

2019 INVESTMENT POLICY AND REGULATORY REVIEW

Vietnam

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GLOSSARY

CA	Competition Authority
CPC	Central Product Classification
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DTAA	Double Taxation Avoidance Agreements
D	Dong (currency)
DICA	Direct Investment Capital Account
DPI	Department of Planning and Investment
ENT	Economic Needs Test
FDI	Foreign Direct Investment
FET	Fair and Equitable Treatment
FIA	Foreign Investment Agency
FIL	Foreign Investment Law
GATS	General Agreement on Trade in Services
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
IMF	International Monetary Fund
IPR	Intellectual Property Rights
IPRR	Investment Policy and Regulatory Review
IRC	Investment Registration Certificate
ISDS	Investor-State Dispute Settlement
LOE	Law on Enterprises
LOI	Law on Investments
M&A	Mergers and Acquisitions
MFN	Most-Favored Nation
MIC	Middle-Income Country
MPI	Ministry of Planning and Investment



NT	National Treatment
OFDI	Outward Foreign Direct Investment
SCM	Agreement on Subsidies and Countervailing Measures
SMEs	Small and Medium Enterprises
TCVN	Vietnam National Technical Regulations
TIP	Treaty with Investment Provision
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
VAT	Value-Added Tax
WTO	World Trade Organization

1. INTRODUCTION

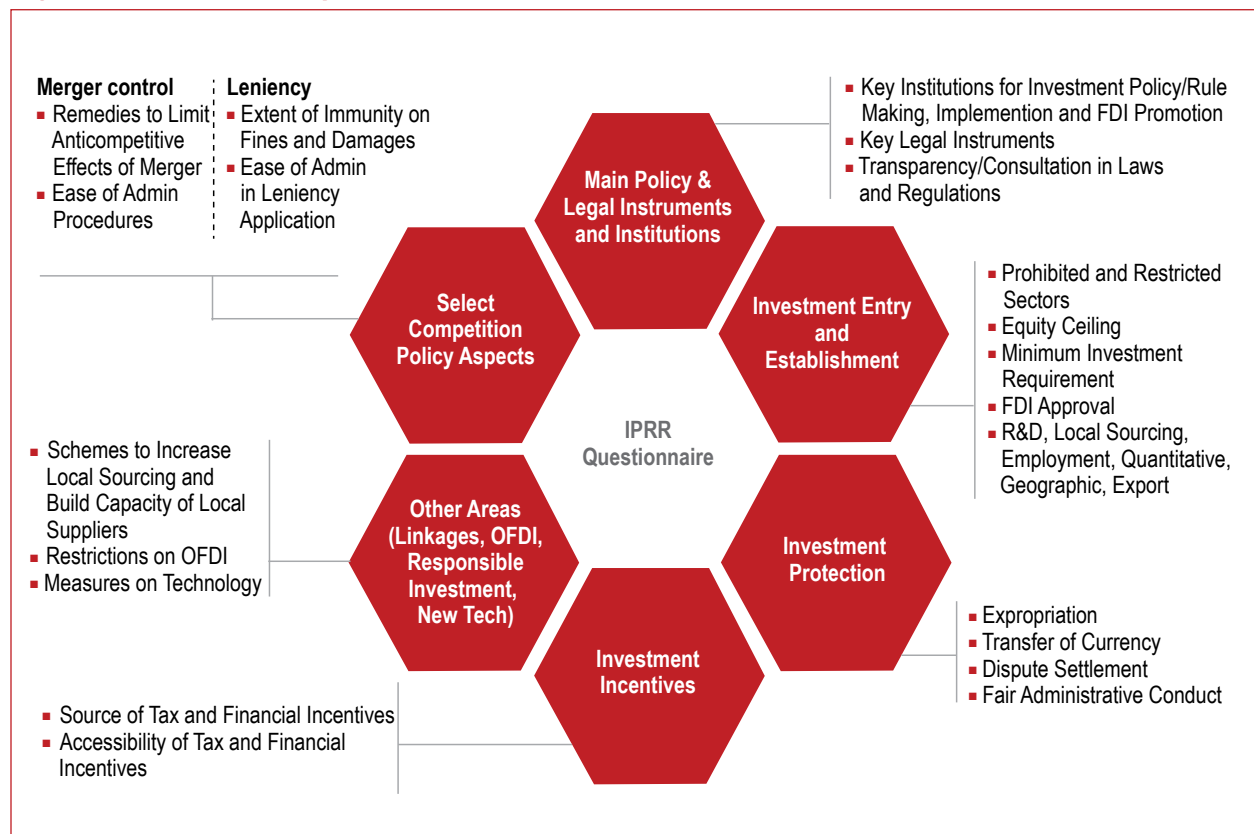
This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) and competition that affect businesses and foreign investors in Vietnam. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries (MICs): Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey and Vietnam.

The research for preparing this IPRR was undertaken by the international law firm Baker McKenzie, under the supervision of the

World Bank Group. The research was primarily based on a review of currently applicable policies, laws and regulations. In some cases, consultations with regulators were conducted to collect up to date information.

The research was guided by a standardized questionnaire, covering a limited set of topics, including foreign investment entry, establishment, protection and select competition related aspects. The questionnaire focused on de jure frameworks as generally applicable to a foreign investor, not located in any specialized or preferential regime (such as special economic zones). It primarily focused on national, economy-wide (rather than sector-specific) laws and regulations. For the purpose of the research, it was assumed that the foreign investor is a private

Figure 1. Overview of Topics Covered in IPRR



multinational company with no equity interest or management control by the government of its home country (that is, not state-owned enterprise).

There are aspects that this IPRR does not cover. It is not a comprehensive review of the entire legal and regulatory framework affecting investment.

Information presented is not exhaustive, but illustrative of the main topics and issues covered (for example, it does not exhaustively list all available tax and financial incentives in the country). It does not present recommendations on reform areas. Notably, it does not capture de facto implementation of laws and regulations in the country. Given these limitations, information presented in this IPRR should be interpreted and used while keeping in view the overall country context and realities. Further, it contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed legal research.

This IPRR is organized as follows:

- Section 2 provides an overview of the country's investment policy framework, including the legal instruments regulating foreign investment, key institutions involved in investment promotion, as well as the country's foreign investment promotion strategy; it also delineates the country's international investment legal framework, including the country's commitments under the World Trade Organization (WTO) and select international investment agreements (IIAs);
- Sections 3-6 cover the country's policies and domestic legal framework concerning different dimensions of the lifecycle of an investment: entry and establishment (Section 3), protection (4), incentives (5) and linkages (6);
- Sections 7-9 explore emerging investment policy and regulatory areas—Section 7 considers outward FDI, Section 8 responsible investment, and Section 9 considers recent policies on new technologies;
- Section 10 focuses on city-specific investment policy and regulatory measures in the largest commercial center; and
- Section 11 covers select aspects of competition law and policy, specifically merger control and leniency frameworks.

2.

OVERVIEW OF INVESTMENT POLICY FRAMEWORK

A. Domestic Legal Instruments Regulating Foreign Investment

Vietnam does not have a statute that specifically regulates foreign direct investment (FDI), but its law on investment equally applies to both domestic and foreign investors. FDI is further regulated by Vietnam's law on enterprises, sector specific laws and policies, as well as international agreements (alongside the general legal framework that applies to all businesses).

FDI Law and Regulation

The primary legislation governing investments in Vietnam is the Law on Investment No. 67/2014/QH13 (LOI) effective as of July 1, 2015, and its implementing regulation, Decree 118/2015/ND-CP. The LOI regulates business investment activities in the country as well as outbound investments overseas. The Law on Enterprises No. 68/2014/QH13 (LOE), effective as of July 1, 2015, and its implementing regulation, Decree 96/ND-CP also regulate investments in the country by addressing the types of companies and business enterprises permitted to operate in the country, their establishment, governance, permitted activities, liability, and method of operation.

The LOI stipulates the main principles of the investment regime: transparency; equal treatment of all investors (foreign and domestic); protection against expropriation; and respect for treaties related to business investment to which Vietnam is a party.

The LOI prevails over other sector specific laws if there is a conflict, except for the Securities Law, the Law on Credit Institutions, and the Law on Insurance Business and the Law on Petroleum. The LOI also states that in case of a conflict between the provisions of the LOI and a treaty to which Vietnam is a party, the treaty will prevail.

Sector Specific Laws

Foreign investors are subject to other sector-specific laws and regulations depending on the sector in which the investment is contemplated (such as Law on Credit Institutions, Law on Petroleum, Law on Publishing, and so forth).

