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# Vietnam Legal Handbook for Foreign Investors

First Edition

November 1993

Dept. of External Affairs  
Min. des Affaires extérieures

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# **Vietnam Legal Handbook for Foreign Investors**

**First Edition**

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The Handbook is intended to provide readers with information regarding foreign investment and related developments in Vietnam. Research was completed in early December 1993. Readers are cautioned that the Handbook is not a source of legal or other professional advice. If such advice or other professional services are required, the assistance of a qualified advisor should be obtained. No responsibility for loss occasioned to any person acting or refraining from action as a result of the material in this publication can be accepted by the authors.

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This is the initial edition of the Handbook. All comments, corrections and amendments will be gratefully received by the authors and will be reflected in the next edition. It is hoped that update supplements will be published every six months, beginning in June, 1994.

## Table of Contents

Introduction.....	1
Purpose of this Handbook.....	1
Foreign Direct Investment and Vietnam .....	1
Methodology.....	1
Organization.....	1
Caveats.....	2
Section 1: Inventory of FDI-Related Legislation.....	3
The FDI Legislative Framework.....	3
The Purpose of this Section .....	3
Additional Introductory Comments.....	3
1. The Inventory.....	5
1.1 Law on Foreign Investments.....	5
1.2 Forms of Investment .....	5
1.3 Tax.....	6
1.4 Intellectual Property.....	10
1.5 Repatriation of Capital and Profits .....	11
1.6 Labour.....	12
1.7 Land Use.....	13
1.8 Dispute Resolution.....	15
1.9 Banking, Finance and Forex .....	18
1.10 Representative Offices.....	19
1.11 Import/Export .....	20
Endnotes.....	22
Section 2: Gaps and Deficiencies in the FDI Legislative Framework .....	23
2. Gaps and Deficiencies.....	24
2.1 Law on Foreign Investment .....	24
2.2 Forms of Investment .....	24
2.3 Tax.....	26
2.4 Intellectual Property.....	26
2.5 Repatriation of Capital and Profits .....	27
2.6 Labour.....	27
2.7 Land Use.....	27
2.8 Dispute Resolution.....	29
2.9 Finance, Banking and Forex .....	31
1.10 Representative Offices.....	32
2.11 Import/Export .....	33
2.12 Other .....	33
Endnotes.....	34
Section 3: Setting up in Vietnam.....	35
3.1 Investment Approval Process.....	35
3.1.1 Introduction .....	35
3.1.2 Flow Chart.....	35
3.1.3 Details.....	36
3.1.4 Important Points .....	44
Endnotes.....	46

3.2 Representative Office Approval.....	47
3.2.1 Introduction .....	47
3.2.2 Flow Chart .....	47
3.2.3 Details.....	48
3.2.4 Important Points .....	50
Endnotes.....	51
Section 4: Six Points to Remember .....	52
Endnotes.....	53

**Appendices:**

**Appendix 1: Selection of Sources Used**

**Appendix 2: Summary Table of FDI Legislation, and Gaps and Deficiencies**

**Appendix 3: Application Documents**

# Introduction

## Purpose of this Handbook

The purpose of this handbook is to provide Canadian businesses with current, useful information on the legislative framework that governs foreign direct investment (FDI) in Vietnam, and the administrative processes through which investment is approved.

## Foreign Direct Investment and Vietnam

Since 1987, Vietnam has been following *Doi Moi*, a master economic strategy designed to promote the country's development in a market-based economy. FDI is the key element in this strategy. Vietnam is counting on FDI to transform the country from a centrally-planned, third world nation into East Asia's next economic tiger.

Vietnam's need for FDI creates new opportunities for foreign businesses. Many investors have already capitalized on these opportunities and are active in several sectors of the Vietnamese economy. Canadian businesses, to date, do not have a large presence in Vietnam; however, this situation is sure to change as more Canadians consider Vietnam's commercial possibilities<sup>1</sup>.

Canadian businesses that explore Vietnam should first familiarize themselves with both the legislative framework that governs FDI, and the administrative processes through which investment is approved. While there are several other important factors to consider in the investment exercise, the legislative framework and administrative processes are arguably the most important. This Handbook focuses on these two factors.

## Methodology

A three step methodology was employed to gather the necessary information on the legislative framework and administrative processes.

- An extensive review of the economic and business literature from Vietnam and the region was performed to produce a first draft of the Handbook.
- In May, 1993, and again in November, 1993, Professor Bill Neilson of UVic Law took the first draft to Vietnam and received several comments from experts in the field. On the same trips, Professor Neilson also collected important current information not available in Canada.
- Finally, the information from all sources was compiled and organized as best as possible for this, the first edition of the Handbook.

*Appendix 1* lists all of the information sources used.

## Organization

The Handbook is organized into four sections, the first two of which address the FDI legislative framework. Section 1 provides an inventory of the most important and current pieces of economic legislation that make up the framework. Section 2 identifies the major gaps and deficiencies – pitfalls – in the framework that have been identified by current and past investors, and experts in Vietnam.

Section 3 addresses the investment approval process and the representative office process. Simple flow-charts are used to outline each process' sequence of events. Details in the text support the flow-charts. Section 4 concludes the Handbook in an advisory spirit by listing Six Points to Remember when investing in Vietnam.

## Caveats

There are four important caveats to state here.

- First, the information on Vietnam's legislative framework and administrative processes ages quickly. In their quest to accommodate investors, Vietnamese legislators and administrators are constantly changing laws and administrative practices. Between the first draft and final version of this Handbook, for example, two major laws were introduced, several minor ones were amended, and several changes were made to the administrative processes.
- Second, it is very difficult to obtain all relevant information. There are many ministries and agencies at different levels of government active in the FDI arena. Unfortunately, the various players are not always coordinated, but instead often work in isolation or even at cross purposes. It is difficult if not impossible to keep track of all FDI-related actions.
- Third, investors should expect variations in both the legislation and administrative processes. As with most regulatory systems, the real meaning of laws and practices lies in their daily implementation.
- Finally, this Handbook is meant as a general guide to present and potential investors. The Handbook cannot be expected to provide detailed information on specific sectors and industries such as financial services, hospitality, oil and gas, and others.

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## Endnotes

- <sup>1</sup> One source reports that Canada is the tenth largest investor in Vietnam, with 10 projects worth US \$160 million. It should be noted, however, that most of this involvement is thanks to PetroCanada's activities in oil and gas exploration. Subtract PetroCanada from the total and Canada's involvement shrinks considerably.

## 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"<sup>1</sup>. 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.

Decrees and Circulars are often the more important pieces of legislation for investors, since these are the documents that spell out the regulatory details.

**(b) National vs. Provincial Governments**

Finally, It is important to note that the inventory focuses on national legislation. Legislation from the provincial governments (People's Committees) is not unimportant; it is simply not well documented.

# 1. The Inventory

## 1.1 Law on Foreign Investment

**Name:** Law on Foreign Investment in Vietnam.  
**Agency:** National Assembly.  
**Date:** Original Law passed on December 29, 1987. Amendments to the Law introduced on June 30, 1990, and on January 2, 1993.  
**Details:** See below under Decree 18.

\*\*\*\*\*

**Name:** Decree No. 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam  
**Agency:** Government.  
**Date:** April 16, 1993.  
**Details:**

The Law on Foreign Investment and Decree 18 should be viewed as a package. The Law is essentially a policy statement that expresses Vietnam's post-1987 desire to promote FDI. The Decree provides substantial detail to give real meaning to the statements in the Law. Together the Law and Decree serve as the legal foundation to regulate foreign investment in Vietnam.

The Decree is especially important for its range of provisions. In total there are 14 Chapters and 105 Articles that apply to several aspects of FDI. Aspects addressed include: the range of economic sectors open to investors; the establishment, operation and liquidation of the various forms of investment; dispute resolution; tax; foreign exchange; and guarantees to investors. In addition, the Decree in places refers readers to complementary legislation. A case in point is Article 68 on Labour Relations, which directs readers to the regulations in a separate decree.

Due to the wide range and importance of the provisions in Decree 18, several of the individual articles are identified throughout this inventory in the relevant categories.

## 1.2 Forms of Investment

**Name:** Chapters 2,3,4, and 5 of Decree No. 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam.  
**Agency:** Government.  
**Date:** April 16, 1993.  
**Details:**

Decree No. 18 gives details on the forms of investment that, according to the Law on Foreign Investment, are acceptable in Vietnam. There are four acceptable forms.

1. Business Cooperation Contracts (BCCs) - Chapter 2 of the Decree.
2. Joint Ventures (JVs) - Chapter 3 of the Decree.
3. 100% Foreign Owned Companies (FOCs). Prior to the 1993 amendments to the Law on Foreign Investment, FOCs were not encouraged by the Vietnamese Government. They are outlined in Chapter 4 of the Decree.
4. Build-Own-Transfer (BOT). BOTs are agreements between Vietnamese Government agencies and foreign investors to construct infrastructure. BOTs are introduced in the 1993 amendments to the Law, and are addressed very briefly in Chapter 5 of Decree 18. Article 56 of Decree 18, however, advises readers that an upcoming "special statute" will address BOTs in more detail (release date unknown).

In Chapter 5 of Decree 18, the Government makes brief reference to a fifth form of investment, called an Export Processing Enterprise (EPE). An EPE is simply a JV, FOC, or BOT company that is located in an Export Processing Zone.<sup>2</sup> Chapter 5 of Decree 18 recognizes EPEs, but refers readers to an upcoming special statute for further detail (release date unknown).

## 1.3 Tax

The main tax issues for foreign investors include:

- corporate income tax;
- withholding tax on profit remittances;
- turnover tax;
- import and export duties;
- land tax; and
- personal income tax.

### 1.3.1 Corporate Income Tax

**Name:** Chapter 9 of Decree No. 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam.  
**Agency:** Government.  
**Date:** April 16, 1993.  
**Details:**

Articles 66 to 69, and article 72 in Chapter 9 provide details on the corporate income tax (profit tax) that is levied on both enterprises with foreign invested capital (JVs and FOCs), and foreign partners of BCCs. Three basic rates are set out: 25% for enterprises not considered privileged cases; 10%-20% for enterprises that qualify as privileged cases; and a minimum of 25% for investments in oil and gas. Article 67 outlines the conditions an enterprise or BCC must meet to be considered privileged.

Article 69 stipulates cases in which an enterprise with foreign invested capital may be temporarily exempted from paying part or all of its corporate income tax. These incentives are not extended to BCCs.

Finally, article 72 states that both enterprises with foreign invested capital and BCCs that re-invest their share of profits for a 3-year period are entitled to a corporate income tax refund on the amount re-invested.

The State Committee for Cooperation and Investment (SCCI) is the agency that determines the exact corporate income tax rates for each enterprise with foreign capital, and each BCC. The SCCI also decides which enterprises with foreign capital qualify for reductions and exemptions as set out in article 69. The SCCI is helped in these roles by the Ministry of Finance, which provides written assessments on the investments.

\*\*\*\*\*

**Name:** Circular No. 48-TC-TCT Guiding the Implementation of the Regulations on Business Income Tax Rates, Reduction and Exemption With Respect To Enterprises With Foreign Capital Investment.  
**Agency:** Ministry of Finance.  
**Date:** June 30, 1993.  
**Details:**

This Circular provides detailed guidelines to implement the corporate tax regime set out in Decree 18. The Circular addresses three aspects of business tax.

1. *Rates.* The Circular breaks down the 3 general tax categories from Decree 18 into five specific rates.
  - (a) 10% — Construction of certain infrastructure facilities; re-forestation for exploitation purposes; projects identified as important on the lists of projects published by the SCCI.
  - (b) 15% — Construction of other infrastructure facilities; exploitation of natural resources other than oil and gas and rare resources; heavy industries; investments in mountainous regions and difficult socio-economic areas (identified); transfer of assets to Vietnam without compensation at the end of a project.
  - (c) 20% — Projects that meet two criteria: employ over 500 Vietnamese; use advanced technology; export 80% of products; and have at least US \$10 million legal capital in the case of a foreign invested enterprise, or prescribed capital in the case of a BCC.
  - (d) 25% — For services, including most hotel projects.
  - (e) Over 25% — Oil and Gas and precious resources. SCCI determines on case-by-case basis.
2. *Duration of Applicable Rates.* The 10% rate is applicable for 8-10 years. The other rates apply for 5-7 years. The SCCI decides the duration of all rates on a case-by-case basis.
3. *Tax Reductions and Exemptions.* An enterprise may enjoy tax exemptions for as long as 4 years from the year in which profit is generated, and 50% reductions for as long as four subsequent years. These benefits depend on the nature and location of the investment. Note that in keeping with Decree 18, article 69, these incentives are not afforded to BCCs.

### 1.3.2 Withholding Tax on Profit Remittances

**Name:** Chapter 9 of Decree No. 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam  
**Date:** April 16, 1993  
**Agency:** Government.  
**Details:**

Article 70 states that a foreign investor in a foreign-invested enterprise or a BCC must pay a withholding tax on the remittance or repatriation of profits. The rate of the tax is between 5% and 10%, depending on the amount of legal capital (prescribed capital) the investor contributed to the enterprise (BCC). The higher the contribution, the lower the remittance of profits tax rate.

As with the corporate income tax, the SCCI sets the actual withholding tax rate and determines which cases qualify for reductions or exemptions.

### 1.3.3 Turnover Tax

**Name:** Law on Turnover Tax (plus 1993 Amendments).  
**Date:** Original in Summer, 1990. Amendments on September 5, 1993.  
**Agency:** National Assembly.  
**Details:**

The Law and recent amendments stipulate that foreign invested enterprises and BCCs must pay a turnover tax on goods and services sold in Vietnam. The tax does not apply to goods manufactured for export. According to the Law, the actual tax rate ranges from 1% to 40%, depending on the type of good or service. For example, machinery, charcoal, and medical instruments are taxed at 1%, whereas ship brokering is taxed at 40%.

The recent amendments address various issues. the definition of turnover in the case of credit activities and other banking services; the conditions to qualify for a tax reduction of up to 50%; and fines for late payers.

### 1.3.4 Import and Export Duties

The legislation presented here deals with import and export duties for foreign invested companies and BCCs outside of the few Export Processing Zones (EPZs). For information on duties for Export Processing Enterprises in the EPZs, turn to part 11 of this Section, which gives information on a separate piece of legislation that deals solely with EPZs.

\*\*\*\*\*

**Name:** Law on Export and Import Duties  
**Agency:** National Assembly  
**Date:** March 1, 1993  
**Details:**

The Law addresses the import and export of goods and stipulates that such goods shall be subject to import and export duties. The Law also addresses actual duties, and outlines exemptions.

The duties are divided into "standard" and "preferential" rates. Preferential rates shall not be lower than 50% of the standard rate for the same good. The Government is responsible for setting a specific rates for groups of commodities and individual products.

A variety of goods may be exempted from duty, including goods and materials imported for the processing of export products, and some goods imported and exported by enterprises with foreign investment and foreign partners to BCCs. It is not clear if the Law exempts equipment and other materials to be used in the capital construction of a foreign invested enterprise, or to be used as fixed assets in a BCC (but see next entry).

\*\*\*\*\*

**Name:** Chapter 9 of Decree 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam.  
**Agency:** Government.  
**Date:** April 16, 1993  
**Details:**

Chapter 9 complements the Law on Import and Export Duties by clarifying the import tax exemptions available to both foreign-invested enterprises and BCCs. Note, however, that the chapter does not comment on the actual import tax rates or export duties charged — this information is only in the Law.

Article 76, section 1 exempts all imported machinery, equipment and other materials to be used in the capital construction of an enterprise or to be used as fixed assets in a BCC. Section 3 of the same article exempts invention patents, technical know-how and other forms of technology transfer that are contributed by the foreign partner as part of the legal capital of an enterprise, or initial capital of a BCC.

Section 2 of article 76 states that all materials imported for the production of export goods are subject to a temporary import duty. The section explains, however, that the tax payment will be refunded once the goods are exported.

### 1.3.5 Land Tax

In Vietnam, as in many other Socialist countries, individuals cannot buy or own land. Instead, all land is owned by the "people" and is administered by the State.

Enterprises with foreign invested capital - not including BCCs - can lease the rights to use land from the Government<sup>3</sup>. An enterprise that leases such rights must pay a specific rent, as stipulated by the Ministry of Finance (see part 7 of this Section).

