

2022 INVESTMENT POLICY AND REGULATORY REVIEW

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	2
GLOSSARY	3
1. INTRODUCTION	5
2. OVERVIEW OF INVESTMENT POLICY FRAMEWORK	7
A. Domestic Legal Instruments Regulating Foreign Investment	7
B. International Legal Instruments Regulating Foreign Investment	8
C. Key Institutions for Investment Promotion	11
D. Foreign Investment Promotion Strategy	12
3. INVESTMENT ENTRY AND ESTABLISHMENT	13
4. INVESTMENT PROTECTION	20
5. INVESTMENT INCENTIVES	23
6. INVESTMENT LINKAGES	24
7. OUTWARD FOREIGN DIRECT INVESTMENT	25
8. RESPONSIBLE INVESTMENT	26
9. CITY SPECIFIC REVIEW—HO CHI MINH CITY	27
10. FDI IN THE DIGITAL ECONOMY	28
ENDNOTES	39
LIST OF REFERENCE MATERIALS	41



ACKNOWLEDGEMENTS

The report was prepared by a core team led by Priyanka Kher comprising Peter Kusek and Maximilian Philip Eltgen. The report benefited from valuable inputs and support from Carolyn Turk, Marcin Piatkowski, Philippe De Meneval, Juni Tingting Zhu and Xavier Forneris. The team would like to thank Asya Akhlaque, Zafer Mustafaoglu and Ivan Nimac for their guidance.

Legal research for the preparation of this report was carried out by the international law firm Kilpatrick Townsend, in collaboration with a country-based law firm.

The team would like to thank Aichin Jones for providing design, layout, and production services.

The report was prepared under the Analyzing Barriers to Investment Competitiveness Project, supported with funding from the Prosperity Fund of the United Kingdom.

GLOSSARY

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
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

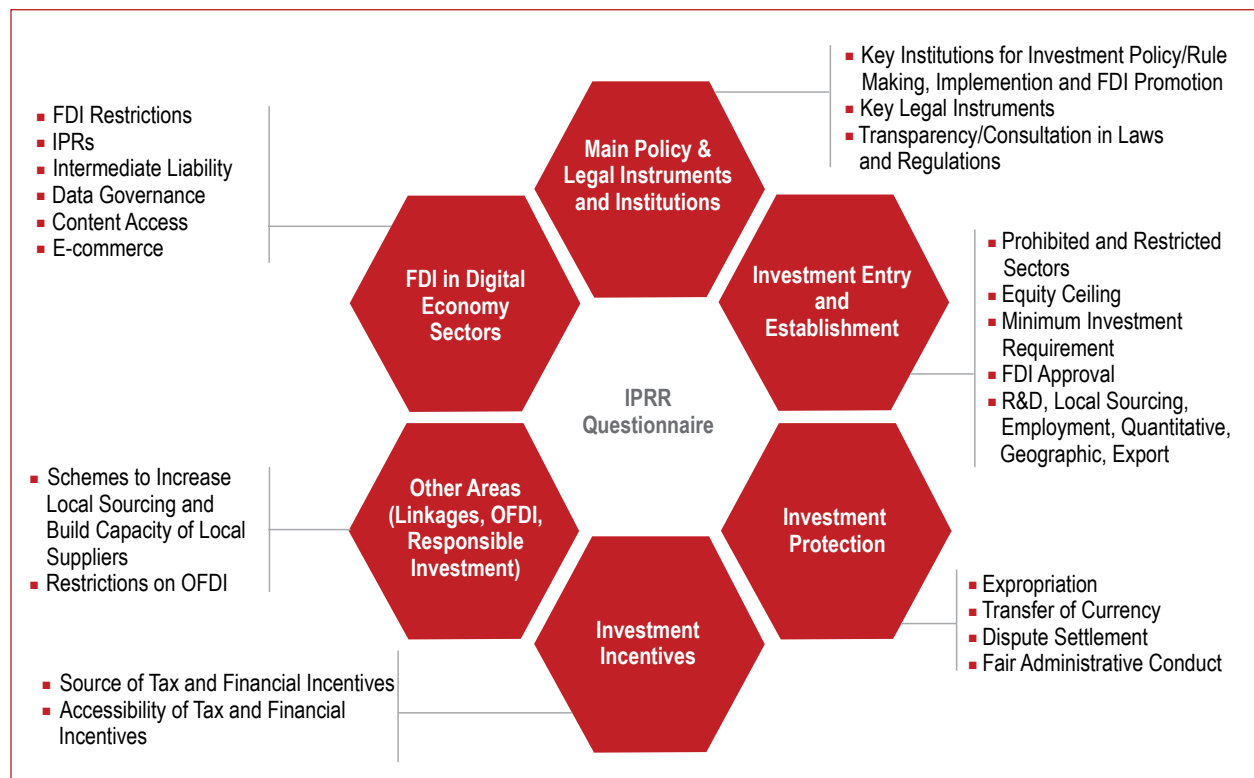
This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) in Vietnam. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **December 31, 2021**, 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 Kilpatrick Townsend & Stockton LLP, in collaboration with a local law firm, 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 dimensions of FDI in the digital economy. 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 multinational company with no equity interest or management control by the government of its home country (that is, not state-owned enterprise).

Figure 1. Overview of Topics Covered in IPRR



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 7-8 explore emerging investment policy and regulatory areas — Section 7 considers outward FDI and Section 8 responsible investment;
- Section 9 focuses on city-specific investment policy and regulatory measures in the largest commercial center; and
- Section 10 covers FDI in the digital economy.

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

On June 17, 2020, Vietnam enacted the revised Law on Investment (Law No. 61/2020/QH14 (LOI 2020), which became effective on January 1, 2021. The LOI 2020 together with its implementing regulation, Decree No. 31/2021/ND-CP of 26 March 2021 (Decree 31), is the primary legislation on inward investment and outward investment. It replaces the prior Investment Law No. 67/2014/QH13 which was effective since 2015. Through this reform, the National Assembly of Vietnam aims to (i) promote the consistency between the investment laws and other laws, and (ii) better attract and manage foreign investment into Vietnam, subject to maintaining the national defense and security review. 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 methods of operation.

The LOI 2020 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 investment to which Vietnam is a party. Among the notable changes introduced in the new investment law are a “negative list”

for foreign investment, increases in ownership thresholds for treatment as a national investor, a “national security” provision, new investment incentives, additional measures to streamline investment procedures, and additional rules on outbound investment.

The LOI 2020 prevails over other sector specific laws if there is a conflict, except for the Securities Law, the Law on Credit Institutions, the Law on Insurance Business, and the Law on Petroleum. The LOI 2020 also states that in case of a conflict between the provisions of the LOI 2020 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 (IIA) — 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 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 out of 12 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, (iv) Tourism and travel related services, (x) Recreational, cultural and sporting services, and (xi) Transport services. In the 11 sectors, Vietnam has made partial commitments

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 (26 signed, 20 entered into force)	Plurilateral or Bilateral	May cover Entry and Establishment, Protection, Incentives
Bilateral Investment Treaties (62 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 (Dispute settlement)
IMF “Articles of Agreement” (Art. VIII Acceptance)	Multilateral	Protection
Double Taxation Avoidance Agreements (75 treaties in force)	Bilateral	Taxation

Source: World Bank Analysis

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 others 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) – it has signed 62 Bilateral Investment Treaties out of which 49 are in force, and 26 Treaties with Investment Provisions (TIPs) of which 20 are in force. The latter category comprises treaties that include obligations commonly found in BITs (for example, a preferential trade agreement with an investment chapter). Table 2. provides an overview of select Agreements: its IIA with the largest home country measured by that country’s share in Vietnam’s total FDI stock (Republic of Korea-Vietnam BIT, 2003), an IIA with expansive regional coverage (Comprehensive and Progressive Agreement for Trans-Pacific Partnership, CPTPP, 2018) as well as a recent IIA (Regional Comprehensive Economic Partnership/RCEP, 2020). RCEP entered into force on 1 January 2022 for Vietnam.

