

# VIETNAM



## Law and Practice

### Contributed by:

Minh Nguyen, Phuong Huynh, Nguyet Le and Duc Tran  
**ACSV Legal**

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

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

## Authors



**Minh Nguyen** is a special counsel and head of the Dispute Resolution Practice of **ACSV Legal**. She joined in 2019 after having worked for nearly ten years for various international

law firms and corporations, including a magic circle firm, and as legal compliance manager in the SEA&NZ Business Unit of the largest brewing company in the world. Minh has directly advised and represented clients in some multi-million-dollar cases arbitrated at the SIAC, the ICC, and the VIAC. She obtained an LL.M in International Arbitration from Pepperdine University and attended the intensive International Commercial Arbitration course at Harvard Law School in January 2023. Minh has been a registered arbitrator at the Pacific International Arbitration Centre in Vietnam since 2018. She is fluent in English and Vietnamese.



**Phuong Huynh** joined the team in April 2013 and is a senior associate at **ACSV Legal**. She was admitted to the Ho Chi Minh City Bar in 2018. Phuong has acted on a wide range of

legal matters and specialises in foreign direct investment, M&A and corporate, intellectual property, real estate, labour, and drafting of commercial contracts and other related documents (lease-related matters) in domestic and international transactions.

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**Nguyet Le** joined the team in July 2017 and is a senior associate at ACSV Legal with extensive experience in the legal sector. Prior to working at ACSV Legal, she worked at a large law

firm in Vietnam. She was admitted to the Ho Chi Minh City Bar in 2020. Nguyet specialises in licensing matters for foreign direct investment projects and offers expertise in business operations, due diligence exercises, and legal research for M&A and corporate law. Nguyet's client portfolio includes the educational, retail, and beauty clinic sectors.



**Duc Tran** is a senior associate at ACSV Legal and joined the team in August 2019. Before joining ACSV Legal, Duc experienced working in a reputable law firm in Vietnam. Duc has a bachelor's

degree from the University of Law and Economics in Ho Chi Minh City and was admitted to the HCMC Bar Association in 2019. Duc has experience in conducting legal research, due diligence, preparing legal advice, drafting corporate and transaction documents, and licensing for clients in several sectors including renewable energy, real estate, manufacturing, healthcare and hospitality.

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## ACSVS Legal

Level 11  
Empress Tower  
138-142 Hai Ba Trung Street  
District 1  
Ho Chi Minh City  
Vietnam

Tel: +84 28 3822 4539  
Fax: +84 28 3822 4239  
Email: [info@acsvlegal.com](mailto:info@acsvlegal.com)  
Web: <https://acsvlegal.com>



## 1. Legal System

### 1.1 Legal System and Judicial Order

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

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

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

and appellate courts, and the district courts are trial courts.

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

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

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

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

- an individual with a foreign nationality;
- an organisation incorporated in a foreign jurisdiction; or
- a Vietnamese-incorporated enterprise in the following cases:
  - (a) more than 50% of its charter capital is held by a foreign investor(s), or a part-

nership has a majority of partners being foreign individuals in the case of a partnership enterprise;

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

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

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

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

A foreign investor in the market to purchase an existing (Vietnamese) entity – depending on the nature and scope of its business – may need

to obtain prior approval of the Department of Planning and Investment (DPI) (M&A Approval) before capital can be contributed or acquired in an existing enterprise.

## 2.2 Procedure and Sanctions in the Event of Non-compliance

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

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

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

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

## 2.3 Commitments Required From Foreign Investors

Commitments from investors (in addition to the investment capital they promise to deploy during their engagement in Vietnam) are not generally regulated. In practice, there are situations where the Vietnamese licensing authority will make their discretionary agreement dependent

on certain commitments from the investor (eg, contribution to infrastructure developments in the location of the business, etc). There are, however, no generally imposed commitments for foreign investors, outside of the general obligation to comply with all laws of the Vietnam while doing business there.

## 2.4 Right to Appeal

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

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

A foreign investor will usually choose one of two main types of legal entities to carry out a project.

Currently, typical options for a foreign-owned legal entity include:

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

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

- the representative office, and
- the branch.

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

### Representative Office

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

Vietnamese law prohibits a representative office to perform activities that generate profit. It cannot conclude agreements for selling or providing products, but it can, for example, conduct business enhancement or marketing activities such as displaying goods or services at its office. A representative office can also play an important role in facilitating operations and business objectives on behalf of the offshore company by liaising with the authorities.

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

## Branch

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

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

## Definitions of Independent Legal Entities

- A Single-member LLC is an enterprise under the ownership of an organisation or individual;

- A Multiple-member LLC is an enterprise under the ownership of two to 50 organisations or individuals; and
- A JSC is an enterprise with at least three shareholders. There is no restriction on the maximum number of shareholders. Shareholders may be organisations or individuals.

## Liability

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

## Minimum investment capital

### General

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

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

by shareholders of a JSC, and stated in the charter of such company.

Capital contribution can be in the local currency VND (Vietnamese Dong), freely convertible foreign currency, gold, land use rights, intellectual property rights, technology, technical know-how, or other assets which can be valued in VND.

