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**THE SIGNIFICANT TRANSITION FROM THE
TRANS-PACIFIC PARTNERSHIP (“TPP”) TO THE
COMPREHENSIVE AND PROGRESSIVE TRANS-
PACIFIC PARTNERSHIP (“CPTPP”)**

How will it affect businesses in Vietnam?

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AGENDA

- **WHAT HAS CHANGED FROM TPP TO CPTPP?**
- **GAINS FOR VIETNAM**
- **POTENTIAL CHALLENGES FOR BUSINESS IN VIETNAM**
- **CPTPP'S ENTRY INTO FORCE AND HOW BUSINESS SHOULD PREPARE FOR IT?**



Comprehensive and Progressive Trans-Pacific Partnership (“CPTPP”)

- The TPP was already concluded on 06 October 2015. However, in January 2017, right after President Trump took his office, the United States formally expressed its withdrawal from the agreement.
- In November 2017, during APEC meeting in Da Nang, Vietnam, ministers from 11 countries decided to push ahead with the TPP with its new name – CPTPP
- On 8 March 2018, the CPTPP was finally signed in Chile.
- The CPTPP accounts for 495 million people, representing 13.5% of the world total economic output - worth a total of \$10 trillion.

New areas in the CPTPP compared with existing FTAs

- Regulatory coherence
- State-owned enterprises
- Government procurement
- Competition
- Investment
- E-commerce
- Environment and
- Labour.

WHAT HAS CHANGED FROM TPP TO CPTPP?

Investor-to-State Dispute Settlement (ISDS)

TPP	CPTPP
Applies to Investment Agreement and Investment Authorization	Does not apply to Investment Agreement and Investment Approval

- Investment Agreement: a written agreement that is concluded and takes effect after the date of entry into force of the CPTPP between an authority at the central level of government of a Party and a covered investment or an investor of another Party and that creates an exchange of rights and obligations, binding on both parties under the applicable law.
- Investment agreement: an agreement in writing, negotiated and executed by both parties, whether in a single instrument or in multiple instruments.
- A unilateral act of an administrative or judicial authority, such as a permit, licence, authorisation, certificate, approval, etc. and an administrative or judicial consent decree or order will not be considered a written agreement.
- Investment Authorization: an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party.

Intellectual Property Rights

TPP	CPTPP
Includes provisions on patentable subject matter, protection of undisclosed test or other data, biologics, technological protection measures, etc.	Suspends 11 important obligations

Financial services

TPP	CPTPP
ISDS applies on breach of Minimum Standard of Treatment obligation	ISDS does not apply on breach of Minimum Standard of Treatment obligation

- Minimum Standard of Treatment obligation: includes fair and equitable treatment and full protection and security.
- “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world;
- “full protection and security” requires each Party to provide the level of police protection required under customary international law.

Telecommunications

TPP	CPTPP
<p>any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the body or other relevant body to reconsider that determination or decision.</p>	<p>Suspends this right</p>

Government procurement

TPP	CPTPP
<p>Negotiations to expand the list of covered government entities and agencies within 3 years from the entry into force of the agreement</p>	<p>Negotiations to expand the list of covered government entities and agencies within 5 years from the entry into force of the agreement</p>

Cross-border trade in services

TPP	CPTPP
<p>No Party shall allow a supplier of services covered by a postal monopoly to cross-subsidize its own or any other competitive supplier's express delivery services with revenues derived from monopoly postal services.</p> <p>No abuse of monopoly position of a postal service supplier</p>	<p>Suspends these provisions.</p>

Environment

TPP	CPTPP
<p>A Party shall take measures to combat trade in /take of wild fauna and flora that violates that Party's law or a law of the jurisdiction where the take or trade occurred</p>	<p>That obligation only applies to that Party's law (<i>i.e.</i>, no law of the jurisdiction where the take or trade occurred applied)</p>

