No. 87 of ILO but not yet ratified it. Thus, the ratification of this Convention must be commenced as soon as possible.

Furthermore, Vietnam should take the appropriate steps to incorporate the Convention No. 87 into the Vietnamese legal framework in order to reflect the full nature of "freedom of association" to comply with ILO Conventions and EVFTA commitments. The localisation should be commenced as regards the following legislation, preferably accomplished by 2020:

a. Law on trade unions and implementing regulations;

b. Provisions relating to trade unions in the Labour Code and its implementing regulations.

Regarding employees' right to collective bargaining, the Vietnamese legal framework has good regulations on collective bargaining which reflects quite well the ILO Convention. Specifically, employers are required to organise periodical employee dialogue at work, once every quarter, discussing employment-related issues. Employees also have the right to request for collective bargaining at any time they wish. However, these regulations have not been fully implemented in practice. Therefore, further promotion of the practical implementation of the regulations on collective bargaining should be made. At the same time, Vietnam should encourage enterprises to promote and facilitate productive dialogues between employees and employers.

In terms of the abolition of child labour, Vietnam has ratified the ILO conventions on child labour - the Convention No. 138 on minimum age to work and the Convention No. 182 on the elimination of bad forms of child labour. Vietnam has also endorsed Sustainable Development Goals which also include Objective 8.7 to eliminate child labour in all forms by 2025.

Vietnam also needs to ratify Convention No. 105 of ILO as soon as possible to ensure the elimination of all forms of forced or compulsory labour.

Regarding anti-discrimination, Vietnamese law is not comprehensive on non-discrimination as regards employment and occupation. The provisions are more favourable to unique types of employees such as female, junior or elderly ones. However, the definition of "discrimination" stated in Vietnamese law (Art. 8.1 of the Labour Code) does not cover all items mentioned in ILO Convention No. 111 (Art. 1). In particular, "discrimination" under ILO's perspective also includes the following components, which have not been reflected under Vietnamese regulations: "political opinion"; "national extraction"; and "any other distinction having the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Therefore, it is recommended that Vietnamese law includes the definitions as covered in the ILO Convention 111.

In addition to commitments on ratification of ILO's conventions, the FTA also includes commitments to promote responsible business practices (Corporate Social Responsibility, or CSR) at the level of enterprises, be it local or foreign investment.

To ensure that Vietnam can comply with its commitments under the FTA, we suggest the following recommendations:

- Present an action plan for the ratification of the pending ILO fundamental Conventions with concrete timeframes;
- Ensure that the revision of the Labour Code and relevant laws ongoing is in line with the FTA commitments, in particular the establishment of independent workers' organisations;
- Work with ILO to monitor and facilitate the implementation of the FTA commitments;
- Upgrade the labour inspectorate system to improve its capacity to effectively implement core labour standards; and
- Develop awareness of CSR principles in line with the OECD Guidelines for Multinational Enterprises.

In order to effectively implement the EVFTA, Vietnam also needs to improve the country's working environment through preparations and enforcement of existing regulations and passing future legislation.

(E). MOBILITY

Vietnam to comply with EVFTA homologation and testing for automotive business.

1. Completely-Built-Up (CBU) vehicles to be tested lot by lot

EVFTA relevant text

EVFTA/Testing requirements for four-wheeled vehicles/Chapter 2: National Treatment and Market Access for Goods/Annex 2-b: Motor Vehicles and Motor Vehicles Parts/Article 2: International Standards:

> 1. The Parties recognise that the UNECE Regulations of WP.29 are the relevant international standards for the products covered by this Annex.
>
> 2. Vietnam is encouraged to become a signatory of the Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions (UNECE 1958 Agreement).
>
> 3. The Parties shall recognise technical requirements of UNECE Regulations as providing a sufficient level of protection for ensuring road safety or the protection of the partially Vietnamese standards for manufacture of four-wheel vehicles.

Article 4.1: Market Access:

"The Parties shall accept on its market as compliant with its domestic technical requirements and conformity assessment procedures, without further testing or marking requirements to verify or attest compliance with requirements in the area regulated by the relevant UNECE Regulations, products covered by this Annex and which are covered by a valid UNECE type-approval certificate."

Decree 116/2017/ND-CP dated 17 October 2017, effective from 1 January 2018 (Decree 116), lists the new conditions regulating the automotive automobile manufacturer, automobile importer and automobile aftersales guarantee/ maintenance business in Vietnam. Article 6, clause 2, point A now requests CBU importers to pass homologation tests (emission and safety) with Vietnam Register in Hanoi for every shipment. Vehicles of the same model will still need to undergo a new test when imported in different shipments. Circular 03/2018/TT-BGTVT of Ministry of Transport (MOT) released on 25 January, and the final dated 10 January 2018, effective from 1 March 2018, guiding the application of Decree 116 even requests additional certificates of production quality for the tires, exterior mirrors, glass and lights fitted on each car homologated in each shipment. As the car manufacturer will have to request such new certificate from each Original Equipment Manufacturer (OEM), this appears as a technical barrier to trade generating time and financial costs.

This new regulation is not compatible with the EVFTA-relevant disposition quoted above as it specifically excludes "further testing or marking requirement to verify or attest compliance with requirements." Once the FTA is ratified and has entered into force, EU imports can be exempted from this requirement of homologation test according to Articles 6.1.c. and 6.2.a. of Decree 116.

In the meantime, the application of this Decree will increase homologation cost and time for businesses, causing higher car prices; especially for vehicles imported in small lot. We are also concerned that congestion will happen at imported ports as well as testing centres in Vietnam in high season. In practice, to send one test car for each different model to Vietnam Register in Hanoi for each shipment, to have it tested and get the results will take several weeks, holding the release of all stock from that shipment for customer deliveries. Such testing delay, plus the necessity to keep stock on hold and monitoring now based on each shipment date over time will generate sizable financial costs, forcing vehicles prices up. Vietnam Automotive Manufacturers Association (VAMA), in its petition 121401/2017/VAMA to Vietnam Chairman of Government Office dated 14 December 2017, highlighted that it will take two months from test to result, during which time all stock will have to be financed on hold – and a cost per test of up to USD10,000 for each vehicle tested.

For EU vehicles, we strongly recommend Vietnam complies with its commitment to grant automatic acceptance with no further test requirement for EU products having equal/higher technical standards certified by the EU. In view of the imminent entry into force of the EVFTA, Vietnam should keep its current practice of accepting EU certification as completely aligning with existing Vietnam National Technical Standard, facilitating business, reducing costs and administration workload. This matches the target of administration reform in Vietnam as well as the objectives and principles of the EVFTA: promoting mutual recognition and eliminating and preventing non-tariff barriers to bilateral trade.

2. Imports of parts and equipment

EVFTA relevant text

Article 4(2.1): "In the case of parts and equipment, the product to be imported shall normally be accompanied by the relevant UNECE type approval certificate. The importing Party shall endeavour to consider a valid UNECE type approval marking affixed to a product as sufficient proof of the existence of a valid type approval certificate."

Chapter 2: National Treatment and Market Access for Goods/Annex 2-b: Motor Vehicles and Motor Vehicles Parts / Article 3.2:

"After 5 years from the date of entry into force of this Agreement, for a following period of 7 years, Vietnam shall accept a valid whole vehicle EC Certificate of Conformity. At the first importation of a vehicle type, the product to be imported shall be accompanied by the relevant EC type approval certificate. Such an EC Certificate of Conformity shall be considered as sufficient proof for the purposes of paragraph 3.1. When such UNECE International Whole Vehicle Type Approval is available for M1 vehicles, Vietnam shall notify the European Union whether it wishes to continue accepting valid whole vehicle EC Certificates of Conformity together with the UNECE International Whole Vehicle Type Approval of a specific vehicle category."

According to Article 6.1.b and 6.1.c. of Decree 116, CKD components of to-be-homologated list are to be tested in Vietnam. The requirements for component certification include Type approval, Test report and COP assessment. Therefore, parts imported from the EU with UNECE certificates/test report will no longer be accepted for test exemption as today unless provided certificate/test report is from a country which has signed a Mutual Recognition Agreement (MRA) with Vietnam. Despite the fact that Vietnam National Technical Regulation on safety and environmental protection for automobiles is derived from ECE/UNECE standards and regulations which are also applicable to EU cars.

This new regulation is not compatible with the EVFTA-relevant disposition quoted above which foresees that imports shall be accompanied with relevant UNECE-type certificates and that valid UNECE-type approval marking should be sufficient proof of the existence of a valid type approval certificate. Once the FTA is ratified and has entered into force, Vietnam will have to accept vehicles accompanied with UNECE whole vehicle type approval certificates as satisfying their requirements on standards and regulations. As foreseen in Annex 2b (Motor vehicles and Motor vehicles parts), the parties have recognised that the UNECE regulations are the relevant international standards and there should be no need for a specific MRA with EU countries as the EVFTA is tantamount to such an MRA. In the meantime, before the ratification and entry into force of the EVFTA, this new regulation will increase homologation cost and time for businesses, causing higher car prices. There is no justification for hardening the condition of imports pending the entry into force of the EVFTA. Indeed, the application of this new regulation could even be considered as materially impairing or nullifying the good-faith implementation of the FTA.

Therefore, we propose the Government considers continuing to accept UNECE/ECE certificate/Test reports issued by competent authorities. For cases where only the type approval and COP assessment are available, we recommend that component testing will only be required for the first shipment (provided that it is the same component, i.e. same type, model code and manufacturer). In such cases, the component certificate granted should be valid for the 3 years as described in Article 6.1.d of Decree 116.

3. Re-manufactured parts

We would like to draw the attention of the following Ministries to the issue of re-manufactured parts: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Science and Technology (MOST) and Ministry of Transport (MOT).

EVFTA relevant text

Chapter 2, Article 5:

"The Parties shall accord to remanufactured goods the same treatment as that provided to new like goods. A Party may require specific labelling of remanufactured goods in order to prevent deception of consumers. The application of this Article is subject to a transitional period of no longer than three years from the entry into force of this Agreement".

Currently, there is no regulation providing a definition of so-called 're-manufactured' parts. Decree 187/2013/ND-CP of the Government (Decree 187)[17] provides general guidelines for import/export activities and prohibits used automotive parts from being imported into Vietnam. In accordance with Circular 38/2015/TT-BTC[18], Vietnam Customs interprets any part which is not 'brand new' as a 'used part' which therefore makes importation of re-manufactured parts impossible.

17 Decree 187/2013/ND-CP of Government detailing the implementation of the Commercial Law regarding international goods' sale and purchase and goods', sale, purchase, processing and transit agency activities with foreign countries, dated 20th November 2017.

18 Circular.38/2015/TT-BTC of the Ministry of Finance dated 25 March 2017 on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods dated.

Re-manufacturing saves energy, cuts CO^2 emissions, conserves resources and benefits customers and consumers in Vietnam. Furthermore, re-manufacturing saves a ton of precious raw materials and many tens of thousands of megawatt hours of electricity. In brief, re-manufacturing reduces the burden on the environment. Every European country, and most Asian countries, have understood the importance and environmental significance of re-manufactured parts and therefore allow the importation and trading of such parts as new ones. This has also been demonstrated by various life-cycle assessment studies certified by independent testing organisations such as 'TÜV SÜD' in accordance with international standards.

We kindly request that Vietnam allows the import of re-manufactured parts with the same treatment as that provided to like-new goods. Specific labelling of remanufactured goods should be implemented in order to prevent deception of consumers. Moreover, genuine re-manufactured parts meet the same quality standards as brand new parts. They are produced according to strict quality requirements and undergo final quality examination with exactly the same standards as brand new parts. Furthermore, genuine re-manufactured parts are supplied by car makers with the same warranty as provided to new parts, are more cost effective for customers and align with environmental protection trends.

(F). WINES AND SPIRITS

The European Union and Vietnam are working on the final preparations before the EVFTA is ratified during the course of 2018 and enters into force in 2019. Wines and Spirits Sector Committee (W&S SC) has always supported the EVFTA. The gradual reduction of the tariff duty should increase import of wines and spirits on which taxes have duly been paid. This will thereby reduce economic incentives of smuggling and other illegal activities. This should ultimately benefit legitimate businesses, Government revenue and the health and well-being of consumers in Vietnam. However, the benefits contemplated from tariff reductions negotiated under the EVFTA are being impaired by successive reforms to the Special Consumption Tax (SCT). W&S SC would like to be associated with the 'domestic advisory groups' mechanism for the EVFTA. We would also appreciate the opportunity for an in-depth exchange and discussion with relevant authorities in developing the implementation of rules and practices of agreed principles relating to the Rules of Origins (ROO) established in the EVFTA for getting the agreed tariff concession in the scenario of direct shipment and transhipment through non-Party states of EU wines and spirits to Vietnam. We hope that Ministry of Industry and Trade (MOIT) will give clear guidance for a smooth application.

Liquor production and trading licence: We warmly welcome the promulgation of Decree 105/ND-CP dated 14 September 2017 of the Government on liquor business (Decree 105), replacing Decree 94/2012/ND-CP dated 12 November 2012 on liquor production and trading (Decree 94). The newly-issued Decree contains positive changes removing unnecessary restrictions, such as the quota of trading licences based on inhabitants, the restriction that one trader is only allowed to apply for one type of liquor trade licence, and sales restrictions from the vertical distribution system in Decree 94. The Decree also reviewed and amended the conditions for obtaining a liquor trading licence, which is more consistent with the practical situation to facilitate the management and operation of liquor distribution and sale in Vietnam in line with Vietnam's EVFTA commitments.

Intellectual Property Rights: The industry respectfully requests Vietnam to ensure a strict enforcement of Vietnam's Intellectual Property Rights laws, especially on Geographical Indications, to reduce unnecessary burdens in enforcing the proprietary rights; and improve cooperation between law enforcement services and owners of brands/products protected by key European Geographical Indications: Champagne, Irish Whiskey, Swedish vodka, Cognac and Scotch Whisky.

Technical regulations: We strongly support and appreciate the initiative of reform and the simplification of administrative requirements and conditions of some sectors, including the wines and spirits industry. These include the on-going discussions concerning the removal of certification of product conformity with technical regulations of non-risk products like wines and spirits and reductions of some procedures on State examination for imported products. We would like to note that any changes on labelling requirements or technical regulations for alcoholic beverages should be harmonised with international practices that assure product quality and safety for consumption without imposing unnecessary technical barriers to trade.

1. Special Consumption Tax reform

The European wines and spirits industry has suffered from successive reforms of the Special Consumption Tax (SCT), combining a progressive increase of the tax rate and a substantial increase of the taxable price. The negative impact of these reforms on our operators is very significant as the tax burden on importers has, in some instances, more than doubled. Further potential tax increases could put the sustainability of our industry in Vietnam at risk. The European wines and spirits industry had been supportive of an ambitious FTA with Vietnam from the very beginning, as it expected to benefit from a mutual opening of markets. Unfortunately, the SCT reforms fully nullify the benefits of the tariff reductions negotiated under the FTA.

Vietnam applies ad valorem tax on alcoholic beverages. The country taxes based on value, and does not tax alcohol based on alcoholic content. The continued increase of the ad valorem rate will put an unfairly higher tax burden on imported wines and spirits and further intensify the economic incentive for illicit cross-border activities and counterfeit of popular high-value items. This will exacerbate revenue loss from tax leakage and increase the risks to public health. This sharp increase of the tax burden will impact the retail prices of imported European products (whose prices are already high in Vietnam). This will make them unaffordable for Vietnamese consumers who will trade down to low-priced and widely available alcoholic products. This will negatively impact Government revenues and jobs in Vietnam. European wines and spirits represent an extremely small proportion of alcohol consumed in Vietnam, less than 2% of the legal market. According to official data from the World Health Organisation (WHO) and industry statistics, more than 70% of the alcohol consumed in the country is unrecorded and untaxed. A large proportion of the unrecorded market consists of village production of alcohol which is regulated to a certain extent but untaxed. It is well known that as alcohol taxation increases, the amount of unrecorded alcohol consumption tends to increase as well, thereby reducing the effectiveness of the alcohol taxation strategy. In addition, village production of alcohol is not captured in Vietnam's excise system and this represents a very substantial loss of potential Government revenue on top of creating a health hazard for consumers.

The industry is currently working, through the regional trade association APIWSA and their tax expert, on a tax model for the Vietnam market that would assess the impact on Government revenues of various tax scenarios, including the adoption of a mixed ad valorem and specific system or a fully specific system. Our industry is willing to positively engage with the Government and MOF to examine various options of alcohol taxation that would address fiscal and public health objectives. To that end, we would greatly benefit from greater transparency from MOF in its assessment of the impact of the various SCT reforms, as well as public consultations of any proposed change to the SCT regime early in the process in the future. Wines and spirits represent less than 3% of the legal alcohol consumed in Vietnam. We believe that a fair and reasonable taxation system should weigh equally on each component of the alcohol industry in Vietnam, including the untaxed domestic production. The current tax system is biased against imported wines and spirits.

2. Customs Valuation Framework issue

Vietnam has confirmed and issued laws and regulations regarding the calculation of customs valuations for imported products, in compliance with the WTO Agreement on Customs Valuation. However, a system of reference prices for 'sensitive items' has been set in the customs data system for reference when there is an issue with importer's declared values. This could result in applying the minimum import values and discriminatorily high customs levies.

In the last couple of years, there have been changes in the implementation of laws and the Vietnamese taxation system has been improved in terms of forms and processing time. However, at the same time we have recently seen an increase of tax audits, possibly driven by an overzealous desire to satisfy the Government's needs for additional tax revenues. It is particularly the case when imports of branded goods take place between the related buyers and sellers where the declared values are rejected under various pretexts in contradiction with basic rules of WTO Customs Valuation Agreement. Sales between related parties is estimated to represent 30% of world trade and, in the case of wines and spirits, the proportion is higher as normally branded products are sold exclusively through related sellers. Depriving importers of their basic rights recognised under WTO commitments of having their declared values being recognised as the basis for import duty calculation constitutes a potential source of nullification and impairment of the benefits of reduction of import duties under the EVFTA.

The EU businesses community would like to co-operate with and support the Government to ensure compliance with WTO rules, improve transparency and allow companies to set the right price in line with the free market economy principles. This will benefit consumers and ultimately boost imports and hence customs revenue.

EUROCHAM'S REPORT ON EU-VIETNAM FREE TRADE AGREEMENT

Perceptions from the European Business Community in Vietnam 2018

Project Leads: Jean Jacques Bouflet, Le Thanh Binh

Sector Committees: EuroCham Legal Sector Committee; EuroCham Food, Agri and Aqua Business Sector Committee; EuroCham Green Growth Sector Committee; EuroCham Healthcare Forum; International Quality Generics Sector Committee; Medical Devices and Diagnostics Sector Committee; Pharma Group; EuroCham Human Resources and Training Sector Committee; EuroCham Mobility Sector Committee and EuroCham Wines and Spirits Sector Committee.

Editor: Laurence Newman

CROSS-SECTORAL ISSUES

PART TWO

CHAPTER 1 **CORPORATE ORGANISATION**

OVERVIEW

The entry into force of Law 68/2014/QH13 dated 26 November 2014 on Enterprises (Law on Enterprise) and its guiding regulations have brought about positive changes in the corporate organisation of foreign investment in Vietnam. As a general comment, European investors have observed that the Vietnamese legal framework for corporate entities has consistently improved through the years.

Alongside this trend, foreign investors have started to enter more complex and sophisticated deals. The clarity of the rules applicable to the corporate organisation appears to be more and more important.

In this chapter, we would like to raise three topics. First, we will discuss some unclear provisions on legal representation for Single-Member Limited Liability Companies (SMLLCs). Second, we will raise the issue of the percentage required to pass ordinary decisions in multiple-member Limited Liability Companies (LLCs). Third, we will consider the effectiveness of shareholders' agreements.

I. UNCLEAR PROVISIONS ON LEGAL REPRESENTATION FOR SINGLE-MEMBER LIMITED LIABILITY COMPANIES (SMLLCS)

Relevant State bodies: Ministry of Planning and Investment (MPI), Supreme People's Court, Supreme People's Procuracy.

Issue description

For the second time, following the previous edition of the Whitebook[1], we would like to raise concerns about some provisions of the Law on Enterprises regarding representation in SMLLCs.

Under the Civil Code of Vietnam[2], a legal entity enters into contracts and other legal documents through its legal or authorised representative. This representative is usually an individual (for example, in practice, it could be the director or the chairman).

Under the Law on Enterprises, the single member (also called 'owner') of an SMLLC may choose in the SMLLC's charter who will be the legal representative: the chairman of the company (or the chairman of the members' council of the company, as the case may be) or the (general) director. The owner may also choose more than one legal representative. Furthermore, the legal representative has, in principle, the power to sub-delegate this power of representation to authorised representatives. These provisions are clear and partners, customers and other third parties to the SMLLC know who has the power to engage the SMLLC.

However, some provisions of the Law on Enterprises are confusing because they imply that the members' council and the director (who is not necessarily the legal representative) may act on behalf of the SMLLC. In particular:

1. Article 79.1 of the Law on Enterprises provides that the members' council of the SMLLC shall "implement rights and obligations of the company in the name of the company except for the rights and obligations of the director or general director". This provision may arguably imply that the members' council is competent to act on behalf of the SMLLC with respect to third parties.

2. Article 81.2(e) of the Law on Enterprises provides that the director of the SMLLC shall have the right to "sign contracts in the name of the company, except in cases falling within the authority of the chairman" (reference is made to the chairman of the members' council or the chairman of the SMLLC, as the case may be).

1 "Whitebook 2017", *EuroCham*, Chapter 1: Corporate Governance, pp. 26-27
2 Civil Code 91/2015/QH13 of National Assembly dated 24 November 2015

Potential gains/concerns for Vietnam

There should be no challenge to the right to enter into contracts or other legal documents on behalf of a company. The provisions mentioned above imply that a person or body other than the legal representative or the authorised representatives may represent the company with respect to third parties.

Our first concern relates to the validity of legal documents signed by such a person or body. Indeed, it may happen that such a person or body, not being a registered legal representative of the company, actually signs a contract or another legal document on behalf of the SMLLC, based on the above provisions. The validity of such a legal document may be challenged.

Our second, more important concern is that, in terms of corporate governance, the owner of an SMLLC decides to give executive power to one person, who is the legal representative, or to more than one person in the case of multiple legal representatives. Such an arrangement decided by the owner shall not be subject to challenges by other bodies or positions in the SMLLC.

The gain for Vietnam by deleting these two provisions will be to offer a more consistent regime for representation in SMLLCs. Foreign investors often choose the form of an SMLLC to invest in Vietnam. Therefore, improvement of this corporate form would definitively add value to their investment in particular and to the investment environment of Vietnam in general.

Recommendations:

We recommend that the two provisions mentioned above should be deleted from the Law on Enterprises.

II. THE PERCENTAGE REQUIRED TO PASS ORDINARY DECISIONS IN MULTIPLE-MEMBER LIMITED LIABILITY COMPANIES

Relevant State bodies: Ministry of Planning and Investment (MPI), Supreme People's Court, Supreme People's Procuracy.

Issue description

In this section, we would like to raise the issue of the drafting of companies' charter. The Law on Enterprises contains some provisions which allow members or shareholders to "agree otherwise" in the charter. However, some of those provisions do not specify any limits in respect of the agreement between the members or shareholders.

For example, Article 60.3 of the Law on Enterprises provides that, with respect to multiple-member LLCs, ordinary decisions shall be passed at the members' council with "at least" 65% "unless otherwise provided" by the charter. Two different interpretations of this provision are possible: according to a strict interpretation, the members of the LLC may provide for a higher percentage than 65%; according to a less conservative interpretation, members may provide for any percentage whether more or less than 65%.

Potential gains/concerns for Vietnam

Members of Legal Sector Committee are concerned about the persistent ambiguity over such a fundamental question as the ability of the members of an LLC to provide in the charter that ordinary decisions may be passed at a percentage of less than 65%.[3]

Recommendations:

We recommend clearly stating that the members of an LLC may provide for a percentage of less than 65% (but at least 51%) to pass ordinary decisions.

3 Resolution 71/2006/NQ-QH11 of the National Assembly, dated 29 November 2006, offers flexibility in sectors opened at the WTO.

III. EFFECTIVENESS OF SHAREHOLDERS' AGREEMENTS

Relevant State bodies: Ministry of Planning and Investment (MPI), Supreme People's Court, Supreme People's Procuracy.

Issue description

Shareholders' agreements are a common tool when investing in Vietnam, in particular when conducting business with local partners. Unfortunately, the Law on Enterprises passed by the National Assembly in 2014 does not contain any specific provisions on shareholders' agreements.

Potential gains/concerns for Vietnam

There is currently no Vietnamese law or regulation which explicitly recognises the effectiveness of shareholders' agreements. Members of the Legal Sector Committee are concerned about this situation and strongly believe that a specific legal framework for shareholders' agreements will improve the business environment for investors in Vietnam.

Recommendations:

We recommend promulgating specific provisions or case law to recognise the effectiveness of shareholders' agreements in Vietnam.

In conclusion, while we are satisfied with the general direction of travel, we remain concerned about some issues affecting corporate organisation in Vietnam.

We therefore hope that the concerns and recommendations mentioned in this chapter will be taken into account by the Vietnamese Government. At the same time, EuroCham and members of Legal Sector Committee will continue to offer expert support and cooperation in order to find solutions to these and other issues.

ACKNOWLEDGEMENTS

EuroCham Legal Sector Committee.

CHAPTER 2 **ENERGY AND ELECTRICITY**

OVERVIEW

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

- Delivering the supply of reliable and affordable energy for sustainable economic growth;
- Reducing greenhouse gas emissions from energy production in line with the Paris Agreement and the Intended Nationally Determined Contributions (INDC) plan submitted by Ministry of Natural Resources and Environment (MONRE); and
- The sustainable development of the power sector, achieving financial sustainability, equitisation of power generating assets and mobilising private sector investment.

The Vietnam Business Forum (VBF) presented the Made in Vietnam Energy Plan (MVEP) to the Prime Minister in Hanoi on 5 December, 2016 and re-iterated it at other later forums in 2017.[1] This is the key energy policy document of EuroCham's Green Growth Sector Committee, which outlines a national energy plan using indigenous resources to deliver a sustainable energy future through to 2030. The EU-Vietnam Business Network (EVBN) and GGSC with Dragon Capital Group Ltd. at the forefront supported the production of MVEP with assistance from the American Chamber of Commerce in Vietnam (AmCham) and Nordic Chamber of Commerce in Vietnam (NordCham).

Table 1: Progress on the MVEP energy reform recommendations

Energy Reform Recommendations	Progress Made in 2017
1. Natural Gas Resources	
a. Commence development of natural gas resources to displace imported coal	The Government has approved in principle the exploitation of new gas fields to supply the power industry. The development of new Liquefied Petroleum Gas (LPG) terminals has also been approved in principle
2. Energy Efficiency	
a. Publish a Roadmap to retail power tariffs to 2020 and a vision to 2025	A pricing framework was published by the Office of the Government in December 2017 estimating the price inflation to 2020. The estimated rate of inflation is below predicted CPI and contradicts expert analysis such as US AID/Deloitte's Novermber 2017 report.
b. Smart Grid Technology	Limited small-scale projects implemented.
c. Waste to energy – special incentives	No progress in 2017. Solid waste disposal remains unsustainable.

1 More information is available at: <https://www.eurochamvn.org/Sector_Committees/green_growth> accessed on 20 December 2017.

d. Public education campaign on energy efficiency for consumers	Limited small campaigns implemented.
3. Renewable Energy	
a. Direct Power Purchase Agreements (DPPAs)	Ministry of Industry and Trade (MOIT) is committed to remove the legal obstacles to DPPAs and is actively collaborating with agencies to implement pilot DPPAs in 2018
b. Solar and wind FIT and PPA terms made internationally "bankable"	No progress in 2017
c. Improve the creditworthiness of Electricity of Vietnam (EVN)	No progress in 2017
d. Engagement with the private sector to develop an effective Solar Decision to attract investors	A Solar Energy Policy partnership is not yet established with EuroCham. MOIT has a policy partnership with public sector organisations and donors where the private sector is not represented

I. MADE IN VIETNAM ENERGY PLAN (MVEP)

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

Issue description

The MVEP was produced to help Vietnam meet its growing energy needs, climate change goals from the 21st session of the Conference of the Parties (COP21)[2] and achieve its economic development goals. It builds on the Power Development Plan (PDP) VII[3] (MOIT-revised for 2016-2030), the World Bank Group-sponsored report Exploring a Low-Carbon Development Path for Vietnam[4], the Asian Development Bank's Renewable Energy Development and Potential in the Greater Mekong Sub-region Report[5] and the World Bank's Financial Recovery Plan for Vietnam Electricity.[6]

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

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

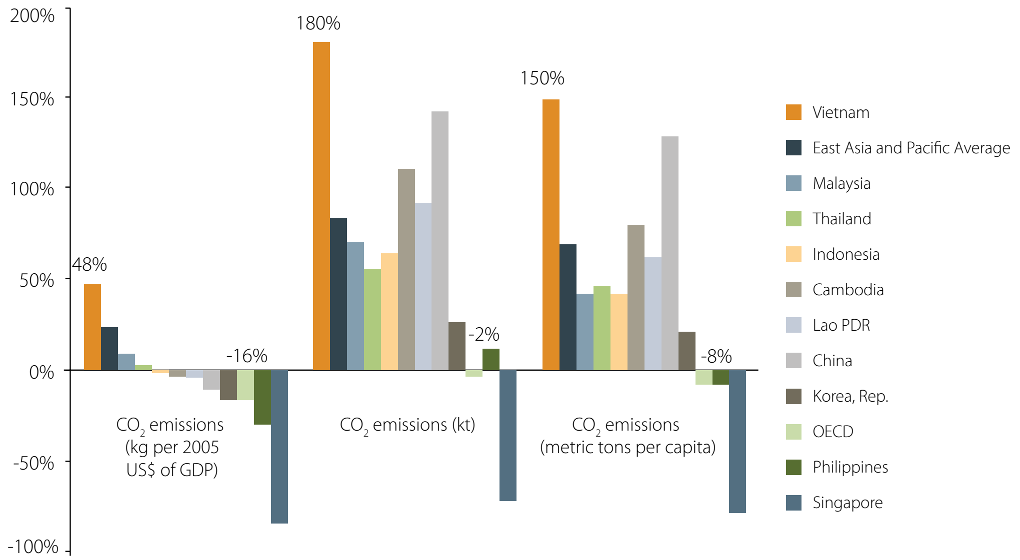
2 "Vietnam's imprint at COP-21", *Nhanh Dan Online*, 2 September 2016. Available at: <http://en.nhandan.com.vn/special_reports/item/4021002-vietnam%E2%80%99s-imprint-at-cop-21.html> accessed on 19 December 2017.
3 Decision 1208/2011/QD-TTg dated 21st July 2011 of the Prime Minister approving the national master plan for power development in the 2011-2020 period with considerations to 2030.
4 P. Audinet; B. Singh; N. Bipulendu; D. T. Kexel; S. Suphachalasai; P. Makumbe and K. Mayer, "Exploring a low-carbon development path for Vietnam" *World Bank Group*, 2016. Available at: <http://documents.worldbank.org/curated/en/773061467995893930/pdf/102363-PUB-VN-Low-cost-carbon-date-Jan-20-2016-9781464807190-Box-394380B-PUBLIC.pdf> accessed on 19 December 2017.
5 "Renewable Energy Developments and Potential for the Greater Mekong Subregion," *Asian Development Bank*, 2015. Available at: <http://hdl.handle.net/11540/5054> accessed on 19 December 2017.
6 J. J. Maweni and J. Bisbey "A financial recovery plan for Vietnam Electricity (EVN): with implications for Vietnam's power sector," *World Bank Group*, 2016. Available at: <http://documents.worldbank.org/curated/en/971901468196178656/A-financial-recovery-plan-for-Vietnam-Electricity-EVN-with-implications-for-Vietnam-s-power-sector> accessed on 19 December 2017.

- **Energy efficiency:** including enhancing the role of Government and using demand-side management tools to reduce waste and attract private sector investment and innovation in efficiencies;
- **Renewable energy:** preparing the policy and regulatory framework to enable the further development of successful markets and attract the required investments in renewables for local and foreign investors, technology and service providers; and
- **Vietnam's natural gas:** accelerating and expanding investment in the use of domestic natural gas as a cheaper, cleaner and more flexible fuel than imported coal. Gas remains the least polluting (with 60% fewer CO_2 emissions than coal) and most cost effective fossil fuel which can serve as a secure bridge fuel.

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

Energy policy goals

Figure 6: Vietnam's carbon emissions are growing at the fastest rate in the region (2000 to 2010)



Source: World Bank (2015) Vietnam Low Carbon Options Assessment[7]

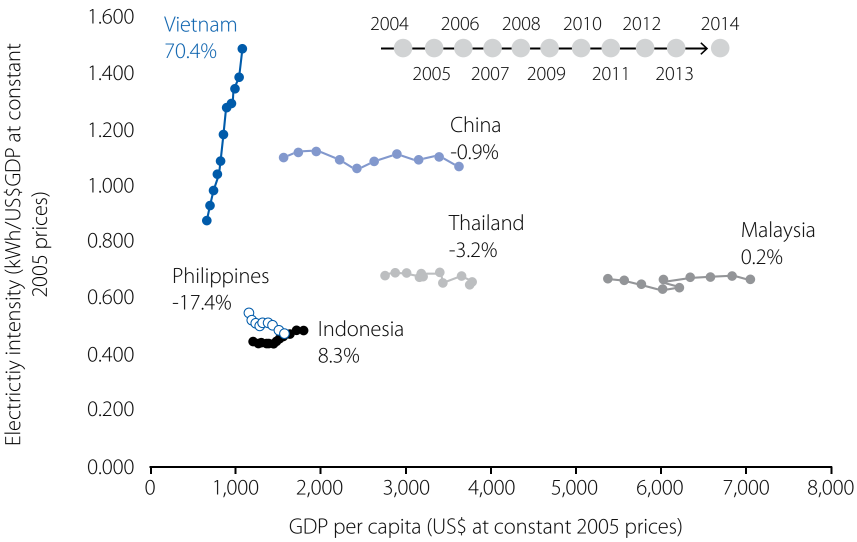
The MVEP outlines how Vietnam's energy needs can be met with greater emphasis on cleaner domestic sources of energy such as: renewables including biomass, wind and solar; sustainable energy efficiencies; and the increased development of Vietnam's offshore natural gas. These will all reduce the effects on the environment and the need for imported coal. The MVEP report includes regulatory and policy recommendations that can deliver the private sector investment necessary to meet the USD100 billion required by 2030 to meet Vietnam's energy needs, and do so in a way that maximises the use of indigenous resources and delivers on Vietnam's environmental goals.

More efficient use of energy

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

7 *Op. cit.* P. Audinet, B. Singh, N. Bipulendu, D. T. Kexel, S. Suphachalasai, P. Makumbe and K. Mayer.

Figure 7: Vietnam's electricity intensity is extremely high and growing rapidly



Source: ECA calculations using data from BP Global's Statistical Yearbook (electricity generation)[8] *and World Bank (real GDP and GDP per capita).*[9]

Potential gains/concerns for Vietnam:

The adoption of MVEP would allow:

- A more flexible power development plan that can be adjusted to fit future demand, low or high, and removes the risk of either stranded assets or of failing to meet demand if growth exceeds estimates;
- Much greater new investment to be attracted from multiple domestic and foreign sources, in particular mobilising private sector resources, building local manufacturing capabilities, reducing the reliance on foreign governments and the need for Vietnamese Government revenues, subsidies and guarantees or Government Guarantees and Undertakings (GGUs);
- The more efficient use of electricity that will reduce energy waste and make Vietnam more competitive, productive and attractive for Foreign Direct Investment (FDI);
- An estimated USD15-20 billion to be added to Government revenues over the project lifetime in developing 3 GW of indigenous gas-fired power plants, compared to an estimated USD20-25 billion in foreign exchange costs to import coal for an equivalent coal-fired development;
- The reduction of social and environmental costs of pollution from a new generation of coal power plants which contribute to poor air, water and land quality and high health costs. Following International Monetary Fund (IMF) calculations, we estimate the costs of health and environmental impacts of the current power development plan, with its reliance on coal, could be as high as USD15 billion a year by 2030;[10]
- Vietnam to reduce its dependence on imported coal with its consequent risks for security of supply and tens of billions of dollars in foreign exchange demands and balance of payment risk;

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8 "BP statistical review of world energy", *BP*, June 2017. Available at: <https://www.bp.com/content/dam/bp/en/corporate/pdf/energy-economics/statistical-review-2017/bp-statistical-review-of-world-energy-2017-electricity.pdf> accessed on 20 December 2017.

9 World Bank data. Available at: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> accessed on 20 December 2017.

10 Calculated using planned coal-fired generation of 311 TWh in 2030 and IMF estimates of the health and environmental costs of coal consumption in Vietnam of $ 2.26/GJ (equivalent to around 8.07/MWh of electricity generated). A cost of carbon of $35/tCO2e is applied. Available at: <http://www.imf.org/external/np/fad/environ/data/data.xlsx> accessed on 19 December 2017.

- A reduction in the significant financial, logistical and environmental costs of transporting coal and coal waste; and
- Faster construction of energy plants. Solar installations require just one year to be built, and even wind farms come to market much faster than thermal plants. They are also scalable, so can be increased as the need arises.

Recommendations:

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

- Adopt energy efficiency measures:

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

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

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

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

- Promote private investment into renewable electricity generation:

  a. Introduce DPPAs between power producers and large power consumers, as these have proven to be extremely effective in other, similar countries. Companies such as Apple, Nike, Coca Cola, Google, TetraPak and other MNCs have stated their global commitments to seek access to clean energy. This will attract additional investment and global brands that will help Vietnam move up the manufacturing value chain.

  b. Implement the recommendations of the German Agency for International Co-operation (GIZ) and United Nations Development Programme on changes to wind and solar PPAs to make these 'bankable' increases in Feed-In-Tariffs (FIT) for renewable energy and to remove the PPA terms which fail to protect the rights of investors and banks financing these projects.

  c. Continue the restructuring of EVN to enhance its creditworthiness. Increasingly, international donors are offering support and guarantees for renewables and clean energy development and procedures which can assist in increasing EVN's creditworthiness from the perspective of new investors in these projects at low cost to Vietnam. This credit enhancement for EVN would help the Government of Vietnam reach energy and environmental goals and encourage developers to consider Vietnam as an attractive market for investment on commercial terms.

  d. The Government is encouraged to work with private sector solar experts and business groups in Vietnam and to publish a Solar Power Decision with its supporting regulations in the form most likely to attract private capital investment.

- Develop offshore gas potential:

  a. Careful analysis indicates that offshore gas development cost and revenue structure is favourable to imported fuel options. Further, the high cost of 'clean coal' technology far outweighs natural gas.

Excellent progress has been made to implement reforms that will attract substantial new investment to build energy generation capacity in Vietnam's natural gas and LPG industries and in the potential market to deliver DPPAs with energy supplied from new solar and wind farms.

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

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

ACKNOWLEDGEMENTS

EuroCham Green Growth Sector Committee

CHAPTER 3 **GREEN GROWTH**

OVERVIEW

EuroCham established a Green Growth Business Sector Committee (GGSC) in May 2014 to mainstream and develop the essential conditions for Green Business to prosper in Vietnam. Representing the private sector, GGSC works closely with public stakeholders, including the Government of Vietnam and its agencies, donors and multilaterals. This chapter focuses on two main topics which we believe should be priorities for the Government: firstly, water and waste management, including air quality control and waste-to-energy;[1] and secondly, sustainable buildings and energy efficiency.

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

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

1. Enforcing wastewater regulations

Issue description

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

Potential gains/concerns for Vietnam

Vietnam has conflicting regulations on Environmental Impact Assessment (EIA). The Law on Investment (LoI), the Law on Environmental Protection (LEP) and poor-quality EIA reports are the main cause of growing environmental pollution, according to Ministry of Natural Resources and Environment (MONRE).[2]

MONRE reports that: "More than 2,000 investment projects have insufficient environmental impact assessments, while hundreds of industrial zones (IZs) have no waste water treatment systems"[3] as required by law.[4] "Industrial parks nationwide discharge more than a million cubic metres of wastewater each day, 75 percent of which is untreated and harmful."[5]

Besides industrial wastewater, the World Bank estimates that only 10% of household wastewater is treated, and that while "90 percent of households dispose wastewater to septic tanks, only 4 percent of the septage is treated."[6] The amount of untreated sludge has become a major challenge.

Chapter 19 of Vietnam's new Criminal Code[7], which came into effect on 1 January 2018, does have sanctions for environmental violations. These include sanctions for wastewater offences that could lead to the permanent

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1 Please note that GGSC's comprehensive position on energy is covered in the Energy and Electricity chapter of the Whitebook.
2 "Unclear laws contribute to environmental crisis", *Vietnam Net*, 1 October 2016. Available at: <http://english.vietnamnet.vn/fms/environment/164584/unclear-laws-contribute-to-environmental-crisis.html> accessed on 20 December 2017.
3 "Environment Ministry's report shows serious environmental problems", *Vietnam Net*, 14 September 2016. Available at: <http://english. vietnamnet.vn/fms/environment/163554/environment-ministry-s-report-shows-serious-environmental-problems.html> accessed on 20 December 2017.
4 Article 37, Decree 38/2015/ND-CP dated April 24, 2015 of the Government on the management of wastes and scraps.
5 "Over 1 mln cu.m of industrial wastewater dumped every day in Vietnam', *Vietnam Net*, 3 December 2015. Available at: <http://english.vietnamnet.vn/fms/environment/148243/over-1-mln-cu-m-of-industrial-wastewater-dumped-everyday-in-vietnam.html> accessed on 20 December 2017.
6 "Vietnam: Urban Wastewater Review", *The World Bank*, 1 December 2013. Available at: http://www.worldbank.org/en/country/vietnam/publication/vietnam-urban-wastewater-review> accessed on 30 November 2017.
7 Criminal Code No. 12/2017/QH14 of the National Assembly dated 20 June 2017 amending, supplementing a number of provisions of Criminal Code No.100/2015/QH13.

closure of a business in serious cases. However, the law will only act as an effective deterrent if the State, together with local authorities, enforces it in practice.

Recommendations:

- Create a task force for effectively enforcing current water treatment standards;
- Align conflicting EIA regulations; and
- Focus on industrial parks that dump untreated wastewater into the environment.

2. Accelerate private investment in water and wastewater treatment solutions

Issue description

The Ministry of Construction (MOC) estimates that Vietnam will require investments of over USD10 billion for water supply and drainage by 2020.[8] These targets will be difficult to reach in such a short time without accelerating investment from the private sector.

However, clean water and wastewater treatment prices are too low for private investors to build financially viable businesses. Vietnam's wastewater prices are calculated based on arbitrary percentages of the clean water supply price, despite the fact that wastewater treatment costs are higher than those for clean water supply.

Furthermore, conflicting regulations, such as Decree 80/2014/ND-CP dated 6 August 2014 of the Government on waste water drainage and treatment (Decree 80) and Decree 154/2016/ND-CP dated 16 November 2016 regulating environmental protection fees on wastewater (Decree 154), create uncertainty about whether wastewater treatment fees and/or environmental protection fees are to be collected.

Potential gains/concerns for Vietnam

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

The Government has laid out a schedule to privatise Hanoi Water Corporation (Hawaco), Saigon Water Corporation (Sawaco) and 51 other water utilities by 2020.[9] Besides the need to improve the pricing mechanism, decision making processes and other technical factors with respect to the equitisation process of State-Owned Enterprises (SOEs), no significant private investment will flow into these companies if the underlying business conditions are not financially viable and economically sustainable.

Recommendations:

- Move towards a demand-driven pricing model for wastewater treatment;
- Align conflicting wastewater treatment and environmental protection fee regulations to remove uncertainties; and
- Provide sustainable conditions for investments in water SOEs.

8 "Over 10 billion USD needed for water supply, treatment projects", *VietnamPlus*, 7 November 2017. Available at: <https://en.vietnamplus.vn/over-10-billion-usd-needed-for-water-supply-treatment-projects/120753.vnp> accessed on 29 November 2017.

9 Annex II, Decision 58/2016/QD-TTg dated 28 December 2016 of the Prime Minister.

3. Waste management and e-waste recycling

Issue description

Vietnam's Law on Environmental Protection operates under the principles of minimisation, re-use, collection and treatment meeting environmental standards.[10] However, most waste is still dumped to landfills without further processing, including 90% of all solid waste in Hanoi and 76% in Ho Chi Minh City.[11] Unsanitary landfills not only cause environmental hazards and infuriate local residents,[12] but also waste valuable materials that could be recycled and used for power generation. Multinational corporations are setting their own recycling and renewable energy goals and require a supportive regulatory framework to do so.

Potential gains/concerns for Vietnam

Decision 16/2015/-TTg dated 22 May 2015 of the Prime Minister on recall and treatment of discarded products (Decision 16) regulates the collection, recycling and disposal of products, including batteries and accumulators, civil and industrial electric and electronic equipment (EEE), lubricants, tubes and tires, as well as vehicles. The Vietnam Environment Administration (VEA) is working on a draft Circular to guide Decision 16 among other regulations.[13] These regulations are positive steps in the right direction, but they would be more effective if they set clear collection goals, so that manufacturers and consumers could plan and adapt in advance.

Vietnam has had a regulatory framework for power generation from solid waste, known as Waste-to-Energy (WTE), since 2014.[14] However, as of October 2017, only very small WTE pilot projects are in operation or under construction in Vietnam. Ho Chi Minh City aims to reduce landfill waste to 20% by 2025 and plans to attract private investment in WTE.[15] However, indecisiveness of Vietnamese authorities and burdensome licensing procedures have prevented larger WTE projects from proceeding to the implementation stage.

Recommendations:

- Disposal of products: set a mandatory collection quota beginning with 10% (or more) of the annual put-to-market volume and increase on a clear timeline.
- WTE: provide clear, enforceable guidelines and timelines for the approval of waste-to-energy projects and accelerate implementation.

4. Air quality control

Issue description

Air quality has reached 'very unhealthy' and 'unhealthy' levels in Vietnam's major cities. Yale University has listed Vietnam among 9 countries with the worst air quality in the world.[16] According to a recent report by Green Innovation and Development Centre (GreenID), Hanoi enjoyed just 38 days of clean air in 2017.[17] Indeed, Vietnam does not specifically regulate air pollution.[18] Sulphur dioxide, dust, dioxide, carbon monoxide and nitrogen dioxide are emitted from transportation, industry and construction, as well as from coal power plants and cement factories.

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10 Law on Environmental Protection 2014; Decree 80/2014/ND-CP dated 6 August 2014 of the Government on waste water drainage and treatment; Decree 19/2015/ND-CP dated 14 February 2015 detailing the implementation of a number of articles of the Law on Environmental Protection; Decree 179/2013/ND-CP dated 14 November 2013 of the Government on the sanction of administrative violations in the domain of environmental protection; Decree 03/2015/ND-CP dated 6 January 2015 providing the assessment of environmental damage; and Decree 38.

11 "Experts: Waste-to-energy useful solution for Vietnam", *Vietnam Net*, 21 August 2017. Available at: <http://english.vietnamnet.vn/fms/environment/185220/experts--waste-to-energy-useful-solution-for-vietnam.html> accessed on 30 November 2017.

12 "PM calls for joint environmental efforts", *Vietnam News*, 9 September 2016. Available at: <http://vietnamnews.vn/society/342513/pm-calls-for-joint-environmental-efforts.html#W8sAKJ1ivcUXDrtZ.97> accessed on 20 December 2017; "Ho Chi Minh City finally traces source of foul smell", *Tuoi Tre*, 22 September 2016. Available at: <http://tuoitrenews.vn/society/37179/ho-chi-minh-city-finally-traces-source-of-foul-smell> accessed on 20 December 2017.

13 "Lấy ý kiến góp ý Thông tư quy định về quản lý chất thải rắn thông thường, thu hồi sản phẩm thải bỏ, sản phẩm thải lỏng không nguy hại và tiêu huỷ xe ưu đãi, miễn trừ", *Vietnam Environment Administration*. Available at: <http://vea.gov.vn/vn/vanbanphapquy/layykiengopy/LayYKienGopy/Pages/Layykiengopy TTveQLCTvaTHXUDMT.aspx> accessed on 20 December 2017.

14 Decision 31/2014/QD-TTg dated May 05, 2014 of the Prime Minister on supporting mechanism for development of power generation projects using solid waste in Vietnam and Circular 32/2015/TT-BCT dated 8 October 2015 of MOIT on project development and model electricity sale contract applied to generation projects using solid wastes.

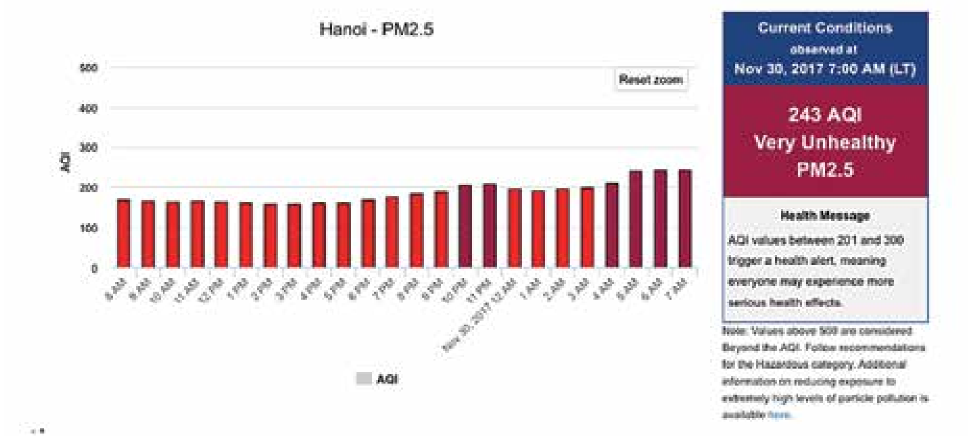
15 "Waste-to-energy a solution to waste management: experts," *Vietnam News*, 27 November 2017. Available at: <http://vietnamnews.vn/society/418310/waste-to-energy-a-solution-to-waste-management-experts.html#iOgY55EeP2fq7Vzz.97> accessed on 20 December 2017.

16 "Air Quality, Environmental Performance Index", *Yale University*, 2014. Available at: <http://archive.epi.yale.edu/epi/issue-ranking/air-quality> accessed on 20 December 2017.

17 "Hanoi enjoyed just 38 days of clean air in 2017: report", *Channel News Asia*. Available at: <https://www.channelnewsasia.com/news/asiapacific/hanoi-vietnam-pollution-clean-air-9909708> accessed on 14 February 2018.

18 "Legal loopholes make it impossible to control air quality", *Vietnam Net*, 22 September 2017. Available at: <http://english.vietnamnet.vn/fms/environment/186758/legal-loopholes-make-it-impossible-to-control-air-quality.html> accessed on 29 November 2017.

Figure 8: Air quality in Hanoi and Ho Chi Minh frequently reaches 'very unhealthy' and 'unhealthy' levels



Source: U.S. Environmental Protection Agency

Potential gains/concerns for Vietnam

Vietnam Business Forum (VBF) estimates the costs of health and environmental impacts of the current power development plan, with its reliance on coal, could be as high as USD15 billion a year by 2030.[19]

The VEA is reported to set emissions targets,[20] however Vietnam lacks clarity on Government policies with specific targets on air quality control. Moreover, Vietnam has no air odour regulations against strong smells from landfills, factories and aquaculture.

Recommendations:

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

5. Plastic pollution

Issue description

This is the second time we have raised the issue of plastic pollution in the Whitebook. While no significant progress has been made thus far, we welcome MOF's draft Resolution to increase tax on plastic bags and look forward to supporting the drafting and implementation of this positive legislation.

Up to 60% of plastic waste dumped in the world's oceans each year comes from just five countries. Unfortunately, Vietnam ranks 4th (after China, Indonesia and the Philippines), discharging a huge amount of plastic waste into the ocean.[21] In a recent survey conducted by researchers of the Ho Chi Minh City (HCMC) Urban Development Management Support Center (PADDI) on Life Cycle of Floating Debris in the Canals of Ho Chi Minh City, the level of plastic waste pollution in the canals of HCMC was found to be 50 to 100 times higher than that of the Seine river in Paris, France which has a comparable population of 10 million inhabitants.[22]

19 "Made in Vietnam Energy Plan", *Vietnam Business Forum*, October 2016, p.3.
20 "Vietnam sets 2020 emissions targets as nation chokes on smog", *VN Express*, 23 September 2016. Available at: <http://e.vnexpress.net/news/news/vietnam-sets-2020-emissions-targets-as-nation-chokes-on-smog-3472995.html> accessed on 20 December 2017.
21 J.R. Jambeck, R. Geyer, C. Wilcox, T.R. Siegler, M. Perryman, A. Andrady, R. Narayan and K.L. Law (2015), *Plastic waste inputs from land into the ocean*, Science, Vol. 347, Issue 6223.
22 "Life cycle of floating debris in the canals of Ho Chi Minh City", *Centre de Prospective et d'Études Urbaines,* 2016. Available at: <http://paddi.vn/wp-content/uploads/WP4_PADDI_Chung_ENG.-Final-221116-2.pdf> accessed on 20 December 2017.

Potential gains/concerns for Vietnam

Recycling is no single solution, as about 80% of plastics dumped have too low a value. Furthermore, the majority of plastics used in Vietnam are made of non-biodegradable materials, and under the sun's ultraviolet light and weathering agents like current or wind, they are broken into smaller and smaller fragments over time. Plastic fragments smaller than 5mm, known as micro-plastics, can be ingested by wildlife and create many problems in the ecosystem.[23] Thus, avoiding and reducing single-use plastic items like food packaging, bags, bottles or drinking straws is key. The reduction of plastic waste will have a positive impact throughout the economy, the natural environment and on the livelihood of people. To showcase that even small steps contribute to tackling Vietnam's plastic problem, in late 2017 EuroCham launched its own Sustainablility Initiative. Companies that sign up to this initiative agree to implement measures to reduce their environmental impact. The first step is to eliminate single-use plastic bottles in offices.[24]

Recommendations:

EuroCham GGSC recommends strict enforcement and fair prosecution of waste and water treatment regulations. The Government should initiate more coordinated action both nationwide and in the wider region to curb plastic waste, following the example of Singapore. Many European countries have successfully introduced a ban on non-biodegradable polythene bags, and this measure should be seriously considered in Vietnam. The cases of Rwanda and Kenya, where non-biodegradable plastic bags were banned in 2008 and 2017 respectively, shows that this is achievable even in developing countries.[25]

We recommend the Vietnamese leadership consult the case studies of more than 40 countries that have banned, partly banned or taxed single-use plastic bags, including France, Germany and Italy in Europe; China in Asia; and Rwanda and Kenya in Africa. Their experience shows that retail outlets, food vendors as well as consumers quickly adapt and adopt less polluting solutions.

II. SUSTAINABLE BUILDINGS AND ENERGY EFFICIENCY

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

Issue description

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

Potential gains/concerns for Vietnam

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

Secondly, by using clay brick, Vietnam destroys 3,000 ha of rice fields and consumes over 6 million tons of coal every year. Both the Government and Ministry of Construction (MOC) have introduced measures to address this. Firstly, Decision 567/QD-TTg of the Prime Minister dated 28 April 2010 on approval of the program of development

23 *Ibid.* p.14.

24 "Join now: These EuroCham Members Stopped Using Single-use Water Bottles. Can You?", *EuroCham*. Available at: <https://www.eurochamvn.org/node/17144> accessed on 14 February 2018.

25 E. Clavel, "Think you can't live without plastic bags? Consider this: Rwanda did it", *The Guardian*, 15 February 2014. Available at: <https://www.theguardian.com/commentisfree/2014/feb/15/rwanda-banned-plastic-bags-so-can-we> accessed on 20 December 2017; "Kenya brings in world's toughest plastic bag ban: four years jail or $40,000 fine", *The Guardian*, 28 August 2017. Available at: <https://www.theguardian.com/environment/2017/aug/28/kenya-brings-in-worlds-toughest-plastic-bag-ban-four-years-jail-or-40000-fine> accessed on 14 February 2018.

of non-baked materials until 2020 (Decision 567) aims to achieve 30-40% Non-Fired Brick (NFB) usage by 2020 with 15-20 million tons of industrial waste. Secondly, Directive 10/CT-TTg dated 16 April 2012 of the Prime Minister on increasing the use of non-baked building materials and limiting the production and use of clay brick (Directive 10). Thirdly, Article 3 of Circular 13/2017/TT-BXD, valid since 1 February 2018[26], states that State-budgeted or State-related projects must use non-fired bricks. All constructions in Hanoi and Ho Chi Minh City must use 100% NFB materials. In other Northern, Midland and South-Eastern provinces: urban centers from type III must use a minimum of 90%, while the remaining shall use a minimum of 70%. The remaining provinces must use a minimum of 70% (from type III) and the rest shall have 50%. Other construction projects with more than 9 floors shall have 80% usage of NFB materials.

The Government has also introduced Decree 139/2017/ND-CP dated 27 November 2017, valid from 15 January 2018, replacing Decree 121/2013/ND-CP dated 10 October 2013 of the Government providing regulations on sanction of administrative violation in construction activities, real estate business; operation, production and business of building materials; management of technical infrastructure management of housing and office development (Decree 121). These new regulations set the fines for non-compliance at between VND20-30 million. However, we look forward to seeing the proper and effective implementation of these regulations.

Finally, the Vietnam Energy Efficiency Building Code (VEEBC), published in 2013 by MOC,[27] is legally mandatory. The VEEBC code is comprehensive and reflects international as well as local norms. However, the code is poorly disseminated and buildings are not currently required to follow it in order to obtain a construction licence. Even a simplified version of this code would require owners to build much more efficiently, and would require engineers to acquire basic knowledge about the energy efficiency of equipment.

Recommendations:

EuroCham GGSC would like to suggest the following recommendations:

- The use of Green Building (GB) standards should be promoted. Many building owners have been introduced to the concept of GB, and organisations such as the Vietnam Green Building Council (VGBC) report a significant uptick in interest over the past couple of years. Over 100 buildings are now GB-certified or are undergoing GB certification in Vietnam. We recommend the Government provides effective encouragement for building owners to certify their buildings. In addition to international green building certifications already being used in Vietnam, such as the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) and International Finance Corporation (IFC) Edge, VGBC has developed the LOTUS certificate. We would support a move to recognise multiple systems for use in Vietnam, letting the market determine which are practical and useful. These systems could be licensed for operation based on a set of simple criteria such as transparency, reliability and coherence according to recognised norms.
- The application of NFB solutions should be enforced and promoted through the Vietnam Association of Building Materials (VABM), since compliance may reduce carbon emissions from 70% to 40%.
- Buildings should become more energy efficient. Making buildings more energy efficient doesn't mean higher investment costs. This process can be applied from the architecture phase, with passive design and the use of environmentally-friendly construction materials, to the implementation of energy-efficient devices during construction. We would encourage all buildings to achieve the minimum standards of the VEEBC code (or a simplified version) in order to receive the Building Licence at Basic Design Stage. Furthermore, Electricity of Vietnam (EVN) could impose a tariff scheme that rewards low energy consumption buildings with lower prices and impose higher prices to high consumption buildings.