In addition to paying rent, foreign invested enterprises which lease land must pay a tax on their land-use rights. Information on the actual tax rates and conditions is incomplete; however, it appears that the key piece of legislation is the Decree on Real Estate Tax.

\*\*\*\*\*

**Name:** Decree on Real Estate Tax.  
**Agency:** Government.  
**Date:** September 14, 1991.  
**Details:**

Very little information is available on this Decree. What is known is that the Decree identifies the types of real estate that are subject to Real Estate Tax, and specifies exemptions. Specific tax rates are included for land use rights and ownership of buildings.

### 1.3.6 Personal Income Tax

**Name:** Ordinance on Income Tax of High Income Earners  
**Agency:** Standing Committee of the National Assembly.  
**Date:** Originally passed on December 27, 1990. Amended on April 22, 1991.  
**Details:**

All foreign nationals who work and receive an income in Vietnam are expected under this Ordinance to pay personal income tax. According to article 1, taxable income includes all regular income such as salary, wages, allowances and bonuses. Income also includes employer-provided benefits such as housing allowances and "hardship" bonuses. Note that taxability is based on origin of income rather than the taxpayer's residence. As such, income earned in Vietnam but received abroad is taxable.

The personal income tax rate ranges from 0% to 50%, depending on income level.

### 1.3.7 General

**Name:** Circular No. 55-TC/TCT: Regulations for the Implementation of the Provisions relating to Taxation of Enterprises with Foreign Owned Capital, Foreign Parties to BCCs Conforming with the Law on Foreign Investment.

**Agency:** Ministry of Finance.

**Date:** August 1, 1993.

**Details:**

This Circular, which is consistent with Decree 18, contains detailed *implementing provisions* for the tax obligations of foreign invested enterprises. The obligations include the Business (corporate) Income Tax, Turnover Tax, Profit Remittance Tax, Import and Export Duties and others. The Circular does not apply to BOTs (recall that BOTs are the subject of upcoming specialized legislation).

The Circular's guidelines cover a number of issues, including:

- allowable deductions in the calculation of profits and expenditures;
- payment procedures and timing;
- basic accounting and auditing requirements;
- the rights and obligations of local tax authorities in regards to tax collection and enforcement; and
- tax issues that arise on the termination and liquidation of foreign investment projects. (Note that on this point, the Circular states that termination and liquidation must be approved by the local tax authorities before a foreign party can remit capital overseas.)

## 1.4 Intellectual Property

### 1.4.1 General Industrial Property

**Name:** Decree No. 13 LCT/HDNN8 on the Protection of Industrial Property Rights

**Agency:** Government.

**Date:** February 11, 1989.

**Details:**

In this Decree, the term Industrial Property Rights includes the ownership of rights to:

- an invention;
- a utility solution;
- an industrial design or trademark; and
- the rights to use an appellation of origin.

The Decree establishes an administrative hierarchy for the management of industrial property activity. In descending order, the groups responsible are the Government, the State Committee for Science, and the National Office of Inventions.

The rights of ownership and utilization are also laid out in the Decree. As regards inventions, utility solutions, industrial designs and trademarks, the owner has the rights of possession, exclusive use and right to transfer. Owners of titles of protection to use an appellation do not have the right of transfer.

Inventions and utility solutions are protected by patents with terms of 15 years and 6 years respectively. Certificates protect the other types of property. Industrial design certificates have a 10 year term, trademark certificates have 5 year terms, and appellations have no time limit.

If rights are infringed, the owner may take legal action through the Ministry of Trade or the People's Courts.

### 1.4.2 Specifically Trademarks

**Name:** Ordinance on Trademarks, and Amendments  
**Agency:** Standing Committee of the National Assembly.  
**Date:** Originally promulgated on December 21, 1982. Amended on March 20, 1990.  
**Detail:**

The Ordinance (and subsequent amendments) is probably the most significant piece of legislation to govern trademarks. It sets out four necessary aspects of trademark protection. First, an administrative structure for issuing trademark patents is established. The Government heads the hierarchy, followed by the State Committee for Science, and the National Office of Inventions.

Second, the Ordinance outlines the rules for obtaining trademark rights. The most important point here is the first-to-file rule, under which the Vietnamese authorities grant the trademark certificate to the first company or individual that registers the trademark, regardless of the trademark's origin.

Third, the Ordinance explains the criteria that trademarks must meet in order to be registered. Finally, the legislation deals with the enforcement of trademarks. Protection can be sought through administrative actions with the Market Management Bureaus of the Ministry of Trade, or through the People's Courts.

\*\*\*\*\*

**Name:** Decree No. 84-HDBT (exceptions to the first-to-file rule).  
**Agency:** Government.  
**Date:** March 20, 1990.  
**Details:**

Under the terms in this Decree, foreign owners of trademarks who faced competing claims to registration in Vietnam were exempted from the first-to-file rule from March 20, 1990 to March 20, 1992. In 1992, the Government extended the exemption period to March 20, 1993. It is not clear if the 1993 cut-off date was respected.

## 1.5 Repatriation of Capital and Profits

**Name:** Articles 22-23 Law on Foreign Investment in Vietnam (and Amendments).  
**Agency:** National Assembly.  
**Date:** December 29, 1987 (amended 1990 and 1993).  
**Details:**

Article 22 guarantees foreign investors in Vietnam the right to repatriate:

- their share of profits from business operations;
- approved payments due to them for provision of technology or services;
- the principal and interest due on any loan made;
- invested capital; and
- other legally owned sums of money or assets.

Repatriation of profits and other sources of income are subject to the withholding tax on profit remittances (see part 3 of this Section).

Article 23 gives expatriates working in an enterprise with foreign invested capital the right to repatriate their incomes after the Vietnamese personal income tax has been paid (see section on tax).

## 1.6 Labour

The Law on Foreign Investment in Vietnam and its accompanying 1993 Decree 18 do not address labour issues in any detail. Instead, article 65 of Decree 18 simply refers the reader to the separate Decree 233, which deals with all labour issues for enterprises with foreign invested capital.

Note that all of the legislation presented in this section regulates labour in enterprises with foreign invested capital only; BCCs are not explicitly addressed. Apparently, current government policy requires that the Vietnamese party to a BCC must handle all labour matters.

**Name:** Decree No. 233-HDBT Regulating Employment in Enterprises with Foreign Invested Capital.  
**Agency:** Government.  
**Date:** June 22, 1990.  
**Details:**

Provisions in the Decree cover all important aspects of labour relations in foreign invested enterprises. Recruitment is addressed first. An enterprise is entitled to hire any Vietnamese citizen over 18 years old. Article 3 of the Decree outlines three acceptable methods of recruitment. First, enterprises may hire persons introduced by a local Labour Employment Agency. Second, the enterprise may contract a Labour Employment Agency to recruit persons that meet certain criteria. Third, if the first two methods fail, the enterprise may hire directly. Note that the first two methods must be completely exhausted before direct employment is allowed.

Wages must be mutually agreed upon and reflect skill levels and productivity. The minimum wage in 1990 was set at US\$50 per month, and had to be indexed (but see next entry).

Enterprises must create favourable conditions for unions to operate efficiently. As regards labour contracts, Employment Contracts are required between each employee and the employer. Collective agreements between the workers' representative and the employer are required after 6 months of operation.

Other topics addressed in the Decree include: working hours; holidays; annual leave; overtime; social insurance; and termination.

Finally, labour disputes are addressed. Conflicts are to be resolved through negotiation, under the auspices of the Local Labour Agency or an Arbitrator appointed by the Minister of Labour. Final recourse is the People's Court system.

\*\*\*\*\*

**Name:** Decision No. 242 Concerning the Minimum Wage.  
**Agency:** Ministry of Labour.  
**Date:** May 5, 1992.  
**Details:**

This Decision - which was prompted by the SCCI - lowered the minimum wage acceptable in foreign invested enterprises. The minimum monthly salary of US\$50 was lowered to US\$35 in Hanoi and Ho Chi Minh City, and US\$30 elsewhere.

\*\*\*\*\*

**Name:** Decree No. 18-CP Regulating Collective Labour Agreements.  
**Agency:** Government.  
**Date:** December 26, 1992.  
**Details:**

A collective labour agreement is a written document executed between the representative of a group of workers and their employer. The agreement concerns the rights, obligations and responsibilities of the parties involved.

Enterprises with foreign capital investment must submit a collective labour agreement to the Ministry of Labour bureau at the provincial or city level. Such agreements must be written on an equal, overt and negotiated basis.

Note that the Decree also includes guidelines on the implementation of collective agreements, dispute resolution and breach of agreement provisions.

## 1.7 Land Use

**Name:** Law on Land.  
**Agency:** National Assembly.  
**Date:** July 14, 1993.  
**Details:**

The 1993 Law on Land replaces its 1987 predecessor as the principle piece of legislation to regulate all types of land use in Vietnam. Unfortunately, foreign investors may have difficulty understanding the Law for two reasons. First, it is not written specifically for foreign investors, and does not address several issues important to investors. Second, the Government has not, as of December 1993, released final sets of detailed regulations to implement the Law. Without detailed regulations, it is difficult for foreigners to determine *exactly* their rights and obligations. This uncertainty is exacerbated by the well-meaning but confusing interpretations of the Law given by different experts.

The 1993 Law on Land is divided into seven chapters. Chapter 1 states that all land in Vietnam is owned by the people and administered exclusively by the State. Individuals cannot own land, but can acquire land use rights. Enterprises with foreign invested capital can lease land use rights.

Chapter 2 of the Law deals with the State's administration of land. In general, the People's Committees are responsible for all administration of land within the various localities. Administrative functions include zoning, allocation of land use rights, inspection to ensure compliance with rules, and the resolution of land disputes. As regards land disputes, it is important to note that the Law sends certain types of disputes to the Courts.

Chapter 3 identifies six categories of land - forests, agricultural, residential rural, urban, specialized and unused - and particular rules that apply to each type.

Chapters 4 and 5 are quite important to investors. Chapter 4 lists, in general terms, the rights and obligations of all land users, including foreign invested enterprises. Key rights include the right to transfer land use rights under certain circumstances, and the right to be indemnified for actual losses incurred in the event that the State repossesses the land. The right to mortgage land use rights is afforded to Vietnamese households and individuals, but is not extended to foreign investors. Obligations include the obligation to pay tax, to use the land in accordance with its intended purpose, to pay previous users for reallocated land, and to comply with environmental regulations.

Chapter 5 is devoted entirely to foreign investors. It tells investors that any land rented to foreign invested enterprises must be accounted for and approved in the enterprise's feasibility study, which is formulated under the

Law on Foreign Investment in Vietnam. The Chapter also mentions that the duration of land leases will conform to the duration of the enterprise, as stipulated in the Law on Foreign Investment.

Chapters 6 deals with penalties for land violations, and Chapter 7 addresses the implementation of the Law. The final article of Chapter 7 (article 89) states specifically that the "Government shall provide details for the implementation of this Law" (see next entry).

\*\*\*\*\*

**Name:** Decree of the Government on Land Leases to Foreign Organizations, Individuals and Vietnamese Joint Venture Parties – Set 5 (Draft).  
**Agency:** Government.  
**Date:** October 15, 1993 (intended date of effect – unsure if deadline met).  
**Details:**

The Government recently considered five sets of draft implementing regulations for the 1993 Law on Land. Each of the sets concerns a separate area of the Law. Set 5 addresses the Law's provisions for foreign investors. Specifically, Set 5 provides guidance on land leases to foreign organizations and individuals, and on land leases to Vietnamese organizations and individuals who cooperate with foreigners. The draft was scheduled to go into effect on October 15, 1993; however, it is not clear if this schedule was met.

\*\*\*\*\*

**Name:** Ordinance on Residential Housing.  
**Agency:** Standing Committee of the National Assembly.  
**Date:** March 26, 1991.  
**Details:**

Article 16 of the Ordinance allows foreigners to own houses during the period of their investment in Vietnam. Owners of housing have the right to use the house as security for a guarantee, and transfer the ownership of the house.

Note that in accordance with the Law on Land, the rights of ownership, use as collateral, and transfer are limited to the residential building itself and do not necessarily apply to the land use rights.

\*\*\*\*\*

**Name:** Circular No. 50-TC-TCDN Guiding the Implementation of the Regulations on Rental Rates for Land, Water Surface and Sea Surface With Respect to Foreign Investment Projects.  
**Agency:** Ministry of Finance.  
**Date:** July 3, 1993.  
**Details:**

The State of Vietnam leases land use rights to foreign invested companies at the rates specified in this Circular. Land is divided into two major categories: urban and rural. Within the urban category, there are five sub-categories of cities in which rents range from US \$0.50 to US \$18.00 per square metre, per year. For example:

- Sub-category 1 is Ho Chi Minh City, where land rents range from US \$2.50 - US \$18.00;
- Sub-category 2 is Hanoi, where land rents range from US \$1.50 - US \$16.50; and
- Sub-category 3 includes Haiphong, Hue, Danang and Bien Hoa, where land rents range from US \$1.50 - US \$12.00.

Rural land rents are far less expensive.

The actual amount or rent payable is determined by the SCCI and the Ministry of Finance and is stated in each investment license. Every five years, the SCCI and Ministry of Finance may adjust the rental rates; however, adjustments shall not be greater than 15%.

If the investor pays the rent up-front for the project's entire term, the rent is reduced by:

- 15% if the project has a term of over fifteen years; and
- 10% if the project has a term of between five and fifteen years.

Finally, Decree 18 on Foreign Investment states that "in necessary cases" the Vietnamese partner to a JV may make its capital contribution in the form of land rights (article 26). Where such a contribution is approved, the calculation of the contribution's value is based on the applicable rental rate in this Circular, the total area and the contribution schedule.

## 1.8 Dispute Resolution

The legislative framework that deals with different types of dispute resolution can be confusing, despite recent attempts by government to rationalize the system. The important pieces of legislation are outlined here. Section 2 of the report highlights some of the gaps and deficiencies in the legislative framework that may cause confusion.

### 1.8.1 Law on Foreign Investment

**Name:** Decree No. 18: Regulating in Detail the Implementation of the Law on Foreign Investment in Vietnam.  
**Agency:** Government.  
**Date:** April 16, 1993.  
**Details:**

Chapter 13 of Decree 18 sets out three programs of dispute resolution.

1. Article 100 deals with disputes between the partners of a JV or BCC. All disputes shall first be resolved "through negotiation and conciliation between the parties concerned". In the event that the parties fail to reach an agreement, the dispute may be referred to a Vietnamese arbitrator, an arbitrator of a third country, an international arbitrator<sup>4</sup>, or an arbitration panel chosen by the parties involved.
2. Article 101 states that disputes between Vietnamese organizations and foreign invested enterprises, or Vietnamese organizations and the foreign partner(s) of BCCs, must be settled in accordance to Vietnamese laws and by a Vietnamese arbitration body. It is believed that a "Vietnamese arbitration body" refers to the State Economic Arbitration body under the central Government, or the provincial/city bodies under the People's Committees.
3. Article 102 states that disputes between foreign interests and Government agencies shall be settled through conciliation. If such efforts fail, "the case shall be brought before a Government competent authority".

### 1.8.2 Specifically Economic Contracts

**Name:** Ordinance on Economic Contracts.  
**Agency:** Standing Committee of the National Assembly.  
**Date:** September 25, 1989.  
**Details:**

This Ordinance stipulates that disputes in economic contracts between juridical persons must be referred to economic arbitration.

Economic contracts are defined in Article 1 as written agreements  
 ...on the implementation of production, exchange of goods, services, researches, and the application of scientific and technical know-how; or any other business agreements which clearly set out the rights and responsibilities of each party.

Article 2 states that an economic contract can only be formed between Vietnamese juridical persons. The definition of a juridical person includes enterprises with foreign invested capital, but not the foreign partner in a BCC.

The Ordinance on Economic Arbitration outlined next establishes the economic arbitration structure for disputes in economic contracts.

\*\*\*\*\*

**Name:** Ordinance on Economic Arbitration.  
**Agency:** Standing Committee of the National Assembly.  
**Date:** January 10, 1990.  
**Details:**

This Ordinance was adopted in an attempt to create a system for economic contract dispute resolution that did not involve the People's Courts.

For disputes that involve foreign parties, there are 2 levels of economic arbitration under the Ordinance. The first is the State Economic Arbitration Committee in Hanoi. The second is the provincial and city economic arbitrators. Most disputes can be reviewed at either level. Appeals from the lower level are heard by the State Committee. The decision of the State Committee is final.