Public Access to Foreign Investment Laws and Policies

The Law on Promulgation of legislative documents No. 80/2015/QH13 requires all Legislative Documents, including those on foreign investment, to be made public by publishing them in the relevant official gazettes and/or local media channels. For instance, all legislative documents of central regulatory agencies must be published in the Official Gazette of Socialist Republic of Vietnam, except for those that contain state secrets. All legislative documents of the People's Councils and the People's Committees of provinces, local governments of administrative-economic units must be published in the official gazettes of the respective provinces. Similarly, all legislative documents of the People's Councils and the People's Committees of districts and communes must be posted publicly and broadcasted on local media. All legislative documents promulgated by central regulatory agencies, the People's Councils and the People's Committees, must be posted in full on the national legal database within 15 days from the day on which they are announced or signed and published on the media.

Vietnam maintains a national [online database of legislative documents \(including foreign investment regulations\)](#). At the central level, the official gazettes of the Government are available on the [website](#) of the Official Gazette of Socialist Republic of Vietnam, managed by the Office of Government. At the provincial level, the official gazettes are also available on official websites of most of the provinces (for example, [that of the Hanoi official gazette](#)), managed by the Office of the relevant provincial-level People's Committees.

Consultation with Stakeholders

Consultation with stakeholders is mandatory for passing legislative documents. Pursuant to the Law on Promulgation of Legislative Documents, during the formulation of legislative documents, the drafting agencies and relevant organizations must enable other organizations and individuals to provide opinions on draft legislative documents and seek opinions from entities regulated by the legislative documents. Such opinions must be considered during the process of adjusting draft documents.

The Law on Promulgation of Legislative Documents stipulates varying statutory periods during which the draft laws and regulations must be made publicly available. For example, drafts of legislative documents at the central level must be posted on the information portals of the issuing agency and other agencies (depending on the type of legislation) for at least 60 days in order to receive opinions, except for those promulgated under simplified procedures which are posted for 20 days. For drafts of legislative documents at the provincial level, the statutory period is at least 30 days to receive opinions, and at the district level, at least 7 days. For legislative documents at the commune level, the Chairman of the People's Committee of the commune must organize and

direct the drafting of its decisions. Depending on the characteristics and contents of the draft decision, the Chairman may seek opinions about the draft decision from relevant agencies, the people in local neighborhoods, villages, hamlets, and so on, and revise the draft decision if necessary; however, there is no specific mandatory period for such consultation.

B. International Legal Instruments Regulating Foreign Investment

Vietnam has undertaken legally binding international investment commitments through a variety of international investment agreements (IIAs) — signed at the bilateral, plurilateral and multilateral level. These commitments mainly cover entry and establishment conditions, protection, as well as the legality of specific types of incentives (see Table 1.). It is important for Vietnam to reflect these commitments in their domestic legal framework to ensure consistency as well as to monitor their compliance.

Having become a member of the World Trade Organization (WTO) on 11th of January 2007, Vietnam has commitments under several WTO Agreements. Under the General Agreement on Trade in Services (GATS), Vietnam grants rights

Table 1. Vietnam's International Investment Framework

Agreement(s) as Basis of Commitments	Type of Agreement	Investment Policy Dimensions Covered
WTO GATS Agreements	Multilateral	Entry and Establishment
WTO TRIMs Agreement	Multilateral	Entry and Establishment, Incentives
WTO SCM Agreement	Multilateral	Incentives
WTO TRIPS Agreement	Multilateral	Protection
Treaties with Investment Provisions (25 signed, 20 entered into force)	Plurilateral or Bilateral	May Cover Entry and Establishment, Protection, Incentives
Bilateral Investment Treaties (61 signed, 49 entered into force)	Bilateral	May Cover Entry and Establishment, Protection, Incentives
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)	Multilateral	Protection
IMF Articles of Agreement (Art. VIII Acceptance)	Multilateral	Protection
Double Taxation Avoidance Agreements (71 treaties in force)	Bilateral	Taxation

Source: World Bank Analysis

to services suppliers from other WTO member countries. This includes services supplied through commercial presence (defined as establishment of a territorial presence), in other words through FDI. These rights are granted through commitments undertaken in “schedules”. The “schedules” list sectors being opened, the extent of market access being given in those sectors (for example whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). Vietnam has made commitments on market access and national treatment in 11 services sectors in the WTO Classification¹: (i) Business services, (ii) Communication services, (iii) Construction and related engineering services, (iv) Distribution services, (v) Educational services, (vi) Environmental services, (vii) Financial services, (viii) Health related and social services, (ix) Tourism and travel related services, (x) Recreational, cultural and sporting services, and (xi) Transport services. In the 11 sectors, Vietnam has made partial commitments on market access for specific services in 37 sub-sectors and on national treatment in 36 sub-sectors. Partial means that although commitments have been made, there are still limitations/reservations, which may differ in their restrictiveness. For example, they may be more restrictive by limiting the equity contribution of the foreign investor, or less restrictive by merely requiring foreign service suppliers to become a member of a union chamber. In addition, under GATS every member is obligated to unconditionally extend to service suppliers of all other WTO members most-favored nation (MFN) treatment. However, Vietnam has made reservations in that regard. It reserves the right to differentiate between foreign investors in certain communication and transport services, and across all sectors through measures extended by way of bilateral investment treaties.

Under the WTO Agreement on Trade Related Investment Measures (TRIMs), Vietnam has committed to not apply certain investment measures that restrict or distort trade (local content requirements, trade balancing requirements, foreign exchange restrictions and export restrictions). These measures are

prohibited both when the obligation for the foreign investors is mandatory and when it is tied to obtaining an advantage (that is, an incentive). Incentives are further regulated by the WTO Agreement on Subsidies and Countervailing Measures (SCM), which among other things prohibits certain types of export subsidies. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), foreign investors’ intellectual property rights are protected. In case of a violation of any of its WTO commitments, Vietnam may be sued under the WTO dispute settlement mechanism.

Vietnam has further entered into obligations through international investment agreements (IIAs) — 49 Bilateral Investment Treaties and 20 Treaties with Investment Provisions (TIPs) are currently in force. The latter category comprises treaties that include obligations commonly found in bilateral investment treaties (BITs) (for example, a preferential trade agreement with an investment chapter). Table 2 provides an overview of select IIAs: its IIA with the largest home country measured by that country’s share in Vietnam’s total FDI stock (Japan-Vietnam BIT, 2012), an IIA with expansive regional coverage (Comprehensive and Progressive Agreement for Trans-Pacific Partnership, CPTPP, 2018) as well as a recent IIA (North Macedonia-Vietnam BIT). The table shows that although generally the main protection guarantees are provided in the reviewed agreements, the BIT with North Macedonia provides for less protection because it does not include national treatment and does not provide compensation for indirect expropriation.

Some of Vietnam’s reviewed IIAs contain commitments to liberalize. Both the BIT with Japan and the CPTPP include such commitments — the former provides MFN and the latter both national treatment and MFN in the pre-establishment phase. In both cases, the treaty partners make reservations: Annex 1 lists measures that do not comply with the commitments, and Annex 2 lists sectors and activities in which countries may maintain existing, or adopt new or more restrictive, measures. The CPTPP also contains a “ratchet mechanism”, which ensures that any future regulatory or legal change that makes it

Table 2. Comparison of Vietnam's Sample IIAs

	Largest Home Country IIA (% of total FDI stock): Japan-Vietnam BIT (2009)	Latest IIA (date of entry into force): North Macedonia-Vietnam BIT (2016) (CPTPP is the latest, but is already included as IIA with expansive regional coverage)	Expansive Regional Coverage IIA (highest number of members): Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, 2018)
Scope of Application			
Covers Pre-establishment	Yes	Yes	Yes
Exclusions from Scope	No	Government procurement, subsidies or grants, taxation	Government procurement, subsidies or grants (both for NT, MFN)
Standards of Treatment			
National Treatment (NT)	Pre - and post - establishment	No	Pre - and post - establishment
Most-Favored-Nation Treatment (MFN)	Post - establishment	Post - establishment	Pre - and post - establishment
Fair and Equitable Treatment (FET)	Yes	Yes	Yes
Full Protection & Security	Yes	Yes	Yes
Expropriation	Direct and indirect expropriation, payment of compensation	Direct expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation
Rights to Transfer Funds	Yes	Yes	Yes
Prohibition of Performance Requirements	TRIMs+ (Prohibiting a larger number of performance requirements than in TRIMs)	No	TRIMs+
Dispute Resolution			
State-State Dispute Settlement	Yes	Yes	Yes
Investor-State Dispute Settlement (arbitration)	Yes	Yes	Yes

Source: Analysis based on IIAs obtained from the United Nations Conference on Trade and Development (UNCTAD) Investment Policy Hub

easier for investors from one party to access the other party's market will automatically be locked-in under the Agreement and cannot thereafter be made more restrictive. Notably, Vietnam is the only country for which this ratchet mechanism is expressly suspended for a period of three years upon entry into force (under Annex 9-I).