26 Circular 13/2017/TT-BXD of the Ministry of Construction dated 8th December 2017 guiding on the use of non-fired building materials in construction. This circular replaces Circular 09/2012/TT-BXD dated 28 November 2012 of MOC which stated that 100% state projects and others with more than 9 floors must have over 50% usage of NFB materials.

27 QCVN 09:2013/BXD set under the Circular 15/2013/TT-BXD of the Ministry of Construction dated 26 September 2013, issuing the National technical standards on buildings adopting energy efficiency.

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

ACKNOWLEDGEMENTS

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CHAPTER 4 **HUMAN RESOURCES**

OVERVIEW

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

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

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

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

- Present an action plan for the ratification of the pending ILO fundamental Conventions with concrete timeframes;
- Ensure that the revision of the Labour Code currently ongoing is in line with the FTA commitments, in particular the establishment of independent workers' organisations;
- Work with ILO to monitor and facilitate the implementation of the FTA commitments;
- Upgrade the labour inspectorate system to improve its capacity to effectively implement core labour standards; and
- Develop awareness on CSR principles in line with the OECD Guidelines for Multinational Enterprises.

In order to effectively implement the EVFTA, Vietnam also needs to improve the country's working environment throughout preparations and enforcement of existing regulations (as presented in detail below) and passing new legislation.

I. EXPANSION TO EMPLOYER'S RIGHTS TO TERMINATE EMPLOYEES

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

Issue description

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

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

Potential gains/concerns for Vietnam

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

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

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

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

These cases do not sufficiently reflect the practical situations of companies having to terminate the employment contract of their employees. Specifically, it is common for candidates to provide falsified information regarding their degrees, expertise and work experience during the recruitment process to increase their chances of being hired. Many employers decide to recruit those candidates based on false information, as the employee would not otherwise have met the recruitment criteria. When this deception comes to light after the employee's probationary period has ended, there is no regime under the law to terminate an employment contract with the employees for providing falsified information during the recruitment process.

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

Another issue concerns the termination of older employees. Under the current Labour Code, a labour contract automatically terminates once an employee has reached retirement age and contributed to the social insurance fund for the number of years required to receive a pension. This means that if the employee has already reached the retirement age but not yet contributed to the social insurance fund for long enough, the employer cannot unilaterally terminate their employment. In practice, most employers feel frustrated in this situation, as they would like to replace older employees with younger staff who have lower salaries and are more productive. However, this is not possible unless the older employee agrees to it.

2. Labour discipline and dismissal

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

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

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

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

Therefore, the scope of dismissal is narrow and does not cover many acts of misconduct that companies face. For instance, acts of sexual harassment, aggression and hostility, fraud, giving or receiving bribes or kickbacks and violent behaviour (including intimidation, attempts to instil fear in others or subjecting others to emotional distress) should also be subject to dismissal. The Labour Code does allow an employer to dismiss employees based on the severity of the damages caused, for example if an employee "commits acts which are seriously detrimental or posing seriously detrimental threat to the assets or interests of the employer". However, there is no clear guidance on the threshold for what should be considered 'seriously detrimental' or 'posing a seriously detrimental threat'. In practice, during the registration of internal labour regulations, each local Department of Labour, Invalids and Social Affairs (DOLISA) has a different interpretation of this provision. Some DOLISAs interpret it to mean that the employers, based on their business situation, should define the threshold of serious damage in internal labour regulations. Meanwhile, other DOLISAs argue that serious damage must be defined as that with a total value equal to at least 10 months of the regional minimum wages applicable to the employees' place of work. The DOLISAs' different interpretation of this regulation has made the application of dismissal more difficult in practice.

As prescribed under the current law, a female employee who is pregnant, on maternity leave or raising a child under 12-months-old must not be subject to any disciplinary measure including dismissal. This regulation aims at ensuring that female employees who are expecting or raising a small child have stable remuneration from their employer. It is right that the law protects pregnant women and those with young children. Indeed, this is an achievement for Vietnam. However, on its own, that should not prevent employers from taking disciplinary action in cases where individuals act in such a way that would otherwise lead to dismissal. In practice, we are aware of cases in which female employees who are expecting or raising a small child commit serious breaches causing severe damages to their employer. Under the current legislation, the employer cannot dismiss them and often has to end up negotiating a mutual termination of employment contract with an unreasonable package for the female employee. Therefore, in cases of serious misconduct which is subject to dismissal, a female employee who is pregnant, on maternity leave or raising a child under 12-months-old should be afforded the same treatment as any other person.

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

Furthermore, there are a lot of deficiencies in the general labour disciplinary procedures. The statute of limitations for settling a labour disciplinary action varies from 6 to 12 months from the date of the misconduct, which we believe is too short. This is because, after conducting such breaches, employees normally try to conceal their violation. Therefore, employers usually do not immediately discover the misconduct. In some cases, the company cannot take disciplinary action, including dismissal, 6 months after an act of misconduct, or 12 months where it is directly related to finance, assets and disclosure of technological or business secrets. Therefore, the statutory limitation should be extended, for example, for an additional 12 months.

Last but not least, disciplinary hearing procedures under the Vietnamese law are too lengthy and burdensome. To lawfully take disciplinary action against an employee, the employer must hold a disciplinary hearing with both the employee and the executive committee of the trade union present. In this hearing, the employer must present evidence of misconduct, and the employee and trade union have the right to respond. This process is generally very time-consuming where an employer lacks its own corporate trade union, since the immediate upper-level union often lacks the sufficient resources or will to participate. In this case, the employer can only proceed with the disciplinary hearing where all required parties have received three invitations, but one is absent. Each invitation must be sent at least five working days before the hearing, so if the employee or the trade union fails to attend, it takes at least one month to complete the invitation process. We believe this process should be shortened. In particular, for example, the advance notice period of five working days should be shortened to five normal days.

Recommendations:

In light of the above, we recommend the following measures:

- Add more legal grounds for the employer to unilaterally terminate employees provided under Article 38.1 of the Labour Code, for instance where:
    - Employees have reached retirement age, regardless of whether he or she has contributed sufficiently to the social insurance fund for 20 years;
    - Employees have provided falsified background information during the recruitment process, which affects the employer's assessment; and
    - Employees have been absent from work without permission and/or proper reasons for a total of 5 working days within one month or 20 days within one year.
- Expand the scope of acts of misconduct subject to immediate dismissal (e.g. fraud, giving or receiving bribes or kickbacks, sexual harassment or aggressive, hostile and violent behaviour or having violated the internal safety rules which lead to potential risk to human life);
- Remove the regulations on the restriction applied to the dismissal of female employees and/or company trade union committee members;
- Allow an employer to dismiss an employee who is subject to the disciplinary deferment of wage increase but who commits further misconduct with the same level of severity while this measure is still in force or who was demoted as a labour discipline and commits a new act of misconduct with the same level of severity;
- Extend the statute of limitations for settling a labour disciplinary action from 12 to 24 months (referred to the same statute of limitations for settling a labour disciplinary action with respect to cadres and civil servants under the Law on Cadres and Civil Servants). This statute of limitations should be calculated from the date the misconduct occurred or was discovered;
- Simplify the disciplinary process. For example, the employer should only send one disciplinary hearing invitation to the employee and the union; if either fail to attend without proper reason, the hearing should proceed; and
- Set out the threshold as a basis to determine 'seriously detrimental' or 'posing seriously detrimental damages', for instance a specific monetary threshold.

II. MANAGING FOREIGNERS WORKING IN VIETNAM

Relevant Ministries: Office of Government (OOG), Ministry of Labour, Invalids and Social Affairs (MOLISA), Vietnam Social Insurance Agency (VSIA).

1. Statutory Social Insurance contribution for foreign workers in Vietnam

Issue description

Under the Law on Social Insurance, from 1 January 2018, foreigners working in Vietnam will be subject to statutory Social Insurance contributions. In particular, under the latest draft Decree of the Government in this regard, only foreigners working in Vietnam under a labour contract and possessing a work permit, practicing licence or practicing certificate will have to pay statutory Social Insurance contributions. In short, the contribution scheme for foreigners is similar to Vietnamese, including 5 regimes: sickness, maternity, labour accidents, pension and survivorship allowance.

However, at the time of writing, the latest draft guiding Decree is considering two options: either (i) all the above 5 regimes would be applicable from 1 January 2018; or (ii) the 3 short-term regimes (sickness, maternity and labour accidents) would be applicable from 1 January 2018, and the remaining 2 long-term regimes (pension and survivorship allowance) would be applicable from January 2020.

Throughout different versions of the draft Decree, as well as consulting workshops, significant concerns about this matter remain. We believe there are too many insufficient and impractical points in this draft legislation, and we discuss these in the next section of this chapter.

Potential gains/concerns for Vietnam

Firstly, the latest draft Decree does not exclude foreign workers who are being internally transferred within enterprises or paying voluntary/compulsory insurance in their home country or have reached the retirement age under Article 187.1 of the Labour Code 2012.

Regarding Social Insurance regimes, the application of 5 regimes would not be fair or practical for foreign employees. We understand that the Government is considering the fact that Vietnam has not signed any bilateral agreements with other countries regarding the recognition of social security contributions. Without relevant bilateral agreements, this will result in double taxation of income with respect to social security taxes. Both employees and employers will bear the additional costs in cases where foreigners contribute to statutory social security in their home or other countries. Furthermore, the application of pension and survivorship regimes is unnecessary, since foreign employees normally work in Vietnam for a short period of time and as such would be unlikely to benefit. The latest draft Decree proposes that foreign employees in such cases will have the right to request a lump-sum payment before they leave the country. However, the claim procedure will inevitably lead to more administrative burdens for all parties, including Social Insurance authorities, employers and foreign employees.

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

Recommendations:

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

- Facilitate flexibility for both employers and foreign workers to have an option of participating in statutory insurance in Vietnam;

- Stipulate the group of foreign workers who are not subject to statutory Social Insurance contributions in Vietnam;
- Extend the term of labour contract for applying statutory Social Insurance contributions to 6 months or more (the current 1-month term is not practical);
- Not to apply the pension and survivorship regimes to foreign workers;
- Create the flexibility for foreign workers to receive a one-off Social Insurance allowance upon repatriation from Vietnam;
- Stipulate the lower ratio of Social Insurance contribution for employers and foreign workers to reduce costs, especially for those who have hundreds or thousands of foreign workers in Vietnam;
- Evaluate the impact of administrative procedures when applying each regime to facilitate the implementation of the executing agencies, foreign workers and employers; and
- Delay the effectiveness and application until Vietnam signs totalisation agreements with other countries to avoid double contributions.

2. Work permit

Issue description

The recent introduction of Circular 23/2017/TT-BLDTBXH of MOLISA dated 15 August 2017 detailing guidance on online issuance of work permit to foreign workers in Vietnam (Circular 23) should lead to a faster and more straightforward process compared to the existing paper-based procedure. However, some issues remain with the implementation of Decree 11/2016/ND-CP of the Government dated 3 February 2016 guiding some articles of Labour Code on foreign workers in Vietnam (Decree 11) and relevant Circulars.

With respect to Decree 11, an intra-company transferee is defined as a manager, executive director, expert or technician of a foreign enterprise which has established a commercial presence in Vietnam and who was employed by the foreign enterprise at least 12 months prior to being transferred. In practice, Multi-National Companies (MNCs) have numerous subsidiaries around the world and often relocate their staff to different countries to maximise the skills of their global workforce. Unfortunately, intra-company transferees may only be recognised in Vietnam if they are assigned from the subsidiaries or headquarters registered on the business licence in Vietnam as the investors or owners of the entities in Vietnam. As a result, Circular 35/2016/TT-BCT dated 28 December 2016 of Ministry of Industry and Trade (MOIT) on identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in Vietnam's WTO commitments on services (Circular 35) can only be applied in very limited cases.

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

The number of foreign workers able to access the positions of 'manager' and 'executive director' are very limited in light of the definitions stipulated in Decree 11. As a result, the majority of management positions, such as head of department, are categorised as 'specialist' which require different experience and qualifications. Sometimes, job titles have to be amended to match with another category for the purposes of a work permit application.

Potential gains/concerns for Vietnam

The narrow definition of intra-company transferee leads to impractical implementation and inappropriate practice. Local authorities sometimes require intra-company transferees who are being transferred (within the group) to Vietnam to submit their local employment agreements. As a result, intra-company transferees may be subject to statutory Social Insurance for foreign workers as well as the relevant local employment regulations which should not be applied to them.

The preparation time for documents required for work permit applications cause significant difficulties for foreign employees and employers who wish to deploy their staff to Vietnam at the right time and place. In order to attract the right talent, Vietnam needs to broaden the definitions of 'manager' and 'executive director' in its current regulations.

Recommendations:

We suggest the Government and MOLISA should consider:

- Supplementing the definition of intra-corporate transferees to recognise all actual cases, as long as the sponsoring entity in Vietnam can prove that foreign employees are being assigned from subsidiaries within the same group;
- Applying fast-track options in which some required documents can be supplemented within a period of time for top management positions or certain special cases when the enterprises need to relocate their workforce immediately to Vietnam. The Government can charge higher processing fees for the fast-track options to implement them effectively;
- Redefining or broadening the definition of 'manager' and 'executive director' to ensure that foreign employees at all management levels are getting the work permit under the right category; and
- Ensure legislation on work permits and relevant matters on managing foreign workers in Vietnam is being applied consistently throughout the country.

III. TECHNICAL AND VOCATIONAL TRAINING AND EDUCATION PRACTICE IN VIETNAM

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

Issue description

The Vietnamese economy has made great strides over the past two decades and now has a great opportunity to reap sustained and successful growth. To facilitate this, the labour force in Vietnam should be equipped for the challenge of enhancing productivity. Education and training are vital components in preparing young people with the skills to meet the demands of the workplace. The quality of training and education in Vietnam will therefore benefit from being at the highest possible standard. While impressive improvements have been made in this area, it is important to maintain and even increase the pace of these advances to ensure that the needs of industry are adequately met.

Currently, there is a widely-acknowledged trend of Vietnamese graduates entering the workforce each year without the necessary skills for the workplace. Indeed, employers from various industries have identified deficits in the abilities of graduates which results in reduced economic productivity. An educated and skilled Vietnamese workforce helps ensure the success of both domestic and foreign investment. Graduates from Vietnamese institutions must be equipped with the practical knowledge, technical and soft skills, resourcefulness, and mind-set to be prepared to contribute and integrate effectively when they enter the workforce. Recognised deficits in competencies can be addressed and minimised through a concentrated effort to ensure that students receive employability and technical skills training prior to graduation.

At the top end of the workforce, Vietnamese students can prepare for their careers by gaining access to top international universities. Meanwhile, at home, learning opportunities at international schools can help these students gain admission to top institutions once they reach university level. International schools in Vietnam now also present a viable education alternative for families who might otherwise choose to send their children overseas to boarding school. This allows children to stay at home during their high-school years while still receiving an elite education.

Vietnam can leverage the expertise of foreign partners in the short term, as well as private educational institutions in the long term. Partnerships with private institutions offering blended educational programs that combine online learning with face-to-face studies for English language as well as soft skills training can be used to help Vietnamese students develop the necessary abilities for the workplace.

Decree 73/2012/ND-CP of the Government dated 26 September 2012 on the foreign co-operation and investment in education (Decree 73) addresses foreign cooperation and investment in education and vocational training in Vietnam. The new Decree being drafted to replace Decree 73 also contains opportunities for dialogue and suggestions for a more beneficial approach to the various forms of foreign support in education.

Currently, international education serves the needs of both the expatriate community, for whom such education is on a par with their home country, and, to a limited degree, Vietnamese students. By providing high-quality international education in the country's primary diplomatic and investment hubs, international schools contribute to the infrastructure needed to attract additional investment to Vietnam. The longer-term benefit, however, is that it also exposes a select number of Vietnamese students to an elite international education.

International education has a number of core benefits. Firstly, it exposes students to a style of education which focuses on classroom participation, individual expression and critical thinking. Secondly, it tends to focus on a 'whole child' concept that balances healthy doses of art, music and athletics together with a steady focus on academic rigour. These learning styles help students perform at higher levels if they are to go on to study at international universities, and also helps them to be more successful in the rapidly-changing workplace.

Vietnamese students play a very important role in international school student communities. However, the law does not currently allow Vietnamese enrolment at kindergarten level and limits the number of Vietnamese students in primary and secondary schools, where the number must not exceed 10% of the total number of students. In high schools, the figure is 20%.

Potential gains/concerns for Vietnam

Vietnam is our host country. We honour and respect Vietnamese culture and readily acknowledge the strides being made to improve the abilities of young people as they prepare to enter the workforce. Vietnam can benefit from the partnerships of private educational and training institutions operating in the country as well as from the expertise of foreign institutions to address current skills gaps. Partnerships with private institutions that offer flexible educational programs combining online and mobile learning with face-to-face English language studies as well as soft skills training can be used to help Vietnamese students and fresh graduates entering the workforce acquire the necessary abilities.

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

Recommendations:

With the aim of enhancing white-collar job readiness and increasing productivity at the top of the labour pool, the Government should consider increasing the percentage of Vietnamese students permitted to study at international schools at all levels. This should also include kindergarten, where important early language learning takes place and learning styles that encourage critical thinking and creativity are developed. If the Government is interested in promoting international education in secondary cities, it may wish to consider offering incentives to attract investors to these regions.

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

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EuroCham Human Resources and Training Sector Committee.

CHAPTER 5 **INTELLECTUAL PROPERTY**

OVERVIEW

Vietnam has made remarkable efforts to enhance its regulatory framework for Intellectual Property (IP) protection. Many IP-related laws and regulations have been amended or issued in the past few years to comply with the country's international commitments, such as the Agreement on Trade-Related Aspects of IP Rights (TRIPS Agreement). Nonetheless, as Vietnam seeks to provide a higher level of IP protection beyond the TRIPS Agreement standards, the protection of IP Rights (IPRs) remains confronted by statutory and practical issues.

Online enforcement of copyright is considered to be one of the primary challenges to the effective protection of IPRs. The lack of a sufficient legal framework has led to increased copyright piracy and domain name infringements, amongst others. Furthermore, civil and criminal proceedings have proved to be inefficient for IP enforcement, while the judicial capacity in dealing with IP cases still needs improvements. Long-standing issues regarding legal procedures and information transparency also hamper the effectiveness of IP protection and enforcement.

In light of the upcoming ratification of the EU-Vietnam Free Trade Agreement (EVFTA), the Government will need to provide adequate statutory provisions and effective implementation of IPRs to meet the requirements of the new agreement.

Since 2012, the IPR Sector Committee has provided its members with a unique platform to share information, voice concern and raise recommendations for stronger IP protection in Vietnam. In this chapter, we will address three important issues that need resolving in order to create a more desirable environment for investment and strengthen economic relations between the EU and Vietnam.

I. COPYRIGHT

Relevant Government authorities: Ministry of Culture, Sports and Tourism (MCST), Copyright Office of Vietnam (COV)

Issue description

Vietnam has been consistent with its improvement of copyright and related rights regulations, with increasing efforts to comply with international commitments and international practice. Despite these efforts, the fast evolution of copyright platforms, notably online, has led to a new and unprecedented wave of copyright infringements. This requires Vietnam to urgently remodel its IP regulations and related practice.

1. Presumption and proof of authorship and ownership

Under the current Law on Intellectual Property (IP Law), the presumption of authorship and ownership is subject to the registration of the copyright or related (neighbouring) right - collectively referred to hereafter as 'copyright'. The IP Law provides that those who are granted certificates of registration of copyright shall not be obligated to prove their authorship or ownership, unless otherwise proved.[1] In other words, the author and copyright owner whose name appears on the copyright registration certificate is presumed to be the author and copyright owner of the work respectively. This provision is inconsistent with the international general presumption of authorship and ownership. Particularly, the latest text of the Berne Convention (1971 Paris Act plus Appendix) states: "In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner."[2]

1 Article 49.3, IP Law

2 Berne Convention for the Protection of Literary and Artistic Works. Art. 15(1)., available at:<https://treaties.un.org/doc/Publication/UNTS/Volume%20828/volume-828-I-11850-English.pdf> accessed on 11 January 2018.

In practice, regarding the burden of proof as to authorship and ownership, competent authorities still consider a copyright registration certificate in Vietnam as the only evidence to prove the petitioner's authorship or ownership. This is despite the fact that the IP Law clearly states copyright shall arise at the moment a work is created and fixed in a certain material form, irrespective of whether such work has been registered[3] and the petitioner can prove his authorship/ownership by producing necessary evidence demonstrating the basis for establishment of copyright in the absence of a copyright registration certificate.[4] Other kinds of evidence, such as original works or even copyright registration certificates in other members of the Berne Convention, are occasionally not acceptable. This leads to unnecessary delays in handling copyright infringement in Vietnam.

2. Registration procedure

Copyright authors and owners appreciate the speedy procedure for obtaining a certificate of copyright registration. However, the requirement by the Copyright Office of Vietnam for copies of the identification documents and residential addresses of copyright authors and owners when filing applications for copyright registration remains a major obstacle for undertaking this procedure. Furthermore, the names and addresses, and numbers and dates of the identification documents, of the copyright authors and owners are published for public access on the website of the Copyright Office. Many copyright authors and owners have refrained from filing applications for registration of their copyrighted works in Vietnam solely because they are not comfortable disclosing their personal information and documents, despite assurances that both will be kept strictly confidential. This situation is, moreover, critical when the IP Law recognises the presumption of authorship and ownership based on copyright registration in Vietnam and many copyright enforcement authorities require a certificate of copyright registration as proof of the authorship and ownership of the work.

3. Copyright assessment

The IP Law gives State agencies the right to request an intellectual property assessment when handling IPR enforcement cases. It also gives IPR holders and other organisations and individuals the right to request an intellectual property assessment to protect their legitimate rights and interests.[5] However, after 10 years, there is still no professional agency in Vietnam which effectively provides assessment of copyright matters. In many cases, copyright authors and owners have not been able to enforce their copyright solely because they have not been able to obtain a copyright assessment opinion confirming the infringement.

4. Online copyright infringement

Online copyright infringement is a global phenomenon for which enforcement is still limited and, in practice, difficult to pursue. In 2017, Vietnam had a total of 42 registered domain name disputes[6], a relatively low number compared to the famously widespread trend of cybersquatting. Joint Circular 07/2012/TTLT-BTTTT-BVHTTDL[7] (Joint Circular 07) has provided a somewhat effective enforcement method, by requiring Intermediary Service Providers (ISPs) to establish a supervising system. ISPs must, therefore, examine websites and remove any third-party digital content that violates a copyright upon the request of competent State agencies. However, Joint Circular 07 remains silent on the concrete responsibilities of the ISPs in handling, removing or erasing infringing content upon the request of IPR holders. It also does not provide for the ISPs' liability if the request of the IPR owner is ignored and the infringing content is maintained.

Potential gains/concerns for Vietnam

Copyright issues remain a concern for a majority of actual and future IPR owners, as Vietnam struggles to comply with its international commitments on copyright protection. This has created concern among copyright authors and holders, practitioners and the public. The lack of standardised regulations and a transparent system may lead to ineffectiveness and uncertainty in copyright protection and enforcement in Vietnam. We are aware that many

3 Article 6.1, IP Law

4 Article 203.2.b, IP Law

5 Article 201 of Law on Intellectual Property 50/2005/QH11.

6 "Respondent filing by country: Vietnam", *World Intellectual Property Organisation*. Available at: <http://www.wipo.int/amc/en/domains/statistics/countries_yr.jsp?country_code=VN&party=R> accessed on 9 January 2018; "Complainant filing by country: Vietnam", *World Intellectual Property Organisation*. Available at: <http://www.wipo.int/amc/en/domains/statistics/countries_yr.jsp?country_code=VN&party=C> accessed on 9 January 2018.

7 Joint circular 07/2012/TTLT-BTTTT-BVHTTDL 13 of the Ministry of Information and Communications and the Ministry of Culture, Sports and Tourism dated 19 June 2012 stipulating the liabilities of enterprises providing intermediary service in protection of copyright and related rights in the Internet and telecommunication networks environment.

copyright owners, especially foreign owners, have refrained from filing applications for copyright registration in Vietnam, not wishing to disclose the required personal information. Lack of copyright registration certificates and professional agencies capable of assessing copyright matters have badly impacted copyright enforcement in Vietnam. This situation is, moreover, critical when Vietnam's IP Law recognises the presumption of authorship and ownership based on the registration of the copyright.

Recommendations:

- Supplement regulations on presumption of authorship or ownership of a literary or artistic work in order to recognise the ownership or authorship of the IPR holders through only the appearance of the name of the work or protected subject matter;
- Remove unreasonable requirements regarding provision of personal information and identification documents of copyright owners and authors when applying for copyright registration;
- Set up specialised agencies able to provide copyright expert assessment. EuroCham Intellectual Property Sector Committee members remain open for discussion and cooperation on this matter in the future;
- Adopt regulations and guidance on the secondary liability of ISPs, in particular 'notice and take down' measures and the liability of ISPs who ignore or do not fully comply with the authors/other right holders' notice and take down request; and
- Provide training to competent authorities' officers for them to be familiar with basic principles of copyright protection, including the issue of establishment of copyright and evidence of copyright holder status.

II. ENFORCEMENT OF IPR

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

Issue description

1. Online enforcement

Online copyright piracy remains rampant in Vietnam. A study in July 2017 showed that pirate websites attract 29 times more visits than legitimate online film distributors in the country.[8] The lack of provisions on 'notice and take down' measures continues to hamper the self-defence of copyright holders online. Meanwhile, Government intervention in the enforcement of copyright remains very limited. Most recently, Ministry of Information and Communication's (MOIC) Administration of Broadcasting and Electronic Information has detected and listed on its official website over 80 evident pirate websites.[9] However, to date, most of these pirate websites are still active.

Enforcing IPR against infringing domain names remains a big challenge for Vietnam. The joint Circular of MOIC and Ministry of Science and Technology (MOST) on handling domain name-related IPR infringements, issued in 2016[10], has been a significant achievement of the two Ministries by making administrative proceedings possible for settlement of IPR infringement disputes in addition to negotiation, court or arbitration routes.[11] In a number of cases, Vietnam Internet Network Information Centre (VNNIC) has frozen allegedly infringing domain names based on notices of MOST, which is one of the competent IPR enforcement administrative authorities. This new practice

8 "Pirate websites attract 29 times more visits than legitimate online film distributors", *itcnews*, 6 September 2017. Available at: <http://ictnews.vn/internet/luot-truy-cap-vao-web-vi-pham-ban-quyen-cao-gap-29-lan-trang-chinh-thong-158359.ict> accessed on 9 January 2017.

9 List of websites that have signs of copyright infringement. Available at: <http://abei.gov.vn/bao-ve-ban-quyen-noi-dung/danh-sach-mot-so-website-co-dau-hieu-vi-pham-ban-quyen-noi-dung-chuong-trinh-truyen-hinh/106515> accessed on 9 January 2018.

10 Joint Circular 14/2016/TTLT-BTTTT-BKHCN issued on 8 June 2016 by Ministry of Information and Communications and Ministry of Science and Technology, guiding order and procedures for changing and revoking domain names infringing upon intellectual property rights (Joint Circular 14).

11 According to Article 76 of Vietnam's Law on Information Technology (67/2006/QH11), disputes over the registration and use of Vietnamese national domain names ending in ".vn" shall be settled in three modes: negotiation or conciliation; arbitration or initiation of lawsuits at court.

has proved to be a faster and more effective measure for dealing with infringing domain names.

This Circular, however, remains a partial solution in so far as it leaves an important part of the matter unsolved: cybersquatting.[12] Cybersquatting disputes, where no active associated websites are involved, still cannot be resolved through administrative routes which have been proved to be quicker and much more straightforward. This loophole has left IPR owners disappointed after initial positive reactions. This remains inconsistent with a previous Circular of MOST which specifically condemns the act of cybersquatting.[13] Similarly, no administrative actions can be taken against infringing domain names where the associated websites are inactive, contain personal blogs, or actively link to other websites that are not related to the business activities of the IPR holder.[14]

2. Administrative enforcement

Administrative measures have so far proved to be the most popular and effective method for enforcement of IPR in Vietnam. Many obstacles, however, still remain in terms of law and practice, leading to delays and tie-ups of the procedure that affect rights and legitimate interests of rights holders. A typical example is the delay in taking administrative measures by competent authorities when there are appeals, denunciations or disputes over the IPR.

According to Decree 99/2013/ND-CP of the Government dated 29 August 2013 on sanctioning of administrative violations in industrial property (Decree 99)[15], if there is an appeal, denunciation or dispute in respect of the right to register the subject IPR, ownership, protection scope and others of the subject industrial property right, the competent authorities may refuse the request for handling of the infringement or suspend the enforcement procedure to wait for the results of settlement of the appeal, denunciation or dispute.

Many infringers have abused this provision by initiating frivolous cancellation or invalidation actions against the validity of the IPR just to delay the settlement of the infringement. It usually takes years for National Office of Intellectual Property (NOIP) to settle such an appeal, denunciation or dispute. This means an administrative action against the IPR infringement can be delayed for years. In many cases, a mere act of filing by the respondent of an application for registration of the subject IPR may be a reason for the enforcement authority to suspend the infringement settlement procedure until the Registrar issues its final decision on whether to refuse or grant the protection title to the respondent.[16] This practice has seriously affected the rights and legitimate interests of IPR owners and local consumers.

3. Criminal enforcement

The unclarified requirement of 'commercial scale' in the Penal Code 1999, amended in 2009[17], made it difficult to prosecute an IP criminal lawsuit. The Penal Code 2015, amended in 2017[18], has addressed this matter by adding bad faith of the suspect and certain values of illegal profit as bases to press criminal charges.[19] However, the law fails to clarify the termination of 'illegal profit' and methods to calculate the values. Also, in practice, enforcement authorities often struggle to prove the intent of suspects in counterfeiting cases.

The requirement for IPR judicial assessments is the next issue. Due to the lack of IPR expertise of the current judicial assessors, in practice, the enforcement authorities instead must rely on non-binding conclusions of Vietnam Intellectual Property Research Institute (VIPRI) or NOIP. The fact that conclusions of VIPRI and NOIP may be conflicting at times causes enormous uncertainty to the enforcement authorities and makes them hesitant to move a case forward.

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12 Cybersquatting means the registration of an infringing domain name, without any use; usually done for the purpose of reselling the name, or preventing the IP holder from registering it. Article 4.2 of Joint Circular 14 only covers (a) domain names identical or similar to others' IP along with content on associated websites which infringe others' IP; and (b) domain names used for publishing content infringing IP laws.

13 Circular 11/2015/TT-BKHCN, issued together with Circular 11/2015/TT on 26 June 2015 (Circular 11).

14 "Vietnam: Joint circular issues infringing domain name dispute guidelines but fails to address cybersquatting", *Rouse*, 29 July 2016. Available at: <https://www.rouse.com/magazine/news/vietnam-joint-circular-introduces-infringing-domain-name-dispute-guidelines-but-fails-to-address-cybersquatting/?tag=domain%20names> accessed on 9 January 2018.

15 See Articles 27 and 28 of Decree 99/2013/ND-CP dated 29 August 2013; Article 28 of Circular No. 11/2015/TT-BKHCN dated 26 June 2015.

16 See Article 28.3(b) of Circular 11/2015/TT-BKHCN dated 26 June 2015.

17 The Penal Code 15/1999/QH10, as amended under Law 37/2009/QH12 (the Penal Code 1999).

18 The Penal Code 100/2015/QH13, as amended under Law 12/2017/QH14 (the Penal Code 2015).

19 Article 225 of the Penal Code 2015.

The lack of a particular set procedure under the current legal framework to guide the investigation, prosecution or adjudication of criminal proceedings against IPR infringement has posed further challenges to IPR criminal enforcement in the country.

4. Judicial reform

Administrative actions have been the most reliable route for IPR enforcement in Vietnam. According to recent statistics from MOST, there were around 25,000 IPR enforcement cases handled through administrative proceedings from 2012 to 2015, while the number of cases resolved in courts was just 177 over the same period.[20] This extreme imbalance between administrative actions and court actions for IPR enforcement is mainly due to complicated procedures, delays, and lack of certainty as to the outcome of court actions. Building IPR expertise must therefore be part of the overall judicial reform effort. Training should be provided to the police and prosecutors, as they play very important roles in IPR criminal cases. In fact, a number of training programs have been offered to the judiciary of Vietnam.[21] However, such efforts remain fragmented and non-systematic, while demand is rapidly rising due to the increasing complexity of IPR infringement cases.

Potential gains/concerns for Vietnam

- The arrival of Netflix[22] in Vietnam has encouraged legitimate international and local video-on-demand service providers, which in turn can positively develop Vietnam's creative and advertising industries;
- Uncertainty in deterrence of cybersquatting can discourage international enterprises in making their commercial presence in Vietnam;
- Infringers have taken advantage of the provision on settlement of IPR infringement when there are disputes over IP rights by delaying the competent authorities' settlement of infringement actions;
- Mere administrative sanctions may not compensate large-scale businesses for the damages resulting from infringement of their valuable IPR assets; and
- The improvement of judicial capacity in handling IPR matters would help Vietnam gain more confidence from foreign investors.

Recommendations:

- Consider adopting a Uniform Domain-Name Dispute-Resolution Policy (UDRP)-type system for resolution of '.vn' domain name disputes and cybersquatting;
- Introduce regulations to fight against cybersquatting; repeal the current provisions which allow enforcement agencies to suspend cases if there are disputes over IP rights, or establish a fast-track procedure for cancellation or invalidation actions to shorten the time period of suspension of the enforcement action;
- Urgently clarify vague definitions in the Penal Code, IP Law and the subordinate legal instruments through amendments of the existing laws or new guidelines;
- Restructure the current judicial assessment system and regulations to accommodate IPR judicial assessment; and
- Concentrate on enhancing judicial capacity by promoting training programs for the police, prosecutors and judges.

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20 More information available at: <http://thanhtra.most.gov.vn/vi/cac-bai-nghien-cuu-shtt/th-c-thi-va-gi-i-quy-t-tranh-ch-p-quy-n-s-h-u-tri-tu-t-i-vi-t-nam-m-i-nam-nhin-l-i> accessed on 10 January 2018.

21 "2017 special 301 report on copyright protection and enforcement", *International Intellectual Property Alliance*, 2017. Available at: <http://www.iipawebsite. com/rbc/2017/2017SPEC301VIETNAM.PDF> accessed on 10 January 2018.

22 Netflix is a prominent American entertainment company which specialises in and provides streaming media and video-on-demand online and DVD by mail. As of July 2017, Netflix had 103.95 million subscribers worldwide.

III. SETTLEMENT OF APPEAL, CANCELLATION AND INVALIDATION MATTERS

Relevant Government authorities: Ministry of Science and Technology (MOST), National Office of Intellectual Property (NOIP).

Issue description

1. Timeline of the appeal, cancellation and invalidation procedures

Under the current framework, IPR appeals are governed by the Law on Complaints. According to this Law, all appeals must be resolved within 45 days from the date of acceptance for handling of the first appeal , or 60 days from the date of acceptance for handling of the second appeal. In practice, however, it takes 2 to 3 years (or even longer) for an appeal to be resolved. Not only does it take about 15 to 20 times longer to resolve an appeal than the time required by law, but it is also unclear when a decision on settlement of an appeal can be anticipated. We understand that delays are justified in many cases because IPR appeals are usually complicated, therefore, it is not realistic to require NOIP to resolve an appeal within 45 or 60 days as required in the Law on Complaints. The long delays and uncertainties in this regard, however, have seriously affected business plans of IPR holders. To address this issue, we recommend building up a separate legal framework for settlement of appeals in the IP field, which balance the workload of NOIP with the rights and interests of the right holders.

We have seen a similar situation in the procedures for settlement of requests for cancellation or invalidation of IPR. We welcome the fact that the recently amended IPR regulations in Circular 16/2016/TT-BKHCN dated 30 June 2016 of MOST amending and supplementing a number of Articles of Circular 01/2007/TT-BKHCN (Circular 16), effective from 15 January 2018, have clearly specified the timeline for every step of the procedure for handling IPR cancellation and invalidation requests.[23] While we welcome Circular 16, we consider that a lot of effort is needed in order to ensure that the timelines are followed in practice and the cancellation and invalidations requests are resolved in a timely manner.

2. New mechanisms for handling appeals, invalidation and cancellation requests

Circular 16 allows filing of a first response to the provisional refusal of an international trademark registration to NOIP's Department of Geographical Indication, instead of filing an appeal to NOIP's Department of Enforcement and Appeal Settlement, as has been the case until now under the old regulations. Hopefully, the new mechanism can help to significantly reduce the number of appeals and shorten the appeal settlement time at NOIP.

Circular 16[24] has also introduced settlement of independent advisory experts and/or advisory councils. This is to provide the appeal settlement body with independent experts' consideration and opinions of the appeal matter. Specifically, Circular 16 stipulates that the appeal settlement body, in consideration of the complexity of the appeal case, may seek expert opinions of independent advisory experts or establish an advisory council to consider and opine on the appeal matter. The Circular also specifies the functions, qualifications, sources and operating principles of such independent advisory experts and advisory councils. However, the Circular is silent on the binding effect of opinions produced by the independent advisory experts and advisory councils, which can be understood to mean that such opinions are not binding, but just have a reference effect. While the new regulation is highly welcome, it would be more helpful if the role of such experts/councils is clearly regulated.

23 See Item 21.3 a) of Circular 16/2016/TT-BKHCN of Ministry of Science and Technology dated 30 June 2016, as amended and supplemented under Circulars 13/2010/TT-BKHCN of Ministry of Science and Technology dated 30 July 2010, 18/2011/TT-BKHCN of Ministry of Science and Technology dated 22 July 2011, and 05/2013/TT-BKHCN of Ministry of Science and Technology dated 20 February 2013.

24 See Item 22.8 of Circular 16/2016/TT-BKHCN of Ministry of Science and Technology dated 30 June 2016, as amended and supplemented under Circulars 13/2010/TT- BKHCN of Ministry of Science and Technology dated 30 July 2010, 18/2011/TT-BKHCN of Ministry of Science and Technology dated 22 July 2011, and 05/2013/TT-BKHCN of Ministry of Science and Technology dated 20 February 2013.

3. Transparency in the settlement of appeal, cancellation and invalidation matters

Transparency is a solution to promote fairness and law enforcement. It contributes to the protection of the legitimate rights and interests of individuals and businesses, and enhances the effectiveness and accountability of State management agencies. Public access to the content of appeal, cancellation and invalidation matters and their outcomes would help to raise public opinion and consistency of the Governmental management agencies in resolving these difficult matters.

We recognise that NOIP has made significant progress in setting up and maintaining an online database in order to transparently and publicly disclose information on patent, industrial design and trademark applications and registrations. The published information, however, does not include any information regarding the appeal, cancellation and invalidation procedure, such as whether or not a request for appeal, cancellation or invalidation is filed, nor does it include their status and outcome.

While NOIP publishes basic information about cancellation and invalidation matters in IP Gazettes, their contents are not published. As such, the public does not have access to the contents, status and outcomes of appeals, cancellation and invalidation requests. It is even difficult for interested parties to fully and in a timely manner access the status of pending actions.

Potential gains/concerns for Vietnam

- Delays in the settlement of appeal, cancellation and invalidation requests have negatively affected the business plans, legitimate rights and interests of IPR holders in Vietnam;
- Public access to the contents and outcomes of appeal, cancellation and invalidation procedures would help to raise the consistency of relevant Governmental authorities in their decisions. This, in turn, would be beneficial in raising the confidence of foreign investors in Vietnam; and
- The disclosure of information, including the content of notices, decisions and judgments in appeal, cancellation and invalidation procedures, would help to raise public awareness of IPR and reduce IPR infringement, especially cases of unintentional infringement.

Recommendations:

In order to strengthen the legal regime for settlement of appeals and requests for cancellation or invalidation of protection titles, and to further improve the transparency and access to information in these matters in Vietnam, we would like to make the following recommendations:

- Build up a separate legal framework for the mechanism and time limits for settlement of appeals in the field of intellectual property;
- Supplement the regulations to clarify the roles, functions and binding effects of the independent advisory experts and advisory councils in the appeal procedure;
- Set up an IPR Appeal Board or IPR Tribunal at NOIP or MOST for the settlement of IPR appeal, cancellation and invalidation matters;
- Strictly comply with the new regulations on time limits for appeal, cancellation and invalidation procedures;
- Develop legal regulations and procedures for disclosure of information, including content of notices, decisions and judgments in appeal, cancellation and invalidation procedures; and
- Develop legal regulations and procedures for publication of information, including content of notices, decisions and judgments in appeal, cancellation and invalidation matters.

ACKNOWLEDGMENTS

EuroCham Intellectual Property Rights Sector Committee.

CHAPTER 6 **JUDICIAL AND ARBITRAL RECOURSES**

OVERVIEW

This chapter on judicial recourses was introduced in the 2015 edition of the Whitebook, as our members reported serious obstacles in trying to enforce their rights in Vietnam. Since then, our members have noted real improvements in the legal framework relating to judicial and arbitral recourses – which comprises access to litigation and arbitration, whether domestic or international, and enforcement of arbitral awards and judicial decisions. Some new developments, such as the publication of judgements, are promising and our members will follow them with great interest.

However, some important concerns remain. We would like to highlight some issues that our members face in Vietnam with respect to the following topics: the Vietnamese courts, arbitration in Vietnam and the recognition and enforcement of foreign arbitral awards in Vietnam.

I. THE VIETNAMESE COURTS

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

Issue description

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

In the World Economic Forum's Annual Global Competitiveness Report, Vietnam consistently ranks low (with limited progress) on both judicial independence and on the efficiency of the legal framework in settling disputes. In the 2017-2018 edition of this comparative study, Vietnam ranks 79 out of 138 participating countries in the 'institutions' category, which includes, among other things: (intellectual) property rights, judicial independence, favouritism in decisions of Government officials and efficiency of the legal framework in settling disputes and in challenging regulations and transparency of Government policymaking.[1]

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

Year	Judicial Independence	Efficiency of the Legal Framework in Settling Disputes	Institutions
2015-2016	# 86 out of 140	# 69 out of 140	# 85 out of 140
2016-2017	# 92 out of 138	# 72 out of 138	# 82 out of 138
2017-2018	# 84 out of 137	# 82 out of 137	# 79 out of 137

Source: K.Schwab, World Economic Forum [2]

One of the reasons that may explain this negative perception of the Vietnamese judiciary is the lack of transparency.

1 K. Schwab, 'The Global Competitiveness Forum 2017-2018', *World Economic Forum*, 2017, pp. 308. Available at: <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf> accessed on 14 December 2017.

2 *Ibid.*

Vietnamese courts have only recently started to publish judgments[3] and many of them remain unpublished. As a result, there is a lack of a well-established and reliable body of precedents and case-law that could provide guidance and predictability on the likely outcome of individual disputes.

Our members also face this issue in competition law, when dealing with the Vietnam Competition Authority (VCA). Decisions of the VCA are generally not published, although some cases are reported in the VCA's yearly report. Investors and their advisors lack assurance regarding the interpretation of fundamental concepts such as the definition of the relevant market and the market shares of an enterprise.

Furthermore, the permitted scope of legal services for foreign law firms remains uncertain, in particular since the adoption of Decree 123/2013/ND-CP dated 14 October 2013 of the Government guiding the Law 65/2006/QH11 dated 29 June 2006 of the National Assembly on Lawyers (The Law on Lawyers). The Law on Lawyers, as amended in 2012, still prevents a fully qualified Vietnamese lawyer from representing clients before Vietnamese courts if he or she is working for a foreign law firm. This is of some importance for foreign investors, who often wish to be supported by their legal counsel in all aspects of their operations in Vietnam, including disputes.

Potential gains/concerns for Vietnam

In the words of Věra Jourová, EU Commissioner for Justice, Consumers and Gender Equality: "Effective justice systems play a key role for an investment-friendly environment, providing greater regulatory predictability and thereby contributing to sustainable growth".[4] When planning to invest abroad, the availability of an efficient and transparent judicial system is one of the key factors that foreign investors take into account. We therefore believe that further judicial reform in Vietnam will lead to increased confidence among investors, which could in turn boost Vietnam's economy.

Recommendations:

- EuroCham members are following with great interest the current process of publicising judgements of Vietnamese courts. Our members note the launch of two websites managed by the People's Supreme Court and encourage the publication of the judgments of all court levels without further delay;
- In addition, our members encourage the publication of the decisions of the Vietnam Competition Authority, in particular the decisions relating to economic concentration; and
- The Law on Lawyers should be amended to allow fully qualified Vietnamese lawyers to represent clients before Vietnamese courts, even if she or he is working for a foreign law firm.

II. ARBITRATION IN VIETNAM

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

Issue description

Statistics released by the Vietnam International Arbitration Centre (VIAC) in 2017 show that dispute settlement through arbitration (or mediation) in Vietnam is increasingly popular, with 155 new cases being registered in 2016, which is 6% higher than 2015.[5]

To compare these statistics with two of Asia's largest arbitration institutions, in 2016, the Singapore International

3 The Supreme Court has launched two websites: https://congbobanan.toaan.gov.vn/ and http://anle.toaan.gov.vn/toaan/.

4 Foreword in 'The 2015 EU Justice Scoreboard', *European Commission*, 2015. Available at: <http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2015_en.pdf> last accessed on 14 December 2017.

5 "VIAC Report on Summarizing Activities in 2016", *Vietnam International Arbitration Centre*, 16 March 2017. Available at: <http://eng.viac.vn/statistics/vietnam-international-arbitration-centre-report-on-summarizing-activities-in-2016-a445.html> last accessed on 14 December 2017.

Arbitration Centre (SIAC) received 343 new cases[6] whereas the Hong Kong International Arbitration Centre (HKIAC) received a total of 462 new disputes in that year.[7]

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

Potential gains/concerns for Vietnam

This year, we would like to highlight the following issues with respect to proceedings at VIAC, which have been raised by our members:

1. Court interventions during arbitration in Vietnam

One of the main concerns relates to the intervention of the Vietnamese courts during VIAC proceedings. As an example, there are cases where the respondent in VIAC proceedings has raised an unfounded objection to the jurisdiction of the VIAC tribunal. When the tribunal issued a decision to confirm its jurisdiction, the respondent successfully applied to a Vietnamese court to have the decision overturned. Since the decision of the Vietnamese court on this issue is final and binding, and since there is no right of appeal against the court's decision, the court decision resulted in the termination of the VIAC proceedings. Our members reported at least one case in May 2017 in which the courts intervened in VIAC proceedings which resulted in the case being terminated.

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

The absence of the right to appeal a decision to set aside an arbitral award continues to represent a major obstacle for foreign investors who are seeking the fair and transparent resolution of their claims in Vietnam.

2. Procedural issues regarding arbitration in Vietnam

Even though arbitral tribunals may request the assistance of the court in the summoning of witnesses or in the collection of evidence, in practice, the courts do not actively or effectively support arbitration proceedings. However, according to information provided by VIAC as from last year (2016), it seems more and more common for VIAC tribunals to accept and consider witness statements and expert witness statements and to provide for witnesses to give evidence and be cross-examined during hearings. Additionally, the lack of case precedents, case law reporting and a developed body of academic analysis is a further disadvantage for parties to settle a dispute at VIAC.

Recommendations:

- The Supreme People's Court and the Chief Justice could provide more and better instructions to lower level courts to consistently limit court interventions during arbitration proceedings;
- The introduction of a right of appeal to first instance court decisions on jurisdiction or on the validity of an arbitral award could further contribute to making dispute settlement through arbitration in Vietnam more popular on its own merits; and
- As a general recommendation, we believe that learning from, and exchange with, foreign countries may lead to best practice being integrated in Vietnam, especially by learning from successful examples in the region (e.g. SIAC and HKIAC).

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6 "SIAC Announces Record Case Numbers for 2016", *Singapore International Arbitration Centre*. Available at: <http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics> last accessed on 14 December 2017.

7 "2016 Case Statistics", *Hong Kong International Arbitration Center*. Available at <http://www.hkiac.org/about-us/statistics> last accessed on 14 December 2017.

III. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

Issue description

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

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

1. Reversed burden of proof

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

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

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

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

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

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

In other cases, the Vietnamese courts have determined that notices were not properly served on the respondent by wrongly applying Vietnamese law and not referring to the rules of arbitration governing the proceedings and the governing law of the arbitration agreement.

Our members have noted with interest that the 2015 Civil Procedure Code clearly provides that the court may only reject an application for recognition and enforcement of a foreign arbitral award where there is 'well-grounded evidence' that the application falls within one of the exceptions to recognition and enforcement provided in the law. This provision is intended to ensure that the Vietnamese courts have properly applied the provisions of the NYC and, for example, prohibit judges from applying Vietnamese law to determine issues that must be applied by reference to the applicable foreign law or the rules of the relevant arbitration institution. Our members are closely following the practical implementation of these provisions by the Vietnamese courts.

Recommendations:

- To further improve the recognition and enforcement of foreign business and commercial arbitral awards, we recommend Vietnam follow international best practice with regard to this matter;
- The implementing regulations of the 2015 Civil Proceedings Code should provide for the strict application of the provisions of the NYC including the confirmation that the burden of proof falls on the award debtor if it claims that a valid objection to enforcement exists; that the award creditor is only required to provide to the court the valid award and the valid arbitration agreement in support of its application; that the Vietnamese court can only reject applications on grounds consistent with the NYC and the 2015 Civil Procedure Code and that the Vietnamese court is strictly prohibited from re-opening the merits of the case;
- Introduce the automatic referral to the relevant Appeal Court of all cases where an application has been rejected by the Courts of First Instance to encourage the recognition and enforcement of foreign arbitral awards in Vietnam; and
- Seminars and training courses could be organised by the Supreme People's Court for all judges of the provincial People's Courts and the Appeal Courts to ensure that judges are properly trained to deal with applications for recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.

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

Foreign investors may lose confidence in doing business in Vietnam and may feel insecure about the protection of their investments if the current system of judicial recourse is not improved. In line with its international commitments, Vietnam should indeed ensure access to justice and a fair and equitable treatment for foreign investors. We acknowledge the progress that has been made since the 2015 edition of the Whitebook but we believe that much more can be done.

We therefore hope that our concerns and recommendations as mentioned in this chapter will be taken into account by the Vietnamese Government. At the same time, we will continue to offer expert support and cooperation in order to find solutions to these issues and to improve the system of judicial recourse in Vietnam.

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CHAPTER 7 **MEDIATION**

OVERVIEW

"A lack of awareness about the benefits of mediation leads to huge amounts of money being spent by businesses on court proceedings… But it is not just about financial and time costs; it's also about relationship costs. Lengthy legal proceedings mean hundreds of thousands of broken commercial relationships." - Arnaldo Abruzzini, Secretary General of Eurochambers (The Association of European Chambers of Commerce and Industry).[1]

Alternative Dispute Resolution (ADR) processes, such as commercial mediation, conciliation and arbitration, have numerous advantages over litigation. Disputing parties can benefit from less costly and much faster procedures, with commercial proceedings seldom taking longer than a week. This means parties are able to maintain amicable relationships (and save face), while maintaining full confidentiality.[2] The legislative basis for mediation needs some improvement. However, Vietnam has pursued mediation reforms as a response to contemporary demands.[3]

Table 3: The Benefits of ADR

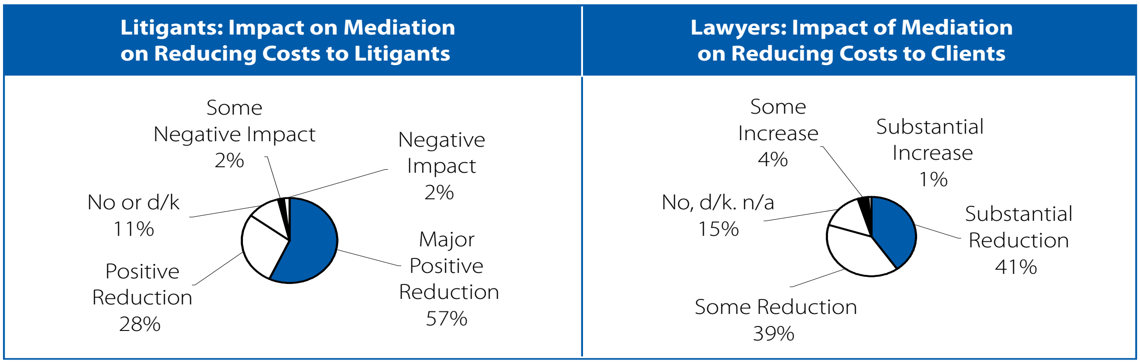
Type of benefit	Benefit
Individual benefit	› Cheaper redress › Resolution of dispute more quickly than mainstream court processes › In recommendation- and facilitation-based processes, retention of decision making with the parties rather than referral to a third party › In recommendation- and facilitation-based processes, a reduction of the need to enforce proceedings to ensure that parties will comply with an agreement, since the parties enter into their agreements consensually.
Private sector benefit	› Enhance private sector development by creating a better business environment › Lower direct and indirect costs of enforcing contracts and resolving disputes › Lower transactional costs so that resources are not diverted from the business › Reinforce negotiation-based methods of doing business, depending on the process.
Institutional benefit	› Enhance good public sector governance by reducing the backlog of disputes before the courts and improving the efficiency of the court system › Provide better access to justice through a greater choice of dispute resolution methods › In particular jurisdictions, improve the reputation of the court system in providing effective resolution of disputes.

Source: World Bank Alternative Dispute Resolution Center Manual, p. 4-5[4]

1 "Mediation: a tool for growth" *Eurochambers* press release, 10 December 2014. Available at: <http://www.eurochambres.eu/custom/53-Mediation_10Dec14-2014-00880-01.pdf> accessed on 2 January 2018.
2 "Is commercial mediation a face saver?", *Vietnam Investment Review*, 3 March 2014. Available at: <http://www.vir.com.vn/is-commercial-mediation-a-face-saver.html> accessed on 1 January 2018.
3 Prof. L.H Hanh and L.T.H Thanh LLM., *Mediation and Mediation Law of Vietnam in Context of ASEAN Integration*, p. 20. Available at: <https://www.aseanlawassociation.org/11GAdocs/workshop5-vn.pdf> accessed on 2 January 2018.
4 "A Guide for Practitioners on Establishing and Managing ADR Centers" *World Bank Group*, 1 January 2011, p. 4-5. Available at: <http://documents.worldbank.org/curated/en/906371468169461301/Alternative-dispute-resolution-center-manual-guide-for-practitioners-on-establishing-and-managing-ADR-centers> accessed on 2 January 2018.

The impact of ADR in resolving commercial disputes and releasing funds into the economy for real growth is undeniable. The benefits of ADR can be summarised into three broad categories, as shown in the table above.[5]

Figure 9: Impact of Mediation



Source: Canadian Mediation Program report[6]

Furthermore, the graphic above shows an evaluation which focuses on whether or not a complete settlement is achieved earlier in the litigation process through mediation under the Mandatory Mediation Program in Ontario, Canada. The evaluation found that in both Ottawa and Toronto, a significant proportion of cases (around 4 out of 10) were completely settled within 7 days of mediation.[7]

Commercial mediation in Asia-Pacific

Commercial mediation is becoming more popular and important in Asia-Pacific. The Singapore government and the Singapore Arbitration Center (SIAC) appear to be taking the lead role by pioneering more efficient judicial proceedings that allow parties to choose ADR processes. SIAC introduced hybrid models of dispute resolution through ADR mechanisms such as the Arb-Med Arb (AMA) Protocol. This Protocol applies to all disputes submitted to SIAC for resolution under the Singapore AMA Clause or other similar clauses, and any dispute which parties have agreed to submit for resolution under the AMA Protocol. Under this Protocol, parties agree that any dispute settled in the course of mediation at the Singapore International Mediation Centre (SIMC) shall fall within the scope of their arbitration agreement.[8] Indeed, many countries in Asia-Pacific are improving their commercial mediation legal frameworks so that they are not only a means of ADR suitable for economic players, but a real opportunity for them to avoid the inconvenience of public courts and maintain good relationships with their commercial partners. This is especially important where a manufacturer wishes to maintain a good relationship with their suppliers and dealerships where it is essential to maintain a good working relationship long after the dispute is resolved. Mediation allows for a 'win-win' outcome where the interests of both parties are addressed, in contrast to a 'win-lose' outcome where one party recovers costs in a lengthy litigation process.

5 *Ibid.*

6 "The Ontario, Canada Court Annexed Mandatory Mediation Program" *Canadian Mediation Program*, Chapter 1, p. 11. Available at: <https://drive.google.com/file/d/0B4sexl_rfQxPUIRLd3c4M1QtcEw4c3BxV2NYdVlleUNEeVdZ/view?ts=5943601a> accessed on 18 January 2018.

7 *Ibid.*

8 SIAC Arb-Med Arb Protocol. Available at: <http://simc.com.sg/siac-simc-arb-med-arb-protocol/> accessed on 2 January 2018.

I. ALTERNATIVE DISPUTE RESOLUTION (ADR) IN VIETNAM

Relevant Government authorities: Ministry of Justice (MOJ).

Issue description

Mediation, an ADR mechanism, has just been introduced into the legal system of Vietnam. It has also been introduced in primary provisions, such as the Law on Commercial Arbitration 2010. According to Article 9 of this Law, parties shall have the freedom, during arbitration proceedings, to negotiate and reach agreement with each other to resolve their disputes or to request the arbitration tribunal to mediate in order for the parties to reach agreement and resolve their dispute. Furthermore, if the parties reach a settlement agreement through mediation conducted by the arbitration tribunal, the arbitration tribunal shall issue a decision recognising the agreement of the parties, which will have the same value as the arbitral award.

The Civil Procedure Code 92/2015/QH13 dated 25 November 2015 (the Civil Procedure Code 2015), replacing the Civil Procedure Code 2004, has recognised the jurisdiction of the Court in the settlement of disputes on investment, business and commerce. Moreover, the Civil Procedure Code 2015 added a new chapter regarding the recognition of results of out-of-court mediation (mediated settlement agreements). Accordingly, one or both parties to the mediated settlement agreement can apply to the courts for the recognition of their agreement. After being recognised, this agreement is enforceable as a full and final court judgment in compliance with the Vietnamese Law on the Enforcement of Civil Judgments.

