



VIETNAM
INVESTMENT CLIMATE STATEMENT
2015

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Executive Summary

Vietnam continues to improve its business climate to attract foreign direct investment (FDI), and has sustained registered FDI of roughly USD 17 billion per year over the last five years. In 2014 Vietnam successfully attracted new investment from world class IT companies including Samsung, Nokia, and LG. Investors commonly cite Vietnam's geographic proximity to global supply chains, relative political and economic stability, expected benefits from completion of the Trans-Pacific Partnership (TPP) trade agreement, and an increasing desire to diversify their manufacturing base in Asia away from China as reasons for investing in Vietnam.

In 2014, Vietnam continued to take concrete steps to improve the investment climate and further integrate into the global economy. It revised several key related laws including the Enterprise Law, the Investment Law, the Bankruptcy Law, in addition to the new Housing Law, and Real Estate Business Law. The State Bank of Vietnam (SBV) worked hard to stabilize the banking sector and maintain the stability of the Vietnamese Dong (VND). The Government of Vietnam (GVN) moved forward with its ambitious plan to equitize over 500 state-owned enterprises (SOEs) by the end of 2015. On the trade front, Vietnam continued to advance negotiations on six separate trade agreements, among which include the TPP and the European Union FTA, which it hopes to conclude in 2015.

While many international companies consider Vietnam an increasingly attractive destination, significant challenges remain. Problems include corruption, a weak legal infrastructure, a shortage of skilled workers to meet the needs of the IT and other sectors, continued land use limitations, the slow pace of SOE reform, and the need for better infrastructure and more reliable access to power. While businesses applaud the economic reforms made to date, more is needed to significantly increase FDI inflows.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Vietnam is serious about attracting foreign investment, especially in sectors that will bring advanced technology and improve Vietnam's labor productivity. Vietnam's attractiveness as an FDI destination has grown as the country has made key legal reforms related to the business climate. Other draws are Vietnam's stable political system, strategic location near global supply chains, and an abundant labor force that is significantly less expensive than that of China.

Foreign invested companies continue to play an important role in the economy. The FDI sector contributed 62 percent of total exports in 2014, up from 47 percent in 2000, and foreign invested enterprises' contribution to GDP increased to 18 percent from 13 percent over the same period. Vietnam has maintained registered FDI levels of around USD 17 billion per year over the last five years. Conclusion of any or all of Vietnam's six active trade agreement negotiations -- the TPP, the Regional Comprehensive Economic Partnership (RCEP), the Vietnam-EU FTA, the Vietnam-Eurasian Customs Union FTA, the Vietnam-Republic of Korea FTA, and the Vietnam-European Free Trade Area FTA -- would open the door for a considerable increase in FDI. Additionally, by the end of 2015 Vietnam aims to fully integrate into the ASEAN Economic Community (AEC), which likely will increase foreign investment from their ASEAN neighbors.

While Vietnam has made great effort to connect to the global supply chain and is committed to improving the business environment, it remains a developing economy with many areas for improvement. Key challenges include corruption and weak legal infrastructure, a shortage of skilled labor that can meet the demands of an increasingly sophisticated global market, low labor productivity, and a cumbersome bureaucracy that still focuses on monitoring and control rather than business facilitation.

In 2014, the United States was the 11th largest source country for FDI with a total investment of USD 259 million, up from 15th in 2013. South Korea, Japan, and Singapore, are consistently the top three foreign investors in Vietnam. FDI from China excluding Hong Kong decreased from USD 2.2 billion in registered capital in 2013 to USD 427 million in 2014.

Other Investment Policy Reviews

- The first official WTO review of Vietnam's trade policies and practices took place September 17, 2013: http://www.wto.org/english/tratop_e/tpr_e/tp387_e.htm.
- The government of Vietnam holds regular meetings with the private sector to discuss issues that will affect the private sector. One such forum, the Vietnam Business Forum, published an annual report in 2014: http://www.vbf.org.vn/en/documentation-center/doc_download/1548-annual-vbf-2014-full-report-eng-reprint.html
- UNCTAD's Investment Policy Review was done in 2008. http://unctad.org/en/Docs/iteipc200710_en.pdf
- OECD's Investment Policy Review was published in 2010. <http://www.oecd.org/countries/vietnam/vietnam-investmentpolicyreview-oecd.htm>
- World Bank Fiscal Transparency Report: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/05/23/000333037_20140523121829/Rendered/PDF/882730WP0P12870iew0Final0May0210ENG.pdf

Laws/Regulations of Foreign Direct Investment

In December 2014 Vietnam passed a new Investment Law with breakthrough changes aimed at improving the investment environment. Previously, Vietnam used a "positive list" approach, meaning that foreign businesses were only allowed to operate in a list of specific sectors outlined by law. Starting in July 2015, Vietnam will use a "negative list" approach, meaning that foreign businesses will be allowed to operate in all areas except for six prohibited sectors. Additionally, there are 267 conditional sectors that are now technically open to foreign investment but will require an investment license.

Under the new Investment Law, companies must apply for an investment license when establishing a new company, and update their business license when they: 1) make significant changes to an ongoing enterprise, such as increasing investment capital; 2) restructure the form of investment or investment ratios between foreign and domestic partners, 3) change the foreign management structure, or 4) add new business activities. The new law also says that foreign and

domestic investors are treated the same in cases of nationalization and confiscation. However, foreign investors are subject to different business licensing processes and restrictions, and Vietnamese companies that have a majority foreign investment are subject to foreign investor business license procedures.