Article 21 of the Ordinance outlines the powers of the arbitrators. Arbitrators may, for example, request independent expert advice and establish valuation committees in circumstances where there is no established market for disputed assets. Arbitrators may also require banks to place interim restrictions on bank accounts. Finally, arbitrators may, of course, issue a variety of awards.

### 1.8.3 Labour Disputes

**Name:** Articles 56-57, Decree No. 233-HDBT Regulating Employment in Enterprises with Foreign Invested Capital.  
**Agency:** Government.  
**Date:** June 22, 1990.  
**Details:**

There are two types of disputes addressed in this Decree: wrongful termination of contract; and implementation of collective agreements.

Articles 56 and 57 outline the dispute resolution procedure. To begin with, Article 57 states that disputes must first be settled by direct negotiation in the spirit of reconciliation. Article 56 refers both sides to Chapter 11 of a Circular Letter on Implementing Labour Regulation in Enterprises with Foreign Invested Capital. Chapter 11 outlines a 4 step procedure.

1. Complaints must be taken to the local office of the Ministry of Labour.
2. If the parties are not satisfied with the results, the matter is transferred to a higher level in the Ministry.
3. If the parties are still unsatisfied, they may choose one of three forms of resolution:
  - mediation, with the local labour office as mediator;
  - arbitration, with an arbitrator satisfactory to both sides; or
  - arbitration, with an arbitrator appointed by the Minister of Labour.
4. If all efforts fail, the parties may bring the dispute before the People's Court.

### 1.8.4 Intellectual Property

**Name:** Ordinance on the Protection of Industrial Property Rights.

**Agency:** Standing Committee of the National Assembly.

**Date:** February 11, 1989.

**Details:**

Disputes that involve intellectual property usually arise when a party uses a registered trademark or one similar to it without the consent of the owner. Owners who suffer infringement must follow the dispute resolution measures in the Ordinance.

First, owners must attempt to settle the matter by negotiation. If this fails, the owner can bring the dispute before the People's Court in Hanoi or Ho Chi Minh City. It should be noted, however, that the Courts are not viewed as adept at handling intellectual property infringements.

To avoid the Courts, the owner can approach the Inventions Office, which, under Article 18 of the Ordinance, is the office responsible for protecting trademarks. The Office cannot award damages, but can deal with the infringement effectively through administrative pressures.

### 1.8.5 Land Use Disputes

**Name:** Law on Land.

**Agency:** National Assembly.

**Date:** July 14, 1993

**Details:**

Article 38 of the Law on Land creates two categories of land disputes and outlines how these are handled. The first category includes disputes over the right to use land for which land users have no land use certificate. These disputes are heard and decided by the local People's Committee. The decisions can be appealed to the next highest State administrative agency, which could be a Provincial People's Committee, or the central Government. The decision of the higher agency is final.

The second category of disputes includes disputes over land for which land users do have a land use certificate, and disputes over properties (equipment, buildings, etc.) that are closely attached to the use of that land. These disputes are heard by the Courts.

## 1.9 Banking, Finance and Forex

### 1.9.1 Banking

**Name:** Ordinance on the State Bank, and Ordinance on Banks, Credit Cooperatives and Financial Companies.  
**Agency:** Standing Committee of the National Assembly.  
**Date:** October 1, 1990  
**Details:**

These two Ordinances were proclaimed together to completely reform Vietnam's banking system into a structure suitable for a non-centrally planned economy.

Under the Ordinances, the State Bank has been given a role similar to Central Banks in other countries. Specifically, the State Bank controls monetary policy and foreign exchange matters.

Commercial banks are the designated bodies to deal directly with enterprises. Commercial banks include the former State-owned "specialized banks", Joint Venture banks and foreign bank branches (whose presence is encouraged under the Ordinances). The prominent State-owned commercial banks include the Bank of Foreign Trade (Vietcombank), the Industrial and Commercial Bank, and the Bank of Agriculture. In past years, these institutions have not performed well. Vietcombank, in particular, has little credibility in the international financial community. The Ordinances, however, have made the banks much more independent, and it is expected that their performance will improve.

\*\*\*\*\*

**Name:** Decree No. 189-HDBT Regulating the Establishment of Foreign Bank Branches and Joint Venture Banks Operating in Vietnam.  
**Agency:** Government.  
**Date:** June 15, 1991.  
**Details:**

As expressed in the October 1990 Ordinances, the Vietnamese Government has opened up to foreign banks. This decision was taken to both provide capital sources for business, and to improve the efficiency of the State banking system through competition. Decree No. 189 regulates the activities of foreign banks. Specifically, the Decree stipulates the application procedures, allowable operations and required finance and accounting systems for foreign bank branches and JV banks in Vietnam.

The Decree appoints the State Bank as the chief administrative body. The State Bank reviews applications and issues licenses, and reviews changes to terms in licenses.

A key consideration is the minimum capital requirement for foreign banks. The allocated operating capital for a foreign branch bank must be no less than US \$15 million. The prescribed capital for a JV bank must be at least US \$10 million (see next entry).

\*\*\*\*\*

**Name:** Decision No. 200/QD-NH5 of the State Bank on the Spending of Provided Funds and Regulated Funds of Foreign Bank Branches and Joint Venture Banks  
**Agency:** State Bank of Vietnam  
**Date:** September 23, 1993  
**Details:**

Recall that foreign bank branches must allocate US \$15 million in operating capital, and that JV banks must allocate US \$10 million of prescribed capital. Decision 200 allows both types of banks to spend 25% of their capital allotments to capital investments in, for example, the development of offices, etc.

Moreover, Decision 200 allows an additional 30% of capital for foreign bank branches, and 10% for JV banks to be deposited in offshore banks, or in foreign branch banks in Vietnam. 15% of the capital must be deposited with the State Bank where it earns interest.

## 1.9.2 Finance

**Name:** Circular No. 533/TC-TCT on Foreign Investment Depreciation Rules.  
**Agency:** Ministry of Finance.  
**Date:** April 26, 1991.  
**Details:**

The Circular stipulates that foreign investment enterprises are not allowed to distribute capital defined as depreciation. Depreciation must be funded in foreign invested enterprises.

\*\*\*\*\*

**Name:** Decree No. 137-HDBT Concerning Price Control.  
**Agency:** Government.  
**Date:** April 27, 1992.  
**Details:**

This Decree allows enterprises to determine the pricing of most goods. The State is, however, responsible for stabilizing the market price for food and gold, and the exchange rates of the Dong. Also, the State sets the price for natural resources, rental of real estate, and other important resources such as electricity, fuel and cement.

## 1.9.3 Forex

**Name:** Chapter 10 of Decree No. 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam.  
**Agency:** Government.  
**Date:** April 16, 1993.  
**Details:**

There are three key regulations in these Articles. First, article 80 requires enterprises with foreign invested capital to deposit all capital funds and revenues in foreign and Vietnamese currencies into accounts at a Vietnamese bank, a JV bank, or a foreign branch bank. All revenues and expenditures must be transacted through these accounts. The article continues and says that "in a special case, if the creditor expects the debtor to open accounts for loans at banks in a foreign country, the enterprise is entitled to do so with the approval from the State Bank of Vietnam".

Second, Article 82 states an enterprise's foreign currency revenues from export and other legal sources must be sufficient to meet the enterprise's expenditures in foreign currency, including overseas profit remittances. In essence, this Article says that foreign invested enterprises cannot convert Dong into foreign currency to pay bills or repatriate profits - although there are exceptions.

Finally, all conversions (where allowed) must be done at the official exchange rate announced by the State Bank.

## 1.10 Representative Offices

Since 1986, many companies have opened representative offices in Vietnam, often to test the investment climate. In 1992, officials estimated that there were 200 such offices in Ho Chi Minh City alone. A recent US Embargo

amendment to allow US firms to establish representative offices in Vietnam will surely cause the number to skyrocket.

Despite their importance, representative offices are not accounted for in the Law on Foreign Investment, or in the 1993 implementing regulations (Decree 18). Representative offices are, however, governed by a 1990 Decree on the Regulation of the Establishment and Activities of all Foreign Economic Organizations, and by an accompanying Circular.

\*\*\*\*\*

**Name:** Decree No. 382-HDBT Regulating the Establishment and Activities of Resident Representative Offices in Vietnam, and Circular No. 04/TN/FC for the Implementation of the Decree.  
**Agency:** Government. Circular by the Ministry of Trade.  
**Date:** November, 1990.  
**Details:**

Representative offices are allowed to open in all economic sectors, including the service sector (airlines, banks, etc.)

The pieces of legislation limit the activities of representative offices. Offices may engage in preparatory work for long-term investment and technology assistance projects, and may promote the trading activities of their head offices. They may not, however, execute contracts in their own name. They may also not make or receive payment directly, purchase Vietnamese goods directly for export, or sell imported products. Offices may only bring in amounts of foreign currency that are necessary to pay for expenses incurred in operating the office itself.

The legislation addresses most other areas that are important to representative offices, including approval and registration procedures, restrictions on imports and supplies, employment of local staff, leasing of office space and housing, and taxation.

The Ministry of Trade is the agency in charge of monitoring representative offices.

## **1.11 Import/Export**

### **1.11.1 General**

**Name:** Chapter VII of Decree 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam.  
**Agency:** Government.  
**Date:** April 16, 1993.  
**Details:**

Chapter VII is entitled "Business Organization" and sets out provisions for import and export by foreign invested enterprises and BCCs.

Article 63 deals with import. An enterprise or BCC needs an import license from the Ministry of Commerce in order to import equipment, machinery, transport means, raw and other materials, etc. In an effort to encourage investors to buy needed products in Vietnam, import licenses apply quotas on the amount of materials imported by investors. Note, however, that the quotas are proposed by the BCC partners and enterprise partners themselves, and when necessary, the quotas may be adjusted.

Article 64, which deals with exports, gives BCCs and enterprises the right to export their products, and the right to sell or assign an agent to sell their products that are permitted in the Vietnamese market.

\*\*\*\*\*

**Name:** Circular No. 03-TM-DT Guiding the Implementation of Chapter VII of Decree No. 18 Concerning the Business Organization of Enterprises With Foreign Capital Investment.  
**Agency:** Ministry of Commerce.  
**Date:** July 2, 1993.  
**Details:**

This Circular outlines import/export procedural requirements for BCCs and foreign invested enterprises. In particular, the Circular addresses three issues.

1. *Registration of Import/Export Authority.* No more than 90 days after receiving its investment or business license, the enterprise must register its import/export activities with the Ministry of Commerce so that the Ministry can confirm that the enterprise has import/export authority. To register, the enterprise must submit a registration form and a copy of its investment or business license.
2. *Import Plan.* The enterprise must prepare an import plan for all goods to be used in the construction of the enterprise, plus an import plan for the raw materials, equipment and replacement parts to be imported for use in production.
3. *Issuance of Import/Export Licenses.* When an enterprise has goods for import or export, it must approach the Import/Export License Issuing Offices of the Ministry of Commerce to obtain the relevant licenses. The application must include the original approval documents from the Ministry for the import plan, copies of the investment or business license and a list of goods to be imported or exported.

### 1.11.2 Export Processing Zones

**Name:** Decree No. 322-HDBT Concerning the Establishment of Export Processing Zones (EPZs).  
**Agency:** Government.  
**Date:** October 18, 1991.  
**Details:**

EPZs are Government-established centres of production for export. Within an EPZ, investors may engage in the manufacturing, subcontracting, and assembly of export products. Investors may also provide services for such operations.

Goods produced must be salable in foreign markets and use mostly Vietnamese labour. Further, the production of such goods cannot damage the environment.

Enterprises in EPZs must be established as limited liability companies, and have the status of a juridical person. (With this status, the enterprises are subject to the same dispute resolution legislation as for enterprises outside of the zones.)

Production-oriented enterprises in EPZs are eligible for a 4 year profit tax exemption, while service-oriented enterprises may be exempted for 2 years. After these periods, the enterprises are subject to profit taxes of 10% and 15% respectively.

Goods imported to produce export goods are exempt from import duties. Similarly, goods exported from zones pay no export tax.

At present, there are three EPZs in Vietnam, all located in Ho Chi Minh City. These are the Saigon EPZ, the Tan Thuan Corporation and the Linh Trung EPZ. Several more EPZs are in the planning stages.

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## Endnotes

- 1 See Bill Neilson, "Vietnam: Legal Indigestion and the New Economy", *Asia Pacific News*, Centre for Asia Pacific Initiatives, March, 1993.
- 2 EPZs, as described in Part 11 of this section, are Government-established industrial zones in which enterprises produce goods for export, or provide services to support export-oriented activities.
- 3 Note that the foreign partner in a BCC cannot lease land use rights. Instead, all land use rights for BCCs must be contributed by the Vietnamese partner. See *Asian Corporate Law*, May 1993, p.11.
- 4 International arbitration centres include the newly-established, non-government Vietnam International Arbitration Centre, and the British Columbia International Commercial Arbitration Centre.

## **Section 2: Gaps and Deficiencies in the FDI Legislative Framework**

Section 1 of the Handbook contained an annotated inventory of the current FDI legislative framework in Vietnam. This section presents the major gaps and deficiencies in the framework, as identified by investors and students of Vietnamese FDI legislation.

The gaps and deficiencies are categorized using the headings from Section 1. The date reported and source of each comment are listed. Any legislative or administrative measures that are being taken to fill the gap or correct the deficiency are outlined in the details.

*Note that common criticisms about the pervasive "red tape" and lack of infrastructure and services are not addressed in this Handbook. Only legal gaps and deficiencies in the legislative framework are included here.*

For quick reference, the table in *Appendix 2* summarizes the information from this section.

## 2. Gaps and Deficiencies

### 2.1 Law on Foreign Investment

Gaps and deficiencies identified in the Law concern specific aspects of FDI. See under the remaining categories.

### 2.2 Forms of Investment

**Deficiency:** Transfer of Ownership in JVs.  
**Source:** John Dick and Paul A. Delemarre of Freehill Hollingdale & Page, Singapore. In *International Financial Law Review*.  
**Date:** July 1991. Note that the comments were made originally about the earlier version of the Law on Foreign Investment, but apply today under Decree 18.  
**Details:**

Decree 18 (1993) regulates the transfer of legal capital by partners of JVs. As stated in article 30, a partner of a JV may assign its legal capital, but must give first priority to the other member in the enterprise. If the other member does not want the capital, the transferring party may approach a third party. In order for any transfer to be made, however, there must be unanimous agreement by the enterprise's Board of Management. Since the Board must be made up of representatives of all members, the non-transferring members have an effective veto over any transfer. The SCCI must also approve and transfer, and therefore has a veto as well.

Another problem may arise if the transferring party is Vietnamese and the designated transferee is foreign. If the Vietnamese party is the only Vietnamese member of the enterprise, then the enterprise will cease to be a JV under the Law on Foreign Investment after the transfer is made. The SCCI will revoke the JV licence in this situation, and the enterprise will have to reapply for a FOC license.

\*\*\*\*\*

**Deficiency:** Trapped in a JV.  
**Source:** Do Dinh Luong, Legal Expert, Institute of Law Research, Hanoi. Unpublished manuscript on foreign investment in Vietnam.  
**Date:** March, 1992.  
**Details:**

A foreign partner that wants to remove itself from a JV enterprise would normally attempt to assign its share of the legal capital to another party. In order to assign its capital, however, the foreign partner must receive the unanimous approval of the JV's Board of Management, on which all parties are represented. In addition, the foreign partner must receive approval from the SCCI.

If for some reason either the Board of Management or the SCCI vetoes the capital assignment, the foreign partner may simply try to withdraw its capital. The problem here, however, is that "in the course of operations, the joint venture is not allowed to decrease its legal capital" (article 28, Decree 18).

In order to re-gain control of its capital, the foreign partner would have to dissolve the enterprise. As in the case of capital transfer, however, liquidation requires both the unanimous approval of the Board, and the SCCI's blessing. Without these endorsements, the foreign partner's capital is trapped.

\*\*\*\*\*

**Deficiency:** Restriction on Assignment of Capital, and Its Effect on Financing.  
**Source:** Do Dinh Luong, Legal Expert, Institute of Law Research, Hanoi. Unpublished manuscript on foreign investment in Vietnam.  
**Date:** March, 1992.  
**Details:**

As explained already, a foreign partner in a JV can only assign its share of the enterprise's legal capital if the JV's Board and the SCCI give their unanimous approval. In most cases, this restriction makes it impossible for the partner to use its interest in the JV as security for financing. The lender has no guarantee that it will be automatically assigned the partner's capital in the event that the partner cannot honour its loan payments.