1. Commercial mediation in Vietnam

On 24 February 2017, the Government issued Decree 22/2017/ND-CP (Decree 22) on commercial mediation, which came into effect on 15 April 2017. It is the first legislation specifically governing commercial mediation and creates a legal framework for the development of commercial mediation in Vietnam. Decree 22 includes the principles, conditions and procedures of commercial mediation as an ADR method, thus creating the conditions for the establishment of mediation centers in Vietnam. Under Decree 22, commercial mediation is applied in cases of: (i) a dispute between parties practicing commercial activities, (ii) a dispute between parties with at least one party practicing commercial activities, or (iii) another dispute under the law which can be resolved by commercial mediation.[9] The statute defines 'commercial activities' as activities for the purpose of generating profits, including the sale and purchase of goods, provision of services, investment and commercial promotion.

2. Defining a mediator and the mediation process

According to Decree 22, commercial mediators include ad-hoc commercial mediators and mediators from commercial mediation institutions selected by the disputing parties or appointed by a commercial mediation institution at their request.[10] Apart from general moral standards, mediators must have a university or higher qualification and at least two years of work experience in their discipline. Mediators are required to have mediation skills as well as legal understanding and knowledge of business and commercial practices. To coincide with these specific and arguably strict requirements, the Decree lacks an accreditation system to train meditators.[11] Arguably, in some situations, the requirements of a mediator as set out in Decree 22 hinder the advancement of mediation practice. Although there is no explicit restriction on the nationality of mediators, the Decree imposes a technical barrier requiring ad-hoc mediators to register with the Department of Justice where they reside. As a result, the opportunity for foreign mediators to practice in Vietnam may be restricted. Selecting an adequate mediator may be a hard task for disputing parties and their counsel since the persons meeting the requirements of Vietnamese law may not be as skillful or experienced as internationally-accredited mediators.

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9 Article 2, Decree 22/2017/ND-CP dated 24 February 2017 on commercial mediation.

10 Article 3, Decree 22/2017/ND-CP dated 24 February 2017 on commercial mediation.

11 N.M. Dzung and D.V.M. Ha, "Enforcement of Mediated Settlement Agreements in Vietnam: A Step Forward the International Trend?", *Kluwer Arbitration Blog*, 2 July 2017. Available at: <http://arbitrationblog.kluwerarbitration.com/2017/07/02/deposition-japan-u-s-based-international-arbitration/>accessed on 27 September 2017.

3. Selecting a mediator

Disputing parties are entitled to choose the mediation rules of a commercial mediation institution or agree on their own mediation procedures. Where the parties have no agreement on the order and procedures for mediation, it shall be conducted how commercial mediators consider appropriate in view of the content of the dispute and in the best interests of the parties. Choosing procedures for mediation from the outset is critical as it determines all aspects of the mediation process, such as appointing a mediator, mediation steps, mediation fees, enforcement of settlement mediation agreement and other related matters.

EU-Vietnam Free Trade Agreement

The EU-Vietnam Free Trade Agreement (EVFTA) constitutes an important legal development and has a considerable role in the mediation of both state-state and investor-state disputes in Vietnam.[12] As per the EVFTA, Vietnam and the EU have agreed on a modern and reformed investment dispute resolution mechanism, which guarantees the respect of the substantive investment protection rules applicable to European and Vietnamese investors.[13]

"Under the EVFTA, at any time during the settlement of an investor-state dispute, any disputing party can invite the other party to conduct mediation by the procedure stipulated therein. The specific regulations on mediation included in the EVFTA demonstrate the special attention given by the legislators in Europe and Vietnam to dispute resolution through mediation, which is apparently gradually becoming a favourable new trend in the world. Consequently, we believe that this trend will also positively affect and further help the development of commercial mediation in Vietnam."[14]

4. Current obstacles affecting the development of ADR in Vietnam

Over time, the use of mediation in dispute resolution will become more popular as Decree 22 gains greater awareness in the legal community. However, the use of ADR mechanisms in commercial disputes still faces some obstacles.

Mediation is very new in Vietnam. Therefore, the number of lawyers specialising in mediation procedures is extremely limited. The success of the mediation process depends on the selection of rules, the procedures for mediation and the mediator. There is no formal accreditation for mediation, conciliation or arbitration in Vietnam. Therefore, it is necessary to design and conduct more alternative dispute training courses on mediation, conciliation and arbitration to add credibility to the process. Very few commercial contracts in Vietnam lack ADR clauses that allow for parties to automatically move to ADR mechanisms such as mediation and conciliation should a contractual dispute arise.

Decree 22 provides a framework and specific guidelines to enable parties to use mediation to resolve disputes. However, the law on commercial mediation is still incomplete and incompatible with some international commitments. This is also the case with arbitration in Vietnam. Foreign investors often opt for ADR mechanisms to avoid using the Vietnamese courts to settle their disputes.[15] Vietnamese law also lacks some provisions on the use of evidence in mediation for other proceedings. These shortcomings will make parties hesitate to use mediation to resolve disputes.

5. International and regional initiatives to promote ADR

In Europe, ADR initiatives are institutionally driven. The European Commission sponsors a range of resources including extrajudicial, ADR services, new technologies, public institutions and private organisations that provide mediation services. Governments themselves often initiate these projects too, with mediation pilots, such as Court-Based ADR schemes, later being adopted. Governments also encourage mediation within their own administrations. Since 2001, for example, the British government has been working towards ensuring that all disputes involving government departments are taken care of, as far as possible, through the use of ADR. Since then, all contracts involving the government and the administration include clauses which refer to processes of mediation.[16]

12 Eurocham Vietnam Legal Committee. Available at: <https://www.eurochamvn.org/Sector_Committees/Legal> accessed on 27 September 2017.

13 "Guide to EU - Vietnam Trade Agreement" *Delegation of the European Union to Vietnam* Available at: <http://eeas.europa.eu/archives/delegations/vietnam/documents/eu_vietnam/evfta_guide.pdf> accessed on 2 January 2018.

14 N. Manh Dzung and D.V.M. Ha "Enforcement of Mediated Settlement Agreements in Vietnam: A Step Forward for the International Trend?", Young ICCA Blog. Available at: <http://www.youngicca-blog.com/enforcement-of-mediated-settlement-agreements-in-vietnam-a-step-forward-for-the-international-trend/> accessed on 5 March 2018.

15 Whitebook 2017, *EuroCham*, p.52.

16 Catalonia Government, Department of Justice, *The White Book of Mediation in Catalonia*, 2010, Chapter 2, p. 83-130.

The European Commission developed an online, web-based dispute resolution platform in 2016. The objective of this initiative is to help consumers and traders resolve contractual disputes about goods and services purchased online cheaply, simply and quickly out-of-court. It allows consumers to submit their disputes online in any of the 23 official languages of the European Union. The online dispute resolution platform transmits the disputes only to the quality dispute resolution bodies identified by Member States.[17]

With the rise of the Internet, the world is now more dependent than ever on electronics.[18] People now expect convenience, responsiveness and empowerment through the Internet, and have become more reliant on services provided online. Therefore, Online Dispute Resolution (ODR) has emerged as a reasonable platform for resolving disputes.[19] As with traditional mediation, a benefit of online mediation is that it can provide substantial savings when compared with traditional litigation, which can be extremely costly.[20] The most-recognised benefit of online mediation is that the disputants do not have to travel long distances to negotiate.[21] Parties can participate in online mediation from their respective business locations or residences, which can save both time and costs.[22]

The Singapore Parliament recently passed the Mediation Act. This Act is part of the government's initiative to grow Singapore as a destination for international dispute resolution, by strengthening the legislative framework for international commercial mediation. With a range of benefits, the Mediation Act is welcome as it addresses the disadvantages of mediation, such as the lack of enforceability and certainty. Once the Mediation Act comes into effect, businesses may want to consider how best to tailor dispute resolution clauses in their commercial agreements to take advantage of the benefits that mediation offers.[23]

These developments, however welcome, have been patchy at best. Certain regions, such as South-East Asia, do not seem to have embraced ODR as much as regions like the European Union. This is despite the strong and sustained growth of mobile usage and e-commerce in South-East Asia. For instance, between January 2016 and January 2017, the number of Internet users and mobile subscriptions in the region jumped by 80 million and 62 million respectively.[24]

Potential gains/concerns for Vietnam

Mediation is new in Vietnam. Therefore, the fundamental rules that distinguish mediation, conciliation and arbitration from each other, and the differences between binding and non-binding negotiations in Decree 22, are unclear to lawmakers. In particular, the wording in Decree 22 is confusing and requires clarification. The most crucial aspect of the mediation or conciliation process is confidentiality. However, there is no provision in Decree 22 to guarantee confidentiality in these proceedings and no guarantee from the courts that the mediator or conciliator will not be subpoenaed to the court during future proceedings. This nullifies the mediation agreement signed by the mediator/conciliator and the affected parties.

While Decree 22 promises to create a legal framework that facilitates the development of mediation, some points are incompatible with international law. First, it is required that the mediator be registered at the Department of Justice, which is a technical barrier preventing a foreign mediator being chosen to participate in the mediation of disputes in Vietnam. This is a limitation, particularly with international commercial disputes, since there are currently very few people specialising in this field in Vietnam. Secondly, Vietnamese law also lacks some provisions on the use of evidence in mediation for other proceedings. Regardless of these major deficiencies, these regulations should create a sound legal framework for the future solid development of mediation in Vietnam.

Influenced by Law 54-2010-QH12 dated 17 June 2010 of the National Assembly on Commercial Arbitration (the Law on Commercial Arbitration, or LCA), and in compliance with Vietnam's commitment to the World Trade Organisation (WTO), Decree 22 also encourages foreign mediation institutions to open a branch or representative

17 European Commission, Online Dispute Resolution Website. Available at: <https://ec.europa.eu/consumers/odr/main/?event=main.home.show> accessed on 27 September 2017.
18 A. Changaroth, "ODR: Suitability in the Construction Industry," *Asian Journal on Mediation*, Singapore Academy of Law, 2016, p.2.
19 "Rechtwijzer 2.0: Technology that puts justice in your hands", *Hiil*. Available at: <http://www.hiil.org/project/rechtwijzer> accessed on 27 September 2017.
20 G.H. Friedman, *Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities*, 19 HASTINGS COMM. & ENT. L.J. 695, 712 (1997).
21 R.C. Bordone, *Electronic Online Dispute Resolution: A Systems Approach – Potential Problems and a Proposal*, 3 HARV. NEGOTIATION L. REV. 175, 176 (1998).
22 L.Q. Hang, *Online Dispute Resolution Systems: The Future of Cyberspace Law*, 41 SANTA CLARA L. REV. 837, 855 (2001).
23 "Singapore Passes New Mediation Act," *Baker McKenzie Website*, 9 February 2017. Available at: <http://www.bakermckenzie.com/en/insight/publications/2017/02/singapore-passes-new-mediation-act/> accessed on 27 September 2017.
24 Law Tech Asia Website. Available at: <https://lawtech.asia> accessed on 27 September 2017.

office in Vietnam. Furthermore, the branch offices of international mediation centres can establish their own panels of mediators, provided that the mediators meet the qualifications specified in Decree 22. It was anticipated that these regulations would facilitate international mediation centres to explore the Vietnamese mediation market.[25]

There are other positive opportunities to raise awareness of ADR processes for the legal community and the public, and to promote ADR in the region. One example is annual ADR conferences, such as the 2017 Asia Pacific Mediation Forum Conference, which was held in Da Nang in November 2017.[26] This kind of public discourse is a real chance for the legal community, including entrepreneurs and academics, to learn more about ADR processes, raise awareness of the legal community in the region and make them more efficient.[27]

Recommendations:

While Decree 22 is a positive step towards improving mediation in Vietnam, there is still more to do. Indeed, mediation in its current form may not be a viable choice for disputing parties. To address this, we recommend that when selecting mediation or conciliation for resolution of commercial disputes, international mediation rules should be chosen. It is therefore advisable to use the United Nations Commission on International Trade Law (UNCITRAL) mediation rules, with added supplementary provisions to make up for the shortcomings of Decree 22, to increase the chance of success of the mediation process.

Decree 22 allows for the creation of private mediation centers. One recent development in the UK, where a business chamber created a mediation center, shows how this can benefit members. A public-private partnership was created under the Greater Manchester Chamber of Commerce whereby members could refer disputes to mediation, thus saving legal fees by resolving disputes early and before court fees are incurred. This collaboration between business chambers and the private sector has proven to be successful, and they receive many inquiries not only from businesses but also the public about using the service. It also offers mediation for all consumer and business disputes in the UK under an ADR Directive offering mediation by telephone and online. It is flexible about the methods of mediation, rather than insisting upon a full day's mediation in many cases, and acts in disputes between law firms and their clients.[28]

The creation of a center in Vietnam that offers both online and in-person ADR under the auspices of a business chambers should include the input of that chamber's legal subcommittee.[29] Creating a high-quality mediation services center where members can refer disputes for mediation, conciliation or arbitration would enable disputes to be resolved before the legal route is pursued.

These recommendations would improve professional development and awareness not just for the legal community in Vietnam, but also for the public. Public and private awareness of ADR, including the establishment of mediation centers, will create more viable options for all stakeholders. This will lead to an improved system and greater access to justice for private industry and the general public.

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25 *Ibid*, note 6

26 *Asia-Pacific Mediation Forum*. More information available at: <http://apmf2017.mediation.vn> accessed on 2 January 2018.

27 *Ibid*.

28 Law Tech Lawyer. Available at: <www.lawtechlawyer.podbean.com> accessed on 27 September 2017.

29 *EuroCham Vietnam* Legal Committee. Available at <https://www.eurochamvn.org/Sector_Committees/Legal> accessed on 27 September 2017.

CHAPTER 8 **MERGERS AND ACQUISITIONS**

OVERVIEW

The Mergers and Acquisitions (M&A) market in Vietnam is strong and vibrant. M&A transactions are widely considered to be one of the most effective means for market entry and business expansion in Vietnam. Numbers and value of completed M&A transactions in Vietnam have grown steadily in recent years, and are expected to grow further during 2018, especially if the EU-Vietnam Free Trade Agreement (EVFTA) is ratified and enters into force as anticipated.

In 2016, the total value of M&A deals in Vietnam reached a record of USD5.8 billion and increased by 11.92% compared to 2015.[1] In the first quarter of 2017, the total value of M&A deals in Vietnam reached USD1.1 billion (equivalent to 75.6% of the quarterly average growth of 2016).[2]

From 2016 to 2017, the value of the M&A deals involving foreign investors accounted for 77% of the total value of M&A deals in Vietnam. The three sectors in which M&A activity was the strongest in 2016 and 2017 were retail, consumer goods manufacturing and real estate.[3] Investors from Singapore, Korea, Japan and Europe played a crucial role in the M&A scene in Vietnam during 2016 and 2017, with impressive transaction completion volumes having been achieved.

These figures are expected to increase further during 2018, as many foreign investors try to position themselves in Vietnam in order to benefit fully from the free trade agreements expected to enter into force next year.

Vietnam's new Law on Investment 2014 (LOI) and Law on Enterprises 2014 (LOE) represent significant milestones in the development of the legal framework for M&A activities in Vietnam. The implementing legislation issued pursuant to these new laws has also contributed to the simplification and streamlining of relevant administrative and regulatory procedures in Vietnam. At the same time, a number of key issues under the new LOI and LOE and their implementing legislation remain unresolved and in need of further clarification by relevant State authorities. In order to address some of these outstanding issues, in December 2017 the Ministry of Planning and Investment (MPI) published for public comment a first draft of a proposed new Law on Amendment of some articles of the LOI and LOE, which is expected to be submitted to the National Assembly (NA) for its review and adoption in May 2018.

Recent developments have been very positive with respect to equitisation of State-Owned Enterprises (SOEs) having 100% of their equity owned by the State. In particular, Decree 126/2017/ND-CP of the Government dated 16 November 2017 on the equitisation of SOEs having 100% equity owned by the State (Decree 126), recently provided new and clearer procedures for the selection and the offering of shares in SOEs to qualified strategic investors (who may be Vietnamese investors or foreign investors). These legislative changes are positive news for foreign investors who wish to acquire shares in equitising SOEs. The impact of this major legal development will be closely monitored by the business community as its practical application unfolds.

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

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

- Continue to reduce the number of 'conditional' business sectors;
- Remove the requirement for foreign investors to obtain both an Investment Registration Certificate (IRC) and an Enterprise Registration Certificate (ERC) in order to establish an entity in Vietnam;

1 Vietnam Investment Review Newspaper under the Ministry of Planning and Investment. Available at: <http://baodautu.vn/kich-hoat-thuong-vu-ma-quy-mo-trong-nam-2017-d67899.html> accessed on 12 January 2018.
2 Vietnam M&A Forum 2017, available at: <http://maf.vn/tai-lieu-hop-bao-dien-dan-ma-vietnam-2017.html> accessed on 12 January 2018.
3 *Ibid.*

- Remove the requirement for foreign investors to obtain an 'M&A Approval' before implementing any private M&A transaction;
- Reduce the degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions;
- Improve the clarity and consistency of the procedures applicable to M&A transactions;
- Set clearer and more uniform guidelines for the use of direct or indirect investment capital accounts in relation to M&A transactions;
- Ensure faster and smoother processing of the tax clearance procedures necessary for implementing M&A transactions and the transfer of purchase consideration;
- Clarify the basis for calculating the market share of a target company in relation to a possible 'economic concentration', for the purposes of Vietnamese competition law;
- Define clear criteria for determining what constitutes the 'relevant market(s)' in relation to 'economic concentration' transactions, for the purposes of Vietnamese competition law; and
- Ensure that the Vietnam Competition Authority has the power and capability to scrutinise 'economic concentration' transactions and make decisions in a more efficient and timely manner.

I. MARKET ACCESS AND LICENSING PROCESS

Relevant Ministries: Ministry of Planning and Investment (MPI), People's Committees.

Issue description

1. Conditional business sectors and other restrictions to market access

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

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

We also appreciate the efforts of the Vietnamese Government in endeavouring to reduce further some of the key restrictions as well as the disparity of treatment between Vietnamese and foreign investors.

We appreciate the issuance of Law 03/2016/QH14 amending the list of conditional business sectors guiding the Law on Investment, under which the number of 'conditional' business sectors has been reduced from 267 to 243, and the further removal of 21 conditional business sectors proposed in the recent draft of the Law on Amendment of some articles of the LOI and LOE.

We welcome the move of Ministry of Industry and Trade (MOIT) in issuing Decision 3610a/QD-BCT of MOIT dated 20 September 2017 (Decision 3610a), which provides for a plan to cut a number of business and investment conditions during the period of 2017 to 2018. Specifically, under this Decision, a total of 675 business and investment conditions in 17 areas have been proposed to be eliminated, thus leaving 541 conditions remaining under the authority of MOIT.

This MOIT Decision 3610a represents the most significant reduction of investment conditions which has ever occurred in the history of MOIT. Many observers expect that this Decision will give rise to a significantly improved business and investment landscape for the entirety of Vietnam.

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

2. Unnecessarily complicated licensing procedures

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

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

3. M&A approval

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

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

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

Potential gains/concerns for Vietnam

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

Recommendations:

Our specific recommendations are:

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

II. AMOUNT AND PAYMENT OF THE PURCHASE PRICE IN M&A TRANSACTIONS

Relevant Ministries: Ministry of Planning and Investment (MPI), State Bank of Vietnam (SBV), Ministry of Finance (MOF).

Issue description

The purchase price payable in an acquisition should be, in principle, freely negotiable among the parties. In Vietnam, however, if the agreed purchase price is less than the registered par value of the target shares or the amount of the sellers' contribution to the charter capital (equity) of the target, the relevant licensing authority will often refuse to issue an M&A Approval on these grounds.

It should also be remembered that M&A transactions become subject to the post-completion scrutiny of the Vietnam tax authorities, which can review the purchase price again to ensure that it reflects the 'market price' or the 'book value' of the equity transferred. If the tax authority concludes that the market price or book value has not been reflected appropriately, it has the discretion to deem another purchase price as applying, for the purposes of calculating tax liability.

In our view, the law should clarify that local licensing authorities do not have the authority to 'review' the purchase price payable on any equity transfer (which is per se a purely commercial matter), and that only the duly empowered tax authorities may conduct such a 'review' for tax purposes. In our view, local licensing authorities should not have the discretionary power to refuse to issue M&A Approvals on the grounds of their discretionary opinion that the agreed purchase price does not reflect 'market price' or 'book value'.

In addition, pursuant to Decree 78/2015/ND-CP of the Government dated 14 September 2015 on enterprise regulation (Decree 78), in many cases the parties to an M&A transaction are required to provide the relevant local licensing authority with 'documents proving completion of the transfer' in order to obtain an amended ERC and/or IRC (where applicable) and to complete the transaction. The law, however, still has not specified what documents can qualify as 'documents proving completion of the transfer'. Therefore, while some local licensing authorities accept documents executed by the parties self-certifying that the transaction has been completed, other local licensing authorities interpret the requirements differently and require an official document issued by a bank, evidencing that the purchase price was in fact paid and received. This latter interpretation is particularly inconvenient when it arises in complex M&A deals where, as a practical matter, the parties normally wish to apply specifically-negotiated arrangements for the payment (for example, with the use of staggered instalments, retention amounts and/or escrow accounts).

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

In our view, the distinction between 'direct investment' and 'indirect investment' transactions and bank accounts is unnecessary, gives rise to confusion, and should be abolished.

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

Potential gains/concerns for Vietnam

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

Recommendations:

We recommend the following:

- Reduce the degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions;
- Improve the clarity and consistency of the procedures applicable to M&A transactions;
- Abolish the distinction between 'direct investment' and 'indirect investment' transactions and the corresponding special-purpose bank accounts; and
- Ensure faster and smoother processing of the tax clearance procedures necessary for implementing M&A transactions and the transfer of purchase prices.

III. ANTI-TRUST RESTRICTIONS

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

Issue description

When structuring an M&A deal it is often necessary for the parties to consider the applicable provisions of the Law on Competition (2004) and its implementing legislation (the Competition Law).

In particular, pursuant to the Law 27/2004/QH11 of National Assembly dated 3 December 2004 (Law on Competition), an M&A transaction may require specific approval or may be prohibited, if certain degrees of 'economic concentration' will result from the transaction.

Where a proposed M&A transaction constitutes an 'economic concentration' and will result in the participating parties having a 'combined market share' of more than 50% in any 'relevant market', the proposed M&A transaction will be prohibited absolutely by the Law on Competition.

Where a proposed M&A transaction constitutes an 'economic concentration' and will result in the participating parties having a 'combined market share' of between 30% and 50% in any 'relevant market', the deal-specific approval of the Vietnam Competition Authority (VCA) will be required before the M&A transaction may lawfully proceed.

Although key concepts such as 'economic concentration', 'relevant market', and 'market share' are defined in the applicable legislation, the bases for determining whether or not an 'economic concentration' will occur, what is/are the 'relevant market(s)', and calculating 'combined market shares', remain ambiguous and controversial. This lack of clarity gives rise to uncertainty amongst investors, and material delays often result from the VCA taking longer than the statutory review periods to apply the applicable tests within vague and poorly-defined parameters.

We also note that the draft of a new Law on Competition has been under discussion for some time, and might be submitted to the National Assembly in June 2018. If adopted in its current form, such a draft will introduce a different approach for determining what constitutes an 'economic concentration'. However, the draft in its current form still falls short of establishing clear and unambiguous criteria for determining whether an M&A transaction may result in 'economic concentration' and should therefore be prohibited or subject to approval of the VCA.

Potential gains/concerns for Vietnam

Given the ambiguity which is inherent in the legislation, parties to M&A transactions often file an informal submission with the VCA, in order to obtain a 'comfort letter' to the effect that the proposed M&A transaction is not prohibited by and/or does not require specific VCA approval under the Law on Competition. This is a cumbersome and time-consuming process which often gives rise to material delays in transaction implementation timetables. This issue is likely to remain unresolved even after the adoption of the new Law on Competition currently under discussion.

Better-defined rules in the competition area would promote more effective protections against 'economic concentration' transactions which do or are likely to have a detrimental impact on competition.

Recommendations:

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

Specifically, we recommend the following:

- Clarify the tests for determining whether or not any M&A transaction will give rise to an 'economic concentration';
- Clarify the basis for calculating the 'market share' and 'combined market share' of the participants in an M&A transaction which constitutes an 'economic concentration', for the purposes of assessing such 'economic concentration' transactions;
- Define clear and precise criteria for determining what constitutes the 'relevant market(s)' in relation to any particular M&A transaction; and
- Ensure that the VCA can scrutinise transactions and make decisions in a more efficient and timely manner.

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CHAPTER 9 **PUBLIC-PRIVATE PARTNERSHIPS**

OVERVIEW

Modern, efficient infrastructure is vital to continued economic growth and to lower the costs of doing business for all investors in Vietnam. Rapid economic growth and urbanisation is driving high demands for roads, electricity, ports, waste and wastewater treatment, hospitals and other public infrastructure for goods and services. However, Vietnam's infrastructure development needs are estimated at USD480 billion in the period from 2016 to 2030[1], while the 2016 – 2020 mid-term State budget reportedly allocated only USD6.6 billion for this sector.[2]

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

The balance of funding would, therefore, need to come from other sources, including from private investments in the form of Public-Private Partnerships (PPPs). The Vietnamese authorities reportedly hope to rely on USD68 billion of foreign investment to support the sector over the next five years.[3]

In recent years, the Government has conducted a rigorous legal reform process aimed at increasing foreign and private investment in the country. In 2015, the Government issued two long-expected Decrees on PPPs, namely Decree 15/2015/ND-CP of the Government dated 14 February 2015 on investment in the form of public-private partnership (Decree 15, or the PPP Decree) and Decree 30/2015/ND-CP of the Government dated 17 March 2015 on implementing the Law on Tendering regarding investors selection (Decree 30). The PPP Decree and Decree 30 replaced the previous regulatory framework relating to Build-Operate-Transfer (BOT) projects and pilot PPP projects. While these Decrees are still in effect, in July 2017 the Ministry of Planning and Investment (MPI) launched an initiative to collect the opinions of Ministries, sectors, localities and members of the Inter-Ministerial Steering Committee on PPPs led by the Deputy Prime Minister (the Steering Committee), with the aim of obtaining constructive criticism in relation to draft revisions of the PPP Decree and Decree 30[4], as there remain gaps and inconsistencies in the legislative framework.

Indeed, since these Decrees became effective, one Prime Ministerial Decision and eight implementing Circulars have been issued, which contain various detailed regulations covering a number of issues ranging from the method of preparation of feasibility studies for PPP projects to PPP project registration procedures. This has not been sufficient, however, to produce a cohesive and overarching framework that is also consistent with other legislation outside the sphere of PPPs[5], and the Government is hoping to address some of the outstanding issues with a new draft Decree on PPP (the Draft Decree)[6], which we discuss in Section III below.

Furthermore, in July 2017, MPI's Public Procurement Department announced a proposal for a Law on Public and Private Partnership (the Proposed Law on PPP)[7] to replace the PPP Decree and Decree 30. The Proposed Law on PPP

1 "Vietnam needs private sector to help fund infrastructure", *The Financial Times*, 19 July 2017. Available at: <https://www.ft.com/content/8b3ad6ea-54db-11e7-80b6-9bfa4c1f83d2> accessed on 24 January 2018; "Meeting Asia's Infrastructure Needs", *Asian Development Bank*, 2017. Available at: <https://www.adb.org/publications/asia-infrastructure-needs> accessed on 24 January 2018.

2 "FDI needed in infrastructure development", *Vietnam Investment Review*, 21 November 2017. Available at: <http://www.vir.com.vn/fdi-needed-in-infrastructure-development.html> accessed on 24 January 2018.

3 "PPP law to be drafted in 2018", *Vietnam Investment Review*, 18 November 2017. Available at: <http://www.vir.com.vn/ppp-law-to-be-drafted-in-2018.html> accessed on 24 January 2018.

4 "PPP regulations to be revised", *Vietnam Law Magazine*, 24 July 2017. Available at: <http://vietnamlawmagazine.vn/ppp-regulations-to-be-revised-5930.html> accessed on 24 January 2018.

5 See in particular our comments in relation to the Law on Land, in Section III below.

6 We refer to the Draft PPP Decree published on the 17th October 2017, with the understanding that the Draft PPP Decree has not been finalised and the provisions as reviewed by the Legal SC are subject to further amendments.

7 Note that the proposal is in its early stages and currently no draft text has been made public for comments.

is expected to be submitted to the Government and the National Assembly in late 2018[8]. Although a comprehensive law on PPP is to be welcomed and the Proposed Law on PPP may serve to consolidate the current disparate legislation, it is not clear how the timing of the issuance of the Proposed Law on PPP would co-exist with the timing of the issuance of the Draft Decree on PPP. The Draft Decree on PPP might therefore become redundant in a short space of time, which may well result in little progress being made in furthering concrete projects under this piece of legislation as the pending Proposed Law on PPP would create uncertainty among investors.

In terms of practical reliance on PPP legislation by investors, over the course of the past 20 years, there has been some limited success in implementing a handful of power projects under previously existing BOT regimes.[9] However, successful private investment in the public infrastructure sector has been the exception rather than the rule, particularly in the case of private investment in PPP form.

Outside the handful of successful foreign invested large scale BOT power plants, the few reported cases of such BOT or PPP investments are usually implemented under relatively basic project contracts and arrangements with the State that, while acceptable to the local market, are insufficient in terms of risk allocation and legal protections to form the basis of significant foreign cross-border investment and financing.

Up until now, due to difficulties with the existing PPP regime, investors, and particularly foreign private investors, have, in several cases, simply either (i) relied on constituting an investment project under the Law on Investment or (ii) implemented Build–Transfer (BT) projects, whereby the construction of public infrastructure, most often expressways, is rewarded by the State granting the investor rights to implement a private project, usually for urban development or real estate development.[10]

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

- Developing a pipeline of visible projects;
- Improving the capacity and coordination amongst relevant Government agencies; and
- Streamlining, and, where necessary, moving towards the practical implementation of the detailed regulations on PPP program in Vietnam.

I. DEVELOPING A PIPELINE OF VISIBLE PROJECTS

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

Issue description

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

Decision 631/QD-TTg of the Prime Minister dated 29 April 2014 (Decision 631), which lists 127 national projects

8 "PPP law to be drafted in 2018", *Vietnam Net Bridge*, 19 November 2017. Available at: <http://english.vietnamnet.vn/fms/business/190572/ppp-law-to-be-drafted-in-2018.html> accessed on 24 January 2018.

9 Since the date of the PPP Decree, two large-scale, Malaysian investor-led coal-fired power plants, Duyen Hai 2 and Hai Duong, have achieved financial close and commenced construction. Their investment and financing arrangements, however, were well under way before the PPP Decree was adopted; and they are considered 'legacy' projects rather than the direct result of the issuance of the PPP Decree.

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

11 The Whitebook, *EuroCham*, 2017. Chapter 8: Public Private Partnerships.

seeking foreign investment including around 35 to be developed under the PPP regime, has not been amended in almost four years to include an updated list of PPP projects based on further developed investment criteria. While certain important projects or categories of projects do feature in sectoral master plans, such as the Power Development Master Plan issued in March 2016[12], a comprehensive list of national and regional projects inviting foreign investment and including details such as the proposed form of the project, the amount and form of the State's contribution, and any other incentives available to investors, would shed some light on the Government's priorities, and would be a positive step conducive to a successful Government-led PPP program.

Currently, the lack of clarity regarding available projects and the regulations pertaining to them risks causing a project bottleneck while infrastructure investment in PPP format becomes more critical where projects cannot be fully supported by State funding.

For example, in the healthcare sector, despite annual spending of USD5 to 6 billion – equivalent to around 5% to 6% of the country's GDP – State spending is still insufficient to meet increasing demand. The Department of Finance and Planning under Ministry of Health (MOH) estimates that around VND65 trillion (USD3 billion) is needed for the development and quality improvement of this sector, including for medical training, infrastructure renovation and overall restructuring.[13] The Government is now seeking various sources of funding, with PPP apparently being a privileged option. However, there is little clear and practical guidance about which projects will be prioritised as a "first in type" in this sector (and others) and the support available from the Government (such as assurances regarding revenue streams and incentives). This may require a sector-oriented approach including sector-specific regulations. In addition, the Department of Planning and Investment of Ho Chi Minh City announced in June 2017 that the city will call for 130 projects in the form of PPP, adding to the 153 PPP projects apparently being implemented or having been completed in the locality[14], and such regional level projects would also benefit from prioritisation and a systematic approach to the market if they are to attract capital from foreign investors.

Another helpful improvement would be to clarify regulations regarding unsolicited proposals. Although unsolicited projects are permitted by Vietnamese legislation, to date no such projects have been publicly reported as having been accepted and the legal aspects of the process are still largely untested. One of the main restrictions is that projects included in Decision 631 would not appear to qualify for being proposed on an unsolicited basis, although the regulations are not entirely clear. It also remains unclear whether the law prohibits an investor from proposing the form of investor selection as part of its project proposal. While a move away from direct appointment is welcomed, objective criteria where this might be permitted would be helpful. It seems that Decree 30 currently requires the project to have the objective of protecting national sovereignty, national borders or islands. The provision is not however clear and leaves the ultimate decision on selection of the project to the Prime Minister.

Clarifications are also needed in relation to the regime for converting State-funded projects into PPP form, if existing brownfield State-run projects are to attract outside investment, liberating funds for the State to undertake new greenfield investments. While the process for conversion has broadly been set out in Circular 06/2016/TT-BKHDT of Ministry of Planning and Investment dated 28 June 2016 guiding Decree 15/2015/ND-CP (Circular 06), its provisions remain new and untested. In particular, the application of Circular 06 relates to "projects currently being implemented by funds sourced from State capital", however the scope of this requirement is unclear, as the definition does not explicitly include projects where construction has not commenced. Clarifications are therefore necessary if investors are to have visibility of the State-funded projects that are eligible for investment under this regime and it would be helpful to see this potential mechanism actually implemented through one or more test projects.

The Project Development Facility (PDF), a facility sponsored by the Asian Development Bank and Agence Française de Développement to assist the authorised State bodies in preparing and assessing potential PPPs may go some way towards addressing these issues. The PDF will be administered by MPI, which is currently drafting a joint Circular together with MOF providing guidance for management of the PDF. In July 2017, the Deputy Prime Minister and Head of the Steering Committee assigned MPI, in coordination with other Ministries, sectors and

12 Decision 428/QD-TTg dated 18 March 2016 of the Prime Minister approving master plan on the national electricity development in the period of 2011 to 2020 with vision to 2030.

13 "Vietnam badly needs private investment for healthcare", *The Saigon Times*, 27 May 2010. Available at: <http://english.thesaigontimes.vn/10522/Vietnambadly-needs-private-investment-for-healthcare.html> accessed on 24 January 2018.

14 "HCM City to call for PPP investment in 130 projects", *Vietnam Net Bridge*, 15 June 2017. Available at: <http://english.vietnamnet.vn/fms/business/180330/hcm-city-to-call-for-ppp-investment-in-130-projects.html> accessed on 24 January 2018.

localities, to prioritise projects within the scope of the PDF.[15] However, there is yet no news on whether the PDF will be launched whether locally or nationally in the near future, although in March 2017 the Ho Chi Minh City People's Committee approved the use of the PDF in principle for PPP projects in the city.[16]

Potential gains/concerns for Vietnam

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

Recommendations:

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

II. IMPROVE CAPACITY AND COORDINATION AMONGST GOVERNMENT AGENCIES

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

Issue description

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

This issue is compounded by the fact that although BOT, BT and BTO regimes have been in place for nearly 20 years, the legal framework for carrying out PPP projects is not yet fully developed. The PPP Decree, in particular, does not fully address a number of key risk allocation and commercial issues (including, for example, assurances regarding the certainty and quantum of revenues, change in law and convertibility risk) and also fails to provide detailed procedures for contract/project assignment rights (including lender step-in) resulting in uncertainty for the implementing authorities and, in turn, delay in project contract conclusion and practical project implementation. There are also only very limited precedents of financed and completed privately invested projects. The Government authorities, therefore, often do not have sufficient legal and practical guidance to smoothly manage the implementation of projects, particularly outside the conventional power sector.

It appears that there is often some confusion on the side of authorities discussing projects with foreign investors between the traditional public investment and the PPP regime. The former focuses more on input elements

15 "PPP regulations to be revised", *Vietnam Law Magazine*, 24 July 2017. Available at: <http://vietnamlawmagazine.vn/ppp-regulations-to-be-revised-5930.html> accessed on 24 January 2018.

16 "HCMC to set up the PDF fund for the development of PPP projects", *Vietnam Biz*, 31 May 2017. Available at: <http://vietnambiz.vn/tp-hcm-lap-quy-pdf-de-phat-trien-cac-du-an-ppp-22719.html> accessed on 24 January 2018.

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

Finally, the lack of coordination by Government and amongst related authorities has also caused confusion for investors. Although the PPP Decree contemplates a centrally monitored program for managing PPP projects, there is work to be done to unify the practice of central and provincial Government authorities. Different industry sectors under separate authorities are beginning to develop differing PPP investment practices. Provincial governments, especially in more remote provinces, continue to be left outside the reform process. The Government has made some effort to reduce this problem by instructing the Ministries to issue various implementing Circulars and organising numerous conferences and seminars to strengthen understanding and form a consistent approach among authorities. In particular, Ministries have been requested by the Deputy Prime Minister to review and complete the legal system for BOT and other PPP contracts, including in relation to the scale, investment cost, and toll collection modalities of projects in the transportation sector.[17] The Government has also been tasked through Resolution 437[18] to improve the investment and operation of BOT contracts in the transportation sector, following the public outcry against the misplacement of road toll stations in various provinces.[19]

Potential gains/concerns for Vietnam

The institutional and practical capacity and coordination issue will, in our view, outside the commercial and economic realities of individual PPP projects, continue to be the single most important factor reducing the competitiveness of Vietnam's PPP program. It will continue to cause delay and it will increase costs for projects when compared with projects in other jurisdictions, including in the Association of South East Asian Nations (ASEAN), potentially resulting in a loss of investor patience and interest in the Vietnamese PPP program. Given the robust PPP program in some other markets in Southeast Asia (such as Thailand, Indonesia and the Philippines), while recognising other difficulties may exist in those jurisdictions which enhances Vietnam's position, failing to timely address this issue will make it even more difficult for Vietnam to develop a competitive and visible project pipeline. We understand, however, that work is being undertaken on some of these aspects with some of Vietnam's development institutions and this is encouraging.

Recommendations:

- Continue to organise regular and quality workshops and capacity building sessions for relevant Government authorities, especially officials at provincial levels. Updated legislation, including the Draft Decree and the Proposed Law on PPP, should be developed in consultation with relevant Government authorities (as well as outside stakeholders), and the Government should organise capacity building sessions centered around the new legislation at an appropriate time to ensure that it is implemented by authorities in a cohesive manner;
- Continue to develop implementing regulations as well as project manuals to assist the authorised State bodies in carrying out projects;
- Develop (with the help of international consultants with experience in other markets) sets of approved bidding documents, including project contracts containing internationally acceptable risk allocation models as a basis for bidding to reduce the potential for delay;
- Bring in tangible projects in line with international best practice to provide the authorised State bodies with hands-on experience; and

17 "Deputy PM urges ministries to review all BOT projects", *The Saigon Times*, 17 October 2017. Available at: <http://english.thesaigontimes.vn/56611/Deputy-PM-urges-ministries-to-review-all-BOT-projects.html> accessed on 24 January 2018.

18 Resolution 437/NQ-UBTVQH14 of Standing Committee of National Assembly dated 21 October 2017 tasking the Government with improving the legal framework and policies for investment in and operation of infrastructure projects in the build-operate-transfer (BOT) form.

19 "Government tasked with improving efficiency of BOT projects", *The Saigon Times*, 27 October 2017. Available at: <http://english.thesaigontimes.vn/56783/Government-tasked-with-improving-efficiency-of-BOT-projects.html> accessed on 24 January 2018.

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

III. RATIONALISING DETAILED IMPLEMENTING REGULATIONS

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

Issue description

The Government's recent efforts in rationalising the PPP framework, notably through the issuance of the PPP Decree and Decree 30, have brought further consistency and improved investment conditions. Notwithstanding these efforts, the overlap of existing regulations remains a major obstacle to the sound development of PPP projects.

Foreign investors in PPP projects need to comply with a large set of regulations, including the Law 83/2015/QH13 of the National Assembly dated 15 June 2015 on the State Budget, the Law 49/2014/QH13 dated 18 June 2014 on Public Investment, the Law 68/2014/QH13 dated 26 November 2014 on Enterprises, the Law 45/2013/QH13 dated 29 November 2013 on Land, and the Law 50/2014/QH13 dated 18 June 2014 on Construction, along with their guiding Decrees and Circulars. Cross references between these pieces of legislation is bound to induce inconsistencies, although MPI has informally confirmed that the Proposed Law on PPP will remove irrelevant and unnecessary references to Law on Public Investment.

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

Foreign exchange considerations also continue to affect the bankability of PPP projects in Vietnam from the perspective of investors relying on foreign lending. The Government guarantee of foreign exchange rates is a central issue for investors (and their foreign lenders) seeking to remit capital overseas. The PPP Decree does provide for the Government guarantee of foreign exchange rates for three categories of projects, including projects for the construction of infrastructure within the investment programs of the Government. However, no clear guidance exists regarding the ratio of the foreign exchange rates guaranteed by the State. Unlike the Official Letter 1604/TTg-KTN dated 12 September 2011 under the previous legislation related to BOT projects[20], which limited the guarantee for thermal BOT power projects, the PPP Decree has not yet benefited from clearer regulations. Guiding documents are still awaited, but the absence of resolution of this issue is a brake to further foreign currency development in the infrastructure sector.

In addition to the superposition of legal texts, the lack of guidance may also affect the future development of PPP projects. The establishment of Viability Gap Funding (VGF) under the PPP Decree marked an encouraging step forward for foreign participants in the PPP market. Despite suggestions that VGF of up to USD1 billion will be made available to support non-viable projects, detailed guidance on the management of and eligibility for VGF has yet to be issued. MPI has, however, affirmed that it has conducted research on VGF with the intention of issuing a separate Circular (although no timeframe has been specified).

20 In particular Decree 1082009/ND-CP dated 27 November 2009 of the Government on investments in BOT, BTO and BT models.

The upcoming legal framework on PPP

In July 2017, MPI announced a proposal for the Proposed Law on PPP, and an outline was submitted to various Ministries, branches of Government and local authorities for their opinions and recommendations in order to remedy the overlapping contents of existing regulations. MPI is also seeking to update the PPP Decree and Decree 30[21], including by way of the Draft Decree.

No draft text of the Proposed Law on PPP has been released for comment and the proposal is in its early stages, meaning that there is currently little visibility of the issues that the law might eventually address. However, in principle, a comprehensive Law on PPP is to be welcomed as an opportunity to consolidate and clarify, and, where necessary, complete the existing regulations in a cohesive framework. MPI is reportedly planning on submitting a draft of the Proposed Law on PPP to the National Assembly in late 2018.[22]

One specific issue that has been mooted within the context of the Proposed Law on PPP includes removing the requirement for foreign investors to obtain an Investment Registration Certificate (IRC)[23] for PPP projects. Although this could simplify the procedural aspect of PPP projects, the practicability of such a change is questionable in the context of the wider foreign investment regime, notably in respect of the recording of investment incentives for PPP projects.

Similarly, while the latest text of the Draft Decree offers some clarifications to current regulations (notably in relation to the proposal and selection of projects to be developed in Operation and Maintenance (O&M) form, and to acts which are prohibited in the context of PPP projects (including various forms of fraud)), the draft includes provisions – or fails to address issues – that may affect the bankability of PPP projects, making it difficult to attract financing from foreign investors and lenders. Most critically, the scope of any backstopping of revenue flows (minimum revenue guarantees) and the implementation of a VGF regime are not covered.

In particular, the current text of the Draft Decree envisages:

› prohibiting investors assigning their rights under a project contract until two years after the completion of construction works, which would prevent investors selling down equity before raising financing for the construction phase, and could also prevent the transfer of interests to lenders, thereby severely limiting their step-in rights;

› an increase of the minimum ratio of equity capital to be injected by investors to either 15% or 20% of a project's total investment capital, depending on the size and importance of the project, which may discourage investors by effectively reducing potential profit margins, particularly if subordinated shareholder loans are not included within the "equity" figure. Relatedly, the Law on Enterprises requires that charter capital of a project company must be fully contributed within 90 days after the company's Enterprise Registration Certificate (ERC) is issued, and licences and approvals required for the project may be delayed if the capital is not paid up in a timely manner. For large-scale projects, the amount of equity capital can be substantial, and therefore, although there can be contractual work-arounds, the 90-day requirement can be problematic as it does not reflect the funding requirements of a typical long term infrastructure project;

› requiring a bidding process to select an investor for projects requiring "new, specialised or complex technology", while it remains unclear how a project would be assessed to fall into that category, or how the bidding process would be implemented where an investor proposes using such technology; and

› including a pre-condition for implementing a project in PPP form that the project would need to use "project facilities, products and services on a large scale", without setting out any further details as to how these criteria should be interpreted, which could lead to issues in determining whether the condition is satisfied for a given project.

These issues should be addressed where possible in the Draft Decree if it is to bring in, when enacted, positive changes to the PPP regime which would facilitate and encourage foreign investment. We would also generally highlight that the Draft Decree contains cross references to other relevant laws, in particular the Law on Public

21 "The "kick" laws are preventing PPP investment", *Tin Tuc Phap Luat*, 25 July 2017. Available at: <https://thuvienphapluat.vn/tintuc/vn/thoi-su-phap-luat-binh-luan-gop-y//17294/luat-da-nhau-dang-can-dau-tu-ppp> accessed on 24 January 2018.

22 "PPP law to be drafted in 2018", *Vietnam Net Bridge*, 19 November 2017. Available at: <http://english.vietnamnet.vn/fms/business/190572/ppp-law-to-be-drafted-in-2018.html> accessed on 24 January 2018.

23 The IRC is a registration certificate required of foreign investors to establish a new company in Vietnam, whether alone or with a Vietnamese partner.

Investment, which are often unclear or unhelpful, and any such referrals to other legislation should be reviewed carefully. We understand that the Government is seeking the opinions of stakeholders on the Draft Decree, which is a welcome step[24], and changes to its provisions may indeed be expected before its adoption - although it is currently unclear when this might be.

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

Potential gains/concerns for Vietnam

The existing and proposed legal regulations on PPP demonstrate a concerted effort by the Government to update and clarify the PPP framework over recent years. However, issues persist which limit the attractiveness of PPP projects to foreign investors, including lack of clarity of existing regulations and conflict with other legislative regimes that serve to undermine incentives for PPP investors. The Draft Decree and the Proposed Law on PPP should aim to address these issues. Care should also be taken to avoid introducing further conditions or limitations that may affect foreign investors' appetite, as cohesive and tested laws and regulations that comply with international norms would lay a solid framework upon which to convert foreign interest in PPP projects to a steady stream of investment in the coming years.

Recommendations:

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

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24 Indeed, these issues have previously been raised in more detail in a letter from EuroCham's Legal Sector Committee to MPI dated 5 July 2017.

CHAPTER 10 TAXATION

OVERVIEW

The EuroCham Taxation and Transfer Pricing Sector Committee continues to recognise the many positive developments in relation to Vietnam's tax laws and regulations.

We acknowledge and appreciate the fact that certain key issues raised by us in the 2017 Whitebook have been fully or partially addressed. Among others is the proposal for fully expanding the creditable VAT which is not refundable under the draft amendment to a number of tax laws.

As well as positive developments in the tax laws, there have been reductions in the time it takes taxpayers to comply with their tax obligations. We also welcome the efforts of Government and the relevant competent authorities in reviewing and updating the tax regulations. Specifically, the issuance of Decree 20/2017/ND-CP and Circular 41/2017/TT-BTC dated 24 February 2017 and 28 April 2017, respectively, in providing guidance on transfer pricing, including provisions reflecting the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, evidences Vietnam's commitment towards transparency and global integration.

We nevertheless observe that the practical implementation of the regulations in general continues to be challenging. A narrow interpretation of what qualifies as comparable companies is a common issue arising on transfer pricing audit and we raise a particular concern in relation to this.

Taxation on capital gains in relation to internal restructuring is one of the unclear areas leading to inconsistent tax treatment in practice which we discuss more specifically in this year's Whitebook.

Another area that is challenging is the application of tax treaties. While we have also raised this previously, important cases involving EuroCham members over the past year have reinforced the fact that practical implementation of the benefits under tax treaties is increasingly difficult.

VAT zero rating on exported services is an issue that has been in existence for some time. While we are recommending that there is a general clarification in interpretation to allow more exported services to be VAT zero rated, in practice, a specific situation we are concerned with is exported services which relate to goods that are exported, for example sourcing and quality assurance.

Since it is a stated objective of the Government to encourage the export sector, we consider that facilitating and encouraging the goods export industry would significantly benefit Vietnam, not only the exporters of services, by confirming the application of VAT zero rating for exported services in relation to exported goods. As new Free Trade Agreements (FTAs) have and will soon become effective and new investors are considering Vietnam as a location for their export businesses we would recommend this is clarified as soon as possible.

I. CAPITAL GAINS TAX (CGT) IN CASES OF INTERNAL RESTRUCTURING

Relevant Ministries: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), General Department of Taxation (GDT), State Auditor (SA).

Issue description

Current Corporate Income Tax (CIT) regulations state that gains from transfer of capital will be taxed at the standard CIT rate – 20% from 2016 onwards[1]. However, the regulation is silent with respect to cases of internal restructuring amongst companies in the same group.

In the past, provincial and central tax authorities issued official letters to specific taxpayers confirming that internal restructuring by transferring capital amongst companies in the same group could not be subject to Capital Gains Tax (CGT) in Vietnam. However, we have recently observed that the tax authority has sought to impose CGT for cases that are purely internal restructuring in a manner similar to the transfer of capital. The fact that the sale proceeds as agreed in the capital transfer agreement are equal to the capital contributed in cases of internal restructuring could also be challenged by the tax authority on the basis that it is not arm's length, even though there is no economic gain to the group.

Potential gains/concerns for Vietnam

Internal restructuring is a common activity in multinational companies. By its nature, it is a re-organisation of the legal, ownership, operational or other structures of a company for the purpose of more efficient or centralised internal management. It is not beneficial for Vietnamese operations to be left out of a global multi-national group re-organisation due to concerns about potential tax liabilities. Therefore, the change in ownership of a Vietnamese-owned direct holding company amongst companies in the same group due to internal restructuring should not be considered as capital transfer on which CGT is imposed.

Recommendations:

We recommend that Ministry of Finance (MOF) and General Department of Taxation (GDT), when developing taxation mechanisms for CGT, consider not imposing CGT in cases of internal restructuring and/or provide a CGT exemption mechanism on internal re-structuring activities.

II. VALUE ADDED TAX (VAT)

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

Issue description

1. Application of zero rating VAT on export services

Under Circular 219/2013/TT-BTC of Ministry of Finance dated 31 December 2013 guiding on Law on VAT (Circular 219), exported services are entitled to 0% VAT. The two conditions for exported services to be entitled to 0% VAT are that the services are (i) directly provided to overseas organisations or individuals and (ii) consumed outside of Vietnam.

There is currently no further definition of condition (i) under the current regulations. It is commonly understood that as long as the contracting party is an offshore entity, this condition is logically met. However, condition (ii) is more problematic and less clear, given that it is a subjective assessment. Indeed, there is no specific definition of 'consumption outside Vietnam' under the VAT regulations, and this is therefore dependent on the interpretations of different tax authorities or even individual tax officers.

1 Article 11 of Circular 78/2014/TT-BTC of Ministry of Finance dated 18 June 2014 guiding the implementation of the Government's Decree 218/2013/ND-CP of 26 December, 2013 detailing and guiding the implementation of the Law on Corporate Income Tax which has been amended from time to time.

2. Possibility of offsetting tax overpayments against outstanding tax

According to Circular 156/2013/TT-BTC of Ministry of Finance[2] taxpayers are allowed to offset an overpaid tax amount against outstanding tax, late payment interest or fines of the same tax or of the tax of the same sub-items. According to Law 106/2016/QH13[3], effective from 1 July 2016, creditable input VAT is no longer allowed to be refunded. Instead, it is required to be carried forward to subsequent periods, except in certain specific cases.

Potential gains/concerns for Vietnam

Application of zero rating VAT on export services: VAT for export services has been one of the most problematic tax areas in Vietnam. In many cases where services are provided to overseas entities, local tax authorities have argued that the services are consumed in Vietnam on the basis that they are rendered inside Vietnam and therefore deny the application of 0% VAT rate. As a consequence, local suppliers are often hesitant to apply 0% VAT and instead charge 10% VAT. In practice, taxpayers are left in the situation of having to seek a ruling to confirm the position. However, such rulings, in our experience, take longer to be issued as the internal policy of the authorities appears not to have been settled.

Possibility of offsetting tax overpayments against outstanding tax: with large amounts of non-refundable input VAT, which are not allowed to be offset against other tax payable, companies' cash flows are significantly impacted. Furthermore, large amounts of refundable VAT may lead to cash flow issues in the State Budget and, as a consequence, the VAT refund process will become even more troublesome for companies.

Recommendations:

- We recommend a broader interpretation of 'overseas consumption' to allow more cases to qualify for 0% VAT, and that a far clearer definition be specified to give service providers the confidence to apply the 0% rate. This would help services be more competitive from a commercial perspective and thus encourage export activities in the service sector;
- We also wish to obtain a specific written confirmation that services provided in relation to goods that are exported are subject to 0% VAT, which would support the growth of goods-exporting industries; and
- We recommend that creditable tax are allowed to be offset against outstanding tax, including other tax types. Similarly, we suggest that the regulations allow companies to choose to claim back refundable tax in cash, or offset it against tax payables of all types.

III. THE APPLICATION OF TAX TREATIES

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

Issue description

Claiming of treaty benefits: Vietnam has a very broad tax treaty network, being a signatory of 77 treaties.[4] Generally, income tax could be exempted or reduced under the relevant tax treaties between Vietnam and other countries if stipulated conditions are satisfied. Tax treaty benefits, however, do not apply automatically in Vietnam. Taxpayers must self-assess their eligibility, and if tax treaty benefits are available, tax treaty notification must be submitted to the local tax authorities, together with supporting documents. However, tax authorities do not issue a confirmation of tax treaty benefit entitlement upon the receipt of the tax treaty notification dossier.

In practice, this often means that Vietnamese authorities withhold the tax as they are not willing to accept the

2 Circular 156/2013/TT-BTC of Ministry of Finance dated 6 November 2013 providing guidance on some articles of the Law on Tax Administration, the law on the Amendments to the Law on Tax Administration, and the Government's Decree 83/2013/ND-CP

3 Law 106/2016/QH13 of National Assembly dated 6 April 2016 amending some articles of the Law on Value-added Tax, the Law on Special Excise Duty and the Law on Tax Administration.

4 Source: The list of Tax treaties signed by Vietnam is available at the website of General Department of Tax at: <http://www.gdt.gov.vn/wps/wcm/connect/gdt+content/sa_gdt/tqt/hdt/6d83e8ba-c39e-4c83-9a4e-893b292db7f2> last accessed 14 December 2017

uncertainty of whether or not the treaty relief applies, and potentially be responsible for paying the tax. This cancels out the application of treaties in Vietnam. Furthermore, overseas tax authorities usually do not grant foreign companies a tax credit when they consider that relief should technically be available under a treaty, thus giving rise to double taxation.

Potential gains/concerns for Vietnam

The entitlement to tax treaty benefits is usually reviewed during a later tax audit, in which additional information, explanation and documents may be requested. However, these are difficult to locate after years have passed. Furthermore, if the tax treaty entitlements are refused, tax would be reassessed, together with tax penalty and late payment interest. This will usually be a very large amount, often exceeding the additional tax assessed.

Prudently, some companies choose to pay tax in advance and claim a refund later, within the limitation of 3 years. However, in practice the tax refund process is difficult and time-consuming.

Recommendations:

We strongly recommend tax treaty notification dossiers be reviewed upon receipt by local tax authorities. Further requests or issues should be notified in a specific timeframe, for example within 1-3 months. If there are no issues raised within the set timeframe, this should be considered as acceptance by the taxpayer. This would enhance taxpayers' full compliance with Vietnamese regulations, protect its tax treaty benefits and demonstrate Vietnam's commitment to the mutual application of tax treaties and the avoidance of double taxation.

IV. THE USE OF COMPARABLE COMPANIES IN TRANSFER PRICING AUDITS

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

Issue description

Vietnam's growing economy is largely dependent on inbound investment, with a very large percentage of Multi-National Enterprises (MNCs) amongst the taxpayers. Most MNEs have related-party transactions which are under the purview of Transfer Pricing (TP) regulations in Vietnam. These are covered under Circular 66/2010/TT-BTC dated 22 April 2010 up to 30 April 2016 (Circular 66); Decree 20/2017/ND-CP dated 24 February 2017 guiding on tax management on transfer pricing in enterprises (Decree 20); and Circular 41/2017/ND-CP dated 28 April 2017 guiding the implementation of Decree 20 (Circular 41).

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

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

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

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

Recommendations:

- With the introduction of Decree 20 and the new TP regulations, we would ask that the tax authorities adopt a more forward-looking approach. Decree 20 is now in line with internationally accepted TP regulations and the administration of the law should also be based on international standards. The United Nations (UN) Practical Manual on Transfer Pricing and the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines both caution against the use of secret comparables for transfer pricing comparability purposes.
- Tax authorities should give due consideration to the analysis undertaken by the taxpayer. Challenges should be based on the merits and features of the taxpayer's comparables and adequate rationale should be provided for rejecting their comparable companies. If comparables are rejected, authorities should propose a better set based on the same database or another public database, rather than resorting to data which is not accessible to the taxpayer.

If the above matters are solved, the results would create a level playing field for both involved parties. They would create a conducive environment for taxpayers to encourage investment and ensure their business continuity in Vietnam while allowing the Government to protect its tax base. A scientific approach to this issue would be a welcome development for MNEs operating in Vietnam and will also increase the overall level of compliance.

ACKNOWLEDGEMENTS

EuroCham Taxation and Transfer Pricing Sector Committee

CHAPTER 11 **TRANSPORTATION AND LOGISTICS**

OVERVIEW

The Transportation & Logistics Sector Committee was established in 2009. Our role is to provide an advocacy forum for our members in the transportation and logistics sector (including shipping lines, airlines, freight forwarders, logistics service providers, air express operators, warehouse operators and other companies with related services). The transportation and logistics sector is important for Vietnam's economy. It enables domestic industries to be competitive around the world in their supply chains and also to open future markets for Vietnam, for example as a transportation/transhipment hub.

With its favourable geographic location; large, low-cost and well-qualified labour pool; stable political environment and open approach to foreign direct investment, Vietnam has seen strong growth in its manufacturing sector and corresponding import and export volumes.