### *Capital Contribution time limit*

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

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

- The owner of a single-member LLC must register an adjustment of the charter capital equal to the actual value of the contributed capital within 30 days from the last day on which the charter capital should have been fully contributed. The owner is responsible to the extent of the capital he/she has undertaken to contribute for the financial obligations of the company arising before the adjustment of the charter capital is registered.
- The member of a multiple-member LLC who fails to contribute all the capital as undertaken automatically ceases to be a member of the company; the member of a multiple-member LLC who fails to pay part of the capital as undertaken shall have the rights correspond-

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

## **3.2 Incorporation Process**

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

### **ERC**

All private business enterprises in Vietnam must have an ERC, and some also require an IRC.

For instance, domestic investors or enterprises where foreign investors hold 50% or less of equity only need an ERC for a newly established enterprise. The ERC is issued by the DPI. It contains information about the company registration, such as the name of the enterprise and enterprise code number which serves as its identification number for its entire corporate life cycle, address of the head office of the enterprise, information of the owner or members in case of LLC, full name, permanent residential and contacting address, nationality and identity card or passport number of legal representatives, and charter capital.

## IRC

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

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

## Timeline and Required Documentation

### IRC

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

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

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

### ERC

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

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

## Post-Establishment Formalities

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

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

### 3.3 Ongoing Reporting and Disclosure Obligations

#### Changes of Business Registration Contents

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

#### Changes of Investment Projects

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

#### Periodical Investment-Related Report Obligations

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

#### Tax Declarations

Companies have to submit monthly or quarterly reports to the regional tax office for value-added tax (VAT) return, corporate income tax (CIT) return, personal income tax (PIT) return and a report of using the VAT invoices. Reports for VAT and CIT may also need to be submitted on a receipt basis in certain circumstances, such as when transferring real estate. The company has

to pay VAT, CIT and PIT by the deadline when the reports have to be submitted. If the reporting or payment is not done before the deadline, a fine can be imposed.

#### Auditing

Foreign-owned entities, credit institutions, insurance enterprises, public companies and institutional securities traders must be audited at least once a year; and the audit must be completed within 90 days from the end of the calendar year. All auditing activities will follow the Vietnam Accounting Standards which differ from the International Financial Reporting Standards (IFRS). These Vietnam standards are issued by the Ministry of Finance based on the international standards on auditing.

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

### 3.4 Management Structures

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

#### LLC

- With respect to a Single-member LLC, the management structure shall include a president or a members' council and a director or general director if owned by an organisation, or a president and a director or general director if owned by an individual. As for those owned by a State-owned entity (SOE), the structure must also include an inspection committee.

- With respect to a Multiple-member LLC, the management structure shall include a members' council, a chairperson of the members' council and a director or general director. As for SOEs or their subsidiaries, the structure must also include an inspection committee.

## JSC

- With respect to a JSC, except for public ones, which may need to be managed under another structure if stipulated in the Law on Securities, the management structure shall include a General Meeting of Shareholders (GMS), a Board of Members (BOM), and a director or general director.
- If a JSC has at least 11 shareholders or the corporate shareholder(s) to hold at least 50% of total shares, the structure must also include an inspection committee. Otherwise, at least 20% of the BOM's members must be independent and there must be an audit committee under the BOM.

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

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

board meetings and other organisational standards.

## 3.5 Directors', Officers' and Shareholders' Liability

### Overview

As of 1 January 2018, a new Criminal Code came into force, bringing Vietnamese laws more in line with international standards. A broad range of Criminal Code violations can lead to criminal liability for a business. Certain violations, particularly ones committed by individual employees, may not lead to criminal liability; however, they may still damage the business' reputation. It is important to note that violations on tax, competition, environment, business and trading, which are not crimes, can be administratively sanctioned both for an individual and a corporate entity. The main difference between the two systems is that the statute of limitations under the administrative procedure is much shorter, and the punishments are lower.

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

If a convicted commercial juridical person is divided, separated, consolidated or merged, the succeeding corporate legal entity inherits rights and duties from the convicted corporate legal

entity and will be responsible for any pecuniary penalties and damages.

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

### Liability of Legal Representatives

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

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

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

has been carried out but fails to report it could be criminally liable.

### Liability of Shareholders

Shareholders' liability is generally limited to the extent of their capital contributions to a company. This means that shareholders are not personally liable for the debts or obligations of the company beyond the amount they have invested or agreed to contribute. However, there are specific circumstances wherein shareholders may assume liability surpassing their capital contributions. In cases where shareholders have used the corporate structure to engage in fraudulent activities, abuse their powers, or evade legal obligations, the courts may "pierce the corporate veil" and hold shareholders personally liable. This allows the courts to look beyond the company's legal entity and hold shareholders accountable for their actions.

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

### Consequences

Depending on the offence and the person or entity having committed the offence, the punishment can be a monetary fine, restraining measures, a forced suspension or termination of business operations, or a ban on conducting certain business activities and/or raising capital. In case of aggravating circumstances such as recidivism, committed in a professional way or

by a group, in the case of abuse of power and position, committed in the name of an agency or organisation, punishments can be higher.