Conformity with Economic Master Plans

As restated in the new Investment Law, most FDI projects must conform to one or more sectorial master plans. Master plans are economic development policies that set five- to ten-year targets for an industry. The requirement for projects to conform to relevant master plans is potentially problematic for foreign investors, as the grounds for assessing compliance with a particular plan are unclear, and master plans may overlap as they are issued by both ministries at the national and provincial level.

Industrial Promotion

Vietnam promotes foreign investment in certain priority sectors and geographical regions, such as mountainous and remote areas of the country with difficult economic and social conditions. The government encourages investment in production of new materials, new energy sources, metallurgy and chemical industries, manufacturing of high-tech products, biotechnology, information technology, mechanical engineering, agricultural, fishery and forestry production, salt production, generation of new plant varieties and animal species, ecology and environmental protection, research and development, knowledge-based services, processing and manufacturing, labor-intensive projects (using 5,000 or more full-time laborers), infrastructure projects, education, training, and health and sports development.

Limits on Foreign Control

The ratio of total foreign ownership permitted in a project depends on a number of factors, including Vietnam's international commitments and the economic sector in question. There are also strict foreign ownership limitations for certain listed companies and service sectors. Foreign investors must negotiate on a case by case basis with the government on market access in sectors that are not explicitly open through a trade or investment agreement.

In addition, the lack of substantive regulations on M&A activities makes such transactions risky. For example, when a foreign investor buys into a local company through an M&A transaction, it is difficult to predict which business lines the acquired company is allowed to maintain as the government does not explicitly announce which sectors are not subject to the restrictions on foreign investment outside of WTO requirements.

Privatization Program

The GVN has a publicly stated goal of equitizing (i.e. convert SOEs to joint stock companies) more than 500 SOEs by the end of 2015. Foreign investors are allowed to buy shares in SOEs in accordance with WTO commitments. Investors can buy shares through a public auction, or invest as a strategic shareholder. The government has certain requirements to become a strategic shareholder, and prioritizes companies that can transfer technology or expertise to the SOE.

The low percentage of shares sold of many equitized firms has led many to question whether equitization will result in real changes in the operation of SOEs. For example, in their recent Initial Public Offering, Vietnam Airlines (VNA) equitized just 3.5 percent of its overall market capital. To date many foreign investors have been hesitant to invest in SOEs due to small percentages of equity being sold, lack of transparency, and unclear management structure.

Screening of FDI

Vietnamese authorities evaluate investment license applications using a number of criteria, including: 1) the legal status and financial capabilities of the investors; 2) the project's compatibility with Vietnam's "Master Plan" for economic and social development; projected revenue; 3) technology and expertise; 4) environmental protection; 5) plans for land use and land clearance compensation; 6) project incentives including tax rates, and 7) land, water, and sea surface rental fees.

Decentralization of licensing authority to provincial authorities has in some cases streamlined the licensing process and reduced processing times. It has also, however, given rise to considerable regional differences in procedures and interpretations of investment laws and regulations. Insufficient guidelines and unclear regulations sometimes cause local authorities to consult national authorities, creating delays. In addition, the approval process is often much longer than the time frame established by law. Many U.S. firms have invested successfully, though a lack of transparency in the procedure for obtaining a business license at times makes participation in investment opportunities too risky for companies that comply with the U.S. Foreign Corrupt Practices Act.

Investment projects that must be approved by the National Assembly include:

- Projects with a large environmental impact,
- Projects that change the land usage purpose in national parks
- Projects located in protective forests larger than 50 hectares
- Projects that require relocating 20,000 people in remote areas such as mountainous regions.

Investment projects that require Prime Ministerial approval include:

- Projects to build airports and seaports; casinos; explore, produce and process oil and gas; produce tobacco;
- Projects having investment capital more than 5,000 billion VND (USD 233 million);
- Projects invested by foreign investors in sea transportation, telecommunication with network infrastructure, forest plantation, publishing, press and;
- 100 percent foreign-owned scientific and technology companies or organizations.

Projects which are not approved by the National Assembly or the Prime Minister will be approved by the provincial People's Committee.

Competition Law

The Vietnam Competition Administration (VCA) of the Ministry of Industry and Trade (MOIT) reviews transactions for competition-related concerns. In 2013, the VCA launched 12 investigations related to competition restriction, and data for 2014 is not yet available. The VCA continues to receive and process M&A cases in crucial sectors of the economy such as food processing and trading; production, trading and transmission of electricity; and import, export and distribution of steel, and in all cases the VCA did not allow the mergers to go through.

Investment Trends

Manufacturing dominates FDI inflows as investors continue to move large scale operations from other developing countries. In 2014 major investments were increasingly high in technological content, as seen in assembly facility investments by Intel, Samsung, Nokia and LG. This result is in line with Vietnam's strategic efforts to shift FDI from low-end manufacturing to the high tech sector. In 2014 the textiles and apparel industries also witnessed a significant wave of investment in anticipation of the conclusion of the Trans-Pacific Partnership. Investment in infrastructure, such as power generation, roads, railways and water treatment, is on the rise. Vietnam needs an estimated USD 170 billion in additional infrastructure development in order to meet growing economic demand.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	119 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2014	78 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	71 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 1,740	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) or USD 4,125 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: <http://www.mcc.gov/pages/selection/scorecards>. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: <http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015>.

2. Conversion and Transfer Policies

Foreign Exchange

The Vietnamese Dong (VND) has been stable over the last two years as the State Bank of Vietnam (SBV) has prioritized stability in order to reduce dollarization and the use of gold. There is some concern headed into 2015 regarding what effect an appreciating U.S. dollar might have on the VND. The GVN generally does not provide foreign currency conversion guarantees to foreign investors.

The SBV publishes daily average interbank exchange rates, and allows USD/VND transactions within a trading band, maintaining a trading band of +/-1 percent since February 2011. The SBV does not typically publish foreign reserves, but the SBV Governor announced in late 2014 that in September 2014 foreign reserves exceeded USD 35 billion.