On June 30, 2019, Vietnam has also signed an Investment Protection Agreement with the European Union. This agreement includes a substantive procedural reform: Instead of conventional investor-state dispute settlement

(ISDS) through investment arbitration, a so-called investment court system (ICS) is introduced. The investment court system consists of a first instance tribunal and an appeal tribunal. Party-appointed arbitrators (selected by the disputing parties) are replaced by tribunal members appointed by State Parties, assigned to specific cases on a rotating basis.

Vietnam is a member of the New York Convention that facilitates enforcement of arbitral awards. It has to date been a respondent in eight publicly known investor-State arbitrations,

three of which have been decided in favor of the State, one settled, one discontinued, and three that remain pending. Vietnam is not a member of the International Centre for Settlement of Investment Disputes Convention. To prevent disputes in the future, as well as to retain existing investment, Vietnam has begun implementing an investor grievance mechanism. The Ministry of Planning and Investment (MPI) is currently in the process of launching a pilot to proactively resolve investor grievances, especially those generated from interactions with provinces.

Acceptance of Art. VIII of the IMF Articles Agreement requires Vietnam to maintain current account convertibility, enabling investors to transfer certain payments related to their investments. Vietnam is also party to 71 Double Taxation Avoidance Agreements (DTAAs) that are in force, influencing its ability to tax foreign investors and investments.

C. Key Institutions for Investment Promotion

National Level Institutions

The Foreign Investment Agency (FIA) overseen by the Ministry of Planning and Investment (MPI) is the national-level administrative agency in charge of investment promotion and facilitation in the country. Established under the MPI's Decision No. 1895/QĐ-BKHDT dated December 22, 2017, the FIA is comprised of 5 divisions, 3 Investment Promotion Centers in the North, Middle and Southern regions, and investment promotion representatives in several countries. The 5 divisions are: the Investment Promotion Division, the Foreign Investment Division, the Outward Investment Division, the Statistic and General Information Division, and the Office of the Agency.

Overall, FIA's main functions are to:

- Act as a focal point for facilitating inward and outward investment;
- Propose solutions to issues related to foreign investment;
- Preside over the development and implementation of foreign investment policy;

- Propose solutions to impediments during the implementation of law, policy, mechanism of inward and outward investment;
- Preside over or co-ordinate with relevant bodies to monitor, check and inspect the implementation of the regulations on inward and outward investment;
- Preside over or co-ordinate with relevant bodies to provide procedures and guidance with respect to the inward and outward investment;
- Receive applications and participate in inspecting BOT, BTO, BT projects; preside over the procedures for BOT, BTO, BT projects; submit to the Minister for decision on issuance of Investment License to BOT, BTO, BT projects where the proposal for the project is approved;
- Receive applications for outward investment projects; participate in inspecting outward investment projects; preside over the application process and monitor the outward investment projects; submit applications to the Minister for the issuance of an Investment License when the project is accepted;
- Act as a focal body to undertake the state management over investment promotion activities; co-ordinate with relevant units to set up strategy, plan, policy, and direction for inward and outward investment;
- Synthesize, evaluate and co-ordinate investment promotion activities.

The FIA is also charged with regulatory functions. These include participating in drafting, amending and supplementing legislative documents on foreign investment in Vietnam and outward investment activities of Vietnamese investors, and assessing applications for investment in sensitive projects in Vietnam (for example: casinos, gambling, and so forth). Further, the FIA is responsible for managing the National Foreign Investment Information System of web portals on procedures for issuance of the Investment Registration Certificate; posting and updating legislative documents, policies, investment conditions applied to foreign investors; and updating information about investment promotion and foreign investment in Vietnam.

Regarding the granting of investment approvals, the FIA is only charged with approval for outward investment activities of Vietnamese investors. Investment approval/license for investment activities of foreign investors into Vietnam is granted by the provincial departments of planning and investment, provincial chairman of People’s Committee, the Prime Minister, or the National Assembly (depending on the scale of the foreign investment project).

Sub-National Investment Promotion Agencies

A number of agencies are operating at the sub-national level. The FIA has Investment Promotion Centers at both regional and provincial levels. At the regional level, the FIA has established three investment promotion centers in northern Vietnam (IPCN), central Vietnam (IPC), and southern Vietnam (IPCS). At the provincial level, many cities of Vietnam have their own investment promotion agencies, that is, Hanoi, Ho Chi Minh City, Hai Phong, Can Tho, and others. In some provinces, the investment promotion agencies are under the Department of Planning and Investment (DPI) and in others under the Provincial People’s Committee.

D. Foreign Investment Promotion Strategy

Vietnam’s investment promotion strategy, applicable to both domestic and foreign investors, can be drawn from Decree 118/2015/ND-CP, which provides the following:

- Promotion of investment in key fields and economic regions is encouraged according to the orientation for investment attraction at that time; other investment promotion activities must be carried out according to assessment of demand for investment and data analysis;
- Focus on investment promotion of executed projects through assistance in resolving difficulties;
- It is encouraged to combine investment promotion with promotion of trade, tourism, diplomatic and cultural propagation programs; and
- It is encouraged to mobilize social resources for investment promotion.

Further, in October 2019 the Politburo issued a Resolution (Resolution 50/2019) on “Orientation to improve quality and effectiveness in attracting and using FDI by 2030”, which provides strategic direction for FDI for 10 years. There is no high-level committee tasked with the responsibility of driving foreign investment reforms in the country. In practice, the FIA acts as a focal point to assist the MPI with managing foreign investment activities in Vietnam as well as outward investments; to coordinate with the units in MPI and the other ministries, branches and local authorities in drafting strategies and plans, making adjustments as necessary for FDI projects.

3. INVESTMENT ENTRY AND ESTABLISHMENT

Market Entry and Sectoral Limitations

A foreign investor may invest in all sectors not prohibited by the LOI. The LOI expressly prohibits investments (both domestic and foreign) in certain sectors or business activities pursuant to Article 6 of the LOI and a “negative list” itemized in the LOI (Prohibited Sectors).

The LOI further restricts investment in certain sectors and business activities set forth in Article 7 and Appendix 4 of the statute by imposing certain conditions for reasons of national defense and security, social order and safety, social ethics or community well-being (conditional sectors). Law No. 03/2016/QH14 dated November 22, 2016 (effective as of January 1, 2017) amended the list in Appendix 4, reducing the number of conditional sectors or business activities from 267 to 243. This list of “conditional” restricted sectors applies to both domestic and foreign investors. Consequently, any FDI in these conditional sectors would be subject to conditions prescribed in the LOI and other applicable laws, ordinances, decrees and treaties to which Vietnam is a party. In addition, equity ceilings on FDI may also be prescribed in sector specific laws and regulations. All these sectors and business activities with restrictions are referred to as “Restricted Sectors”.

The LOI expressly prohibits ministries and ministerial-level agencies, People’s Councils and People’s Committees of all levels from promulgating regulations on investment conditions, thereby restraining the government’s ability to regulate by means other than decrees in order to provide transparency and certainty to investors. It further requires that for all sectors subject to conditional business investment, the applicable investment conditions should be published on the National Enterprise Registration Portal and on the National Foreign Investment portal (for conditions specific to foreign investors). If any conditions are changed, they are required to be updated on the portals within 8 working days.

For sectors and business activities not included in the LOI, the general position is that foreign investors are accorded treatment equal to that afforded to domestic investors, and FDI is permitted without restrictions, subject to applicable sector-specific laws and regulations.

Prohibited and Restricted Sectors

Table 3 lists the Prohibited and Restricted Sectors based on the LOI and other sector specific laws and regulations.

There is no express requirement that a foreign investor must form a joint venture with a local partner in order to establish business in Vietnam, but it is required by default to participate in a Restricted Sector with foreign equity caps (such as aviation and banking). A foreign investor may not bypass the foreign equity restrictions through mergers and acquisitions.

Restrictions on Non-Equity Contract Based Investments

Foreign investors may be subject to registration requirements in non-equity contract-based investments. For example, in a franchising arrangement, the franchisor is entitled to franchise a business if it has been operating for at least 1 year, and it must be registered with the competent authority of Vietnam. Likewise, construction activities on a cross-border basis are also subject to construction activity permit.