Additional measures that can be applied include:

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

## 4. Employment Law

### 4.1 Nature of Applicable Regulations Governing Law

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

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

#### Labour Contracts

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

#### Minimum Wage

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

### 4.2 Characteristics of Employment Contracts

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

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

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

### 4.3 Working Time

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

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

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

In some special sectors and industries, such as textile and garment, leather, electronic products, aquaculture processing, and telecommunications, and in extraordinary cases such as a lack of necessary workforce for urgent work, overtime is higher and capped at 300 hours per year.

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

## 4.4 Termination of Employment Contracts

### No At-Will Employment

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

### *Cases of unilateral labour termination by an employer*

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

- unilateral termination of *an* employee based on objective reasons or due to a fault on the part of the employee;
- retrenchment where the employer can lay off multiple employees without their consent on the grounds of a change in organisational structure, technology, or products; economic depression; or changes in government policies;
- termination of multiple employees due to a change of control; and
- disciplinary action of dismissal.

### *Financial compensation for the terminated employee*

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

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

### *Retrenchment*

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

- substantiate the grounds for retrenchment and establish its correlation with the need for layoffs;
- develop a comprehensive labour usage plan;
- engage in consultation with employee representatives through a workplace dialogue process;
- provide affected employees with offers for new positions, and only after their rejection,

include them in the list of employees to be laid off in the labour usage plan;

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

### *Termination of multiple employees due to a change of control*

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

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

### *Unilateral termination by the employer*

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

- (a) the employee repeatedly fails to perform work in accordance with the terms of the labour contract as determined based on the assessment criteria of work performance level in the rule issued by the employer upon consulting opinions of an organisation representing employees at the grassroots level, which includes the trade union at grass-root level and other organisation of employees at an enterprise (labour union), if any;
- (b) the employee is ill or injured and remains unable to work after having received treat-

ment for a period of 12 consecutive months (indefinite term contract) or six consecutive months (definite term contract with a duration between 12 and 36 months), and more than half of the contract duration (definite term contract with a duration less than 12 months);

- (c) the employer, although having taken all measures to remedy the problem, has to reduce the number of jobs due to natural disasters, fire, epidemics or other force majeure reasons;
- (d) the employee fails to attend the workplace within 15 days from the expiry of the suspension of the labour contract;
- (e) the employee reaches retirement age;
- (f) the employee arbitrarily leaves their work without proper reason for five consecutive working days or more; or
- (g) the employee provides untruthful information affecting their recruitment.

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

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

### **Unilateral Termination by Employee**

An employee may unilaterally terminate the labour contract prior to its expiry by sending a prior notice of at least 45 days for indefinite-term labour contracts, 30 days for definite-term contracts with a duration between 12 and 36 months, or three working days for definite-term contracts less than 12 months.

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

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

## Collective Labour Agreements

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

The collective labour agreements shall prevail over labour contracts and other rules of the

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

## Trade Unions

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

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

Both a public and private sector employer is required to contribute to a fund for trade union activities with a contribution that is equal to two percent of the employer's salary fund, based on that SI is paid for its employees, irrespective of whether a trade union has been established at the workplace.

## Workers' Union

Aside from the trade union, employees may also establish, access, and take part in operations

of a workers' union at an enterprise, which is a new type of labour union introduced under the 2019 Labour Code, if granted with a registration certificate by the competent authority.

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

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

## 4.5 Employee Representations

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

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

- circulation of the performance improvement plan;
- retrenchment;

- termination with multiple employees due to a change of control;
- establishment of pay scales, payrolls and labour productivity norms;
- circulation of bonus regulations;
- issuance or amendment of Internal Labour Regulations;
- application of disciplinary measures.

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

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

#### PIT

##### Scope

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

(a) is present in Vietnam for 183 days or more in a calendar year or during a period of 12 consecutive months from the date of entry into Vietnam (can be checked from entry/exit stamps in passport);

(b) holds a temporary or permanent resident card with respect to foreigners, or a regular residential location registered as a permanent residence address in Vietnam with respect to Vietnamese citizens; or

(c) has an irregular residential location or locations in Vietnam such as a hotel room(s) and/or

leased house(s) in Vietnam with an aggregated lease term of 183 days or more in a tax year.

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

## Taxable Income

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

## Tax Rates

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

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

Nevertheless, if a resident performs services but does not have a labour contract, or the labour contract is of a term under three months with payments each time amounting to VND2 million or more in total, in general, 10% will be withheld and paid directly to the tax authorities.

## Mandatory (Social) Insurance

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

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

### Employee

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

### Employer

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

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

Statutory employer contributions are tax-exempt for employees and are not counted as taxable income or additional compensation. Employee contributions to statutory obligations are tax-

deductible, reducing their taxable income and potentially lowering their tax liability.