I. CUSTOMS

Relevant Government authorities: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), General Department of Vietnam Customs (GDC), Ministry of Transport (MOT), Ministry of Culture, Sport and Tourism (MCST), Ministry of Science and Technology (MOST), Ministry of Agriculture and Rural Development (MARD), Ministry of Information and Communication (MOIC), Ministry of Health (MOH), Ministry of Natural Resources and Environment (MONRE), Ministry of Public Security (MPS), Ministry of Defence (MOD).

Issue description

1. Introducing a modern customs bond system to improve customs clearance

Customs bond guarantees – agreements that importers will pay import duties and taxes – have long been used in countries around the world. Where customs release is separate from the final determination of duties and import taxes, this allows for expedited customs release of goods at the time of clearance. In many countries, special purpose customs bonds are also used for customs bonded warehousing, free-trade zones, inward and outward processing and transit procedures involving bonded transport carriers. They are also used for other trade compliance purposes including goods subject to anti-dumping, countervailing and temporary safeguard measures.

Vietnam's customs procedures involve compliance with numerous additional conditions for customs release beyond payment of duties and import taxes with declarations. These mainly involve non-tariff State management and specialised inspection of goods by up to 12 Ministries or State agencies, depending on the goods being regulated. Customs declaration filing and payment of duties and import taxes alone are not sufficient to obtain customs release of goods. All certificates of testing and conformity to technical standards, permits or licences involving agencies such as MARD, MOIT, MOH, MOT, MOST and others must be obtained and presented to Customs at the time of customs declaration, as a condition of goods being released. In a previous edition of the Whitebook, we suggested that non-tariff Ministries and agencies implement risk management-based procedures but they haven't materialised so far. Therefore, the pre-clearance, transaction-based processes of non-tariff bodies involving repetitive formalities continue to impose long delays and significant cost burdens for importers and exporters.

2. Customs revaluation

In practice, there is significant variation and a lack of transparency in how Customs arrive at their decisions regarding customs valuation, and how the process of revaluation or valuation consultation is conducted. Often, when declared values are questioned, revaluations are based on values held in the Customs' databases or on 80% of online price valuation.

Decree 08/2015/ND-CP dated 21 January 2015 of the Government provides specific provisions and guidance on enforcement of the customs law on customs procedures, examination, supervision and control procedures. Article 22.2 (Decree 08) states: "The database of customs value shall serve as the basis for assessing risks from export and import values". In practice, however, this is not the case. Customs authorities are rejecting the customs declaration value based upon values recorded in their databases but this information is only available to customs officers and is not shared with enterprises who could authenticate it.

Indeed, in many cases, the declarant does not receive any formal notification from customs officials specifying the reasons for or method of revaluation. Nor do they receive an explanation of the basis for revaluation - as stipulated in Circular 39/2015/TT-BTC dated 25 March 2015 of MOF on customs value of imported goods and exported goods (Circular 39).[1]

There are no commercial contracts for goods such as gifts, presents and samples imported through express delivery services, and revaluation and consultation procedures are not specified in the regulations. The procedures for revaluation in these cases are not clear or transparent, and there is no legal basis detailing a specific timeline for revaluation. Article 17.5 of Circular 39 states: "With regard to goods that are imported without sale contract or commercial invoice, customs value is the declared value". In addition to the discount applied to goods, the customs value could be the declared value based on the actual value shown on the purchase invoice. However, customs agencies often do not accept this declared value, and instead require the revaluation to be set on the Customs database or market price, which is not in accordance with the regulations.

Pursuant to the provisions of Article 17.5, Circular 39: "With regard to goods that are imported without sale contract or commercial invoice, customs value is the declared value. If there is evidence proving that the declared value is unconformable, the customs authority shall determine the customs value according to the rules and methods for customs valuation specified in Articles 8 to 12 of this Circular". In our view, the definition of 'unconformable' should be clarified. In practice it is often misinterpreted, leading to an uneven application of revaluation.

3. Customs procedure checkpoints and centralised checkpoints

Express Customs Sub-Departments are not recognised as Import Border Gates. As a result, Customs procedures cannot be performed at Express Customs Sub-Departments for type A11 code[2], the list of goods under Decision 15/2017/QD-TTg dated 12 May 2017 of Prime Minister Nguyen Xuan Phuc on the List of imported goods required to follow customs procedures at the port of entry (Decision 15)[3], temporary import-re-export goods and temporary export for re-import.

Express businesses are required to conduct their clearance activities in one location close to international airports in Hanoi and Ho Chi Minh City, according to Decree 68/2016/ND-CP.[4] Article 36 mandates that warehouse operators must meet specific requirements on location, a minimum warehouse size of 5,000 square metres, specific facilities and equipment, IT systems that are capable of managing imports, exports and inventories, as well as specific requirements for the control of shipments into and out of the warehouse.

Potential gains/concerns for Vietnam

1. Introducing a modern customs bond system to improve customs clearance

The World Trade Organisation Trade Facilitation Agreement (WTO TFA) entered into force on 22 February 2017 and Vietnam must implement the trade facilitation commitments in the agreement. Due to Vietnam's status as a developing country, GDC and State management agencies have identified the following WTO TFA commitments as requiring additional time, receipt of technical assistance, or both from WTO members for implementation:

1 Article 3.1 of Circular 39/2015/TT-BTC dated 25 March 2015 of MOF on customs value of imported goods and exported goods: "Customs declarants shall request the customs authority to make a written notification of dutiable values, basic and methods for customs valuation in case the customs value is determined by the customs authority."

2 Official Letter 2765/TCHQ-GSQL dated 1 April 2015 of General Department of Customs regarding customs procedure codes in VNACCS system, states that: "imports goods for consumption or for sale; goods that are input materials; taxed or tax-free goods imported as assets".

3 Decision 15/2017/QD-TTg dated 12 May 2017 of the Prime Minister Nguyen Xuan Phuc on the List of imported goods required to follow customs procedures at the port of entry.

4 Decree 68/2016/ND-CP dated 1 July 2016 of the Government prescribing the conditions for duty-free business, warehouses, sites for customs clearance, customs inspection and supervision.

- "Pre-Arrival Processing" of imports (Article 7.1);
- "Separation of Release from Final Determination of Duties and Taxes" (Article 7.3);
- "Expedited Shipments" (Article 8);
- "Formalities and Documentation" (Article 10.1);
- "Temporary Admission of Goods and, Inward and Outward Processing" (Article 10.9), and;
- "Freedom of Transit" (Articles 11.6 - 11.10).

Without large-scale legislative and regulatory reforms alongside innovative new compliance tools and procedures, Ministries and agencies will not be able to simplify their procedures and adopt a post-clearance inspection regime. As a result, Vietnam will face serious barriers to implementing high-impact trade facilitation measures and reforms to improve and streamline trade processes. Therefore, enterprises engaged in trade will continue to experience high global trade transaction costs.

The Global Alliance for Trade Facilitation (GATF) has offered to help Vietnam address this issue. GATF is a public-private partnership that includes the World Economic Forum, the International Chamber of Commerce and the Center for International Private Enterprise – part of the U.S. Chamber of Commerce. These institutions have joined with leading global enterprises engaged in international trade and investment to coordinate and provide trade facilitation implementation assistance under Section II of the WTO TFA. These efforts are, in part, supported by the governments of Australia, Canada, Germany, the United Kingdom and the United States of America.

This initiative involves introducing new trade measures in Vietnam and a modern customs bond system to enable the 'conditional customs release of goods'. This project will address the needs of Vietnam's State management agencies for enforceable guarantees of compliance of imports under a post-inspection regime. It will also facilitate the export and transit of goods while fulfilling the demand of enterprises and traders for predictable and efficient trade processes.

2. Customs revaluation

Since the Customs database and suspected cases involving declaration value are not disclosed to traders, their understanding of declarations and the revaluation procedures applied in different customs agencies varies. This leads to various difficulties for enterprises in customs valuation.

Gaps in the regulations specifying the proper basis and procedures for revaluation, alongside their incomplete application in practice, create uncertainty for traders importing goods. This leads to delays during the import process, as these revaluations are almost always conducted pre-clearance instead of post-clearance. This time pressure strengthens the hand of customs officers, leading to the risk of informal payments being expected, offered and accepted. The frequent lack of formal documentation of the revaluation basis in individual cases makes it difficult, if not impossible, for traders to seek redress at higher levels of authorities.

3. Customs procedure checkpoints and centralised checkpoints

The fact that Express Customs Sub-Departments are not recognised as Import Border Gates means that many time-critical shipments cannot be imported or exported via the express mode. For example:

- Temporary import-re-export and export-re-import goods;
- A11 declaration code in VNACCS system (imported goods for consumption and for sale - customs procedures are carried out at sub-department of Customs at the checkpoint)[5]

Express Customs Sub-Departments do not work 24/7 as Customs Border Gates, so many urgent shipments cannot be released outside of working hours.

5 According to the List of Customs Procedure Codes attached to the Official Letter 2765/TCHQ-GSQL dated 1 April 2015 regarding customs procedure codes in VNACCS system issued by the General Department of Customs, Ministry of Finance.

Turning to centralised checkpoints, in practice, according to Decree 68, warehouse operators are only renting their facilities to express companies. These warehouse operators do not trade in express goods and are not responsible for the storage and preservation of goods at a centralised checkpoint, as is the case at other ports and warehouse businesses. Express enterprises operate independently, carry out business services for express goods and have their own management software.

None of the express carriers currently have volumes that justify a warehouse of 5,000 square meters close to an airport. That forces express carriers to use shared warehouses, creating a quasi-monopoly at the airports. This leads to lower operational flexibility and the potential risk for warehouse operators to exploit their position to increase rent and other costs.

The requirement for express enterprises to provide business information such as a Bill of Lading number and Customs declaration form to warehouse operators will create redundancies, delays, costs and conflicts of interest. Currently, at all express business checkpoints, there are Express Customs Sub-Departments that directly manage and carry out customs procedures for enterprises, including goods inspections and supervision in and out of the local area. Express businesses are equipped with a CCTV system as regulated.

Moreover, warehouse operators are required to inspect shipments entering, leaving or remaining inside the warehouse. This adds another level of delay to the processing of highly time-sensitive goods, without adding any additional information or control. We are concerned that commercially sensitive information, including express companies' customer demands, could be shared with warehouse operators who are their direct competitors. One example here is the case of Tan Son Nhat Cargo Services and Forwarding Express (TECS Express). Therefore, it is not appropriate or practical to request express companies to comply with Article 36 of Decree 68 on providing business information to warehouse operators, as the relevant regulations must take commercial considerations into account.

Recommendations:

1. Introducing a modern customs bond system to improve customs clearance

In our view, MOF, GDC, relevant Government authorities and agencies carrying out State management of goods and specialised inspections should consider the GATF initiative for a 'conditional customs release of goods' through a modern customs bond system. This could be done through inter-ministerial coordination procedures led by the Office of Government and new National Committee for Trade Facilitation.

2. Customs revaluation

MOF and GDC should consider including clearer guidance on the occurrences/instances that will result in challenges to declared values at the border point in:

- the draft Decree amending and supplementing Decree 08/2015/ND-CP which provides guidance on the customs procedures, customs supervision and inspection, and
- the draft Circular amending and supplementing Circular 38/2015/TT-BTC which provides specific provisions and guidance on enforcement of the law on customs procedures.

MOF and GDC should clearly communicate the provisions of Circular 39 and Article VII of GATT (1994) to customs officers and ensure that their application is strictly enforced. Specifically, customs officers at the border points should be reminded that the Customs databases are for risk-management only, and that the benchmark values in those databases are to be used only for identifying suspicious transactions, and not used to impose customs value (Article 22 of Circular 39). MOF and GDC should also consider including in the draft Circular amending Circular 38/2015/TT-BTC provisions that will allow declarants to provide further supporting documentation or explanations to support the values declared.

- Regarding the principles of Customs valuation, the customs value at the first import border gate should be determined by applying the 6 methods of Customs valuation in hierarchical order. A legitimate commercial transaction value between buyer and seller should be accepted as the prime basis of valuing goods.
- In cases where Customs authorities dispute the declared values, the customs officer must notify the declarants in writing and in a timely manner the reasoning behind their challenge, supported with documentary evidence,

as well as the methodology applied to determine any revaluation they seek to impose. This is a necessity for risk management and prevention of fraud.

- This information provided by Customs should be clear, transparent and accurate. Customs officers should not use 80% of the online price or other internet-based pricing to determine customs value, as this approach lacks any legal basis.
- For imported goods, the customs value should be the actual price paid or payable at the first imported border gate, subject to required adjustments as stipulated in Circular 39/2015/TT-BTC Articles 13 and 15. Customs officials should understand the concept of import border gate when examining declared values and treatment of required adjustments to determine the customs value.
- For non-commercial imports without sales contracts, MOF and GDC should ensure that express Customs agencies work in accordance with Point 5, Article 17 of Circular 39 to recognise that the declared value is the customs value. Acceptance of the customs value is based on the actual payment value shown on the invoice and purchase receipt. At the same time, MOF and GDC should consider in the draft Circular amending and supplementing Circular 38/2015/TT-BTC provisions that will allow declarants to provide further supporting documentation or explanations to support the values declared where Customs consider the declared value is 'unconformable'.
- To supplement the provisions on the authorisation to determine customs value when the Customs agencies determine the customs value in cases where it can prove that the declared value falls into one of the following categories: Documentation (invoice or contract) is fake; documentation is genuine but the content is fake; the declared value and price on the invoice is not the actual price paid; the declared value does not include additional charges.

3. Customs procedure checkpoints and centralised checkpoints

- For Customs procedure checkpoints, in our view, the Government, MOF and GDC should consider recognising Express Customs Sub-Departments as Import Border Gates. In addition, Express Customs Sub-Departments should be allowed to carry out customs procedures for Form A11 as per existing procedures and goods listed in Decision 15. This content should be included in the draft decree replacing Decree 08/2015/ND-CP.
- Concerning centralised checkpoints, express enterprises should comply with Article 36 of Decree 68/2016/ND-CP (except for the conditions on warehouse size). However, express businesses should not have to provide commercially sensitive business information to the warehouse operators, and should be able to operate their own management software for imports, exports and inventories. They should be able to directly connect to Customs agencies without the need for intermediaries set up by the warehouse operator, such as a landlord.

II. SPECIALISED MANAGEMENT EXEMPTION FOR LOW-VALUE GOODS IMPORTED THROUGH EXPRESS DELIVERY SERVICES

Relevant Government authorities: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), General Department of Vietnam Customs (GDC), Ministry of Transport (MOT), Ministry of Culture, Sport and Tourism (MCST), Ministry of Science and Technology (MOST), Ministry of Agriculture and Rural Development (MARD), Ministry of Information and Communication (MOIC), Ministry of Health (MOH), Ministry of Natural Resources and Environment (MONRE), Ministry of Public Security (MPS), Ministry of Defence (MOD).

Issue description

Low-value imported goods under the de-minimis threshold (VND1 million) as a gift, present or sample sent though an express service still require specialised inspection if these items fall under the category of specialised management. This negates the intended trade facilitation effects for the following goods:

1. Censorship licence (books, calendars, brochures, posters, magazines, hard drives, memory cards and

catalogues) under MCST as regulated in Circular 07/2012/TT-BVHTTDL dated 16 July 2012 of MCST guiding Decree 32/2012/ND-CP dated 12 April 2012 of the Government on management of the export and import of cultural products for non-commercial purposes (Circular 7)[6] and Decree 32/2012/ND-CP dated 12 April 2012 of the Government on management of the export and import of cultural products for non-commercial purposes (Decree 32)[7];

2. Food safety inspection (functional food, milk, vegetable, beer, glass, cups, etc.) under MOH as regulated in Circular 52/2015/TT-BYT dated 21 December 2015 of MOH on state inspection of imported food safety (Circular 52)[8];

3. Quarantine inspection (rice, coffee beans, pepper, egg products, food for shrimp, feed ingredients etc.) under MARD as regulated in Circular 25/2016/TT-BNNPTNT dated 30 June 2016 of MARD on the quarantine of terrestrial animals products (Circular 25).[9]

Potential gains/concerns for Vietnam

These regulations are costly and time consuming for importers who require certificates for low-value goods sent through express delivery services. Customs clearance procedures are delayed, and various Ministries and regulatory agencies have to spend time and resources to check these goods, despite their low possibility of risk or violation. This bottleneck affects the timeline of customs clearance.

On a more positive note, the Government has streamlined and clarified overlapping legislation. Firstly, it promulgated Decision 37/2017/QĐ-TTg dated 17 August 2017 of the Prime Minister on the abolition of Decision 50/QĐ-TTg[10] (Decision 37) effective from 5 October 2017. Secondly, MOH promulgated Decision 3741/QĐ-BYT dated 17 August 2017 of MOH on the abolition of overlapped Decision 818/QĐ-BYT dated 5 March 2017 of MOH on the list of goods subjected to food safety inspection by HS codes (Decision 3741/QĐ-BYT[11]) effective from 17 August 2017. This has been good news for importers related to the specialised inspection of imported goods.

These improvements help all parties involved in trade facilitation speed up Customs clearance procedures and ensure that both enterprises and Government agencies save resources, time and money. These positive steps show that the Government has taken action to improve specialised management and create a favourable environment for businesses to attract more investment.

Recommendations:

In our view, the Government, MOF, GDC and Ministries should not require the specialised management or inspection of low-value imported goods under the threshold of VND1 million sent using express services. We would welcome a specialised inspection exemption to that effect. Moreover, the Government should allow Customs agencies at Express Customs Sub-Departments to perform specialised inspections for low-value goods sent through an express service.

Furthermore, mutual recognition mechanisms should be applied to goods with international brand names already certified by well-known global trademarks. This would reduce the need to apply specialised inspection regulations when these goods are imported to Vietnam.

6 Circular 07/2012/TT-BVHTTDL dated 16 July 2012 of MCST guiding the Government's Decree 32/2012/ND-CP dated 12 April 2012 of the Government on management of the export and import of cultural products for non-commercial purposes.

7 Decree 32/2012/ND-CP dated 12 April 2012 of the Government on management of the export and import of cultural products for non-commercial purposes.

8 Circular 52/2015/TT-BYT dated 21 December 2015 of MOH on state inspection of imported food safety.

9 Circular 25/2016/TT-BNNPTNT dated 30 June 2016 of MARD on the quarantine of terrestrial animals products.

10 Decision50/QĐ-TTg dated 16 July 2012 of the Prime Minister instructed on implementing Decree 32/2012/ND-CP dated 12 April 2012 of the Government on the management of export and import of cultural products without business purpose.

11 Decision 3741/QD-BYT dated 17 August 2017 of MOH on abolishing Decision 818/2007/QD-BYT dated 5 March 2007 of the Minister of Health on promulgating the List of imported goods required to be examined hygiene and food safety by HS codes

III. IMPLEMENTING NATIONAL SINGLE WINDOW (NSW) AND ASEAN SINGLE WINDOW (ASW)

Relevant Government authorities: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), General Department of Vietnam Customs (GDC), Ministry of Transport (MOT), Ministry of Culture, Sport and Tourism (MCST), Ministry of Science and Technology (MOST), Ministry of Agriculture and Rural Development (MARD), Ministry of Information and Communication (MOIC), Ministry of Health (MOH), Ministry of Natural Resources and Environment (MONRE), Ministry of Public Security (MPS), Ministry of Defence (MOD).

Issue description

There has been significant progress in the development and implementation of the National Single Window (NSW) and ASEAN Single Window (ASW) initiatives, including the following new regulations:

- Decision 1899/QD-TTg dated 4 October 2016 of the Prime Minister on the establishment of the National Steering Committee team on NSW & ASW (Decision 1899);
- Decision 2185/QD-TTg dated 14 November 2016 of the Prime Minister on implementing NSW & ASW from 2016 to 2020 (Decision 2185);
- Handbook developed by GDC providing guidance on NSW dated 6 July 2017;
- Directive 27/CT-TTg dated 29 June 2017 on the acceleration of the NSW and ASW implementation (Directive 27);
- From 1 January 2017, GDC and the Hanoi Customs department have implemented the proposal for airport management and supervision under the NSW mechanism;
- On 12 July 2017, Ministry of Finance and the World Bank launched the Vietnam Trade Information Portal (VTIP) with a comprehensive Vietnamese and English repository of import and export regulations and processes.[12]

However, more work remains to be done. Many administrative procedures related to import and export are not yet integrated in the NSW, leading to slow and cumbersome procedures. Examples include:

1. Censorship Licence as regulated in Decree 32/2012/ND-CP;[13]
2. Chemical declaration certificate as regulated in Decree 113/2017/ND-CP dated 9 October 2017 specifying and providing guidelines for implementation of certain articles of the Law on Chemicals (Decree 113);[14]
3. Quality Inspection as regulated in Decision 50/2006/QD-CP TTg dated 7 March 2006 of the Prime Minister on the list of products and goods need to be inspected quality (Decision 50);[15]
4. Import Licence as regulated in Decree 187/2013/ND-CP dated 20 November 2013 of the Government on the implementation of the Commercial Law regarding international goods sale and purchase and goods sale, purchase, processing and transit agency activities with foreign countries (Decree 187).[16]

Ministries are making positive efforts to implement NSW, according to Directive 27/CT-TTg dated 29 June 2017 of the Prime Minister on accelerating the progress and enhancing effectiveness when implementing the NSW, ASW and trade facilitation (Directive 27).[17] More than 328,000 administrative documents were processed in NSW with about 11,000 enterprises to join. Twelve out of 18 Ministries have joined the NSW, and 38 out of 380 administrative

12 Vietnam Trade Portal available at: <http://vietnamtradeportal.com/index.php?r=site/display&id=1269> accessed on 22 December 2017.
13 Decree 32/2012/ND-CP dated 12 April 2012 of the Government on management of the export and import of cultural products for non-commercial purposes.
14 Decree No. 113/2017/ND-CP dated 9 October 2017 specifying and providing guidelines for implementation of certain articles of the Law on Chemicals
15 Decision 50/2006/QD-TTg dated 7 March 2006 of the Prime Minister on the list of products and goods need to be inspected quality.
16 Decree 187/2013/ND-CP dated 20 November 2013 of the Government on the implementation of the Commercial Law regarding international goods sale and purchase and goods sale, purchase, processing and transit agency activities with foreign countries.
17 Directive 27/CT-TTg dated 29 June 2017 of the Prime Minister on accelerating the progress and enhancing effectiveness when implementing the NSW, ASW and trade facilitation.

procedures are processed on the NSW as of June 2017. This rate is quite low compared to the target in Resolution 19/2017/NQ-CP dated 6 February 2017 of the Government on main duties and measures for improving business environment and enhancing national competitiveness in 2017 and orientation towards 2020 (Resolution 19)[18], which includes the following specific targets:

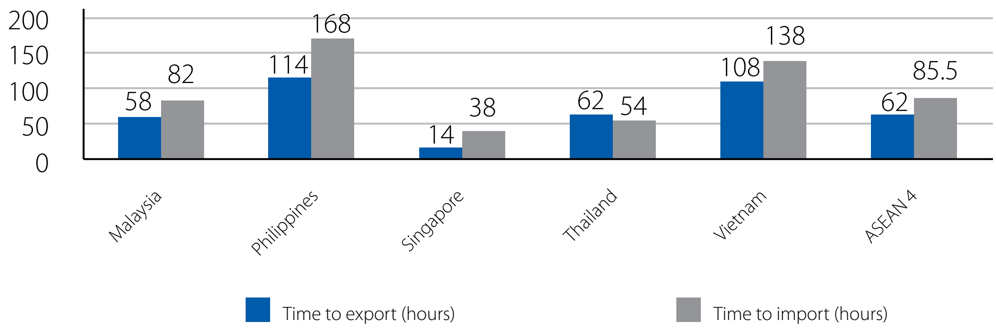
- Implement 100% of the administrative procedures related to State management of import, export and transit goods in NSW with public service level 4 (the highest level in Vietnam which allows users to process payments and receive results online);
- Extend NSW with paperless and simplified procedures for all administrative processes related to cross-border trade and transport;
- Make preparations to communicate and exchange electronic documents with other trading partners outside ASEAN to facilitate cross-border trade and transport logistics; and
- Reduce the number of specialised inspections at Customs clearance from 30-35% to 15% on total of imported and exported goods.

The above statistics show more improvements and greater coordination is required from the Government and related Ministries and agencies. Faster progress in this critical area would allow traders to save time and costs when securing necessary permit licences and certificates.

Potential gains/concerns for Vietnam

Vietnam's time-to-trade is higher than most other countries in the region, and above the ASEAN 4 average, as the graph below shows. More time spent importing and exporting goods increases costs, and research has shown that shortening customs procedures by just one day could save businesses USD1.6 billion a year.

Figure 10: Time to export and import in ASEAN countries



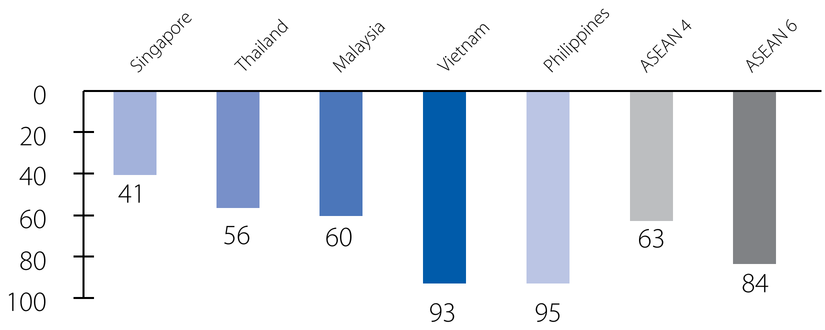
Source: The World Bank, Doing Business 2017

The World Bank measures Trading Across Borders (TAB) and Ease of Doing Business (EoDB) and ranks Vietnam 4th in ASEAN, as the graph below shows. However, Vietnam remains lower than the average of ASEAN 4.[19]

18 Resolution 19/2017/NQ-CP dated 06 February 2017 of the Government on main duties and measures for improving business environment and enhancing national competitiveness in 2017 and orientation towards 2020.

19 "Doing Business 2017", *The World Bank*. Available at <http://www.doingbusiness.org/data/exploretopics/trading-across-borders> accessed on 24 November 2017.

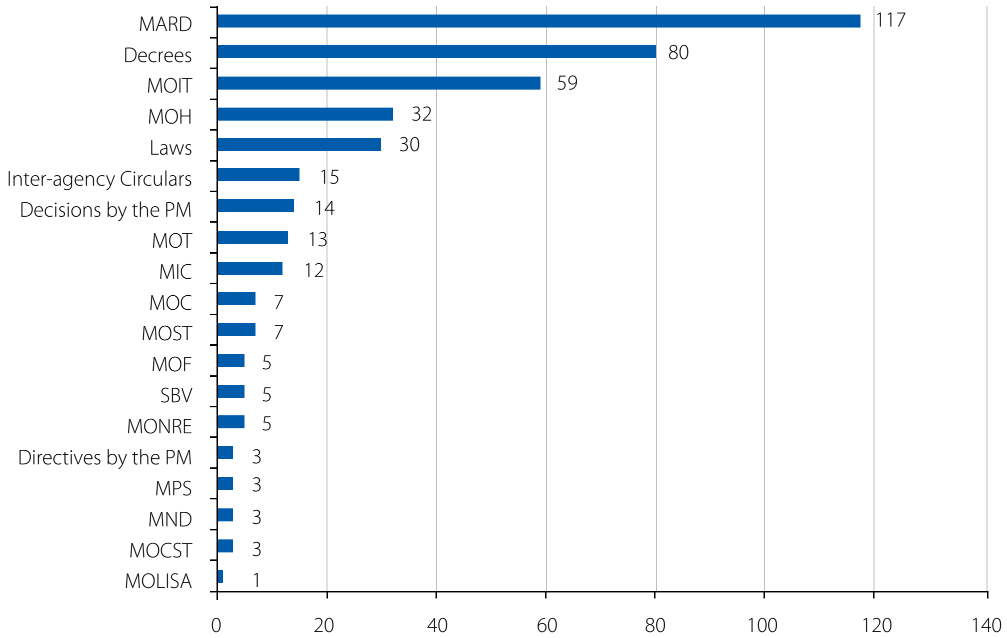
Figure 11: Trading across borders in ASEAN countries



Source: The World Bank, Doing Business 2017

The Specialised Inspection and Management system of legal documentation is large, containing 414 legal documents.[20] However, many regulations are unspecific and unclear which leads to variations in interpretation and application. Regulations do not conform to practical situations or international practice; for instance, administrative procedures for specialised inspection not implemented in the NSW require original documents, and this creates difficulties for traders working with state agencies.

Figure 12: Number of specialised inspection procedures



Source: Central Institute for Economic Management, Trade Facilitation

There is also an issue of overlap in specialised inspection and management. For instance, one good can be managed by several agencies, and no less than 58% of goods go through more than 2 procedures of specialised

20 "Businesses applaud Customs' decision to simplify procedures", Vietnam Net (in nghiêng tên báo), 14 October 2014. Available at: <http://english.vietnamnet.vn/fms/business/114092/businesses-applaud-customs--decision-to-simplify-procedures.html> last accessed on 15 December 2017.

inspection. Some examples include:

- Yogurt and cheese require an animal quarantine and food safety inspection under MARD, MOIT and MOH.
- Plant varieties, bricks, stones and glass require a quality inspection and certification of technical regulation.
- Medical equipment and materials for the production of medicines require import permits and quality control of MOH.
- Fertilizer requires 3 types of management, including an automatic import licence, quality inspection and certification of technical regulation.
- Meat and meat products require animal quarantine, quality inspection and food safety inspection of MARD.
- Food for chickens, pigs, shrimp and fish require an inspection at both the Department of Veterinary Medicine and Department of Fisheries under MOH;
- In many cases (i.e. imports subjected to Quality Control), line Ministries nominate a limited number of authorised testing organisations, causing bottlenecks and monopolies. For example, MOIT assigned QUATEST 1 (in Hanoi) to test engines. This decision forced all engine importers to move their goods to QUATEST 1 for testing, and in the process incur high transportation costs (especially in the South) and a prolonged processing time.

Recommendations:

The Government, Ministries and GDC should accelerate the implementation of all NSW procedures in 2018 for commodities which require a specialised licence under the management of different Ministries as stated in Decision 2185/QD-TTg dated 14 November 2016 of the Prime Minister on approval for master plan of implementing National Single Window and ASEAN Single Window in the period of 2016 – 2020 (Decision 2815),[21] including the following:

- Under MARD: Applying for quarantine of animals and animal products to be imported, issuing licences to import veterinary medicines and issuing licences to import plant genetic resources;
- Under MOH: Importing cosmetics issued with receipt number of template for notification of cosmetic products in Vietnam, issuing licences to import drugs used as samples for registration or study, analysis and survey and issuing licences to import medicinal materials, herbal ingredients without registration numbers and packages in physical contact with medicinal products, and;
- Under MOIT: Declaring chemicals to be imported and importing tobaccos for non-commercial purposes.

Moreover, the requirement for original documentation or original copies should be removed, instead allowing full use of electronic copies so that the entire NSW process can be migrated onto a fast and efficient digital platform with minimal need for subjective human intervention.

The Government should also set clear KPIs for all Ministries to evaluate their performance and progress on NSW and ASW implementation, and penalise those that fail to meet their targets.

ACKNOWLEDGEMENTS

EuroCham Transportation and Logistics Sector Committee

21 Decision 2185/QĐ-TTg dated 14 November 2016 of the Prime Minister on approval for master plan of implementing National Single Window and ASEAN Single Window in the period of 2016 – 2020.

SECTORAL ISSUES

PART THREE

CHAPTER 12 HEALTHCARE FORUM

In light of the importance of the healthcare industry in Vietnam, which includes pharmaceutical manufacturers; medical equipment providers; healthcare practitioners; public, private healthcare establishments and other voluntary services; EuroCham officially established the Healthcare Forum (HCF) in 2016. The Forum's aim is to create a platform for all EuroCham Sector Committees operating in the Healthcare Industry (HI) to discuss, facilitate cooperation, share updates on industry issues and achieve alignment and common interests on issues that improve the health industry in Vietnam.

The EuroCham Sector Committees included in the HCF are: International Quality Generics (IQGx), Medical Devices and Diagnostics (MDD) and Pharma Group (PG).[1] HCF aims to organise information-sharing activities to keep all relevant HI Sector Committees updated on new developments in the industry. Highlights of HCF's activities over the last 12 months include signing a Consensus Framework with stakeholders to promote ethical practices at the APEC Ethics Forum in 2017. Then, in January 2018, HCF attended the Advisory Council for Administrative Procedures Reform (ACAPR) to raise the issues of Decree 54 guiding the Pharma Law and the establishment of legal entities in Vietnam.

I. COMPLIANCE ISSUE

Relevant Ministries: Ministry of Health (MOH), Ministry of Finance (MOF).

Issue description

Doing business with integrity is essential. EuroCham Healthcare Forum (HCF) is dedicated to creating a trusted environment for our members, to discussing our experience on how to promote ethical and compliant business practices, as well as fostering compliance awareness and the implementation of best practice in order to enhance compliance among our members and other key industry players in the local healthcare industry. Some of our recent work is described below:

1. A Consensus Framework has been signed among local stakeholder groups to promote ethical practices

Within the framework of the APEC 2017 summit organised in Vietnam, the Business Ethics Forum for APEC SMEs was held in Hanoi from the 7th to the 8th of September, 2017. The Forum aims to strengthen ethical business practices and increase trusted collaborations among all stakeholders in target sectors, including the medical device and biopharmaceutical sector. As a result of successful agreement in this forum, and in a first for Asia, the Consensus Framework for Ethical Collaboration was signed among healthcare stakeholder groups in Vietnam. These groups include EuroCham Medical Devices and Diagnostics (MDD), EuroCham Pharma Group (PG), EuroCham International Quality Generics (IQGx) Group, Vietnam Medical Devices Association (Vimedas), Vietnam Pharmaceutical Companies Association (VNPCA), Vietnam Medical Association and Vietnam Women Union Association. Under the Consensus Framework, the parties respect and comply with high ethical standards in order to promote fairness, integrity and transparency, and thus enable an efficient development of the capacity and quality of the healthcare system in Vietnam, to best serve patients and in general improve the health of the people of Vietnam.

With this Consensus Framework for Ethical Collaboration, Vietnam follows the success of its APEC counterparts from North and South America, and becomes the first country in Asia to strongly state, with one common voice from all healthcare stakeholders, its commitments to Fairness, Integrity and Transparency in the healthcare industry, in line with the APEC goals.

1 The names of the Sector Committees and their respective chapters are presented in alphabetical order.

2. Medical Devices Industry Code of Conduct

Understanding the issues of risk and unfair competition among industry players, including foreign investment and local enterprises in Vietnam, the Medical Devices Industry Code of Conduct is being built to facilitate ethical interactions between corporate members that develop, manufacture, sell, market or distribute medical technologies in Vietnam and those individuals and entities that use, recommend, purchase or prescribe medical technologies in Vietnam. The spirit of the Code of Conduct shall be focused on: i) strict compliance with the law and regulations in the territory; ii) prioritising people and patient health and safety; and iii) the promotion of scientific and educational activities to bring the best benefits to patients.

Potential gains/concerns for Vietnam

An ethical business environment is one of the greatest concerns for multinational companies, especially when seeking to invest in 'high risk' jurisdictions. We believe that the commitments on high ethical standards shall create an environment in which Vietnam can better attract investments in the field of healthcare with further long-term benefits to the community.

We also expect that what HCF is working on will be an example that encourages other industries to learn from, follow and in turn make their own contribution to build up strong business ethics and compliance in Vietnam.

Recommendations:

Considering the key role of Ministry of Health (MOH) in regulating and leading the development of healthcare in Vietnam, to create a transparent business environment we would recommend MOH support us in promoting ethical collaboration among industry players, particularly:

- To encourage all healthcare sector stakeholders in the stakeholder groups which have signed the Consensus Framework to implement the code of ethics in alignment with the Framework;
- To encourage other stakeholders who have yet to sign the Consensus Framework to commit themselves to ethical collaboration by engaging with the Framework as soon as possible; and
- To support multinational companies who have to follow and implement their international industry code in Vietnam as well as in their communication activities towards Government-related stakeholder groups (e.g. implementation of APACMed measures in 2018).

II. LEGAL CERTAINTY: ENSURING A VIABLE SETUP FOR BUSINESS OPERATIONS AND ENABLING PARTNERSHIPS

Relevant Government authorities: Office of Government (OOG), Ministry of Health (MOH), Drug Administration of Vietnam (DAV), Ministry of Industry and Trade (MOIT), the National Assembly (NA).

Issue description

The Pharmaceutical Law represents a major step towards building a predictable legal framework that encourages both local and foreign investment that ensures a continuous safe supply of high quality drugs for Vietnamese patients.

Prior to the issuance of Decree 54/2017/ND-CP which guides the implementation of the Pharmaceutical Law, and except for early foreign investors, Multinational Pharmaceutical Companies (MNCs) only had the option to be present in Vietnam via Representative Offices or as Foreign Invested Enterprises (FIEs) active in manufacturing or providing warehousing and transportation services in Vietnam.

Pharmaceutical MNCs were looking forward to Decree 54 to enable them to establish an FIE with the ability to import and carry out associated activities as agreed under international treaties (WTO, EVFTA). Through dialogues with the Vietnamese Government, the industry was encouraged by Vietnam's openness for foreign investment and acknowledgment of their critical role in bringing high quality products, investments and partnerships that transfer global knowledge into Vietnam. Therefore, the industry was expecting that Decree 54 would provide the legal certainty and business scope required to accelerate Foreign Direct Investment (FDI) in the pharmaceutical industry, to expand existing operations, and to enable technology transfer activities.

Decree 54/2017/ND-CP, which came into effect on 1 July 2017, does in fact allow importation. However, it also introduces a long list of restricted activities that render an import FIE operationally dysfunctional and puts in jeopardy the business continuity of existing investors providing warehousing and transportation services. Decree 54 includes several protectionist barriers that will impact patient access to quality medicines, foreign investment and trade. To that end, the Decree disables strategic partnership, adds additional cost to the healthcare system, is not patient-centric and is contradictory to Vietnam's prevailing laws and international treaties (WTO, EVFTA), in particular as it relates to investor protection.

It is with this in mind that we highlight the following issues and provide suggestions for a 'win-win-win' solution that will benefit patients, Government and industry:

1. **A viable model for FIEs to operate and partner,** equally relevant for members of the HCF, specifically IQGx and PG members:

› **Scope of activities of FIEs**: The limited activities allowed under Decree 54 (Article 91.10) do not provide companies with the operational foundation, and do not encourage them to establish legal entities in Vietnam with associated rights similar to those in other APAC markets. Companies were planning to expand FDI and existing operations, as well as to partner with local companies on sector development activities that included technology/knowledge transfer projects.

Furthermore, FIE importers under the Decree have insufficient ability to monitor products' circulation in the market to fulfil their responsibilities regarding product quality, pharmacovigilance/patient safety and supply continuity. Moreover, it puts a wedge between the company's product liability (which is associated with the product's integrity throughout the supply chain and its appropriate prescription and use) and the company's ability to avoid any product liability.

› **Establishment of FIEs**: Pharmaceuticals are a conditional business in Vietnam, therefore FIEs must obtain a Certificate of Satisfactory Conditions (CSC), which requires them to lease/build and operate Good Storage Practice-certified warehouses. This creates a potential situation, whereby dozens of companies would need to build/operate their own warehouse, which is inefficient and does not leverage expertise and capacity in the market, thus creating a risk to quality standards.

2. For existing investors licensed to provide warehousing services and transportation in Vietnam:

Decree 54 expands on the definition of 'distribution' beyond the WTO and UN Provisional Central Product Classification (UNCPC), by including regular supply chain activities, such as warehousing services and transportation services. As distribution is reserved for 100%-owned Vietnamese companies, such expansion effectively blocks existing foreign companies who have been in Vietnam for two decades from continuing to provide warehousing and transportation services in the country.

› **From a patient access perspective**, the prohibition of these activities would disrupt supply and impact the safety and quality of medicines.

› **From a business perspective**, this severely limits the operational capabilities of established foreign invested entities, which will have to rely exclusively on local companies. Pharmaceutical companies' contractual decisions are based first and foremost on the ability for supply chain service providers to follow extremely stringent quality, safety, compliance, transparency and financial standards and practices. Serious concerns exist around the availability and capacity of local providers that meet these standards.

› **From an international trade commitment perspective**, the UNCPC definition of pharmaceutical distribution does not include warehousing and transportation services. Thus, the expanded definition of distribution in Decree 54 (article 91.10) is not compliant with the UNCPC and Vietnam's WTO commitments. Hence, it also goes against the intent and therefore the commitments made under the EVFTA.

- Furthermore, rights of existing investors are protected under existing bi- and multilateral trade agreements between Vietnam and its trade partners. Therefore, Decree 54 (Article 91.10) conflicts with these treaties.

It is a legitimate expectation that the application of new measures post-EVFTA negotiations should not unravel the intended trade liberalisation. This change in regulations, just prior to the ratification of the EVFTA, does not provide existing and potential investors the confidence in the sustainability and predictability of the business and investment environment in Vietnam.

3. Ability for Representative Offices (ROs) to operate and provide drug information:

As mentioned above, most foreign pharmaceutical companies currently operate in Vietnam as RO. Given that the timeframe to establish an FIE importing entity is estimated at around 2 years:

- It is in the interest of healthcare professionals and patients to ensure MNCs could maintain existing RO activities until a viable FIE could be established in Vietnam. These activities include drug safety information and medical education to ensure the correct and safe use of medicines.
- The Decree essentially eliminates the execution of the aforementioned activities by a RO. ROs would be required to leverage local companies to provide these critical activities. Forcing pharmaceutical MNCs to transfer these activities to local companies in the short-term would result in the lay-off of large numbers of employees, impact drug (safety) information/reporting and eliminate the ability to educate healthcare professionals on the proper use of medicines.
- Furthermore, as the Government introduces new price negotiation and centralised tender processes, it is important to ensure that ROs and Import FIEs can participate in price discussions together with the local partner. Current policy mechanisms do not allow for such participation, and therefore do not enable MNCs to effectively support the Government's objective for healthcare budget management.

Potential gains/concerns for Vietnam

Holistic solutions that address the above concerns will:

- Enable a system where patient safety and access to high quality medicines is at the forefront of all discussions;
- Send a strong signal of confidence to existing and future foreign healthcare investors in Vietnam regarding the sustainability and predictability of the Vietnam regulatory framework;
- Ensure the optimal use of existing infrastructure. This will ensure economies of scale, optimised service costs and the ability for Vietnamese patients nationwide to enjoy access to high quality drugs, delivered in a timely manner;
- Allow MNCs to participate and assist local wholesalers in price discussions and supply planning. This will enable a strong healthcare budget management system and ensure supply continuity;
- Enable the continued investment in and provision of valuable medical information by pharmacists and medical doctors employed by FIEs; and
- Build a strong, dynamic and diversified healthcare sector that continues to attract foreign investors and encourages partnership with local Vietnamese companies to grow in a competitive manner. Partnerships will develop in the area of toll manufacturing, technology transfer and local capability building, which will accelerate the development of a full-fledged healthcare ecosystem.

Recommendations:

The following models will ensure the continued safe supply of medicines, whilst providing companies with the legal certainty and business scope required to accelerate FDI in the pharmaceutical industry and to engage in technology and knowledge transfer activities:

1. For FIE importers:

- Provide FIE importers with a viable operating model, through granting FIE importers the right (not obligation) to carry out the following activities:
- Import;
- Employ drug introducers and conduct drug introduction activities;
- Participate and assist local distributors in price discussions, including but not limited to price negotiations for tenders in public healthcare establishments;
- Allow the use of 3rd party GSP-certified warehouse services, including those offered by FIEs, to apply for the CSC;
- Be involved in discussions of business strategy of trading establishments that such FIEs partner with, including the ability to monitor and respond to issues in the supply chain potentially impacting pharmaceutical quality and drug safety;
- Engage local companies to toll manufacture; partner with or invest in Vietnamese companies to manufacture locally; and
- All other rights as stipulated by law.

2. For FIEs providing warehousing and transportation services:

- Ensure continued safe provision of medicines to Vietnamese patients and protection of foreign investment by allowing existing foreign investors to continue their licensed rights and operations and provide warehousing and transportation services. This is possible whilst keeping the distribution right (as defined under WTO) for 100% Vietnamese-owned companies.

3. For Representative Offices:

- Interpret the regulations as allowing Representative Offices until a viable FIE model is established, to continue to (i) fully engage in the direct delivery of drug information to healthcare practitioners and pharmacists through drug introducers, dissemination of drug information materials, organisation of workshops, symposiums, roundtable discussions; and (ii) continue to directly hire licensed drug introducers to conduct activities relating to drug information listed in point (i).
- In order to facilitate the price negotiation and centralised tender processes, introduced by the Tender Circular, allow ROs to participate in price discussions on behalf of the foreign pharmaceutical company, including but not limited to price negotiations for public tenders, together with local distributors.

CHAPTER 12a **INTERNATIONAL QUALITY GENERICS GROUP**

OVERVIEW

The International Quality Generics Group (IQGx) is a Pharmaceutical Sector Committee established under the EuroCham Healthcare Forum[1] in August 2016. The IQGx Sector Committee includes Foreign Direct Investment (FDI) or foreign pharmaceutical companies with head offices based in ICH[2] countries and Representative Offices in Vietnam. Our companies all have products marketed in a minimum of 10 countries in Asia Pacific (APAC), the EU and North America and have 50% of their portfolio revenue categorised in Originator, Generic Group 1, Group 2 as current tender regulation or with Bio-Equivalence/Bio-Availability (BE/BA) from the EU.

All IQGx members are strongly committed to the common mission of delivering affordable, high quality, sustainable and trusted off-patent medicines and services to Vietnamese people. Key activities of IQGx Sector Committee focus on policy advocacy and collaboration with key healthcare stakeholders such as the Government, providers and payers in Vietnam in order to build efficient legal frameworks and implementation platforms.

I. OFF-PATENT PHARMACEUTICAL DIFFERENTIATION THROUGH HEALTH TECHNOLOGY ASSESSMENT (HTA) METHODOLOGY

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly - Committee on Social Affairs.

Issue description

Universal coverage is the most critical healthcare priority in Vietnam today. The Government aims to reach 90% of the population with access to public healthcare insurance by 2020.[3] Transforming healthcare to provide universal coverage highlights the need for high-quality generic pharmaceuticals and efficient management of Government funds.

The majority of patients in Vietnam are treated with Off-Patent Pharmaceuticals (OPP) which include off-patent originators, branded and unbranded generics. OPP currently holds 90% volume and 71% value of the total pharma market, according to the latest Total Vietnam Pharma Audit published by QuintilesIMS in August 2017.[4]

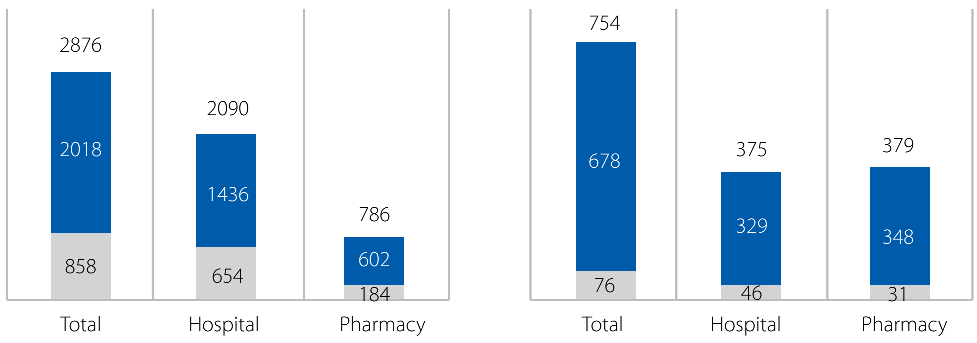
1 EuroCham's Healthcare Forum is a coordination platform for Sector Committees operating in the Healthcare industry - at present International Quality Generics (IQGx), Medical Devices and Diagnostics (MDD SC) and Pharmaceuticals (Pharma Group). The Healthcare Forum enables industry representatives to discuss, share and advocate on common interests and topics. Given its inherently diverse nature, it also covers different interests of those industry representatives. All Sector Committees are equally supported by EuroCham

2 ICH: International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use. More information available at: <http://www.ich.org/home.html> accessed on 22 December 2017.

3 Prime Minister Nguyen Xuan Phuc's speech in the National Health Insurance Conference in June 3rd 2016.

4 "Total Vietnam Pharma Audit", *QuintilesIMS*, August 2017. Available at: <https://www.quintilesims.com> accessed on 28 February 2018.

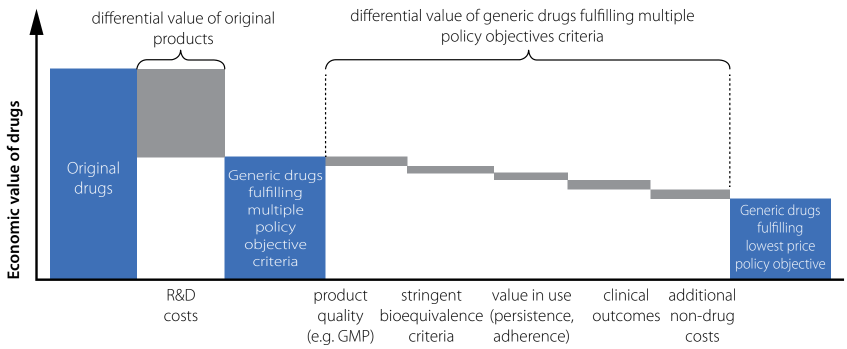
Figure 13: Vietnam's total pharma market split by branded and OPP[5]



However, there are value differences within OPP. These include Manufacturing Certification (EU or PIC/S Good Manufacturing Practice (GMP) and WHO GMP)[6], Stringent Bio-Equivalence Criteria, Value in Use (Persistence and Adherence), Clinical Outcome and Additional Drug Cost.

For example, there are regulatory-based differences when comparing sub-quality generics. Active Pharmaceutical Ingredients (APIs) used in high-quality OPP products should come from sources with either Drug Master File (DMF) or Certification of Sustainability to the monographs of the European Pharmacopoeia Procedure (CEP). Facilities are regularly audited by the European Directorate for the Quality of Medicine and Healthcare (EDQM),[7] local authorities of related EU countries and United States Food & Drug Administration (USFDA). There are OPP manufacturers who do run international pharmacovigilance systems, including in Vietnam, to continuously monitor the safety of their marketed products. All finished formulations of those OPP are considered as original or as having BA/BE studies with the reference product in the related countries. This means that the quality of those OPP is always measured to the reference/original product and cannot be inferior. Those manufacturers have production sites in the EU, U.S. or other PIC/S countries and their products are marketed in these markets as well. Generics manufacturers unable to fulfil the above-mentioned criteria are considered sub-quality generics.

Figure 14: Value differentiation between Off-Patent Pharmaceuticals[8]



Unfortunately, there is limited OPP differentiation in Vietnamese healthcare decision making, specifically in the areas of registration, reimbursement, formulary listing and pricing. Therefore, the IQGx Sector Committee initiated evidence-based Health Technology Assessment (HTA) for OPP to sustain the accessibility of affordable and good quality medicine for the Vietnamese population.

5 *Ibid.*
6 European Union (EU) Pharmaceutical Inspection Co-operation Scheme (PICS/S), Good Manufacturing Practice (GMP) and World Health Organisation (WHO).
7 Further information on EDQM is available on the website: https://www.edqm.eu/ last accessed on 11 January 2018
8 Kaló Z et al., *Value in Health*, 2015. Available at: <http://www.valueinhealthjournal.com> accessed on 22 December 2017.

Potential gains/concerns for Vietnam

The proper approach to OPP differentiation in Vietnam's healthcare decision making will not only achieve early patient access to high-quality OPP products but also ensure efficient public spending on healthcare management. Key positives for Vietnam's healthcare industry could be derived from adopting best practice in other markets. These include:

1. Ensuring comprehensive patient outcome and safety;
2. Sustaining high-quality OPP for Vietnamese patients with reliable pricing;
3. Ensuring efficiency in government spending and VSS funding;
4. Increasing quality standards within OPP manufacturers;
5. Ensuring reliability for Vietnamese patients.

Recommendations:

Evaluating current infrastructure conditions, IQGx Sector Committee proposes that the Government implement 3 important activities which will support the initiative of universal healthcare coverage:

- Upgrade differentiated category mechanisms in hospital tenders, taking into consideration the real-life patient outcome benefit factor. Differentiated categories will ensure medicine with the same quality level is reimbursed and evaluated in the same lot. This will sustain access of quality medicine in hospital tenders.
- Implement Multi-Criteria Decision Analysis (MCDA) evaluation in drug decision making, i.e. the National Reimbursement Drug List (NRDL), as this will ensure a comprehensive and transparent mechanism. Given the importance of the NRDL and the comprehensive dossier required in its evaluation, MCDA would be the best-fit solution for an evaluation mechanism. The implementation should be based on the outcome of the workshop that took place in Hanoi on 13 July, 2017.[9] Participants in this workshop included 19 key stakeholders from Ministry of Health (MOH) such as Drug Administration of Vietnam (DAV), Health Economics Association, National Centralised Drug Procurement Center, Finance and Planning Department, Medical Service Administration Department, Health Insurance Department and Vietnam Social Security.
- Following discussion during the Conference, adopting the MCDA framework is strongly recommended in order to support drug decision making in Vietnam, especially in the Drug Procurement (tender) process of OPPs. The next steps should include committee member finalisation and criteria selection, weighting and scoring for tender decisions. This should be followed by a customised framework for manufacturers to present their products for consideration.

Table 4: Initial MCDA, Definition and Performance Categories (Outcome)[10]

Name of criterion	Intended definition	Performance categories
Equivalence with the reference (original) product	To capture evidence on health outcomes from pharmaceutical, bioequivalence and clinical trials (efficacy data from controlled clinical settings)	- No data on pharmaceutical equivalence - Pharmaceutical equivalence - Interchangeability defined based on local criteria - Bioequivalence proven based on local criteria - Bioequivalence proven based on European EMA or U.S. FDA criteria - Therapeutic equivalence proven in clinical trial - Improvement in efficacy and/or safety based on clinical trial data

9 "IQGx Workshop on Multi-Criteria Decision Analysis (MCDA) Methodology and Applications in Decision-Makings for Off-Patent Pharmaceuticals (OPP)" *EuroCham Advocacy Update*. Available at: <https://www.eurochamvn.org/node/16779> accessed on 22 December 2017.

10 P.L. Tuan, P.H.T. Kiet, D. Brixner and V. H. Ngo (2017) *Development of multiple criteria decision making analysis framework for off-patent pharmaceuticals decision making in Vietnam*. Available at: <https://www.eurochamvn.org/sites/default/files/uploads/20171002%20_VN_MCDA_Whitepaper_ENG_FINAL_sent.pdf> accessed on 22 December 2017.

Real world clinical or economic outcomes such as adherence or non-drug costs	To capture evidence on health outcomes (effectiveness) and costs from real-world data	- No real world data on equal a) tolerability, b) adherence and persistence, c) non-drug cost - International real world data on either equal a) tolerability, b) adherence and persistence, c) non-drug cost - Local real world data on either equal a) tolerability, b) adherence and persistence, c) non-drug cost - International real world data on improvement in a) tolerability, b) adherence and persistence, c) non-drug cost - Local real world data on improvement in a) tolerability, b) adherence and persistence, c) non-drug cost
Product stability and drug formulation	To capture evidence on stability and drug formulation	- No data on product expiry or stability - Data on non-inferior product expiry or stability in local environment - Data on improved product expiry - Data on improved product stability in local environment - Data on improved product expiry and stability in local environment
Quality assurance	To capture evidence on manufacturing, product quality and standardisation	- Limited information on quality assurance - Local/non GMP quality assurance only for active product ingredient - Local/non GMP quality assurance for the entire manufacturing process - WHO GMP certification - EU or PIC/s GMP
Macroeconomic benefit	To capture wider economic benefits of selecting the medicine (e.g. tax, investment, employment etc.)	- The manufacturer has no local investment in the country - The manufacturer has minor local investment in the country - The manufacturer has moderate local investment in the country - The manufacturer has significant local investment in the country
Reliability of drug supply	To capture the stability and reliability of drug supply (history and future guarantee)	- Major and multiple problems in the last 5 years - Minor and fairly frequent problems in the last 5 years - Single precedence of supply problems in the last 5 years - No precedence of supply problems in the last 5 years - Manufacturer is financially capable and willing to guarantee supply
Pharmacovigilance	To capture data collection and assessment on adverse events of pharmaceuticals	- No pharmacovigilance system - Qualified person for pharmacovigilance - Qualified person and sophisticated system to collect pharmacovigilance data
Added value service related to the product	To capture extra services provided alongside the drug with quantifiable and demonstrated outcomes/benefits	- No program or service - Availability of value added service - Major value added service with demonstrated outcomes
Price	Acquisition cost of the pharmaceutical product compared to the lowest price available	N/A

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

The IQGx Sector Committee also recommends collaborating with the Government to bring global expertise, best practice sharing, models and tools in planning and implementing those activities.

II. AFFORDABLE TREATMENT OPTIONS FOR VIETNAMESE PATIENTS

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security, National Assembly (NA) – Committee on Social Affairs.

Issue description

Patients in Vietnam are currently overburdened with high out-of-pocket payments and therefore require affordable treatment options. However, affordable treatment should not be at the cost of quality. MOH is considering alternative treatment options for the largest number of Vietnamese patients, whilst containing cost. Formulating policies for complex affordability issues requires strong collaboration between the Government and industry.

The affordability of treatment is managed at multiple levels: First, at a product/drug level through the Government selection and assessment process; and second, at a service level through patient out-of-pocket costs during a hospital visit.

Affordability is not limited to price. It requires a proper assessment of the real cost of delivering the service in its entirety. The cost of using low-quality therapeutic solutions and the consequences of a medical error or infection has to be taken into consideration. Frequent hospital visits by a patient not only increases the pressure on hospital resources, but also exposes the patient to additional service fees, especially for those who have a chronic disease.

Potential gains/concerns for Vietnam

Vietnam is considered to have a high share of out-of-pocket payments, which means that a high proportion of households face severe difficulties managing their income and subsequently their health. Empowering patients to manage their health at home and developing home care services will reduce the pressure on already crowded hospitals and reduce the out-of-pocket payments incurred by patients during hospital visits.

Opportunities exist to develop a process that assesses the merits of drugs or products using criteria over and above pricing. This will result in the establishment of a sustainable model of care, based on affordability.

Locally produced drugs or products do not automatically mean lower prices, and an equally branded/innovative product does not always mean value for money. That is why it is necessary to assess each product on its own merits, regardless of its origin, provided that quality standards are met.