Forms of Establishment

In general, the Law on Enterprises permits foreign investors to establish a commercial presence in Vietnam by means of liaison office, branch, representative office or a company (including shareholding or limited liability company). In practice the Vietnamese Government has primarily allowed foreign law firms and foreign banks to set up branches in Vietnam. Foreign investors may

Table 3. List of Major Prohibited and Restricted Sectors

Prohibited Sectors	Scope
Narcotics	Trade in narcotic substances itemized in Appendix 1 of the LOI
Chemicals and Minerals	Trade in chemicals and minerals itemized in Appendix 2 of the LOI
Flora and Fauna	Trade in specimens of wild fauna and flora species in Appendix 1 to the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other species itemized in Appendix 3 to the LOI
Prostitution	Prostitution
Human Trafficking	Trafficking in humans or human tissues and organs
Human Cloning	Business activities related to human cloning
Explosives	Trading firecrackers
Restricted Sectors	Restrictions on Foreign Equity
“Conditional” Sectors	See Appendix 4 of the LOI listing 243 business activities that are restricted
Media and Entertainment	<ul style="list-style-type: none"> ■ Motion picture distribution (up to 51%) ■ Entertainment services (theatre, live bands) (up to 49%)
Logistics	<ul style="list-style-type: none"> ■ Container handling services (up to 50%) ■ Freight transport—internal waterways (up to 49%) ■ Freight transport—railways (up to 49%)
Maritime Transport	Operating fleet under Vietnam national flag (up to 49%)
Maritime Auxiliary	Container handling services (up to 50%)
Internal Waterways Transport	Passenger and freight transport (up to 49%)
Rail Transport	Passenger and freight transport (up to 49%)
Road Transport	Passenger and freight transport (up to 51%)
Telecommunications	<ul style="list-style-type: none"> ■ Non-facilities based services (up to 65%) ■ Facilities based services (up to 49%)
Commercial Banks	<p>Greenfield: 100% capital ownership allowed</p> <p>Brownfield:</p> <ul style="list-style-type: none"> ■ For capital contribution in the form of buying shares, the total equity held by foreign institutions and individuals in Vietnam’s joint-stock commercial banks may not exceed 30% of the bank’s chartered capital, unless otherwise provided by Vietnam’s laws or authorized by a Vietnam’s competent authority ■ For commercial joint venture banks, foreign capital contribution may not exceed 50% of chartered capital

Source: Analysis by Baker McKenzie based on country’s laws and regulations.

Note: The table is based on a review of 32 specific sectors identified for the purpose of this research². The list of sectors is therefore not exhaustive.

also invest in the form of public private partnership contract, or business cooperation contract with the objective of cooperating to operate one or more specific business activities without having to establish a new legal entity.

Minimum Investment Requirements

While there are no general minimum investment requirements, foreign investors may be subject to such requirements depending on the type of activity

in which foreign investment is contemplated. For example, the minimum investment capital for a commercial presence in hospital services must be at least US\$20 million for a hospital, US\$2 million for a polyclinic unit and US\$200,000 for a specialty unit. In the education services sector, the minimum investment capital for educational institutions is at least 30 million Dong (D) per child for preschool, at least D50 million per student for primary schools, secondary schools, high schools but no less than D50 billion in total, at least D20 million per student for

short term training institution, and at least D1,000 billion for a university.

Quantitative Limits

Vietnamese laws do not explicitly provide for quotas on the number of foreign service providers, enterprises or market players that can operate in a given sector.

Restrictions on Expatriate Appointments

There are no overarching limitations on the appointment of foreigners to the boards of local companies or to key managerial positions, but there may be some restrictions under sector specific laws. For example, under Vietnamese aviation law, the number of foreigners must account for not more than one third of the total number of members of the executive board of a foreign invested airline company in Vietnam. Under the same law, the legal representative of a foreign invested airline company must be a Vietnamese citizen.

Current regulations do not expressly require foreign investors to hire local staff, but for certain types of positions Vietnamese workers are given preference. Under the Labor Code (2012), a company in Vietnam (including foreign invested companies) is only allowed to employ foreign citizens in such positions as manager, managing director, expert and technical worker only if Vietnamese employees are unable to fill the positions to meet production and business requirements.

Local Sourcing, R&D and Export Requirements

Although the Law on Investment specifically states that the investors may not be compelled to source locally, certain sector laws may impose local sourcing requirements and the required proportion or percentage of local inputs in total inputs. For example, under the Law on Bidding and Decree 59/2015/ND-CP guiding the Construction Law, a foreign contractor must employ a Vietnamese sub-contractor to do construction work in Vietnam. Similarly, in domestic petroleum operations, Decree

No. 95/2015/ND-CP requires that the contractor give priority to the use of local services and goods if they are comparable to imported items in terms of price, quality and supply schedule; and the foreign parties are required to give priority to recruiting Vietnamese citizens.

The Law on Investment also stipulates that investors may not be compelled to reach a certain level or value in domestic R&D activities. Investment in local R&D is not a requirement for a foreign investor to establish a business in Vietnam. However, if a foreign investor invests in local R&D, it may be eligible for investment incentives under relevant laws.

Similarly, with respect to exports, the Law on Investment specifically states that investors may not be compelled to comply with any requirements to reach a certain rate of exported goods or services. As such, a specific threshold of export volume is not a requirement for a foreign investor to establish a business in Vietnam. However, if a foreign investor invests to establish an export processing company, it may be eligible for incentives under relevant laws.

Foreign Investment Approval

Foreign investors (including foreign invested joint ventures with majority foreign ownership) are required to obtain investment project approval in the form of an Investment Registration Certificate (IRC) from the relevant local/provincial investment authority. Other agencies may also be involved in the approval process (such as Ministry of Finance for the insurance sector). The IRC will contain the key details of the investment project, including the applicable legal conditions and investment incentives.

A foreign investor will be required to obtain an IRC from the local/provincial investment authority for a merger and acquisition (M&A) transaction only in the following circumstances: if (i) the target company is engaged in business lines subject to conditions; and (ii) the result of the transaction leads to the foreign investors owning over 51% of the charter capital of the target company. The transaction has to ensure that foreign capital

contribution and the form of establishment are in accordance with the law. If these conditions are satisfied, the MPI will notify the foreign investors to proceed with amending the list of members/shareholders of the company within 15 days from the receipt of a valid application. Otherwise, the transaction is barred. If an M&A transaction does not involve a majority foreign ownership stake in a “conditional” Restricted Sector, then no IRC or approval is required from the local/provincial investment authority.

Certain types of investment projects may also require a higher-level approval prior to obtaining an IRC (depending on the nature, scale and scope of investment). Once the higher-level approval is obtained, the relevant investment authorities will issue the IRC to the investor. The types of projects subject to such a higher-level approval of the National Assembly, the Prime Minister or Provincial People’s Committees, and the associated procedures and timelines to obtain such approvals, are enumerated in the Law on Investment.

The National Assembly’s approval is required for the following investments:

- Projects that have significant effects on the environment or potentially can seriously affect the environment (Nuclear power plants; projects that change the purposes of land in certain specified areas, such as national reserves);
- Land-using projects requiring change of the use-purpose of land meant for cultivation with two or more crops per year of 500 hectares or larger;
- Projects that require relocation of 20,000 people or more in highlands; 50,000 people or more in other areas;
- Projects that require application of special policies subject to the decision by the National Assembly.

The Prime Minister’s approval is required for the following investments:

- Certain types of projects regardless of capital sources (such as large scale relocations, construction and operation of airports; air transport; national seaports, petroleum

exploration/extraction/refinery, betting and casino business, cigarette production, commercial golf courses, industrial parks);

- Projects not mentioned above in which investment is D5,000 billion or more;
- Projects of foreign investors in sectors of sea transport, provision of telecommunications services with network infrastructure; afforestation, publishing, journalism, establishment of wholly foreign-invested science and technology organizations or science and technology companies;
- Other projects subject to issuance of decisions on investment policies by the Prime Minister as prescribed by law.

The Provincial-level People’s Committees’ approvals are required for the following investments:

- Projects that use land allocated or leased out by the State without auction or bidding or transfer; projects that require changes of land purposes;
- Projects that use technologies that are on the list of restricted technologies under the Law on Technology Transfer (2017) and its implementing regulations (except for projects executed at industrial parks, export-processing zones, hi-tech zones, and economic zones in conformity with planning approved by competent authorities).

Once the applicable higher-level approval is granted, the LOI requires that the investor be issued an IRC within 5 days from the receipt of the approval. The higher-level approval takes around 3 months for decisions by the provincial People’s Committee, at least 3 months by the Prime Minister; and at least 5 months by the National Assembly.

If the project is not subject to a higher-level approval, the investor will only have to submit the required application dossier to the relevant registration office for issuance of the IRC. The IRC will be issued within 15 days if the following conditions are satisfied:

- Investment project dossier is valid under the law;

- Investment project is not aimed at industries or sectors banned for investment and business in accordance with Article 6 of Law on Investment; and
- Investment project meets all conditions for foreign investors' investment (if any).