As part of its efforts to de-dollarize the economy, the GVN issued Decree 70 in 2014 to prohibit foreigners, residents and non-residents, from holding foreign currency in foreign currency denominated savings accounts. Foreigners are, however, still allowed to have checking accounts and investment accounts in any foreign currency and VND (previously foreigners were only allowed to have USD investment accounts).

According to the 2005 Ordinance on Foreign Exchange Control, currency transactions between residents must be conducted in VND. Exporters must remit all foreign currency earnings into a foreign currency account with an authorized credit institution in Vietnam. Retaining foreign currency earnings overseas requires SBV approval. Any resident or institution permitted to conduct offshore investment must open a foreign currency account at an authorized credit institution and register the account with the SBV.

Transfers of currency are protected by Article VII of the International Monetary Fund (IMF) Articles of Agreement (<http://www.imf.org/External/Pubs/FT/AA/index.htm#art7>)

Remittance Policies

The GVN allows foreign businesses to remit profits, capital contributions, and other legal revenues derived from their investment activities in Vietnam in hard currency. Outward foreign currency transactions require certain supporting documents (such as import/foreign service procurement contracts and proof of tax obligation fulfillment, etc.).

Bureau of International Narcotics and Law Enforcement's 2014 International Narcotics Control Strategy Report (INCSR) at <http://www.state.gov/j/inl/rls/nrcrpt/2014/database/index.htm>.

3. Expropriation and Compensation

Under the U.S.-Vietnam Bilateral Trade Agreement (BTA), Vietnam must apply international standards of treatment in any case of expropriation or nationalization of U.S. investor assets, which includes acting in a non-discriminatory manner with due process of law and with prompt, adequate and effective compensation. The U.S. Mission is monitoring four foreign investment

expropriation cases without just compensation. Several foreign investors have reported that provincial or the national government pressured them to increase the pace of project development or to raise additional project capital or risk losing their investment license.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The hierarchy of Vietnamese People's Courts includes: (1) the Supreme People's Court; (2) Provincial People's Courts; and (3) District People's Courts. The People's Courts operate in five divisions: criminal, civil, administrative, economic, and labor. Parallel to the court systems is the People's Procuracy, which is responsible for supervising judicial operations. The People's Procuracy can protest a judgment or ask for a review of a case. In addition, Vietnam has a system of independent arbitration centers established under the Commercial Arbitration Ordinance of 2003 that can grant enforceable arbitral awards.

Vietnam's legal system remains underdeveloped and ineffective in settling disputes. Negotiation between concerned parties is the most common means of dispute resolution. The Law on Arbitration does not allow a foreign investor to refer an investment dispute to a court in a foreign jurisdiction, and Vietnamese judges cannot apply foreign laws to a case before them, and foreign lawyers cannot represent plaintiffs in a court of law.

Vietnamese courts will only consider recognition of civil judgments issued by courts in countries that have entered into agreements on recognition of judgments with Vietnam or on a reciprocal basis. However, with the exception of France, these treaties only cover non-commercial judgments.

Under the 2005 Civil Code, all contracts are "civil contracts" subject to uniform rules. In foreign civil contracts, parties may choose foreign laws as a reference for their agreement, provided that the application of the law does not violate the basic principles of Vietnamese law. In addition, commercial contracts between businesses are regulated by the 2005 Commercial Law.

Bankruptcy

In 2014 Vietnam revised its Bankruptcy Law to make it easier for companies to declare bankruptcy. The new law clarifies the definition of insolvency as an enterprise that is more than 3 months overdue in meeting its payment obligations. The new law also provides provisions for when creditors can commence bankruptcy proceedings against an enterprise, and created for the first time procedures for credit institutions to file for bankruptcy. The new bankruptcy law is important as 58,322 companies suspended operations in Vietnam in 2014, up 14.5 percent over last year. However, in the past very few businesses formally declared bankruptcy as there were few benefits to doing so, and most companies either ceased operations or sold their businesses. According to the World Bank's 2015 Ease of Doing Business report, it takes five years on average to conclude a bankruptcy case in Vietnam, and the recovery rate is only 18 percent, which is half that of many other East Asia Pacific countries.

Investment Disputes

In January 2014, the Prime Minister named the Ministry of Justice (MOJ) as the government's legal representative in dealing with international investment disputes, while the Ministry of Finance (MOF) resolves disputes related to government loans, debts, and guarantees. The Vietnam International Arbitration Center (VIAC) handled 99 cases in 2013, up from 16 cases in 2003.

Under the investment chapter of the U.S.-Vietnam Bilateral Trade Agreement, U.S. investors have the right to choose a variety of third-party dispute settlement mechanisms in the event of an investment dispute with the government. Vietnam has not yet acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID), but has asked the United States to provide technical assistance in this area. The Ministry of Planning and Investment (MPI) has submitted a proposal to the government to join the ICSID, but this is still under consideration.

International Arbitration

The arbitration regime in Vietnam is still developing and awaits the issuance of implementation guidelines and regulations for the Arbitration Law. In 2014, the Ho Chi Minh City Economic Court recognized and enforced an arbitral award in Vietnam against an SOE. This is considered a healthy precedent, though the ruling is under appeal.

The Law on Commercial Arbitration took effect in 2011. At present, there are no foreign arbitration centers in Vietnam, though the Arbitration Law permits foreign arbitration centers to establish branches or representative offices. Foreign and domestic arbitral awards are legally enforceable in Vietnam, although in practice it can be very difficult.