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

## 5.2 Taxes Applicable to Businesses

### CIT

#### Scope

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

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

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

### Tax Rates

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

### Calculation

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

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

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

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

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

## Capital Gains Tax

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

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

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

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

## Foreign Contractor Tax

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

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

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

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

## 5.3 Available Tax Credits/Incentives Tax Incentives

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

## Industries and Sectors

Tax and land use incentives can be granted to new investment projects, or projects extended from the existing ones, in "investment-encouraged" geographical areas located across the country or business sectors including, among others, education, healthcare, high technology, scientific research, environmental protection, infrastructural development, or projects with capital of at least VND6 trillion (USD260 million) in which at least VND6 trillion is paid within three years from the date the IRC or in-principle approval was granted and satisfies any of the following criteria: the total revenue is at least VND10,000 billion per year within three years from the year in which the revenue is earned or the project has more than 3,000 employees.

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

### Auxiliary Industrial Zone

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

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

### Eco-industrial Zone

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

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

### Specific Areas

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

### Tax Holidays

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

### Other Incentives

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

## 5.4 Tax Consolidation

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

## 5.5 Thin Capitalisation Rules and Other Limitations

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

## 5.6 Transfer Pricing

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

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

## 5.7 Anti-evasion Rules

Vietnam’s new Law on Tax Administration (No. 38/2019/QH14) took effect on 1 July 2020. Under the new law, tax authorities have been endowed with additional enforcement powers, which directly translates into more stringent and successful prosecution of tax evaders.

## 6. Competition Law

### 6.1 Merger Control Notification

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

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

- Total assets in the Vietnamese market of the enterprise or a group of affiliated enterprises to which such enterprise is a member are valued at VND3,000 billion (USD127,659,574) or more in the fiscal year preceding the expected year of the economic concentration;
- Total sales or purchase volume in the Vietnamese market of the enterprise or a group of affiliated enterprises to which such enterprise is a member are valued at VND3,000 billion (USD127,659,574) or more in the fiscal year preceding the expected year of the economic concentration;
- Transaction value of the economic concentration is valued at VND1,000 billion (USD42,553,191) or more; or
- The combined market share of the enterprises planning to participate in the economic concentration accounts for 20% or more of the total share in the relevant market in the fiscal year preceding the expected year of the economic concentration.

Greater thresholds are applied with respect to the economic concentration performed by

enterprises that are *credit institutions, insurance enterprises and securities companies*.

## 6.2 Merger Control Procedure

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

## 6.3 Cartels

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

Such agreements are absolutely prohibited if they:

- prevent, restrain, and disallow other enterprises to enter the market or develop business;
- abolish from the market enterprises other than the parties of the agreements; or
- conspire in biddings.
- If the parties have the same relevant market, prohibited agreements include:
  - directly or indirectly fixing prices;
  - distribute outlets, sources of supply of goods, or provision of services; or
  - restrict or control produced, purchased or sold quantities or volumes of goods or services.

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

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

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

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

- may cause other restrictive effects on competition.

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

## 6.4 Abuse of Dominant Position

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

- (a) selling goods or services at prices below the total cost price resulting in eliminating competitors;
- (b) imposing unreasonable purchase or sale prices of goods or services, or fixing minimum resale prices, causing damage to customers;
- (c) restricting production or distribution, limiting the market, or hindering technical or technological development, causing damage to customers;
- (d) applying different commercial terms on similar transactions, causing restrictions to market entry or expansion by other enterprises or elimination of other enterprises;
- (e) imposing conditions or unrelated obligations on the signing of sale or purchase contracts, causing restrictions to market entry or expansion by other enterprises or elimination of other enterprises;
- (f) preventing competitors from entering or expanding the market; or
- (g) other acts abusing the dominant position as prescribed by other laws.

An enterprise or a group of enterprises with a monopoly position is prohibited from performing acts mentioned in items (b) to (f) and from imposing adverse conditions on consumers, taking advantage of the monopolistic position to

unilaterally change or cancel an executed contract without legitimate reasons or performing other acts abusing the monopolistic position as prescribed by other laws.

## 7. Intellectual Property

### 7.1 Patents

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

- process or method;
- products;
- formula, composition, chemical mixture.

Vietnamese regulations distinguish two types of patents, including:

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

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

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

What are the criteria for a patent to be protected under Vietnamese regulations?

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

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

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

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

Documentation required to file a Vietnamese patent:

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

## 7.2 Trade Marks

The trademark system in Vietnam protects symbols, three-dimensional objects, colours, and other visual devices that are used to identify a business's products or services.

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

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

## 7.3 Industrial Design

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

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

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

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

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

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

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

Applications for registration of industrial designs under the Law on Intellectual Properties of Vietnam must be prepared in a regulatory template and attached with certain documents and photos describing the registered subject matter and specifying the registration rights. The application shall be submitted to the Intellectual Property Office of Vietnam (“IP Office”). The IP Office shall examine and consider if the applications are valid. By law, it shall take one month from the submission date for formality examination, and it shall take seven months from Vietnam’s IP Gazette publication for substantive examination. In practice, it could take longer and normally will take from one year to 1.5 years from the filing date to receive the outcome of the registration. For applications which are considered valid, the IP Office shall issue a notice of acceptance of the valid application or carry out procedures for granting a protection title.