Foreign investors may be granted approval subject to certain conditions, that are prescribed in Decree 118/2015/ND-CP. These include:

- Ratio of the foreign investor's charter capital in a business organization;
- Investment method;
- Scope of investment;
- Vietnamese partners participating in the investment; and/or
- Other conditions specified in Vietnamese laws, ordinances, decree, and international agreements on investment.

The MPI is required to take charge and cooperate with other ministries and agencies in reviewing and aggregating investment conditions applied to foreign investors according to different legal sources, in order to publish them on the [National Foreign Investment Web Portal](#).

In case of rejection, the investor will be notified in writing with explanation of why IRC was rejected. In addition, sector-specific approvals from other government bodies may also be required.

Once issued, the IRC is valid for the entire duration of the investment project and will not be revoked until the project is terminated. The duration is limited to maximum 70 years for projects within Industrial zones and 50 years for projects outside of Industrial zones.

Other Restrictions

In the retail sector, an economic needs test (ENT) is applied. Specifically, establishment of outlets for retail services beyond the first one may be allowed on the basis of an ENT, unless such outlets are less than 500 m² in size, located in shopping malls and not classified as convenience stores or supermarkets.

In addition, a foreign investor must obtain a Trading License and/or Retail Store Establishment License for engaging in the activities below:

- Import; export; distribution;
- Trade examination;
- Logistics;
- Goods leasing (excluding financial leasing);
- Promotions (excluding advertisement);
- Trade intermediation;
- E-commerce; and
- Organization of auctions.

4. INVESTMENT PROTECTION

Protection Against Expropriation

The LOI contains express protection against expropriation, which applies equally to domestic and foreign investors. Under the LOI, the State must recognize and protect investors' ownership of property, investment capital, incomes and other lawful rights and interests. LOI provides express guarantee of property ownership by stating that lawful assets of investors can generally not be nationalized or confiscated by administrative measures. In case the State compulsorily purchases or requisitions investors' assets for national defence or security reasons or in national interest, investors are entitled to payment or compensation in accordance with the Law on Compulsory Purchase and Requisition of Property No. 15/2008/QH12 and other relevant laws.

The Law on Compulsory Purchase and Requisition of Property further provides for measures to protect investors against both direct and indirect expropriation. Under this law, expropriation is permitted only if it is essential due to defense, national security and other reasons of national interest. It is subject to payment of reasonable compensation based on the market price of the properties, determined in accordance with fair market value at the time of issuing administrative decision on compulsory purchase. The compensation must be paid within 30-45 days from the effective date of the administrative decision on compulsory purchase. All expropriations must follow the procedures (for example, procedures to issue the administrative decision on expropriation; procedures to compensate, etc.) stipulated in this law. The types of assets subject to compulsory expropriation are limited to the following:

- Types of properties subject to compulsory purchase:
 - Houses and any assets attached to land;
 - Medicines, food, tools and other essential supplies;

- Transportation means, communication and other technical means.
- Types of properties subject to compulsory requisition:
 - Houses and any assets attached to land;
 - Machines, equipment, transportation means, communication and other technical means.

Restrictions on Inflow and Outflow of Funds

There are no restrictions on inflow and outflow of funds (net of applicable taxes and subject to compliance with certain formalities). As such, a foreign investor may freely transfer (both inward and outward) its capital contributions, profits, capital gains, intracompany loans, income from asset disposal, intellectual property rights (IPR) royalties, lawfully obtained compensation, income from liquidation, and other similar proceeds.

Initial equity investments (that is, contribution of charter capital by a foreign investor into its Vietnamese subsidiary) must be made into the Direct Investment Capital Account (DICA). Foreign loans with a term of 1 year or more may need to be registered with the State Bank of Vietnam.

Foreign investors must fulfil all financial obligations required under Vietnamese law prior to remittance. The Law on Investment specifically states that after having fulfilled all financial obligations to the State in accordance with Vietnamese regulations, the foreign investor is entitled to transfer abroad the following assets, subject to compliance with certain formalities:

- Investment capital; liquidation amounts of investment capital;
- Income generated from investment and business activities; and
- Cash and other assets that legally belong to the foreign investor.

The Vietnamese currency is convertible for purposes of transferring outside Vietnam. The Dong-US\$ exchange rate is subject to announcement of the State Bank of Vietnam (Circular No. 15/2015/TT-NHNN, Article 5), which states that:

- The spot exchange rate between D and US\$ of a FX spot or FX spot within a currency swap shall be determined according to the average exchange rate on the inter-bank foreign exchange market announced by the State Bank of Vietnam and within the margin decided by the State Bank.
- The forward rate between D and US\$ in a FX forward or FX forward within a currency swap shall be agreed upon by the parties thereto but not exceeding the exchange rate determined according to: (i) the spot exchange rate on the transaction date; (ii) the difference between two currency interest rates which are the refinancing interest rate announced by the US Federal Funds Target Rate; and (iii) terms of the transaction.

The exchange rate between Dong and currencies other than US\$ are subject to the agreement between the foreign investor and the bank providing foreign exchange services (Circular No. 15/2015/TT-NHNN, Article 5).

Certain outbound transfers and conversion of currency may be restricted. For example, foreign investors cannot remit abroad profits earned from their direct investment in Vietnam in a raised profit year if the financial statements of such year still contain accumulated losses after such losses have been carried forward under the Law on Corporate Income Tax. As noted earlier, the LOI permits foreign investors to transfer assets abroad on the condition that they (and their Vietnamese subsidiary) fulfil all financial obligations under Vietnamese law.

Further, outbound transfers may be subject to stipulated time-periods in certain circumstances. For example, foreign investors are entitled to use their legal revenues in Vietnamese Dong generated from their FDI activities in Vietnam to purchase foreign currency at authorized credit institutions and transfer foreign currency amounts overseas within 30 working days from the date on which foreign currency procurement is completed.


Under Circular No. 186/2010/TT-BTC of the Ministry of Finance, dated November 18, 2010, the time-period for transfer of profits abroad is divided into the following:

- Annual transfer: A foreign investor is entitled to transfer abroad the profit received or collected from direct investment activities in Vietnam to foreign countries:
 - At the end of the financial year;
 - After the Vietnamese company (that is, the entity receiving investment from the investor) has fulfilled financial obligations to the State in accordance with Vietnamese regulations; and
 - After the Vietnamese company has submitted the audited financial statement and the enterprise income tax declaration form of the financial year to the relevant Vietnamese tax authorities.
- Transfer upon termination of investment activities in Vietnam: A foreign investor is entitled to transfer abroad upon termination of its direct investment activities after the Vietnamese company (that is, the entity receiving investment from the investor) has:
 - Fulfilled financial obligations to the State in accordance with Vietnamese regulations; and
 - Submitted the audited financial statement and the enterprise income tax declaration form to the relevant Vietnamese tax authorities; and fulfilled all obligations as required under the Law on Tax Management.

Dispute Settlement

Pursuant to Article 14 of the Law on Investment, foreign investors have the choice of using the following means of dispute settlement:

- International Arbitration;
- Domestic Courts;
- Domestic Arbitration;
- Mediation.



In domestic forums the language used is Vietnamese.

At present, there is no codified law on administrative procedures in Vietnam, but fair process is guaranteed in other laws or regulations. Administrative procedures are dispersed in laws and regulations of specific business sectors. Despite there being no codified administrative regulations, Vietnamese laws have certain provisions to ensure fair process. For example, an investor may file an appeal

against a decision of the state authority imposing administrative sanction on it by following the procedures of the Law on Administrative Sanction and Law on Complaints. The Law on Complaints regulates complaints and settlement of complaints against administrative decisions or acts of state administrative agencies or competent persons in these agencies; complaints and settlement of complaints related to disciplinary decisions against cadres or civil servants; and management and supervision of complaint settlement work.

5. INVESTMENT INCENTIVES

Vietnam's investment incentives regime applies equally to both domestic and foreign investors. No special tax or financial incentives or concessions are granted to foreign investors only. The granting of tax and financial incentives is based on various criteria, such as encouraged sectors (for example, education, healthcare, sport/culture, high tech, scientific R&D, environmental protection, renewable energy, and agricultural and aquatic products), location (for example, qualifying economic and high tech zones, industrial zones, under-developed areas), scale (for example, investment capital exceeding D6,000 billion to be dispersed within 3 years or less from investment approval date), and manufacturing criteria.

The tax incentives are generally in the form of tax holidays, allowances and accelerated depreciations, value-added tax (VAT) exemptions and customs duty exemptions. They are specified in the following laws:

- Law on Investment and Decree No. 18/2015/ND-CP;
- Law on Corporate Income Tax No. 14/2008/QH12 (as amended);
- Law on Value Added Tax No. 13/2008/QH12 (as amended);
- Law on Export and Import Duties No. 107/2016/QH13.