ICSID Convention and New York Convention

Vietnam is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, meaning that foreign arbitral awards rendered by a recognized international arbitration institution should be respected by Vietnamese courts without a review of cases' merits. Only a limited number of foreign awards have been submitted to the Ministry of Justice (MOJ) and local courts for enforcement so far, and almost none have successfully made it through the appeals process to full enforcement.

Duration of Dispute Resolution

The court system in Vietnam works slowly. International arbitration awards, when enforced, may take years from original judgment to payment.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

When Vietnam joined the World Trade Organization in 2007, it established minimum commitments on market access for U.S. goods and services, as well as treatment for Vietnamese and foreign companies. Vietnam undertook commitments on goods (tariffs, quotas, and ceilings on agricultural subsidies) and services (provisions of access to foreign service providers and related conditions). It has also committed to implement agreements on intellectual property (TRIPS), customs valuation, technical barriers to trade, sanitary and phytosanitary measures, import licensing provisions, anti-dumping and countervailing measures, rules of origin.

As part of its WTO accession, Vietnam also committed to remove performance requirements that are inconsistent with the TRIMS agreement. The new Investment Law specifically prohibits the following requirements: giving priority to the purchase or use of domestic goods or services; compulsory purchase of goods or services from a specific domestic firm; export of goods or services at a fixed percentage; restricting the quantity, value or type of goods or services that may be exported or that may be sourced domestically; fixing import goods at the same quantity and value as goods exported; requirements to achieve certain local content ratios in manufacturing goods; stipulated levels or values on research and development activities; supplying goods or services in a particular location; or mandating the establishment of head offices in a particular location.

In addition, Vietnam has excluded certain products from its WTO distribution services commitments, including rice, sugar, tobacco, crude and processed oil, pharmaceuticals, explosives, news and magazines, precious metals, and gemstones.

Investment Incentives

Foreign investors are exempt from import duties on goods imported for their own use and which cannot be procured locally, including: machinery, vehicles, components and spare parts for machinery and equipment, raw materials, inputs for manufacturing and construction materials that cannot be produced domestically. Remote and mountainous provinces are allowed to provide additional tax breaks and other incentives to prospective investors.

In addition, projects in high tech, research and development, new materials, energy, clean energy, renewable energy, energy saving products, automobile, software, waste treatment and management, primary or vocational education; or locating in difficult areas or economic and projects in industrial zones are entitled to investment incentives such as lower corporate income tax, exemption of import tariffs, land rental.

Vietnam has instituted policies to attract investment by its diaspora community. Vietnam recognizes dual citizenship for Vietnamese expatriates, who are allowed to choose their status as either domestic or foreign investors. A 2008 law required that Vietnamese citizens who emigrated overseas before 2009 register their intent to retain Vietnamese citizenship with the Vietnamese Embassy in their country of residence by July 1, 2014. In April 2014, the Prime Minister agreed to postpone the deadline for registration for an additional five years, until July 1,

2019. U.S. citizens of Vietnamese descent may be treated as Vietnamese nationals unless they have formally renounced their Vietnamese citizenship.

The Law on High Technology came into force in 2009 to encourage investment in areas such as informatics, biotechnology, new materials and automation, and a number of companies now receive these incentives.

Research and Development

The list of high tech products that are given investment priority is updated on an ad hoc basis, and companies investing in research and development for items on the list are entitled to the highest tax incentives and may be eligible for funding from the National High Tech Development Program. Companies that develop infrastructure for high tech parks will also receive land incentives.

Performance Requirements

In 2013 Vietnam tightened enforcement of foreign worker permit requirements through Decree 102, which introduced significant changes to regulations and procedures on the use of foreign labor. The overarching goal of the decree is to encourage the use of domestic labor over foreign labor. It reduced the validity of a work permits from three years to two, and eliminated the work permit exemption for foreign workers on contracts.

The decree also requires employers to evaluate their needs for foreign employees on an annual basis and submit a justification report to the People's Committee of each province where the company's head office is located. Exceptions are granted to certain categories of foreign workers, including teachers at institutions under the management of diplomatic missions or international organizations; holders of a Master's degree or equivalent assigned to work in Vietnam for consultation, teaching, research at universities for less than 30 days; or foreigners working within the framework of an international agreement involving central authorities and political/social organizations at the central level.

In July 2014, the GVN issued a resolution to address some issues the foreign business community raised regarding Decree 102. The most welcome change was the reversion to the prior rule, which required foreign workers to have five years of related professional experience or a four year university degree, as opposed to the recent, controversial rule requiring both five years of experience and a four year degree.

Data Storage

The Ministry of Information and Communications (MIC) is the lead agency for administrative enforcement of cyber-related regulations, including data storage requirements. The Ministry of Public Security's cyber division may also get involved if there is a suspected criminal violation of data storage rules. MIC's Decree 72/2013 on Management, Provision, and Use of Internet Services and Information Content Online, which came into effect on September 1, 2013, is the primary legal document establishing data storage requirements.

The Decree requires all organizations establishing “general websites,” or social networks and companies providing online gaming services or services across mobile networks to maintain at least one server inside Vietnam. It also establishes requirements on the type of data that these companies must store (personally identifiable information of users, user activity logs, etc.) but it is unclear if that information must be stored on a local server.

According to Decree 72, companies are required to comply with requests from authorities for access to their servers. To date this requirement only applies to companies established in Vietnam. MIC is expected to release an implementing circular in 2015 that will clarify if the local server requirement applies also to cross-border service providers.

6. Right to Private Ownership and Establishment

The right to non-land private property was restated in Vietnam’s revised Constitution in 2013, recognizing “the right of ownership with regard to lawful income, savings, housing, chattel, means of production funds and other possessions in enterprises or other economic organizations.”