Table 2. Comparison of Vietnam’s Sample IIAs

	Largest Home Country IIA (% of total FDI stock): Republic of Korea-Vietnam BIT (2003) (in force)	Latest IIA (date of entry into force): RCEP (2020) (not yet in force)	Expansive Regional Coverage IIA (highest number of members): Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, 2018)
Scope of Application			
Covers Pre-establishment	No	Yes	Yes
Exclusions from Scope	No	Government procurement, subsidies or grants, services supplied in the exercise of governmental authority	Government procurement, subsidies or grants (both for NT, MFN)
Standards of Treatment			
National Treatment (NT)	Post - establishment	Pre- and post-establishment	Pre- and post-establishment
Most-Favored-Nation Treatment (MFN)	Post - establishment	Pre- and 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 and indirect expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation
Rights to Transfer Funds	Yes	Yes	Yes
Prohibition of Performance Requirements	No	TRIMS+ (Prohibiting a larger number of performance requirements than TRIMS)	TRIMS+
Dispute Resolution			
State-State Dispute Settlement	Yes	Yes	Yes
Investor-State Dispute Settlement (arbitration)	Yes	No	Yes

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

Some of Vietnam’s reviewed IIAs contain commitments to liberalize. Both RCEP and CPTPP include such commitments, providing national treatment and most-favored nation treatment 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. They both also contain a “ratchet mechanism”, which ensures that any future regulatory or legal change

that makes it easier for investors from one party to access the other party’s market will automatically be locked-in under the Agreement and therefore cannot subsequently be made more restrictive. In the CPTPP, 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). Table 2 shows that generally the main protection guarantees are provided in the reviewed agreements. Although RCEP does not provide for ISDS, the parties are to enter discussions on ISDS no later than two years after the date of entry into force of the agreement and conclude them within

three years of the commencement of the discussions. RCEP also includes a provision for establishing focal points or other entities within member states, for early resolution of investor complaints and grievances against government agencies.

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 rotational basis.

Vietnam is a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention), facilitating the 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 in favor of the investor, one settled, one discontinued, and two that remain pending. Vietnam is not a member of the International Centre for Settlement of Investment Disputes (ICSID) 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 Investment and Planning (MPI) leads a task force to proactively resolve investor grievances, especially those faced in the interaction with provinces.

Vietnam is currently not participating in WTO negotiations on an agreement on investment facilitation for development. The agreement focuses on transparency, efficiency, and effectiveness of investment-related administrative procedures. It will not cover market access, investor protection and ISDS.

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 75 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/QD-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; and
- 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 31, which provides the following:

- Arranging investment promotion activities in an effective manner suitable for domestic, international, territorial and local contexts and specific conditions at stated times;
- Balancing contents, time, duration, schedule and composition of promotion delegations and funding for investment promotion activities in a practical manner;
- Developing a list of projects attracting for foreign direct investment capital in each period in accordance with the general planning and development investment plan of the whole country.

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 any sector on the same basis as a domestic investor so long as such sector or business activity is not prohibited or restricted by the new Law on Investment (LOI 2020). The LOI 2020 sets out the prohibited and restricted sectors that apply to all investments, whether foreign or domestic (**General List**). On March 26, 2022, the government issued Decree 31/2021/ND-CP, which is the implementing regulation for the LOI 2020, provides two “negative lists”, one for business activities in which foreign investment is prohibited (**Prohibited List**) and the other for “conditional” business activities in which foreign investors must satisfy certain market entry conditions to invest in (**Restricted List**). These two lists are collectively referred to as the “Negative Lists.”. The new approach adopted in the investment law reform provides more certainty and transparency to foreign investors and streamlines investment conditions and applicable licensing procedures.

- The **General List** of 8 prohibited sectors and 227 restricted sectors for all investments in Vietnam is found in Appendices 1-4 of the LOI 2020. This list applies to both foreign and domestic investors. The 2020 reform reduced the number of restricted sectors from 236 to 227. See Table 3 below.
- The **Prohibited List** in Appendix I, Section A of Decree 31 itemizes 25 categories of business activities. This list applies to foreign investors only. See Table 3 below.
- The **Restricted List** in Appendix I, Section B of Decree 31 itemizes 59 categories of business activities (including any other new business lines opened by the National Assembly, the Government or the Prime Minister under the pilot mechanisms). These include manufacturing and distribution of media products, insurance, banking, legal services, tourism services,

e-commerce, to name a few. The Restricted List applies to foreign investors only.

Decree 31 does not provide any market entry conditions (e.g., foreign ownership limitation, investment form such as joint venture, conditions on scope of investment, investor qualifications etc.) for these restricted sectors. Instead, the Ministry of Planning and Investment (MPI) is mandated to coordinate with other Ministries to review and collect all market entry conditions and publish such market entry conditions on the National Foreign Investment portal. If the relevant market entry conditions are satisfied, then foreign investment in the Restricted List sectors is permitted. See table 3 below.

For all other sectors and business activities that do not fall under the two Negative Lists above, the general position is that foreign investors are accorded the same treatment as domestic investors regarding market entry, and foreign investment is permitted without any foreign ownership restrictions if Vietnamese law does not have regulations restricting market access of foreign investors to such business lines. In addition to the prohibitions and restrictions on the two Negative Lists, foreign investors are also subject to the prohibitions and restrictions set out in the General List that equally applies to domestic investors. Any changes to these lists or market entry conditions must be updated on the National Investment portal.

Pursuant to Decree 31, in cases where the foreign investors have met the market entry conditions in accordance with Vietnamese law and then the Vietnamese law has new regulations on market entry conditions, foreign investors may continue to carry out investment activities under the previous conditions.

The LOI 2020 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 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).

Prohibited and Restricted Sectors

Table 3 lists the Prohibited and Restricted Sectors based on the LOI and Decree 31.

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.