\*\*\*\*\*

**Gap:** Forced Dissolution of Joint Venture.  
**Source:** Barry Wain, "Cancellation of Foreign Investor's License Raises Questions About Vietnam's Policies", in *Asian Wall Street Journal Weekly*.  
**Date:** October 26, 1992.  
**Details:**

In a recent case, the SCCI acted under article 38 of Decree 18<sup>1</sup> to revoke the licence of a JV because the Hong Kong foreign partner allegedly did not respect the terms in the licence. While most observers acknowledge that the foreign partner probably did break the contract, there is some concern over the way that the SCCI handled the affair. Specifically, observers are concerned first about the SCCI's failure to provide details on the alleged transgressions, and second about the lack of an independent appeal process.

The SCCI's handling of the affair exposes two gaps in Decree 18. The Decree does not require the agency to explain its actions, and does not provide for an appeal process. Instead, article 38 simply states that the SCCI "has the authority to dissolve a joint venture prior to the expiry of its duration if the joint venture deviates from its objectives and the scope of its operation as stated in its charter and in the investment licence".

\*\*\*\*\*

**Deficiency:** Buy-out Provisions in FOCs.  
**Source:** James Chapman, Johnson Stokes & Master (Hong Kong), "New Developments in the Foreign Investment Law of Vietnam" in *Asia Money Lawyer*.  
**Date:** February, 1993.  
**Details:**

Article 14 of the Law on Foreign Investment in Vietnam allows Vietnamese parties to buy part of FOCs that operate in what the Government determines to be "important economic sectors". Decree 18 – the Law's implementing regulations – clarifies this provision and says that the SCCI

..."shall determine important economic establishments and provide guidelines to the foreign investor to present in the investment application conditions for Vietnamese business, on the basis of agreement, to re-purchase a part of that enterprise to turn it into a joint venture" (article 47).

This buy-out provision is of great concern to investors who invest in the form of a FOC — many choose the FOC form because they do not want Vietnamese involvement. In addition, while Decree 18 does state that the buy-out will be "on the basis of agreement", it is not clear if the investor has any choice over whom its potential partner will be.

## 2.3 Tax

No major gaps or deficiencies were identified for this area of legislation<sup>2</sup>.

## 2.4 Intellectual Property

### 2.4.1 General Industrial Property

**Deficiency:** Industrial Property Not Protected Under Decree on Industrial Property Rights.  
**Source:** Sesto Vecchi and Michael Scown, Russin and Vecchi, "Intellectual Property Rights in Vietnam", in *IP Asia*.  
**Date:** July 1992.  
**Details:**

The Decree on Industrial Property Rights states that industrial property that is "contrary to public order, principles of humanity and socialist morality, or which is detrimental to public interest shall not be protected under the Decree" (p.57 of source). Investors may be unsure of what exactly is offensive to socialist morality.

\*\*\*\*\*

**Deficiency:** Provision for State to Issue Non-Voluntary Licenses of Utilization.  
**Source:** Sesto Vecchi and Michael Scown, Russin and Vecchi, "Intellectual Property Rights in Vietnam", in *IP Asia*.  
**Date:** July 1992.  
**Details:**

Owners of titles of protection (trademarks, patents, etc.) for intellectual property are required under the Decree on Industrial Property Rights to utilize, or transfer the right to utilize, the property to the extent required "to meet the needs of the socio-economic development of the country" (p.59 of source).

If the owner does not meet this arbitrary measure, the Chairman of the State Committee for Science may grant a "non-voluntary license of utilization" to another organization. In addition, the Chairman may "if he considers it necessary" use the protected property for Vietnam's national defense, for the treatment of human diseases, or for "other vital purposes". The owner must be compensated in these cases, but the decision to use the property cannot be appealed.

This provision in the Decree has serious implications for certain foreign investors, such as pharmaceutical companies.

### 2.4.2 Specifically Trademarks

**Deficiency:** First-to-File Rule.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong), "Trademark Protection in Vietnam", in *East Asian Executive Reports*.  
**Date:** October 1991.  
**Details:**

As mentioned in the Inventory, Vietnam follows a general first-to-file rule for obtaining trademark rights. Vietnam is officially a member of the Madrid Union (on trademark protection), but has no record of recognizing marks registered in other signatory countries.

In an attempt to protect trademark owners, the Vietnamese Government issued a Decree to waive the first-to-file rule until March 1993. This Decree, however, no longer applies.

In a May 1993 interview at the Patent Information and Documentation Centre, Director Vu Khac Trai suggested that Vietnamese legislators had built in safeguards to protect trademark owners. Specifically, he stated that a company that files for trademark protection must prove that it owns the trademark. Information on application procedures, however, slightly contradict the Director. Applications must only provide "information concerning the origin of the mark (if any)"<sup>3</sup>.

It appears that the only sure way for foreign invested companies to overcome this deficiency in the Trademark Ordinance is to register for a trademark before pirates make competing claims.

\*\*\*\*\*

**Deficiency:** Trademark Disputes and the People's Courts.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong), "Trademark Protection in Vietnam", in *East Asian Executive Reports*.  
**Date:** October 1991.  
**Details:**

The People's Courts in Vietnam are not trained in commercial matters, and do not have the expertise necessary to handle trademark dispute litigation. If civil damages are sought, however, litigation in the People's Courts is the only option; only these Courts can award such damages.

*The National Assembly in December, 1993 will consider legislation to establish Economic Courts. These Courts will either be completely separate from the People's Courts, or will be combined at the appellate level. It is expected that in either form, the new Economic Courts will have the jurisdiction to hear all commercial cases, including those which involve trademark disputes. Until the independence of the Economic Courts is established, investors are advised to settle trademark and other commercial disputes through informal or administrative means.*

## 2.5 Repatriation of Capital and Profits

No major gaps or deficiencies were discovered in this area of legislation.

## 2.6 Labour

No major gaps or deficiencies were discovered in this area of legislation.

## 2.7 Land Use

**Deficiency:** Enforcement of Penalties Imposed for Infringing on Land Use Rights.  
**Source:** John Gillespie, "Foreign Investment in SR Vietnam Revisited", *International Business Lawyer*.  
**Date:** October 1990. Comments apply under 1993 Law on Land.  
**Details:**

Article 73 of the 1993 Law on Land assures investors that the State will protect an enterprise's land use rights from the actions of wrongdoers, including corrupt State officials. Penalties for infringement on land use rights range from warnings to fines, to forced retirement of officials.

In cases of corrupt officials, however, State protection may have limited value. The enforcement of penalties is the responsibility of the local People's Committees, which are the same State bodies that effectively control land use. It would seem that in many cases the corrupt officials would come from within the Committees themselves, and that the

Committees may be reluctant to punish their own personnel. As John Gillespie comments, "basic principles of natural justice are normally offended where an administrative body is made judge in its own cause" (page 419).

\*\*\*\*\*

**Deficiency:** Unclear Ability to Use Land Rights as Security.  
**Source:** Laurence Brahm, "Legal Developments in Vietnam", in *Asia Money & Finance Lawyer*.  
**Date:** April 1992.  
**Details:**

In April 1992, Laurence Brahm noted that "one of the major drawbacks for financing ventures in Vietnam is the inability of lenders to take security over real property in Vietnam" (p. 29). At the time, other students of Vietnam believed that the National Assembly was planning to correct this deficiency and allow land and the buildings on it to be mortgaged<sup>4</sup> – indeed, the draft to the 1993 Law on Land did allow for such mortgages.

The actual 1993 Law on Land, however, is not clear on the issue. Article 77 of the Law extends the right to use land as security only to those persons who use "agricultural land or forestry land for afforestation", and to persons "who use land for habitation". Since the same rights are not extended to any other circumstances, it seems that foreign invested enterprises are not allowed to mortgage land or non-residential buildings on the land<sup>5</sup>.

\*\*\*\*\*

**Deficiency:** Arbitrary Land Rents for Foreigners.  
**Source:** Business International, IL&T, Indochina.  
**Date:** April 1992.  
**Details:**

In response to complaints about high rental costs, the SCCI and Ministry of Finance set maximum rents for foreign investors (see Inventory). These rents, however, have not been enforced. Reports suggest that local People's Committees often ignore the official rates.

\*\*\*\*\*

**Gap:** Right to Use Land; Right to Own Buildings.  
**Source:** Lucy Wayne, Indochina Consulting Services Ltd., and Elaine Chiew, Chandler & Thong-ek.  
 "Vietnam's land law: an area to tread carefully", *Asian Corporate Law*.  
**Date:** May, 1993.  
**Details:**

In Vietnam, land may not be privately owned. Private ownership of buildings on the land, however, is recognized. Lucy Wayne and Elaine Chiew point out two gaps in land use legislation that concern the interaction of these two conditions.

First, it is not clear in the Law on Land what happens to a building owned by a foreigner when the right to use the land under the building expires. Does the ownership of the building remain with the foreigner, or is it transferred to the State? And if it is transferred to the State, how is the foreigner compensated? Or, if ownership remains with the foreigner, does the foreigner have to pay to demolish or relocate the building?

Second, if the foreigner transfers the ownership rights over a building, is the right to use the land under the building automatically transferred to the new building owner? An automatic transfer, say the authors, is not guaranteed because the Law on Land restricts land use transfers except in stated circumstances. The authors advise investors that the transfer of land use rights and the transfer of building ownership must be made concurrently but separately.

\*\*\*\*\*

**Gap:** Expropriation and Compensation.  
**Source:** Lucy Wayne, Indochina Consulting Services Ltd., and Elaine Chiew, Chandler & Thong-ek.  
 "Vietnam's land law: an area to tread carefully", *Asian Corporate Law*.  
**Date:** May, 1993.  
**Details:**

Under the Law on Land, the State has the right to expropriate land under limited circumstances, including if the land is needed to meet "State or social demands" (p.16 of source). In the event that land use rights are expropriated, the State must pay compensation to the dispossessed party.

The practical definition of "State or social demands" may concern some investors. In addition, investors may be concerned over the compensation provision. It is not clear how compensation will be calculated. Will it include indirect losses incurred, or will it be limited to the land value?

It should be noted here that it is not certain how frequently this provision to expropriate land is actually invoked in practice.

\*\*\*\*\*

**Deficiency:** Restrictions on Vietnamese Contribution of Land Use Rights to JVs.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong). *Indochina Law Quarterly*.  
**Date:** June, 1993.  
**Details:**

There are two ways for JV enterprises to acquire land use rights. One way is for the enterprise to apply to the local People's Committee for a land use certificate, and the other way is for the Vietnamese partner to a JV to make its capital contribution in the form of its existing land use rights. To date, the large majority of JVs have acquired land use rights through the latter method.

Fred Burke notes that article 26 of Decree 18 upsets this trend. As stated in the article, the Vietnamese partner may only contribute its share of the legal capital in the form of rights over the use of land "in necessary cases". The State has realized that since it owns all of the land, it is financially better to lease the land to the JV's foreign partner than allow the Vietnamese partner to contribute its own land use rights on which it pays nominal rent.

## 2.8 Dispute Resolution

### 2.8.1 Law on Foreign Investment

**Gap:** "Competent Government Body" Not Identified.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong). In *Indochina Law Quarterly*.  
**Date:** July, 1993.  
**Details:**

Article 102 of Decree 28 states that disputes between Vietnamese Government agencies and foreign invested enterprises, or the foreign partners to a BCC, shall be settled first through conciliation. Should conciliation fail, "the case shall be brought before a Government competent authority".

Unfortunately, the Decree does not identify the actual Government body that the Government has in mind. Of more concern to investors, however, is the use of a Government body instead of an independent authority.

## 2.8.2 Economic Contracts

**Gap:** Incomplete Body of Commercial Law.  
**Source:** John Gillespie, "Foreign Investment in SR Vietnam Revisited", *International Business Lawyer*.  
**Date:** October 1990.  
**Details:**

Using arbitration to resolve disputes has its drawbacks, namely "the fact that there is no substantive body of commercial law in Vietnam against which an adjudicator of a dispute may assess the acceptable standard of behaviour of the parties" (p.417).

In addition, most investors feel that arbitrators are not sufficiently trained in non-socialist legal and commercial principles to resolve disputes effectively.

New Commercial Laws are expected to be drafted and promulgated in late 1993 or 1994.

\*\*\*\*\*

**Deficiency:** Conflicting Dispute Resolution Legislation.  
**Source:** David Howell, Baker & McKenzie (Singapore), "A Realistic Look at Vietnam: Can Disputes Be Resolved and Awards Enforced?", in *East Asian Executive Reports*.  
**Date:** March 1992. Comments apply today under Decree 18.  
**Details:**

Recall from the Inventory that Dispute Resolution is addressed in Decree 18 and in the Ordinance on Economic Arbitration.

Under Decree 18, disputes between the parties of a JV or BCC may be referred to an agreed-upon arbitration body. According to the Ordinance on Economic Arbitration, however, all disputes that arise out of economic contracts - which include JV contracts and BCCs - must be referred to Vietnamese economic arbitration. It appears that the Ordinance clears the way for Vietnamese economic arbitrators to assume jurisdiction over an internal dispute, notwithstanding the expressed choice of the parties involved to use a different forum.

It is worth noting that the dispute resolution provisions in Decree 18 do not explicitly repeal the provisions in the Ordinance.

\*\*\*\*\*

**Deficiency:** Inability to Enforce Vietnamese Economic Arbitration Awards.  
**Source:** David Howell, Baker & McKenzie (Singapore), "A Realistic Look at Vietnam: Can Disputes Be Resolved and Awards Enforced?", in *East Asian Executive Reports*.  
**Date:** March 1992.  
**Details:**

Recall that the system of economic arbitration introduced by the Ordinance on Economic Arbitration was developed to address the issue of enforcement without involving the ineffective People's Court. Under the new system, however, enforcement has not been improved.

Arbitrators have the power to "request" the banking sector to deduct monies from the defaulting party's account. The banks, however, are not legally obligated to comply. Arbitrators also have the power to compile property for auction, but there is no mechanism in place for implementing this power.

Reports suggest that arbitrators have sent matters to the People's Courts - the very agencies the Ordinance sought to avoid - to have awards enforced. The Courts have returned awards unexecuted.

\*\*\*\*\*

**Deficiency:** Inability to Enforce Foreign Arbitration Awards.  
**Source:** David Howell, Baker & McKenzie (Singapore), "A Realistic Look at Vietnam: Can Disputes Be Resolved and Awards Enforced?", in *East Asian Executive Reports*.  
**Date:** March 1992. Comments apply today under Decree 18.  
**Details:**

According to Article 100 of Decree 18, the parties in a JV are (ostensibly) allowed to choose where to refer disputes. Due to the inexperience of arbitration bodies in Vietnam, many JVs choose foreign dispute resolution forums.

Investors must be warned, however, that Vietnam is not yet a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards. In principle, Vietnam will enforce foreign awards. In practice, however, "proceedings to enforce such an award are virtually unknown in the Vietnamese courts" (p.20).

To deal with this deficiency, the Vietnamese legislators had been working on an Ordinance on Procedures for Recognition and Execution of Judgments and Decisions of Foreign Courts and Arbitration Tribunals in Vietnam. On July 1, 1993, the Government promulgated a revised ordinance under which Vietnam will recognize civil verdicts rendered by foreign courts<sup>6</sup>. No mention is made, however, of decisions by foreign arbitration tribunals.

### 2.8.3 Labour Disputes

**Deficiency:** Conflict of Interest in Conciliation.  
**Source:** Franca Ciambella, Sinclair Roche & Temperley, "Resolution of Disputes in Vietnam".  
**Date:** February 16, 1993.  
**Details:**

Recall from the Inventory that labour disputes may be settled by conciliation. In this process, the Local Labour Office acts as mediator. The Labour Office, however, is the office that negotiates the collective labour agreement for the workers. As such, the impartiality of the Office as a mediator is called into question.

## 2.9 Finance, Banking and Forex

### 2.9.1 Finance

**Deficiency:** Prohibition Against Raising Capital on Domestic Capital Markets.  
**Source:** John Gillespie, "Foreign Investment in SR Vietnam Revisited", *International Business Lawyer*.  
**Date:** October 1990.  
**Details:**

Foreigners are not allowed to raise capital in Vietnamese domestic capital markets<sup>7</sup>. Foreign investors, therefore, must have adequate capital reserves and lines of credit to finance the enterprise until there are sufficient returns from foreign sales.