7. Protection of Property Rights

Real Property

State protection of property rights is still evolving, as the state can expropriate land for socio-economic development. Under the new Housing Law and Real Estate Business Law passed by the National Assembly in November 2014, land can only be taken if it is deemed necessary for social-economic development in the public or national interest, and approved by the Prime Minister or the National Assembly, as well as the Provincial People’s Council. However, ‘socio-economic’ development is loosely defined, and there are many outstanding legal disputes between land owners and local authorities. Foreign investors also may be exposed to land disputes through M&A activities when they buy into a local company.

Real estate rights in Vietnam are divided into collective land ownership by the government, and land-use and building rights, which can be held privately. All land in Vietnam is collectively owned and managed by the state, and as such neither foreigners nor Vietnamese nationals can own land. The majority of land in Vietnam (94.5 percent) has been issued a land use rights certificate. The GVN is also building a national land registration database, and some localities have already digitized their land records.

In addition to land, collective property includes “forests, rivers and lakes, water supplies, wealth lying underground or coming from the sea, the continental shelf and the air, the funds and property invested by the government in enterprises and works in all branches and fields - the economy, culture, society, science, technology, external relations, national defense, security - and all other property determined by law as belonging to the State.”

The new Housing Law and Real Estate Business Law extended “land-use rights” to foreign investors, allowing title holders to conduct real estate transactions, including mortgages. Foreign investors can lease land for renewable periods of 50 years, and up to 70 years in some poor areas

of the country. Certain foreigners can own apartments, durable construction, durable trees and planted forests for production purposes in Vietnam.

Some investors have encountered difficulties amending investment licenses to expand operations onto land adjoining existing facilities. Investors also note that local authorities may intend to increase requirements for land-use rights when current rights must be renewed, particularly in instances when the investment in question competes with Vietnamese companies.

Intellectual Property Rights

The legal basis for property rights includes the 2005 Civil Code, the 2005 Intellectual Property Law as amended in 2009, and implementing regulations and decrees. Vietnam has joined the Paris Convention on Industrial Property and the Berne Convention on Copyright and has worked to meet its commitments under these international treaties. In 2009, Vietnam revised the Intellectual Property (IP) Law and IP-related provisions in the Criminal Code with respect to criminal penalties for certain acts of IPR infringement or piracy. However, enforcement agencies still lack clarity in how to impose criminal penalties on IPR violators and continue to wait for further implementing guidelines.

Although Vietnam has made progress in establishing a legal framework for IPR protection, very significant problems remain and new challenges are emerging. The country remains on the Special 301 Watch List. Infringement and piracy remained widespread and complaints of “fakes” still abound. Companies continue to voice serious concerns about widespread Internet-based piracy and the increasing prevalence of counterfeit goods sold online. 2014 also saw the emergence of limited, but increasingly high quality, domestic counterfeit manufacturing operations in Vietnam.

Customs officers have authority to seize and destroy counterfeit goods and incur expenses from these activities. Vietnam’s IPR agencies track and report seizures of counterfeit goods, although trend data may be difficult to discern due to varying data collection methods, cross-over from joint actions, and differing contributions from Vietnam's 63 provinces. Individual agencies have made efforts to improve their enforcement tracking in recent years, but coordination among them to aggregate data is very weak.

Ministry of Science and Technology (MOST) inspectors carried out 64 inspections in 2014, 17 less than the previous year. However, the inspectors discovered almost the same number of violations (42, compared to 39 the previous year) and issued 37 fines, 10 more than in 2013. Most importantly, MOST collected approximately USD 75,000, an increase of 115 percent from the previous year. MOST’s average fine increased from approximately USD 1,300 in 2013 to over USD 2,000 in 2014, an increase of approximately 57 percent. A MOST official attributed the higher fines in 2014 to the fact that the inspectorate encountered more serious violations this year, which warranted higher fines. MOST inspectors also reported destroying hundreds of articles of counterfeit clothing and fashion accessories and removed the infringing aspects of thousands of infringing items, primarily food and beverage and pharmaceutical and supplemental products.

In 2014, the Ministry of Culture, Sports, and Tourism (MOCST) Inspectorate cooperated with the Ministry of Public Security (MPS) to carry out inspections for software licensing compliance on 86 individuals and companies throughout the country, a decrease of around 20% from 2013. Despite the lower number of cases, the inspectorate discovered 78 violations, resulting in fines totaling USD 88,500, which is on par with last year. MOCST officials reported that the copyright compliance rate of inspected companies was higher than in previous years. The inspectors also carried out 19 inspections of individuals and companies selling art and photography and found no infringements. The HCMC Department of Culture, Sports and Tourism was particularly active this year, collecting around USD 42,500 worth of fines for copyright infringement, and destroyed 21,268 pirated CDs and VCDs. Nationwide, MOCST confiscated 126,521 CDs and DVDs that lacked the required proof of copyright and destroyed 34,038 pirated CDs and DVDs.

In 2014, Vietnam's Customs captured 24 cases of counterfeit and IP infringing products with a total value of USD 1.8 million. In 2014 Custom's imposed fines worth USD 98,000. This was a significant increase from the previous year, when Customs reported 17 cases with an infringing value of less than USD 130,000.

The Ministry of Industry and Trade's Market Management Bureau (MMB) reported that it processed 17,396 cases of counterfeit, sub-par and IP infringing products in 2014, an increase of approximately 3,000 cases compared to 2013. MMB collected USD 2.4 million worth of fines in 2014, a slight decrease from the USD 2.8 million collected in 2013. The Ho Chi Minh City (HCMC) MMB reported that it uncovered 442 counterfeit cases, nearly twice as many as in 2013. The HCMC bureau seized over 430,000 counterfeit products with a total value of USD 138,000 and assessed fines of approximately USD 300,000 in 2014.