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 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 and Local Hiring Requirements

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

Table 3. List of Major Prohibited and Restricted Sectors

Prohibited Sectors	Scope
LOI's General List of Prohibited Sectors for all investments (domestic and foreign)	
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
Debt Collection	Provisions of debt collection services
Decree 31' Prohibited List for foreign investment - itemizes 25 business lines	
Trading	<ul style="list-style-type: none"> ■ Trade in goods and services subject to state monopoly ■ Trade in border-gate transfer of goods ■ Trade in temporary import for re-export ■ Export/import/distribution of goods that foreign investors are not permitted to do so
Press and News	Press and news gathering activities
Fishing	Harvesting of marine resources
Guest Worker Services	Service of sending workers to work abroad under contract
Judicial Administrative Services	Judicial expertise services, bailiff services, property auction services, notary services, and services of asset administrators
Cemeteries	Building infrastructure for cemeteries and graveyards to transfer land use rights associated with infrastructure
Garbage Collection	Garbage collection service directly from households
Polling	Public opinion polling service
Public Property	Collection, purchase and disposal of public property at units of the armed forces
Manufacturing of Military Materials or Equipment	Manufacturing; trading in military equipment, military equipment for the armed forces, military weapons, equipment, techniques, weapons, specialized military and police vehicles, components, parts, spare parts, supplies and special equipment, specialized technology to manufacture them
Intellectual Property Representation and Assessment	Industrial property representation service business and intellectual property assessment service
Water Area Services	Services for setting up, operating, maintaining and maintaining navigational signals, water zones, water areas, public navigational channels and navigational routes; surveying services of water areas, water areas, public navigational channels and navigational routes serving the publication of maritime notices; Surveying services, building and publishing charts of water areas, seaports, navigational channels and routes; develop and publish maritime safety documents and publications
Maritime Safety	Regulatory services to ensure maritime safety in water zones, waters and public navigational channels; maritime electronic information services

Inspection Services for Transport, Oil and Gas Exploration, Sea Exploitation, Occupational Safety	<ul style="list-style-type: none"> ■ Inspection, testing and issuance of certificates for means of transport (including systems, components, equipment and components of vehicles); inspection services and grant of certificates of technical safety and environmental protection for vehicles, specialized equipment, containers, dangerous goods packing equipment used in transportation ■ Inspection services and grant of certificates of technical safety and environmental protection for means and equipment for oil and gas exploration, exploitation and transportation at sea; ■ Technical inspection services for occupational safety for machines and equipment with strict requirements on occupational safety installed on means of transport and vehicles, exploration and mining equipment and transporting oil and gas at sea; fishing vessel registration service
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Investigation Services for Natural Forests	Investigation, assessment and exploitation of natural forests (including logging and hunting, trapping of rare and precious wild animals, management of genetic funds of plants, animals and microorganisms used in the forest); agriculture
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Genetic Research	Research or use genetic resources of new livestock breeds before being appraised and evaluated by the Ministry of Agriculture and Rural Development
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Business Travel Services	Business travel services, except international travel services serving international tourists to Vietnam
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Restricted Sectors	Restrictions on Foreign Equity
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LOI's General List of Restricted Sectors for all investments - See Appendix 4 of the LOI listing 227 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%)
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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%)
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Maritime Transport	Operating fleet under Vietnam national flag (up to 49%)
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Maritime Auxiliary	Container handling services (up to 50%)
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Internal Waterways Transport	Passenger and freight transport (up to 49%)
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Rail Transport	Passenger and freight transport (up to 49%)
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Road Transport	Passenger and freight transport (up to 51%)
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Telecommunications	<ul style="list-style-type: none"> ■ Non-facilities based services (up to 65%) ■ Facilities based services (up to 49%)
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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
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Decree 31' Restricted List for foreign investment - This itemizes 59 business lines; applicable market entry conditions yet to be published by the Ministry of Planning and Investment

Source: Analysis by Kilpatrick Townsend and Stockton based on country's laws and regulations.

Note²: The table is based on a review of 32 specific sectors identified for the purpose of this research. The list of sectors is therefore not exhaustive.

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 15/2021/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) must 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, and specify the business lines of the target company according to both Vietnam Standard Industrial Classification (VSIC) and Provisional Central Product Classification (Provisional CPC).

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 capital contribution or purchase of shares or stakes results in a foreign investor holding over 50% of the charter capital of the business organization in the following cases: the holding of charter capital by the foreign investor is increased from less than or equal to 50% to over 50%; the holding of charter capital by the foreign investor is increased while such foreign investor is holding over 50% of the charter capital of the business organization. The transaction must 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 type of projects regardless of capital sources (such as projects that require relocation of 10,000 people or more in highlands; 20,000 people or more in other areas, construction and operation of airports, air transport; construction of national seaports with investment over D\$2300 billion, petroleum processing, betting and casino business, large housing construction investment project, investment project on infrastructure construction of industrial parks);
- Foreign investors' investment projects in the following fields: provision of telecommunications services with network infrastructure; afforestation; publication, press;
- Investment projects which at the same time fall within the power of at least two provincial People's Committees to grant approval for investment guidelines;
- 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 and investment projects that request permission to repurpose land, except for cases of allocation, lease or permission for repurposing of land of households or individuals not subject to the written approval by the provincial People's Committee in accordance with regulations of law on land;
- Projects on construction of residential housing (for sale, lease or lease purchase) and urban areas that use at least 50 hectares of land or less than 50 hectares of land but with a population of at least 15,000 people in an urban area; or that use at least 100 hectares of land or less than 100 hectares of land but with a population of at least 10,000 people in a non-urban area; or investment projects regardless of the area of land used or population within a restricted development area or within an historic inner area (determined in accordance with urban area planning projects) of a special urban area;
- Projects on investment in golf course construction and business;
- Investment projects of foreign investors and foreign-invested business organizations executed on islands or in border or coastal communes; in other areas affecting national defense and security.

Approval from the Ministry of Defense and Ministry of Public Security may also be required for investment projects located in the national security sensitive area.

Once the applicable higher-level approval is granted, the LOI requires that the investor be issued an IRC within 5 working 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:

- The investment project does not involve any prohibited business lines;
- There is a location for execution of the investment project;
- The investment project is conformable with national planning, regional planning, provincial planning, urban planning and special economic - administrative unit planning (if any);
- The investment per m2 (or investment per employee) is not smaller than the minimum requirement (if any); and
- Market access conditions applied to foreign investors are satisfied.

Pursuant to the LOI, foreign investors may be granted approval subject to certain conditions, which include:

- Ratio of the foreign investor's charter capital in a business organization;
- Investment method;
- Scope of investment;
- Capacity of investor, 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 unless the investment project is terminated in accordance with the laws. 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 shall 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). With respect to the guidance on DICA, Circular 06/2019/TT-NHNN on foreign exchange control of FDI in Vietnam also clarifies the definition of foreign-invested enterprises (FIE) including:

- Enterprises newly established by foreign investors and required by Vietnamese law to obtain an investment registration certificate;
- Enterprises having 51% or more foreign ownership; and,
- Project companies established by foreign investors to implement public-private partnership projects.

Accordingly, Circular 06/2019/TT-NHNN requires the following investors to open a DICA:

- FIEs as addressed above;
- Foreign investors entering into business co-operation contracts (BBC Investors); and
- Foreign investors directly entering into PPP projects without setting up a project company.

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. 02/2021/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 on the basis of the central rate announced by the State Bank of Vietnam on the transaction date 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 (if the US Federal Funds Target Rate is within the margin, the lowest interest rate in the margin shall apply); 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.

Vietnamese laws do not specifically provide for a specific time period within which outbound transfers must be processed. Generally, 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.

Under the LOI 2020, new Special Investment Incentives are available for the following projects:

- Establishment or expansion of R&D/innovation centers with the total investment capital of at least D 3 trillion with the minimum drawdown of D 1 trillion within 3 years from the issuance date of the IRC or the in-principal investment approval; or national innovation centers to be established pursuant to the Prime Minister's decision; and
- Investment projects in business sectors eligible for exceptional investment incentives that have the total investment capital of D 30 trillion or more and the minimum drawdown of D 10 trillion within 3 years from the issuance date of the IRC or the in-principal investment approval.