There are no financial incentives in the form of cash grants. However, other financial incentives such as reduction or waiver of land lease/use fees are provided under the LOI and Land Law No. 45/2013/QH13 (Land Law). The policy objectives for incentives are provided under the Resolutions of the Government, Prime Minister's Decision and other similar types of legal instruments. There is

no publicly accessible, centralized government source or portal that lists all tax/financial incentives offered to investors in the country.

Eligibility Criteria and Approval Process

The criteria for eligibility of tax and financial incentives are specified under the Law on Investment, various tax laws and regulations, Land Law and other related regulations. For example, the Law on Investment (Articles 15, 16, 17) describes the types of investment projects eligible for investment incentives; sectors and regions eligible for investment incentives; and procedures to grant/request for investment incentives.

In general, the approval process for receiving tax/financial incentives is not automatic but subject to the assessment by the state authorities on a case-by-case basis. The Law on Investment (Article 17) requires that:

- If the investment project is issued an Investment Registration Certificate, the investment registration authority will record the investment incentive, legal basis and conditions for the incentive on the IRC.
- If the investment project is not required to apply for IRC under the Law on Investment, the investor will on the basis of the criteria of eligibility for investment incentives provided under the Law on Investment and other regulations (i) determine the applicable investment incentives and (ii) carry out procedures to enjoy the investment incentives with the relevant tax, finance and customs authorities.

The approval process for investment incentives is typically stipulated under the Law on Investment and the Land Law, tax regulations, customs regulations, and other regulations relating to incentives.

6. INVESTMENT LINKAGES

For the purposes of this section, research was focused on the availability of incentive schemes to increase local sourcing, technology transfer and measures to improve information exchange between foreign investors and domestic suppliers.

There are incentive schemes and other programs in place to encourage foreign investors to increase local sourcing, build the capacity of local suppliers (or potential local suppliers) to help them meet strict procurement requirements, or to increase technology transfer, for example:

- Under the Law on Investment (Article 15.2), investment projects in rural areas using more than 500 workers are eligible for investment incentives.
- Under the Corporate Income Tax Law, corporate income tax is exempted for income generated from technology transfer in certain sectors to organizations and individuals in areas with extremely difficult socio-economic conditions. Under Article 49 of the Law on Technology Transfer, examples of technologies encouraged to be transferred to areas with difficult socio-economic conditions include high tech, technologies applied to the conservation and development of genetic resources, selection, the generation and improvement of economic value of plant varieties and domestic animal breeds, technologies for production, extraction and thriving use of clean water sources, and technologies for water treatment in the aquaculture industry;
- Vietnam has also implemented supplier development programs to better link local suppliers with multinational companies. Recently, the Vietnam Industry Agency was set up under the Ministry of Industry and Trade and is mandated to support the creation of a competitive supply base in Vietnam, especially focusing on those sectors that have seen substantive FDI inflows in the past. Moreover, under DECISION 68 “On the approval of the Supporting industry development program from 2016 until 2025”, the Government set up a supplier development program to develop three major fields of supporting industry: (i) spare parts and accessories, (ii) supporting industry for the textile, garment and shoe leather industries, and (iii) supporting industry for high tech industries. The objectives under the program include: (a) connecting local suppliers with export markets and multinational companies, (b) assisting local suppliers with applying management systems that meet global product standards, (c) trainings, and (d) R&D support.

7.

OUTWARD FOREIGN DIRECT INVESTMENT

For this section, research was focused on whether there are any legal instruments specifically covering outward investment and if there are, whether they impose any restrictions on outward investment. The Law on Investment sets out certain conditions and licensing requirements for outward investments by private companies, for example:

- Outward foreign direct investment (OFDI) should not fall in the sectors or trades banned from business investment in Article 6 of the Law.
- Investors intending to make outward investment must (i) commit to arrange foreign exchange by themselves or (ii) receive a commitment on foreign exchange by a licensed credit institution for outward investment activities. If the outward investment capital to be transferred abroad exceeds D20 billion, the Ministry of Planning and Investment will need to obtain written approval from the State Bank of Vietnam for such a transfer.
- The investor must obtain the Outward Investment Registration Certificate from the Ministry of Planning and Investment, the Prime Minister or the National Assembly depending on the investment project threshold (Article 54).

- The investor must obtain confirmation of the relevant tax authorities confirming tax obligations performance of the investor up to the time of outward investment registration.

- Per Article 65, profits and all income from overseas investments must be repatriated to Vietnam within 6 months from the date of issuance of a tax finalization statement under the law of the host country, except under the limited circumstances described in Article 66.

Notably, in comparison with the prior Law on Investment of 2005 repealed by the current Law on Investment in 2014, the current law imposes more conditions for outward investment activities, for example:

- Additional conditions for outward investment activities (including, among others, conditions on the foreign investor's commitment on arrangement of foreign exchange).

- Under the Law on Investment of 2005, "Investment Certificates" were issued to both outward and inbound investment activities. Under the Law on Investment as amended in 2014, outward investment activities are subject to separate licensing procedures to obtain the "Outward Investment Registration Certificate".

8. RESPONSIBLE INVESTMENT

For this section, research was focused on whether there are any measures within the country's investment legislation that are specifically targeted to ensure responsible investment. Vietnam has specific regulations to ensure environment protection, compliance of products with national/international standards that apply to both domestic and foreign investors conducting business activities in Vietnam, such as:

- Law on Environment Protection 2014;
- Law on Quality of Goods and Products 2007;
- Law on Protection of Consumers' Rights 2010;
- Law on Technical Regulations and Technical Standards 2006;
- Specialized regulations for specific types of products (for example, food products are subject to the quality standards set out under the Law on Food Safety);

- Vietnam National Technical Regulations (TCVN) issued to address specific types of products.

In addition, Vietnam has undertaken some measures in the country's investment policy and legal framework to promote responsible investment to preserve the environment and to ensure products produced comply with national and international standards. Specifically, under the Law on Investment, an investment project may be suspended to remedy violations of environmental protection regulations, following requests of the State management authority on environment. Further, projects that are subject to approval of the Prime Minister or the National Assembly must submit a preliminary assessment of impacts of the project on the environment and solutions for environmental protection.

9. RECENT POLICIES ON NEW TECHNOLOGIES

This section considers Vietnam's recent policy measures on new technologies (that may affect both domestic and foreign investors). Globally, policy measures on new technologies tend to focus on the enabling (sectoral) regulatory framework, as well as on incentives, digital standards, and clusters. At the same time, countries have taken measures that highlight their changing approaches to national security. Other emerging policies that, though not directly related to investment, as a matter of fact impact investments, are data localization requirements as well as rules and regulations concerning the treatment and use of digital data.

Vietnam has taken several measures focusing on the development of new technologies:

- **Special Incentives for Scientific and Technology Enterprises.** Pursuant to Decree No. 13/2019/ND-CP of the Government dated February 18, 2019 (effective as of March 20, 2019), enterprises possessing the Certificate of Scientific and Technology Enterprise will enjoy several incentives, among others: a waiver or reduction of enterprise income tax, a waiver or reduction of land lease, credit incentives, and incentives for import and export duties.

- **Law on Technology Transfer.** Under the Law on Technology Transfer of 19 June 2017 and its implementing Decree No. 76/2018/ND-CP dated May 15, 2018 (effective as of July 1, 2018), certain incentives are provided to encourage the transfer of technologies and to improve the science and technology market in the country. For instance, technologies which, among others, create new and highly competitive products, use new energy or environment-friendly energy, protect human life or help to prevent diseases, or technologies that are encouraged to be transferred to rural and mountainous areas shall enjoy tax reduction policies. Furthermore, the Law also allows the organization that creates new technologies using state budgets to be the owner of such technology. More specifically, under Article 36.2 of the Law on Technology Transfer, if the Government provides funding for performing scientific research and technology development tasks for an entity that makes investment in material-technical facilities and/or financial investment and concurrently acts as the presiding entity on such scientific research and technology development tasks, the ownership of findings of such scientific research and technology development tasks shall be given to this entity. Enterprises are allowed to use part of their pre-tax profits for research and development activities.
- **Fund for Technology Innovation.** A national fund used for technology innovation (the National

Technology Innovation Fund) was launched on January 8, 2015 to support small and medium enterprises as they renovate, transfer, or perfect their technologies, as well as to encourage the transfer of technology for the development of the agriculture, forestry, and fishery sectors.

Data Localization

The Law on Cybersecurity 2018 requires certain entities to store data within the territory of Vietnam. This requirement applies to domestic and foreign enterprises that are:

- Providing services on the telecom network, the internet and value-added services on cyberspace in Vietnam; and
- Are involved in the collection, exploitation, analysis, and/or processing of personal information, data about users' relationship and/or data generated by users in Vietnam.