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

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

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

## 7.4 Copyright Registration of Copyright

The registration of copyright is conducted at the National Copyright Office, which is the competent authority for all copyright issues within the Vietnamese jurisdiction. In Vietnam’s definition of the term, “copyright” also applies to computer programs, which cannot be patented instead because they lack (one or more) of the requirements for being granted a patent. Vietnam’s copyright IP is governed by the Berne Convention on copyright which states that the minimum protection from publication will be:

### Duration of Copyright

75 years for cinematographic works, photographic works, works of applied art and anonymous works from the first publication date and during the author’s life plus 50 years after the death of the author for other works.

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

## 7.5 Others

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

## 8. Data Protection

### 8.1 Applicable Regulations

In February 2021, the MPS released the initial draft of the Decree on Personal Data Protection (Draft PDP Decree) for public consultation. This Draft PDP Decree marked a significant milestone as it represented the first comprehensive legal framework for personal data protection (PDP) in Vietnam. Throughout the development process, the Draft PDP Decree underwent various revisions to address numerous concerns from the public. On 7 March 2022, the government issued Resolution 27/2022, approving the then-latest version of the Draft PDP Decree and entrusted the MPS to share it with the Standing Committee of the National Assembly (SCNA) for further consultation. Subsequently, on 7 February 2023, the Government issued Resolution 13/2023, approving the then-latest version of the Draft PDP Decree and seeking the SCNA's appraisal. After a thorough review period, the

Draft PDP Decree was officially adopted on 17 April 2023, and became Decree No. 13/2023/ND-CP (Decree 13), which will come into effect on 1 July 2023. Decree 13 represents the first-ever unified regulation on PDP in Vietnam.

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

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

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

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

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

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

## 8.2 Geographical Scope

Decree 13 binds foreign and local companies based in Vietnam to the same standards of protection. Decree 13 however does not directly apply to offshore companies. However, when

there is a cross-border transfer of data, Decree 13 requires the transferor to submit the contact details of the transferee to the Ministry of Public Security (MPS).

## 8.3 Role and Authority of the Data Protection Agency

The MPS and its Department of Cybersecurity and Hi-tech Crime Prevention (A05) will be in charge of the execution and implementation of Decree 13, once it has entered into force.

# 9. Looking Forward

## 9.1 Upcoming Legal Reforms Draft Amended Law on Commercial Arbitration

In November 2021, the Standing Committee of Vietnam's National Assembly assigned the Vietnam Lawyers' Association to be responsible for reviewing and examining the implementation of the 2010 Law on Commercial Arbitration and proposing a draft amendment to the 2010 Law on Commercial Arbitration. The purpose of the draft amendment is to address shortcomings observed during the enforcement of the existing law, such as ensuring the impartiality and independence of arbitrators and improving the recognition and enforcement of foreign arbitral awards in Vietnam, etc, to align with international standards in the practice of international arbitration. Currently, it remains uncertain when the draft amendment will be published by the National Assembly for public feedback and opinions. It is expected that the first draft amendment will be submitted to the National Assembly in May 2024.

## Draft Decree on Administrative Sanctions for Cybersecurity Violations

To enforce Decree 13 on personal data protection (as mentioned in Section 8 above), the Ministry of Public Security of Vietnam (MPS) has been working on a draft Decree on Administrative Sanctions for Cybersecurity Violations (Sanctioning Decree), which also provides sanctions for personal data violations. The initial version of the draft Sanctioning Decree was made available for public consultation in September 2021. Subsequently, after the issuance of Decree 13, an updated version of the draft Sanctioning Decree, known as the third draft, was released by the MPS for public comments in May 2023, which represents the latest version of the draft Sanctioning Decree (Third Draft Sanctioning Decree). The Third Draft Sanctioning Decree provides the most severe administrative penalty amounting to 5% of the total revenue in Vietnam of the violator for the preceding fiscal year, for:

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

The tentative date of effectiveness of the Sanctioning Decree is 1 December 2023.

## Trends and Developments

### Contributed by:

Minh Nguyen, Phuong Huynh, Nguyet Le and Duc Tran  
ACSV Legal

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

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

## Authors



**Minh Nguyen** is a special counsel and head of the Dispute Resolution Practice of ACSV Legal. She joined in 2019 after having worked for nearly ten years for various international

law firms and corporations, including a magic circle firm, and as legal compliance manager in the SEA&NZ Business Unit of the largest brewing company in the world. Minh has directly advised and represented clients in some multi-million-dollar cases arbitrated at the SIAC, the ICC, and the VIAC. She obtained an LL.M in International Arbitration from Pepperdine University and attended the intensive International Commercial Arbitration course at Harvard Law School in January 2023. Minh has been a registered arbitrator at the Pacific International Arbitration Centre in Vietnam since 2018. She is fluent in English and Vietnamese.



**Phuong Huynh** joined the team in April 2013 and is a senior associate at ACSV Legal. She was admitted to the Ho Chi Minh City Bar in 2018. Phuong has acted on a wide range of

legal matters and specialises in foreign direct investment, M&A and corporate, intellectual property, real estate, labour, and drafting of commercial contracts and other related documents (lease-related matters) in domestic and international transactions.

