

Section 1

Inventory of FDI-Related Legislation

The FDI Legislative Framework

Vietnam's framework of FDI-related legislation began to develop only six years ago. Under Vietnam's pre-1987 centrally-planned economy, legislation to govern the activities of foreign investors was essentially non-existent. With the announcement of *Doi Moi*, however, the Vietnamese leaders recognized the need for such legislation, and set out to create a new framework. For the government – untrained in market economics and commercial law – the task has not been easy.

The result of Vietnam's FDI law making efforts to date is, to borrow the words of one observer, "legal indigestion"¹. Over 100 FDI-related legal documents have been issued since 1987. The development of these documents has not followed an organized, rational schedule, but instead has been somewhat haphazard, in response to individual crises.

Purpose of this Section

While it is impractical (and impossible) for investors to understand the entire FDI legislative framework, it is important for them to be familiar with the key elements. To this end, this section of the Handbook provides an inventory of the legislative documents that are identified as most important in the recent academic and business literature on Vietnam (see *Appendix 1* for sources).

The inventory is organized by aspect of investment. Each piece of legislation is outlined in 1 of 11 categories:

- Law on Foreign Investment (and amendments);
- forms of investment;
- tax;
- intellectual property;
- repatriation of capital and profits;
- labour;
- real estate;
- dispute resolution;
- finance, banking and forex;
- representative offices; and
- import/export.

In cases where a particular legal document contains provisions that apply to more than one aspect of FDI, the individual provisions are outlined separately under the different categories.

For quick reference, *Appendix 2* presents a summary table of all the legislation included in the inventory.

Additional Introductory Notes

(a) Legislative Hierarchy

Readers will notice immediately that the inventory includes Laws, Ordinances, Decrees and Circulars. In general, these four types fit into a legislative hierarchy. At the top of the hierarchy are Laws and Ordinances, which sketch out broad principles in a given subject area. Laws are promulgated by the National Assembly, whereas Ordinances are passed by the Standing Committee of the National Assembly when the National Assembly is not in session. Below Laws and Ordinances come Decrees. These are detailed regulations that implement the Laws and Ordinances, and are passed by the Government. Circulars come after Decrees and are issued by individual ministries as interpretations of their authority and policies under the higher orders of legislation.