On October 6, 2021, the government issued Decision No. 29/2021/QĐ-TTg on Special Investment Incentives that sets out the incentives for the abovementioned eligible investment projects, which include reduced corporate income tax rates as well as relief from land and surface rental fees.

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:

- LOI 2020 and Decree 31;
- 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) stipulates that based on the objectives specified in Clause 2 Article 15, the written approval for investment guidelines (if any), the investment registration certificate (if any) and other relevant regulations, investors shall determine investment incentives themselves and follow procedures

for availing of investment incentives at the tax authority, finance authority, customs authority or other competent authority corresponding to each type of investment incentive.

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. Chapter 5 of the Law on Investment 2020 sets out certain conditions and approval requirements for outward investments by private companies. The applicable rules include:

- Outward foreign direct investment (OFDI) shall comply with the Law on Investment, other relevant regulations, laws of the countries or territories that receive investment and relevant international treaties, and the investors shall take responsibility for the efficiency of the OFDI.
- OFDI should not fall in the sectors or trades banned from business investment in Article 6 of the Law on Investment.
- Business activities subject to conditional outward investment include:
 - Banking
 - Insurance
 - Securities
 - Press, radio and television
 - Real estate business
- The National Assembly's approval shall be required for the following outward business activities:
 - Investment projects with outward investment capital of D20,000 billion or more
 - Investment projects that requires application of special policy or mechanism to be decided by the National Assembly
- The Prime Minister's approval shall be required for the following outward business activities:
 - Investment projects in banking, insurance, securities, press, radio, television and telecommunication fields with outward investment of D400 billion or more
 - Investment projects (other than those in the above bullet) with outward investment capital of D 800 billion or more
- Conditions for the issuance of outward investment registration certificate include:
 - Investor complies with all applicable laws and relevant regulations, the outward investment does not involve banned activities, and required approvals are obtained for outward investment in conditional business activities.
 - Investor makes a commitment to raise foreign currency themselves or obtains a commitment to borrow foreign currency from an authorized credit institution for the purposes of conducting outward investment activities.
 - There is a tax authority's certification of the fulfillment of tax obligation by the investor. Such certification must be issued by the tax authority within the last 3 months.
- If the investment project is subject to approval for its outward investment guidelines, the Ministry of Planning is required to issue the outward investment registration certificate to investor within 5 working days from receipt of such approval. If foreign currency capital transferred overseas is D20 billion or more, the Ministry of Planning and Investment must request approval from the State Bank of Vietnam.
- All profits and income from overseas investments must be repatriated to Vietnam within 6 months from the date of issuance of a tax finalization statement or equivalent documents under the law of host country, except under limited circumstances such as if such proceeds are reinvested in the investment project.

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 2021;
- 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); and

- 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. 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. For example, the Government has issued the Resolution No. 02/NQ-CP dated 01 January 2021 on implementation of major tasks, solutions to improve business environment, and on improvements to national competitiveness in

2021. Following such Resolution, the People’s Committee of Ho Chi Minh City has organized a conference with relevant authorities for the purposes of improving the investment environment of the City in 2021. Specifically, a solution being considered by the authorities is to issue a Decision on the mechanism for coordination in selecting investors to implement an investment project in accordance with the Law on Investment which shall replace the Decision No. 5166/QD-UBND dated 02 October 2017 regulating the coordination in handling procedures for decision on investment policies, applied to land use projects within HCMC city.

The authorities are also tasked to promulgate regulations on state management coordination between the Management Board of export processing zones and the city’s industry, departments and agencies of the city according to the provisions of Decree 82/2018/ND-CP of the Government on regulations on management of industrial zones and economic zones.

10. FDI IN THE DIGITAL ECONOMY

This section examines Vietnam’s legal and regulatory framework impacting investment in digital activities and infrastructure. The first sub-section assesses FDI-specific restrictions that apply to 19 different digital economic sectors or activities (see Table 4). The following sub-sections review a number of legal and regulatory dimensions that may affect both foreign and domestic investments in the digital economy: intellectual property rights, data

privacy, data localization, intermediary liability, content access, and e-commerce.

FDI-Specific Restrictions

Vietnam permits foreign direct investment in most key digital economy areas identified in Table 4. Restrictions apply to cryptocurrencies trading, logisticstech, telecom services, and potentially E-Commerce.

Table 4. FDI Equity Restrictions in Vietnam’s Digital Economy Sectors

Digital Activity/Sector	FDI Equity Restrictions, if any; “100%” Means No Caps on Foreign Equity
3D Printing (Manufacturing)	100%
AI and Machine Learning	100%
Big Data & Analytics	100%
Blockchain	100%
Cryptocurrency	If traded as a form of securities, then regulated activity requiring license under the Capital Markets and Services Act and up to 70% foreign equity permitted.
Drones	100%
E-Commerce	100%; Note: E-Commerce is a restricted business line under Decree 31, thus market entry conditions yet to be determined by the Ministry of Planning and Investment
Fintech	100%
Gig Worker Platforms	100%
Healthtech	100%
Insurtech	100%
IoT Devices (Similar to Drones)	100%
Logisticstech	100%, provided company does not operate any commercial vehicles or logistics facilities such as warehouses
Robotics	100%
Social Network Platforms	100%
Cloud Computing Infrastructure (e.g. Datacenters)	100%
Telecom Services	Non-facilities based services (up to 65%) Facilities based services (up to 49%)
Telecom Equipment to Enable Digital Infrastructure and Digital Connectivity	100%
Traveltech	100%

Source: Analysis by Kilpatrick Townsend and Stockton based on country’s laws and regulations.

There is no separate screening process for digital FDI. Nor are there any minimum investment requirements or other discriminatory restrictions or quotas or local sourcing requirements specifically for FDI in the digital economy sectors. No special restrictions are placed on the appointment of expatriates on the board of directors or key managerial positions in the digital economy. There is also no specific regulation in respect of work permits for the digital economy sector. Rather, the rules applicable to FDI in the traditional sectors described in sections above equally apply to FDI in the digital economy.

Recent Policies in Digital Economy Sectors

Vietnam's recent measures focusing on digital economy sectors are the following:

- **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.

- **On 3 June 2020, the government issued Decision No. 749/QĐ-TTg to approve the “National Digital Transformation Program to 2025, with an orientation to 2030” (Decision 749).** In broad terms, the government's vision to 2030 is to have Vietnam become a digital, stable and prosperous country, to be a pioneer in testing new technologies and models, to fundamentally and comprehensively modernize the government's management and administration activities and enterprise's production and business activities, as well as transform the way of living and working of people, and develop a safe, humane, and wide-reaching digital environment.

Decision 749 covers numerous disciplines relevant to digital transformation. However, for the telecom sector in particular, below are some key takeaways:

As part of its solutions to set a foundation of digital transformation, the government had recognized a need to reform numerous legislative documents, including the Law on Telecommunications.

The government has set, as an objective, to develop regulations and roadmaps on requirements for 4G and 5G technology integration for manufactured and imported mobile phones and IoT devices for circulation in the domestic market, as well as to develop infrastructure to connect to IoT.