Due to the general lack of venture capital in Vietnam at present, this deficiency in the legal framework is not considered serious. It is also worth noting that Vietnamese legislators are working towards a domestic investment law (release date unknown), and are laying the groundwork for the country's first stock exchange, to be located in Ho Chi Minh City.

## 2.9.2 Banking

**Deficiency:** Banking Ordinances vs. Law on Foreign Investment: Which Applies?  
**Source:** Cynthia Brown, Indochina Consulting Services, and Elaine Chiew, Chandler & Thong-ek. "Banking in the bud", in *AsiaLaw*.  
**Date:** June/July, 1993.  
**Details:**

Special legislation exists to govern the activities of JV banks and foreign bank branches in Vietnam. In addition, however, the Law on Foreign Investment and its implementing regulations (Decree 18) exist to regulate all foreign business involvement in Vietnam. The extent to which the provisions in Law on Foreign Investment and Decree 18 apply to the banks is not always clear.

For example, bank branches and JV banks are regulated by detailed circulars from the State Bank, and bank representative offices are regulated by the Ministry of Commerce. If the provisions of the Law on Foreign Investment and Decree 18 also apply to banks, the SCCI may also play a regulatory role over banking activities.

\*\*\*\*\*

**Deficiency:** Unsophisticated Legislation.  
**Source:** Cynthia Brown, Indochina Consulting Services, and Elaine Chiew, Chandler & Thong-ek. "Banking in the bud", in *AsiaLaw*.  
**Date:** June/July, 1993.  
**Details:**

The authors identify a general deficiency that foreign investors should keep in mind: the banking laws are not sophisticated documents. As the authors explain, the Vietnamese banking laws

"...do not anticipate the complexities of banking activities, especially in the area of project financing. Furthermore, where the banking regulations are silent on a particular issue, it is not always clear as to what activities are permissible. In a country with few written statutes and no case law, a foreign enterprise seeking to engage in an activity not clearly permitted by the banking regulations would do well to adopt a working relationship with the State Bank, and obtain permission prior to undertaking such an activity" (p. 34).

## 2.10 Representative Offices

**Deficiency:** Potential for Conflict in Regulations on Representative Offices.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong), "Opening Representative Offices in the New Vietnamese Market", in *East Asian Executive Reports*.  
**Date:** March 1992.  
**Details:**

The government issued the Decree on Representative Offices to regulate the establishment and activities of these offices in Vietnam. In addition, however, the local People's Committees may pass their own regulations on representative offices. Reports from Ho Chi Minh City indicate that the local People's Committee has passed rules that supplement the national rules in "a number of significant respects" (p.22). It is not clear which rules apply in the case of conflicts.

It is also worth mentioning that in many areas of Vietnam, local People's Committees are controlled by hardliners who do not always approve of foreign investment. In such areas, it is possible that representative offices will be expected to meet extraordinary demands.

\*\*\*\*\*

**Gap:** "Branch Offices" Not Recognized in Law.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong), "Opening Representative Offices in the New Vietnamese Market", in *East Asian Executive Reports*.  
**Date:** March 1992.  
**Details:**

In Vietnamese law, there is no equivalent to a branch office that is allowed to participate in limited business dealings<sup>8</sup>. Instead, there are only representative offices and wholly-owned foreign enterprises. Representative offices, according to the Decree on them, are not permitted to conduct basic business functions that are associated with branch offices elsewhere.

The absence of branch offices in Vietnamese Law causes hardship to enterprises which need to conduct limited business transactions, but do not need a full subsidiary company. Most investors in this situation use representative offices to perform branch office functions. In so doing, however, these investors risk being heavily fined by the ever-watchful Ministry of Trade and local People's Committee.

## 2.11 Import/Export

No major gaps or deficiencies were identified in this aspect.

## 2.13 Other

**Gap:** No Environmental Law or Regulations  
**Source:** No official source.  
**Date:**  
**Details:**

Article 34 of the Law on Foreign Investment states that foreign invested enterprises must take all necessary precautions to protect the environment. Article 79(3) goes further and requires all enterprises to "comply with the regulations concerning environment protection".

The problem, however, is that no environmental laws or regulations with which enterprises can comply exist in Vietnam today. Apparently, the National Assembly will consider and adopt a "Law on Environmental Protection" in December 1993<sup>9</sup>.

\*\*\*\*\*

**Gap:** No Antitrust Legislation.  
**Source:** Business International, IL&T, Indochina.  
**Date:** April 1992.  
**Details:**

Vietnam has not adopted any antitrust legislation to establish rules of competition. SOEs are still very numerous and active in the Vietnamese economy, and "the degree to which private domestic and foreign investors will be permitted to compete with state enterprises remains a crucial issue" (p.12).

It does not appear that any Antitrust Legislation is in the works.

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## Endnotes

- 1 Note that at the time of the incident, Article 38 of Decree 18 was actually Article 48 of Decree 28. Decree 18 replaced Decree 28 on April 16, 1993.
- 2 Note that no gaps and deficiencies in the actual legislation were identified here. There may very well be several deficiencies in the public administration that implements the legislation; however, as was emphasized on p.23, this section does not address deficiencies in the implementation of laws. This section focuses solely on the legislative deficiencies.
- 3 From Do Dinh Luong, Legal Expert, Institute of Law Research, unpublished manuscript on foreign investment in Vietnam, p.53, March 1992.
- 4 *Ibid*, p.53.
- 5 Note that under the Ordinance on Housing, residential buildings can be mortgaged.
- 6 See Ngoc Diep, "Foreign court verdicts recognized in Vietnam", in *Vietnam Investment Review*, May 17-23, 1993 (Hanoi: Vietnam Investment Review Ltd., 1993), p. 3.
- 7 It is believed that this restriction is in the Law on Foreign Investment in Vietnam.
- 8 The exception is foreign bank branches.
- 9 See Fred Burke, Baker & McKenzie, *Indochina Law Quarterly* June 1993, p.26.

## **Section 3: Setting Up in Vietnam**

### **3.1 Investment Approval Process**

#### **3.1.1 Introduction**

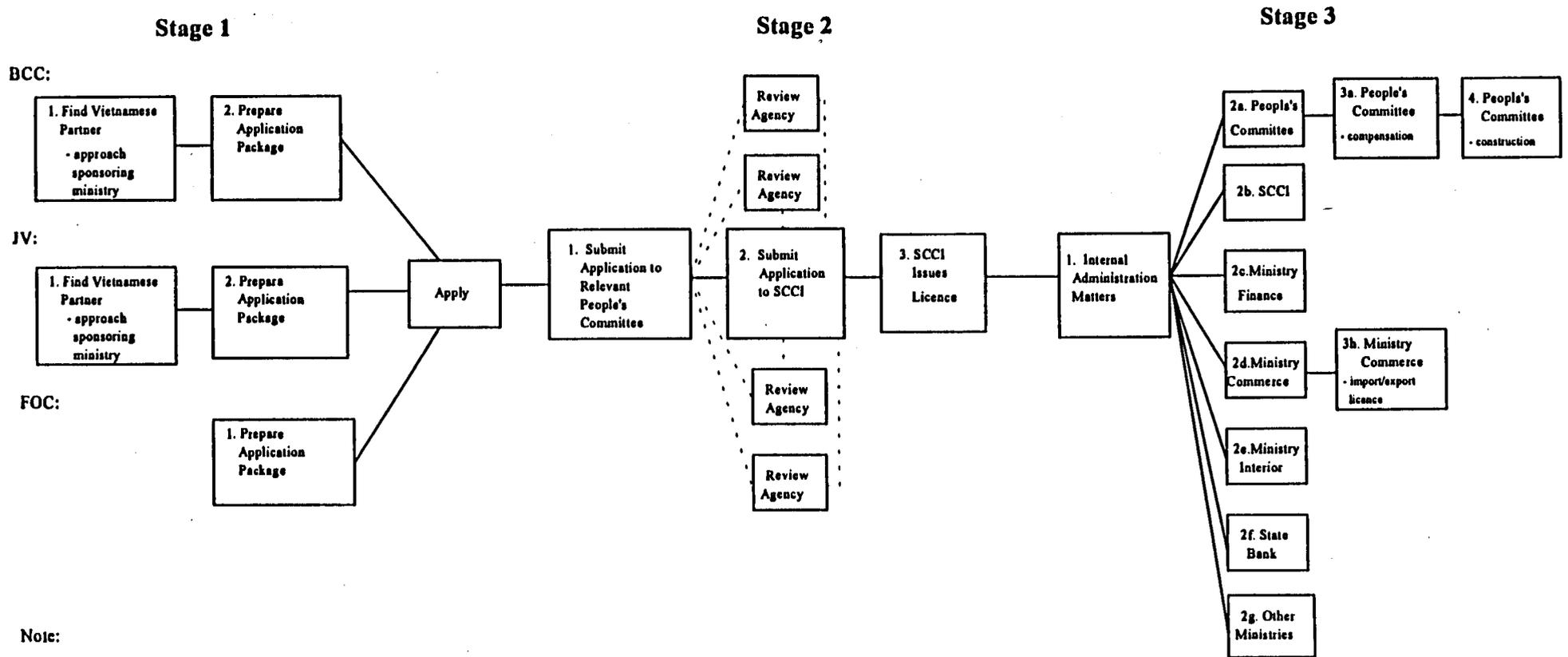
Investors that wish to establish a functioning BCC, JV or FOC in Vietnam must complete an investment approval process. Unfortunately, this process is not user-friendly. Instead, it is inconsistent and characterized by excessive layers of bureaucracy. Moreover, it seems to defy description: neither the State nor any student of Vietnam has explained the process in its entirety.

This section attempts to give investors the simplified guide that they are missing. The section pulls together information from government sources, investment and business publications, and persons in the field to construct the complete approval process as it exists today. The section begins with a simple flow chart that illustrates the sequence of approval steps. Then, each part of the process is described in detail. Where helpful, actual accounts of past investors, and advice from experts in the field, are included in boxes next to the text. Finally, a short discussion is presented to highlight key points from the process.

It should be noted that, for the purpose of simplicity, the process outlined is the process for investing in Hanoi and Ho Chi Minh City. The process followed in other urban centres and in rural areas is not measurably different.

### 3.1.2 Flow Chart Investment Approval Process

This flow-chart presents the investment approval process. The process is broken into three stages, each of which is further broken into various steps.  
Details on each step follow the flow-chart.



**Note:**  
In Step 2 of Stage 2, the applicant only officially submits a package to the SCCI. The applicant should, however, approach directly all of the ministries and agencies that act as review agencies (see dotted lines).

### 3.1.3 Details

#### Stage 1

Stage 1 is divided into 2 steps. Investors interested in BCCs and JVs must follow both steps, whereas investors interested in FOCs follow only step 2.

##### 1. Find Partner

The first task for the BCC or JV investor is to find a suitable Vietnamese partner. The key consideration in this endeavour is government backing: the investor should find a Vietnamese partner that is closely connected to, and recommended by, an important government agency. Such support gives an implicit guarantee of future assistance.

To locate such a partner, the investor can approach the State Committee for Cooperation and Investment (SCCI) for

##### Box 1

The following excerpts from a recent article in the *Vietnam Investment Review* illustrate the importance of both choosing a recommended partner, and a suitable partner.

"In order to meet a good partner you have to contact the correct authority", explained Kim (General Director of the Vietnam office for the South Korean corporation Daewoo). Because his needs included developing large-scale manufacturing enterprises, Kim turned to the Ministry of Heavy Industry for suggestions about possible partners. Daewoo rejected several companies which didn't know the electronics field, before choosing the Hanel Company, an experienced firm belonging to the Hanoi People's Committee."

"Kim based his decision to embark on joint ventures with Hanel not only on Hanel's own history of experience in high technology, but also on the fact that the company had the backing of high level officials. 'You have to understand Vietnam', he explained. '(Vietnamese) companies are different from those of Japan or Hong Kong. It's very important which companies the authorities recommend. If they recommend (a company), then we expect they will support us (in working with those partners)'.

In the same article, T. Ohara, the General Manager of the Japanese Tomen Corporation in Vietnam, stresses that

"it is not enough for a potential partner to have the backing or recommendation of a government ministry. If the company is suitable, fine", he said. "But if we're not 100 percent satisfied, we should talk to another company and compare. Don't directly believe in the introduction. Find out for yourself".

Source: "Finding Partners", in *Vietnam Investment Review*, October 4-10, 1993

assistance. The investor can also visit the Vietnam Chamber of Commerce and Industry, which is the body that represents all Vietnamese enterprises, including those owned by the State. Most investors, however, find it better to go directly to the Ministry under whose jurisdiction the future business activity falls (i.e., the sponsoring Ministry). Each Ministry has a list of recommended partners which consists of enterprises that the Ministry owns or effectively controls. The local and provincial People's Committees also have such lists, and should be considered by investors as well<sup>1</sup>.

Past investors caution, however, that while it is important to choose a partner recommended by the proper authorities, investors should not simply accept whichever partner is suggested first. Investors should thoroughly review a number of recommended enterprises, and should choose the one with the right experience and compatible interests (see Box 1).

##### 2. Application Package

In this step, the investor works with the Vietnamese partner -- or, in the case of an FOC, works alone -- to complete an application package for the necessary investment or business licence<sup>2</sup>. The contents of the required package differ only slightly for the different forms of investment. The table below summarizes the requirements.

Table: Application Packages

Form of Investment	Contents of Application Package
1. Business Cooperation Contract	<ul style="list-style-type: none"> <li>• a project feasibility study</li> <li>• the signed business co-operation contract</li> <li>• relevant information on the parties involved, such as the charters and financial standing of each party</li> <li>• any other information that may be requested by various government agencies</li> </ul>
2. Joint Venture	<ul style="list-style-type: none"> <li>• a project feasibility study</li> <li>• the joint venture contract</li> <li>• the charter (articles of association) of the proposed enterprise</li> <li>• any other information required, such as information on the financial standing of the foreign investor, or proof of land-use rights</li> </ul>
3. Foreign Owned Company	<ul style="list-style-type: none"> <li>• a project feasibility study</li> <li>• the charter of the proposed enterprise</li> <li>• the corporate constitutional documents of the investor and other necessary information about the investor, such as its financial standing</li> <li>• any other information that may be requested by authorities</li> </ul>

The most important documents required in the different application packages are described briefly here, and are outlined in detail in *Appendix 3*.

(a) Feasibility Study

All forms of investment must complete and submit a project feasibility study. This document is a detailed examination of a proposed project. The study must attempt to foresee all aspects of the business venture, from the source and cost of production materials, to land and labour requirements, to plans for marketing goods or services in foreign markets and in Vietnam. It is very important that the study addresses all potential business aspects. As the excerpt from a recent article in the *Vietnam Investment Review* illustrates (Box 2), sloppy feasibility studies ground many investment projects later in the approval process.

The sponsoring Ministry and the local People's Committee are responsible for approving the feasibility studies before they are included in an application package. In these reviews, the agencies will evaluate the strengths and weaknesses of the projects. Investors should expect to negotiate the figures used in the feasibility study, and the overall value of the project to Vietnam. During these negotiations, investors should prepare to not only defend their projects, but also to explain many of the business aspects that persons trained in Western-style commerce may treat as common knowledge. Box 3 is an excerpt from an article in *Asia Money & Finance* in which an executive of *Cathay Pacific Airways* reviews his experience in negotiating during this and other steps of the approval process.

**Box 2**

Excerpts from a recent article in VIR show that poor feasibility studies come back to haunt investors.

"Fourteen per cent of projects approved since the introduction five years ago of the Law on Foreign Investment in Vietnam - 104 projects - have had their licences withdrawn, revoked or expired."

"The failure of most of the 104 projects can be attributed to inaccurate and hastily prepared feasibility studies."

"The feasibility study of the Huong Xuan Restaurant Project, licensed in September 1990 to a French concern, failed to anticipate that the company itself might go bankrupt. Saigon Island Resort, a 100 per cent foreign owned project capitalized at US \$2.3 million, licensed to the Malaysian-based TT Hotel Enterprises at the end of 1991, did not take local land lease issues into consideration in its feasibility study, and was consequently unable to find a proper location to launch its project."

Source: "One Licensed project in seven is a failure", *Vietnam Investment Review*, Aug 30-Sept 5, 1993.