The following information must be stored in Vietnam for a duration of time (to be specified by the Government in the implementing regulations):

- Personal information;
- Data about users' relationships; and
- All other data generated by users in Vietnam.

Foreign businesses that fall within the scope of this clause are also required to establish either a branch or a representative office in Vietnam.

10. CITY SPECIFIC REVIEW — HO CHI MINH CITY

In addition to the laws and regulations issued by central state authorities, foreign investment activities in Ho Chi Minh City’s vicinity are also governed by the legal normative documents issued by local authorities in the city, such as the People’s Committee. Under Article 14 of the Law on Promulgation of Legal Documents, as a general principle the issuance of legal normative documents with contradicting or inconsistent content to the documents of higher-level authorities is strictly prohibited. Therefore, legal normative documents issued by the local authorities of Ho Chi Minh City are generally not in conflict with the laws and regulations issued by central state authorities.

Local regulations normally stipulate further details and provide further guidance on the issues that are not yet detailed or clarified under the laws and regulations of the central state authorities, such as the Law on Investment and Decree no. 118/2015/ND-CP. For example, the People’s Committee of Ho Chi Minh City promulgated the

Decision No. 5166/QD-UBND/2017 regulating the coordination for issuance of higher-level approvals applied to land-use projects within Ho Chi Minh City’s territory. This Decision provides more detailed instructions on the procedures for issuance of such approvals prescribed in the Law on Investment and Decree No. 118/2015/ND-CP, applying to local land-use investment projects. In particular, the Decision lays down specific provisions on the content of inspection by each competent authority (such as the Ho Chi Minh Environment and Natural Resources Department, Construction Department, Planning and Investment Department, and so forth) as well as specific time-limits for each step and the coordination principles for authorities participating in the procedure. These provisions are not in conflict with the procedures prescribed by the central government, but rather supplement certain issues and areas that the Law on Investment and Decree No. 118 have not regulated.

11. COMPETITION LAW & POLICY

For the purposes of this section, research was focused on merger control and leniency frameworks in the country.

The primary law governing competition in Vietnam is the new Law on Competition No. 23/2018/QH14 (Law on Competition), passed in June 2018 and effective as of July 1, 2019. The Law applies to all anti-competitive acts and economic concentrations that impact or potentially impact competition in the Vietnamese market, regardless of where the acts occur. This includes acts by both domestic and foreign businesses, agencies, and organizations. In September 2019, the Vietnamese government issued Decree No. 75/2019/ND-CP (Decree 75) to give guidance on how the Law on Competition Law is to be enforced in practice, which became effective on December 1, 2019.

The National Competition Committee (CA or Competition Authority), established in 2019, is the main body in-charge of implementing competition law and policy in the country. Under the new law, the existing Vietnam Competition Authority and the Vietnam Competition Council have been merged to form the National Competition Committee.

A. Merger Control

Vietnam’s merger control regime is governed by the Law on Competition and Decree 75. They apply to all anti-competitive acts and economic concentrations that impact or potentially impact competition in the Vietnamese market. Per the Law on Competition, an “economic concentration” may take the form of an acquisition, a merger of enterprises, consolidation of enterprises or joint venture. An acquisition means an act whereby an enterprise acquires the whole or part of the property or shares of another enterprise sufficient to control or influence/dominate all or one of the trades of the acquired enterprise. Under the guiding decree of the previous Law on Competition (Decree No.

116/2005/ND-CP), this has been understood to mean the acquirer acquires shares or assets of the target to the extent that it obtains more than 50% of the voting rights at the Shareholders’ Meeting or Board of Management of the target or at a level which, under the law or the company charter, is sufficient for the acquirer to exercise “influence” on the financial policies and operations of the target. Currently, there is no official guidance under the Law on Competition with respect to the definition of acquisition. The Law on Competition moves away from a structure-based approach where concentrations were prohibited based on market share (above 50%) to an effect-based approach where economic concentration is prohibited if it has or may have a “significant anti-competitive effect” in the market.

Regarding the threshold for notifications, the new law provides for more concrete standards based on:

- Participating enterprises’ total assets in the Vietnamese market;
- Participating enterprises’ revenues in the Vietnamese market;
- Total value of the transaction; or
- Participating enterprises combined market share in the relevant market.

While there has been no official guidance issued, the latest Decree guiding the application of the new Law on Competition provides that the notification threshold shall be determined based on one of the following criteria:

- Total assets in the Vietnam market of all parties to the economic concentration exceeding D2,000 billion (approx. US\$86 million);
- Total turnover in the Vietnam market of all parties to the economic concentration exceeding D2,000 billion (approx. US\$86 million);

- Value of the transaction exceeding D1,000 billion (approx. US\$43 million); or
- Combined market share of the participating entities in the relevant market, from the year prior to the notification, is 20% or greater.

Pre-notification Meetings

While not provided for under the law, as a matter of practice the merging party or parties can request a pre-notification consultation with the Competition Authority prior to the submission of an official notification dossier. Such consultations are generally advisable, especially when dealing with complicated cases. It is, however, unclear how long it will take the Competition Authority to respond to these requests for consultations.

Fast Track Procedure and Information Requests

There is no short form/fast track option provided under the Law on Competition.

According to the Law on Competition, the CA may require the participating enterprises to submit additional documentations during the official assessment of economic concentration notification, at a maximum of two requests total. The duration for providing additional documentation is not included in the time limit for assessment of the economic concentration (that is, the clock will stop).

Remedies

Under the economic concentration notification dossier, the participating parties are requested to propose remedies for any possible anti-competitive effects that may be caused by the economic concentration. Further, the CA may approve a merger under conditional terms (that is, a conditional economic concentration). Such conditions may include structural and behavioral remedies (Art. 42 of the Law on Competition).

File Access and Third Party Intervention

The Law on Competition is silent on the parties' ability to access the merger file during the proceedings. Therefore, the CA is unlikely to

grant the parties' access to the merger file because there is no legal basis for such sharing provided in this statute.

While a description of the transaction including the involved parties and the industry is published in the CA's annual report, the CA is obliged to keep confidential the business secrets of the parties. The Parties' documents or information submitted with the notification and the decision are not published. It is worth mentioning that under the new Law on Competition the decision on economic concentration is required to be published on the CA's website when it comes into effect; however, information regarding business secrets of the participants would still be kept confidential by the CA.

The Law on Competition does not address whether interested third parties can defend their interests in merger procedures, but it provides for the right to challenge the CA's decisions/actions by any persons if they believe that such decisions/acts infringe on their rights and interests. Therefore, it is possible for the interested third parties to file complaints and defend their interests to the authority if the CA's decision approving the proposed transaction infringes on such rights and interests.

Substantive Assessment

As part of the economic concentration review, the CA will assess the substantial anti-competitive effects caused or that may be caused by the economic concentration. Per Article 31.1, of the Law on Competition, part of this assessment includes reviewing the:

- Combined market share and relevant markets;
- Relationship of the parties engaged in the economic concentration;
- Any competitive advantages brought about by the economic concentration;
- Ability of the enterprises post-concentration to significantly increase prices or returns on sales; or
- Ability of the enterprises after the concentration to remove or prevent other enterprises from market entry or expansion.

Additionally, the CA will assess the positive effects or the economic concentration. The Law on Competition is silent on whether the CA can set conditions to address public interest concerns beyond anti-competitive effects. However, the positive effects include impact on (a) development of industries, science and technology in accordance with public strategies, (b) development of small and medium enterprises (SMEs) and (c) enhancement of the national enterprise's competitiveness in the international market.

Penalties and Appeals

Per the Law on Competition, the maximum fine for violations of economic concentration regulations is 5% of the total turnover of the violating enterprises in the relevant market in the fiscal year preceding the year that the violation occurred. In addition, the CA may also order the breakdown of the post-merger enterprises, and/or control over the terms of sale and purchase of goods and services entered into by the post-merger entity. The organization or individual disagreeing with part or the whole of the decision is entitled to make complaints against the CA's decisions to the Competition Council if they disagree with a part of, or the entire decisions of the CA. However, not all decisions made by the CA may be brought to court for resolution. Instead, only the decision of the Competition Council resolving the parties' complaints against the CA's decisions can be brought to administrative court if the parties disagree with a part of, or the entire decision.

Publicity and Deadlines for Merger Decisions

Under the new Law on Competition, the decision on economic concentration must be published on the CA's website when such decisions come into effect. The information about business secrets of the participants will be kept confidential by the CA. Other contents (inclusive of analytical underpinnings motivating the CA decisions) may be published.