Recommendations:

In our view, the Government should review product categorisation, such as branded or generics, in light of experience and data collected in recent years. The process should be revised to ensure that it is delivering the desired objectives, whilst ensuring continuous improvement in cost containment. The introduction of pharmaco-economy-based assessment will ensure that the cost/effect relationship of products and drugs has been taken into consideration and this, in turn, is more likely to deliver a better distribution of funds.

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

III. SUSTAINABLE SUPPLY SOURCE FOR LOCAL DEMAND

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security, National Assembly (NA) – Committee on Social Affairs.

Issue description

The Government aims to have 80% of domestic demand met by local producers by 2020, as specified in Decision 68/QD-TTg dated 10 January 2014 of the Prime Minister approving the National Strategy for development of the pharmaceutical industry in the period to the year 2020 and vision to 2030 (Decision 68). The current ratio of domestic demand is 50%, therefore, in order to achieve this objective, it is clear that a strong focus on investment in local 'quality' manufacturing from foreign organisations is needed.

Another critical aspect to accomplish this objective is to put in place a transparent and robust tender process, ensuring the Government achieves value for money. However, there are two key issues with the current tender process as it stands. First, the tender result for each category only includes one choice of supplier. It does not include alternative suppliers or a commitment on tender quantities, which can result in critical shortages. Moreover, based on current product categorisation for the procurement process, products in the same or different categories may not necessarily reflect the true overall value of each product.

Potential gains/concerns for Vietnam

IQGx members could offer long-term, affordable medical solutions with guaranteed quality standards for the Vietnamese healthcare market. However, local regulations, policies and guarantees should be put in place to ensure local long-term investment. Meanwhile, long-term commitments for marketing authorisations should be curtailed to supply the market with more choice in terms of price and quality. Both are important contributing factors to the improvement and efficiency of spending on state budgets and health insurance funds. Not only will this secure stable supplies, but it will also increase the number of Vietnamese working in the production sector, thus creating employment.

Recommendations:

- The Government should have clear policies and guarantees to strongly support the long-term presence and investment of foreign investors in the Vietnamese market, ensuring 80% of domestic demand can be met by local qualified producers in the coming years;
- Continue an advanced categorisation of the procurement process in Vietnam that will present opportunities for improvement, deliver benefits to the Government and control the budget. Both relevant authorities and key stakeholders have now obtained adequate experience of and insight into the current process of procurement, including the categorisation of drugs. IQGx member companies recommend further detailed discussions about the identified gaps in the process and opportunities for improvement;
- The relevant authorities shall have measurements for the actual volume which suppliers must strictly commit to deliver; and
- A mechanism should be set up to allow hospitals to buy a 2nd choice, and for the insurance to reimburse the same value as the winning tender – in cases of limited supplies or unavailability.

ACKNOWLEDGEMENTS

EuroCham Healthcare Forum and International Quality Generics Group Sector Committee Members

CHAPTER 12b **MEDICAL DEVICES AND DIAGNOSTICS**

OVERVIEW

Vietnam's healthcare infrastructure has developed rapidly over the past few years. This is thanks to the significant efforts of the Vietnamese authorities to improve public infrastructure across the country and to open the market to private healthcare providers. The related double-digit growth of the Medical Devices and Diagnostics market, which consists of around 90% imports, has stimulated Multi-National Companies (MNCs) to better serve the market through investments in a solid local network of partners. This has involved the set-up of representative offices or, very often, the creation of local Vietnamese branches employing and training highly-qualified Vietnamese experts. It has also created opportunities for some of the MNCs to establish local production.

This has enabled substantial improvements in the access to innovations and knowledge for the Vietnamese healthcare community, as well as an increase in pre-sales and post-sales service levels to healthcare providers, for the benefit of Vietnamese patients. Decree 36/2016/ND-CP of the Government dated 15 May 2016 on medical device management (Decree 36), which has been largely aligned to international standards, is a significant milestone for the improvement of the regulatory landscape. Its consistent implementation will foster a more efficient and quality-oriented supply of medical devices and diagnostics solutions in Vietnam.

However, a number of issues still need to be addressed in order to keep on the path to a state-of-the-art healthcare system, giving efficient access to innovative and high-quality healthcare to all citizens. The EuroCham Medical Devices and Diagnostics Sector Committee (MDD SC)[1] has identified several key areas of improvement which it would like to address with the authorities, such as:

- Improving regulations on management of medical devices and diagnostics;
- Improving 'not-new' device management;
- Improving regulatory, budgetary and administrative framework to optimise usage, quality and costs of medical devices throughout their life cycle;
- Increasing efficiency in post-marketing surveillance and quality management systems to ensure product and service safety;
- Accelerating customs processes for critical spare parts as committed under the EVFTA regulation on Release of Goods (Chapter 5, Article 5);
- Preventing counterfeiting and illegitimate imports;
- Controlling enablement of pre-licensing promotion and marketing or sale registration;
- Increasing transparency, a level playing field and fair competition in public procurement of medical devices and diagnostics;
- Focusing more on 'homecare' to foster efficiency in the healthcare system;
- Improving awareness and control on utilisation of single-use devices; and
- Giving better access to wound care innovations through a clear reimbursement system.

The following sections focus on three of these issues. We remain available for further dialogue and cooperation with Ministry of Health (MOH) and relevant authorities.

1 Established from 1 April, 2016 under EuroCham HealthCare Forum. EuroCham's Healthcare Forum is a coordination platform for Sector Committees operating in the Healthcare industry - at present International Quality Generics (IQGx), Medical Devices and Diagnostics (MDD SC) and Pharmaceuticals (Pharma Group). The Healthcare Forum enables industry representatives to discuss, share and advocate on common interests and topics. Given its inherently diverse nature, it also covers different interests of those industry representatives. All Sector Committees are equally supported by EuroCham

I. REGULATIONS ON MEDICAL DEVICE MANAGEMENT

Relevant Ministries: Ministry of Health (MOH).

Issue description

Decree 36 is the result of a careful discussion process based on actual status of licensing, sale registration, manufacture, trading and use of medical devices in Vietnam alongside the Department of Medical Equipment and Health Works, who spent time learning from countries in the region and around the world. Decree 36 is harmonised with the ASEAN Medical Device Directive (AMDD), conforms to development trends in Vietnam and inherits previously-issued management documents. Decree 36 also provides more favorable conditions for enterprises and management authorities of the State in the following aspects:

- The definitions and concepts of medical devices have been extended. For example, In Vitro Diagnostics (IVD) are now managed as medical devices instead of pharmaceutical products;
- Medical devices are classified according to regulations in the region and around the world;
- Medical devices are managed based on their risk levels;
- Management methods, including the registration of medical device sales, have been changed. This will help to closely manage the origin and quality of products and prevent fraud in trading, import and use of medical devices. Furthermore, 9 groups of administrative procedures including sale registration, publication of eligibility, import licensing and issue of free-sale certificate, are more public and transparent;
- The Decree provides for post-sales activities regarding traceability and remedy of defects to ensure safe and effective provision of products to market; and
- It promotes administrative reform and strengthens the application of information technology to management, in order to provide the most favourable conditions to enterprises for production and trading.

We welcome the fact that the Government has implemented Decree 36 with guiding Circulars (Circular 39/2016/TT-BYT[2] and Circular 42/2016/TT-BYT[3]). This has created a legal framework to help managers, hospitals, medical units and enterprises fully understand these regulations and determine the rights, responsibilities and obligations of parties participating in the medical device field.

While Decree 36 makes medical device management more effective, the transition period has caused significant challenges to all enterprises and management authorities.

Decree 36 was issued on 15 May, 2016 and took effect on 1 July that year. Resolution 131/NQ-CP of the Government dated 6 December, 2017 (Resolution 131) extends the effective period of Decree 36 for medical device groups B, C and D to 1 January, 2019. Accordingly, application dossiers for these groups are submitted from 1 July, 2017 and shall be registered in numbers before import and sales from 1 January, 2019. Simultaneously, all import licences issued under old regulations will be invalid from 1 January, 2019. According to the inspection data of the DMEC filing system until January 2018, the total number of application dossiers submitted under Decree 36 is more than 6,000 (as of January 2018) and no documents are being appraised or licensed. This means that management authorities only spend one year licensing all medical devices traded in the market.

This contrasts with countries elsewhere in the region and around the world that provide a transition period long enough for new regulations in medical devices to be applied. For example, in ASEAN member states who have signed AMDD with Vietnam:

- Import licences issued under old regulations in Indonesia are applied in parallel until sale registration under new regulations is approved.
- Malaysia has issued regulations on medical device management harmonised with AMDD since 2012 (Act 737 - Medical Device Act 2012). It has performed voluntary sale registration and in parallel applied a mechanism to extend import licences issued until December 31st, 2017. This has led to a 5-year transition period.
- Singapore has been harmonised with AMDD since 2007 (Health Products (Medical Devices) Regulations 2007)

2 Circular 39/2016/TT-BYT of the Ministry of Health dated 28 October 2016 providing details on classification of medical devices
3 Circular 42/2016/TT-BYT of the Ministry of Health dated 15 November 2016 guiding on recognition of medical devices classification

with a transition period of 3.5 years and a rapid approval of application dossiers. This means that medical devices licenced for sale in one of the following reference countries: Australia, Canada, Japan, the U.S. and EU Member States, will be recognised in Singapore.

Meanwhile, in other countries around the world, Korea completed harmonisation in 2014 with a transition period of 3 years. European countries have implemented regulations on medical device management since the 1990s (Directives 90/385/EEC[4], 93/42/EEC[5] and 98/79/EEC[6]). However, Europe has amended and transited these decrees with the following transition periods:

- For non-IVD medical devices, the transition period is 3 years. Licences issued before the effective period of new regulations shall remain effective for 4 years.
- For IVD medical devices, the transition period is 5 years. Licences issued before the effective period of new regulations shall remain effective for 2 years.

Potential gains/concerns for Vietnam

Regarding the transition period mentioned above, we believe that MOH will face a number of challenges to implement the new regulations of Decree 36 on time. These challenges include:

- Lack of human resource, especially experts in appraising specialised dossiers of each type of medical devices;
- The system for online receipt and appraisal of dossiers is incomplete;
- The number of dossiers to be appraised under Decree 36 is rising fast, while management authorities continue to license for import all products traded in the market under previous legislation (Circular 30/2015/TT-BYT[7]), leading work volumes to rocket; and
- There is a particular challenge around the management of IVD medical devices. These were defined as pharmaceutical products and now need to be registered as medical devices. However, this entails more complicated dossier requirements, which will cause significant challenges to the Department of Medical Equipment and Health Works in dossier appraisal.

In order to ensure enterprises' compliance with Vietnamese regulations, we have supported MOH in its preparation of the Decree and urgently contacted foreign manufacturers and partners to prepare dossiers and documents as fast as possible.

However, in light of the challenges discussed above, we are concerned that there will be no sale certificate to import goods from 1 January, 2019 when the whole import licences expire. In fact, based on the characteristics of products, we cannot import a large amount of goods for reserve during the transition period for the following reasons:

- A lot of medical devices have a very short useful life – between 3 to 6 months – and in some cases just 30 days for reference standards;
- The period from the time that goods are ordered to the time that they are transported to Vietnamese ports can last from 2 to 5 months;
- There are many medical devices, parts and accessories. Therefore, with current facilities, MDD SC members and distributors do not have enough warehouses to store and maintain such a large number of goods at the same time for all types of medical devices. This has a serious impact on product quality, especially IVD products requiring rigorous storage conditions;
- Warehousing for a long time will increase selling expenses, leading to a rise in medical device prices and impacts on provision of medical devices to hospitals and customers; and
- High-value image diagnostic devices are only imported when bidders are successful and specific projects are implemented.

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4 Council Directive 90/385/EEC dated 20 June 1990 on approximation of the laws of Member States relating to active implantable medical devices. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1990L0385:20071011:en:PDF> accessed on 10 January 2018

5 Council Directive 93/42/EEC dated 14 June 1993 on medical devices. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/content/EN/TXT/?uri=CELEX:31993L0042> accessed on 10 January 2018.

6 Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices. Available at http://eur- lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31998L0079, accessed on 10 January 2018

7 Circular 30/2015/TT-BYT of the Ministry of Health dated 12 October 2015 on import of medical devices

Recommendations:

In order to address the issues highlighted above, we would like to recommend the following solutions:

- Type B, C and D dossiers submitted under Decree 36 should be appraised, approved and take effect from 1 January, 2019. Furthermore, the compulsory application period under Decree 36 should be from 1 January, 2020;
- Dossier application under Circular 30 should be implemented until 31 December, 2018 and its approval valid for one year from the signing date and at most until 31 December, 2019 with the condition that the Letter of authorisation is valid during approved time; and
- The rapid appraisal and approval (abridged approval) mechanism should be applied to products whose application dossiers are submitted under Decree 36 and approved in a member state of the Global Harmonisation Task Force (GHTF) or licensed for sale in a member state of ASEAN applying AMDD. Documents used as the basis for abridged approval include: (i) Free Sale Certificate (FSC) or sale certificate and (ii) ISO 13485 certificate for quality management system.

II. MANAGEMENT OF 'NON-NEW' MEDICAL DEVICES

Relevant Ministries: Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), General Department of Customs (GDC).

Issue description

Decree 187/2013/ND-CP[8] (Decree 187) prohibits the importation of used medical equipment. This is intended to protect patients' rights and prevent the importation of used medical devices whose quality is not guaranteed. However, in practice commercial enterprises and healthcare service providers do illegally import used equipment due to weak law enforcement.

1. Barriers and obstacles of the Decree:

The Decree constitutes a barrier to some of the following:

(i) Temporary import and re-export of used equipment for the purpose of display or exhibition: In order to achieve economic efficiency in the introduction of medical device products, as common practice medical device manufacturers worldwide offer activities such as:

- Showcases to introduce and explain the benefits of a medical device at conferences, workshops or sales introductions at conferences.
- Organise training in conjunction with the 'trial' of a medical device (taking place at events such as 'consumer conferences', classroom training, etc.)

These activities are essential to ensure the introduction of innovations that will benefit Vietnamese patients, to make sure healthcare providers take informed decisions when purchasing medical devices, and to improve the use and maximise the impact of medical devices through professional training. Moreover, in the cases mentioned above, medical devices are not intended to be used on patients but for the education and training of healthcare professionals.

Medical equipment is generally both expensive and complex. Healthcare professionals therefore need to be well informed when purchasing this equipment. The people who use these devices also need specialised training.

With such economic benefits, these facilities are used at events in many countries. Therefore, Vietnam should have specific provisions on the temporary import and re-export of these devices.

(ii) The import of used spare parts for maintenance, repair and replacement of damaged parts:

8 Decree 187/2013/ND-CP of the Government dated 20 November 2013 detailing implementation of the Commercial Law with respect to international purchases and sales of goods; and activities of agency for sale and purchase, processing and transit of goods involving foreign parties

Currently, the maintenance of medical equipment is often associated with the repair and replacement of parts and components. Maintenance services are most closely associated with equipment purchase contracts, so the import of spare parts frequently occurs to meet repair and replacement needs. The import of used components and spare parts brings some economic benefits such as cost savings and environmental protection.

2. Concept of 'non-new' medical equipment

The concept of 'non-new' medical devices should also be understood correctly. Our definition of 'used' medical equipment is as follows: refurbished or reconstructed equipment from certified businesses that comply with quality standards and guidelines for refurbished goods ('OEM refurbished').

"Refurbished" or "re-manufacturing" goods - when complying with international guidelines on the quality of goods approved by the manufacturers' association throughout the world - are widely used in the field. Global (including G7 countries) and is considered to be an effective way to obtain high quality health equipment or parts that operate normally at a lower cost. For example, refurbished devices account for nearly 20% of the total number of diagnostic imaging systems sold in countries such as the US and Germany.

Refurbishment is defined as a systematic process that ensures the quality, safety and effectiveness of a product with re-confirming the system's performance, safety specifications and intended use as in its original registration. Any update processed during refurbishment shall be performed in a manner consistent with the original product specifications and service procedures defined by the original manufacturer of that system.

The refurbishment process consists of five main steps: (1) selection of equipment for refurbishment; (2) disassembly, packing and shipment; (3) refurbishment (cleaning and disinfection, refurbishment planning, aesthetic refurbishment, mechanical and electrical refurbishment and system configuration, system testing, quality approval and release, packing and shipment); (4) installation of refurbished equipment and (5) warranty and professional services.

In order to distinguish 'refurbished goods' from 'second hand' or 'used' goods, and ensure a well-controlled supply, it is essential to have a clear definition of the term 'refurbishment' (also called 're-manufacturing') that follows international quality guidelines. It is also important to restrict import authorisation to companies certified under these guidelines. The advantages of refurbished compared to second-hand products are as follows: the safety and effectiveness of medical devices for healthcare professionals and patients are guaranteed; adaptation of the existing system configuration is based on customer-specific needs, within the original product licence; the latest software level for the latest hardware level; guaranteed delivery of the medical device within the Original Equipment Manufacturer (OEM) specification through complete system testing; their warranties are identical to new medical devices; their transportation and installation is done through qualified and trained service providers; and spare parts are available.

3. Benefits of importing refurbished medical equipment

Opening up the supply of OEM-refurbished products to Vietnam will enable the medical community to access essential equipment at a range of prices. Indeed, this could save up to 30% of the cost of all new equipment. It also enables healthcare providers to access more important parts faster, thereby ensuring that equipment is running more efficiently and for longer. For many smaller healthcare facilities, this cost differential can be the difference between offering patients comprehensive diagnostic services and having to send them to larger facilities. Buying used equipment is therefore a cost-effective means of improving patient care.

Not only is it economical, but it also reduces harm to the environment. Reusing equipment reduces waste, and ensures that each carefully constructed device will serve its full lifespan. This cuts back on the by-products of manufacturing, the impact of transportation and the environmental ramifications of shipping potentially hazardous equipment.

4. Countries which allow the import of refurbished medical equipment

The import of refurbished medical equipment is allowed in some European countries, including Germany, Switzerland and Austria. It is also allowed in other countries around the world, such as Australia, India, Indonesia and Malaysia, to name a few.

Potential gains/concerns for Vietnam

Products imported illegally can potentially harm patients. This behaviour also creates an unequal environment for enterprises to comply with the law. The ban on importing used medical equipment prevents the temporary import and re-export of equipment for display and training purposes, and the importing of spare parts. This regulation hampers the introduction of advanced medical equipment and technology to health professionals and thus reduces patient access in Vietnam.

Recommendations:

Regarding the unauthorised import of used equipment, we recommend the introduction of a strict legal framework for the provision of inspection and sanctioning measures related to violations. We also recommend the implementation of effective control and monitoring measures, and a regular review and evaluation of imported and installed equipment in accordance with relevant regulations.

Regarding OEM-refurbished products, we strongly recommend that the Government opens the healthcare market to goods refurbished by certified companies according to international quality guidelines. The international reference documents commonly used are the 'Good Refurbishment Practices' from the European Coordination Committee of the Radiological, Electro-medical and Healthcare IT Industry (COCIR)[9] as well as the standards for refurbishment from the Medical Imaging and Technology Alliance (MITA), a division of the National Electrical Manufacturers Association (NEMA).[10] These documents fulfil the requirements of ISO 14001 and OHSAS 18001 certified by Société Générale de Surveillance (SGS). The opening of the market to such goods is supported by the EU-Vietnam Free Trade Agreement (EVFTA) roadmap (Chapter 2, Article 5).[11]

For refurbished medical devices used for training or demonstration purposes, we recommend the Government implements a special authorisation mechanism for 'used' devices to be temporarily imported for these specific cases. Controls can be implemented through a tight tracking mechanism of import and re-export of the equipment, alongside stringent fines.

Turning to the import of 'non-new' spare parts, as Decree 187 has not been replaced, we recommend the Government issue a new, specific regulation on the import of these spare parts. Import of 'non-new' spare parts should also be subject to certain conditions to ensure that imported components and spare parts meet desired standards and to prevent the importation of counterfeit goods that put patients' safety at risk.

III. HOME CARE

Relevant Ministries: Ministry of Health (MOH), Ministry of Finance (MOF).

Issue description

Given the limited bed capacity of Vietnamese hospitals, there is an imbalance of 'supply and demand'. The number of patients needing treatment and the overcrowded hospitals are a challenge that MOH aims to overcome. But even healthcare systems with greater bed capacity have established home care services to improve the follow-up of chronic and long-lasting diseases for patients who return to their homes to continue treatment after being discharged from hospital.

Out-of-pocket healthcare spending is a significant burden for households. The indirect costs of healthcare, such as travelling, meals during hospitalisation and loss of income during treatment puts patients and their families under enormous financial pressure. In the absence of professional and organised home care services, patients tend to

9 Further information available at: <http://www.cocir.org/initiatives/good-refurbishment-practice.html> last accessed on 10 January 2018

10 Further information available at: <https://www.nema.org/Standards/Pages/Good-Refurbishment-Practices-for-Medical-Imaging-Equipment.aspx> last accessed on 10 January 2018

11 A medical device (for Vietnam, this definition is without prejudice to the Vietnamese legislation on medical device) means any product fulfilling the definition of medical device and in vitro medical diagnostic medical device as stipulated in Final Document GHTF/SG1/N071:2012 by the International Medical Device Regulators Forum (GHTF/IMDRF). Full text of the EVFTA, Chapter 2: National Treatment and Market Access for Goods, Annex 2-a: Annex on pharmaceutical products and medical devices is available at: <http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154197.pdf> accessed on 1 January 2018.

care for themselves with the help of their family. This causes a lot of concern to patients and potential additional health complications due to the lack of professional follow-up. Moreover, in most cases, patients will return to hospital several times and, for some, with more severe conditions.

The prevalence of non-communicable diseases in Vietnam has increased significantly in recent years. These diseases now contribute to around 70% of cases of mortality.[12] The most frequent diseases are hypertension, cancer, heart and vascular disorders, diabetes, chronic wounds, Chronic Obstructive Pulmonary Disorder (COPD) and asthma. For example, Chronic Kidney Disease (CKD) has also been increasing as its main causes relate to hypertension and diabetes.[13] Moreover, Vietnam has around 90,000 End-Stage Renal Disease (ESRD) patients that need dialysis, with 8,000 more every year. However, just around 20% get access to treatment, including about 14,000 for Haemodialysis (HD) and 2,000 for Peritoneal Dialysis (PD).[14] Patients who do not have access to dialysis will die. Meanwhile, diabetic-related foot ulcers, another chronic disease, affects 10% of diabetic patients and 11% of those will require an amputation. Eighty-five percent of these amputations start with a chronic wound, which could be prevented with proper control once patients have left hospital. This could avoid more than 50,000 lower-limb amputations per year in Vietnam.

In countries such as Australia and Japan, home care is promoted to empower patient access to treatment, especially those suffering from chronic diseases. In neighbouring countries, PD penetration has increased vs. HD in dialysis cases by 90% in Hong Kong, almost 70% in Thailand and 80% in Singapore.[15]

Potential gains/concerns for Vietnam

We believe that Vietnam should trigger and support the creation and development of professional home care services. Intervention for behavioural change for patients, care givers and healthcare professionals would be critical. Developing home care guidelines and policies for chronic diseases would be an important factor to encourage healthcare professionals to consult patients about adopting home care as a treatment option.

With the support of innovative medical devices and equipment, Vietnamese patients would have access to new models of healthcare which can improve treatment at home, such as renal dialysis, or enable better control of chronic wounds. Many other medical services can also be conducted at home with the help of healthcare professionals' remote guidance.

Home care can help to address the problem of overcrowded hospitals, reduce high public spending on chronic diseases and mitigate out-of-pocket healthcare spending for households. At the same time, it can help to improve quality of life for all patients suffering from chronic diseases.

Recommendations:

We recommend MOH support the development of a home care model through:

- Supporting the creation of an official, organised system of home care by trained professionals with adapted training, material, guidelines and protocols;
- Introducing education programs for patients and their families promoting the continuity of treatment and appropriate care protocols;
- Ensuring trained professionals (nurses, pharmacists and specialists) facilitate care outside hospitals;
- Providing relevant support policies to healthcare professionals involved in home care; and
- Supporting the registration of medical devices, ensuring import licences are approved smoothly, and consider full reimbursement for home care drug and medical devices.

ACKNOWLEDGEMENTS

EuroCham Medical Devices and Diagnostics Sector Committee

12 "Non-communicable disease mortality accounts for 73%", *Hanoimoi*, 8 September /2016. Available at: <http://hanoimoi.com.vn/Tin-tuc/Doi-song/847444/ty-le-tuvong-do-benh-khong-lay-nhiem-chiem-73> accessed on 24 January 2018.

13 *Ibid*. See also Phan Van Bau, "Cost-effectiveness study for the treatment of chronic renal failure in hospital and peritoneal dialysis", 2016, p.1

14 Research by Baxter Healthcare (Asia) Pte Ltd Representative Office in Ho Chi Minh City.

15 Pham Thi Chai, "Peritoneal Dialysis in Vietnam - Achievements in the past ten years", Presented at the 8th Annual Scientific Conference.

CHAPTER 12c PHARMACEUTICALS

OVERVIEW

EuroCham Pharma Group (PG) represents the voice of the innovative pharmaceutical sector in Vietnam. PG and our 26 members all share the same mission: to ensure that Vietnamese patients have fast and sustainable access to safe, high quality and innovative medicines. PG also sees the opportunity to partner with the Vietnamese Government and local companies to develop a sustainable, top-tier healthcare system and innovative life sciences sector in line with the strategy of the Government of Vietnam.[1]

Vietnam Market Overview[2]

General market information

- Vietnam's GDP is one of the fastest growing in Asia achieving 6.81% in 2017.
- Healthcare expenditure has reached 7.1% of GDP, yet public healthcare spending remains low at 3.8% of GDP in 2014.
- Universal Healthcare Coverage reached 82% in 2017, with the target to reach 90% by 2020.
- There is a burgeoning middle class, which is anticipated to double by 2020 and represent roughly 54% of the population.
- Growing need for high quality healthcare, evidenced by USD2 billion in outbound medical tourism.
- The pharmaceutical market is estimated to exceed USD3.3 billion in 2017, of which the value of MNC brand name drugs represent 22% value and 4% volume, which is among the lowest in APAC.
- Vietnam is one of the most genericised countries in the world: 94% generic volume penetration (including Non-Rx, excluding vaccines).

Market access and Government procurement

- Only 6% of new molecules launched globally, between 2010 – 2014, are available in Vietnam, due to prior requirements for local clinical trials.
- It can take 5-7 years for a patient to have reimbursed access to medicines in Vietnam. Usage of medicines after their regulatory approval ('uptake') is among the lowest in the world, which effectively deprives patients of new treatment modalities. Reasons include a long registration timeline, approval visas being temporary and long timelines to reimbursement.
- Government procurement represents 67% of total market value, one of the highest in measured countries. Government procurement decisions will have a profound impact on quality of care, product supply and patient flow.
- Ex-manufacturer prices of MNC brand name drugs (0.68 indexed over five key therapeutic areas) and generics are among the lowest in ASEAN.
- The vast majority of MNCs still operate in Vietnam as Representative Offices due to the lack of a viable FIE operating model.

1 Prime Minister's National Strategy on Protecting, Caring, and Improving the People's Health, 2011-2020 with Vision to 2030, and National Strategy for Vietnam's Pharmaceutical Industry Development to 2020, with Vision to 2030.

2 Quintiles IMS data analysis 2017

The healthcare sector in Vietnam is at a crossroads: as per capita income rises, infrastructure investments by the Government are increasing, and demand for quality healthcare products and services continue to rise. At the same time, Universal Healthcare Coverage and limited private sector financing are putting pressure on the State budget. This creates an increasing need for a more active private sector and for Public-Private Partnerships (PPPs) to develop a patient-centric, high quality healthcare system that includes an innovative and generics pharmaceutical sector to meet patient needs. To enable this, the following elements should be considered:

1. **Patient access** to innovative pharmaceuticals on par with - or faster than - leading countries in the region, including innovative patient access programs and healthcare financing solutions;
2. **Quality and Innovation** remain at the center of Government procurement policies;
3. **Trade & Legislative Predictability**: a clear and transparent legal framework for both domestic and foreign companies;
4. **Importance of FDI**: FDI and PPP will need to replace economic concessions and foreign funding as Vietnam reaches middle-income status. It is not possible to 'cost-save' your way to growth;
5. **Sector Development**: Healthcare professional and infrastructure development is confirmed as a clear Government priority at the highest political level;
6. **IPR Development**: An opportunity - not a cost - that helps protect Vietnamese and foreign entrepreneurship, develops value for the Vietnamese economy and human capital creating a strong country brand;
7. **Cross-Ministerial Collaboration**: 'A new model for a new Government' that enables the Government to swiftly address issues holistically whilst successfully implementing recent international trade agreements; and
8. **Local Industry Development - not Protection** where mandatory vs. market-based incentives will send a clear signal to investors.

The innovative pharmaceutical industry is a key driver in the development of a sustainable healthcare ecosystem. Our value proposition to patients and Government builds on the above mission, and our international experience serves as a helpful compass in designing holistic solutions benefiting patients, Government and industry.

PG believes that the recommendations outlined in this chapter[3] will assist the Government in managing the quality of care for patients, industrial development and State financing that are in line with the Government's 2030 Healthcare objectives. We understand the current inflection point of the healthcare sector, and we are committed to partner with the Vietnamese Government on this journey to develop a top-tier healthcare system while addressing State budget concerns.

Summary of Pharma Group recommendations

1. Fast access to innovative pharmaceuticals for Vietnamese patients

We recommend the effective exemption of local clinical trial requirements in Vietnam for the purpose of Marketing Authorisation (MA) application of chemical drugs, vaccines and biologics that have been approved by stringent international authorities for registration. There should be no requirements going beyond International Council for Harmonisation of Technical Requirements for Pharmaceuticals in Human Use (ICH) guidelines which is in line with EVFTA commitments. This, alongside further optimisation of the drug registration process, is vital to improve patient access.

3 The contents of this chapter are Pharma Group recommendations based on the draft legislations which are not yet issued at the time of writing, and are not considered Pharma Group's legal analysis and interpretation. The continued collaboration between the Ministries, the EU, industry representatives and relevant stakeholders would be important in ensuring the EVFTA commitments, once entered into effect, are honoured in Vietnam's legislations.

2. Government procurement

Given the sizable role that Government procurement plays in Vietnam, there is a need for holistic solutions that preserve quality, doctor choice and patient access. A sustainable environment that encourages investment and sector development while addressing short-term State budget concerns can be achieved through continuous Government-industry dialogue. Balancing the long-term sector development and budget realities will require innovative financing solutions.

3. Innovative Life Sciences Sector development

A viable operating model based on a clear legal framework, investor protection and the opportunity to establish legal entities in Vietnam is essential for multinational pharmaceutical companies and services companies. Companies need the associated rights that make business sense and maximise economies of scale. Coupled with appropriate investment incentives, this environment will enable Vietnam to develop a high-quality, innovative and sustainable pharmaceutical sector.

4. Intellectual Property Rights (IPR) protection

IPR is a cornerstone of innovation. If implemented, it gives local companies the confidence to develop patentable pharmaceuticals over time and encourages the innovative pharmaceutical industry to invest in local industry, including technology transfer in the short term.

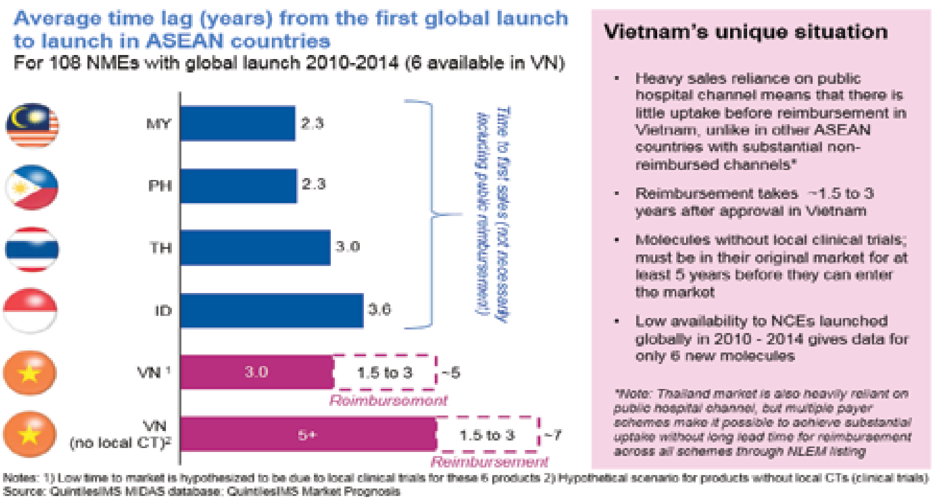
I. FAST ACCESS TO INNOVATIVE PHARMACEUTICALS FOR VIETNAMESE PATIENTS

Relevant Government authorities: Ministry of Health (MOH), Drug Administration of Vietnam (DAV), Ministry of Industry and Trade (MOIT), the National Assembly (NA).

Issue description

It can take 5 to 7 years for patients in Vietnam to have reimbursed access to innovative medicines, which is significantly longer compared to neighbouring countries. This is due to previous administrative requirements for new medicines to undergo local clinical trials, 2 to 3 year registration timelines, and initial visa requirements of 2 to 3 years before being eligible for reimbursement.

Figure 15: Timeline for Vietnamese patient access to innovative medicines



Source: QuintilesIMS

In order to improve patient access to pharmaceuticals, a number of regulatory hurdles need to be overcome. The revision of the Registration Circular provides an opportunity to ensure these technical barriers are addressed, through alignment with international guidelines (ICH and WHO) and regional best practice (ASEAN).

Potential gains/concerns for Vietnam

1. Local clinical trials

- The EVFTA eliminated the need for additional requirements relating to clinical studies going beyond ICH guidelines for all pharmaceuticals including drugs, vaccines and biologics. The Pharma Law also heads in this direction by removing the previous 5-year existing authorisation requirement, as well as the local clinical trials requirement, which is a major improvement in accelerating patient access. However, this exemption is currently not extended to include vaccines. Patient safety is the foundation of innovative pharmaceutical companies' global mission. Duplicative clinical trials that do not add additional safety protections, but impede or delay access to pharmaceuticals, are not in the best interests of patients.

- Furthermore, requiring products that have been granted Marketing Authorisation in Vietnam but have undergone certain changes[4] ('variation') to go through the registration process again as a new product will bring significant administrative burdens for the authorities, while much of the information submitted and approved by Drug Administration of Vietnam (DAV) regarding that product remains unchanged.

2. Drug registration process

The Pharma Law introduces a new, shorter timeline for MA issuance and aims to accelerate patient access to new molecules and reduce incidences of existing pharmaceuticals being out of stock. The Registration Circular, which is currently being revised, plays a key role in streamlining the current registration process building on the advances of the Pharma Law. A clear, transparent and more optimised review process, coupled with measures to fast-track applications and develop resources for dossier review, will address current practical challenges (e.g. companies typically receive feedback regarding the MA 1-2 years after registration dossier submission).

3. Brand name drug list

Brand name drugs play an important treatment role in healthcare establishments in ensuring patient access to new treatments. It is key for products that are globally recognised as brand names to be included in the Brand name drug list issued by Ministry of Health (MOH), to facilitate those products' participation as brand name in tenders at healthcare establishments.

We appreciate MOH's continued efforts to further optimise this process by allowing the review of new products to be conducted in parallel with the registration process, thus enabling eligible products to be on the brand name list from the point at which MA is granted. To ensure the feasibility of this new procedure, and to best serve the purpose of drug tendering and supply, it is important to continue recognising products previously categorised as brand name.

4. Reimbursement process

Under current practice, once a pharmaceutical product is granted an MA/visa number, it is still not eligible for reimbursement, as it has to wait additional 2 to 3 years for the MA/visa number to be renewed. In order to ensure faster access to new, innovative pharmaceuticals for a larger number of patients, we recommend that reimbursement should be possible upon receipt of MA, in line with other ASEAN markets. Furthermore, the National Reimbursement List (NRL) is only reviewed every 2 years and the revision of the list itself can take 2 years, during which time no new information or newly-licensed products can be considered for reimbursement. Altogether, new pharmaceuticals may therefore have to wait 5 to 7 years for inclusion in the NRL, effectively causing considerable delay in bringing new reimbursed treatments to Vietnamese patients and increasing medical tourism.

4 Changes with respect to the composition of pharmaceutical substances, medicinal materials; strength; concentration or quantity of active drug substance components; dosage forms, route of administration; manufacturing establishment

Recommendations:

1. Local clinical trial:

- Complete removal of the local clinical trial requirement at all stages of registration for innovative pharmaceuticals in Vietnam, by not going beyond ICH guidelines which is in line with EVFTA commitments. All pharmaceuticals – including chemical drugs, vaccines and biologics – which have obtained MA in at least one ICH country and/or which are WHO pre-qualified vaccines, shall automatically be considered as having sufficient and full data on safety and efficacy. These pharmaceuticals shall therefore be fully exempt from local clinical trial requirements for registration in Vietnam.

- Remove the requirement for pharmaceuticals that have been granted MA in Vietnam to conduct confirmatory clinical trials in Vietnam in all cases of variations, if such variations have been confirmed by the competent authority in the manufacturing or reference country.

2. Drug registration process: Optimise the current administrative procedure and introduce fast-track mechanisms:

- Introduce a clear and transparent review process with a tracking function so companies can monitor the process and supplement dossiers if required. This process should also include a deadline for when MOH will confirm whether the dossier is adequate and complete. We propose that this be within 4 months from the submission date for new registration and 2 months for extension;

- Facilitate more frequent dossier review sessions and introduce Government-industry Frequently Asked Questions (FAQs) to reduce the number of deficiency letters, ensure proper interpretation of the regulations and ensure transparent, fair, reasonable and non-discriminatory registration procedures;

- For submissions, data generated outside Vietnam should be accepted for variation submission purposes; a Certificate of Pharmaceutical Product (CPP) from country of manufacturing or from reference countries should be accepted without the requirement for the product to be actively marketed in those countries;

- Further improve the e-submission system; and

- Introduce fast-track mechanisms, including: automatic fast track for orphan and new, life-saving drugs with a faster approval timeline (3 months); align the definition of orphan and life-saving drugs with international definitions (ICH/WHO); fast-track optionality for new pharmaceuticals; and consider introducing an option for shorter review timeline (3 to 6 months) with a higher registration fee. The additional fee could be used to externalise parts of the registration dossier review process to certified third parties or hire additional resources.

3. Brand name drug list:

Currently the Government is considering a new process for product inclusion in the brand name drug list. Further clarification of that process and associated timelines is important to ensure continued availability of medicines. For drugs that are already included in the current list, we propose recognising the continuity of this status without the need to submit or re-submit data according to the new requirements, or reapply after visa renewals. Furthermore, drugs that are subject to an arrangement for toll manufacturing or technology transfer over a period of time should also be able to remain in the list.

4. Reimbursement process

Pharma Group suggests integrating the process of reimbursement decisions and National Essential Drug List (NEDL) management into one centralised, seamless process. This should include the following:

- **Timing & frequency**: develop clear and consistent timelines, including timeline commitments, for the reimbursement review process (i.e. from time of submission to time of response). The Reimbursement List should be revised every 12 months, not every 2 years as currently provided by Circular 40/2014/TT-BYT dated 17 November 2014 of MOH promulgating and guiding the implementation of the list of pharmacy drugs under the scope of payment of medical insurance (Circular 40);

- **Structure:** allow for registration submission and reimbursement submission to occur at the same time and in parallel. The ideal outcome would be to have a final reimbursement decision at the same time as the MA approval. Moreover, we propose enabling faster, automated implementation of the Reimbursement List in public hospitals;
- **Selection criteria**: criteria for assessing reimbursement should be aligned with international best practice and with a continued focus on patients, quality and doctor choice. We also recommend including clear criteria for molecule selection and percentage of reimbursement;
- **Right to appeal**: there should be a right to appeal the reimbursement decision within 90 days; and
- **Stakeholder participation**: the pharmaceutical industry should be allowed to provide reimbursement submissions directly, either at the point of submission for MA or during the first visa period. We also propose holding public sessions where pharmaceutical industry experts can attend discussions between the VSS and MOH to ensure the final decision made is based on sufficient data.

II. GOVERNMENT PROCUREMENT

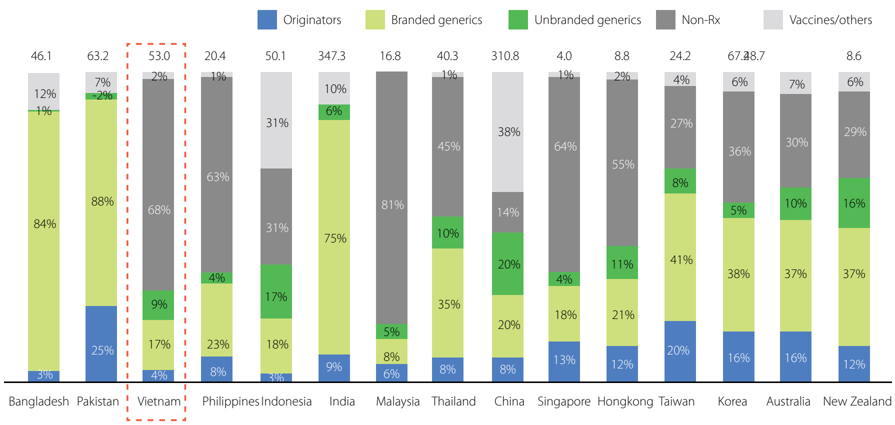
Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), Ministry of Planning and Investment (MPI), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST).

Issue description

Government procurement in Vietnam represents 67% of total market value, one of the highest amongst measured countries. Therefore, any decision relating to Government procurement will have a systemic impact on quality of care, product supply and patient flow in the country.

Vietnam is doing well in terms of Government procurement. Total healthcare spend (in real terms) is amongst the lowest in ASEAN, 94% of Government procurement volume is provided by local/imported generics and Vietnam benefits from some of the lowest prices in almost all therapy areas for the most common brand name drugs in Southeast Asian countries, according to IMS.[5]

Figure 16: Share of brand name drugs in Vietnam amongst the lowest in the region



APAX average Ox and BGx volime share: 55%
Vietnam Ox and BGx volume share: 21%

Source: Quintiles IMS

5 "Improving Patient Access to Innovative and High Quality Medicines in Vietnam", *IMS Consulting Group*, May 2015, Commissioned by Pharma Group Vietnam.

Pharma Group understands the Government's intention to achieve State budget savings through introducing new regulations for tender in public healthcare establishments. Brand name drugs are essential to Vietnam's healthcare system, and given their already low volume, there is an inherent need to preserve Vietnamese doctors' choice and patients' access to brand names while ensuring strong healthcare budget management, keeping in mind the desire to develop a high quality life-science sector. This will also provide procurement agencies with more treatment choices, contribute to overall treatment effectiveness, and improve the efficiency of State budget and health insurance fund spending.

In light of this, Pharma Group appreciates a number of developments in the recent draft Tender Circular dated 9 February 2018, where mechanisms for price negotiation of brand name medicines, amongst others, were introduced. For the benefit of patients, it is important to ensure that quality remains a top priority in the introduction and implementation of any Government procurement policy and procurement mechanisms such as price negotiation and centralised tendering. This can be achieved by enabling an ongoing constructive dialogue with stakeholders where health outcomes, State financing and sector development can be attained in a win-win-win for patients, Government and industry.

Potential gains/concerns for Vietnam

Pharma Group believes that fair, transparent price negotiation mechanisms, respecting high quality standards and doctors' choice for patient treatment will create a more sustainable healthcare environment. Allowing physicians and hospitals to purchase according to their needs will also enable the availability of high-quality innovative medicines across the country, effectively counteracting overcrowding of central hospitals. When combined with faster access to innovative medicines through an optimised registration and reimbursement process, it will also position Vietnam as an attractive investment destination, bring opportunities for life-sciences sector development that will lead to R&D, high knowledge based jobs, exports and a reduction in outbound medical tourism.

Recommendations:

In order to ensure viable price negotiation mechanisms are introduced and successfully implemented, Pharma Group proposes the following elements:

- Doctors' choice and patient access shall always be respected and shall determine the volumes requested in tender from healthcare establishments;
- An effective price negotiation mechanism would need to be built and conducted based on fairness, transparency and good faith from all parties involved;
- Enable the participation of manufacturers, representatives of Marketing Authorisation holders, together with local partners in price negotiations;
- Take into account commitments to toll manufacturing or technology transfer for local production;
- Organise workshops prior to implementation to ensure all stakeholders share common understanding of the new process.

III. INNOVATIVE LIFE SCIENCES SECTOR DEVELOPMENT

Relevant Ministries: Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Justice (MOJ), Ministry of Finance (MOF).

Issue description

Vietnam has an opportunity to build a high-value, self-sustaining life sciences sector, and position itself as an attractive investment destination in ASEAN. The role of FIEs is to enable investment and partnerships that transfer technical knowledge to Vietnam. A clear legal framework that provides investors with the predictability for operations, coupled with incentives to attract investment, will send positive signals to Multi-National Corporations (MNCs). This will lead to an era of innovative FDI and PPP in Vietnam's pharmaceutical industry, and enable Vietnam to become a regional hub for innovative pharmaceutical manufacturing and development. This is a true win-win-win situation: access to high-quality and innovative medicines for patients, increased FDI for the Government and legal certainty for industry.

Potential gains/concerns for Vietnam

Taking a sectoral approach to pharmaceuticals will stimulate the development of a healthcare eco-system in Vietnam consisting of not only manufacturing, but also of service providers, clinical research organisations and others, thus also boosting Small and Medium-sized Enterprises (SMEs). This will attract sustainable FDI and PPPs which, over time, will enable exports to replace decreasing Overseas Development Assistance, representing a clear victory for patients, Government and industry alike.

Recommendations:

To make such a strategy a reality, a predictable and outward-looking legal framework, as well as an inter-Ministerial Taskforce under the leadership of an appointed senior Government representative to develop a Roadmap for sector development, is required. In order to facilitate and encourage long term investment from MNCs, a number of elements should be explored in the development of such a Roadmap, which can include:

Enablers

- Viable operating model for FIEs with clear guidelines for establishment and associated activities that enable partnership, together with investor protection. More details on this key point is outlined in the Healthcare Forum chapter.
- Commitments to toll manufacturing, technology transfer, investments in facilities and capability development, in patient education etc. should be taken into account for consideration to exempt products from price negotiations over a period of time.
- The ability to remain in Brand name package, or a specific package for brand name drugs with tech transfer, without time lag for tender participation if the quality, specification and technological standard have been effectively transferred to Vietnam;
- Consider toll-manufactured primary packaging in Vietnam as a local product, if there is a commitment to do further tech-transfer;
- The ability to keep a secondary (dormant) visa for imported products, with the possibility to immediately reactivate in case there is an issue with local production;

Incentives

- Incentives to facilitate and encourage long term investment should be explored. Similar to other countries, such incentives can include elements relating to market access, government procurement, pricing stability and other financial incentives. This would facilitate long-term commitments from MNCs, which lead to enhancement of Vietnamese manufacturing capabilities and eventually export.

IV. INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Relevant Government authorities: Ministry of Health (MOH), Ministry of Science and Technology (MOST), National Office of Intellectual Property (NOIP), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Justice (MOJ).

Issue description

Research & Development (R&D) is a significant investment for research-based biopharmaceutical companies - their annual spend is greater than USD180 billion per year, more than any other industry including the tech sector. To bring a new, innovative product to market, it takes an average cost of USD1.3 billion. It is through these significant investments in R&D that the innovative pharmaceutical industry is able to push the frontier of healthcare solutions for better patient outcomes. Without adequate safeguards, other firms could receive a significant competitive advantage by relying on innovator-created regulatory data, which would undermine the foundation of the research-intensive pharmaceutical industry. Indeed, as a recent PG industry survey undertaken by PricewaterhouseCoopers (PwC) found, 63% of PG's members have encountered IPR violations with 37 violation cases over the last few years.

As part of the implementation of Vietnam's obligations under TRIPS, Vietnam provides five years of RDP. Companies are required to submit a separate application for data protection, rather than receive automatic protection upon marketing approval as international standards and TRIPS require. In practice, even if companies apply for RDP, it is often without success.

Under the current regulations, in order to qualify for data protection in Vietnam, the request for data protection must be submitted within 12 months of the date MA was first granted in any country in the world. This is not always feasible in practice, as it would require companies to immediately apply for MA in Vietnam as soon as a product is approved for circulation in any country in the world. Indeed, 87% of companies have not managed to obtain the approval letter for RDP in Vietnam.[6] The reasons quoted include the lengthy process, unclear guidelines, data protection time being too short compared to registration time and an inability to meet the requirements.

Potential gains/concerns for Vietnam

The adoption of patent protection, a strong enforcement system, automatic RDP and other intellectual property protections that conform to international standards would enhance Vietnam's healthcare system, create a more predictable environment for investment, promote innovation and help address the critical health issue of counterfeit pharmaceuticals.

Recommendations:

In our view, amendments to Vietnam's laws and regulations should be made to ensure domestic legislation complies with key points in the EVFTA and common international practice. These proposed amendments include:

- Granting automatic RDP consistent with international standards, in particular putting in place a procedure that automatically grants RDP upon MA approval without additional requirements;
- Vietnam should provide patent term adjustment to compensate for unreasonable delays in the issuance of MA for pharmaceuticals. Patent term extension is not currently available in Vietnam, therefore we encourage the Government to add the relevant provision into domestic legislation;
- Patent disputes should be resolved as quickly as possible. DAV supports patentees by allowing them to supply granted patent information as an internal reference source for the MA granting process. However, in practice, some MAs are still granted for patent-infringing drugs. Vietnam should provide effective 'linkage' between approval of a generic drug and evidence that the generic does not infringe a patent on the original drug. Moreover, patent invalidation actions should be fast-tracked in the context of patent litigation, and stays in infringement cases should not be granted pending resolution of an invalidation action, unless the invalidation action has very high merits; and
- Vietnam should consider changing the current IP Law to recognise or give clear provisions regarding the patentability of new uses.

Overall, Vietnam should improve IPR enforcement standards and related procedures. This could be achieved by encouraging training of both judges and enforcement authorities and by increasing penalties for infringers manufacturing, supplying or selling counterfeit pharmaceuticals.

Over the coming months, Vietnam will be finalising the regulatory framework that will guide the pharmaceutical landscape for the foreseeable future. This legislative review provides Vietnam with a unique – but fast closing – window of opportunity. The opportunities of Vietnam's growth, development and international FTAs provides an opening for a new vision for a new Vietnam, building on the overarching objective to develop a high-standard and patient-centric healthcare sector and pharmaceutical industry in alignment with the Prime Minister's vision.[7] Vietnam is starting an ambitious journey that could propel it towards becoming a regional, best-in-class champion for patients, Government and industry (a 'win-win-win' situation). Pharma Group remains committed to working with the Government to reach that destination. The benefits of FTAs can be a springboard to Vietnam becoming a leading healthcare provider in the region by ensuring that Vietnamese patients have fast and sustainable access to high-quality, safe and innovative pharmaceuticals.

6 Pharma Group Value Survey conducted by PwC, 2016
7 Prime Minister's National Strategy on Protecting, Caring, and Improving the People's Health, 2011-2020 with Vision to 2030, and National Strategy for Vietnam's Pharmaceutical Industry Development to 2020, with Vision to 2030

CHAPTER 13 **FOOD, AGRI AND AQUA BUSINESS SECTOR**

OVERVIEW

The Food, Agri and Aqua Business sector has seen both positive and negative tendencies in 2016 and 2017. Indeed, agricultural product exports have increased but the sector remains vulnerable to climate change and volatility of buyers.[1] We are, therefore, pleased with the directives of the Minister of Agriculture and Rural Development to focus on the restructuring and development of the agricultural sector as well as promoting ten key products for export.[2]

The path to a safe and sustainable food production and supply sector is challenging, as the current pig crisis shows.[3] Therefore, we believe restructuring is particularly needed. While reducing prices and stock products, as suggested by the Minister of Agriculture and Rural Development, could help in the short term it is, in our view, not a sustainable solution.[4] It could help for the short term, but we aim at finding a long-term solution. Moreover, this suggestion has had a negative impact on the demand for poultry, which has decreased as a result.[5]

Dependence on China for export (about 70% of total export value) is one of the main causes of problems in the pig/pork meat sector, but this has already been the case for the fruit and vegetable sectors in the past.[6] Previously, Vietnamese enterprises encountered obstacles such as export/import tariffs and quarantine requirements when exporting to neighbouring countries. Combined with a lack of information, this resulted in the use of unofficial import and export channels, despite greater risks.[7] In our view, this issue should be addressed to increase food safety. We will discuss a partial solution to increase safety in the food sector and the competitiveness of the pig sector.

Importing countries are introducing stricter controls for fish and seafood for various reasons[8], and this further highlights the need to restructure and develop the sector. However, pork and chicken also encounter hurdles, especially with regard to the need of ensuring Sanitary and Phytosanitary (SPS) standard measures. Overcoming these hurdles will be one of the biggest challenges in order to take advantage of opportunities of the EU-Vietnam Free Trade Agreement (EVFTA) once it comes into effect.[9]

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1 "Vietnam's top ten 2016 exports", *Vietnam Net*, 03 February 2017. Available at: <english.vietnamnet.vn/fms/business/172030/vietnam-s-top-ten-2016-exports.html> accessed on 22 November 2017; "Vietnam's top agricultural export products", *Vietnam Net*, 29 December 2016. Available at: <english.vietnamnet.vn/fms/business/170369/vietnam-s-top-agricultural-export-products-in-2016.html> accessed on 22 November 2017; "El Nino looms large in 2017 with drought and strong typhoons forecast for Vietnam", *VN Express*, 24 March 2017. Available at: <e.vnexpress.net/news/news/el-nino-looms-large-in-2017-with-drought-and-strong-typhoons-forecast-for-vietnam-3560262.html> accessed on 22 November 2017; "Mekong set for tougher drought", *Vietnam News*, 06 February 2017. Available at: <vietnamnews.vn/society/350615/mekong-set-for-tougher-drought.html> accessed on 22 November 2017.

2 "Agriculture to focus on 10 export products: Minister", *Vietnam News*, 24 November 2016. Available at: <vietnamnews.vn/economy/346850/agriculture-to-focus-on-10-export-products-minister.html> accessed on 22 November 2017.

3 "Vietnam suffers as China sets trade barriers on farm produce", *Vietnam Net*, 24 August 2016. Available at: <english.vietnamnet.vn/fms/business/162148/vietnam-suffers-as-china-sets-trade-barriers-on-farm-produce.html> accessed on 22 November 2017.

4 "MARD urges husbandry firms to save pig farms", *Vietnam News*, 25 April 2017. Available at: <vietnamnews.vn/economy/375278/mard-urges-husbandry-firms-to-save-pig-farms.html> accessed on 22 November 2017.

5 V. Yen, "Pig farmer rescue campaign hits chicken breeders", *Saigon Times*, 27 June 2017. Available at: <english.thesaigontimes.vn/54700/-Pig-farmer-rescue-campaign-hits-chicken-breeders.html> accessed on 22 November 2017.

6 "China stops buying Vietnamese pigs causing rapid price drop", *Tuoi Tre News*, 14 May 2016. Available at: <tuoitrenews.vn/business/34795/china-stops-buying-vietnamese-pigs-causing-rapid-price-drop> accessed on 22 November 2017; K. Tam, "Vietnam farmers face problems when Chinese traders stopped purchasing agricultural commodities", *Vietnam News*, 30 March 2017. Available at: <viet-news.net/vietnam-farmers-face-problems-when-chinese-traders-stopped-purchasing-agricultural-commodities/> accessed on 22 November 2017; "Vietnam croc farms suffer as Chinese market shrinks", *Tuoi Tre News*, 17 November 2016. Available at: <tuoitrenews.vn/business/38048/vietnam-croc-farms-suffer-as-chinese-market-shrinks> accessed on 22 November 2017; "Vietnam suffers as China sets trade barriers on farm produce", *Vietnam Net*, 24 August 2016. Available at: <english.vietnamnet.vn/fms/business/162148/vietnam-suffers-as-china-sets-trade-barriers-on-farm-produce.html> accessed on 22 November 2017; "Vietnam government aims to lift agricultural exports", *Black Sea Grain*, 17 August 2016. Available at: <www.blackseagrain.net/novosti/vietnam-government-aims-to-lift-agricultural-exports> accessed on 22 November 2017; "Vietnam's top agricultural export products", *Vietnam Net*, 29 December 2016. Available at: <english.vietnamnet.vn/fms/business/170369/vietnam-s-top-agricultural-export-products-in-2016.html> accessed on 22 November 2017; "With a turnover of $US 25.5 billion, China is the biggest trading partner of Vietnam", *Customs News*, 16 May 2017. Available at: <customsnews.vn/with-a-turnover-of-us-255-billion-china-is-the-biggest-trading-partner-of-vietnam-3480.html> accessed on 22 November 2017.

7 L. Minh, "Boosting Exports to China through Official Channel", *Vietnam Chamber of Commerce and Industry*, 21 November 2016. Available at: <www.vccinews.com/news_detail.asp?news_id=34157> accessed on 22 November 2017.

8 "Seafood exporters show concern about Japanese stricter import control", *FIS*, 07 July 2017. Available at: <www.fis.com/fis/worldnews/worldnews.asp?monthyear=7-2017&day=7&id=92651&l=e&country=&special=&ndb=1&df=1> accessed on 22 November 2017.

9 H. Ly, "Exports to be hurt by banned substances", *VCCI News*, 05 September 2016. Available at: <www.vccinews.com/news_detail.asp?news_id=33880> accessed on 22 November 2017.

The introduction in the EVFTA of the concept of 'single entity' for the whole EU territory will facilitate the approval of EU exports by Vietnam. The same import requirements should apply to all EU Member States.

Vietnam's agri-food sector has a huge potential to benefit from the FTA but it needs first to comply with the EU SPS standards. Otherwise, it will not be able to export to the EU and will damage the reputation of its products.

The yellow card recently given to Vietnam by the EU for not having demonstrated sufficient progress in the fight against Illegal, Unreported and Unregulated (IUU) fishing worldwide is also likely to have an impact on exports.[10]

Another issue, already mentioned briefly in the 2017 edition of the Whitebook[11], is Antimicrobial Resistance (AMR), caused by irresponsible use of antibiotics, which in Vietnam is already one of the highest in the world.[12] We will address this in section I of this chapter.

The opening up of several 'difficult' markets, such as Japan and Australia, prove that it is possible for Vietnam to comply with high-level food safety requirements.[13] In our view, the Government should use these successes to show farmers and producers the benefits of improving standards, as this will increase the competitiveness of Vietnamese products as well as open up more markets. We share the view of the Vietnam Association of Seafood Exporters and Producers that improving quality and ensuring food safety is the best method to increase exports.[14] However, while the focus on increasing exports is important, we believe the long-term focus should prioritise transforming the domestic agricultural sector to be stronger and more self-sufficient. This should include upgrading, diversification, developing high-end products and improving food safety. Transforming the sector along these lines would help it to export more.