**Box 3**

"...The process of starting a venture in Vietnam therefore often becomes a mixture of education and negotiation, in which success often hinges on the ability to gain trust and confidence and to convince the Vietnamese side of the soundness of a project and the benefits that will flow from it.

'Naturally, suspicions will arise (among the Vietnamese) that the foreign partner is trying to load the costs,' says Richard Stirling, director for corporate development at Cathay Pacific Airways. 'No matter how exasperating and time consuming it may be, success will only be achieved by keeping cool, and explaining the background to each item, until complete comprehension is achieved. A take-it-or-leave-it attitude, or, indeed, an inability to justify in detail one's own figures, will inevitably lead to failure.'"

Source: "Who's who on Asia's last business frontier", in *Asia Money & Finance*, April 1992.

**(b) Joint Venture and Business Co-operation Contracts**

A JV contract is a document that commits two or more separate companies to establish and jointly run a separate enterprise. A Business Co-operation Contract is a document that commits two or more separate companies to simply pursue a particular area of business together, without establishing a separate enterprise.

These two documents contain several provisions that essentially spell out the responsibilities of each party to the contract. Such provisions include the capital contributions by each party, the sharing of profits and losses and the procedures for settling inter-party disputes. Needless to say, the contracts are very important documents. Sesto Vecchi, an international lawyer in Vietnam, advises investors to make the contracts as detailed as possible. Nothing in the contract should be overlooked as unimportant or obvious. Remember that the Vietnamese have not had great exposure to Western law and contracts (Vietnam does not even have any contract law) and as such, many seemingly straightforward clauses may be easily misinterpreted<sup>3</sup>.

Ostensibly, each contract is negotiated between the foreign investor and the Vietnamese enterprise – the two parties to the contract. In reality, however, many more interests are involved. To begin with, the parent Ministry of the Vietnamese party may negotiate directly with the foreigner. Second, the SCCI overlooks the process and may intervene in a number of ways. For example, the SCCI may want to negotiate buy-out provisions to enable the local partner to increase over time its ownership in the venture. Third, any number of other Ministries and government agencies that have any interest – weak or strong – in the project are to be kept advised of negotiations over terms in the contract. Finally, the relevant People's Committee is involved, especially in the case of JVs because JV contracts normally specify that the Vietnamese partner's contribution to legal capital is to be made in the form of land-use rights. The People's Committee, as the agency in charge of all land-use in its locale, oversees and instructs the parties on the valuation of the land-use rights.

**(c) Company Charter**

JVs and FOCs must write a company charter that provides all of the specifics on the proposed enterprise, including its business activities, its legal and investment capital, the capital contribution schedule, the organization of the enterprise's management, and the dissolution of the enterprise.

**(d) Other Documents**

The SCCI, the relevant People's Committee and any other agencies involved may require the investor to include other documents in the application package. The most important of these applies to JVs and FOCs, and is the documentation to prove that the proposed enterprise has the rights to an identified land site, and the rights to the existing equipment on the site.

The onus is on the investor to ensure that the proposed enterprise does indeed have the rights that it claims to have. JV investors should not accept a land-use certificate from the Vietnamese partner without making sure that the certificate complies with the records of the People's Committee. The investor in this role is not questioning the

integrity of the Vietnamese partner; the investor is simply ensuring that the official records match the official land-use certificate. Note that the People's Committee will not check the records without being prompted by the investor.

## Stage 2

There are three steps in Stage 2. Investors in all forms of investment must complete each step.

### 1. Application Package to People's Committee

Once the licence application package is complete, the investor must submit it to the relevant People's Committee<sup>4</sup>. The People's Committee and its various departments assess the application against a number of criteria, including:

- the compatibility of the project's objectives with the city's development policy and plans;
- the capacity of the locality to satisfy the labour, materials, electricity, water and transport needs of the project;
- the valuation of the assets to be contributed by the Vietnamese party in the case of a JV; and
- the project's land-use needs.

During the assessment, the People's Committee pays particular attention to the project's land-use needs. Indeed, the assessment of these needs involves a separate sub-process that begins in this step, but ends much later in the overall investment approval process. In the portion of the sub-process that occurs in this step, the investor must send its land-use requirements to the Chief Architect's Office<sup>5</sup> – a department of the People's Committee. Upon receipt of the information, the Chief Architect's Office reviews the requirements with the Design Institute, another department. If the two departments support the requirements in general, the Chief Architect's Office asks the Design Institute to recommend land to the investor, to advise on construction designs, and to draft an *interim* land-granting document for the People's Committee's executive to sign. Only when the interim document is signed, and the assessment of the other criteria is completed, can the investor move on to step 2.

There are two points that should be made here. First, the investor must negotiate with and lobby the People's Committee to ensure that everything is understood, and to obtain local support. Second, it is very important for the investor to recognize that any endorsement from the People's Committee at this step is simply support in principle for the project. This support only enables the project to proceed to the next step; it does not guarantee final support. In Stage 3 of the approval process, the People's Committee assesses the land and other aspects of the project in much greater detail.

### 2. SCCI and Other Agencies

Once the People's Committee has given its initial support to a project, the investor must apply for an investment licence, as in the case of a JV or FOC, or a business licence, as in the case of a BCC. To apply for a licence, the investor must submit multiple copies of the application package to the SCCI. The SCCI then circulates copies of the application amongst several key ministries and top level agencies for comments on specific aspects. For example:

- the Ministry of Finance reviews and recommends a tax basis, and considers depreciation of assets;
- the State Bank assesses the foreign exchange implications, considers requests for bank guarantees, and considers the topic of bank accounts;
- the Ministry of Commerce examines the investor's financial status, considers the amount of output that will be sold in foreign and domestic markets, and examines the list of machinery and equipment proposed for exemption from import duties;
- The State Planning Commission ensures that the proposed project conforms to government planning, and reviews the project's social benefits; and
- the State Commission on Science examines the technology involved and reviews the project's environmental impact.

In addition to these five bodies, the SCCI asks all other Ministries and agencies relevant to a particular project to review the application. All review agencies submit their comments and questions to the SCCI.

On the surface, the role of the SCCI as a sort of one-stop shop promises convenience and time savings to the investor. In reality, however, the one-stop service is ineffective. In addition to taking the official application route through the SCCI, investors must approach, negotiate with and lobby *every* review agency. Unless the investor or its agent stays in constant contact with each interested agency to answer questions, defend points and essentially push through the application, the process will not move forward.

### 3. Licence Issued

#### Box 4

From Do Dinh Luong of the Institute of Law Research in Hanoi.

... "once the contract has been approved the SCCI will issue a business licence or investment licence. This should be scrutinized carefully as it may not in fact accord with the parties' wishes. It is always advisable to request to see a draft of the licence before it is issued as it will be considerably easier to correct any inadvertent mistakes in the licence before it is formally issued."

Source: Do Dinh Luong, Unpublished Manuscript on Investing in Vietnam, 1992.

Based on the comments of the review agencies, the SCCI writes a recommendation on the project to the State Evaluation Committee, headed by the Prime Minister<sup>6</sup>. The Evaluation Committee considers the SCCI recommendation and approves or rejects the project application. If the application is approved, the SCCI issues an investment licence to the investor in the case of a JV or FOC, or a business licence in the case of a BCC. Investors should check the licence issued to ensure that it properly reflects the negotiated agreements.

It is very important to understand that the investment/business licence is not a licence to begin business operations. Instead, the licence simply allows the JV, FOC or BCC to exist. Before the JV, FOC or BCC can operate in business, it must complete the next more difficult stage of the approval process, Stage 3.

### Stage 3

Before a licenced JV, FOC or BCC can participate in business, the investor must meet several practical requirements. The investor must, for example, attend to internal administrative matters, obtain specific licences for certain activities, and must register various documents with different agencies. All of these practical requirements are addressed in this Stage of the process.

#### 1. Internal Administrative Matters

##### Joint Venture Enterprises

In the case of a JV enterprise, an investor must attend to two important administrative tasks as soon as the JV is licenced. First, the investor, with its Vietnamese partner, must hold the first meeting of the JV's Board of Management. The Board of Management is essentially tantamount to a Board of Directors, and is the highest level of authority in the JV. All parties to the JV must be represented on the Board, as it sets the corporate policy and makes key strategic decisions.

During the first meeting, the Board must address four issues.

- *Appointments.* The Board must fill four key positions: the Chair and Vice Chair of the Board, and the General Director (CEO) and Vice General Director of the JV enterprise.
- *Capital.* The concrete capital contribution schedule for both parties must be determined.
- *Plans.* Detailed production and business plans must be set up (Note that these issues were studied in the feasibility plan in Stage 1, but were not finalized.)

- *Import, Office, Staffing.* The Board must finalize plans for the import of materials, production equipment and office facilities, as well as plans for labour recruitment.

The minutes from the first meeting should be submitted to the relevant People's Committee, the SCCI and the Vietnamese partner's parent Ministry.

The second administrative task to perform is to make a public announcement of the new JV enterprise. The investor must, within 30 days of receiving its licence, make this announcement in five consecutive issues of a major Vietnamese newspaper. The contents of the announcement should include:

- the name, address and representative of the JV;
- the scope of the JV's business activities;
- the total investment and legal capital; and
- the capital contribution ratios of each partner.

#### Business Cooperation Contracts and Foreign Owned Companies

Since BCCs are not separate legal enterprises, they do not have Boards of Management, and they do not have to address all of the same internal administrative matters as in a JV. Nevertheless, the parties to a BCC must meet at this time to settle administrative matters which do apply to BCCs, such as: capital contribution schedules; production and business plans; import plans and other requirements.

FOCs are separate legal entities, but their Boards of Management do not have Vietnamese representatives. Nevertheless, the Board of an FOC must meet after licencing to address the administrative matters that are relevant to the company.

Both BCCs and FOCs must make a public announcement in a major newspaper.

## 2. Details - part I

In this step, the investor - regardless of the form of investment - must approach and negotiate at length with several agencies to obtain the various licences and other approvals that are needed to begin operations. There are certain approvals that every investor must obtain, just as there are certain agencies with which each investor must deal. The actual number and variety of approvals and agencies, however, vary by project.

### (a) People's Committee

All investors must approach various departments in the relevant People's Committee to discuss labour, land and other requirements. As regards labour, the investor must submit to the People's Committee the staffing plans finalized in the Board of Management (or equivalent) meeting in step 1 of this Stage. The Committee reviews the Vietnamese representation at different management levels, the number of expatriates, the labour recruitment method to be used, the remuneration levels, and so forth.

The approval of the land aspect - arguably the most crucial aspect for any investment project - is more complicated. Approval for land comes in the form of an official land-granting document. Recall from Stage 2 of the overall approval process that before the investor could submit a licence application package to the SCCI, the investor had to begin a land granting sub-process and obtain an interim land granting document. The interim document allowed the investor to proceed through the process, but only indicated the People's Committee's support-in-principle for the land-use request. In this third Stage, the investor must move beyond support-in-principle and obtain an *official* land granting document.

To obtain the necessary document, the investor must complete the sub-process that was started in Stage 2. The chain of events to complete this sub-process is as follows.

- The investor must send documents to the Chief Architect's Office (again) and request an official land-granting document.
- The General Land Management Department<sup>7</sup> of the People's Committee meets with the Chief Architect's Office to review the request and to draw up a report of recommendation to the Prime Minister (national government).
- The Prime Minister decides on land-granting, based on the recommendation in the report.
- If the report recommends that land be granted, the People's Committee issues an official land-granting document to the investor.

It is important to note here that all investors that require land – for offices, production facilities, etc. – must obtain the official land-granting document. This document is even necessary for investors with JVs in which the Vietnamese party has or claims to have land.

**(b) SCCI**

All investors must negotiate with the SCCI on specifics such as corporate tax rates and incentives.

**(c) Ministry of Finance**

The investor is required to register its business' accounting system and books with the Ministry of Finance.

**(d) Ministry of Commerce**

Within 90 days of licencing, the investor must register its import/export activities with the Ministry of Commerce. The Ministry wants to confirm that the investor's licence gives the investors the authority to conduct such activities. Registration entails submitting a registration form and a copy of the investment or business licence.

At this time, the investor must also prepare an import plan for all goods to be used in the construction of the enterprise, plus an import plan for any raw materials, equipment and replacement parts to be used in production. These plans are both subject to review and negotiation.

**(e) Ministry of the Interior**

Investors involved in a JV enterprise or a FOC must make an official seal for the enterprise, then register it with the Ministry of the Interior.

**(f) State Bank**

Investors must open bank accounts at local, joint venture or foreign banks in Vietnam. The investor that needs to open a loan account outside of Vietnam must approach the State Bank of Vietnam for permission.

**(g) Other Agencies**

Investors should be prepared to negotiate the specifics of their projects with several other particular agencies, depending on the actual project in question. A JV hotel project, for example, would have to meet with and receive approvals from the Ministry of Tourism, the Ministry of Post and Telecommunications (for telecom needs), and others.

### 3. Details - part II

In this step, the investor must approach the People's Committee and Ministry of Commerce for further approvals. In certain cases, an investor may have to also approach other review agencies. Due to incomplete information, however, these "other" agencies are not known.

#### (a) People's Committees

An investor that has received an official land-granting document is not yet able to begin operations. Due to the scarcity of land and housing in both Hanoi and Ho Chi Minh City, the land that the investor is granted is rarely vacant. Instead, it is usually occupied by several families who, according to the Law on Foreign Investment, must be compensated for having to move. The compensation exercise is organized and monitored by the People's Committee.

In the case of FOCs, it is the foreign investor who must pay all compensation. In the case of JVs, the Vietnamese partner often handles all compensation because the land is usually the partner's capital contribution to the enterprise. Regardless of which party pays, the compensation process can be very long and costly.

#### (b) Ministry of Commerce

In the previous step, the Ministry of Commerce approved an investor's authority to engage in import/export activities, and approved plans to import materials for the construction of production facilities, and for use in production. In this step, the investor must apply for licences to import additional goods and to export actual goods produced.

The investor must apply to the Import/Export Licence Issuing Offices of the Ministry. The application must include the original approval documents from the Ministry for the import plans, copies of the investment or business licence and a list of the goods to be imported or exported.

### 4. Details - part III

The only known approval that investors must seek in this, the last step is a construction permit from the People's Committees. Any project that involves some kind of construction -- a hotel, a production plant, etc. -- must obtain this permit.

Unfortunately, very little is known about the method for obtaining this permit. What is known is that the investor must complete a series of seven separate steps in which detailed design proposals are reviewed by various departments. The investor must submit a total of 18 copies of the designs to the Chief Architect's Office, which grants the permit once all requirements have been satisfied<sup>8</sup>. These requirements, at the very end of the overall investment approval process, can be long and arduous, and can effectively prevent a project from going ahead. Box 5 presents an example of an investment project that was grounded in this last step.

#### Box 5

"HONG KONG -- Scouting for real estate prospects in Vietnam, TransAsia Ltd. was delighted to get the chance to redevelop an entire block in the heart of Ho Chi Minh City. TransAsia, a Hong Kong-based regional advisory and investment company, and its partners signed a \$45 million joint venture contract with an arm of the city government last November. The 41-year deal gave the foreign parties a 65% stake.

"That's when all the trouble started. All attempts to produce a design for the redevelopment of the prime site, bounded by famous landmarks, failed to satisfy city authorities.

"The delay has proved costly for the foreign investors, who say they still don't understand why they have been denied approval".

Source: "Hanoi Listens to Investors' Gripec, Shows Willingness to Take Corrective Action", in *The Asian Wall Street Journal Weekly*, November 1992.

### 3.1.4 Investment Approval Process: Important Points

#### Time Requirements

It is impossible to attach any accurate time frame to the investment approval process. The SCCI and the Law on Foreign Investment in Vietnam do, to be sure, provide some time figures; however, these should be seen simply as targets for government. For example, Decree 18 (implementing regulations for the Law) states in article 23 that "within three months upon receipt of the application for an investment licence, the SCCI shall notify the joint venture partners of its decision". Remember, however, that this three month figure is dependent on the speed with which the various review agencies give their approvals. The SCCI asks for all reviews to be completed within one month, but this deadline is rarely respected.

Another example concerns the time requirement for Stage 3 of the process. The SCCI recently stated that "the post-licencing tasks should be completed within a period of six months"<sup>9</sup>. It is believed that this time frame is unmanageable in most cases. Remember that much of the last stage involves the People's Committee. The SCCI, to date, has had little say over the speed with which the People's Committees review a project<sup>10</sup>. In short, it is impossible to give a responsible estimate of time required, other to say that the figure is considerable.