Despite continued serious shortcomings, the GVN has taken positive steps to improve IPR over the last two years. In 2014 the government formed a new National Steering Committee, known as Committee 389, to combat smuggling, counterfeit goods and commercial fraud. Despite the fact that it has only been operating since March 2014, Committee 389's proactive leadership has been credited as one of the factors driving the increased effort by law enforcement agencies to uncover and combat IP violations. In 2013, the government began implementing two new decrees on administrative sanctions (MOST's Decree 99 and the Ministry of Culture, Sports & Tourism's Decree 131), which contributed to the significant increase in fines for IP violations imposed in 2014. Average fines imposed by provincial Departments of Science and Technology (DOST) for violations of trademarks, geographic indicators and industrial designs increased in 2014 by 64, 350 and 368 percent respectively compared to 2013. The MOST Inspectorate's average fines increased by almost 60 percent from 2013 to 2014.

Most often, authorities use administrative actions such as warnings and fines to enforce IPR protection because they are less demanding on enforcement time and resources. The United States and other countries have conducted training for enforcement agencies, prosecutors and judges. Some businesses and rights holders have started to assert their rights under the law more forcefully. One positive sign is the growth of Collective Management Organizations (CMO), particularly for the music and publishing industries. Vietnam's most successful CMO, the Vietnam Center for the Protection of Musical Copyrights (VCPMC), boasts a membership of

over 90 percent of Vietnam's music composers and collected nearly USD 3.3 million in royalties on behalf of its members in 2014. However, the ability of other CMOs to protect their members IP and collect royalties on their behalf remains weak. In recent years, the government pledged and but only partially implemented a plan to rid government offices of pirated software.

Vietnamese enforcement bodies have investigated, and in some cases raided and fined, businesses suspected of using pirated software. According to statistics from the Business Software Alliance, Vietnam reduced its online piracy rate by almost 20 percent over the last decade, one of the largest reductions for any country during that time period. However, Vietnam still has one of the highest rates of online piracy in the world (over 80 percent in 2013). Rights holders continue to seek additional enforcement actions against websites containing infringing digital content. To date, however, very little enforcement action has been taken to punish or prevent digital and internet piracy.

Substantial compensation for IPR violations is only available under the civil remedies section of the IP Law. Vietnam has yet to establish specialized IP courts, and knowledge on IP issues within the judiciary remains low. However, in 2014 the courts effectively resolved a number of significant IP dispute cases, particularly the HCMC People's Court. Significant improvements are still needed, but legal experts are optimistic that the court system is slowly improving its ability to handle civil IP cases. Criminal offenses are prosecuted under the Criminal Code, and criminal proceedings are regulated under the Criminal Procedure Code. In practice, however, criminal prosecutions are rarely used to prosecute IPR violations.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

Resources for Rights Holders

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8. Transparency of the Regulatory System

The Law on the Promulgation of Legal Normative Documents requires all legal documents and agreements to be published online for comments for 60 days, and published in the Official Gazette before implementation. The strong presence of business associations and chambers of commerce, the availability for online commentary on draft laws and regulations, and the biannual Vietnam Business Forum all open up opportunities for direct dialogue between the foreign business community and Vietnamese government officials. However, when issuing more detailed implementing guidelines, government entities regularly issue circulars without public notification or with little advance warning or opportunity for comment by affected parties, arguing that these binding decisions are not legal documents.

Vietnam is a member of the U.N. Conference on Trade and Development's (UNCTAD) international network of transparent investment procedures: <http://vietnam.eregulations.org/>. Foreign and national investors may be able to find information on administrative procedures applicable to investment and income generating operations including the number of steps, name and contact details of the entities and persons in charge of procedures, required documents and conditions, costs, processing time, and legal bases justifying the procedures for the following provinces:

Danang - <http://danang.eregulations.org>

Ho Chi Minh City - <http://hochiminhcity.eregulations.org>

Binh Dinh - <http://binhdinh.eregulations.org>

Hai Duong - <http://haiduong.eregulations.org>

Phu Yen - <http://phuyen.eregulations.org>

Vinh Phuc - <http://vinhphuc.eregulations.org>

9. Efficient Capital Markets and Portfolio Investment

There are many challenges to raising capital domestically, including Vietnam's weak and poorly regulated financial system, low transparency, and non-compliance with internationally accepted accounting standards. While the government has acknowledged the need to strengthen both the capital and debt markets, there has been no substantial progress, leaving the banking sector as the primary channel of capital for Vietnamese companies.

Vietnam has two stock exchanges: the Ho Chi Minh City Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX). As of March 2015, 346 stocks were listed on the HOSE with total market capitalization of approximately USD 15.9 billion, and 369 companies were listed on the HNX with total market capitalization of approximately USD 6.6 billion. A trading floor for unlisted public companies (UPCOM) was launched at the Hanoi Securities Center in 2009. As of March 2015, 177 companies were listed on UPCOM, with total market capitalization of approximately USD 1.8 billion. Government bonds are traded on the HNX. UPCOM is important because equitized SOEs will first list on the UPCOM (due to lower transparency requirements) before moving to an exchange.

Money and Banking System, Hostile Takeovers

Vietnam's banking sector is concentrated at the top and fragmented at the bottom. The state-owned or majority state-owned banks accounted for 44 percent of the total assets and 34 percent of equity capital in the banking sector as of March 2015. Vietnam's 33 joint stock commercial banks are all smaller than the state-owned commercial banks, but gradually gaining market share, and the government has plans to reduce the number of private banks to 15-17 by the end of 2017.