To further increase quality and address issues of food safety, traceability is a solution that should be further developed.[15] We also believe that it is important that current regulations are reviewed and that a value agricultural and food production and supply chain is created. This includes developing new market opportunities, reducing AMR and the sector's dependence on imported materials.[16] In our view, cooperation and coordination of the various parts of the sector is key to its success in domestic and foreign markets, and that is what should be focused on.

We also wish to stress the importance of developing a sustainable sector that provides farmers with a stable income and reduces its carbon footprint while meeting consumer demands. For example, farmers need to become more business-minded. Today, farmers often react impulsively when choosing what to grow and do not look for buyers or gather market intelligence before deciding on products.[17] Farmers also need to learn what products they should use to increase yields, but which use less water and other natural resources while keeping the soil fertile. This can be done by creating trust and developing agricultural extension groups and veterinary services. We share the view of the Prime Minister that the size of land plots needs to be increased and high tech needs to be applied, alongside more investment and better policies.[18]

Hereafter, we will address some of these issues more in detail. The Food, Agri and Aqua Business Sector Committee (FAABS) and CropLife Vietnam Sector Committee have both contributed to this chapter.

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10 "EU yellow card will likely hurt VN seafood", *Vietnam News*, 25 October 2017. Available at: <vietnamnews.vn/economy/416153/eu-yellow-card-will-likely-hurt-vn-seafood.html> accessed on 22 November 2017.

11 Whitebook 2017, Chapter 12: "Food, Agri and Aqua Business Sector overview", p. 103; "Vietnam's antibiotic resistance rate among the highest in the world", *Thanh Nien News*, 01 November 2015. Available at: <www.thanhniennews.com/health/vietnams-antibiotic-resistance-rate-among-the-highest-in-the-world-53110.html> accessed on 22 November 2017.

12 *Ibid.*

13 M. Long, "Vietnam exports processed chicken to Japan", *VOV World*, 20 September 2017. Available at: <vovworld.vn/en-US/current-affairs/vietnam-exports-processed-chicken-to-japan-577933.vov> accessed on 22 November 2017; M. Van, "Vietnam the first permitted to export dragon fruit to Australia", *VN Economic Times*, 29 August 2017. Available at: <vneconomictimes.com/article/vietnam-today/vietnam-the-first-permitted-to-export-dragon-fruit-to-australia> accessed on 22 November 2017.

14 B. Chau, "Seafood Exports Maintain Growth Momentum", *Vietnam Chamber of Commerce and Industry*, 04 November 2016. Available at: <www.vccinews.com/news_detail.asp?news_id=34095>

15 Whitebook 2016, Chapter 11 (I): "Food Safety – importance of traceability and legal enforcement" p. 80.

16 "Policies hinder trading of local agricultural products", *Vietnam News*, 22 June 2017. Available at: <vietnamnews.vn/economy/378730/policies-hinders-trading-of-local-agricultural-products.html> accessed on 22 November 2017; "Vietnamese agriculture improves quality for exports", *Voice of Vietnam*, 24 June 2017. Available at: <english.vov.vn/economy/vietnamese-agriculture-improves-quality-for-exports-352245.vov> accessed on 22 November 2017; "Weakness in Vietnam's agricultural supply chains", *Vietnam Net*, 6 May 2017. Available at: <english.vietnamnet.vn/fms/business/177731/weakness-in-vietnam-s-agricultural-supply-chains.html> accessed on 22 November 2017; T. Dung, "Vietnam seeks to export pork", *Saigon Times International*, 22 October 2017. Available at: <english.thesaigontimes.vn/56697/Vietnam-seeks-to-export-pork.html> accessed on 22 November 2017.

17 "Farmers switch to pepper as coffee prices fall", *Vietnam News*, 28 May 2016. Available at: <vietnamnews.vn/economy/297419/farmers-switch-to-pepper-as-coffee-prices-fall.html> accessed on 22 November 2017; "Vietnam's pepper export revenue loses spice due to oversupply", *VN Express*, 26 June 2017. Available at: <e.vnexpress.net/news/business/vietnam-s-pepper-export-revenue-loses-spice-due-to-oversupply-3605029.html> accessed on 22 November 2017.

18 T. Hoang, "PM points out shortcomings in agriculture production", *VN Express*, 27 June 2017. Available at: <english.thesaigontimes.vn/54693/PM-points-out-shortcomings-in-agricultural-production.html> accessed on 22 November 2017.

I. ANTIMICROBIAL RESISTANCE

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST).

Issue description

In this section we will address AMR. The World Health Organisation (WHO) considers this a major global problem, and ranks Vietnam in the group of countries with the highest rates of AMR in the world. It is estimated that, by 2050, AMR will be the main cause of global mortality, responsible for 10 million deaths every year, with half of those in Asia. On top of this, the economic costs will be USD100 trillion.[19]

The Government is aware of this problem and an Aide Mémoire was signed in 2015 by the four relevant Vietnamese Ministries and Development Partners, and a National Steering Committee on the prevention of AMR was established in 2016.[20] Moreover, several conferences on this topic took place in 2016 and 2017.[21] We are pleased to see that after the signing of the Aide Mémoire, a national action plan for management of antibiotic use and control of antibiotic resistance in livestock production and aquaculture has been produced.[22] As is often the case in Vietnam, insufficient legal enforcement of existing regulations seems to be a major cause of this problem.[23] We will address the issue of enforcement regarding the use of certain antibiotics in section IV of this chapter. We believe the private sector can play an important role in this process as well. Vietnam could learn from the experience of other countries in this respect and look, for example, at the 'One Health Action Plan to combat AMR' developed by the European Union.[24] Various members of FAABS are active in the sector related to feed, animals and testing. We believe that these companies can provide a valuable contribution and can be part of the multi-stakeholder engagement as outlined in the National Action Plan.

Potential gains/concerns for Vietnam

If the issues causing AMR are well-addressed, AMR rates will decrease and there will be a reduced impact on Vietnamese society and its economy. Human lives will be saved which will avoid a significant increase in the costs of healthcare. If the incorrect use of antibiotics is not addressed, it will negatively influence the possibility to export products as importing countries will check for residue.

Recommendations:

- Engage with local and foreign private sectors, such as the FAABS' members, to reduce AMR;
- Apply good husbandry practices to reduce demand for antibiotic treatment in farms through agricultural extension programs and related activities;
- Encourage research on alternative treatments to antibiotics; and
- Increase awareness and educate farmers on the risks associated with misuse of antibiotics.

19 J. O'Neill, *Antimicrobial Resistance: Tackling a crisis for the health and wealth of nations*. London: Review on Antimicrobial Resistance, 2014. Available at: <https://amr-review.org/sites/default/files/AMR%20Review%20Paper%20-%20Tackling%20a%20crisis%20for%20the%20health%20and%20wealth%20of%20nations_1.pdf> accessed on 21 November 2017.

20 The Aide Mémoire was signed by the Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Industry and Trade and the Ministry of Natural Resources and Environment, as well as by development partners such as the World Health Organisation, Food and Agriculture Organisation and Oxford University Clinical Research Unit. The Ambassador of the United States of America and representatives from the embassies of Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland expressed their support for this Aide Mémoire; "Viet Nam signs aide-memoire to combat antimicrobial resistance", *WHO*, 22 July 2015. Available at: <http://www.wpro.who.int/mediacentre/releases/2015/20150722/en/> accessed on 22 November 2017.

21 "Antibiotic resistance in livestock threatens Vietnamese health and livelihood", *Nhan Dan*, 03 August 2017. Available at: <en.nhandan.com.vn/society/health/item/5392702-antibiotic-resistance-in-livestock-threatens-vietnamese-health-and-livelihood.html> accessed on 22 November 2017; "Summary of the Viet Nam Action Plan for AMU/AMR reduction in Livestock Sector", *Food and Agriculture Organisation of the United Nations*, 10 November 2016. Available at: <www.fao.org/vietnam/news/detail-events/en/c/451446/> accessed on 22 November 2017.

22 This action plan describes the various problems as well as the activities that will be undertaken in the coming years; T. Sau, "Vietnam is on the right track in the national program on antibiotic resistance", *Nhan Dan*, 20 January 2017. Available at: <http://www.nhandan.com.vn/suckhoe/tieu-diem/item/31897602-viet-nam-dang-di-dung-huong-trong-chuong-trinh-quoc-gia-ve-khang-khang-sinh.html> accessed on 22 November 2017.

23 Antibiotics in Vietnam are used for different purposes such as prevention and control of disease, but also as growth promoter, to control bacterial contamination and control of the spread of drug-resistant bacteria in livestock production and aquaculture in Viet Nam.

24 "A European One Health Action Plan against Antimicrobial Resistance", *European Union*, June 2017. Available at: <ec.europa.eu/health/amr/sites/amr/files/amr_action_plan_2017_en.pdf> accessed on 22 November 2017; "Action at EU level", *European Union*, June 2017. Available at: <ec.europa.eu/health/amr/action_eu_en> accessed on 22 November 2017.

II. MANAGEMENT OF PLANT PROTECTION PRODUCTS

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST)

Issue description

Circular 21/2015/TT-BNNPTNT dated 8 June 2015 of Ministry of Agriculture and Rural Development (MARD) on the management of plant protection products (Circular 21) became effective on 1 August 2015. In our view, the provision on the prohibition of crop protection products that contain actives or finished products falling under the Globally Harmonised System (GHS) Categories 3 & 4; and that have a Pre-Harvest Interval (PHI)[25] > 7 days as a means to ban a crop protection product is not a scientifically-sound step. GHS was developed by the United Nations to ensure commonality around the world with respect to chemical classification and hazard communication, mainly via labelling and safety data sheets. Neither GHS nor PHI are intended to be used as an alternative to risk assessment procedures in determining the toxicity of products or to determine if products are safe for consumers to use. Neither the GHS classification nor PHI are designed to be used as a criterion for cut-off by regulatory bodies. Vietnam is the first country in the world to adopt GHS classification and PHI as criterion to ban crop protection products.

We strongly support the Government's desire to provide a regulatory framework for crop protection products that protects both farmers' interests and consumer health. However, restricting the use of a crop protection product should be based on an appropriate safety evaluation and risk assessment that takes into account various toxicological aspects of formulated products without considering the toxicity class of relevant active ingredients, rather than referring to a toxicity category under the GHS as a restriction criterion. In the 2017 edition of the Whitebook, we mentioned the importance of applying risk-based assessment to food safety issues.[26]

Government efforts to monitor domestic markets in agricultural commodities in terms of consumer safety, including Maximum Residue Levels (MRLs) are appreciated and should be continued. We also believe that it would be helpful if a partnership between the Government, the crop protection industry and relevant stakeholders could be created to jointly promote safe use of crop protection products and good agricultural practices.

Potential gains/concerns for Vietnam

In our view, using GHS and PHI as a criterion to ban crop protection products will lead to higher MRLs due to repeated use of the same crop protection products; faster resistance development and an increased likelihood that farmers turn to illegal products, off-label use, and poor stewardship practices; and reduction in crop yield. In turn, overuse of one particular product will occur and farmers' incomes will be reduced. If fully realised, these developments would ultimately bring about a significant competitive disadvantage to Vietnam's agriculture sector relative to its ASEAN neighbours and beyond.

Recommendations:

- Apply a risk-based assessment when registering products and their use;
- Abolish the application of Circular 21 with regard to GHS and PHI criterion;
- Create a partnership between the Government, crop protection product industry and relevant stakeholders to jointly promote the safe use of crop protection products and good agricultural practices; and
- Continue efforts to monitor domestic markets in terms of consumer safety, including residue-related issues in agricultural commodities.

25 PHI is a reference for the number of days that must pass between the last application of a crop protection product and the moment the crop can be harvested.

26 Whitebook 2017, Chapter 12 (II): "Food safety: risk-based food safety management and Importance of legal enforcement" p. 107.

III. LEGAL ENFORCEMENT: TRACEABILITY AND ACCOUNTABILITY THROUGH AN ANIMAL IDENTIFICATION AND RECORDING SYSTEM

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST).

Issue description

Currently, there is no mandatory traceability system, even though the Food Safety Law prescribes it. There have been some local 'voluntary' traceability systems for eggs and vegetables set up in recent times.[27] This is a good first step, but in our view the Government should start introducing mandatory systems. It could begin with the introduction of a mandatory animal registration system, as the lack of such a system causes a two-fold risk for food safety at the moment.

Firstly, when a serious disease breaks out that can be transmitted from animals to humans (zoonotic disease) it is not possible to trace the disease back to its origin. Not being able to accurately identify the source of an infection makes effectively eradicating the disease incredibly difficult, if not impossible. This reduces confidence both in the sector and in Vietnam, causing a drop in prices and irrevocable reputational damage.

Secondly, not having an identification system in place actually increases the likelihood of serious food safety issues occurring. For example, when a problem such as the illegal use of hormones or antibiotics is detected, it is often impossible to identify and punish the offender because the source of the product is unknown. This lack of accountability makes it more likely that offences will occur, since perpetrators know that the chances of being caught are very low. For instance, at a session of the National Assembly in June 2017, it was revealed that only 20% of the detected 680,000 violations have been punished.[28] However, we welcome the new Decree on fines for food safety violations which is being drafted[29] which, we believe, will have a positive impact. The Government has also recognised that offenders should be punished more severely[30] and we are pleased with the decision of the Ho Chi Minh City (HCMC) authorities to do this.[31] In earlier editions of the Whitebook, we raised the issue of strict(er) enforcement of existing regulations.[32] Of course, legislation could be improved, but we believe that enforcing the current regulations would be a good first step since it will increase food safety, competitiveness and export possibilities while lowering the negative economic impact significantly by reducing health costs and rejections of Vietnamese products by importing countries.

We also believe that an identification and recording system containing a traceability component would change this and be a useful tool to prosecute offenders while improving Vietnam's food safety reputation. This system would allow each animal product to be traced back to the farm where it was born, the places it stayed during its lifetime and after, as well as the companies responsible for its transport. Since the reputational damage of a serious disease outbreak is extremely high for the sector and the country, we believe that the costs of such a registration system should be borne jointly. The initial investment to design and set up the system should be borne by the Government. However, the operational costs of running the system should be paid for by fees levied on the sector. Each producer, transporter and handler should be required to pay a fixed annual fee to be registered. Then, an additional fee should be levied per animal, meaning larger businesses would pay extra. Below, we briefly describe a pilot currently running in HCMC. The pilot has shown that the costs of the scheme are relatively easy for the users to cover.

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27 V. Yen, "Egg origin made traceable from this month", *The Saigon Times*, 07 September 2017. Available at: <english.thesaigontimes.vn/55976/Egg-origin-made-traceable-from-this-month.html> accessed on 22 November 2017; "Saigon consumers can now check where their vegetables come from", *VN Express*, 17 January 2017. Available at: <https://e.vnexpress.net/news/news/saigon-consumers-can-now-check-where-their-vegetables-come-from-3529541.html> accessed on 22 November 2017.

28 "Lawmakers say unsafe food giving Vietnamese long slow death", *VN Express*, 06 July 2017. Available at: <e.vnexpress.net/news/news/lawmakers-say-unsafe-food-giving-vietnamese-long-slow-death-3595305.html> accessed on 22 November 2017.

29 "Ministry gets tough on food safety violations", *The Saigon Times*, 08 September 2017. Available at: <english.thesaigontimes.vn/56028/Ministry-gets-tough-on-food-safety-violations.html> accessed on 22 November 2017.

30 "Localities struggle to ensure food safety", *Vietnam Net*, 12/09/2017. Available at: <english.vietnamnet.vn/fms/society/186231/localities-struggle-to-ensure-food-safety.html> accessed on 22 November 2017; "Shrimp injection crackdown intensified", *Vietnam News*, 13 September 2017. Available at: <http://vietnamnews.vn/society/393687/shrimp-injection-crackdown-intensified.html> accessed on 22 November 2017.

31 K. Phong, "Food safety violators to face criminal charges", *Saigon News*, 6 October 2017. Available at: <sggpnews.org.vn/law/food-safety-violators-to-face-criminal-charges-70372.html> accessed on 22 November 2017.

32 Whitebook 2015, chapter 3.1.5: "Legal Framework, Coordination and Enforcement" p. 91; Whitebook 2016, chapter 11 section I: "Food Safety – Importance of traceability and legal enforcement" p. 81; Whitebook 2017, chapter 13 section II: "Food Safety: risk-based food safety management and importance of legal enforcement" p. 106.

Monitoring animal movements will allow MARD, through the Department of Animal Health, to better protect against trade-limiting diseases such as Foot and Mouth Disease. These diseases currently restrict the ability to develop official health protocols with China and cost millions of dollars of losses to farmers every year. The Department of Livestock Production of MARD and MOIT require improved monitoring systems to better protect against and regulate the unofficial import of livestock and products from other countries and to improve market access and competitiveness in foreign markets. We are aware that the fresh food traceability system is now operating in HCMC with the support of the HCMC authorities.[33] This system ensures the traceability and integrity of all pig and pork movements into HCMC from 22 surrounding provinces.[34] It is now being extended to chicken and poultry[35] and eggs[36] with projects in beef, vegetables and fruits also in the pipeline. The decision of the HCMC authorities to only accept traceable pigs is a good step. However, it is important that this is strictly implemented, which we believe will be done soon.[37]

This program could effectively improve the Government's ability to monitor the movement of animals and products. It provides a reliable system that will allow stricter enforcement of regulations and decrease the impact of corruption. The minimal cost of the system is paid for by users rather than the authorities, or reliance on international support. For this program to be successful, the authorities should accept, support and implement it at all Government levels. It would also be helpful if an annual report could be published detailing how issues will be followed-up.

In this light, it is also important that authorities prevent the sale of products that are suspected of being unsafe while waiting for test results. This is currently not possible and therefore we suggest drafting regulations to make it possible.[38]

In 2017, a problem was detected in Europe with the use of a pesticide which resulted in eggs becoming unsafe. This caused large financial losses for many companies. However, the fact that the tainted eggs were traceable prevented a negative impact on human life and resulted in the arrest of the persons responsible.[39] This incident shows that it is sometimes not easy to control food safety, but, with the right tools in place, the issue can be addressed efficiently and quickly and the responsible persons held accountable. The Vietnamese Government could learn from this and other international best practices to avoid making the same mistakes, and introduce these in Vietnam.[40] As we mentioned in the previous edition of the Whitebook[41], referring to the report of the World Bank Group[42], food safety should be assessed in a risk-based manner. In our view, this can be best achieved through involving the producers and ensuring their commitment to supplying safe food products.

Potential gains/concerns for Vietnam

The introduction of an identification and recording system containing a traceability component would make it easier to find and punish offenders. This would ensure that fewer offences occur as there would now be a more effective system to identify the people responsible. At the same time, food safety standards would rise and the reputation of Vietnamese products would increase both nationally and internationally. Increased food safety would lead to more export opportunities for Vietnam to the EU and other markets.

33 For more information, please refer to <https://te-food.com/use_case.html> accessed on 22 November 2017.

34 Decision 6079/QĐ-UBND dated 21 November 2016 of HCMC People's Committee promulgating regulations on implementation of the plan on management, identification and traceability of pork under the pilot market of food safety in Ho Chi Minh City during the period of 2016 - 2020

35 Decision 3584/QĐ-UBND dated 8 July 2017 of HCMC People's Committee approving the plan on management, identification and traceability of poultry under the pilot market of food safety in Ho Chi Minh City.

36 Decision 3583/QĐ-UBND dated 8 July 2017 of HCMC People's Committee approving the plan on management, identification and traceability of eggs under the pilot market of food safety in Ho Chi Minh City.

37 V. Yen, "HCMC says will trace pork origin more stringently", *Saigon Times International*, 23 October 2017. Available at: <english.thesaigon times.vn/56696/HCMC-says-will-trace-pork-origin-more-stringently.html> accessed on 22 November 2017.

38 K. Phong, "Food safety violators to face criminal charges", *Saigon News*, 6 October 2017. Available at <sggpnews.org.vn/law/food-safety-violators-to-face-criminal-charges-70372.html> accessed on 22 November 2017; "Food safety violators to face criminal charges", *Saigon Online*, 6 October 2017. Available at: <sggpnews.org.vn/law/food-safety-violators-to-face-criminal-charges-70372.html> accessed on 22 November 2017.

39 "15 EU countries, Hong Kong and Switzerland caught up in tainted egg scandal", *RTE*, 11 August 2017. Available at <www.rte.ie/news/europe/2017/0811/896628-eu-commission-eggs/> accessed on 22 November 2017.

40 H. Nguyen-Viet, T. T. Tuyet-Hanh, F. Unger, S. Dang-Xuan & D. Grace, "Food safety in Vietnam: where we are at and what we can learn from international experiences", *NCBI*, 16 February 2017. Available at <www.ncbi.nlm.nih.gov/pmc/articles/PMC5314466/> accessed on 22 November 2017.

41 Whitebook 2017, Chapter 12: "Food safety: Risk-based food safety management and importance of legal enforcement" p. 106.

42 "Vietnam food safety risks management: challenges and opportunities: technical working paper", *World Bank Group*, 28 March 2017. Available at <documents.worldbank.org/curated/en/415551490718806138/pdf/113828-REVISED-WP-Technical-working-paper-EN-FINAL.pdf> accessed on 22 November 2017; "World Bank releases report on food safety in Vietnam", *Vietnam Net*, 28 March 2017. Available at: <http://english.vietnamnet.vn/fms/society/175339/world-bank-releases-report-on-food-safety-in-vietnam.html> accessed on 22 November 2017.

Recommendations:

- Finance the setting up of an identification and recording system containing a traceability component;
- Start with a product, such as pig, in which Vietnam is competitive and has export potential;
- Roll-out the HCMC pilot nationally;
- Raise awareness of the importance of implementing the HCMC program to increase the reputation of Vietnamese products, food safety and exports;
- Encourage the Government at all levels to accept, support and implement this system;
- Introduce an annual registration fee for this system and a fee per animal, or follow the HCMC finance model;
- Draft regulations to prevent the sale of products that are being examined and tested;
- Look at international best practice for traceability and use this where necessary to improve the situation in Vietnam; and
- Improve food safety through involving the producers and committing them to supply safe food products.

IV. LEGAL ENFORCEMENT: BANNED SUBSTANCES

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Science and Technology (MOST).

Issue description

In animal husbandry, antibiotics are mainly used for three purposes: growth promoter[43], treatment of ill animals and as a preventative treatment against diseases. In order to serve these three purposes, antibiotics are usually added into animal feed.

Over the last five years, Vietnamese lawmakers have made numerous efforts to stop the use of prohibited antibiotics and other veterinary medicine in animal husbandry; and to enforce existing regulations, with varying degrees of success.[44] The use of prohibited veterinary medicines as a growth promoter is mainly done in commercial production, or by individuals for purposes of unhealthy business competition – an issue we addressed in the 2015 edition of the Whitebook.[45] Several Circulars have been promulgated that contain a list of chemicals and antibiotics prohibited from import, production, trading and use in livestock and poultry feeds in Vietnam since 2014.[46] However, the entry into force of several parts has been postponed for various reasons.

In 2017, the Veterinary Department of MARD reduced the amount and type of antibiotics that can be used for growth promoting purposes, and in 2018 the use for this purpose will be completely banned. However, the use of antibiotics for the treatment of ill animals and preventive treatment has a more severe impact on human health, because the quantity used is much higher than when used as growth promoter. Nevertheless, there are no proper or clear regulations to efficiently control these issues, as only a few types of banned antibiotics are mentioned in Circular 28/2014/TT-BNNPTNT dated 4 September 2014 of MARD promulgating the list of chemicals and antibiotics prohibited from import, production, trading and use in livestock and poultry feeds in Vietnam.

Following publicity in 2014 on the use of banned hormones and the actions taken by local authorities to enforce existing legislation[47], many farmers agreed to not use these antibiotics in the future.[48] We are pleased that medium-sized animal feed production enterprises have also been proactive in reducing the use of antibiotics in their

43 Hormones used as a growth promoter are: salbutamol, chlenbutarol and ractobamine.

44 The head of the agency/company which violates the regulations related to banned substance use can be criminally liable.

45 Whitebook 2015 Chapter 3, paragraph 3.1.5: "Legal Framework, Coordination and Enforcement" p. 92.

46 Circular 28/2014/TT-BNNPTNT dated 04 September 2014 and Circular 42/2015/TT-BNNPTNT dated 16 November 2015 promulgating the list of chemicals, antibiotics prohibited from import, production, trading and use in livestock and poultry feeds in Vietnam; and Circular 06/2016/TT-BNNPTNT dated 31 May 2016 that explicitly lists antibiotics that can be used as growth promoters.

47 Use was banned in 2002. "Pig farmers targeted in chemical probe", *Vietnam News*, 25 August 2014. Available at: <vietnamnews.vn/society/259271/pig-farmers-targeted-in-chemical-probe.html> accessed on 22 November 2017; "Pig farm owners say no to growth promoters", *Vietnam News*, 25 August 2015. Available at: <vietnamnews.vn/society/274947/pig-farm-owners-say-no-to-growth-promoters.html> accessed on 22 November 2017.

48 "Pig farm owners say no to growth promoters", *Vietnam News*, 25 August 2015. Available at <vietnamnews.vn/society/274947/pig-farm-owners-say-no-to-growth-promoters.html> accessed on 22 November 2017.

production, and even aim to stop using them in the future. Antibiotics will be replaced with safe alternatives such as: herbal substances and enzymes. However, in our view, a holistic approach to livestock production through bio-security, building design and control, vaccination, monitoring, genetics and nutrition is likely to provide even better results than an erratic use of "magical products".

Furthermore, over the past year, a rapid urine test kit has been used to check for banned substances in livestock in Vietnam. This method has helped authorities discover violations and subsequently impose harsh penalties on offenders, including destroying all animals on their farms. As a result, the overuse of growth hormones has been brought under control and incidents have significantly decreased, and hopefully will stop altogether in the future.

Potential gains/concerns for Vietnam

Livestock product manufacturers are concerned about ensuring the safe consumption of their products inside and outside Vietnam. To export products, Vietnam's animal husbandry sector has to deal with difficult technical barriers from importers. This encourages enterprises to find solutions that ensure food safety, meaning antibiotics will be used responsibly. When the use of the rapid urine test kit is implemented repeatedly and over a long period of time across the country, and when existing regulations are enforced efficiently, the reputation of pork meat will improve. People will be able to consume safe pork meat and export opportunities for Vietnam will increase.[49] Furthermore, it will positively impact the AMR issue described earlier in this chapter.

Recommendations:

- Strictly enforce existing regulations on the use of banned hormones;
- Provide easy access to products to be used in livestock production imported from countries with which a Free Trade Agreement exists; and
- Increase awareness of the use of banned antibiotics, especially as a growth promoter.

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49 T. Dung, "Vietnam seeks to export pork", *Saigon Times International*, 22 October 2017. Available at: <english.thesaigontimes.vn/56697/Vietnam-seeks-to-export-pork.html> accessed on 22 November 2017.

CHAPTER 14 **INFORMATION & COMMUNICATION TECHNOLOGY**

OVERVIEW

The Information & Communication Technology (ICT) sector in Vietnam has developed rapidly over the last few years. It is now playing an increasingly important economic role, emerging as a spearhead sector and driving force for the social and economic development of the country.

In 2017, Prime Minister Nguyen Xuan Phuc instructed Vietnam's larger cities and their authorities to take action to implement the 4^{th} Industrial Revolution.[1] This shows once again that Vietnam is willing to step up and challenge itself. The anticipated implementation of the European Union-Vietnam Free Trade Agreement (EVFTA) in 2018 is expected to generate a new wave of foreign investment as well as a desire to strengthen capacity and implement policies to ensure the development of digital infrastructure and the security of the national information system.

The EuroCham ICT Sector Committee welcomes these initiatives. We are keen to support Vietnam's long-term ICT development by working on common issues related to European ICT businesses operating in Vietnam.

To make Vietnam a stronger and more reliable competitor in both the regional and global ICT market, we believe that the laws related to this sector should be updated to become more international and open. In particular, human resources (HR), network, privacy and security regulations should be the core focus to promote a sustainable, smart, efficient and trustworthy online economy.

In the rest of this chapter, we provide further details on the issues we believe the Government should prioritise to implement the 4th Industrial Revolution. These include International Internet Bandwidth and Internet connection costs, IT education and training on cyber security. These concerns were chosen by our members through a careful process of deliberation and discussion.

We hope that local partners, the Government and relevant authorities will consider our recommendations and treat them as a useful resource to help achieve their development goals for Vietnam. We would welcome the opportunity to discuss these issues further with relevant Ministries.

I. CYBER SECURITY

Relevant Ministries: Ministry of Public Security (MPS).

Issue description

The issue of cyber security has been rising up the global agenda for some time. It came to a head in May 2017 with the worldwide WannaCry ransomware attack.[2] Responding to the multitude of attacks and hacks of both large and small organisations, the National Assembly is taking positive steps towards organising cyber security on a national level by drafting a Law on Cyber Security through Ministry of Public Security (MPS).[3]

Cyberspace includes all information accessible via the Internet both inside and outside national borders. Individuals, public and private organisations have taken advantage of the possibilities of the Internet. The world is becoming

1 Directive 16/CT-TTg dated May 4, 2017 of the Prime Minister on enhancing access to the fourth industrial revolution.

2 "Cyber-attacks have become a fact of life", *Vietnam Investment Review*, 23 May 2017. Available at: <http://www.vir.com.vn/cyber-attacks-have-become-a-fact-of-life.html> accessed on 7 December 2017.

3 "Cybersecurity protection measures to be put into law", *Vietnam Law and Legal Forum*, 26 June 2017. Available at: <http://vietnamlawmagazine.vn/cybersecurity-protection-activities-to-be-put-into-law-5903.html> accessed on 7 December 2017.

more interconnected, so the state, critical public infrastructure, businesses and citizens all depend on the safe and secure functioning of ICT and the Internet. Cyber security has therefore become a major challenge for the public and private sectors both at a national and international level. We therefore welcome the positive steps the Government is taking to improve cyber security, and would like to point out the following issues with current legislative developments.

Potential gains/concerns for Vietnam

In its present form, we believe that the draft Law on Cyber Security is not in line with current international standards. We anticipate several potential issues for Vietnam if the Government follows this course of action. In our view, cyber security provides an opportunity for public and private organisations to work together without losing the knowledge and freedom that the Internet has given Vietnam or the prosperity connected to it. Legal implications should not lead to an undue increase in the cost of doing business or inhibit the ease of Internet usage.

Recommendations:

In our view, the Government should:

- Collaborate with innovators to provide real-world, standards-based cyber security capabilities that address both business and national needs. This will accelerate the adoption of security technologies across industries;
- Provide guidelines to establish hardware and software infrastructure with practical ways to implement cost-effective, repeatable and scalable cyber security solutions;
- Use these guidelines to support organisations to adopt cyber security technology with reduced total cost of ownership; and
- Establish a single privacy law which protects end-consumers' private information stored and processed on devices and systems.

II. EDUCATION AND TRAINING

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

Issue description

Information Technology (IT) is a key growth industry in Vietnam. The Government recognises this, and has set a target to have 1 million employees meet international skills and education standards in the ICT sector by 2020. This ambition is set out in Decision 1755/QD-TTg dated 22 September 2010 of the Prime Minister approving National Strategy on "Transforming Vietnam into an advanced ICT country" (Decision 1755). However, the availability of skilled and trained labour remains an immediate obstacle to the industry's growth.[4]

There are 142 universities and 112 colleges with IT faculties in Vietnam, according to Ministry of Information and Communications (MIC) data. While there is a huge demand for IT workers, and while companies often offer high salaries for IT positions, many universities and colleges struggle to enrol enough students in their IT courses.[5] On top of this, Vietnam does not have a standardised IT education skills set or curriculum, based on international criteria, which would meet the requirements of local and foreign technology companies in compliance with the objectives set out in Decision 1755 to develop the ICT industry.

Therefore, IT companies in Vietnam have to make substantial investments in fresh graduates from universities and

4 "Cybersecurity protection activities to be put into law", *Vietnam Law and Legal Forum*, 26 June 2017. Available at: <http://vietnamlawmagazine.vn/cybersecurity-protection-activities-to-be-put-into-law-5903.html> accessed on 7 December 2017.

5 T. Chanh "Vietnam faces severe shortage of IT manpower" *The Saigon Times*, 14 August 2017. Available at: <http://english.thesaigontimes.vn/55538/Vietnam-faces-severe-shortage-of-IT-manpower.html> accessed on 8 December 2017.

vocational training schools to develop their technical, soft and English language skills. On average, it can take a year to prepare the workforce for the professional requirements of their roles. Roland Polzhofer's 2013 thesis for the Vietnamese-German University (VGU) is a case in point. Highlights the gaps between the views of University managers and the managers of IT companies.[6]

Potential gains/concerns for Vietnam

Developing a highly-skilled workforce will help support Vietnam's objectives as set out in the plan on development of IT HR. This is a key requirement if Vietnam wants to continue the development and growth of its IT industry, as well as foster local innovation and entrepreneurship. A well-trained labour force would also help the country transition to an advanced, knowledge-based economy.

There are around 250,000 people employed in the ICT industry in Vietnam, according to the Vietnam Software and IT Services Association.[7] Around 50,000 of those work in the software and digital technology development industry. The average annual increase in demand for HR in IT stands at 13%, according to MIC. Moreover, for the last three years, the annual supply for IT HR has grown 8% on average, outstripped by the 47% average annual growth rate of demand for IT jobs, according to a VietnamWorks report.[8] This large demand is difficult to fulfill and if supply growth remains low, Vietnam will face an annual shortage of 78,000 IT workers. To put that in perspective: Vietnam needs about 1.2 million people in the IT sector by 2020, according to a 2017 MIC report. If the current rate of growth is maintained, Vietnam will have a deficit of around 1 million IT workers in 2020.[9]

However, a recent survey by the National Institute of Information and Communications found that 70% of IT graduates need to be re-trained to meet firm requirements. It also uncovered that the majority of IT students were not even aware of their field of practice, 72% lacked practical experience, while 42% showed poor teamwork. Among fresh graduates, only 15% met the requirements of businesses, while 80% of graduate computer programmers needed re-training.[10]

Recommendations:

In order to address the above mentioned issues, we would like to make the following specific recommendations:

- The Government should cooperate with high-performing foreign universities and learn from best practice to create an international, relevant curriculum;
- A national standard technical skills exam should be developed for the IT industry, in close cooperation with national and foreign industry associations;
- A minimum qualification course should be designed to enhance soft skills and strengthen English communication;
- Ministry of Information and Communication (MIC), together with Ministry of Education and Training (MOET) and Ministry of Labour, Invalids and Social Affairs (MOLISA), should require students from IT universities and specialised IT vocational training institutions to complete a practical internship. This should be carried out at any IT company of their choice for a period of between 6 and 12 months, as part of their curriculum;
- Universities should collaborate closely with the ICT sector to understand technological trends and the practical demands of jobs in the industry for students after graduation. For example, offering inter-disciplinary courses such as 'Computer Engineering with Embedded Systems', and adding engineering processes and methods like problem solving skills and failure mode analysis to engineering subjects would be a positive outcome for the ICT industry; and

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6 R. Polzhofer (2013) *Analyzing the skill-sets and skill-set requirements for IT Software Engineers in the IT Industry of Ho Chi Minh City*, Master's Thesis, Vietnamese-German University.

7 "Demand for IT Workers Surges" *Viet Nam News*, 7 June 2013. Available at: <http://vietnamnews.vn/society/240415/demand-for-it-workerssurges.html#oAJY9o1lLHsbhgEf.97> accessed on 8 December 2017.

8 "Vietnam to lack 1 million IT workers in 5 years" *Vietnam Net*, 30 November 2015. Available at: <http://english.vietnamnet.vn/fms/science-it/148153/vietnam-to-lack-1-million-it-workers-in-5-years.html> accessed on 8 December 2017.

9 L. T. Thao, "Relentless boom in technology sector open opportunities for IT staff in Vietnam" *FPT Education*, Available at: <http://international.fpt.edu.vn/relentless-boom-technology-sector-open-opportunities-staff-vietnam/> accessed on 8 December 2017.

10 "IT industry tackles lack of qualified staff", *Vietnam Breaking News,* 24 May 2015. Available at: <https://m.vietnambreakingnews.com/2015/05/it-industry-tackles-lack-of-qualified-staff/> accessed on 8 December 2017.

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

III. INTERNET COST AND INTERNATIONAL INTERNET BANDWIDTH (MBPS)

Relevant Ministries: Ministry of Information and Communications (MIC).

Issue description

Vietnam is one of the major emerging markets in the ASEAN region, with some of the fastest rates of growth in economic development and consumer demand. The number of Internet users in Vietnam has grown to over 50 million, bringing the number of Internet users per 100 people to 54.19.[11] Meanwhile, the total International Internet connection bandwidth reached over 3,816,027 Mb/s, an increase of almost 128% compared with 2015.

In terms of political issues, one of the underpinnings of this growth has been the expansion of telecommunications networks. Vietnam is a relative newcomer to the Internet, obtaining its first permanent international connection in December 1997. This late start can be partly explained by the Government's hesitation. The Internet is a powerful tool for research and economic development but it can also be perceived as a potential threat, since it can open up access to views and opinions that are not always consistent with those of the Government.

Regarding pricing, the re-balancing of prices towards regional norms is an urgent priority. Vietnam has some of the world's highest prices for domestic and international leased lines. This is inevitably passed on in higher prices for local Internet Service Providers (ISPs) and therefore customers' Internet access prices are also among the highest in the region.

While clearly of great significance for Vietnamese society, the operation of a national firewall has the effect of slowing Internet communication and exacerbating problems of congestion. In any case, the perceived need for content control should be dealt with in a way that does not exclude ISPs from eventually having their own international gateways.

From an infrastructure point of view, we notice that the country's Internet has repeatedly been affected by breaks in the submarine cables system that connects it with international systems, especially the Asia-America Gateway (AAG). The connection is one of only 5 pipes and is the network entry point for local providers. Vietnam encountered trouble with almost all of them in 2017:

- AAG broke down in August (the 4th time it faced problems in 2017);
- SMW3 broke down in August;
- IA broke down in August; and
- APG broke down in June.

In fact, 3 out of 4 Internet submarine cables linked to Vietnam broke down in August 2017, causing the slowing down of Internet speed nationwide.

11 "Internet users account for 54% of Vietnam's population after 20 years", *Vietnam Net*, 23 November 2017. Available at: <http://english.vietnamnet.vn/fms/science-it/190837/internet-users-account-for-54--of-vietnam-s-population-after-20-years.html> accessed on 15 December 2017.

Potential gains/concerns for Vietnam

The forces that are changing the global ICT (including International Internet Bandwidth) market context, and its openness, create visible opportunities for a potential competitor. Improving this International Internet Bandwidth, by decreasing the cost and improving the quality of services, provides opportunities for Vietnam to attract foreign companies as part of a sustainable and long-term growth plan.

Recommendations:

We would like to make the following specific recommendations:

- ISPs and other operators should be allowed to set their own tariffs. In the short term, Directorate General of Posts and Telecommunications (DGPT) could set an upper limit on prices. It should not be necessary to set lower limits for prices;
- Some degree of competition should be introduced in services provision, for instance, by allowing foreign services providers to get their full service distribution rights in Vietnam;
- Telecommunications and Internet prices should be benchmarked against regional and national averages; and
- Efforts should be directed towards developing more local content, especially in the Vietnamese language.

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Kevin Richard, Vice-Chairman, EuroCham Information and Communication Technology Sector Committee; Business Development Director, SoftNET Asia.

CHAPTER 15 **MOBILITY**

The mobility sector in Vietnam continues to see positive growth. Almost 1.5 million motorcycles were sold in the first 6 months of 2017. Meanwhile, the automotive market crossed a historic milestone in 2016, with over 300,000 units, including imported vehicles.

Looking ahead, 2018 presents significant opportunities for the sector. The EU-Vietnam Free Trade Agreement (EVFTA), which we hope will be ratified in the next 12 months, should lead to an increase in imports of vehicles and motorcycles from the EU. This positive development led European companies in Vietnam to come together and form the Mobility Sector Committee under EuroCham's umbrella.

This Sector Committee contains leading companies from around Europe, including the producers and suppliers of passenger cars, commercial vehicles, motorbikes and parts. It is separated into companies assembling in Vietnam and a larger group of companies importing from Europe. But while we work across different areas of the mobility sector, we share the common goal of improving road safety, connectivity and the business environment across the country. This cross-sectoral work is essential in Vietnam. There are organisations representing the car and motorcycle industries, such as the Vietnam Automotive Manufacturer's Association (VAMA) and the Vietnam Association of Motorcycle Manufacturers (VAMM), and an official importers association - Vietnam Importers Vehicle Association (VIVA), including European companies is in the making.

While there are significant opportunities in this sector, there are also challenges. Some of these are unique to the car and motorcycle industries, and will be discussed in their individual chapters. However, there are some common challenges that we share, and which we would like to highlight here. In particular, both the car and motorcycle industries are concerned about aspects of Vietnam's tax regime. Motorcycle companies are concerned about the proposed increase in VAT applied to vehicles, goods and accessories. Meanwhile, car companies are concerned about the new Special Consumption Tax (SCT) provisions and the import duty scheme for specific components. Both these issues, if unaddressed, could have unintended negative consequences for manufacturers in the sector, the wider supply chain and living standards in general.

That's why EuroCham's Mobility Sector Committee is so important. As a strategic EU industry, the mobility sector will not only support the implementation of the EVFTA but also continue to bring the international knowledge and experience of our companies into Vietnam for the benefit of all. In the remainder of this chapter, we present specific issues from both the motorcycle and automotive industries, along with a series of specific recommendations. We would be delighted to discuss any of these issues in more detail with the Government and relevant Ministries.

CHAPTER 15a **AUTOMOTIVE**

OVERVIEW

Automobile enterprises in Vietnam are divided into two groups. The first consists of 17 manufacturers and assemblers who are members of the Vietnam Automotive Manufacturers' Association (VAMA). The second group consists of authorised importers under the soon-to-be-established Vehicle Importers Vietnam Association (VIVA).

Many VAMA members are involved in both manufacture/assembly and import. Vehicle assembly in Vietnam began in 1992, followed by imports of new vehicles on a larger scale in 2003. Official importers[1] started their operations when Vietnam joined the World Trade Organisation (WTO) in 2007 and are now in the process of creating VIVA. Moreover, trading companies also import new and used vehicles alongside authorised ones, although new vehicle imports were interrupted in 2011 by Circular 20/2011/TT-BCT dated 12 May 2011 of Ministry of Industry and Trade (MOIT) stipulating additional procedures for imported cars from 09 seats or less (Circular 20).

In 2016, for the first time, Vietnam's automobile market exceeded the 300,000 vehicles milestone at 304,427 units, including used vehicle imports. The new vehicles segment rose 22% over 2015 to exceed 293,500, with Passenger Cars (PC) accounting for 180,500 units (a 28% increase) and Commercial Vehicles (CV) and specialised vehicles accounting for 113,000 units (a 13% increase). 76% of those vehicles were Completely-Knocked-Down (CKD) and 24% were Completely-Built Unit (CBU).[2]

However, with over 20 companies and 40 vehicle brands, the development of the local automobile industry is still far below an installed capacity of 500,000 vehicles per annum.[3] Despite Government policies to protect local automotive production since 1992, the production cost of a locally-manufactured car could still be 20% higher than the cost of a similar vehicle made in Thailand or Indonesia.

Moreover, passenger cars made in Vietnam are still not eligible for the 40% local content value threshold to benefit from the preferential ASEAN Trade in Goods Agreement (ATIGA) import tax for export in Association of South-East Asian Nations (ASEAN). The local content is about 10% for passenger cars, except for some specific models[4] (about 35% for THACO passenger cars by 2017) and about 40% to 50% for commercial vehicles.

Domestic automakers are disadvantaged due to small-scale production, according to a Vietnam Business Forum (VBF) report.[5] As local supportive industry is limited, they import almost all components for assembly. This is costly in terms of transport, packaging services and import taxes. The lack of coherent Government automotive policies over time, combined with Government incentives considered weak by CKD assemblers and poor supplier presence continues to result in a local manufacturing environment in Vietnam that is less attractive for automakers than other ASEAN countries.

It is fair to say that the Government has introduced policies to support domestic automobile production. In 2015, Decree 11/2015/ND-CP dated 3 November 2015 of the Government to support industry development (Decree 11) was promulgated. Then, in 2016, Decision 229/QD-TTg of the Prime Minister dated 4 February 2016 on the mechanism and policy for implementation of the strategy and plan for development of Vietnam automobile industry (Decision 229) was signed. However, VBF believes that these policies are unclear, and that this makes it difficult for automakers to prepare production projects and to ask the Government for support.

Last year highlighted the growing trend of CKD assemblers switching to CBU imports from ASEAN – mostly Thailand

1 Brands represented by official importers in 2017 include: Audi, Bentley, BMW, Infiniti, Jaguar, Lamborghini, Land Rover, Maserati, Mini, Porsche, Renault, Rolls Royce, Subaru, Volkswagen and Volvo.

2 Source: VAMA reports.

3 Vietnam Business Forum's annual forum organised by the International Finance Corporation and the World Bank Group with Ministry of Planning and Investment in Ha Noi on 6th December 2016.

4 "Toyota Vietnam leads MPV market segment", *The Saigon Times*, 20 July 2009. Available at: <http://english.thesaigontimes.vn/Home/features/general/5527/> accessed on 19 December 2017.

5 "Remove import tax on auto components, VBF proposes" *Vietnam News*, 6 December 2016. Available at: <http://vietnamnews.vn/bizhub/347495/remove-import-tax-on-auto-components-vbf-proposes.html#VRezsUhbh0CzwwDX.97> accessed on 8 January 2018.

and Indonesia - to exploit the full implementation of ATIGA from 2018. In order to further facilitate and protect local automobile production, the Government has issued new policies. For example, Decree 125/2017/ND-CP dated 16 November 2017 on amendments to certain articles of Decree 122/2016/ND-CP of the Government dated 1 September 2016 on export duty schedule, preferential import duty schedule and lists of commodities and their flat tax rates, compound tax rates and outside tariff quota rates (Decree 125) applies 0% import duty on CKD components for manufacturers who can achieve high-production volume. Moreover, Decree 116/2017/ND-CP of the Government dated 17 October 2017 on requirements for manufacturing, assembly and import of motor vehicles and trade in motor vehicle warranty and maintenance services (Decree 116) sets stricter conditions on automobile import to protect local production. Ministry of Finance (MOF) is also considering exempting locally-produced passenger car parts from the Special Consumption Tax (SCT). Despite Vietnam having eliminated its import tax for automobiles within ASEAN from 30% down to 0% on January 1st, automotive imports stopped in early 2018. Toyota stopped all production from Thailand, Indonesia and Japan for export to the Vietnamese market. Honda switched production of the CR-V, its mainstay SUV model, for the Vietnamese market to Thailand. Previously, parts shipped from Thailand were assembled and finished in Vietnam. Honda thought it would take advantage of the zero tariffs to consolidate all production of the SUV in Thailand to save costs. Production of the vehicles that it was supposed to release into the market from early January has been suspended. Mitsubishi suspended production in Thailand of its Pajero Sports SUV for the Vietnam market.

Ford Thailand, which export cars to Vietnam, raised their concerns with the Vietnam Government on the impact of the Decree on their business operations. Major exporters from Japan, Thailand and the U.S. also expressed concerns to Vietnam that it would become impossible for them to sell into the country, highlighting that the Decree could violate World Trade Organisation (WTO) rules. VAMA petitioned the Prime Minister of Vietnam four times in 2017, without any result. No vehicles shipped from Europe to Vietnam means neither export revenue in Europe nor tax collection in Vietnam from CBU imports. The resulting fiscal revenue drop in Vietnam will be significant, as imported CBU represented 30% of Vietnam's automotive market in 2017.

Table 5: Import Tax deduction from 2016 to 2018

	2016	2017	2018	
ATIGA	40%	30%	0%	
MFN	70%	70%	70%	51% for 4WD with engine over 3.0 litres
EVFTA		78%		Reduced over 9 -10 years in 11 equal steps - 10 for 4WD from signature date [7 8]

In light of the high importance of the EU-Vietnam Free Trade Agreement (EVFTA) in this year's Whitebook, this chapter will focus more on questions of import than traditional, local manufacturing.

I. TAXATION ISSUES

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF).

1. Special Consumption Tax (SCT)

Issue description

6 "Tariffs under the ASEAN trade in goods agreement (ATIGA) - Tariff reduction schedule 2016-2018", ASEAN, 19 October 2012. Available at: <http://www.asean.org/wp-content/uploads/images/2015/september/tarifs-schedule/Annex%202%20Tariff%20Schedules%20-%20Viet%20Nam%20AHTN%202012%202015-2018.pdf> accessed on 19 December 2017.

7 Text of EU-Vietnam Free Trade Agreement agreed as of January 2016, Annex 2-c-ii: Tariff schedule of Vietnam and Chapter 2: National Treatment and Market Access for Goods relating to Mobility. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437> accessed on 19 December 2017.

Table 6: SCT rates on passenger cars

Engine capacity	01/01-30/06/2016	From 01/01/2017	From 01/01/2018
Below 1.5 l	45%	40%	35%
1.5 l and below 2.0 l	45%	45%	40%
2.0 l and below 2.5 l	50%	50%	50%
2.5 l and below 3.0 l	50%	55%	60%
3.0 l and below 4.0 l	60%	90%	90%
4.0 l and below 5.0 l	60%	110%	110%
5.0 l and below 6.0 l	60%	130%	130%
6.0 l and over	60%	150%	150%

Source: Tax Law 106/2016/QH13 dated 6th April 2016 effective on 1st July

Since 2016, when the SCT rates were amended, the new SCT calculations have been open to interpretation despite automotive tax payers hiring tax consultants. To provide guidance on Law 106/2016/QH13, the Government issued Decree 100/2016/ND-CP dated 1 July 2016 providing guidelines on some articles of the Law on amendment of the Law on value added tax, the Law on special consumption tax and the Law on tax administration (Decree 100) with immediate effect. Then MOF issued Official Letter 10315/BTC-TCT dated 25 July 2016 to provincial tax authorities providing guidance on the implementation of Decree 100 which removed the 105% rule from Circular 195/2015/TT-BTC[8] and changed the selling price base for the SCT calculation.

Decree 100 specifies that where manufactured or imported goods are subsequently sold by a trading entity which has one of the following relationships with the manufacturer or importer: (i) parent – subsidiary; (ii) same parent; or (iii) related party, the Streamlined Sales Tax (SST) taxable price cannot be less than 7% of the average selling price of trading entities purchasing goods directly from the manufacturer or importer. Related companies, where one directly or indirectly holds at least 20% of the other, are also subject to the 7% rule. The basis of this calculation is the price charged by the dependent or related trading entity selling to independent or non-related trading entities or customers. This is applicable to both single level and multi-level dependent or related trading entities.

As per their contractual obligations, official vehicle importers must have their official dealer network implement the world-class standards of the brand they import. Their dealers have to invest in tools, training, IT and sizeable facilities for showrooms, workshops, warehouses and storage due to the nature of the car business. However, for imported passenger car brands from Europe, sales volume is limited and will remain so as the provisions of the EVFTA will be implemented in stages over 10 years. Therefore, the 7% margin level in the SCT calculation is too low in overall value due to the small volume of cars sold and high operation cost for dealers to comply with all standards and ensure profitable operations.

Potential gains/concerns for Vietnam

Vietnamese authorities will gain from SCT calculations that ensure a growing market which generates dependable tax revenue and allows automotive dealers to develop and invest. However, unclear SCT guidelines generate confusion and possible misinterpretation of tax regulations. For the automotive sector to remain a dynamic and significant tax contributor to the Vietnamese Government, we recommend that potentially costly SCT liabilities due to late penalty charges should be waived.

Recommendations:

We would like to recommend the following:

- For imported passenger car brands, the SCT cap for the calculations should be raised from 7% to 12% or even 15% so that, despite low sales volumes, dealers make enough profit to comply with brand standards and ensure profitable operations for continued investment.

8 Circular 195/2015/TT-BTC of Ministry of Finance dated 24 November 2015 guiding on the Government's Decree 108/2015/ND-CP providing guidelines of articles of Law on Special Consumption Tax and the Law on amendments to the Law on Special Consumption Tax.

- As the SCT definition of 'related parties' is still open to interpretation, for instance from a transfer pricing perspective, we recommend that either the definition of 'related parties' applied to SCT calculations is clarified, or that the SCT becomes a standard calculation regardless of the ownership of the distribution channel. We recommend that potentially costly SCT liabilities due to late penalty charges should be waived as unclear SCT guidelines generate confusion and possible misinterpretation of tax regulations in good faith.

2. Import Duty (ID) scheme for CKD components

Issue description

Article 7.a. of Decree 125/2017/ND-CP dated 16th November 2017 provides a zero-duty incentive scheme for auto components yet to be produced domestically with knockdown level satisfaction only for manufacturers who meet specific requirements (CVs and PCs, not including PCs with engines larger than 2,500cc). This incentive scheme is available for automakers over a 5-year period from 2018 to 2022.

Potential gains/concerns for Vietnam

To be eligible for the scheme, the total production volumes of the product group and the specific committed model must be at least as high as the regulated targets. Consider, for example, the PCs group: the total production volume for each sub-period of six months must reach 8,000 units of all PCs less than 2,500 cc, of which the volume of one committed model with fuel consumption of less than 7.5 litres/100km must be more than 3,000 units. These requirements mean that most automakers in Vietnam are not eligible for this scheme, which could, in practice, be limited to just a few big companies. Moreover, this incentive scheme would allow a multiple brand company – who qualifies for volume of one brand or combined ones – to have the benefits for even low-volume brand. While other companies, that have remarkable volumes but still do not reach the required figures, would not get the benefits of this scheme.

Recommendations:

In our view, the program should be designed in a fair and non-discriminatory way to all automakers who invest in Vietnam. ID for CKD components should be eliminated without condition regardless of their source.

For the development of the industry in general, support to grow volume is essential in Vietnam. Diversification of suppliers in the market will facilitate sustainable development and meet increasing consumption demand.

II. HOMOLOGATION TEST REGULATED IN DECREE 116/2017/ND-CP ON CONDITIONS FOR AUTOMOTIVE BUSINESS

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF).

After strong growth in 2016, Vietnam's automotive market dropped 7% to below 273,750 new vehicles in 2017. Despite the most intensive discount and sales promotions in Vietnam's automotive history, customers kept waiting for SCT cuts on passenger cars with engine sizes of 2.0 litres or less and the elimination of import tariffs on CBUs imported from ASEAN member states from January 2018.

The 'conditional business for automotive' requirements expected in July 2016 were released in Decree. Official importers initially welcomed this Decree, and the new conditions enforced in the automotive sector. However, while CKD assemblers have 18 months to implement, CBU importers were left with just over 2 months to get their service facilities inspected, to receive a new warranty/maintenance certificate, then apply for an import licence from Ministry of Industry and Trade (MOIT). Decree 116, despite being a good Decree, is being implemented without taking into account the necessary 6-months lead time for the automotive industry from Europe to Vietnam.

On January 25th, Ministry of Transport (MOT) released the final Circular 03/2018/TT-BGTVT dated January 10th 2018 confirming the regulations from the draft Circular with application date of March 1st 2018. These new technical requirements will be implemented without sufficient implementation lead time, which is a prerequisite of WTO and Free Trade Agreements (FTAs), but which was completely ignored by Vietnamese authorities.

1. CBU homologation lot by lot

Issue description

According to Article 6.2.a of Decree 116, CBU imports are required to pass homologation tests (emission and safety) for every shipment. This means that a similar vehicle to one imported in a different shipment, possibly just a few days earlier, needs to be tested again.

Potential gains/concerns for Vietnam

The new regulation will increase homologation costs and time for businesses. The cost of testing for each lot, for just one model, will be around USD10,000, according to VAMA's petition letter to the Government. The new homologation process is set to necessitate up to two months during which no single vehicle from the same shipment can be sold. Together, this leads to sizeable financial costs for businesses, forcing vehicle prices up. In early 2018, there was still no sign of a testing capacity increase from Vietnam Register to accommodate in Hanoi the whole fleet of each model sent from each importer for each and every ship docking in Vietnam.

Decree 116 also requires all models to obtain a Vehicle Type Approval (VTA) certification issued by authorities of the exporting country. VTA certifications show that the vehicle meets the standards of the country in which it will be sold and is normally issued by domestic entities of the importing country. In practice, automotive certifying authorities test vehicles according to their country specifications, for instance, Europe. They are not in a position to test vehicles for export markets with each export country specifications. Such a requirement is contrary to WTO Agreements on Technical Barriers to Trade (TBT). According to Article 2 of the WTO Agreement, to request that imported vehicles undergo emission and safety tests for every shipment while vehicles produced in Vietnam only undertake tests every 36 months is discriminatory treatment between imports and domestically-produced products. This technical barrier creates unnecessary obstacles to international trade. Since Vietnam has its own competent authority (the Vietnam Register) that conducts emission and safety compliance tests on Vietnam vehicle standards, it is unclear why it is requiring a foreign authority to test and certify on conformity to Vietnam standards. As testing is now required for every shipment, such repetitive testing of identical models only generates costs and unnecessary obstacles contrary to Article III of the General Agreement on Tariffs and Trade (GATT) 1994 regarding national treatment.

Recommendations:

We propose the Government considers and accepts continuing existing homologation procedures with no requirement for testing again the same imported vehicle type.

Such testing and retesting is even more unnecessary for European-made vehicles as Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles refer to United Nations Economic Commission for Europe (UNECE/ECE) standards and regulations for vehicles as well as automotive components for assembly. This is in contradiction with the agreed EU-Vietnam Free Trade Agreement (EVFTA), by which Vietnam would commit to accept UNECE/ECE certificates or test reports emission certificates.

2. CKD component parts to be tested in Vietnam

Issue description

According to Articles 6.1.b and 6.1.c. of Decree 116, CKD components are to be tested in Vietnam. These include safety parts, tires, lamps, mirrors, glass, wheels and fuel tanks. That means parts imported from the EU with UNECE/ECE certificates or test reports will no longer be accepted for test exemption unless the certificate or test report provided is from a country which has signed a Mutual Recognition Agreement (MRA) with Vietnam. This is despite the fact that Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles refer to UNECE/ECE standards and regulations.

Potential gains/concerns for Vietnam

The new regulation will increase homologation costs and time for businesses.

Recommendations:

We recommend that the Government keeps the current practice of accepting UNECE/ECE certificates for parts that completely align with existing Vietnam National Technical Standards. For imported parts and equipment, a valid UNECE/ECE-type approval and/or test report attached to a product should be considered sufficient evidence of a valid certificate. This will help businesses to cut costs and administrative workload, aligning with the target of administrative reform in Vietnam as well as the objectives and principles of the EVFTA, namely promoting mutual recognition and eliminating and preventing non-tariff barriers to bilateral trade.