For investors, IoT technology has been included in government's list of “high technologies” that would be prioritized for investment and for which investment incentives may be applicable.

Intellectual Property Rights

Digital products (such as e-books, digital platforms, downloadable music, digital content, software, and databases, to name a few) are afforded copyright protection under the country's Law on Intellectual Property (Law 50/2005/QH11). The law protects a range of original works of authorship in the form of literary works (including computer programs), musical works, artistic works, databases, photographs, films or sound recordings and broadcasts. A copyright owner is granted a bundle of exclusive rights to reproduce, display, distribute, rent, and perform the copyrighted works. The law also recognizes authors' and performers' moral rights covering the right of paternity and the right of integrity. Although the law does not expressly mention creations made on the Internet or in the digital environment, the copyright rules applied for conventional works in physical media also apply to digital works.

Copyright holders may seek civil and criminal remedies, as well as administrative action and customs procedures against infringers.

A copyright owner whose work is reproduced, disclosed, or used in any other illegal or infringing manner may apply to the competent authority for the confiscation of infringing copies. Interim and permanent injunctive relief is also available to cease the infringing activities. A court may order the infringer to compensate the copyright owner for a loss of profits or damages of the amount which the court considers appropriate, taking into account the seriousness of the injury, including the loss of benefits and expenses necessary for the enforcement of the rights by the copyright owner. The law sets the maximum amount that the court can award in damages to D 500 million. Criminal remedies for a violation of copyright may include fines of up to D 3 billion and/or imprisonment for a term of up to 3 years, or both, as well as a suspension of its business operation from six months to 24 months. Repeat violations may trigger a stiffer penalty of imprisonment depending on the aggravating circumstances described in the law and/or application of fines.

In 2016, the Ministry of Culture, Sports and Tourism established the Expertise Center of Copyright, Related Rights (ECCR), the state

agency with authorization to issue expert opinions in copyright and related right issues. IP holders can obtain expert opinions from ECCR regarding copyright infringement and available courses of enforcement. The expert opinions are non-binding but are well considered by enforcement authorities in Vietnam.

Vietnamese law currently does not specifically provide for the fair use doctrine. However, the following cases of using copyrighted works would not require the owner's permission or payment of royalties or remunerations:

- Duplication of works for personal scientific research or teaching purposes;
- Reasonable recitation of works without misrepresenting the authors' views for commentary or illustrative purposes;
- Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;
- Recitation of works in schools for lecturing purposes without misrepresenting the authors' views and not for commercial purposes;
- Reprographic reproduction of works by libraries for archival and research purposes;
- Performance of dramatic works or other performing-art works in mass cultural, communication, or mobilization activities without collecting any charges in any form;
- Audio-visual recordings of performances for the purpose of reporting current events or for teaching purposes;
- Photographing or televising of plastic art, architectural, photographic, and applied-art works displayed at public places for the purpose of presenting images of these works;
- Transcription of works into Braille or characters of other languages for the blind;
- Importation of copies of others' works for personal use.

Trade secrets are protected under the Law on Intellectual Property.

While Vietnam's IP protection laws are generally at par with international standards, the enforcement of IP rights in the country remains lax and online sale of counterfeit goods remains prevalent, attributable to capacity constraints related to enforcement and low monetary damages without any deterrent effect. In October 2021, the government submitted the updated Draft Amendment of IP Law to the National Assembly, that aims to amend and supplement the rules concerning the law on intellectual property. It includes a comprehensive revision of the existing Law on Intellectual Property, including amending the copyright rules with the intent to assist copyright owners with commercializing their IP assets and clarifying the scope of economic rights, amending rules regarding industrial property rights and trademarks, and proposing stiffer penalties and sanctions for IP infringement.

Data Privacy

Vietnam does not have an omnibus data protection and privacy law. However, there are a number of laws and regulations with provisions to protect personal data privacy, which include the following:

- Law on Network Information Security 2015, which applies to subjects directly involved in or related to network information security activities in Vietnam.
- Law on Information Technology 2006, which applies to subjects engaged in information technology application and development activities in Vietnam as well as regulates the collection, processing, use, storage, and provision of personal data on a network environment.
- Law on Cybersecurity 2018, which applies to, among others, subjects engaged in activities in cyberspace, including provisions on data protection for cybersecurity reasons.
- Law on Consumer Rights Protection 2010, which applies to, among others, subjects that trade goods and/or services to consumers and protection of consumer information.

- Decree 72/2013/ND-CP on the Management, Provision and Use of Internet Services and Online Information, which applies to subjects engaged in or related to the management, provision and use of Internet services, online information, and assurance of information security.
- Vietnam's Constitution 2013, which stipulates that everyone has the right to inviolability of private life, personal secrets and family secrets; and has the right to protect his or her honor and reputation.

Generally, the Ministry of Information and Communications is the main regulator for the protection of privacy and personal data in Vietnam.

The key legal principle across these laws is that prior express consent of the data subject is required for the collection, processing and use of their personal information and the use of such information must be in accordance with prior stated purposes. There is no specific requirement on the form or the content of consent. Besides consent, the laws recognize an alternative legal basis of the specific purpose for processing of personal information, pursuant to which organizations may collect, process, use, store, disclose and transfer personal information of other people without the consent when that information is used for the following purposes:

- To execute, adjust or perform contracts with the data subjects for the use of data, products or services over a network environment.
- To calculate charges for use of data, products or services over a network environment.
- To perform other obligations provided for by law.
- To ensure national defence, social order, security, and safety of Vietnam.

There is no requirement to conduct data privacy impact assessments, and there are no exact minimum or maximum data retention periods for personal data stipulated under the law.

There is further no specific right to be forgotten provided for under the current regime. Data subjects have the right to be informed, the right to

access their information, the right to opt out and the right to rectification of inaccurate personal data.

Non-compliance with the data protection laws can be subject to both administrative and criminal penalties. The administrative penalties provided for under Decree No. 15/2020/ND-CP include fines of up to D 5 million for storing personal data for longer than legally required or agreed by the parties; up to D 100 million for failing to verify, correct or delete personal information after request from owner; up to D 20 million for collecting personal data without consent or providing such information to third party after receiving notice from owner to stop transfer, or failure to comply with the technical standards for security of such information; up to D 30 million for using personal data in violation of agreed scope and purpose without consent; and up to D 70 million for failing to promptly apply remedies or preventive measures to actual or threatened breaches, among other penalties.

Criminal penalties may be imposed for violations of rules confidentiality and safety concerning an individual's email, mail, telephone, or other forms of communications, which may include a fine of up to D50 million and imprisonment of up to three years.

In February 2021, the Ministry of Public Security issued a draft personal data protection decree (Draft PDPD) for public consultation, which if passed would become Vietnam's first omnibus legislation regulating data privacy. In general, the PDPD adopts a framework modeled after the EU General Data Protection Regulation (GDPR), with broad definition of personal data, data subject's rights, concept of Data Protection Officer, extraterritorial applicability, and potentially strict penalties for non-compliance (up to 5% of total revenue of violator). It establishes the Personal Data Protection Commission as the supervisory authority to administer the new law. Among other provisions, it distinguishes between basic personal data and sensitive personal data and imposes stricter requirements on the latter. It is unclear when and in what form the Draft PDPD will finally be promulgated into law. In March 2022, the government issued Resolution No. 27/NQ-CP approving the latest version of the highly

anticipated Personal Data Protection Decree. With Resolution 27, it is anticipated that the Ministry of Public Security will share the Draft PDPD with the Standing Committee of the National Assembly for consultation.