With respect to the timeline for assessment of economic concentration case, the Law on Competition provides as follows:

- **Receipt of notification dossiers (7 working days):** Within 7 working days from receipt of the notification dossier, the CA shall notify the applicant in writing whether the application is complete and valid. If the application is incomplete or invalid, the CA shall notify the applicant in writing of the deficiencies that require amendment and allow them 30 days to make amendments from the date of notice. Upon expiry of 30 days, if no amendment is made or the application is not amended completely, the CA shall return the notification dossier.
- **Preliminary assessment of economic concentration (30 days):** Within 30 days from receipt of a complete and valid notification dossier, the CA shall notify the preliminary assessment result that: economic concentration is approved; or economic concentration is subject to further official assessment. Upon the expiry of this 30 days period, if the CA fails to notify the preliminary assessment result, the economic concentration may be conducted.
- **Official assessment of economic concentration (90 days + up to 60 days extension):** The CA shall carry out the official assessment of economic concentration within 90 days from the date on which a notification of preliminary assessment result is issued. In complicated cases, the time limit for official assessment of economic concentration may be extended, but not exceeding 60 days and the CA shall inform enterprises submitting the notification dossier.

B. Leniency Program

The National Competition Committee's leniency program is set out in Section 12 of the new Law on Competition. Leniency is available for all restrictive agreements prohibited under the new Law on Competition. Parties may be entitled to immunity or reduction in penalties if they:

- Were or are participating in an agreement in restraint of competition;
- Voluntarily declare the breach before the CA issues a decision on investigation;
- Declare honestly and provide all available information and evidence on the breach that



is helpful for the discovery, investigation and resolution of the breach; and

- Cooperate fully during the investigation and resolution of the breach.

The law allows for a reduction in fines on a sliding scale from total immunity to 40% of the total fine. The first three leniency applicants will receive 100%, 60%, and 40% percent penalty reductions, respectively. No subsequent applicants would be eligible for leniency. Leniency cannot be extended to applicants who coerced or organized for others to parties to participate in the conduct. Further, leniency can be provided to enterprises, not individuals. The decision to grant leniency is made by the President of the CA.

Marker System

The Law on Competition does not provide for a specific marker system. It states that full or partial immunity shall be granted if, among other things, the applicant honestly provides all information/evidence regarding the violation, which is of help to the CA in detecting, investigating, and handling the violation.

Confidentiality

The Law on Competition is silent on confidentiality issues with respect to leniency.

Cooperation with other competition authorities

The Law on Competition is silent on issues of cooperation.

ENDNOTES

¹ The WTO services sectoral classification list (W/120) is a comprehensive list of services sectors and sub-sectors covered under the GATS. It was compiled by the WTO in July 1991 and its purpose was to facilitate the Uruguay Round negotiations, ensuring cross-country comparability and consistency of the commitments undertaken. The 160 sub-sectors are defined as aggregate of the more detailed categories contained in the United Nations provisional Central Product Classification (CPC). The list can be accessed under the following link: http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc.

Services are categorized into 12 sectors:

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services
12. Other services not included elsewhere

² For the purpose of this research, the following 32 sectors have been identified. This is not an exhaustive list of all sectors of the economy.

<p>Primary:</p> <ol style="list-style-type: none"> 1. Agriculture, Hunting, Forestry, and Fishing 2. Mining, Quarrying, and Petroleum 	<p>Services:</p> <ol style="list-style-type: none"> 18. Electricity, Gas, and Water 19. Alternative Energy
<p>Manufacturing:</p> <ol style="list-style-type: none"> 3. Agroprocessing, Food Products, and Beverages 4. Textiles, Apparel, and Leather 5. Chemicals and Chemical Products 6. Rubber 7. Plastic Products 8. Pharmaceuticals, Biotechnology, and Medical Devices 9. Metals and Metal Products 10. Non-metal Mineral Products 11. Wood and Wood Products (other than Furniture) 12. Furniture 13. Paper and Paper Products 14. Printing and Publishing 15. Automobiles, Other Motor Vehicles, and Transport Equipment 16. Information Technology and Telecommunications Equipment 17. Machinery and Electrical and Electronic Equipment and Components 	<ol style="list-style-type: none"> 20. Construction 21. Wholesale and Retail Trade 22. Hotels and Restaurants 23. Other Travel and Tourism-related Services 24. Logistics, Transport, and Storage 25. Telecommunications 26. Computer and Software Services 27. Financial Services including Insurance 28. Real Estate 29. Business Services 30. Professional, Scientific and Technical Services (Engineering, Architecture, etc.) 31. Health Services 32. Media and Entertainment

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4. Land Law No. 45/2013/QH13 adopted by the National Assembly on 29 November 2011
5. Civil Code No. 91/2015/QH13 adopted by the National Assembly on 24 November 2015
6. Criminal Code No. 100/2015/QH13 adopted by the National Assembly on 27 November 2015 (as amended)
7. Law on Promulgation of legislative documents No. 80/2015/QH13 adopted by the National Assembly on 22 June 2015
8. Labor Code No. 10/2012/QH13 adopted by the National Assembly on 18 June 2012
9. Law on Corporate Income Tax No. 14/2008/QH12 adopted by the National Assembly on 03 June 2008 (as amended)
10. Law on Value Added Tax 2008 No. 13/2008/QH12 adopted by the National Assembly on 03 June 2008 (as amended)
11. Law on Export and Import Duties No. 107/2016/QH13 adopted by the National Assembly on 06 April 2016
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15. Law on Quality of Goods and Products No. 05/2007/QH12 adopted by the National Assembly on 21 November 2007
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17. Law on Technical Regulations and Technical Standards No. 68/2006/QH11 adopted by the National Assembly on 29 June 2006
18. Law on Food Safety and Hygiene No. 55/2010/QH12 adopted by the National Assembly on 17 June 2010
19. The Law on Cybersecurity No. 24/2018/QH14 adopted by the National Assembly on 12 June 2018
20. Law on Technology Transfer No. 07/2017/QH14 adopted by the National Assembly on 19 June 2017
21. Law on Competition No. 23/2018/QH14
22. Law on Compulsory Purchase and Requisition of Property No. 15/2008/QH12 adopted by the National Assembly on 03 June 2008 (as amended)
23. Foreign Exchange Ordinance of the Standing Committee of the National Assembly of Vietnam No. 28/2005/PL-UBTVQH11 dated 13 December 2005 (as amended)
24. Decree No. 13/2019/ND-CP of the Government dated 01 February 2019 on science and technology enterprises

25. Decree No. 76/2018/ND-CP of the Government dated 15 May 2018 on guidelines for the Law on Technology Transfer
26. Decree No. 34/2016/ND-CP of the Government dated 14 May 2016 on detailing the Law on Promulgation of Legal Documents
27. Decree No. 86/2017/ND-CP of the Government dated 25 July 2017 on the composition, functions, powers of the Ministry of Planning and Investment
28. Decree No. 118/2015/ND-CP of the Government dated 12 November 2015 on detailing and guiding the implementation of some provisions of Law on Investment
29. Decree No. 35/2006/ND-CP of the Government dated 31 March 2006 on detailing implementation of Commercial Law 2005 regarding Franchising (as amended)
30. Decree No. 09/2018/ND-CP of the Government dated 15 January 2018 on guidelines for the law on commerce and the law on foreign trade management regarding sale of goods and other activities directly related to sale of goods of foreign investors and foreign-invested business entities in Vietnam
31. Decree No. 11/2016/ND-CP of the Government dated 03 February 2016 on detailed regulations on implementing a number of articles of the Labor Code regarding foreign workers in Vietnam
32. Decree No. 75/2019/ND-CP
33. Decree No. 116/2005/ND-CP
34. Circular No. 40/2016/TT-BLDTBXH of Ministry of Labor, War Invalids and Social Affairs dated 25 October 2016 on guidance on implementation of a number of articles of Decree No.11/2016/ND-CP dated February 03, 2016 detailing a number of articles of the Labor Code in respect of foreign workers in Vietnam
35. Circular No. 15/2015/TT-NHNN of the State Bank of Vietnam on foreign currency transactions on foreign currency market by credit institution permitted to make foreign currency transactions
36. Circular No. 186/2010/TT-BTC dated 18 November 2010 of the Ministry of Finance on guidelines on the transfer abroad of foreign organizations
37. Decision No. 1895/QD-BKHDT of the Ministry of Planning and Investment dated 22/12/2017 on composition, functions, powers of the Foreign Investment Agency
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39. General Agreement on Trade in Services (GATS)
40. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
41. Agreement on Trade-Related Investment Measures (TRIMs)
42. Agreement on Subsidies and Countervailing Measures (SCM)
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45. Japan-Vietnam BIT (2009)
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This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment and competition that affect businesses and foreign investors. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries: Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey and Vietnam.