III. MANUFACTURING QUALITY STANDARDS

Relevant Ministries: Ministry of Industry and Trade (MOIT).

Issue description

The automotive industry is a precision-engineering industry which requires high-quality parts. In order to join the global supply chain, automotive suppliers, contract manufacturers and local-branded companies must meet quality standards such as ISO 9001:2015, ISO 14009 and IATF 16949:2016.

According to Decree 116, automobile manufacturers are required to build up and apply the Quality Management System in compliance with ISO 9007:2016 or an equivalent standard no later than 12 months after the date of manufacture/assembly licence. Moreover, all new vehicles manufactured or assembled in Vietnam are to qualify for the National Technical Regulation on Safety and Environmental Protection for Automobiles QCVN09:2015/BGTVT that is referred from respective UNECE standards. Furthermore, there is currently no New Car Assessment Program (NCAP) and no testing center in which to perform these standard tests, and Vietnam is not a member of the NCAP for Southeast Asia – established in 2011 with five members and two financial support organisations.

Potential gains/concerns for Vietnam

With fierce competition in the automotive industry, especially when a significant reduction in import tax is putting increasing pressure on the local automotive market, failure to meet quality standards only serves to damage the reputation of automotive makers in Vietnam. Moreover, carrying out safety tests (for instance, crash tests for locally-developed cars and trucks) is also an issue of morality. It is essential for manufacturers to make sure that their products are safe and well-functioning before passing them on to consumers. Without necessary tests, concerns about the level of vehicle safety is a critical factor that discourages customers from purchasing these cars.

Recommendations:

In our view, Vietnam should join the NCAP for Southeast Asia for safety certification and to increase the possibility to export its cars to ASEAN countries under ATIGA. Furthermore, with the aim of automobile safety assurance, Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles QCVN 09:2015/BGTVT dated 31 December 2015 should include IATF 16949:2016 for better automobile quality management. We also recommend that an independent organisation should monitor the application of the certifications and safety testing, to ensure all the certificates obtained are objective, genuine and value adding.

IV. IMPORTATION OF RE-MANUFACTURED PARTS

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Science and Technology (MOST), Ministry of Transport (MOT).

Issue description

Currently, there is no regulation providing a definition of so-called 're-manufactured' parts. Decree 187/2013/ND-CP dated 20 November 2013 of the Government detailing the implementation of the Commercial Law regarding international goods sale and purchase and goods sale, purchase, processing and transit agency activities with foreign countries (Decree 187) provides general guidelines for import/export activities and prohibits used automotive parts from being imported into Vietnam. In accordance with Circular 38/2015/TT-BTC dated 25 March 2015 of MOF on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods (Circular 38), which provides detailed instructions for carrying out customs procedures for commercial goods, Vietnamese Customs interpret any part which is not 'brand new' as a 'used part'. This makes importing re-manufactured parts impossible.

Potential gains/concerns for Vietnam

Re-manufacturing saves energy, cuts CO_2 emissions, conserves resources and benefits customers and consumers in Vietnam. Furthermore, re-manufacturing saves a large amount of precious raw materials and many tens of thousands of megawatt hours of electricity. In short, re-manufacturing reduces the burden on the environment. Every European country and most Asian countries understand the importance and environmental significance of re-manufactured parts, and therefore allow the importation and trading of such parts as new. This has also been demonstrated by various life-cycle assessment studies certified by independent testing organisations such as 'TÜV SÜD' in accordance with international standards.

Recommendations:

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

Genuine re-manufactured parts meet the same quality standards as brand-new parts. They are produced according to strict quality requirements and undergo final quality examination with exactly the same standards. Furthermore, genuine re-manufactured parts are supplied by car makers with the same warranty as new parts, are more cost-effective for customers and align with environmental protection trends.

ACKNOWLEDGEMENTS

EuroCham Mobility Sector Committee.

CHAPTER 15b **MOTORCYCLES**

OVERVIEW

Motorcycles continue to be the most popular means of transport in Vietnam. There were over 45 million motorcycles in the country in 2016, and on average, motorcycles serve over 60% of travel needs.[1] Vietnam is also the 4th-largest market for motorbikes in the world (after China, India and Indonesia) and the market continues to see strong and steady growth both in quantity and quality.[2] Whilst other countries' markets are saturated, demand is expected to remain high in Vietnam. Nearly 1.5 million motorcycles were sold in the first 6 months of 2017 – a 6% increase on the 2016 financial year, according to data from the Vietnam Association of Motorcycle Manufacturers (VAMM).[3] While this may, in part, be a result of economic recovery after the financial crisis, it also shows the enduring popularity of motorcycles as a means of transportation in Vietnam.

This strong market demand means that many investors still largely invest in the motorcycle industry. More than 60 enterprises are engaged in this sector, according to Ministry of Planning and Investment (MPI). This includes 50 companies directly involved in production, with the rest involved in assembly.[4] However, only around 10 are strong enough to compete in the market, including giant manufacturers from Japan (Honda, Yamaha and Suzuki), Italy (Piaggio) and Taiwan (SYM). Rising income levels are also stoking demand, and current consumer preferences tend to favour more modern, fashionable bikes. For instance, the market share of scooters rose from 37% in 2013 to 55% in 2016.[5] In fact, scooter sales overtook motorbikes as long ago as 2015, when they accounted for around 54% of total market share.[6] New models with additional functions and modern designs are now launched in a much shorter time, and investment in Research and Development (R&D) is also on the rise.

Motorcycle manufacturers have made significant investments in Vietnam in recent years. This has contributed to economic growth, created jobs and transferred technology and knowledge to the local population. For example, in 2012 Piaggio Vietnam announced investment in an engine-manufacturing plant with an annual capacity of 300,000 units, which has been in operation since early 2013.[7] Moreover, with USD120 million, Honda Vietnam opened its third manufacturing plant in November 2014, with an annual production capacity of 500,000 units.[8] The Vietnamese motorcycle market will remain a promising industry for manufacturers, with high future growth rates both in revenue and consumption, particularly if supported by a clear and transparent development strategy from the Government.

Regarding its social contribution, the motorcycle industry has created a significant number of jobs for local workers. It has also conducted various activities contributing to social development, with a particular focus on improving road safety in Vietnam.[9] Nonetheless, the motorcycle industry still faces some challenges. Below, we discuss three of the most important issues facing the sector, and outline our recommendations to address each of them.

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1 "Xe máy tại Việt Nam: Những con số "giật mình"", *Vietnam Net*, 19 September 2016. Available at: <http://vietnamnet.vn/vn/chuyen-trang/oto-xemay/xe-may-tai-viet-nam-nhung-con-so-giat-minh-327440.html> accessed on 7 December 2017.

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3 "VAMM declare the annual sale in Vietnam", *Vietnam Association of Motorcycle Manufacturers*, 11 July 2017. Available at: <http://vamm.org.vn/tin-tuc-su-kien/vamm-cong-bo-doanh-so-ban-hang-tai-viet-nam-n709.html> accessed on 7 December 2017.

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8 "Honda Vietnam inaugurates 3rd motorbike plant at cost $120 million", *Tuoi Tre News*, 11 November 2014. Available at: <http://tuoitrenews.vn/business/23967/honda-vietnam-inaugurates-third-motorbike-plant-at-a-cost-of-120mn> accessed on 7 December 2017.

9 J. Le Fevre, "Honda Vietnam Seeks to Protect Kids with 30.000 Free Helmets", *The Establishment Post,* 30 June 2015. Available at: <http://www.establishmentpost.com/honda-vietnam-seeks-to-protect-kids-30000-free-helmets/> accessed on 7 December 2017.

I. VAT RATE OF VEHICLES, SPARE PARTS AND ACCESSORIES

Relevant Ministries: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT).

Issue description

We understand that Ministry of Finance (MOF) has proposed to increase the rate of Value Added Tax (VAT) applied to most goods and services including vehicles, spare parts and accessories from its current rate of 10% to a higher rate of 12%. If the proposal is approved through the National Assembly in 2018, this new tax rate will take effect from early 2019.

Potential gains/concerns for Vietnam

In light of the current economic situation, in which the incomes and living standards of people, as well as the performance of businesses, are still low, an increase in VAT may have unintended negative consequences. It could become a burden on Vietnam's economy, its society in general and the automotive industry in particular.

Impact on enterprises' business activities: a VAT rise will increase the price of goods, particularly vehicles, which in turn will lead to a decline in consumption. Weaker purchasing power will be a strong barrier to enterprise development. This will act as a disincentive for businesses to expand their operations, and could lead to a cut in current levels of manufacturing and possible job losses in the future. It could also cause a ripple effect throughout other, related business activities including manufacturing and providing spare parts and accessories for motorcycles. Furthermore, the increase in Government revenues from a VAT rise may not be enough to offset falls in other taxes, such as corporate income tax and personal income tax. This total net loss would have a negative impact on society. Increasing VAT will also make Vietnam less competitive than other, similar countries in the region, where VAT ranges from 6% to 10%. For example, the VAT rate in Laos, Cambodia and Indonesia is 10%. Meanwhile, it is 7% in Thailand and Singapore and just 6% in Malaysia. The VAT increase will therefore make Vietnam's investment environment less attractive than other countries in the region.

Impact on living standards: motorcycles are an essential means of transport throughout Vietnam. In large cities like Hanoi, Ho Chi Minh City and Haiphong, public transportation networks are not sufficient to meet public demand, therefore motorbikes are one of the most popular and convenient modes of transportation. For people in rural areas, motorbikes are even more essential. Walking or riding a bicycle is ineffective, meanwhile cars are not only too expensive but also difficult to drive on the small roads typical of mountainous regions. Therefore, given current income levels and the state of Vietnam's public transport infrastructure, motorbikes are essential for people in both rural and urban areas. In this light, increasing the cost of goods and services, particularly vehicles (including spare parts and accessories) will be an extra burden for low-income people who spend most of their income on consumption.

Recommendations:

In our view, the Government should thoroughly consider the proposal to increase VAT for vehicles, spare parts and accessories. In particular, it should have a longer roadmap for increasing the rate of VAT in harmonisation with the broader economy and income of the people.

II. BAN ON MOTORCYCLE CIRCULATION IN BIG CITIES BY 2030

Prime Minister's Office (OOG), Ministry of Transportation (MOT), Hanoi People's Committee (Hanoi PC), Da Nang People's Committee (Danang PC), Ho Chi Minh City People's Committee (HCMC PC).

Issue description

Hanoi

The Hanoi People's Committee has approved Resolution 04/2017/NQ-HDND dated 4 July 2017 on strengthening transportation management to reduce congestion and pollution in Hanoi from 2017 to 2020 and vision to 2030 (Resolution 04). Resolution 04 aims to deliver the following:

1. Managing the number of Units in Operation (UIO)
2. Managing the quality of UIO
3. Managing the operation scale of UIO
4. Finding solutions to develop and improve the effectiveness of public transportation
5. Finding solutions to apply information technology in traffic management and control (smart transportation)
6. Finding solutions to strengthen the capability of relevant State agencies regarding transportation system management

The roadmap to banning motorcycle circulation in Hanoi's inner-city districts in order to strengthen the management of UIO and reduce congestion and pollution is set out in the table below:

Table 7: Timeline for implementing Hanoi's motorcycle ban

No.	Task	Timeline
1	Publicity on banning motorcycle circulation in Hanoi by 2030.	Yearly
2	Research and sum-up total number of UIO (based on production year)	2017-2020
3	Research and set regulations on technical and emission standards in order to manage the quantity of motorcycles in operation	2017-2020
4	Recall and destroy out-of-date and unqualified motorcycles*	2017-2030
5	Pilot to ban motorcycle circulation during set hours and on set dates on selected main roads and in the city centre	2025-2029
6	Ban motorcycles in inner-city-districts in Hanoi	2030

**When legal regulations and required technical and emission standards are on the ground*

Da Nang

On 7 July 2017, authorities in Da Nang approved a proposal for the "improvement of public transportation, management of individual vehicles in circulation, control and management of traffic flows in the City". The proposal includes the following objectives:

1. Developing mechanisms and regulations for urban-traffic planning
2. Investing and developing proper urban-traffic infrastructure
3. Improving and expanding the public transportation system
4. Introducing the application of IT and smart management of traffic control
5. Managing individual vehicles
6. Managing traffic in the city centre
7. Implementing solutions to traffic-management issues

Ho Chi Minh City

In 2017, Ho Chi Minh City authorities discussed a proposal to limit and ban motorcycles in order to solve traffic congestion and pollution. So far, there has been no further official decision on this issue.

Potential gains/concerns for Vietnam

The motorcycle is essential to the daily lives and livelihoods of millions of people. It has become the most economical, convenient and flexible mode of transportation, particularly in cities like Hanoi and Ho Chi Minh City where streets are narrow and there are very few alternative methods of transport. Now and in the near future, public transportation infrastructure in large cities might not be sufficient to meet public demand. Therefore, banning motorcycles could create significant difficulties and inconvenience for people in large urban areas. Jakarta is a case in point here. The Indonesian government banned motorcycles, but this met public opposition and was later overturned because Jakarta's infrastructure and public transportation were insufficient to meet public demand.

Banning motorcycles, on its own, is therefore not an effective solution to improve traffic congestion and pollution and reduce traffic accidents in big cities. The causes of these issues include a lack of effective management of UIO, poor driving skills and low road-safety awareness. The proposed ban may also cause significant challenges to the motorcycle manufacturing industry which, over the last decade, has established long-term investment in Vietnam for both domestic and international markets and made a great contribution to the economic and social development of the country, not least through tax contribution and local job creation.

Recommendations:

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

- Undertaking research, referring to and adopting best practice from other motorised countries such as Taiwan, where advanced public transport and traffic infrastructure are used in harmony with motorcycles;
- Taking into consideration peoples' needs in order to propose a feasible master plan, minimise disturbances to people's daily life and work and avoid negative economic consequences;
- Only manage or ban out-of-date motorcycles which are the main cause of air pollution, following the example of India, where the government only banned motorcycles over 20 years old; and
- Raise awareness about and compliance with traffic regulation and safety.

III. INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Relevant Ministries: National Office of Intellectual Property of Vietnam (NOIP) under Ministry of Science and Technology (MOST), Vietnam Competition Authority of Ministry of Industry and Trade (MOIT), Vietnam Internet Network Information Centre (VNNIC) under the Ministry of Information and Communications (MIC), National Steering Committee 398 (Committtee 398) under the Ministry of Finance (MOF).

Issue description

Intellectual Property Rights (IPR) infringement in Vietnam remains a serious and widespread problem. Since infringement activities are becoming ever more complicated and increasingly difficult to discover and control, a strong protection and enforcement of IPR is essential to encourage foreign investment in Vietnam, especially at a time when Vietnam is part of major international treaties such as the European Union-Vietnam Free Trade Agreement (EVFTA).

Potential gains/concerns for Vietnam

In line with our IPR position, we note with concern that high-profile motorcycles manufactured by motorcycle companies are copied. Preferring to 'imitate rather than innovate', some companies are plainly trying to trade on the goodwill associated with the appearance of our products and confuse the public with the originals. This activity not only violates the provision on IPR relating to industrial design but also causes unfair competition.

At the same time, we note that infringement of online IPR is becoming more important with the growth of Internet users. Enforcement is particularly difficult when it comes to illegal trading in IPR-infringing goods, but also with regards to infringement on websites and abusive domain name registration and maintenance.

Recommendations:

- The Government should provide in detail the implementation of IPR enforcement legislation, and strengthen the protection and enforcement of industrial and product designs. For example, design infringement should be prosecuted by criminal laws, and the penalty for IP infringement, including counterfeit and fake products under administrative procedures, should be increased;
- The Government should promote a proactive attitude at competent authorities to prevent IP violations. It should also strengthen market survey activities and establish a mechanism to quickly and effectively exchange information between enforcement agencies and IP holders to ensure timely handling of infringing acts;
- Cooperation between enforcement bodies and relevant agencies should be improved, especially Market Control Department and Economic Police, National Office of Intellectual Property of Vietnam and the Motorcycle Registration Agency, the National Steering Committee 398 for fighting against smuggling, commercial fraud and counterfeit goods to further monitor the registration of products such as cars, motorcycles and electric vehicles. Specifically, inter-sectorial cooperation projects, such as Action Program 168[10], should continue to be implemented to share information and handle specific tasks as well as promote and improve IPR enforcement activities;
- The competent department managing domain name registration, such as the Vietnam Internet Network Information Centre (VNNIC) should have mechanisms to prevent and discourage the filing of '.vn' domain names in 'bad faith' in order to deal with domain name disputes which are on the rise; and
- The Government should also consider establishing specialised tribunals to handle IP matters.

ACKNOWLEDGEMENTS

EuroCham Mobility Sector Committee and for this chapter in particular:
Piaggio Vietnam Company Limited

10 Action Program 168 - Cooperation to Prevent Intellectual Property Rights Violations stage II (2012-2015)

CHAPTER 16 NUTRITION AND MILK FORMULA PRODUCTS

OVERVIEW

The EuroCham Nutritional Foods Group (NFG) is a non-profit, non-governmental representative body of 5 of the world's leading multinational dairy companies operating in Vietnam. NFG was established to improve the nutritional well-being of the Vietnamese people and remains committed to fostering international industry best practice to cultivate a responsible and sustainable market for milk and nutritional products in Vietnam.

Our objectives include:

- Promoting science-based nutrition knowledge to support the development of effective policies and practices on safe and good nutrition for Vietnamese people;
- Promoting the highest food quality and global harmonisation standards;
- Fostering robust business ethics in the dairy and nutrition sector through observation of strict and comprehensive self-regulation policies;
- Contributing to the development of science-based regulations governing the industry;
- Participating in open discussions with the Government and other stakeholders to facilitate broad-based industry support for stakeholder efforts to encourage breastfeeding and to improve the nutrition of the Vietnamese people; and
- Raising awareness and capacity-building in the field of nutrition to support the public health goals of good nutrition.

Vietnam currently has around 7.5 million children, of whom 24.6% are stunted and 14.1% are underweight, according to the National Institute of Nutrition.[1] Malnutrition has been declining more slowly in the past few years (see Figure 17), while the number of children with micronutrient deficiencies has remained high.[2] Nevertheless, businesses in the dairy and nutritional sector, including NFG members, have recently faced mounting challenges that restrict timely access to our products by the Vietnamese public. Despite the Government's determined efforts to improve the overall business environment, much remains to be done.

Looking back on the issues NFG raised in the previous Whitebook, although we are encouraged by positive developments in some areas, there has been little progress in others. We recommended the Government fully remove the price ceiling policy on milk products for children under 6 years old. We therefore welcome the promulgation of the new Circular 08/2017/TT-BCT dated 26 June 2017 of the Ministry of Industry and Trade regulating price registration, price declaration of milk and functional foods for children under 06 years old (Circular 08), valid since 10 August, 2017. The circular has brought forward a new regulatory approach that upholds the right of businesses to determine prices without interference and other fundamental principles of the market economy. However, we await more concrete progress on the removal of unreasonable technical barriers to food products' market entry, such as the registration requirement on tolerance for nutrient values declared on food labels, which continue to challenge NFG members and the food industry in general.

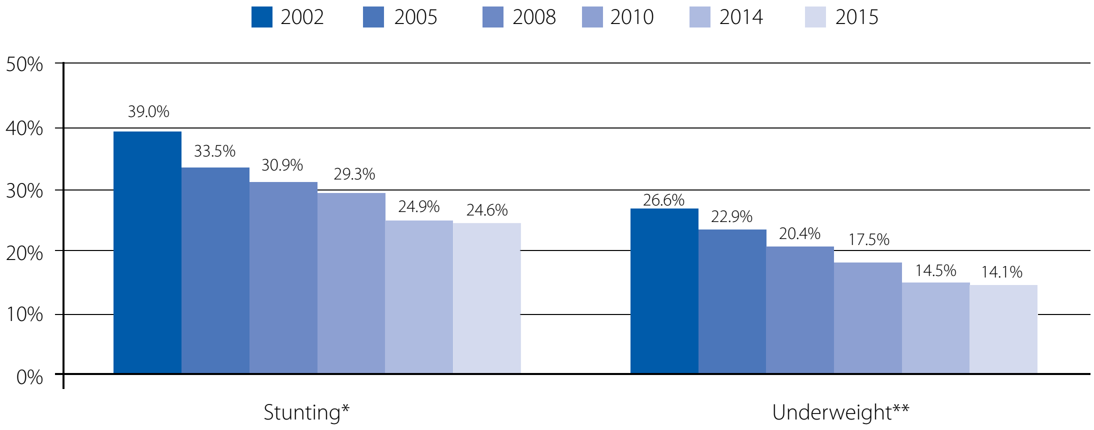
NFG would like to stress two overarching policies that could be improved to support the delivery of safe, healthy nutrition to Vietnamese people. Firstly, it is necessary to reform food safety management to make it efficient, transparent and result-focused. Secondly, policies that directly or indirectly restrict consumer access to healthy and nutritious products should be reconsidered to avoid conflict with the country's nutrition strategy. These topics are presented in further detail below.

1 Databank on Child nutrition situation in Vietnam (from 1999 to 2015), *National Institute of Nutrition*. Available at: <http://viendinhduong.vn/news/vi/106/61/0/a/so-lieu-thong-ke-ve-tinh-trang-dinh-duong-tre-em-qua-cac-nam.aspx> accessed on 30 November 2017.

2 'Vi chất dinh dưỡng - Thực trạng và giải pháp hiện nay', [Micronutrients - current status and solutions], *National Institute of Nutrition*, 25 May 2016. Available at: <http://www.viendinhduong.vn/news/vi/858/12/vi-chat-dinh-duong-thuc-trang-va-giai-phap-hien-nay.aspx> accessed on 30 November 2017.

NFG remains hopeful that the persistent efforts of the Government to improve the business environment will yield more positive and concrete results in the coming year. NFG members are committed to working alongside the Government and relevant Ministries on reforms as Vietnam pursues sustainable development and economic integration with the world.

Figure 17: Malnutrition prevalence among children under 5 (%)



Source: Databank on Child nutrition situation in Vietnam (from 1999 to 2015), National Institute of Nutrition.[3]

I. REFORMING FOOD SAFETY MANAGEMENT TO ENSURE EFFICIENCY, TRANSPARENCY AND SUBSTANCE

Relevant Ministries: Ministry of Health (MOH), Ministry of Agriculture and Rural Development (MARD), Ministry of Science and Technology (MOST), Ministry of Planning and Investment (MPI)

Issue description

Food safety risks arising from pre-packaged, industrially-processed food products are extremely low in Vietnam, according to a Government report. These products caused just 2.2% of food poisoning incidents in 2016.[4] Nevertheless, for many years, these products have been subjected to stringent and unnecessary inspection and registration procedures that bring no value to food safety but which are burdensome and costly to businesses. Examples include quarantine control over imported milk preparations and products containing dairy ingredients as prescribed in Circular 25/2016/TT-BNNPTNT dated 30 June 2016 of MARD regulating the quarantine of terrestrial animal and animal products (Circular 25). Despite multiple Government instructions and comments, as well as petitions from relevant State agencies and the business community throughout 2017, the Ministries in charge have kept these procedures in place.

3 Databank on Child nutrition situation in Vietnam (from 1999 to 2015), *National Institute of Nutrition*. Available at: <http://viendinhduong.vn/news/vi/106/61/0/a/so-lieu-thong-ke-ve-tinh-trang-dinh-duong-tre-em-qua-cac-nam.aspx> accessed on 30 November 2017. *Stunting refers to inadequate height for age as defined by the World Health Organisation (WHO). **Underweight refers to inadequate weight for age as defined by the WHO

4 Report 37/BC-CP dated 3 February 2017 of the Government on the implementation status of food safety management policies and laws during 2011-2016.

Potential gains/concerns for Vietnam

According to Circular 25, 'fresh milk, yoghurt, butter, cheese, canned milk, powdered milk, milk powder and dairy products' are subject to quarantine control upon importation. However, as Circular 25 does not specify the corresponding HS codes, MARD and Customs authorities have also subjected preparations of milk or products containing dairy ingredients to quarantine control upon import, alongside existing MOH food safety and hygiene inspection.

The requirement for animal quarantine in Circular 25 is a backwards step in administrative reform compared to the previous Decision 4758/QĐ-BNN-TY dated 18 November 2015 of MARD on HS codes of terrestrial animals and products of terrestrial animals required to be put into quarantine (Decision 4758). The requirement has no benefits in terms of food safety management, while causing inspection overlap and significant time and financial burdens to businesses.

The realities of scientific and management practice mean that all canned milk preparations have already undergone heat treatment to help eliminate epidemic risks, and have been certified as safe by exporting countries. The Vietnam Food Administration (VFA) recently confirmed that: 'products after undergoing heat treatment will have minimal epidemic risks'. It further stated: 'According to international practices, imported products are inspected only once by a competent authority… only fresh products (not yet undergoing industrial processing) shall be subject to quarantine to eliminate epidemic threats'.[5]

Quarantine control on milk preparations or products containing dairy ingredients also causes unnecessary and excessive time and cost burdens for businesses. The new quarantine requirement will add an additional 10 days and VND5-6 million for each lot, not including the value of the testing sample, while also requiring companies to have a quarantine certificate from the exporting country.

The Government has issued various instructions to end overlapping inspections during import clearance. However, to date, MARD has not promulgated any specific guidelines related to the overlapped inspections on milk preparations and products containing dairy ingredients.

Recommendations:

- Promulgate the list of HS codes corresponding to the categories of terrestrial animal and animal products subject to quarantine controls. This should not include preparations of milk and products containing dairy ingredients under HS codes in Chapters 19 and 21, similar to the previous Decision 4758/QD-BNN-TY of MARD dated November 18 2015 providing HS code of terrestrial animals and products of terrestrial animals required to be put into quarantine (Decision 4758).
- Adopt a risk-based food safety management system, and move away from the 'command and control' approach based on inspection and punishment, as per World Bank recommendations.[6]

II. REMOVING BARRIERS TO CONSUMER ACCESS TO HEALTHY AND NUTRITIOUS PRODUCTS

Relevant Ministries: Ministry of Finance (MOF), Ministry of Health (MOH)

Issue description

Milk and dairy products are endorsed by MOH as recommended daily foods for adults and children over 6 months old. However, conflicting policies have emerged in recent years that have directly or indirectly limited public access to milk and nutritional products. These include information restrictions resulting from the advertising ban on breast-milk substitute products for children under 24 months old, stipulated in the Law 16/2012/QH13 dated 21 June 2012 on Advertising (Law on Advertising). More recently, a proposed excise tax on sugary drinks, if not clearly defined, could lead to future risks for nutritional products.

5 VFA's Official Letter 2221/ATTP-SP dated 24 May 2017 responding to an NFG member.

6 "Vietnam Food Safety Risks Management: Challenges and Opportunities", *World Bank Group*. Available at: <http://documents.worldbank.org/curated/en/235741490717293094/Vietnam-food-safety-risks-management-challenges-and-opportunities> accessed on 1 December 2017.

Potential gains/concerns for Vietnam

1. Advertising ban on breast milk substitutes for children under 24 months old

NFG believes that breast milk is best. We support exclusive breastfeeding in the first 6 months and appropriate complementary feeding from 6 to 24 months. However, as both the World Health Organisation (WHO) and MOH have pointed out, while breast milk can meet 100% of infants' nutritional demands in the first 6 months, that falls to 50% for 6-12 months and just 33% for 12 months and over. In Vietnam, a National Institute of Nutrition study also revealed that only 51.7% of children under 24 months old are given complementary foods meeting the minimum acceptable diet.[7] According to a survey by Alive & Thrive, up to 29.1% of children from 6 to 23.9 months old do not have a diet with sufficient meal frequencies and diet diversity.[8]

Maternity leave in Vietnam lasts for 6 months. Therefore, it is essential to provide children with adequately nutritious food sources to complement breast milk after the first 6 months. Mothers and caregivers need to be supported and enabled to access safe and adequately nutritious foods for young children, including industrially-processed breast-milk substitute milk products. With hundreds of different products available targeting diverse demands and consumers, mothers need to be properly informed about the products on the market, including the proper use of each, to help them make the right choice for their children.

In Vietnam, all advertisements of milk products must be submitted to MOH for review and approval. Since advertisement is a way to deliver information about a product, and since this information is reviewed to ensure it is accurate and truthful, we believe that restricting advertisement of breast-milk substitute milk products for children up to 24 months old impedes mothers' access to full and reliable information, and also restricts their access to the range of alternatives available. Furthermore, this has also led to mothers depending on unofficial sources of information such as social forums and word-of-mouth, which can offer inaccurate advice and affect their child's health later on.

2. Proposed excise tax on sugary drinks

On August 15, 2017, Ministry of Finance (MOF) released the Draft Law amending and supplementing articles in the laws on value added tax, Special Consumption Tax (SCT), corporate income tax, personal income tax and natural resource tax. It proposed introducing a SCT of 10% on 'sugary beverages, including carbonated drinks, non-carbonated drinks, energy drinks, sports drinks, tea, and instant coffee, which are packaged using industrial production lines, excluding: 100-percent natural fruit and vegetable juices, milk and dairy products'.

International experience has shown that the criteria for determining which products are subject to a SCT must be clearly specified to ensure transparent and smooth implementation. This is particularly true in the context of Vietnam's legal framework, where certain products are regulated by relevant technical standards and may have different names to those commonly used by business, the public and non-specialised management agencies.

The term 'sugary beverages' in the current Draft Law can be broadly interpreted. It is unclear whether this refers to beverages containing sugar, or to beverages with a sweet flavour that may contain no sugar. The scope of products proposed in the existing Draft Law, therefore, also contains products with health benefits whose consumption should be encouraged, such as:

- **Medical food in liquid form**: These products have a balanced nutritional content adequate for patients and play an important role in medical treatment.
- **Liquid formula products for children not made from milk but from soya or whey protein and used for lactose-intolerant children**: These are crucial products for children in need. Most milk products are categorised by MOH as supplementary food, not as milk. Such products have sugar as one of the ingredients, and can therefore easily be classified as a Sugar-Sweetened Beverage (SSB), while milk is necessary to improve the nutritional status of children and the elderly and is encouraged for use by the Government.

7 Report on Nutrition in Vietnam 2009-2010, *National Institute of Nutrition*, April 2011.

8 Baseline Survey Report: 11-Province Master Report. Ha Noi, Viet Nam: *Alive & Thrive*, 2012. Available at: <http://aliveandthrive.org/resources/research-report-findings-of-alive-thrive-secondary-baseline-survey-in-11-provinces-of-viet-nam-full-and-executive-summary-english-and-vietnamese/> accessed on 1 December 2017.

- **Fruit and vegetable juices**: These juices bring about significant health benefits for consumers. However, they may contain a small amount of additives for flavouring purposes. Therefore, having '100-percent natural fruit and vegetable juices' is hardly attainable.

- **Tea**: Tea is a completely natural, healthy drink. Furthermore, Vietnam is also a leading international tea exporter.

Recommendations:

- The Government should assign relevant Ministries and organisations to conduct a scientific assessment on the effectiveness of the advertisement ban on breast-milk substitute milk products for children up to 24 months old. This should consider whether the ban has helped to raise the breastfeeding rate, and more importantly, whether it has helped to improve the nutrition status of Vietnamese children. If the advertising ban has proved to be ineffective, the Government should consider revising the Law on Advertising to narrow the scope of the ban to cover only breast-milk substitute milk products for children under 12 months as it was regulated before.

- MOF should clarify the term 'sugary beverage' subject to SCT. In our opinion, it should exclude the following products: medical foods; formula products for young children (in liquid form) and nutritional products for special consumers (such as the elderly and pregnant women) for nutrition supplement and not refreshment purposes; milk products in liquid form where milk is one of the three largest ingredients by volume (usually water, cow's milk and carbohydrates); fruit and vegetable juices, tea, and coffee with mostly natural ingredients (the percentage of natural ingredients should be specified for ease of reference. For instance, natural ingredients excluding sugar being 90% of the volume of dry ingredients. However, the exact percentage should be based on solid scientific evidence).

ACKNOWLEDGEMENTS

EuroCham Nutritional Foods Group

CHAPTER 17 **REAL ESTATE**

OVERVIEW

The Vietnamese real estate market has been on the rise over the last four years, as a result of encouraging investment policies and increased participation of new investors. With trade treaties such as the EU-Vietnam Free Trade Agreement (EVFTA) in the pipeline, Vietnam is in a strong position to improve its infrastructure and economic competitiveness. Furthermore, recent important laws have stimulated the real estate market, such as the Law on Construction (LOC), Law on Housing (LOH) and Law on Real Estate Business (LOREB).

However, if not enough administrative reforms and transparent procedures are put in place, it is likely that capital flow will move to neighbouring countries. We believe that there are some regulatory handicaps hindering the sustainable operation and development of the real estate market which should be considered, and we wish to share our concerns with the Government in order to take advantage of the favourable climate in which Vietnam finds itself.

Firstly, the LOH and Circular 02/2016/TT-BXD[1] (Circular 02) which regulates the management and use of apartment buildings have several provisions regarding Apartment Building Management Boards (ABMB). However, it is not clear whether an ABMB has the lawful right to participate in litigation procedures on behalf of apartment owners to protect their legal rights and benefits.

Secondly, it is necessary to establish a legal framework for new hybrid properties in real estate projects, such as 'condotels', 'hometels' and 'officetels', which have attracted more investment capital. Currently, there are conflicting interpretations from house buyers, real estate developers and regulatory authorities. Therefore, establishing a legal framework to regulate these new types of property is essential to quickly deal with all related legal issues, to develop the real estate market and also to attract foreign investment capital.

Thirdly, it is essential to protect people who purchase homes from housing projects where real estate developers become insolvent or bankrupt. This entails many legal risks for house buyers, who are the ultimate victims of developers' financial difficulties.

Lastly, although there have been welcome improvements both in the legal system and in administrative reforms made to previous legislation, several inadequacies in regulations for real estate projects remain. Therefore, this chapter will highlight certain legal shortcomings and provide recommendations. We would welcome the chance to discuss these further with the Government, and to help facilitate the growth and efficiency of the real estate market.

I. THE LAWFUL RIGHT OF AN ABMB TO PARTICIPATE IN LITIGATION ON BEHALF OF APARTMENT OWNERS

Relevant Ministries: Ministry of Construction (MOC), Ministry of Planning and Investment (MPI).

Issue description

The LOH and Circular 02 are welcome improvements which clarify regulations on ABMBs. In particular, pursuant to Article 103 of the LOH, if an apartment building has fewer than 20 apartments, regardless of whether it is a single or multi-owner building, homeowners and occupiers shall decide whether or not to set up an ABMB. Apartment buildings with 20 or more apartments are required to set up an ABMB.

The ABMB of multi-owner buildings shall be organised under a model similar to a Board of Directors in a joint-stock company or a Chairman of Board of Cooperatives[2], which has legal status and seal. The ABMB has 11 rights and obligations set out under Article 104.1 of the LOH. For a single-owner building, the ABMB has fewer rights and obligations than that of a multi-owner building under Article 104.2 of the LOH.

1 Circular 02/2016/TT-BXD of the Ministry of Construction dated 15 February 2016 regulating on the management and use of apartment buildings

2 Article 103.3 of the Law on Housing 65/2014/QH13 dated 25 November 2014

While there are legal rights and obligations regarding ABMBs, the lawful right to participate in litigation procedures on behalf of apartment owners is not clearly specified in law. Under Article 104.1(l) of the LOH, the ABMB has the right to perform other tasks assigned by the apartment building general meeting and such tasks are not against legal regulations. However, it is not clear whether the ABMB can participate in a litigation process even if all apartment owners authorise it to do so.

This is disadvantageous for apartment owners who wish the ABMB to represent them and to participate in litigation. If a dispute related to all such owners occurs, the number of petitioners will be numerous and related legal procedures more complicated. The most important purpose of establishing an ABMB is to collectively protect the legitimate interests of apartment owners in the use of apartments. Therefore, the lack of provisions regarding an ABMB's rights to participate in litigation on behalf of apartment owners seriously affects owners' rights and benefits to represent themselves in litigation. This purpose is both extremely important and necessary, especially when a dispute occurs that directly affects such owners.

Potential gains/concerns for Vietnam

The lack of legal provisions regarding the lawful right of an ABMB to participate in litigation on behalf of apartment owners also creates difficulties for competent authorities when settling disputes involving a large number of petitioners. While the ABMB could perhaps represent all such owners, it does not have the right to participate in the dispute process. Furthermore, apartment owners will waste more time and resources as individual and direct participants in litigation compared to using an authorised representative. The same is true for courts, which will also become tangled up when similar legal actions could have been represented collectively by an ABMB.

Recommendations:

- The competent authorities should clarify whether Article 104.1(l) of the LOH regulating ABMB has the right to perform other tasks assigned by the apartment building meeting as mentioned above consisting in the right to participate in litigation on behalf of the apartment owners, where it has been authorised to do so.
- The lawful rights of an ABMB to participate in litigation on behalf of the apartment owners should be regulated in the LOH and other relevant legal documents.

II. 'CONDOTEL', 'HOMETEL' AND 'OFFICETEL'

Relevant Ministries: Ministry of Construction (MOC), Ministry of Planning and Investment (MPI)

Issue description

New hybrid types of property, including 'condotels', 'hometels' and 'officetels', have arisen in the real estate market and grown in popularity because they meet customers' demands. However, there is a lack of provision in Vietnam's legal framework to regulate them. 'Condotel' (a combination of 'condominium' and 'hotel') is a term used to describe a type of hotel-apartment. Owners of 'condotels' can temporarily reside in, sell or rent their property, which mainly functions as a hotel (short stay and not forming a unit of residence). They are usually located near a beach or in a tourist resort. 'Hometel' (a combination of 'home' and 'hotel') is a term used to describe a type of luxury house catering for long-term residence. 'Hometels' include all the services and facilities found in a five-star hotel, ensuring a comfortable living environment for homeowners and renters. 'Hometels' are located in big cities and usually built in the form of adjacent villas. 'Officetel' (a combination of 'office' and 'hotel') is a term used to describe an office which also includes accommodation.

It is therefore clear that 'condotels', 'hometels' and 'officetels' are apartments that combine a number of different functions with a living environment. Article 3.4 of Decree 43/2014/ND-CP[3] (Decree 43) regulates that a mixed-purpose condominium built before 1 July 2014, in which part of the floor area is used as office, commercial or service space, shall be considered residential in its main purpose. However, 'condotels', 'hometels' and 'officetels' are multi-functional and do not have separate parts of the apartment building's area purpose prescribed in law.

Under Article 5.1 of the Law on Investment (LOI), investors are entitled to make investments in business lines that are not prohibited in law. However, new hybrid properties in real estate projects including 'condotels', 'hometels' and 'officetels' are not regulated by law. This creates confusion among competent authorities in the management

3 Decree 43/2014/ND-CP of the Government dated 15 May 2014 detailing a number of articles of the Law 45/2013/ND-CP on Land.

of construction investment and use of this kind of real estate. Therefore, investors in new real estate projects which include hybrid properties face a number of legal risks, especially regarding the issuance of certificates of land use right, ownership of houses and other assets attached to the land.

Furthermore, under Article 126 of the LOL, a residential apartment has a long and stable land use term, while the term for an apartment used for trading and services cannot exceed 50 years. There is a difference in duration between land use, residential use, and a trading and services apartment. It is therefore unclear whether 'condotels', 'hometels' and 'officetels' should be treated like apartments and awarded a long, stable land use term, or like apartments used for trading and services and awarded a much shorter term.

We believe that establishing a legal framework for these new hybrid properties in real estate projects is important not only for the development and demands of the real estate market, but also for attracting investors and protecting their legitimate rights and benefits in line with Vietnamese laws.

Potential gains/concerns for Vietnam

The continued lack of legal provisions regulating hybrid properties could have a negative impact on housing project investors' financial decisions. 'Officetels', 'hometels' and 'condotels' can encourage more investment projects, and therefore protecting investors' rights and benefits is essential.

For Vietnamese people, an increase in real estate investment projects will increase revenue, jobs and economic growth for the property market as a whole. Providing support will contribute to the general long-term social and economic wellbeing of Vietnam.

Recommendations:

- In our view, the Government should promulgate legal provisions with specific standards and guidance for 'condotels', 'hometels' and 'officetels';
- We believe the Government should clarify the land-use term for 'condotels', 'hometels' and 'officetels'; either the long and stable term or the shorter 50-year term; and
- Legal provisions on the classification and mechanism of using land for mixed-purpose apartments like 'condotels', 'hometels' and 'officetels' should be amended, granting certificates of land use right and ownership of houses and other assets attached to land for these properties.

III. PROTECTING PROJECT HOUSING CLIENTS IN CASES OF INSOLVENCY OR BANKRUPTCY OF REAL ESTATE DEVELOPERS

Relevant Ministries: State Bank of Vietnam (SBV), Ministry of Construction (MOC), Ministry of Planning and Investment (MPI)

Issue description

On the 24th of February 2017, the People's Court of Ho Chi Minh City granted a Decision to initiate bankruptcy proceedings for PVC Land, the real estate developer of the PetroVietnam Landmark project.[4] If PVC Land is declared bankrupt, the reasonable rights of those who bought apartments in the project will be seriously affected: four hundred customers may not own their apartments in the future.

Under Article 4.1 of the Law on Bankruptcy (LOB), real estate developers who fail to meet their debt liabilities for three months from the repayment deadline will be declared insolvent. Furthermore, pursuant to Article 4.3 of the LOB, bankruptcy will be the legal status of an insolvent entity when declared bankrupt by the People's Court. The consequences of insolvent real estate developers being declared bankrupt are serious for many project housing clients.

In practice, when buying a real estate project apartment, the purchaser must pay the entire cost before completion, after which a certificate of land use right, ownership of houses and other assets attached to land for the apartment is granted. Often, real estate developers prolong the length of time for ownership of apartments or delay construction due to financial losses. This means the buyer is unlikely to receive the apartment and, therefore,

4 "The lawsuit against PVC Land which went bankrupt Phase II: Is the Ho Chi Minh City Execution Authority wrong" *Enter News VN*, 9 January 2017. Available at: <http://enternews.vn/hanh-trinh-khoi-kien-pvc-land-pha-san-ky-ii-cuc-thi-hanh-an-tp-hcm-lieu-co-sai-113788.html>last accessed on 13 December 2017.

incurs significant financial losses. Project apartments are considered off-plan property under Article 108.2 of the Civil Code[5]. Therefore, under Article 4.4 of LOB[6], if a real estate developer is insolvent or bankrupt, the project housing buyers are considered creditors of unsecured debts – buyers are paying for their future apartments, which are themselves assets that the real estate developer uses to secure the financing of their project.

Under Article 54 of LOB[7], project housing clients are the last in line for redistribution of assets. In such cases, if the value of a developer's assets is insufficient to meet their liabilities, purchasers will be paid a percentage of their original investment, but will not be able to own the apartments that were paid for.

Article 56 of LOREB and Article 1.3 of Circular 13/2017/TT-NHNN of the State Bank of Vietnam (SBV), amending and supplementing a number of articles of Circular 07/2015/TT-NHNN, (Circular 13) which came into effect on 15 November 2017, requires real estate developers to acquire bank guarantee contracts before pre-selling apartments. If the real estate developers fail to transfer apartment buildings on schedule as committed to the project housing buyers, the commercial bank of the bank guarantee contract will perform the financial obligations on the developers' behalf by refunding the money received from customers under the future sales apartment contracts. This is one possible solution to protect the benefits of project housing buyers.

However, Circular 13 does not clearly prohibit real estate developers from selling future apartments if they do not have bank guarantee contracts in place. Obtaining bank guarantee contracts may increase the cost of future apartments by 2% or 3%, so that reduces the competitiveness of these projects in the real estate market.[8] As a result, many real estate developers refuse to sign bank guarantee contracts with commercial banks. If the real estate developer becomes insolvent or bankrupt and does not have an executed bank guarantee contract, buyers will incur significant financial losses and have no recourse or prospect of owning their intended project apartments.

Potential gains/concerns for Vietnam

Under Article 4.1 of the LOB, after three months of non-payment a creditor shall have the right to request bankruptcy. This regulation is mechanical, easily turning debt disputes into bankruptcy requests. If real estate developers trigger the decision to declare bankruptcy, a huge number of project apartment owners will be seriously affected.

Article 56 of LOREB and Article 1.3 of Circular 13 require real estate developers to acquire bank guarantee contracts before pre-selling apartments for project house buyers. This might be a good solution to protect project housing buyers if a real estate developer with a bank guarantee contract for its project becomes insolvent or bankrupt.

Recommendations:

- SBV should promulgate legal provisions with specific standards and guidance for the finance abilities of real estate developers; and
- SBV should regulate the penalties for real estate developers who do not sign bank guarantee contracts with the competent commercial banks.

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VCI Legal

5 Civil Code 91/2015/QH13 dated 24 November 2015 of the National Assembly, Article 108.2: "Off-plan property includes:a) Non-formed property; b) Formed property that the entity has established his/her ownership rights after the time of transaction establishment."

6 Article 4.4 of the Law on Bankruptcy 2014: "A creditor of unsecured debts (hereinafter referred to as unsecured creditor) is an individual, an agency or an organization entitled to request the debtor to pay the debts that are not secured against assets of the debtor or a third party".

7 Article 54.1 of the Law on Bankruptcy 2014: "When the judge gives the Decision on the declaration of bankruptcy, the assets of the insolvent entity shall be redistributed in the following sequence: a) Cost of bankruptcy; b) The unpaid salaries, severance pay, social insurance and medical insurance to employees, other benefits according to the labor contracts and collective bargaining agreements; c) Debts incurred after the initiation of bankruptcy which are used for resuming the business operation. d) Financial obligations to the Government; unsecured debts payable to the creditors on the list of creditors; secured debts which are not paid because the value of collateral is not enough to cover such debts."

8 "Why do enterprises avoid the bank guarantee for projects?" *Café F VN*, 22 October 2017. Available at: <http://cafef.vn/vi-sao-doanh-nghiep-ne-bao-lanh-ngan-hang-cho-du-an-20171022220090377.chn> accessed on 13 December 2017; "Concerns on the guarantee for real estate projects" *The Saigon Times*, 18 January 2016. Available at: <http://www.thesaigontimes.vn/141053/Ban-khoan-bao-lanh-du-an-bat-dong-san.html> last accessed on 13 December 2017.

CHAPTER 18 **TOURISM AND HOSPITALITY**

OVERVIEW

Vietnam welcomed 11.6 million foreign visitors in the first 11 months of 2017, a 31% increase compared to the same period in 2016.[1] The number of inbound visitors from China continues to grow strongly, as do those from Korea[2]. This represents an opportunity, but also a risk of unbalanced sources of visitors, causing the tourism industry in Vietnam to become over-reliant on Chinese tourists for economic growth.

These developments are considered to be the result of industry solutions regarding visa policy over the past two years and the Government's adoption of an e-visa program.[3] Specifically, we welcome the fact that the 5 European countries that continue to be granted visa exemption recorded an increased tourist volume to Vietnam during the first 11 months of 2017.[4]

Vietnam is ranked 67th in the World Economic Forum's latest global Travel and Tourism Competitiveness Index, 8 places higher than in 2016.[5] However, Vietnam still has more to do in order to enhance its competitiveness in South-East Asia.

Table 8: Travel and Tourism Competitiveness Index

Enabling environment						
Country/Economy	Global rank	Business environment	Safety and security	Health and hygiene	Human resource and labour market	ICT readiness
SOUTH-EAST ASIA						
Singapore	13	6.1	6.5	5.5	5.6	6.1
Malaysia	26	5.4	5.8	5.2	5.2	5.2
Thailand	34	4.7	4.0	4.9	4.9	4.8
Indonesia	42	4.5	5.1	4.3	4.6	3.8
Vietnam	67	4.4	5.6	5.0	4.9	4.2
Philippines	79	4.3	3.6	4.8	4.8	4.0
Lao PDR	94	4.7	5.4	4.3	4.6	3.1
Campuchia	101	3.7	5.1	4.0	4.1	3.6
South-East Asia Average		4.7	5.2	4.8	4.8	4.3

Source: World Economic Forum Travel and Tourism Competitiveness Report 2017.[6]

1 "International visitors to Viet Nam in November and 11 months of 2017", *Vietnam National Administration of Tourism*, 4 December 2017. Available at: <http://vietnamtourism.gov.vn/english/index.php/items/12379> accessed on 25 December 2017. Ho Chi Minh City alone attracted 6.3 million visitors in the whole of last year, and Hanoi saw 5 million foreign visitors. Meanwhile, 350,000 international guests visited Phu Quoc in 2017, and foreign visitors to Da Nang in the first 9 months of last year were up 49 percent to more than 1.7 million. For more information please see "Tourism events in HCMC lure visitors", *Vietnam National Administration of Tourism*, 12 January 2018. Available at: <http://vietnamtourism.gov.vn/english/index.php/items/12485> accessed on 18 January 2018; "Ha Noi expects to welcome 5.5 million foreign tourists in 2018", *Vietnam National Administration of Tourism*, 11 January 2018. Available at: <http://vietnamtourism.gov.vn/english/index.php/items/12482> accessed on 18 January 2018; "Phu Quoc island works to lure more foreign visitors", *Vietnam National Administration of Tourism*, 8 January 2018. Available at: <http://vietnamtourism.gov.vn/english/index.php/items/12467> accessed on 18 January 2018; "Increase in foreign arrivals to Da Nang", *Vietnam National Administration of Tourism*, 11 October 2017. Available at: <http://vietnamtourism.gov.vn/english/ index.php/items/12228> accessed on 18 January 2018.

2 Korea saw a massive increase of almost 55%, representing 21.8% of total international tourists to Vietnam, just behind China. With an impressive continued increase of more than 45% compared to 2016, reaching more than 3.6 million visitors in November 2017, Chinese tourists make up 36.4% of all foreign tourists in Vietnam *op.cit. Vietnam National Administration of Tourism,* 4 December 2017.

3 "Vietnam on track to attract 10 million foreign tourists in 2017", *Vietnam Net*, 6 November 2017. Available at: <http://english.vietnamnet.vn/fms/travel/189702/vietnam-on-track-to-attract-10-million-foreign-tourists-in-2017.html> assessed on 4 December 2017.

4 "International visitors to Vietnam in October and ten months of 2017" *Vietnam National Administration of Tourism*, 30 October 2017. Available at: <http://vietnamtourism.gov.vn/english/index.php/items/12282> accessed on 25 December 2017.

5 "Travel and Tourism Competitiveness Report 2017', *World Economic Forum*, 2017, p. 24. Available at: <http://www3.weforum.org/docs/WEF_TTCR_2017_web_0401.pdf> accessed on 25 December 2017.

6 *Ibid.*

Tourism continues to be a major contributor to GDP and employment in Vietnam. In 2016, the sector's direct and total contribution was around 4.6% and 9.1% of GDP.[7] Its direct and total contribution to employment in 2016 was 1,959,500 and 4,003,000 jobs respectively.[8] Tourism's share of employment is expected to have risen 2.3% in 2017[9] with a rapid increase in the number of hotel rooms also forecast. This will create further challenges for the industry.

We welcome Resolution 08-NQ/TW of the Political Bureau dated 16 January 2017 regarding the development of the tourism industry in Vietnam up to 2030 (Resolution 08). This resolution sets a number of targets for developing tourism through to 2020.[10] Some of these targets have been accomplished in 2017. However, several important issues remain. We believe these need to be addressed for the travel and tourism industry to reach its full potential and for Vietnam to achieve its development plan for 2020 and vision 2030.

Before addressing these, however, we would like to highlight the continued success of the temporary visa waiver program for 5 European countries. This has significantly increased the number of higher-spending long-haul visitors. Vietnam has proved to be one of the most-improved countries in terms of travel and tourism competitiveness in 2017, rising 8 places compared to 2016.[11] This is a prime example of sound Government policies benefiting the industry and, ultimately, the country. Furthermore, we also appreciate the Government's new Law 09/20-17/QH14 on Tourism dated 19 June 2017, which sets out a clearer policy path to enable the favourable conditions to develop tourism in Vietnam, aiming to enhance the quality and competitiveness of this industry.

However, as stated above, necessary improvements still need to be made. Some of the major issues we would like to address with the Government and relevant authorities include the entry visa policy, destination marketing and vocational training in the tourism industry. Last but not least, we would like to raise the need to promote responsible and sustainable tourism in Vietnam.

I. ENTRY VISA POLICY

Relevant Government authorities: Ministry of Foreign Affairs (MOFA), Ministry of Public Security (MPS), Ministry of Culture, Sports and Tourism – Immigration Department.

Issue description

Whilst the addition of 5 European countries, along with Belarus and Chile, to the list of visa exempted countries is welcome, there are still several issues in this area that require modification. Moreover, the strict visa policy for most countries requiring a visa prior to travel or a visa on arrival, together with the relatively high cost, is deterring higher-spending Free Independent Travellers (FITs) visiting the country,[12] not least those from European countries without a visa exemption. The benefits for Vietnam of easier access for European tourists is clear. In the first 5 months of 2017, visitors from the 5 visa-exempt countries saw strong growth. Inbound traffic from Spain was up 29.2%, with a 17.4% increase from Germany, 16.1% from Italy, 12.7% from the UK and 10.1% from France.[13]

1. Entry visa policy trend

Entry visa policy is one of the Government policies that has the biggest impact on international tourist flow. International tourists consider visa procedures as an additional barrier in terms of cost and time. If the cost of visiting a destination exceeds tourists' budget, they will choose a more convenient alternative. To increase competitiveness, attract direct investment and international tourist flows – in order to increase foreign currency income and create jobs – many countries are considering incrementally increasing visa exemption. Vietnam grants

7 "Travel and Tourism Economic Impact 2017 Vietnam", *World Economic Forum*. Available at: <https://www.weforum.org/reports/the-travel-tourism-competitiveness-report-2017> accessed on 25 December 2017.

8 *Ibid.*

9 *Ibid.*

10 In particular to: (i) attract 17-20 million international visitors, (ii) serve 82 million domestic tourists, (iii) increase tourism revenue to USD35 billion and contribute to 10% of GDP and (iv) create 4 million jobs with 1.6 million direct jobs Resolution 08-NQ/TW of the Political Bureau dated 16 January 2017 regarding the development of the tourism industry in Vietnam up to 2030. Available at: <https://thuvienphapluat.vn/van-ban/Thuong-mai/Nghi-quyet-so-08-NQ-TW-phat-trien-du-lich-tro-thanh-nganh-kinh-te-mui-nhon-2017-338542.aspx> accessed on 25 December 2017.

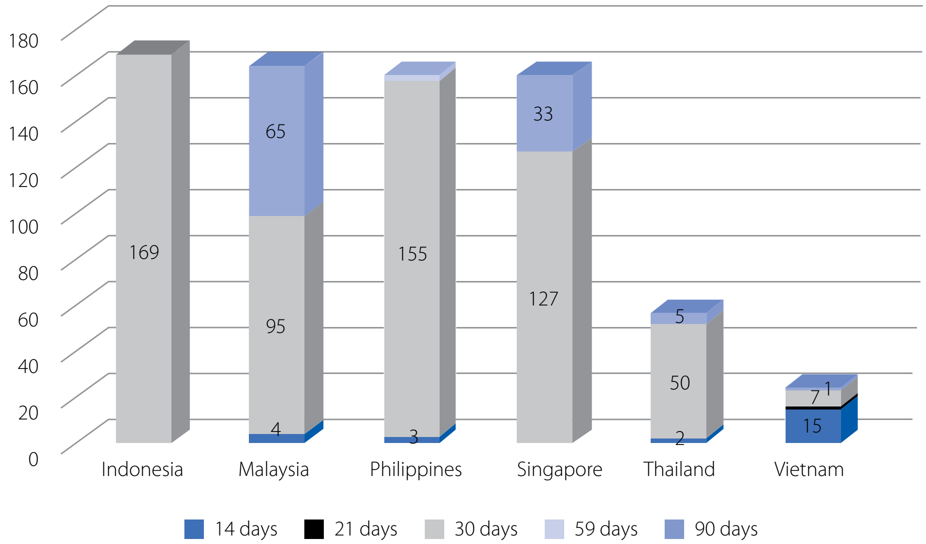
11 *op.cit. World Economic Forum*

12 "Visa fees cut to boost flagging arrivals" *Nikkei Asian Review*, 15 October 2015. Available at: <https://asia.nikkei.com/Politics-Economy/International-Relations/Visa-fees-cut-to-boost-flagging-arrivals> accessed on 27 December 2017.

13 "Vietnam tourism arrival numbers up in first half of 2017", *Oxford Business Group*, 20 July 2017. Available at <https://oxfordbusinessgroup.com/news/vietnam-tourism-arrival-numbers-first-half-2017> accessed on 18 January 2018.

an entry visa exemption to 24 countries, far fewer than other ASEAN nations. Moreover, Vietnam's most common visa exemption (15 days) is much shorter than that granted to tourists elsewhere in ASEAN (usually 30 days), as the graph below shows. Not only does this create time constraints for travellers, but also difficulties for tour operators in designing travel plans for tourists. This is particularly true for European visitors. Direct, long-haul flights from Europe last, on average, 12 hours and take place overnight. In practice, this reduces their exemption period in Vietnam to just 13 days.

Figure 18: Exemption of entry visa to 6 ASEAN countries



Source: Statistics Figure collected by EuroCham based on data of Olympic Air[14]

European tourists tend to stay for a long time and spend a good sum of money during their visits to Vietnam, according to a Tourism Advisory Board report to the Prime Minister in the Dialogue with Prime Minister on 31st July 2017. Specifically, their average length of stay in Vietnam ranges from 14 to 16 days, with an average expenditure of USD1,200 to USD1,600. Meanwhile, tourists from China, Taiwan and South Korea (who account for the highest number of tourists in Vietnam) only stay between 7 and 9 days on average. Their average spending is also lower – from USD500 to USD950. In short, even though European countries may not make up the highest number of foreign tourists in Vietnam, their contribution to the country's economy should be considered just as important.

Therefore, we believe that the list of visa exempt countries should be further expanded, so that tourism can fulfil its key role to develop into a spearhead sector of Vietnam's economy. Furthermore, we believe that it is inconsistent to have Free Trade Agreements (FTAs) with countries while still maintaining that tourists from those countries require a visa. In particular, with the EU-Vietnam Free Trade Agreement (EVFTA) expected to be ratified in 2018, we hope the Government will extend visa exemption from 5 EU countries to all Member States as a tool to enhance the competitiveness of Vietnam's tourism industry.