Data Localization

The Law on Cybersecurity requires domestic and foreign enterprises to store personal data within the territory of Vietnam for a period prescribed by the government if they:

- Provide 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.

Foreign businesses that fall within the scope of this clause are also required to establish either a branch or a representative office in Vietnam. The scope of these provisions is broad and includes every provider of any service over cyberspace who processes personal data. These requirements are currently subject to further guidance from the Ministry of Public Security and until such time, there is no clear process or guideline for foreign investors to retain data in Vietnam (including on the length of the required period) and/or establish a branch/representative office.

The law does not distinguish between basic or sensitive personal data, or between data controller and data processor, and there are no specific restrictions against the transfer of data outside Vietnam. The law also does not regulate the mechanisms by which personal data may be transferred outside of Vietnam (such as requirements on the qualifications of the transferees and/or measures the transferees are required to perform). However, consent of the data subject must be obtained prior to the transfer of personal data to any third party overseas.

Under the Draft Personal Data Protection Decree, specific procedures and requirements to transfer data outside of Vietnam are foreseen.

Specifically, it stipulates that personal data of Vietnamese citizens can only be transferred out of Vietnam's territorial borders upon fulfilling all of the following conditions:

- When the data subject consents to the transfer;
- The original data is stored in Vietnam;
- Data transferor provides proof that the country, territory, or a specific area in the country or territory to which the personal data is transferred has issued regulations on the protection of personal data with equivalent or higher level as those specified in the Draft PDPD; and
- A written approval for the transfer is obtained from the Personal Data Protection Committee. The application must include an impact assessment report with an assessment of potential harm and measures to manage, minimize or eliminate such harm.

The Draft PDPD has been controversial particularly because of these restrictions placed on cross-border transfers.

Moreover, in September 2021, the MPS released the Draft Decree on Sanctions against Administrative Violations in Cybersecurity for public consultation, which specifies acts constituting administrative violations, relevant sanctions, and remedial measures. In particular, the Draft Decree includes sanctions for violations of the Law on Cybersecurity's yet-to-be enforced data localization provision which requires storage of certain types of data in Vietnam and establishment of local presence, as well as the Draft PDPD's proposed requirements for cross border transfer of personal data. The Draft Decree appears to dilute the data localization obligation such that it would only arise if the service has been used to violate the Law on Cybersecurity, such violation has been notified to the service provider by the authority, and the service provider has not complied with such instructions.

Intermediary Liability

Vietnamese law does not provide any clear guidance regarding the concept of "intermediary liability." There are numerous regulations

impacting the liability of enterprises providing services in cyberspace in relation to the actions of its users, which include:

- Law on Information Technology 2006, which applies to subjects engaged in information technology application and development activities in Vietnam
- Law on Cybersecurity 2018, which applies to, among others, subjects engaged in activities in cyberspace
- Decree No. 85/2021/ND-CP on E-Commerce (Decree 85), which applies to, among others, organizations that engage in e-commerce activities in Vietnam
- Decree No. 15/2020/ND-CP (issued on February 3, 2020) on administrative penalties for breach of postal services, telecom, radio frequencies, IT and electronic transactions
- Circular No. 38/2016/TT-BTTTT, which applies to the activities of providing cross-border public information
- Decree No. 72/2013/ND-CP on the Management Provision and Use of Internet Services and Online Information (Decree 72), which applies to subjects engaged in or related to the management, provision and use of Internet services, online information, and online games, and assurance of information security
- Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL (Joint Circular 07/2012), which applies to enterprises providing intermediary services in protection of copyright and related rights; it defines intermediaries as including:
 - Internet service providers;
 - Telecommunications enterprises;
 - Enterprises providing digital information storage space rental services, including website information hosting services;
 - Enterprises providing online social networking services; and
 - Enterprises providing digital information search services.

The Law on Information Technology provides safe harbors for online intermediaries: organizations that transmit third party content shall not be responsible for such content which is stored in an automatic, intermediary, and temporary manner for technical requirements if the temporary storage aims to serve information transmission and the information is stored within a sufficient time for the transmission, except when the intermediary performs any of the following acts:

- Start the transmission of information;
- Select recipients of transmitted information; or
- Select and modify the contents of transmitted information

Similarly, organizations that temporarily store third party content are not responsible for the content, except when the intermediary performs any of the following acts:

- Modify the information's content;
- Fail to observe the provisions on accessing or updating information content;
- Illegally collect data by temporarily storing information; or
- Disclose confidential information.

Online intermediaries are only in limited circumstances directly liable for infringing copyrighted content, according to the Joint Circular 07/2012, such as (i) where the service provider is the source of uploading, transmitting or providing digital content through telecom networks and the internet without the copyright holder's permission, (ii) if the service provider copies or modifies the content without permission of the copyright holder, (iii) it deliberately circumvents technical measures taken by the copyright holder to protect copyright and related rights, or (iv) operates as the secondary distributor of the infringing content. Intermediaries are responsible for removing infringing content after receiving notice from the competent authorities. This framework is bureaucratic and administrative law-driven rather than providing effective civil remedies for copyright holders as well as safe harbors for ISP.

Several notice and takedown regimes exist under specific laws that are all based on notices from government agencies. It is not necessary to obtain a court order under these regimes.

- **Law on Cybersecurity:** Foreign providers of telecommunications services, internet services, and value-added services in Vietnam's cyberspace have the responsibility to block and delete information that is meant to oppose the government of Socialist Republic of Vietnam; to cause riots, disturb security or public order; to humiliate or slander; to violate economic management laws; or fabricated, false information on their services or information systems within 24 hours after a request is given by the cybersecurity force of the Ministry of Public Security or a competent authority of the MIC.
- **Law on Information Technology:** Organizations and individuals that lease space for digital information storage shall have to promptly take necessary measures to remove illegal digital information at the request of competent state agencies.
- **Decree 52/2013/ND-CP:** Traders or organizations providing e-commerce trading floor services shall have to remove information on goods/services which violate the law within 24 hours from receipt of the request from a competent authority.
- **Circular 38/2016/TT-BTTTT:** After receiving a request for coordination from the MIC in handling infringing information, within 24 hours, organizations and individuals providing public information across borders must identify infringing information and handle information as requested.
- **Joint Circular 07/2012:** Enterprises providing intermediary services shall have to remove and delete content of digital information which violates copyright and related rights; stop and suspend the Internet line and/or telecommunication line when receiving a request in writing from an inspector of the MIC or the Ministry of Culture, Sports and Tourism or other competent authorities.

In addition, there are a number of requirements imposed on intermediaries to monitor users' activities and remove or block content deemed illegal or harmful. For example, pursuant to the Cybersecurity Law, ISPs are responsible for promptly informing an authority of any illegal information detected, as well as coordinate and cooperate with relevant authorities to deal with illegal information in cyberspace. Circular 38/2016/TT-BTTTT (Circular 38) implements content restrictions provided under Article 5 of Decree 72/2013/ND-CP. It requires all offshore providers of public information or content into Vietnam to comply with Vietnam's laws and regulations. If such offshore provider entity (a) has more than 1 million hits from Vietnam per month or (b) leases a data center to store digital information in Vietnam in order to provide its services, then additional obligations apply to notify the MIC of the provider's contact information and collaborate with the MIC in dealing with infringing content according to the procedures set forth in the Circular. Public information or content means the online information of an organization or individual which is made public to all entities.