The SBV has taken positive steps to stabilize the banking sector, through the establishment of the Vietnam Asset Management Company (VAMC), merging weak banks with stronger banks, taking over failing banks, and stepping in and ensuring deposits when private bank officials are arrested. In 2015, SBV took over Vietnam Construction Bank, which is the first time SBV has

taken over a bank. Additionally, this year the SBV for this first time will allow a joint venture bank (VID Bank) to be transformed to a 100 percent foreign owned company.

Despite progress, most domestic banks remain under-capitalized and have high non-performing loan (NPL) levels. By law, banks must maintain a minimum chartered capital of VND 3 trillion (about USD 140 million). As of November 2014, under Vietnamese accounting standards and loan classification criteria, the SBV reported the NPL ratio at over 3.8 percent. The true level of NPLs is unknown, and many international credit rating agencies believe it is much higher. In addition, state-directed lending by state-owned commercial banks, cross-ownership and related-party lending under non-commercial criteria continue to be a source of concern.

In 2008, the SBV for the first time granted licenses to wholly foreign-owned banks. In January 2014, the ownership limit for a single foreign investor was raised from 15 percent to 20 percent. Currently, the ceiling for total foreign ownership in a Vietnamese bank remains at 30 percent, but can be raised by approval of the Prime Minister.

10. Competition from State-Owned Enterprises

In 2014, 167 out of 532 SOEs were restructured, of which 143 were equitized, three were sold, three were dissolved, three filed for bankruptcy, and 14 were merged with other enterprises. Decision 37 /2014/QĐ-TTg, dated June 18, 2014, spells out the targeted sectors and percentages of SOE equitization. Recently, the GVN signaled that it plans to accelerate the equitization process of the transportation infrastructure - roads, seaports and airports. This includes plans to equitize the four biggest seaports in the country, reducing the percentage of state ownership in the four ports from 75 percent to 51 percent. The GVN is also looking to fully divest in smaller less strategic ports throughout the country, and to partially privatize components of various airports and newly-constructed highways currently held by the state.

According to Vietnam's General Statistics Office, state sector investment accounted for 11 percent of total economic investment in 2014. However, labor productivity in the state sector is low, and the state makes a disproportionately low contribution to the economy in comparison to its share of production resources. Vietnam's Central Economic Commission reported that through 2014, the state sector used 70 percent of total land, 70 percent of total ODA, and 60 percent of total credit, while contributing just 32 percent of GDP, and SOEs account for fifteen out of the 20 largest Vietnamese enterprises.

OECD Guidelines on Corporate Governance of SOEs

The appointment of senior managers and board members in SOEs is often not transparent, and not in clear adherence to the OECD Guidelines on Corporate Governance for SOEs. According to the World Bank, the Vietnamese state owned sector would benefit from a "modern corporate governance system that separates state ownership rights from regulatory functions and implements an objective and transparent mechanism for the selection of Chief Executive Officers (CEOs) and board members." While TPP negotiations are ongoing, developing a robust and transparent dispute settlement mechanism is one of the key principles under discussion, and would apply to SOEs. Currently, court processes involving SOEs are opaque.

Sovereign Wealth Funds

Vietnam does not have a sovereign wealth fund.

11. Corporate Social Responsibility

Most multinational companies implement Corporate Social Responsibility (CSR) programs that contribute to improving the business environment in Vietnam, and awareness of CSR programs is increasing among domestic companies. However, only the largest Vietnamese companies have CSR programs. The Vietnam Business Forum (VCCI), which is the Vietnam Chamber of Commerce, conducts CSR training and has a web page dedicated to CSR: <http://www.csr-vietnam.eu/>.

OECD Guidelines for Multinational Enterprises

Vietnam is not an adherent to the OECD Guideline for Multinational Enterprises.

12. Political Violence

Incidences of violence against foreign investors in Vietnam were unheard of until anti-China protests on May 13-14, 2014. These protests were primarily motivated by a spike in tensions with China following their movement of an oil rig into disputed waters in the South China Sea in May 2014. The GVN successfully maintained public order and worked with investors to offer mutually negotiated compensation packages.

13. Corruption

Vietnam's 2005 Anti-Corruption Law requires government officials to declare their assets and sets strict penalties for corrupt practices. However, enforcement remains problematic. Vietnam ratified the UN Convention on Anti-Corruption in 2009, but has not signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Government has tasked various agencies to deal with corruption, including the Central Steering Committee for Anti-Corruption (led by the Prime Minister), the Government Inspectorate, and line ministries and agencies. The Central Steering Committee for Anti-Corruption was formed in 2007 and initially was under the Office of the Prime Minister. In 2012 responsibility for oversight was shifted to the Communist Party of Vietnam (CPV) Politburo, and eventually transferred to the CPV Central Commission of Internal Affairs in February 2013.

Corruption is due in large part to a low level of transparency, accountability, and media freedom, as well as low pay for government officials and inadequate systems for holding officials accountable for their actions. Competition among agencies for control over business and investments has created overlapping jurisdictions and bureaucratic procedures that in turn create opportunities for corruption.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Vietnam signed the UN Anticorruption Convention in December 2003 and ratified it in August 2009.

Resources to Report Corruption

Contact at government agency or agencies are responsible for combating corruption:

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14. Bilateral Investment Agreements

Vietnam does not have a bilateral investment treaty with the United States. Vietnam has 58 bilateral investment agreements with the following countries and territories: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium and Luxembourg, Bulgaria, Burma, Chile, China, Cuba, Czech Republic, Cambodia, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, India, Indonesia, Italy, Iran, Japan, Kazakhstan, Korea, Kuwait, Laos, Latvia, Lithuania, Malaysia, Mongolia, Mozambique, Netherlands, North Korea, Oman, Philippines, Poland, Qatar, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Ukraine, United Kingdom, Uruguay, Uzbekistan, United Arab Emirates, and Venezuela.