2. Visa exemption clarification and exemption period

We welcome the fact that 5 EU countries continued to be exempt from visa requirements in 2017. However, the critical issue facing our members and visitors is whether this exemption will continue for 2018 and in the future. Long-haul travellers plan their trips much further in advance than regional travellers and require advanced notice on whether this program will remain in effect. Therefore, we would urge the authorities to be more open and

14 "Country information (visa section)". Timatic. International Air Transport Association (IATA) through Olympic Air. Available at: < http://cms.olympicair.com/timatic/webdocsl/countryinfo.html> accessed on 28 February 2018.

transparent regarding the extension of visa exemption for the current 5 EU countries. We would also urge them to increase the length of exemption from 15 to 30 days. This will encourage tourists to see more of Vietnam and, in turn, contribute more to the tourism and hospitality industries of the country.

Potential gains/concerns for Vietnam

Vietnam ranked 116th out of 136 countries in the world for visa requirements in 2017, scoring 17 out of a possible 100 points according to the World Economic Forum.[15] Therefore, Vietnam's travel and tourism sector needs to do more to compete with other ASEAN countries. A report published by the United Nations World Tourism Organisation (UNWTO) and the World Travel and Tourism Council (WTTC) highlighted that international tourist arrivals increased from 5% to 25% as a direct result of visa facilitation.[16] Therefore, we believe that Vietnam should be looking at the major high-spending tourist markets as well as markets for trade and investment, and expand the number of countries whose citizens are eligible for visa on arrival or visa exemption.

Recommendations:

- Expand the list of visa exempt countries to include all countries with whom Vietnam has FTAs, significant trading or investment partners and targeted inbound tourism markets;
- Extend the period of recently announced visa exemptions and new exemptions from a 1-year period to a 5-year period;
- Extend the visa exemption period from 15 days to 30 days. This will enhance the competitiveness of Vietnam's tourism sector by enabling travellers to visit for long enough to discover Vietnam's culture and natural beauty;
- Urgently clarify the procedures and rules allowing returns within 30 days for visa exempt travellers. The problem seems, in part, to have been resolved with the imposition of a USD5 administration fee. However, it is not yet clear how this will operate in practice. This is a major hindrance to visitors who take flights to Vietnam and return from Vietnam, but who want to visit neighbouring countries such as Cambodia or Laos during their trip. Clear regulations and guidance on implementation needs to be issued;
- Improve the appearance, access speed and procedures of the current e-visa website. For example, we suggest not requiring foreigners to upload their passport data page image and photograph. Instead, travellers should be required to enter the necessary data only. We also recommend that the current website's name should be simplified to avoid misleading travellers and facilitating the easier identification of the official online portal;
- Extend the list of countries eligible for e-visa application to help visitors acquire a visa and save time, as well as reducing administrative dossiers for both the Government and visitors;
- Allow transit visas to be issued on arrival for up to 72 hours for passengers with connecting flights. With Vietnam Airlines upgrading its aircraft on its European routes there is an opportunity to attract transit traffic and passengers to stop over in Vietnam when in transit from other Asian destinations; and
- Make greater efforts to allow international airlines to fly into Vietnam's airports (Hanoi, Ho Chi Minh City, Da Nang, Nha Trang and Phu Quoc) to ease travel time for international guests. This could also include creating stopover programs.

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15 *op.cit. World Economic Forum.*

16 "The Impact of Visa Facilitation on Job Creation in the G20 Economies", *World Travel & Tourism Council*. Report prepared for the 4th T20 Ministers' meeting Mexico 15 to 16 May, 2012, p.4. Available at: <http://www.wttc.org/-/media/files/reports/policy%20research/visa_facilitation%20g20.pdf> accessed on 26 December 2017.

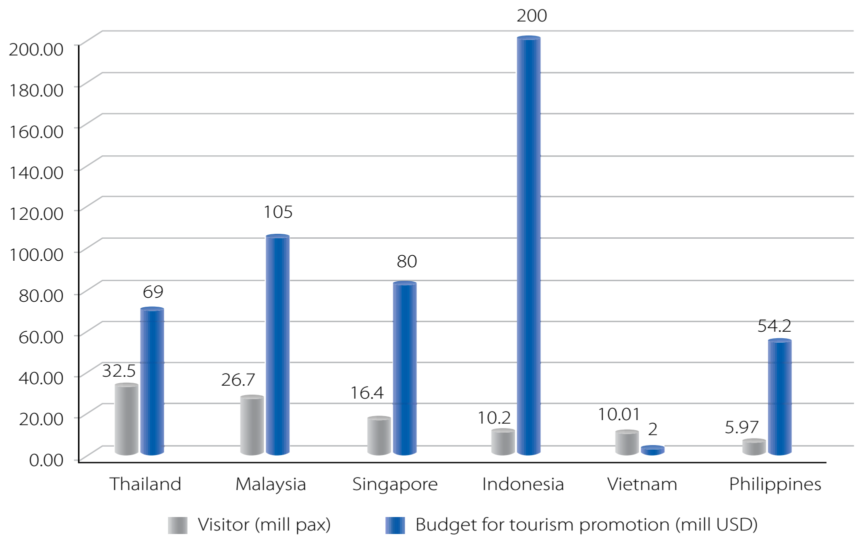
II. DESTINATION MARKETING

Relevant Government authorities: Ministry of Culture, Sports and Tourism (MCST), Vietnam National Administration of Tourism (VNAT).

Issue description

Deputy Prime Minister Vu Duc Dam's recent guidance to restructure the tourism industry has made promoting the sector one of the top priorities for relevant Ministries and agencies.[17] However, the Government's national budget for tourism promotion is still low at USD2 million per 10 million visitors in 2016, according to Forbes and a Tourism Advisory Board (TAB) presentation in the Dialogue Forum with Prime Minister on 31 July 2017. This will affect the competitiveness of Vietnam compared to its higher-spending neighbours.

Figure 19: National budget for tourism promotion in 2016



Source: Forbes Magazine on Travel Budget Data, 14 June 2016

This also increases the need to find other ways to boost spending on destination marketing at central and provincial levels. The initiation of a Tourism Development Fund stated in Resolution 92/NQ-CP of the Government dated 8 December 2014 on a number of solutions to promote development of Vietnam's tourism on a new period (Resolution 92) needs to be set up soon. We hope the new administration will see to its implementation and that Vietnam's tourism industry gets the governmental support necessary to remain competitive.

1. Public-private partnerships and destination competitiveness

The business of tourism is complex and fragmented. From the time visitors arrive in a destination until the time they leave, delivering excellent value depends on many organisations working together and sharing resources where possible. This is a key challenge in a region where, at present, there is limited cooperation and communication between the public and private sectors and between competing private sector companies.

Most destination management issues arising in the region need to be addressed at the provincial level. This is where existing structures of Government should be strengthened. It is therefore important that effective governance structures for tourism are put in place locally, especially in the timely budgeting and clarification of empowerment level. It is at the local destination level that many services vital to tourism are delivered and where the positive and negative socio-economic and environmental impacts of tourism are most apparent, requiring sound local planning and management. Therefore, local teams empowered to deliver a task should also receive the budget

17 "Tourism industry restructuring needs creative and practical thinking", *The Hanoi Times*, 1 December 2017. Available at: <http://hanoitimes.com.vn/travel/2017/12/81E0BBF3/tourism-industry-restructuring-needs-creative-and-practical-thinking/> assessed on 4 December 2017.

to do so in a timely manner in order to exercise their empowerment rights, develop action plans and ensure the project is delivered. In terms of destination marketing, Public-private partnerships have been implemented around the world and are proven to provide mutual benefits for both parties.[18]

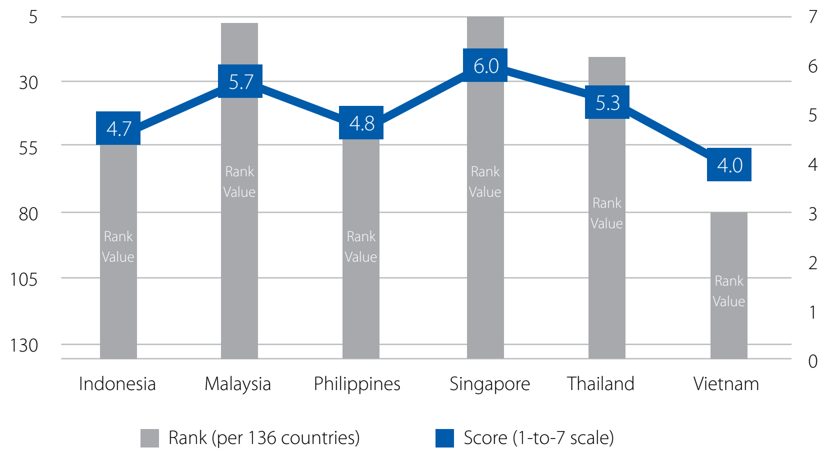
2. Online marketing as a key channel to promote tourism

Digital and social marketing via Facebook, Google, YouTube and Instagram is more cost effective than traditional marketing, and enables tourist-driven content. More and more people around the world are going online[19]. Indeed, smartphones are now an essential part of travel and tourism.[20 21] Family and social circles are important influencers of travel decisions.[22] Online reviews and Internet advertisements are also top drivers for travel demand.[23] In Vietnam, information and communication technology has improved a lot, both in terms of capacity and usage.[24] Such developments show that Vietnam's online presence is growing.

We appreciate the recent efforts of Vietnam National Administration of Tourism in developing its website (http://www.vietnamtourism.com). It now has a more professional appearance and useful content for travellers. This is also a positive sign that the Government is developing a digital strategy. However, joint efforts from both Government and the private sector still need to be improved to enhance tourism promotion in Vietnam.

Vietnam is ranked 80th in the world for effectiveness of marketing and branding in attracting tourists, according to the World Economic Forum. Vietnam scored 4 out of a possible 7 in the Travel and Tourism Competitiveness Report 2017.[25] To put that in perspective: Vietnam is a long distance behind other ASEAN countries such as Thailand, Indonesia and the Philippines regarding destination marketing and branding, as the graph below shows.

Figure 20: Effectiveness of marketing and branding to attract tourists - ASEAN countries in 2017



Source: Travel and Tourism Competitiveness Report 2017.[26]

18 For example, the Singapore Tourism Board has partnerships with Lyft and Pandora to promote destination awareness in the U.S. Meanwhile, Tourism Australia works with non-travel brands such as Sony, Samsung and Quicksilver as well as banking partners on market-specific campaign activities, and The Netherlands Board of Tourism & Conventions has partnered with Expedia to promote tourism. Furthermore, airlines are also key strategic partners that can support Vietnam's destination marketing plan.

19 Internet and mobile penetration have now crossed the 50% global threshold. Meanwhile, the number of active social media users reached 2.8 billion in 2017, representing 37% global penetration "Digital in 2017: Global Overview", *We Are Social*, 24 January 2017. Available at: <https://wearesocial.com/special-reports/digital-in-2017-global-overview> accessed on 26 December 2017.

20 Global statistics show that 50% of travellers use their smartphone for planning, research and bookings while on a trip; almost 25% of travellers over 55 use a smartphone to research a trip; 81% of travellers use peer-to-peer reviews when researching a trip; and 42% of travellers acknowledge the importance of sharing travel experiences on social media. "The Global Digital Traveler Research", *Travelport*, November 2017, p. 3. Available at: <https://marketing.cloud.travelport.com/gdtr-en-uk-download> accessed on 26 December 2017.

21 In Asia Pacific, 47% of travellers share their experiences on social media.*Ibid.*

22 "The New Digital Traveler", *Criteo*, p. 25 Available at: <https://www.criteo.com/the-new-digital-traveler-in-apac/wp-content/uploads/2017/05/New-Digital-Traveler-EN.pdf> accessed on 26 December 2017.

23 47% of people in Vietnam are influenced by friends and family, just below the APAC average of 48% *Ibid.* p. 32.

24 In particular, 3G signal now covers over 94% of Vietnam. Meanwhile, Internet usage has risen from 44% to 53% in 2017 *op.cit. World Economic Forum*

25 *op.cit. World Economic Forum*

26 *op.cit. World Economic Forum*

3. Unlock the potential of new sources of tourism

China, Korea, Russia, Europe (the United Kingdom, France and Germany), the U.S., Japan, Australia and ASEAN countries (Malaysia, Thailand and Singapore) represent two thirds of total foreign visitors to Vietnam.[27] These tourists have strong purchasing power, tend to visit frequently and stay for a long period of time. While Vietnam is successful in attracting visitors from China and Korea, who together represent half of total foreign visitors to Vietnam,[28] this might be a double-edged sword as the tourist sector risks becoming over-dependant on visitors from these countries. Therefore, we believe that focused investment promoting Vietnam in other important markets could help to reduce the stress and stretch of resources.

Potential gains/concerns for Vietnam

To put this in international benchmarking perspective: the Department of Tourism in Thailand had an annual budget of USD80 million in 2015. Malaysia's Ministry of Tourism and Culture had a similar budget of USD81.6 million in 2015. Meanwhile, the Philippines Department of Tourism received USD54.2 million in 2015. More significantly, Hong Kong allocated USD240 million for marketing, Meetings, Incentives, Conferences and Exhibitions (MICE) and other industry improvements in 2016/17.

We cannot emphasise enough the importance of travel and tourism to Vietnam's economy. The industry indirectly generates almost 10% of GDP. Furthermore, in light of the Government's ambitious goal to develop tourism into a spearhead of the economy, it is imperative to recognise the sector's contribution to the socio-economic welfare of the State in order to properly support it through an effective strategic plan for international tourism marketing.

Recommendations:

- Allocate a more reasonable amount to the national tourism promotion fund from the State Budget to support tourism promotion;
- Facilitate public-private partnerships to manage and effectively operate the tourism promotion fund, aiming to promote Vietnam as a top destination in ASEAN;
- Focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long time, visit regularly and spend more when travelling in Vietnam;
- Strengthen Vietnam's visibility while saving costs using digital and social marketing channels to develop a professional appearance as well as comprehensive and useful information for tourists;
- Contribute funding towards not only promotional activities, but also initiatives that support the long-term objectives of the industry. These include cultural and environmental preservation, product development and infrastructure improvements;
- Establish improved mechanisms for communication between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organisational structures;
- Put in place region-wide coordination structures to focus and maximise the actions of cooperating provinces and facilitate cooperation; and
- Open tourism centers, possibly using virtual technology, around the world once visa restrictions are improved to raise awareness of Vietnam. The Vietnam tourism website is way behind others, and should also be improved.

27 *op.cit.* Vietnam National Administration of Tourism
28 *op.cit.* Vietnam National Administration of Tourism

III. DEVELOPMENT OF SUSTAINABLE TOURISM

Relevant Government authorities: Ministry of Natural Resource and Environment (MONRE), Ministry of Culture, Sports and Tourism (MCST).

Issue description

Vietnam has enormous potential to become a popular tourist destination, attracting visitors from around the world. Vietnam's unique cultural and natural heritage is already a huge draw and, with recent and continued investment in infrastructure development, it appears to be well placed to cater to the growing demand. As Vietnam moves beyond the period of 'exoticism' and into the tourism mainstream, there is a need to focus on the projection of a sophisticated cultural and natural heritage destination, with high preservation and sustainability attributes.

Vietnam's development of cultural and sustainable tourism has lagged behind the development of tourism infrastructure and national development. Moreover, natural and heritage tourism are some of the most lucrative sectors in global tourism. Tour operators have recorded significant sales increases for sustainable travel offers such as local and community-based tourism excursions, certified 'green' accommodations, local organic food and restaurants, responsible wildlife experiences and responsible volunteer experiences.[29] Vietnam is a natural fit for these desirable market segments.

Wellness, culture and the environment are massive segments in the tourism industry. They embrace everything from walking, spas, diving and beach holidays to marathons and natural attractions like Ha Long Bay and Phong Nha. They can also embrace cultural activities such as photography festivals, food festivals, film festivals and writers' festivals. Vietnam has an enviable supply of destinations suited to these activities, including the mountains of the far north, Ha Long Bay, Phong Nha Ke Bang, the spectacular coastline, mountainous Truong Son Range, the Mekong Delta and Central Highlands. These assets are used to different degrees across Vietnam's tourism sector. Almost without exception, there are concerns that these assets face mild or serious environmental threat or the threat of over-development.

1. Heritage sites and architecture

Vietnam's heritage sites face many threats. All across the country, heritage sites are being demolished or facing heavy-handed destructive renovation or upgrade. The degradation of heritage assets poses a risk to a lucrative existing tourism market and the future development of mid and high-value tourism. Most of Vietnam's museums have barely evolved since the 1990s. There is widespread under-estimation in Vietnam's tourism sector of the appetite of travellers for heritage and historical engagement. Vietnam's museums are well behind international and regional standards. Many of the problems facing museums concern the craft of storytelling rather than the more expensive questions of infrastructure and collections. Museums often occupy valuable but under-utilised heritage spaces.

2. Overdevelopment

All over Vietnam, there are concerns that the country is over-developing its tourism assets and in the process devaluing them. Tourism infrastructure development is essential. So is the delicate balance between development, protection of fragile environments and enhancing their economic potential. Across Vietnam, this balance is being missed. There is a real risk of serious degradation to the country's natural environment and the economic opportunities this presents.

The present trajectory of Vietnam's coastal development risks over-allocating precious coastal land to high-intensity development.[30] This development has poor sustainability qualities and risks pigeonholing Vietnam as a mass tourism destination at the expense of cultivating other important and lucrative markets.

29 "The Case for Responsible Travel: Trends and Statistics", *CREST,* 2016, p 2. Available at <http://www.responsibletravel.org/whatWeDo/The_Case_for_Responsible_Travel_2016_Final.pdf> accessed on 26 December 2017.

30 "Vietnam's rush to develop risks damaging its natural attractions", *The Guardian*, 01/08/2015. Available at: <https://www.theguardian.com/world/2015/aug/01/vietnam-tourism-rush-development-conservation> accessed on 26 December 2017.

3. Green tourism as an attractive and responsible initiative

Hotels are at the forefront of tourist destinations, while small-scale, low-impact resorts and successful integration into the local environment are unfortunately rare in Vietnam. Over-development and excessive land use in hotel construction, especially along the coast, are damaging the environment and its limited resources. To reduce this impact, tourism hotspots should be mixed with lower-scale organic development of preserved destinations. Furthermore, hotel management should be held responsible for reducing the environmental impact of mass tourism, with special attention paid to the use of chemicals and hazardous waste, waste management and recycling and the use of natural resources.

4. Pollution and degradation

Excessive and wasteful use of plastics is a serious environmental problem and Vietnam has been identified as a major source of global plastic waste. Tourists and the tourism industry are large producers of plastic waste (though small in the grand scale of the problem). The industry also suffers from the impact of Vietnam's plastic waste on beaches and in other natural environments.[31]

Another issue is water quality. The lack of adequate water treatment, waste management and recycling options has resulted in polluted waterways and beaches. Beyond the environmental implications, the recent use of toxic chemicals released into the ocean has not only affected the fishing industry but also negatively affected the brand image of Vietnam as a tourist destination. Moreover, in the last 6 to 8 years, concerns about the natural environment in Ha Long Bay have become more pressing. Ha Long Bay is Vietnam's signature natural attraction. Its reputation for being polluted and unsafe represents a threat to its appeal to international travellers, causing subsequent reputational damage.[32] Similar concerns are mounting along Vietnam's coastline.[33]

5. Unfair distribution of tourism profits to local communities

Tourism activities have the potential to positively impact local communities. However, there is currently a lack of adequate vocational training and employment opportunities for local communities and entrepreneurs. The heritage of Vietnamese contemporary society should be protected and promoted to generate income for local communities. Operators need to be empowered and encouraged to play a more active role in local development. Training and especially vocational training facilities need to be supported and subsidised to create better access to employment opportunities in the tourism industry for local people.

Tourism can support and give back to local communities. However, it must be done in a meaningful way. Children, orphans and vulnerable people must not become tourist attractions. Vietnam's civil society needs financial resources and support, but not at the expense of its beneficiaries. Social enterprises, local associations and non-profit networks are gaining voice and recognition. In order to protect the most disadvantaged, operators and tourists must be educated to further support such initiatives and be transparent and accountable for their actions.

Potential gains/concerns for Vietnam

Vietnam's tourism planning and development to date has not adequately recognised the economic and environmental value of managed sustainable development. It has often failed to acknowledge the tourism, lifestyle and economic value of Vietnam's rich, diverse heritage and historic assets. With careful planning and sustainable development, the tourism industry has the potential to not only attract more travellers to Vietnam but also act as a window to the world. The rise of civil society and the expansion of grassroots social entrepreneurs is a step towards local development, to which many tourists are eager to contribute. This can be an asset for the country, but it needs to be handled with care, especially to avoid negative effects on Vietnam's social development structure. Tourists will need to be educated and given the chance to learn more about Vietnam's societal challenges and contribute to the solution. International brands and local stakeholders in the luxury travel market are already embracing sustainability and applying its main principles.[34]

31 "Phu Quoc feels growing pains as development booms", *VN Express,* 23 October 2016. Available at: <http://e.vnexpress.net/news/travel-life/phu-quoc-feels-growing-pains-as-development-booms-3487852.html> accessed on 26 December 2017.

32 "MONRE highlights severe seawater pollution", *Viet Nam News*, 14 October 2016. Available at: <http://vietnamnews.vn/society/344438/monre-highlights-severe-seawater-pollution.html#x8r3r8m7DV67v1DR.97> accessed on 26 December 2017.

33 op.cit., *VN Express*

34 According to a recent survey, 'today's consumers expect travel companies to build sustainability into their product offer'. A majority of respondents (70%) believe companies should be committed to preserving the natural environment and 55% to fair working conditions. Meanwhile, 75% of consumers want a more responsible holiday and 66% would like to easily identify a 'greener' holiday. *Op.cit.*, *CREST* p 2.

Recommendations:

- City urban planners and tourism management authorities need to understand the importance of heritage assets as significant economic and national resources and recognise their economic value and fragility. There is also a need to invest in world-class storytelling at museums, historical and heritage sites (Hue, Hoi An, Dien Bien Phu etc.);
- Keep beaches clean and prioritise sustainable, diverse development;
- Ensure a more systematic approach to sustainable development in tourism. Promote incentives for responsible commitments and actions taken by stakeholders;
- Support local people through training and economic empowerment. Promote activities directly benefiting local people and promoting their authentic local cultures;
- Strengthen the capacities of local non-profit organisations and create a framework for ‘voluntourism’ activities;
- Spread useful tips to tourists including information on sensitive social issues, such as behaviours to adopt towards children selling souvenirs in the street or begging, sexual exploitation, visiting schools or orphanages etc.;
- Provide guidelines, such as ‘dos and don’ts for travellers’, in heritage locations and spiritual sites to ease interactions with locals and raise foreign tourists’ awareness of local customs;
- Reduce demand for endangered wildlife species and limit uncontrolled interactions with wildlife to protect the limited number of species in Vietnam. Information in National Parks or natural areas could be developed in order to encourage tourists to respect and protect these sensitive locations;
- Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of Community-Based Tourism (CBT) initiatives; and
- Strengthen the capacity of stakeholders involved in responsible tourism and support initiatives led by and for locals, in order to develop income-generating activities as a by-product of tourism.

IV. HUMAN RESOURCES AND VOCATIONAL TRAINING IN TOURISM AND HOSPITALITY

Relevant Government authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA), Ministry of Culture, Sports and Tourism (MCST), Ministry of Education and Training (MOET).

Issue description

Resolution 08 has set a target for the tourism sector to create 4 million jobs with 1.6 million direct jobs in 2020. It also includes a detailed action plan to develop human resources in the tourism sector up to 2020, which is (i) to initiate policies to attract investment in vocational training for the travel industry, (ii) to enhance the capacity of training centres/institutions by promoting international cooperation, (iii) to diversify training methods with the application of high technology and (iv) to focus on improving technical skills, foreign language and ethics for labourers.[35] These initiatives indicate that tourism is one of the key sectors that require sustained effort from both the Government and private sector.

Even though Vietnam is becoming more integrated within the ASEAN Economic Community (AEC), the tourism and hospitality sector continues to suffer from skills shortages at all levels compared to other countries in the region.[36] With the current pace of development in Vietnam’s tourism sector, and in light of its key contribution to the economy, it is more important than ever to develop a highly-qualified labour force in this industry.

35 Session II, III, Resolution 08-NQ/TW dated 16 January 2017 of the Political Bureau regarding developing tourism industry into the spearhead of Vietnam till 2030

36 D.M. Cuong, “Solutions for a high-qualified labour force in tourism sector”, *Vietnam Tourism Education Association*. Available at: <http://vitea.vn/giai-phap-dao-tao-nguon-nhan-luc-du-lich-chat-luong-cao/> accessed on 26 December 2017.

Certain measures aimed at resolving the issue have been put in motion.[37] These Decisions meet with the current demands of tourism in Vietnam, as well as conforming with the ASEAN Common Competency Standards for Tourism Professionals (ACCSTP) under the Mutual Recognition Arrangement on Tourism Professionals (MRA-TP). However, efficiently implementing these standards requires cooperation between Government, businesses and training institutions to develop proper methodology to make them a reality.

Potential gains/concerns for Vietnam

Increasing the number of trained and qualified personnel in the tourism and hospitality industry would enhance the quality of products and services on offer. This, in turn, would have a positive impact on Vietnam's reputation. Better services also translate into greater competitiveness and more visitors, increasing potential GDP contribution and Government revenue. Tourism is a significant sector for the country, so there might also be positive knock-on effects for other industries, improving overall skill levels across the supply chain. This is likely to increase employment and wages for the local population.

Recommendations:

- Businesses and training institutions should collaborate to raise awareness and provide procedures to efficiently implement the National Occupation Skill Standards for housekeeping and front door operation;
- National Occupation Skill Standards should be developed for other sectors in the tourism and hospitality industry to enhance service quality and increase the competitiveness of Vietnam as a tourist destination in the region;
- The role of Vietnam Tourism Certification Board (VTCB) should be enhanced in assessing, training and providing certification for workers who have gained practical experience, but not received formal training;
- Cooperation between the Government and private sector should be reinforced to improve vocational training activities in the tourism sector for both learners and instructors;
- Ensure that cooperation between training institutions and businesses is sustainable by creating mechanisms, policies and awards to honour businesses that are actively involved in tourism training;
- Review and restructure the network of tourism training institutions to ensure that they have adequate competencies to provide quality training;
- Facilitate language education for workers in the tourism industry. This will not only contribute to high-quality service in the tourism industry, but also help ensure locals are qualified to gain important positions in the sector; and
- Invite more educational companies to open their offices in Vietnam with more internationally-oriented teaching methods and give Vietnamese students the chance to earn an international certificate in tourism and hospitality. The Government should financially support such projects which are so important for professional development in the tourism and hospitality sectors.

ACKNOWLEDGEMENTS

EuroCham Tourism and Hospitality Sector Committee

37 For instance, in August 2017, Ministry of Labour, Invalids and Social Affairs (MOLISA) promulgated two sets of National Occupation Skill standards for housekeeping and front office operation. Decision 1385/QĐ-LĐTBXH dated 31 August 2017 of the Ministry of Labour, Invalids and Social Affairs announcing the National Occupation Skill Standards for Housekeeping and Decision 1383/QĐ-LĐTBXH dated 31 August 2017 of the Ministry of Labour, Invalids and Social Affairs announcing the National Occupation Skill Standards for front door operation. Moreover, official Document 4929/BGDĐT-GDĐH dated 20 October 2017 of Ministry of Education and Training (MOET) regarding applying specialised mechanism for tourism vocational training (Document 4929) specifies the tourism sectors that will benefit from the specialised mechanism. Document 4929 is designed to ensure collaboration between training institutions and businesses to deliver the quality of vocational training in a sustainable manner.

CHAPTER 19 **WINE AND SPIRITS**

OVERVIEW

Vietnam's economic growth, at 6.2% in 2016 and 6.81% in 2017, was among the strongest in the world. However, public debt pressures have prompted authorities to set ambitious targets to reduce the budget deficit: the Government and the National Assembly have promised to rein in the deficit over the medium term. This will be achieved by gradual fiscal consolidation which strikes the right balance between revenue raising and spending cuts. This will be challenging, and will require deeper tax reform, better revenue administration and much more efficient public spending, according to the Asian Development Bank.[1] Due to budget-deficit issues, the Ministry of Finance (MOF) will continue managing tight tax compliance and State budget collection by increasing tax inspection and audit, monitoring transfer pricing and tax evasion, and detecting tax under-declaration and fraud.

Raising productivity, increasing competitiveness and improving the business environment continue to be the Government's top priorities. However, Foreign Direct Investment (FDI) could suffer as the tax and regulatory environment for business still requires significant improvement.

We welcome the promulgation of Resolution 35/NQ-CP dated 16 May 2016 of the Government supporting and developing enterprises until the year 2020 (Resolution 35) and the annual Resolution 19/2017/NQ-CP dated 6 February 2017 of the Government on major tasks and solutions to improve the business environment and enhance national competitiveness (Resolution 19). Both contain solutions related to access to resources and cost efficiency for businesses.

Market overview: Vietnam is listed among the world's top ten highest beer consuming countries. In 2016, Vietnam produced 3.78 billion litres of beer, up 9.3% against 2015 and 40.72% against 2010. The Saigon Alcohol Beer and Beverages Corporation is the biggest producer of beer in Vietnam, with a total of 1.6 billion litres in 2016. That was followed by Hanoi Alcohol and Beverages Corporation, with 717.4 million litres. The rest came from other producers such as Heineken and Carlsberg. The beer sector in Vietnam has set a target of producing 4.1 billion litres by 2020 and 5.5 billion litres by 2035. Beer accounts for 94% of the commercial alcoholic beverage market in Vietnam.[2]

The formal spirits market was estimated at more than 4.77 million nine-litre cases – about 43 million litres – in 2016.[3] Meanwhile, the formal wine market was estimated at around 1.62 million cases – about 14.6 million litres.[4] Home-made alcohol was estimated at around 275 million litres.[5] According to World Health Organisation (WHO) data, unrecorded (untaxed and unregulated) alcohol amounts to more than 70% of the alcohol consumed in the country.[6]

The population of Vietnam is growing quickly and is fast approaching 100 million people. Every year, a million new consumers enter the legal-drinking-age bracket.[7] Meanwhile, Vietnam's middle class has doubled to 33 million people, and that growth in disposable income is creating stronger consumer demand.

The European Union (EU) wines and spirits industry supports the Government's commitment to international integration: greater liberalisation will encourage further strong economic growth in Vietnam. The EU-Vietnam Free Trade Agreement (EVFTA), expected to come into force in 2018, will facilitate the market access of EU wines and spirits to Vietnam. This will bring about positive changes in the liquor production and trading regime, the

1 "Asian Development Outlook 2017 Update: Sustaining Development through Public-Private Partnerships", *Asian Development Bank*. Available at: <https://www.adb.org/sites/default/files/publication/365701/ado2017-update.pdf> accessed on 5 December 2017.

2 "Vietnam beer consumption to top 4 billion litres this year" *Vietnam Net*, 20 April 2017. Available at: <http://english.vietnamnet.vn/fms/business/176901/vietnam-beer-consumption-to-top-4-billion-litres-this-year.html> accessed on 8 December 2017.

3 "Country Volume Report", *International Wine and Spirits Record (IWSR)*, June 2017. Available at: <http://www.theiwsr.com/iwsr_core_reports.html> accessed on 5 December 2017.

4 *Ibid.*

5 "Assessment on status and proposals on management food safety of some traditional alcohol products" *Vietnam Ministry of Health*.

6 "Global status report on alcohol and health 2014" *World Health Organisation*. Available at: <http://www.who.int/substance_abuse/publications/global_alcohol_ report/profiles/vnm.pdf> accessed on 8 December 2017.

7 *Op.cit*. IWSR Report 2017.

strict enforcement of European brand protection and Geographic Indications (GIs), as well as a reform initiative to simplify administrative measures and to harmonise the technical regulations with international practices.

EVFTA: The EU and Vietnam are working on the final preparations before the EVFTA can be ratified. Wines and Spirits Sector Committee (W&S SC) has always supported this agreement, as the gradual alleviation of the tariff barrier should support the import of tax-paid wines and spirits. This will reduce economic incentives to smuggling and other informal activities and benefit legitimate businesses, Government revenue and the health of Vietnamese consumers. However, the anticipated benefits from tariff cuts negotiated under the EVFTA are compromised following successive reforms to the Special Consumption Tax (SCT). These reforms have greatly impacted EU wine & spirits exporters to Vietnam, and the overall tax burden (which has, in some instances, more than doubled) puts the sustainability of our industry in Vietnam at risk.

W&S SC would like to understand more and to participate in the 'domestic advisory groups' mechanism for the EVFTA. We appreciate the opportunity to discuss with relevant authorities developing legal documents implementing Rules of Origins (ROO) principles established in the EVFTA for getting the agreed tariff concession where EU wines and spirits are shipped directly to Vietnam or indirectly through a non-Party country. We hope that the Ministry of Industry and Trade (MOIT) will give clear guidance in its legal documents.

Liquor production and trading licence: We warmly welcome the promulgation of Decree 105/2017/ND-CP dated 14 September 2017 of the Government on liquor business (Decree 105), replacing Decree 94/2012/ND-CP dated 12 November 2012 of the Government on liquor production and trading (Decree 94). Decree 105 contains positive changes and removes unnecessary restrictions. These include the quota of trading licences based on inhabitants, the limit of one type of liquor trade licence application per trader and sales restrictions from the vertical distribution system in Decree 94. Decree 105 also reviewed and amended the conditions for obtaining a liquor-trading licence. It is therefore now more consistent with the real-life management and operation of liquor distribution and sale in Vietnam, in line with Vietnam's EVFTA commitments.

Intellectual Property Rights: We request that the Government strictly enforces Vietnam's Intellectual Property Rights (IPR) laws, especially on GIs, to reduce unnecessary burdens and improve cooperation between law enforcement agencies and owners of brands and products protected by key European GIs, for example: Champagne,[8] Irish Whiskey, Swedish vodka, Cognac and Scotch Whisky.

Technical regulations: We strongly support the reform and simplification of administrative requirements and conditions in some sectors, including the wines and spirits industry. In particular, we appreciate the on-going discussions to remove certification of product conformity with technical regulations of non-risk products like wines and spirits and reducing some procedures on State examination for imported products. We would like to note that any changes on labelling requirements or technical regulations for alcoholic beverages should be harmonised with international practices that assure product quality and safety for consumption without imposing unnecessary technical barriers to trade.

Below, this chapter describes three key challenges for the EU wines and spirits industry, and outlines specific recommendations that will help increase Government revenue, support industry growth and encourage a responsible drinking environment for those who choose to drink.

8 Champagne will be fully protected after a transition period of 10 years, during which all users incompatible with GI protection, including translation and transliterations in Vietnamese should be phased out. Please see "EVFTA Guidebook", *European External Action Service Vietnam*, p.32. Available at: <https://eeas.europa.eu/delegations/vietnam/documents/eu_vietnam/evfta_guide.pdf> accessed on 5 December 2017.

I. SPECIAL CONSUMPTION TAX

Relevant Ministries: Ministry of Finance (MOF)

Issue description

A stable domestic tax policy is critical for maintaining and attracting foreign investment in Vietnam. However, the EU wine and spirits industry has greatly suffered from successive reforms of the SCT regime. This includes an increase in the tax rates in the SCT roadmap for alcoholic beverages from 2016-2018[9] and an increase of the taxable price in Decree 108/2015/ND-CP dated 28 October 2015 of the Government providing guidelines for some article of the Law on Special Excise Duty and the Law amending the Law on Special Excise Duty (Decree 108) which has been in force since 1 January 2016. These reforms have significantly increased the total tax burden on EU wine and spirits exported to Vietnam and cancelled out the benefits of tariff reductions on these products negotiated under the EVFTA, thereby limiting the potential development of the market.

The retail prices of European and imported wines and spirits have been significantly impacted by the increased rates and higher taxable price from the various reforms, and have therefore become less affordable for Vietnamese consumers. This could lead to a substantial loss of sales of legal imports and an increase of illegal trade. Excessive ad valorem taxation, often exacerbated by high import duty, will encourage illicit activities such as counterfeiting and smuggling of imported wine and spirits. This is a common problem in many other ASEAN countries like Indonesia. This negatively impacts legitimate importers, Government revenues and consumers' safety.

Potential gains/concerns for Vietnam

Increasing the ad valorem rate of SCT could increase Government revenues in the short term. But in the long term it could be counterproductive and would:

- Jeopardise a stable and predictable business environment;
- Nullify and impair the benefits of any tariff cut negotiated under the EVFTA;
- Create a huge economic incentive for illicit activities, leading to tax leakage;
- Decrease tax revenue as consumers trade down or shift to black-market products; and
- Not mitigate the problem of unrecorded alcohol abuse, including home-made alcohol which is sold at very low prices, is easily accessible and which accounts for more than 70% of alcohol consumption in Vietnam.

Indeed, a stable domestic tax policy is critical to maintain and attract foreign investment in Vietnam. The stability of the excise tax base is the solid ground on which excisable industries develop their business, thus helping domestic commerce and retail trade to prosper. This effectively generates jobs and contributes to the Government budget. Unpredictable and opaque changes with no roadmap will therefore discourage existing and prospective investors and impair trust in the stability of the business environment in Vietnam. On 8 January 2018, while attending the State Finance and Budget sector's 2017 review and 2018 planning meeting, Prime Minister Nguyen Xuan Phuc said that tax policies changed too fast and too often, causing negative impacts to people and enterprises. Moreover, the interpretation of a vague provision in a tax regulation can be bias in the favour of the competent authority and does not protect the rights of tax payers. The Prime Minister therefore requested that tax policy should be have a more stable planning of 5-10 years.

Recommendations:

The current SCT roadmap for alcoholic beverages runs until 2018. A clear, predictable and evidence-based SCT roadmap is needed to address public health concerns and revenue objectives:

- We would welcome greater transparency in MOF's evaluation of SCT regime reforms since 2016;
- We would also request that public consultations on any proposed changes to the SCT regime happen as early as possible in the process;

9 Law 70/2017/QH13 amending some articles of Law on Special Consumption Tax. Available at: <http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=178139> accessed on 8 December 2017.

- We understand from the August 2017 meeting between EuroCham and the National Assembly that there are no new SCT proposals for alcoholic beverages in the near future.[10] However, W&S SC is prepared to engage with the Government, MOF and other relevant Ministries to initiate a positive dialogue and explore a sustainable and evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption; and
- The Asia Pacific International Wine & Spirits Alliance (APIWSA) is working with the Centre for Customs & Excise Studies (CCES) at Charles Sturt University (CSU) on a tax model of the alcoholic beverage market in Vietnam. We would greatly encourage a dialogue between CCES and the Government, MOF and other relevant Ministries to discuss this and to consider how it could help in exploring a rational and sustainable tax environment for the imported wine and spirits industry in Vietnam.

II. ALCOHOL SOCIAL POLICY

Relevant Ministries: Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF)

Issue description

W&S SC shares the Government's desire to prevent the harmful effects of alcohol abuse as set out in Decision 244/QD-TTg dated 12 February 2014 of the Prime Minister on National Policy on prevention and fighting against harms of abusing alcoholic beverage by 2020 (Decision 244). Ministry of Health (MOH) is also working on a Draft Law on Prevention and Fighting against Harmful Effects of Liquor or Wines and Spirits and Beer (Draft Alcohol Law) scheduled for discussion in the 6th session of National Assembly XIV.[11]

Unrecorded alcohol represents a substantial proportion of total alcohol consumption in Vietnam – around 70% according to the WHO[12]. Commercial alcoholic beverages, including EU-imported wines and spirits, are already highly taxed and regulated, notably in terms of production, distribution and advertisement. Unrecorded alcohol, meanwhile, is untaxed and unregulated. Besides ensuring the enforcement of existing regulations on commercial alcohol, regulations on the production and distribution of highly-prevalent unrecorded alcohol should be further improved and enforced to address growing public health concerns and the demand for safe and high-quality products for consumption.

We also believe that, when consumed responsibly, alcohol can be part of a healthy lifestyle. In moderation, it can bring pleasure, not to mention social benefits. Although, of course, it can cause personal and social harm if misused. Therefore, alcohol policies must operate within a reasonable regulatory framework that balances individual freedom against the wellbeing of society. Furthermore, such policies must be realistic, pragmatic and feasible in order to be successfully implemented.

W&S SC is willing to work with MOH and the drafting Committee's members to share our concerns and recommendations based on international experience of the policy options proposed in the Draft Alcohol Law regarding bans or restrictions on trade (including sales, promotion and advertisement) and the Health Improvement Fund (HIF).

Potential gains/concerns for Vietnam

If the Draft Alcohol Law is overly restrictive to legitimate alcohol trading, it will be counterproductive and drive consumers towards the black market. This will negatively impact tourism and ultimately reduce tax revenues while increasing public health risks. However, effective enforcement of a fair and balanced regulatory regime will help reduce harmful alcohol use across Vietnam, while protecting Government revenue, commercial freedoms and economic activity.

10 "Meeting between EuroCham and Vice-Chairman Phung Quoc Hien and National Assembly Committees on 14 August 2017 in Hanoi." *EuroCham*, August 2017. Available at: <https://www.eurochamvn.org/node/16811> accessed on 30 November 2017.

11 Resolution 34/2017/NQ-QH14 dated 8 June 2017. Available at: <http://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=122829> accessed on 8 December 2017.

12 *Op.cit.* World Health Organisation.

HIF's draft has proposed a compulsory contribution of 1-2% of the SCT's taxable price[13], which would go to a non-budgetary fund. Experience tells us that similar public health funds have not been effective to address or reduce the problem of harmful alcohol use in practice. In fact, governments implementing this tax have incurred greater administrative and compliance costs.

Recommendations:

We support multi-stakeholder coordination to enforce more strictly existing laws, such as those on drink driving, road safety and underage drinking. More generally, we support all laws punishing socially unacceptable behaviour, including domestic violence and public disturbance, to address the problems associated with harmful alcohol use.

W&S SC appreciates the opportunity to work with MOH, the Government and other stakeholders to develop an effective alcohol policy regime and collectively tackle the problems of harmful alcohol use in Vietnam. In order to do this, we recommend that the Government:

- Support an evidence-based, proportionate and targeted policy intervention to effectively manage individual consumption and reduce harmful use of alcohol without excessively restricting market access and legitimate business activities;
- Adopt a comprehensive and integrated approach to manage harmful use of alcohol, coupled with a rigorous evaluation of all strategies implemented based on nationally-agreed targets; and
- Consider alternatives to the HIF, as there are more effective ways to achieve responsible alcohol consumption without harming the economy. We also propose that the drafting Committee call for public consultation with relevant stakeholders to exchange and express views, concerns, experience and recommendations on the proposed HIF.

We are also open to scaling-up our social responsibility programmes and look forward to working with the Government to raise awareness and promote responsible drinking in Vietnam. However, instituting an HIF would severely limit our capability to expand our targeted initiatives, some examples of which are below:

- Between 2010 and 2013, wines and spirits companies developed a range of schemes to help tackle drink driving in Vietnam under International Centre for Alcohol Policies (ICAP) and International Alliance for Responsible Drinking (IARD) programs. We have been working closely with the National Traffic Safety Committee to improve drink-driving enforcement and road safety campaigns in Da Nang, Thanh Hoa and Nghe An. The project helped to reduce drink driving and drink-driving-related road crashes in these targeted provinces.
- Between September 2011 and February 2012, together with Ministry of Transport's (MOT) Traffic Safety Department, ICAP and the Directorate for Roads of Vietnam (DRVN), we implemented Phase 1 of a pilot project in bus stations in Dak Lak and Khanh Hoa to strengthen management practices at bus stations and reduce traffic accidents caused by alcohol-impaired drivers.
- In early April 2015, at the Sector Committee's suggestion, Vietnam Association for Responsible Drinking (VARD)[14] was formed, as a response to the CEO's commitment[15] and Vietnam National Alcohol Policy (NAP). VARD worked on a 'Don't Sell to Under 18 Years Old' campaign, carried out on 30 July 2016 at 154 retail outlets in Hanoi, Da Nang, Ho Chi Minh City and 10 provincial cities. In addition, VARD worked with the National Traffic Safety Committee (NTSC) to organise an educational initiative, the '7 Film Fest', a responsible-drinking film festival which took place from June to December 2016. The film 'Sprout at the Bottle's Bottom' received local and international awards under the 'drink-driving prevention' category at the Global Road Safety Film Festival, which was conducted during the 70th Session of the United Nations Economic Commission for Europe Inland Transport Committee.
- In 2017, the Asia Pacific International Wine and Spirits Alliance (APIWSA) worked closely with the National Traffic

13 Resolution 34/2017/QH14 of the National Assembly on Law and ordinance development program for 2018 and adjusting the Law and ordinance program of 2017. Available at: <http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?_piref135_27935_135_27927_27927.mode=reply&_piref135_27935_135_27927_27927.id=1467> accessed on 8 December 2017.

14 More information is available at: <http://vard.org.vn/> accessed on 5 December 2017.

15 "Producers' Commitments: 2016 progress report" *International Alliance for Responsible Drinking (IARD)*. Available at: <http://www.producerscommitments.org/>accessed on 8 December 2017.

Safety Committee, the Vietnam Women's Union, the People's Police Academy (PPA) of the Ministry of Public Security and VARD to support professional road police training on advanced drink-driving enforcement and to empower and equip women to be drivers of social change and to influence behaviours around harmful drinking in communities. Two models were built up in the North and South, and 480 road police in 12 provinces have been trained on advanced drink-driving enforcement. These projects have been extended in 2018[16].

III. CUSTOMS VALUATION FRAMEWORK

Relevant Ministries: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue description

Vietnam has issued laws and regulations regarding the calculation of customs valuations for imported products[17], in compliance with the World Trade Organisation (WTO) Agreement on Customs Valuation. However, a set of reference prices for 'sensitive items' has been set in the Customs database for cases where there is an issue with importer's declared values. This could result in the minimum import values being applied and in discriminatorily high customs levies.

We warmly welcome recent improvements to Vietnam's taxation system, particularly in terms of forms, procedures and time of processing. At the same time, we have seen many different levels of tax audits recently, possibly driven by an interpretation of the Government's need for additional tax revenues. However, in practice, our members have found that administrative breaches seem increasingly to be the focus of many tax and customs audits. This is contrary to the increasing focus on substance over form as indicated in recently-issued tax regulations, such as Decree 20/2017/ND-CP dated 24 February 2017 of the Government prescribing tax administration for enterprises engaged in transfer pricing (Decree 20).

The nature of these breaches, such as inconsistencies in a customs declaration or a perceived failure to follow a non-tax procedure, are simply administrative mistakes. They do not change the substance of the transaction and should not be used as a legal basis for Customs or Tax authorities to apply tax arrears and penalties or to deny a tax refund. We are very concerned about the current customs framework and its application.

Potential gains/concerns for Vietnam

We are keen to co-operate with and support the Government. However, precious resources that could be used to this end are being diverted to dealing with overly-punitive interpretations of current regulations.

We are also very concerned that administrative errors with no material impact, such as checking the wrong box on a declaration form, are being used to open up valuation methods or impose heavy, unmerited penalties in Tax and Customs audits. This undermines confidence in Vietnam's investment environment. Companies might be forced to reconsider investing or downsize operations if the environment is not more supportive of business operations.

Recommendations:

- The Government should assess the long-term impact of these practices vis-à-vis business confidence. W&S SC would like to work with and support the Government to achieve its tax-management ambitions. On customs valuation, we urge a focus on substance over form. We also request that the Government share its rationale and evidence as to how decisions are reached with affected businesses. This would ensure compliance with WTO rules, improve transparency and allow companies to set the right market price, which benefits consumers and ultimately boosts both imports and customs revenue.
- In the long run, we hope the government can take a principled, 'light touch' approach to regulations founded

16 http://dantri.com.vn/giao-thong/uong-co-trach-nhiem-va-an-toan-giao-thong-20180129181852362.htm

17 Law on Customs 2014; Decree 08/2015/ND-CP dated 21 January 2015 and Circular 39/2015/TT-BTC dated 25 March 2015 as confirmed in the letter Ministry of Finance sent to Eurocham on November 11th, 2017.

on substance over form. This will create a more sustainable way of working with the private sector to promote growth in Vietnam. We hope to work closely with the Customs authorities to foster their role not only as regulators, but also as facilitators for businesses. This would create conditions for a more predictable and consistent source of tax revenue for the Government and a pro-business environment.

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LIST OF TABLES AND FIGURES

ABBREVIATIONS AND ACRONYMS

AAG	Asia-America Gateway
ABMB	Apartment Building Management Board
ACAPR	Advisory Council for Administrative Procedures Reform
ACCSTP	ASEAN Common Competency Standards for Tourism Professionals
ADR	Alternative Dispute Resolution
AEC	ASEAN Economic Community
AMA	Arb-Med Arb Protocol
AmCham	American Chamber of Commerce in Vietnam
AMR	Antimicrobial Resistance
APD	Automate Peritoneal Dialysis
APEC	Asia-Pacific Economic Co-operation
API	Active Pharmaceutical Ingredient
APIWSA	Asia Pacific International Wine and Spirits Alliance
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ATIGA	ASEAN Trade in Goods Agreement
BBGV	British Business Group Vietnam
BCI	Business Climate Index
BE/BA	Bio-Equivalence/Bio-Availability
BeluxCham	Belgian-Luxembourg Chamber of Commerce in Vietnam
BEPS	Base Erosion and Profit Shifting
BOT	Build-Operate-Transfer
BT	Build-Transfer
BTO	Build-Transfer-Operate
CAPD	Continuous Ambulance Peritoneal Dialysis
CBU	Completely-Built-up Unit
CCES	Centre for Customs & Excise Studies
CCIFV	French Chamber of Commerce and Industry in Vietnam
CCTV	Closed-Circuit Television
CEEC	Central and Eastern European Chamber of Commerce in Vietnam
CEP	Certification of Suitability to the monographs of the European Pharmacopoeia procedure
CGT	Capital Gains Tax
CIT	Corporate Income Tax
CKD	Chronic Kidney Disease
CKD	Completely-Knocked-Down
CME	Continuous Medical Education
COCIR	Coordination Committee of the Radiological, Electro-medical and Healthcare IT Industry
COP	Conformity of Production
COP21	21st session of the Conference of the Parties
COPD	Chronic Obstructive Pulmonary Disorder
CPI	Consumer Price Index
CPM	Comparable Profits Method
CPP	Certificate of Pharmaceutical Product
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSC	Certificate of Satisfactory Conditions
CSR	Corporate Social Responsibility
CWM	Competitive Wholesale Market
DBAV	Dutch Business Association Vietnam
DFAP	Department of Foreign Affairs for Provinces
DGPT	Directorate General of Posts and Telecommunications
DICA	Direct Investment Capital Account
DMF	Drug Master File
DOH	Department of Health
DOLISA	Department of Labour, War-Invalids, and Social Affairs
DPI	Department of Planning and Investment
DPPA	Direct Purchase Power Agreement
DRVN	Directorate for Roads of Vietnam
DWT	Deadweight
EBOWWN	European Business Organisation Worldwide Network ASBL
EC	European Commission
EDQM	European Directorate for the Quality of Medicines and Health Care
EIA	Environmental Impact Assessment
EoDB	Ease of Doing Business
ERC	Enterprise Registration Certificate
ESRD	End Stage Renal Disease

EU	European Union
EVBN	EU-Vietnam Business Network
EVFTA	European Union-Vietnam Free Trade Agreement
EVN	Electricity of Vietnam
FAABS	Food, Agri and Aqua Business Sector Committee
FAQ	Frequently Asked Question
FCT	Foreign Contractor Tax
FCWT	Foreign Contractor Withholding Tax
FDI	Foreign Direct Investment
FIE	Foreign Invested Enterprise
FIT	Feed-in-Tariffs
FTA	Free Trade Agreement
FTS	Free-Independent Travellers
GATF	Global Alliance for Trade Facilitation
GB	Green Building
GBA	German Business Association in Vietnam
GDC	General Department of Customs
GDP	Gross Domestic Product
GDT	General Department of Tax
GGSC Committee	Green Growth Business Sector
GGU	Government Guarantees and Understandings
GHS	Globally Harmonised System
GI	Geographical Indication
GIC/AHK	German Industry and Commerce in Vietnam
GIZ	German Agency for International Co-operation
GMP	Good Manufacturing Practice
GPA	Government Procurement Agreement
GreenID	Green Innovation and Development Centre
GSP	Good Storage Practice
Hawaco	Hanoi Water Corporation
HCMC	Ho Chi Minh City
HIF	Health Improvement Fund
HKIAC	Hong Kong International Arbitration Centre
HR	Human Resources
HS	Harmonised System
HTA	Health Technology Assessment
HWL	Health Warning Label
IARD	International Alliance for Responsible Drinking
ICAP	International Centre for Alcohol Policies
ICH	International Council for Harmonisation of Technical Requirements for Pharmaceuticals in Human Use
ICham	Italian Chamber of Commerce in Vietnam
ICT Technology	Information & Communication
ID	Import Duty
IICA	Indirect Investment Capital Account
ILO	International Labour Organisation
IMF	International Monetary Fund
INDC	Intended Nationally Determined Contributions
IORB	International Outcome Research Board
IP	Intellectual Property
IPR	Intellectual Property Rights
IQGx	International Quality Generics Sector Committee
IRC	Investment Registration Certificate
ISDS	Investor-to-State dispute settlement
ISP	Intermediary Service Provider
IT	Information Technology
IZ	Industrial Zone
LCA	Law on Commercial Arbitration
LEED	Leadership in Energy and Environmental Design
LEP	Law on Environmental Protection
LLC	Limited Liability Company
LOB	Law on Bankruptcy 2014
LOC	Law on Construction 2014
LOE	Law on Enterprises
LOH	Law on Housing 2014
LOI	Law on Investment 2014
LOL	Law on Land 2013
LOREB	Law on Real Estate Business 2014
LPG	Liquefied Petroleum Gas
M&A	Mergers and Acquisitions
MA	Marketing Authorisation
MARD	Ministry of Agricultural and Rural Development
MCDA	Multi-Criteria Decision Analysis
MCST	Ministry of Culture, Sports and Tourism

MDD SC	Medical Devices and Diagnostics Sector Committee
MDG	Millennium Development Goals
MIC	Ministry of Information and Communications
MITA	Medical Imaging and Technology Alliance
MNC	Multi-National Company
MNE	Multi-National Enterprise
MOC	Ministry of Construction
MOD	Ministry of Defence
MOET	Ministry of Education and Training
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOH	Ministry of Health
MOIC	Ministry of Information and Communication
MOIT	Ministry of Industry and Trade
MOJ	Ministry of Justice
MOLISA	Ministry of Labour, Invalids and Social Affairs
MONRE	Ministry of Natural Resources and Environment
MOST	Ministry of Science and Technology
MOT	Ministry of Transportation
MOU	Memorandum of Understanding
MPI	Ministry of Planning and Investment
MPS	Ministry of Public Security
MRA	Mutual Recognition Agreement
MRA-TP	Mutual Recognition Arrangement on Tourism Professionals
MRL	Maximum Residue Level
MS	EU Member State
MUTRAP	Multilateral Trade Assistance Project
MVEP	Made in Vietnam Energy Plan
NA	National Assembly
NAFIQAD	National Agro-Forestry-Fisheries Quality Assurance Department
NAP	National Alcohol Policy
NCAP	New Car Assessment Program
NEDL	National Essential Drug List
NEMA	National Electrical Manufacturers Association
NFB	Non-Fired Brick
NFG	Nutritional Foods Group
NGF	Nutritional Foods Group
NOIP	National Office of Intellectual Property
NordCham	Nordic Chamber of Commerce in Vietnam
NRDL	National Reimbursement Drug List
NSW	National Single Window
NYC	1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
O&M	Operation and Maintenance
ODA	Official Development Aid
ODR	Online Dispute Resolution
OECD	Organisation for Economic Co-Operation and Development
OEM	Original Equipment Manufacturer
OPP	Off-Patent Pharmaceuticals
PDF	Project Development Facility
PDP	Power Development Plan
PG	EuroCham Pharma Group
PHI	Pre-Harvest Interval
PIC/S	Pharmaceutical Inspection Co-operation Scheme
PISA	Programme for International Student Assessment
PIT	Personal Income Tax
PPP	Public-Private Partnerships
PVC Land	PetroVietnam Construction Land Joint Stock Company
PwC	PricewaterhouseCoopers
R&D	Research and Development
RDP	Regulatory Data Protection
RO	Representative Office
ROO	Rules of Origin
Sawaco	Saigon Water Corporation
SBA	Swiss Business Association
SBG	Spanish Business Group in Vietnam
SBV	State Bank of Vietnam
SCT	Special Consumption Tax
SDR	Special Drawing Right
SEDS	Socio-Economic Development Strategy
SGS	Société Générale de Surveillance
SIAC	Singapore International Arbitration Centre
SIMC	Singapore International Mediation
SME	Small and Medium-Sized Enterprises

SMLLC	Single-Member Limited Liability Company
SOE	State-Owned Enterprise
SoH	Service of Health
SPN	Simplified Price Negotiation
SPS	Sanitary and Phytosanitary
SSB	Sugar-Sweetened Beverage
SST	Streamlined Sales Tax
TAB	Tourism Advisory Board
TAB	Trading Across Borders
TFA	Trade Facilitation Agreement
TP	Transfer Pricing
TRIPS	Agreement on Trade-Related Aspects of IP Rights
UDRP	Uniform Domain-Name Dispute-Resolution Policy
UIO	Units in Operation
UN	United Nations
UNECE/ECE	United Nations Economic Commission for Europe
UNICITRAL	United Nations Commission on International Trade Law
UNIDO	United Nations Industrial Development Organisation
USFDA	United States Food and Drugs Administration
USGBC	United States Green Building Council
VABM	Vietnam Association of Building Materials
VAMA	Vietnam Automotive Manufacturers' Association
VAMM	Vietnam Association of Motorcycle Manufacturers
VARD	Vietnam Association for Responsible Drinking
VAS	Vietnamese Accounting Systems
VAT	Value Added Tax
VBF	Vietnam Business Forum
VCA	Vietnam Competition Authority
VEA	Vietnam Environment Administration
VEEBC	Vietnam Energy Efficiency Building Code
VFA	Vietnam Food Administration
VGBC	Vietnam Green Building Council
VGF	Viability Gap Funding
VGU	Vietnamese-German University
VIAC	Vietnam International Arbitration Centre
VIPRI	Vietnam Intellectual Property Research Institute
VIVA	Vehicle Importers Vietnam Association
VNAT	Vietnam National Administration of Tourism
VNNIC	Vietnam National Internet Centre
VSIA	Vietnam Social Insurance Agency
VSS	Vietnam Social Security
VTCB	Vietnam Tourism Certification Board
VTIP	Vietnam Trade Information Portal
W&S SC	Wines and Spirits Sector Committee
WEF	World Economic Forum
WHO	World Health Organisation
WTE	Waste-to-Energy
WTO	World Trade Organisation

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OVERVIEW

CONTEXTUAL INTRODUCTION
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EXECUTIVE SUMMARY
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