Is there a fast-track process that investors may qualify for? The answer to this question is not clear. Government information indicates that there is no official system for fast-tracking. Reports from persons in the field, however, seem to suggest otherwise. As Box 6 indicates, one expert reports that large projects of interest to the Vietnamese authorities may be treated as greater priority.

#### Box 6

The following is from Michael Scown, a Ho Chi Minh City-based lawyer.

"Give the impression that your business, and its interests in Vietnam, are 'big'. In the physical world, as light approaches a large body it bends. In Vietnam, as the law approaches a large investment, it bends too. The Vietnamese government likes large companies that can bring capital, technology and commerce to Vietnam. Such companies have more leverage in the investment approval process."

Source: "Business Tips from a Barstool in Vietnam", in *The Asian Wall Street Journal Weekly*, July 26, 1993.

#### Hands-on Exercise

Moving a project through the investment approval process is definitely a hands-on exercise. Investors or their representatives must be prepared to spend months in Vietnam to make all of the necessary contacts in all of the review agencies, and to attend endless meetings to build support for a project. Michael Scown, an international lawyer based in Hanoi, sums up the need for personal attention best when he says: "don't expect things to happen fast; and when you're not in Vietnam, don't expect things to happen at all"<sup>11</sup>.

#### Stifling Bureaucracy

The approval process involves a huge number of government Ministries, departments and agencies at both the national and local levels. Unfortunately, the presence of the SCCI to date has not streamlined anything; the investor must still obtain approval from each individual government body.

The investor must understand that Vietnam is a socialist state with a very competitive bureaucracy. Established, powerful agencies are reluctant to transfer any power to a new player like the SCCI. An agency's importance is measured by its level of involvement in a high-profile exercise such as foreign direct investment, and as such it is in every agency's self-interest to deal directly with the investor, rather than through the SCCI.

Unfortunately, the investor gets caught up in these bureaucratic power struggles. The investor must negotiate its way through the multi-level bureaucracy, and appease all interests along the way.

## Negotiation

As is clear from the description section, and as we would expect in a heavily bureaucratic system, the approval process involves constant and lengthy negotiation. Investors must negotiate and re-negotiate certain aspects several times throughout the process. For example, the question of land-use involves negotiations with the People's Committee in all three stages. In Stage 1, the People's Committee reviews the land-use figures in the feasibility studies, and the land valuation in the JV contracts. In Stage 2, the People's Committee again reviews the issue, through the land-granting sub-process. Finally, in Stage 3 the Committee considers land-use in considerable detail, and deals with issues such as compensation and construction. There are two reasons for this endless negotiating.

- First, throughout a long investment approval process, conditions and factors on which a project is based can change, for any number of reasons. Consider the land example again. During the process, the land in question could be taken over by the Ministry of Defence, could be rezoned by the People's Committee as part of a new development plan, or could be targeted by a competing project.
- Second, early negotiations and the approvals that result from such negotiations are usually based on broad concepts or principles. For example, early talks with a People's Committee over a particular site may simply be about the idea of using that type of site for a particular kind of project. Later in the process, once the project is licenced, the talks with the People's Committee focus on the finer points of actually developing the site in question.

## Local Partners

In the cases of JVs and BCCs, the role of the Vietnamese partner in the investment approval process appears to be very limited. Investors can count on using the contacts of the local partners in negotiations, but should expect to deal with all of the various government agencies alone.

## Future Changes

The Vietnamese authorities recognize the shortcomings of the investment approval process, and appear determined to identify and make the changes necessary to better accommodate investors. Two examples of government actions illustrate the commitment of Vietnamese officials to improvement.

### Box 7

"The communiqué comes in response to concerns voiced several weeks ago by Minister Dau Ngoc Xuan, chairman of the SCCI, that lengthy formalities for granting land, floor space, and approving construction designs are interfering with the deployment of projects.

"In order to trouble-shoot licenced projects, procedural hitches will now be cleared in periodical meetings chaired by the vice chairman of the HPC (Hanoi People's Committee) with the participation of the leader of the branches concerned and project-related establishments, and SCCI representatives.

"The new style of problem solving results from a proposal by SCCI Vice Chairman Nguyen Mai, who suggested that administrators look to a similar model in China.

"The Hanoi People's Committee also said it would cut down the amount of paperwork and approval stages necessary at the City's Architects Council to gain a construction permit. Until now, 18 sets of drawings were required.

Source: "Communiqué pares down red tape on construction in Hanoi", in *Vietnam Investment Review*, Nov. 29-Dec.5, 1993

First, in recent years the SCCI has been holding regular workshops with foreign investors to hear about problems in the approval process, and to generate appropriate solutions. As reported in the *Asian Wall Street Journal Weekly*, such gatherings are "characterized by the SCCI's realistic assessment of the investment climate in Vietnam and willingness to consider ways of improving it"<sup>12</sup>.

Second, the SCCI and the Hanoi People's Committee have recently issued a joint communiqué in which they pledge their co-operation to streamline Stage 3 of the investment approval process. Relevant excerpts from a report on the communiqué are reproduced in Box 7.

At present in Vietnam, it is true that the process is slow and unpredictable, with high transaction costs. The elements of an approvals framework, however, are in place. Continuing efforts to improve the system will make it steadily easier for investors.

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## Endnotes

- 1 Note that in Hanoi and Ho Chi Minh City, the local and provincial People's Committees are the same body since these two cities are designated as provinces.
- 2 JVs and FOCs apply for investment licences, since these forms of investment involve the establishment of actual enterprises. BCCs apply for a business licence.
- 3 Sesto Vecchi, "Joint Ventures in Vietnam: Negotiating the Agreement - Details Foreign Firms Shouldn't Leave to Chance", in *East Asia Executive Reports*, August 1992.
- 4 Note that this is a new step. The investor used to submit the package to the People's Committee and the SCCI at the same time -- i.e., in step 2 of Stage 2. Recently, however, changes were made in both Hanoi and Ho Chi Minh City that require the application to go to the People's Committee before the SCCI. In Hanoi, the SCCI and the People's Committee agreed that the SCCI will only receive applications for projects that have already had the granting of land endorsed by the People's Committee. In Ho Chi Minh City, the People's Committee formed the "Board for the Evaluation of Investment Projects" and unilaterally declared that any project proposed for Ho Chi Minh City must be assessed and supported by the new Board before the investor can apply to the SCCI.
- 5 Note that the actual departments and chain of events reported here apply specifically to the Hanoi People's Committee. In Ho Chi Minh City, sub-process for land assessment is believed to be essentially the same, except that the department of the People's Committee in charge is the newly-created Board for the Evaluation of Investment Projects.
- 6 Note that on small projects, the SCCI makes the final decision. On most projects, however, the SCCI recommends to the State Evaluation Committee.
- 7 As explained earlier, the actual departments and chain of events apply specifically to the Hanoi People's Committee. The department names may be different in Ho Chi Minh City, but the chain of events is believed to be essentially the same.
- 8 Note that the requirement for 18 copies is in the process of being changed. See Box 7.
- 9 See "SCCI issues special Circular setting out and clarifying guidelines for investment", in *Vietnam Investment Review*, September 20-26, 1993.
- 10 It should be noted here, however, that recently the SCCI and the Hanoi People's Committee issued a joint communiqué in which the two agencies agreed to work together to streamline the post-licencing stage. The communiqué reads that "all hitches that remain in licenced projects after six months will be cleared in monthly examinations by the two committees". See "Communiqué pares down red tape on construction in Hanoi", in *Vietnam Investment Review*, November 29 - December 5, 1993.
- 11 Michael Scown, "Business Tips From a Barstool in Vietnam", in *The Asian Wall Street Journal Weekly*, July 26, 1993.
- 12 Barry Wain, "Hanoi Listens to Investors' Gripes, Shows Willingness to Take Corrective Action", in *The Asian Wall Street Journal Weekly*, November 2, 1992.

## **3.2 Representative Office Approval**

### **3.2.1 Introduction**

Representative offices offer an alternative to companies that want to enter Vietnam without forming a JV, BCC or FOC. To be sure, representative offices are a much more restrictive form of involvement. They do not include a Vietnamese partner, they are not permitted to execute contracts in the office's name, and they are not allowed to engage in any business activities. Representative offices are only allowed to perform marketing and support functions for a company's head office. As such, they are very attractive to companies that want to study opportunities in the Vietnamese market.

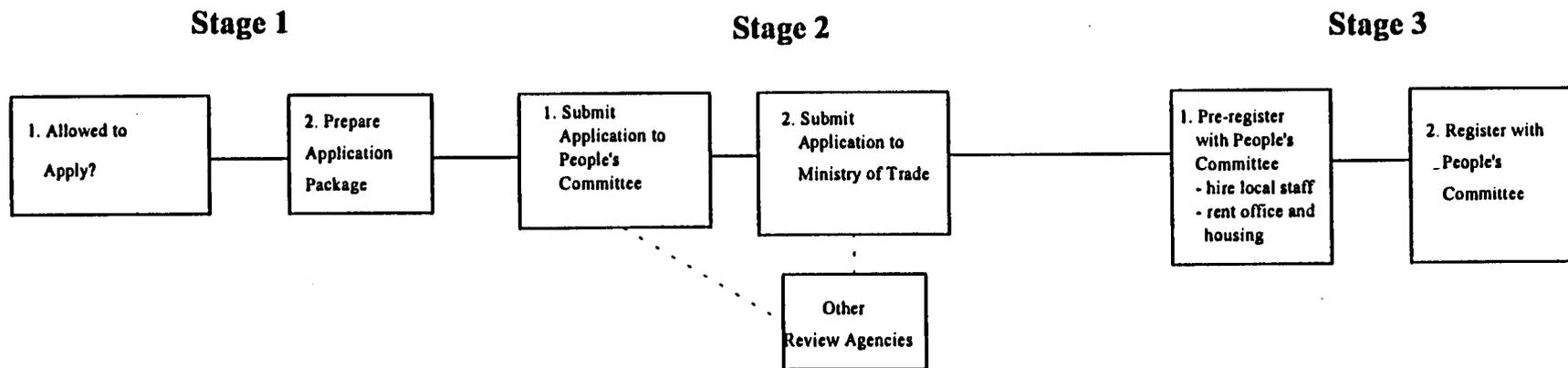
There is a separate approval process to set up a representative office, which, unlike the investment approval process, is fairly straightforward and uncomplicated. The process has three stages and involves primarily only two government agencies: the relevant People's Committee, and the Ministry of Trade. Note that the SCCI is not involved in this process.

This section begins with a simple flow-chart that outlines the sequence of the approval steps. Details on each step follow the flow-chart.

### 3.2.2 Flow Chart

## Representative Office Approval Process

This flow-chart presents the representative office approval process. The process is broken into three stages, each of which is further broken into various steps. Details on each step follow the flow-chart.



**Note:**

In Step 2 of Stage 2, the applicant only officially submits an application to the Ministry of Trade. The applicant may have to approach and negotiate with other review agencies, if any.

### 3.2.3 Details

#### Stage 1

##### 1. Allowed to Apply?

Before a company can apply to open a representative office in Vietnam, the company must determine if it is allowed to apply. In broad terms, a company can apply if it is in a business relationship with a Vietnamese economic or commercial organization in certain economic sectors. The sectors include: export or import trade, investment, banking and finance, communication and transport, scientific and technical co-operation and tourism.

Within each economic sector, there are specific conditions that a company must meet. These conditions are outlined in the Table.

Economic Sector	Conditions to Meet to Establish a Representative Office
1. Export or Import	<ul style="list-style-type: none"> <li>• must first have commercial ties with a Vietnamese import-export business for a minimum of 2 years, <i>and</i></li> <li>• must have imported goods worth at least US \$2 million per year</li> </ul>
2. Investment	<ul style="list-style-type: none"> <li>• must intend to negotiate or implement an investment project under the Law on Foreign Investment worth at least US \$2 million, <i>or</i></li> <li>• must have a prescribed capital of at least US \$5 million and is party to a licenced project and the project has been implemented</li> </ul>
3. Banking and Finance	<ul style="list-style-type: none"> <li>• must be proposing to proceed with a co-operation project in banking and finance which has been confirmed by the State Bank or Ministry of Finance, <i>or</i></li> <li>• must have an established a credit business, including a licenced bank branch, <i>or</i></li> <li>• if it has to carry out a SCCI-approved BCC or JV contract with a Vietnamese legal entity in banking or finance</li> </ul>
4. Communication and Transport, Science and Technology	<ul style="list-style-type: none"> <li>• if company is required to proceed with a State-authorized co-operation project in these sectors, <i>or</i></li> <li>• if it must perform a signed contract with a Vietnamese enterprise in these sectors</li> </ul>
5. Tourism	<ul style="list-style-type: none"> <li>• if required to proceed with a State-authorized co-operation project in tourism development; <i>or</i></li> <li>• if it must perform a signed contract with a Vietnamese enterprise in tourism</li> </ul>

Source: Do Dinh Luong, Institute of Law Research (Hanoi), unpublished manuscript on Investing in Vietnam

##### 2. Prepare Application Package

A company that meets the necessary conditions to open a representative office must prepare an application package. The package should include various particulars on the applicant, including:

- the name and address of the company's headquarters;
- the scope of the company's business activities in its home country;
- the company's prescribed capital;
- the purpose for setting up a representative office;
- the proposed address and activities of the office;
- the name of the chief representative and the number of staff (both expatriate and local); and

- principal assets of the office.

The package must be signed by the highest authority in the company (CEO, President) and must include a number of supporting documents, such as:

- the company's charter and certificate of incorporation; and
- a certificate by a bank to confirm the company's legal capital.

## Stage 2

### 1. Submit Application to People's Committee

The company must first submit the completed application package to the local People's Committee, which needs 30 days to examine the documents. It is not clear from the literature if there is a great deal of negotiation with the People's Committees at this stage. Given the high degree of negotiation in other dealings with the Committees, however, it would seem that investors should be prepared for some talks.

### 2. Submit Application to the Ministry of Trade

The applicant must then submit the package to the Ministry of Trade, which needs 60 days for a complete review. During this time, the Ministry will consult any other government Ministries or agencies that may have some interest in the proposed office's functions. As in step 1, the investor should prepare for talks with all involved bodies.

### 3. Licence Issued

If no serious objections are raised by the People's Committee, the Ministry of Trade or any other review bodies, the Ministry of Trade issues a representative office licence. The licence normally consists of five articles, the most important of which are Articles Three and Four. Article Three states the authorized number of local and foreign office staff, whereas Article Four specifies the office's scope of activities. Of particular importance, Article Four states that "the representative office must not undertake business or any form of profit-making activities"<sup>1</sup>.

Licences are normally only valid for three years, but are renewable. There is a US \$5,000 permit fee required by the Ministry of Trade. No other fees are charged.

## Stage 3

### 1. Pre-Registration

As in the case of an investment licence, a representative office licence does not allow the office to immediately begin operations. Before the office can open, it must be registered with the relevant People's Committee. Before the office can be registered, however, the company must attend to some pre-registration tasks.

There are two important pre-registration tasks that, it would appear, can be completed concurrently. First, the company must hire its local staff<sup>2</sup>. In most cases, the company chooses and hires its own staff without help from government authorities. Once hired, however, all local staff must be "legalized" by the Foreign Service Company (FSC), a department in the People's Committee. The FSC can only "legalize" the workers who are considered eligible by the Directorate of Labour and Social Welfare, another department of the People's Committee. The Directorate issues work permits to the eligible staff.

Once the local workers have been approved, they must sign an employment contract with the FSC. The foreign company must then also sign a separate contract with the FSC that essentially allows the foreigner to officially hire its workers through the FSC.

The second pre-registration task is to rent office space and housing. The process is essentially the same as that used to hire local workers, except that in this case the Directorate of Housing Management determines which office and residential facilities are eligible for rent. The office and housing arrangements are legalized by, and leased through, the FSC.

These two important pre-registration tasks, as well as other less important ones, are expected to take less than 60 days to complete.