Contributed by: Minh Nguyen, Phuong Huynh, Nguyet Le and Duc Tran, **ACSV Legal**



**Nguyet Le** joined the team in July 2017 and is a senior associate at ACSV Legal with extensive experience in the legal sector. Prior to working at ACSV Legal, she worked at a large law

firm in Vietnam. She was admitted to the Ho Chi Minh City Bar in 2020. Nguyet specialises in licensing matters for foreign direct investment projects and offers expertise in business operations, due diligence exercises, and legal research for M&A and corporate law. Nguyet's client portfolio includes the educational, retail, and beauty clinic sectors.



**Duc Tran** is a senior associate at ACSV Legal and joined the team in August 2019. Before joining ACSV Legal, Duc experienced working in a reputable law firm in Vietnam. Duc has a bachelor's

degree from the University of Law and Economics in Ho Chi Minh City and was admitted to the HCMC Bar Association in 2019. Duc has experience in conducting legal research, due diligence, preparing legal advice, drafting corporate and transaction documents, and licensing for clients in several sectors including renewable energy, real estate, manufacturing, healthcare and hospitality.

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## ACSVS Legal

Level 11  
Empress Tower  
138-142 Hai Ba Trung Street  
District 1,  
Ho Chi Minh City  
Vietnam

Tel: +84 28 3822 4539  
Fax: +84 28 3822 4239  
Email: [info@acsvlegal.com](mailto:info@acsvlegal.com)  
Web: <https://acsvlegal.com>



## Economy – General Developments

In comparison to the rest of the world, Vietnam's economy seems to be relatively resilient. The country has a strong track record of economic growth, and its economy is less exposed to the global financial system than many other countries. However, the challenges facing Vietnam's economy are real, and the country will need to take steps to address them if it wants to maintain its current growth trajectory.

On the one hand, the country has been one of the fastest-growing economies in the world in recent years, with GDP growth averaging over 6% per year since 2010. This growth has been driven by several factors, including a young and growing population, a low-cost workforce, and a strategic location in Southeast Asia. On the other hand, Vietnam's economy is facing a few challenges, including rising inflation, a widening trade deficit, and a slowdown in export growth. These challenges have been exacerbated by the global economic slowdown, which has led to a decline in demand for Vietnamese exports. At the time of writing this contribution, Vietnam's economy is expected to grow by 6.3% in 2023, down from 8% in 2022. This slowdown is due to several factors, including the moderation of domestic demand and exports, as well as the ongoing trade war between the United States and China.

The Vietnamese government is taking steps to mitigate the impact of the slowdown. These measures include increasing public spending on infrastructure and social programmes and providing tax breaks and other incentives to businesses. It is also expected that the visa and work permit requirements will be changed, which will attract more tourists and people interested to invest in Vietnam; and it is expected to make the hiring of foreigners easier.

One of the sectors that has been most affected by the challenges facing Vietnam's economy is the manufacturing sector. The manufacturing sector has been a major driver of economic growth in Vietnam in recent years, but it has come under pressure from rising wages and a slowdown in export growth. As a result, the manufacturing sector has shed jobs and seen its output decline.

Another sector that has been affected by the challenges facing Vietnam's economy is the tourism sector. The tourism sector has been a major source of foreign exchange for Vietnam, but it has been hit hard by the global economic slowdown. As a result, the number of tourists visiting Vietnam has declined, and the tourism sector has seen its revenue fall. Moreover, the current visa policy is not attractive enough to get more tourists, but this is expected to change soon.

The challenges facing Vietnam's economy are real, but the country has several strengths that will help it to overcome these challenges. These strengths include a young and growing population, a low-cost workforce, and a strategic location in Southeast Asia. With these strengths, Vietnam is well positioned to continue its economic growth in the years to come.

The country's middle class is now estimated to be over 40 million people. It is growing rapidly and drives demand for a wide range of goods and services, from consumer electronics to luxury goods. The rise of the middle class will support overcoming the economic challenges. The e-commerce sector is important for this as well. It is a rapidly growing market, with a value of USD14 billion in 2022 and projected to reach USD32 billion by 2025. The most popular products purchased online are clothes and footwear,

consumer electronics, household appliances, and personal care products. The key e-commerce operators in Vietnam are Shopee, Tiki, Lazada, and Sendo.

The growth of e-commerce in Vietnam is being driven by several factors, such as the increasing internet penetration, the growing middle class, and the rising popularity of mobile devices. The government is also supportive of e-commerce and has implemented several policies to encourage its growth. Despite the growth of e-commerce, there are still some challenges that need to be addressed. These include the lack of trust in online retailers, the high cost of shipping, and the lack of a clear regulatory framework. However, the potential for growth in the e-commerce market in Vietnam is significant, and the sector is expected to continue to snowball in the coming years.

Furthermore, the government is taking steps to diversify the economy and reduce its reliance on exports. This includes promoting the development of the services sector, such as tourism and finance, and investing in new industries, such as renewable energy and high-tech manufacturing.