Telecoms operators and onshore data center service providers are required to timely report infringing content to the MIC within 3 hours of detection, and at MIC's request, telecoms operators must implement necessary technical measures and report to the MIC the number of users in Vietnam accessing public information provided by the offshore service provider. Onshore data center service providers must, either periodically (every 6 months) or upon the MIC's request, notify the MIC of their service supply to offshore service providers. Users are also obligated to notify the MIC of any illegal public information made available by offshore service provider upon detection.

Intermediaries are also subject to user identity requirements. For example, the Law on Cybersecurity requires foreign enterprises providing telecommunications services, Internet services, and value-added services in cyberspace in Vietnam to verify information when a user registers a digital account. Similarly, Decree 72/2013/ND-CP enterprises that establish social networking sites to ensure that only the persons who sufficiently and accurately provide their

personal information are allowed to establish personal websites or provide information on social networking sites. They are also required to register, store, and manage personal information of the persons who establish personal websites and other information providers on social networking sites pursuant to the regulations of the Ministry of Information and Communications (MIC).

In February 2020, the government issued Decree No. 15/2020/ND-CP on administrative penalties under which intermediaries may be liable for a fine of up to D 30 million for two types of violations: (i) failing to implement necessary measures to prevent access to or removal of violating information at the request of a competent authority when transmitting or leasing space for storing digital information, or (ii) failing to cooperate in the investigation of violations against the law in the course of transmission or storage of digital information of other organizations/individuals at the request of a competent authority. Additional penalties may also be imposed such as the suspension of the business license and forced removal of infringing content.

Content Access

The filtering of political, religious, or any other web content is permitted mainly under two legislations:

- The Law on Cybersecurity provides the government with a broad authority to monitor information and communication systems within the country and to delete or block access to data infringing upon cybersecurity, defined as national security, social order and safety, or the lawful rights and interests of agencies, organizations and individuals. It also provides with the right to inspect computer systems to improve cybersecurity. The Ministry of Information and Communications (MIC) can request providers of telecommunications services, internet services, and value-added services in cyberspace and information system administrators to remove information that violates cybersecurity laws on their systems or services within one day. Operating licenses may be suspended for up to two years if companies violate the law by failing to block content flagged by authorities.

- **Decree 72/2013/ND-CP (Decree 72) on the Management, Provision, and Use of Internet Services and Online Information** prohibits the use and provision of the internet to, inter alia, oppose the Socialist Republic of Vietnam, threaten national security, incite violence, arouse racial and religious animosity, propagate pornography, or contradict national traditions (i.e., infringing or illegal content).

Under this Decree, the MIC is empowered to determine infringing content that needs to be deleted or blocked from access in Vietnam and to send takedown notice to cross border service providers to delete or block such content. Upon detecting any information that threatens Vietnam's national interests, the relevant authorities will immediately implement technical measures necessary to prevent such information from reaching users in Vietnam as well as notify such service provider to delete or block such information from access within Vietnam. These measures will be lifted only after such infringing content has been duly handled by service providers pursuant to the takedown request. If the MIC determines content to be infringing but does not pose an immediate threat to national interests, the MIC will send a takedown request to the cross-border service provider to coordinate removal of the content from the site. Upon receipt of a notice, the service provider must respond to the MIC and remove the identified infringing content from the site within the prescribed time. If the offshore service provider fails to so remove the infringing content, then MIC may execute the necessary technical measures to prevent the proliferation of the infringing content in Vietnam.

The Draft Decree on Sanctions against Administrative Violations in Cybersecurity published by the MIC in July 2021 aims to tighten control over livestreaming and revenue generating activities on social networks. Among other changes, it would expand the MIC's reach to cross border providers with 100,000 monthly unique visitors or more and impose a new set of stricter obligations which include:

- Block access to illegal services per MIC's request;

- Enter into content cooperation agreement with the Vietnamese press when providing information cited from the local media on the basis of copyright regulations;
- Store data and set up a branch or representative office in Vietnam according to the Law on Cybersecurity;
- Establish a department dedicated to receiving, processing, and responding to requests from competent authorities in accordance with Vietnamese law, and resolve and respond to complaints from Vietnamese users;
- Handle Vietnamese users' complaints within 24 hours from receipt of the complaints; temporarily lock or remove the complained content that affects the lawful rights and interests of others if the complaint is valid, and notify the uploader of the reasons for the locking/ removal;
- Allow only accounts, community pages, and content channels in Vietnam that have notified contact information to MIC to livestream and participate in revenue-generating services in any form;
- Publicize policies and procedures to support customers in handling network safety and security issues in a concise, clear, visible, and perceivable manner; and
- Submit an annual report by 31 December or an ad-hoc report on cross-border information provision activities upon request of MIC.

Furthermore, the Draft Decree would expand the scope of 'violating acts' and information contained in the services of cross border service providers that trigger authorities' administrative actions (e.g., distortion of history, false information for the purpose of causing public confusion or economic loss, information on prostitution, human trafficking, or contents which infringe intellectual property (IP) rights or legitimate interests of other individuals or organizations). Data center service providers would be required to obtain a business license from the MIC prior to offering data center services, retain their data for five years upon cessation of service, and sufficiently apply measures to protect the data. The draft would further effectively ban data centers

from transferring any customer data abroad. An administrative fine of up to D 160 million may be imposed on failure to block and delete infringing or illegal content within 24 hours after a request is given by the cybersecurity force of the Ministry of Public Security or a competent authority of the MIC. The Draft Decree has not yet been enacted into law.

E-Commerce

E-commerce in Vietnam is regulated by the following laws and implementing regulations mainly based on consumer protection principles:

- Law on E-Transactions 2005
- Law on Commerce 2005
- Decree No. 85/2021/ND-CP on E-commerce
- Law on Information Technology 2006
- Law on Protection of Consumer Rights 2010
- Law on Advertising 2012
- Law on Cybersecurity 2018

The main official authority for regulating e-commerce is the Ministry of Industry and Trade (MIT).

On September 25, 2021, the government passed Decree 85/2021/ND-CP (Decree 85) regulating e-commerce platforms and activities in Vietnam, which amends and supplements several aspects of Decree No. 52/2013/ND-CP (Decree 52) on e-commerce. Decree 85 is effective as of January 1, 2022, and introduces the following main amendments:

- Foreign e-commerce service providers that do not have a presence in Vietnam are required to register their e-commerce activities with the MIT and set up a representative office in Vietnam or appoint an authorized representative in Vietnam. Foreign e-commerce services providers are:
 - E-commerce websites under Vietnam domain names
 - E-commerce websites that have Vietnamese as a display language

- E-commerce websites that have more than 100,000 transactions that originated from Vietnam within a year
- Social networks that make their members directly or indirectly pay a fee to carry out certain activities will be regulated as e-commerce platforms.
- The list of five companies holding a dominant position in the e-commerce service market in Vietnam will be issued by the MIT. A foreign investor having control over one or more companies on such list will have to seek an appraisal opinion on national security for its investment from the Ministry of Public Security (MPS).