## 2. Registration

Within 60 days of receiving its licence, the representative office must register with the Directorate of External Economic Affairs, a department of the relevant People's Committee. To register, the representative office must submit a number of documents, including:

- a photocopy of the licence;
- the Registration of Activities form;
- the letter of appointment of the chief and assistant representative;
- the contract (with the FSC) of the office lease;
- an application for the registration of the company's official stamp;
- certificates of bank accounts issued by local banks;
- resumes with photos of all local and expatriate staff members;
- copy of the company's employment contract with the FSC; and
- a list of necessary office supplies under a "temporary import and re-export" provision.

All documents in the package must be printed on the company's letterhead. Four copies of the package must be submitted to the Directorate of External Economic Affairs and the Ministry of Trade. Within 15 days of the filing date of a complete registration package, the Directorate is obligated to issue a "notice of procedure completion" to the office.

### 3.2.4 Representative Office Approval Process Important Points

#### Time Required

The approval process to set up a representative office is clearly less involved and less time consuming than the investment approval process (Section 3.1). Various government literature sources even attach time estimates to some of the stages. Stage 2, for example, is supposed to take no longer than 90 days – 30 days for the People's Committee review, and 60 days for the Ministry of Trade review. Stage 3 is expected to take only 75 days – 60 days for the pre-registration activities and 15 days for the actual registration.

In total, these time estimates add up to approximately 6 months, a figure which matches the actual experiences of several companies<sup>3</sup>.

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**Endnotes**

- 1 Nguyen Ngoc, "Detailed guidelines for rep office registration", *Vietnam Investment Review*, May 17-23, 1993.
- 2 It is very important for the office to use local staff, even though there is no Vietnamese partner.
- 3 Interview with Franca Ciambella, Associate, Sinclair, Roche and Temperley (Singapore). Hanoi, May 25, 1993.

## Section 4: Six Points to Remember

In this Handbook, investors have been introduced to detailed information on important legislation, legislative pitfalls and approval processes. Throughout the text, a number of important themes have emerged which investors should keep in mind. These themes are stated here, in no particular order, as Six Points to Remember.

### Point One: Contacts

In any business environment, "networking is everything". In a country like Vietnam, with its huge multi-level bureaucracy, this adage takes on new meaning. Investors should spend whatever time is necessary to establish firm relationships at every level of government, from the local People's Committee to the senior national ministries. As one expert comments, "the government interprets the law for its friends, and applies the law to strangers"<sup>1</sup>.

### Point Two: Presence

Recall in Section 3.1.4 that the investment approval process was described as a hands-on exercise. This point is worth reiterating. To set up an investment project in Vietnam, the investor must be present in some form throughout the entire lengthy process. As lawyer Sesto Vecchi warns, "people who believe that securing a contract in Vietnam or setting up a joint venture is a matter of a couple of business trips and a signing ceremony will not get very far"<sup>2</sup>. Companies should consider either hiring a local advisor to handle the approval process, or sending a manager to Vietnam for an extended period of time.

### Point Three: Implementation of Legislation

One of the caveats from the general introduction stated that the real meaning of legislation in Vietnam lies in its implementation. Some foreigners active in Vietnam today have found that the same piece of legislation can be interpreted and applied differently by various government agencies in different locations throughout Vietnam. Investors should expect these variations.

### Point Four: Don't Assume Anything

Vietnam is still learning how to handle Western-style business activities in an open market. As recently as 1986 remember, Vietnam was a centrally-planned, closed nation that had neither the need for nor an understanding of open market economic legislation and business administrative procedures. Today, Vietnam has improved its understanding a great deal; however, the country is still learning. Investors should not assume that international business terms or practices are familiar to the Vietnamese. All aspects of contracts and business transactions should be made explicit.

It is worth mentioning here that the Vietnamese are very pragmatic, and recognize their shortcomings in business. Investors who make the effort to deal openly, and to help educate the Vietnamese will be helped in return<sup>3</sup>.

### Point Five: Importance of People's Committees

In Vietnam, there is an ancient saying that "the king's order has to stop at the village gate"<sup>4</sup>. This saying still applies today. The provincial and local People's Committees are very powerful organizations that effectively control all local resources, including labour and land. It is imperative to win the support of the relevant Committee. In simple terms, a project will not come to fruition without the relevant People's Committee on-side.

### Point Six: Patience

Perhaps the most repeated piece of advice from experienced investors and experts in Vietnam is to have patience. As one expert comments, patience is "a national virtue in this communist state where everything that works, works deliberately"<sup>5</sup>. It takes a great deal of time to build relationships, study the market, and learn about the key regulations and approval processes. Companies in search of the quick, easy profit should not consider Vietnam – few of the companies present in Vietnam today have started to show big returns.

Nevertheless, most experts remain optimistic. They believe that investors who are patient and can afford a few years with no returns, will benefit over the long term as Vietnam continues its move toward a market economy.

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### Endotes

- <sup>1</sup> Michael Scown, "Business Tips From a Barstool in Vietnam", in *The Asia Wall Street Journal Weekly*, July 26, 1993.
- <sup>2</sup> See "Who's who on Asia's last business frontier", in *Asia Money & Finance*, April, 1992.
- <sup>3</sup> See story on Australian businessman Raymond Eaton. Rodney Tasker, "When in Hanoi", in *Far Eastern Economic Review*, November 25, 1993.
- <sup>4</sup> See "The forces behind economic change", in *Asia Money*, July/August, 1993
- <sup>5</sup> Michael Scown, "Business Tips From a Barstool in Vietnam", in *The Asian Wall Street Journal Weekly*, July 26, 1993.

## **Appendices**

## Appendix 1: Selected Bibliography

This appendix lists some of the more valuable sources used for this report.

### Personal Interviews Conducted by William Neilson

In May, 1993 and November, 1993, William Neilson conducted numerous interviews in Vietnam with international lawyers, and numerous Vietnamese government officials.

### General Written Sources

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## Appendix 2: Summary Table of FDI Legislation, and Gaps and Deficiencies

This table summarizes the information from Sections 1 and 2. All information is organized in the categories used in the report, and is presented in the same order as in the text. The table continues on the following page.

Category	Legislative Framework	Gaps & Deficiencies in Framework
Law on FDI	<ul style="list-style-type: none"> <li>- Law on Foreign Investment in Vietnam (including Amendments)</li> <li>- Decree No. 18 Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam</li> </ul>	See other categories
Forms of Business	<ul style="list-style-type: none"> <li>- Chapters 2, 3, 4 and 5 of Decree No. 18</li> </ul>	<ul style="list-style-type: none"> <li>- Transfer of Ownership in Foreign Invested Companies</li> <li>- Trapped in a JV</li> <li>- Restriction on Assignment of Capital, and Its Effect on Financing</li> <li>- Forced Dissolution of Joint Venture</li> <li>- Buy-out Provisions in FOCs</li> </ul>
Tax - <i>Corporate Income</i> Tax - <i>Withholding Tax</i> Tax - <i>Turnover Tax</i> Tax - <i>Import and Export</i>  Tax - <i>Land Tax</i> Tax - <i>Personal Income</i>	<ul style="list-style-type: none"> <li>- Chapter 9 of Decree No. 18</li> <li>- Chapter 9 of Decree No. 18</li> <li>- Decree No. 351-HDBT on Turnover Tax</li> <li>- Law on Import and Export Duties</li> <li>- Chapter 9 of Decree No. 18</li> <li>- Decree on Real Estate Tax</li> <li>- Ordinance on Income Tax of High Income Earners</li> </ul>	None identified.
Intellectual Property - <i>General Industrial</i>  Intellectual Property - <i>Specifically Trademarks</i>	<ul style="list-style-type: none"> <li>- Decree No. 13 on the Protection of Industrial Property Rights</li>  <li>- Ordinance on Trademarks</li> <li>- Decree No. 84 (exceptions to the first-to-file rule)</li> <li>- Decree No. 140 on the Investigation and Handling of Production of and Dealing in Counterfeit Goods</li> </ul>	<ul style="list-style-type: none"> <li>- Industrial Property Rights Not Protected Under Decree on Industrial Property Rights</li> <li>- Provision for State to Issue Non-Voluntary Licenses of Utilization.</li>  <li>- First-to-File Rule</li> <li>- Trademark Disputes and the People's Courts</li> </ul>
Repatriation of Profits and Capital	<ul style="list-style-type: none"> <li>- Articles 22-23, Law of Foreign Investment in Vietnam</li> </ul>	None identified
Labour	<ul style="list-style-type: none"> <li>- Decree No. 233 Regulating Employment in Enterprises with Foreign Invested Capital</li> <li>- Decision No. 242 Concerning the Minimum Wage</li> <li>- Decree No. 18-CP Regulating Collective Labour Agreements</li> </ul>	None identified

### Summary Table Continued

Category	Legislative Framework	Gaps & Deficiencies in Framework
Real Estate	<ul style="list-style-type: none"> <li>- Law on Land</li> <li>- Decree of the Government on Land Leases to Foreigners</li> <li>- Ordinance on Residential Housing</li> <li>- Circular No. 50-TC-TCDN Guiding the Implementation of the Regulations on Rental Rates for Land</li> </ul>	<ul style="list-style-type: none"> <li>- Enforcement of Penalties Imposed for Infringing on Land Use Rights</li> <li>- Unclear Ability to Use Land Rights as Security</li> <li>- Arbitrary Land Rents for Foreigners</li> <li>- Right to Use Land; Right to Own Buildings</li> <li>- Expropriation and Compensation</li> <li>- Restrictions on Vietnamese Contribution of Land Use Rights to JVs</li> </ul>
<p>Dispute Resolution - <i>Law on Foreign Invest</i></p> <p>Dispute Resolution - <i>Economic Contracts</i></p> <p>Dispute Resolution - <i>Labour Disputes</i></p> <p>Dispute Resolution <i>Intellectual Property</i></p> <p>Dispute Resolution <i>Land Disputes</i></p>	<ul style="list-style-type: none"> <li>- Chapter 13 of Decree No. 18</li> <li>- Ordinance on Economic Contracts</li> <li>- Ordinance on Economic Arbitration</li> <li>- Articles 56-57, Decree 233 Regulating Employment in Enterprises with Foreign Invested Capital</li> <li>- Ordinance on the Protection of Industrial Property Rights</li> <li>- Law on Land</li> </ul>	<ul style="list-style-type: none"> <li>- "Competent Government Body" Not Identified</li> <li>- Incomplete Body of Commercial Law</li> <li>- Conflicting Dispute Resolution Legislation</li> <li>- Inability to Enforce Vietnamese Economic Arbitration Awards</li> <li>- Inability to Enforce Foreign Arbitration Awards</li> <li>- Conflict of Interest in Conciliation</li> </ul>
<p>Finance, Banking and Forex - <i>Banking</i></p> <p>Finance, Banking and Forex - <i>Finance</i></p> <p>Finance, Banking and Forex - <i>Forex</i></p>	<ul style="list-style-type: none"> <li>- Ordinance on the State Bank</li> <li>- Ordinance on Banks, Credit Cooperatives and Financial Companies</li> <li>- Decree No. 189 Regulating the Establishment of Foreign Bank Branches and Joint Venture Banks</li> <li>- Decision No. 200/QD-NH15 of the State Bank on the Spending of Provided Funds and Regulated Funds</li> <li>- Circular on Foreign Investment Depreciation Rules</li> <li>- Decree 137 Concerning Price Control</li> <li>- Chapter 10 of Decree 18: Regulations Governing in Detail the Implementation of the Law of Foreign Investment in Vietnam</li> </ul>	<ul style="list-style-type: none"> <li>- Banking Ordinances vs. Law on Foreign Investment: Which Applies?</li> <li>- Unsophisticated Legislation</li> <li>- Prohibition Against Raising Capital on Domestic Capital Markets</li> </ul>

### Summary Table Continued

Category	Legislative Framework	Gaps & Deficiencies in Framework
Representative Offices	<ul style="list-style-type: none"> <li>- Decree No. 382 Regulating the Establishment and Activities of Resident Representative Offices in Vietnam</li> <li>- Circular No. 04/TN/FC for the Implementation of Decree 382</li> </ul>	<ul style="list-style-type: none"> <li>- Potential for Conflict in Regulations on Representative Offices</li> <li>- "Branch Offices" Not Recognized in Law</li> </ul>
Import/Export - <i>General</i>  Import/Export - <i>EPZs</i>	<ul style="list-style-type: none"> <li>- Chapter 7 of Decree 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam.</li> <li>- Circular No. 03-TM-DT Guiding the Implementation of Chapter 7 of Decree No. 18</li> <li>- Decree No. 322 Concerning the Establishment of Export Processing Zones in Vietnam</li> </ul>	None identified
General	N/A	<ul style="list-style-type: none"> <li>- No Environmental Regulations</li> <li>- No Antitrust Legislation</li> </ul>

## Appendix 3: Application Documents

As explained in the text, there are specific documents that an investor must submit as part of an application package for the different forms of investment. This Appendix contains the particulars on the more important documents, including the feasibility study, the business co-operation contract, the JV contract, the JV charter, and the FOC charter.

The information presented here comes from two sources:

- Unpublished manuscript on Investing in Vietnam, by Do Dinh Luong of the Institute of Law Research in Hanoi; and
- Decree 18: Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam.

### Documents

<i>Feasibility Study</i>	<p>These studies must attempt to foresee all aspects of the business venture. They must include information on:</p> <ul style="list-style-type: none"> <li>• source of supply, and amount of materials and equipment needed for construction</li> <li>• rate of construction progress</li> <li>• sources of supply of raw and other materials to be used in production</li> <li>• cost of production materials</li> <li>• annual production forecasts</li> <li>• cost of goods produced</li> <li>• number of staff and cost of labour</li> <li>• land requirements</li> <li>• marketing plans for export and local markets</li> <li>• etc.</li> </ul>	<ul style="list-style-type: none"> <li>• procedure for settling disputes between the partners that arise from the execution of the contract</li> <li>• validity of the contract</li> </ul>
<i>Business Cooperation Contract</i>	<ul style="list-style-type: none"> <li>• nationalities, addresses and duly authorized representatives of the partners</li> <li>• a description of the intended business activities</li> <li>• a description of the main equipment and materials for business; details on the quantity and quality of products to be sold; markets in which the products will be sold; the ratio of foreign currency and domestic currency to be collected</li> <li>• the obligations and rights of the partners; the method of determining and distributing profits and losses; conditions for assignment of rights and obligations</li> <li>• duration of contract and responsibilities of parties in execution of contract; amendment to and termination of contract</li> </ul>	<p><i>Joint Venture Contract</i></p> <ul style="list-style-type: none"> <li>• nationalities, addresses and authorized representatives of joint venture partners</li> <li>• name, address and business activities of the joint venture</li> <li>• the investment capital, the legal capital, the capital contribution of each partner, the mode and progress rate of capital contribution, the progress rate of the construction of the joint venture, the conditions and procedure for assignment of capital</li> <li>• list of main equipment and materials needed to establish the joint venture; products and their outlets; the ratio of foreign currency and Vietnamese currency to be collected</li> <li>• the duration of the joint venture, termination and dissolution of the joint venture</li> <li>• the procedure for settling disputes between the joint venture partners; the arbitration body and the applicable law in cases of disputes</li> <li>• responsibilities of the partners in the execution of the joint venture contract</li> <li>• the validity of the joint venture contract</li> </ul>
		<p><i>Joint Venture Charter</i></p> <ul style="list-style-type: none"> <li>• nationalities, addresses and authorized representatives of the joint venture partners</li> </ul>

- name, address and business activities of the joint venture
- the investment capital, the legal capital the ratio of contribution to the legal capital and the rate of contribution to the legal capital
- the number, composition, responsibilities, rights and office term of the Board of Management, General Director and Deputy General Directors of the joint venture
- the representative of the joint venture before the law courts, arbitration bodies and state authorities of Vietnam
- the principles governing financial matters, accounting and statistical systems; insurance of assets of the joint venture
- the rate of profit and loss sharing between the joint venture partners
- duration of the joint venture, termination and dissolution of the joint venture
- labour relations in the joint venture
- training plan in regard to managerial officials, technical and business personnel and workers
- procedure for amendments to the charter of the joint venture

*FOC Charter*

- nationality and address of the authorized representative of the foreign investor
- the business name, address and activities of the enterprise
- the invested capital, legal capital and the progress of capital contribution and construction
- the representative of the enterprise before the Vietnamese law courts, arbitration body and state authorities
- the principles governing financial matters, accounting, statistics and insurance of the enterprise assets
- the duration, termination and dissolution of the enterprise
- the employment in the enterprise
- plans for the training of managerial, technical and professional staff and personnel
- the procedures of amending the charter of the enterprise

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