### Approval of Power Development Plan 8

In May 2023, the long-awaited approval of the Power Development Plan 8 (PDP8) was finally given. It outlines the country's electricity sector strategy for the next 30 years. PDP8 aims to ensure a reliable and affordable supply of electricity to meet Vietnam's growing demand, while also promoting the use of renewable energy sources.

PDP8 is a comprehensive plan which considers Vietnam's economic growth, climate change, and energy security. It is a major step forward for the country's electricity sector and will help

to ensure a sustainable and reliable supply of electricity for years to come.

PDP8 is also an ambitious plan that will require significant investment. However, it is a necessary step for Vietnam to ensure a sustainable and reliable supply of electricity for years to come. This is particularly important in light of the recent heat waves and subsequent power cuts, especially in the north of Vietnam. This has had a significant impact on the manufacturing industry as the power cuts were announced at very short notice and with a rather long duration, from six to ten hours at a stretch with only a warning lead time of a few hours.

### Environmental, Social, and Governance

Environmental, social, and governance (ESG) investing is a growing trend in Vietnam, as investors become more concerned about the environmental and social impact of their investments. The Vietnamese government is also supportive of ESG investing and has implemented several policies to encourage renewable energy, sustainable agriculture, and green infrastructure. However, some of the challenges are the lack of transparency and a clear regulatory framework.

Furthermore, there is still a lack of understanding and understanding of the ESG principles among businesses and investors. Finally there seem to be insufficient resources and infrastructure.

ESG investing is still in its early stages in Vietnam, but it is a growing trend that is gaining momentum. The Vietnamese government and businesses are increasingly recognising the importance of ESG, and this is likely to lead to further growth in the sector in the coming years.

In 2023, the carbon emissions tax under the Carbon Border Adjustment Mechanism (CBAM) will

be implemented in the EU. Considering that the EU is one of Vietnam's key markets, it is important for businesses to comply with ESG standards if they want to remain active in this market.

### Corporate Sustainability Reporting Directive

The Corporate Sustainability Reporting Directive (CSRD) of the European Union is expected to have a significant impact on Vietnam. It requires large companies to report on their environmental and social performance, which will help to improve transparency and accountability. It will also encourage companies to take steps to improve their sustainability performance. The CSRD is part of a broader trend towards sustainability reporting, which is being driven by several factors, including investor demand, consumer awareness, and government regulation.

Companies in Vietnam will have to report on their environmental and social performance. This in return will help to improve transparency and accountability and will be beneficial for investors, consumers, and other stakeholders who want to know more about how companies are operating. Companies that are seen as being sustainable are likely to have a better reputation with investors, consumers, and other stakeholders. This could lead to increased sales, lower costs, and easier access to capital.

It is likely to encourage companies to focus more on sustainability which could lead to increased investment in sustainability initiatives, such as renewable energy, energy efficiency, and waste reduction.

### Extended Producer Responsibility

Extended producer responsibility (EPR) is a policy approach that shifts the responsibility for managing end-of-life products from the government and consumers to producers. In Vietnam,

EPR was introduced in 2020 when the Law on Environmental Protection was approved. The law requires producers and importers of certain products to take responsibility for the collection, recycling, and treatment of waste from those products.

The EPR regime in Vietnam is still in its early stages, but it has the potential to significantly reduce waste and improve environmental protection. It will help to reduce waste by shifting the responsibility for managing waste from the government and consumers to producers. This can lead to more efficient and effective waste management, as producers have a vested interest in ensuring that their products are recycled or disposed of properly.

Furthermore, EPR can help to improve environmental protection by reducing the amount of waste that ends up in landfills and incinerators. This can help to reduce air pollution, water pollution, and greenhouse gas emissions.

Finally, EPR can create jobs in the waste management sector, as producers and recyclers need to hire people to collect, sort, and recycle waste.

### Anti-Money Laundering Law of Vietnam

The latest Anti-Money Laundering Law of Vietnam (AML) came into effect on 1 March 2023. It is designed to strengthen Vietnam's anti-money laundering and terrorist financing regime. The new law expands the scope of businesses and individuals required to implement AML measures, increases the penalties for non-compliance, and enhances co-operation with foreign authorities. The new law allows for the sharing of information with foreign authorities and the freezing of assets located in Vietnam that are

suspected of being used for money laundering or terrorist financing.

## New Laws

What is happening in the legislation area in Vietnam, what new laws are expected, and which laws will be amended in 2023? The National Assembly will be discussing the following new and draft laws and we will provide some more insights into remarkable changes in some of these laws.

## Law on Land

The amended Law on Land, which is currently in its fourth draft, is expected to be passed in October 2023. The law will make several changes to the current land law, including:

- The current three price brackets system (depending on the location and quality of the land) will be abolished and replaced with a single land price table.
- The use of lump sum payment will be limited to two cases: agriculture and forestry, and the development of industrial zones, industrial clusters, processing zones and hi-tech zones.
- A new land pricing system that is based on the market value of the land will be introduced, which will make the land pricing system more transparent and efficient.
- The rules on land use rights will be amended to make them more flexible and to encourage the efficient use of land.
- The role of the state in land management will be strengthened to ensure that land is used in a sustainable and efficient way.