Bilateral Taxation Treaties

Vietnam does not have a bilateral taxation treaty with the United States.

15. OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) has a bilateral agreement with Vietnam. Vietnam joined the Multilateral Investment Guarantee Agency (MIGA) in 1995.

16. Labor

Vietnam's labor force is large (over 54.5 million people), literate (94 percent literacy rate), inexpensive, and young (nearly 66 percent of the population is under 40). The labor pool is expected to increase by 1.5 percent annually through 2015.

Minimum wage varies geographically. In 2015, the minimum wage for workers in private businesses ranges from VND 3.1 million (USD 160) to VND 2.15 million (USD 110) monthly. Businesses in urban districts of Hanoi, Ho Chi Minh City, and neighboring areas are subject to higher minimum wage.

Vietnam witnessed 303 strikes in 2014, according to data from the Vietnam General Confederation of Labor (VGCL), much less than the number of the strikes in 2013, when 351 strikes occurred. However, all strikes are unofficial (due to the impracticality of a legal strike under Vietnamese labor law), making data reliability questionable. Approximately 68 percent of strikes took place in foreign invested enterprises (FIEs) and the remaining 32 percent in domestic private companies. The majority of strikes (80 percent) took place in Ho Chi Minh City and surrounding provinces where most FIEs are located, particularly in the garment, footwear, and furniture sectors. The government rarely takes action against "illegal" strikers.

Labor Code

The 2012 revised Labor Code introduced a process of mediation and arbitration for labor disputes, and stipulates that strikes can only be held if they relate to collective labor disputes about benefits. The code still requires that at least 50 percent of workers in the workplace must vote for strikes. The new labor code introduced several other revisions, including increasing maternity leave from four months to six months, restricting labor outsourcing services, and reducing the validity of foreign worker permits from three to two years.

Trade Union code

The Trade Union code was also revised in 2012. In principle employers are not obliged to establish trade unions at their workplace, but if a trade union is established the employer must provide a workspace and amenities to conduct trade union activities. In order to be legally recognized, all labor unions must register with the VGCL, a state-run organization under the Communist Party-affiliated Vietnam Fatherland Front that labor experts note has weak capacity at the provincial and enterprise level. Employers have to contribute two percent of their payroll to support trade union budgets regardless of whether trade unions exist at their workplace. Employees who are members of the trade union must also contribute one percent of their payroll.

ILO

Vietnam has been a member of the International Labor Organization (ILO) since 1992, and has ratified five of the core ILO labor conventions (Conventions 100 and 111 on discrimination, Conventions 138 and 182 on child labor, and Convention 29 on forced labor). Vietnam has not ratified Convention 105 dealing with forced labor as a means of political coercion and discrimination or Conventions 87 and 98 on freedom of association and collective bargaining,

although the GVN is currently taking steps toward ratification. Under the 1998 Declaration on Fundamental Principles and Rights at Work, however, all ILO members, including Vietnam, have pledged to respect and promote core ILO labor standards, including those regarding association, the right to organize and collective bargaining. A number of technical assistance projects in the field of labor sponsored by foreign donors, including the United States, are currently underway in Vietnam.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

In recent years Vietnam has worked hard to establish free trade zones (FTZs). Vietnam currently has approximately 270 industrial zones (IZs) and export processing zones (EPZs). Many foreign investors note that it is easier to implement projects in industrial zones because they do not have to be involved in site clearance and infrastructure construction, and enterprises pay no duties when importing raw materials if the end products are exported.

Customs warehouse keepers in FTZs can provide transportation services and act as distributors for the goods deposited. Additional services relating to customs declaration, appraisal, insurance, reprocessing, or packaging require the approval of the provincial customs office. In practice the time involved for clearance and delivery can be lengthy and unpredictable.

Most import or export pending goods can be deposited in bonded warehouses under the supervision of the provincial customs office. Exceptions include goods prohibited from import or export, Vietnamese-made goods with fraudulent trademarks or labels, goods of unknown origin, and goods dangerous or harmful to the public or environment. The inbound warehouse leasing contract must be registered with the customs bond unit at least 24 hours prior to the arrival of goods at the port. Documents required are a notarized copy of authorization of the holder to receive the goods, a notarized copy of the warehouse lease contract, the bill of lading, a certificate of origin, a packing list, and customs declaration forms. Owners of the goods pay import or export tax when the goods are removed from the bonded warehouse.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2013	171,400	2013	171,400	www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (\$M USD, stock positions)	2014	10,619	2013	1,398	http://bea.gov/international/factsheet/factsheet.cfm?Area=653
Host country's FDI in the United States (\$M USD, stock positions)	2014	N/A	2013	N/A	http://bea.gov/international/factsheet/factsheet.cfm?Area=653
Total inbound stock of FDI as % host GDP	2014	7.3%	2014	N/A	

* General Statistic Office of Vietnam – Pledged FDI, not disbursed.

*Table 3: Sources and Destination of FDI***Direct Investment from/in Counterpart Economy Data****From Top Five Sources/To Top Five Destinations (US Dollars, Millions)**

Inward Direct Investment			Outward Direct Investment		
Total Inward	15.6	100%	Total Outward	N/A	100%
South Korea	7.3	47%			
Hong Kong	3.0	19%			
Singapore	2.8	18%			
Japan	2.1	13%			
Taiwan	1.2	7.5%			

"0" reflects amounts rounded to +/- USD 500,000.

Source: IMF Coordinated Direct Investment Survey

Table 4: Sources of Portfolio Investment

IMF Coordinated Portfolio Investment Survey data are unavailable for Vietnam.

19. Contact for More Information

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