E-commerce services are defined as an e-commerce operation where a trader or an organization providing e-commerce services sets up an e-commerce website to provide the environment for other traders, organizations or individuals to carry out commercial promotion, sell goods or provide services. It excludes traders and organizations that only design websites and applications but do not directly participate in the business, operation or coordination activities of such websites and applications. Social network platforms will also be regulated as e-commerce platforms if they make their members directly or indirectly pay a fee to carry out the following activities:

- Open sales booths for displaying and/or promoting goods and services;
- Open accounts that provide interaction or transactions with customers; and
- List postings and provide services related to the delivery of goods and services with customers.

E-commerce service providers are required to:

- Register the website used to provide e-commerce platform services and post certain information about the website owner on the website homepage;
- Take prompt measures when detecting or receiving reports about any business acts in violation of laws on their e-commerce platforms (including taking down information upon request from competent authorities, removing infringing

products and coordinating with IP rights holders) and

- Cooperate with enforcement agencies in investigating and handling violations and resolving disputes and claims.
- Websites with online payment function have the following obligations:
- Assure safety and confidentiality of payment transactions of their customers as well as settle complaints and pay damages in case customer payment information via e-commerce websites is illegally altered, deleted, destroyed, copied, revealed, removed, or appropriated, causing damage to customers
- Apply the following measures to assure safety and confidentiality of customer payment transactions if self-developing payment solutions to exclusively serve their own sales e-commerce websites:
 - Set up an information system to serve payment activities and assure online connection around the clock 24 (twenty-four) hours a day and seven (07) days a week; the suspension of the system for maintenance must not exceed 12 hours each time and be notified in advance to customers
 - Encrypt information and using security protocols to prevent information leakage during transmission
 - Deploy applications which are capable of detecting, warning of, and preventing illegal access and various online attacks against the information systems serving their online payment activities
 - Have plans to control access to the system and the right to enter or leave places where information system equipment is installed to serve online payment activities
 - Establish processes and systems for copying, storing, and recovering data when the information systems serving payment activities encounter incidents, assuring copying and storage of payment data on media or online copying and caching of all data

- Storing data on each payment transaction for a time limit as prescribed in the accounting law
- If customers make payments before purchasing goods and services, customers' payments must be kept at payment service providers, and customers must be provided with tools to monitor their payment balances on the system
- Publicize on their websites the policy on confidentiality of customer payment information

Electronic signatures are legal binding based on the UNCITRAL model laws on Electronic Commerce and on Electronic Signatures adopted by Vietnam.

Certain products are prohibited from being sold online and can only be obtained through physical sales, which include:

- Shotguns and bullets, sporting weapons, combat gear
- Cigarettes, cigars, and other finished products of tobacco
- Alcoholic drinks
- Precious and rare wildlife and plants including live species and their processed parts
- Other goods restricted from trading under law

In May 2020, the government of Vietnam approved the National e-Commerce Development Master Plan, which aligns with current Vietnamese strategies and policies on the Fourth Industrial Revolution towards the overall goals of developing a digital economy and promoting national digital transformation. The plan aims to promote the broad application of e-commerce in businesses and consumers, narrow the gap between major cities and localities, build a sustainable virtual market, and increase cross-border online trading. In particular, the government actively promotes a non-cash payment society with the goal of increasing the cashless payment to over 50 percent by 2025.

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 purposes 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. 45/2019/QH14 adopted by the National Assembly on 20 November 2019
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
12. Law on Management and Utilization of State Capital Invested in Manufacturing and Business Activities of Enterprises No. 69/2014/QH13 adopted by the National Assembly on 26 November 2014
13. Law on Prices No. 11/2012/QH13 adopted by the National Assembly on 20 June 2012
14. Law on Environmental Protection No. 55/2014/QH13 adopted by the National Assembly on 23 June 2014
15. Law on Quality of Goods and Products No. 05/2007/QH12 adopted by the National Assembly on 21 November 2007
16. Law on Protection of Consumers' Rights No. 59/2010/QH12 2010 adopted by the National Assembly on 17 November 2010
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 Compulsory Purchase and Requisition of Property No. 15/2008/QH12 adopted by the National Assembly on 03 June 2008 (as amended)
22. Foreign Exchange Ordinance of the Standing Committee of the National Assembly of Vietnam No. 28/2005/PL-UBTVQH11 dated 13 December 2005 (as amended)
23. Decree No. 13/2019/ND-CP of the Government dated 01 February 2019 on science and technology enterprises
24. Decree 15/2021/ND-CP dated 03 March 2021 guiding the Construction Law
25. Decree 89/2019/ND-CP of the Government dated on 15 November 2019 amending some Articles of Decree No. 92/2016/ND-CP dated 01 July 2016 on conditional business lines in

- the aviation industry and Decree No. 03/2013/ND-CP dated 08 April 2013 on air transport business and general aviation activities
26. Decree No. 76/2018/ND-CP of the Government dated 15 May 2018 on guidelines for the Law on Technology Transfer
 27. Decree No. 34/2016/ND-CP of the Government dated 14 May 2016 on detailing the Law on Promulgation of Legal Documents
 28. 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
 29. Decree No. 31/2021/ND-CP of the Government dated 26 March 2021 on detailing and guiding the implementation of some provisions of Law on Investment
 30. Decree No. 35/2006/ND-CP of the Government dated 31 March 2006 on detailing implementation of Commercial Law 2005 regarding Franchising (as amended)
 31. 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
 32. Decree No. 152/2020/ND-CP of the Government dated 30 December 2020 on detailed regulations on implementing a number of articles of the Labor Code regarding foreign workers in Vietnam
 33. Decree 134/2016/ND-CP of the Government dated 01 September 2016 guiding the Law on Export and Import Duties
 34. Circular No. 02/2021/TT-NHNN of the State Bank of Vietnam dated 31 March 2021 on foreign currency transactions on foreign currency market by credit institution permitted to make foreign currency transactions
 35. Circular No. 06/2019/TT-NHNN of the the State Bank of Vietnam dated 26 June 2019 guiding the foreign exchange management for the foreign direct investment in Vietnam
 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. 749/QD-TTg dated 03 June 2020 on approving the “National Digital Transformation Program to 2025, with an orientation to 2030”
 38. 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
 39. General Agreement on Trade in Services (GATS)
 40. Vietnam’s Schedule of Specific Commitments in Services in the WTO
 41. ASEAN Framework Agreement on Services
 42. The Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam
- Secondary Sources**
43. Vietnam National Database on Legislative documents (<http://vbpl.vn/pages/portal.aspx>)
 44. Official Gazette of Socialist Republic of Vietnam (<http://congbao.chinhphu.vn/>)
 45. Hanoi Official Gazette (<https://www.thudo.gov.vn/egazette.aspx>)
 46. Investment Promotion Center- South Vietnam’s website (<http://www.ipcs.vn/en/>)
 47. Investment Promotion Center -North Vietnam’s website (<http://ipcn.mpi.gov.vn/home/news.aspx?CatId=39>)
 48. Investment Promotion Center for Central Vietnam’s website (<http://centralinvest.gov.vn/Default.aspx?lang=en>)

This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment. 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 December 31, 2021, 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.