## Law on Electronic Transactions

The current draft Law on Electronic Transactions aims to reflect the rapid development of technology and the changing needs of businesses and individuals.

These are the most notable changes and the draft law:

- Clarifies the definition of electronic transactions to include a wider range of activities, such as online banking, e-commerce, and electronic signatures.
- Establishes a regulatory framework for the use of electronic signatures, including the requirements for certification authorities and the requirements for electronic signatures to be considered valid.
- Sets out rules for protecting personal data and intellectual property in the context of electronic transactions, such as the requirements for businesses to obtain consent before collecting and using personal data.

## Law on Credit Institutions

The draft Law on Credit Institutions strengthens the supervision of credit institutions by the State Bank of Vietnam. It also introduces new regulations on the management of credit risk, the provision of financial services, and the resolution of financial institutions.

Below, we have set out some of the most notable changes and the draft law:

- Gives the State Bank of Vietnam more powers to supervise credit institutions, including the power to conduct on-site inspections and to impose sanctions.
- Introduces new regulations on the management of credit risk, including the requirement for credit institutions to establish and maintain a comprehensive risk management system.
- Provides for the resolution of financial institutions that are insolvent or are likely to become insolvent. The resolution process is designed to protect the interests of depositors and

other creditors, and to minimise the impact of the failure of a financial institution on the financial system.

## Law on Real Estate Business and Law on Housing in Vietnam

The Vietnamese government has amended the Law on Real Estate Business and Law on Housing. The amendments are expected to have a positive impact on the real estate market by making it more transparent and competitive, and by providing stronger consumer protection. The amendments are also expected to help to promote the development of affordable housing.

Some of the key changes:

- Real estate businesses will now be required to obtain a licence from the Ministry of Construction before they can operate.
- Real estate businesses will be required to keep a register of all real estate transactions that they undertake.
- Real estate developers will be required to provide prospective buyers with more information about their projects, including the project's feasibility study, the developer's financial statements, and the project's environmental impact assessment.
- Buyers will now have the right to cancel their contracts if the developer fails to complete the project on time or if the project does not meet the specifications that were advertised.

The amendments are expected to come into effect in early 2024.

## Law on Bidding in Vietnam

The Law on Bidding 2022 was passed on 11 January 2022. It is the most recent version of the law on bidding in Vietnam. The Law on Bidding 2022 sets out the rules and regulations for

public procurement in Vietnam. It applies to all government agencies, state-owned enterprises, and other organisations that use public funds to procure goods, services, or works.

The Law on Bidding 2022 has a number of key provisions, including:

- The most common form of bidding in Vietnam is open bidding. Under open bidding, all interested bidders are invited to submit bids.
- Limited bidding is used when there are a limited number of qualified bidders. Under limited bidding, only pre-qualified bidders are invited to submit bids.
- Direct negotiation is used when there is only one bidder or when the value of the contract is below a certain threshold. Under direct negotiation, the procuring entity negotiates with the bidder to agree on the terms of the contract.

## Law on Medical Examination and Treatment 2024

The Law on Medical Examination and Treatment 2024 is a new law that was passed by the National Assembly and will take effect on 1 January 2024. The law aims to improve the quality of medical examination and treatment in Vietnam. It does this by establishing new regulations for medical practitioners, medical examination and treatment establishments, and patients.

Some of the key provisions of the law include:

- Foreign medical practitioners who wish to practice in Vietnam must be proficient in Vietnamese. This is a change from the previous law, which allowed foreign doctors to use non-Vietnamese when providing medical examination and treatment for Vietnamese people, provided that there was an interpreter.

- Medical practice certificates issued before 1 January 2024 will be converted to medical practice licences. These licences must be renewed every five years.
- Medical examination and treatment establishments must self-assess annually the quality of their services. They must also meet certain quality standards set by the Ministry of Health.
- Patients have the right to be informed about their condition, to choose their doctor, and to refuse treatment.

## Law on Protection of Consumer Rights

The draft Law on Protection of Consumer Rights in Vietnam aims to protect the rights and interests of consumers, including the right to be informed, the right to choose, the right to be treated fairly, the right to be compensated, and the right to be heard. The draft law also establishes several new measures to protect consumers, such as the creation of a consumer ombudsman, the strengthening of penalties for violators, and the expansion of the scope of coverage to include online transactions.

Here are some of the key provisions of the draft law:

- Consumers have the right to be informed about the quality, quantity, price, origin, warranty, and other relevant information of goods and services before making a purchase.
- Consumers have the right to choose from a variety of goods and services at competitive prices.
- Consumers have the right to be treated fairly in all aspects of the transaction, including the right to be free from discrimination and the right to be compensated for any damages incurred.
- Consumers have the right to be heard in any dispute arising from a transaction.

The draft law also establishes a few new measures to protect consumers, such as the creation of a consumer ombudsman, the strengthening of penalties for violators, and the expansion of the scope of coverage to include online transactions. The draft law is currently under review by the Vietnamese government and is expected to be finalised in 2023.