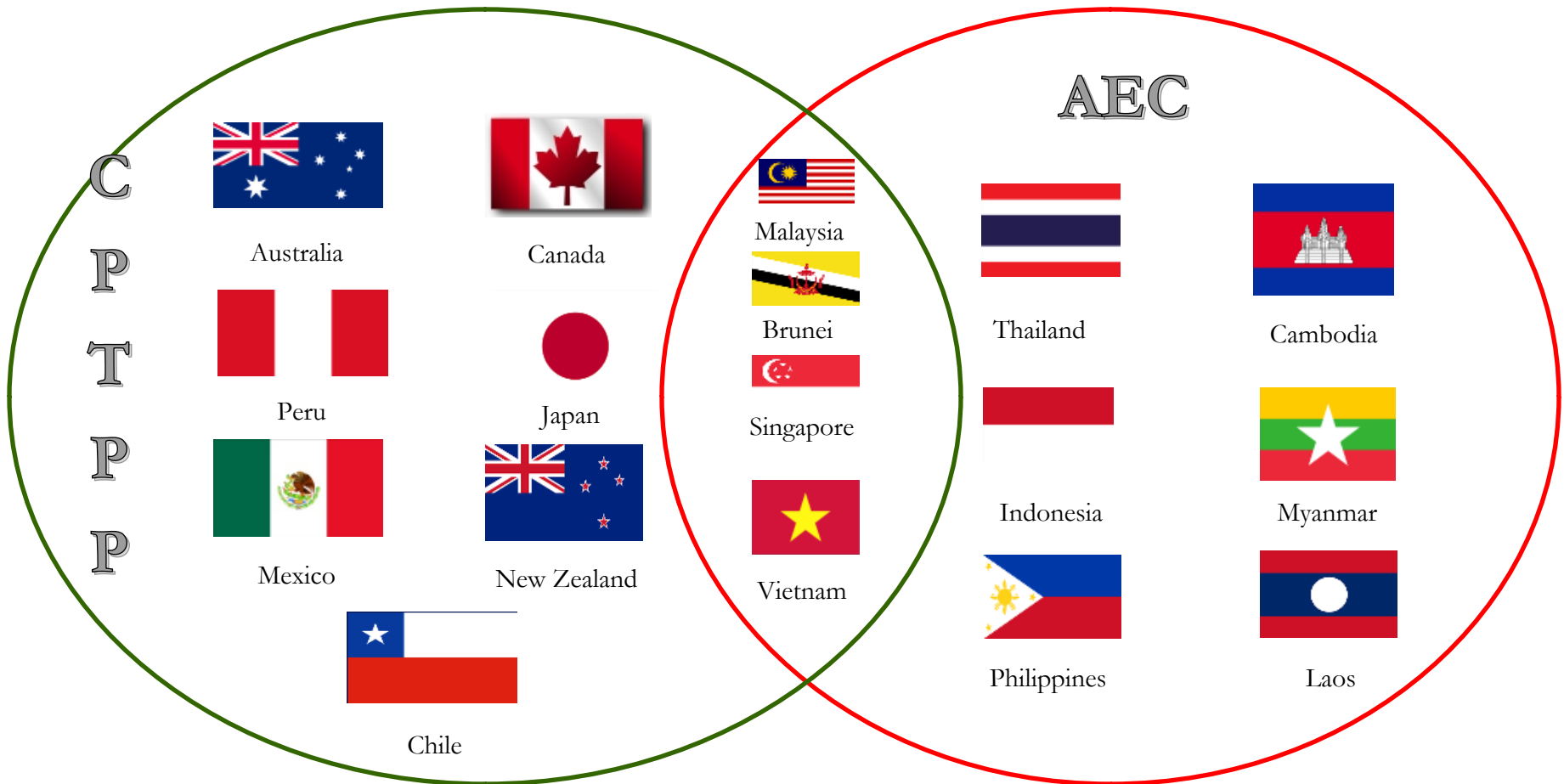
Vietnam's commitments in CPTPP vs. TPP

- Same as TPP:
 - Tariff reduction (almost 100% tariff lines, non-application of export tariff, etc.)
 - Textile (yarn-forward rule, short supply list of products)
 - Trade in services and Investment (negative list approach, ratchet mechanism, ...)
 - Government procurement
 - State-owned enterprises, environment
- New commitments in the CPTPP:
 - Electronic commerce
 - Intellectual Property
 - Labor

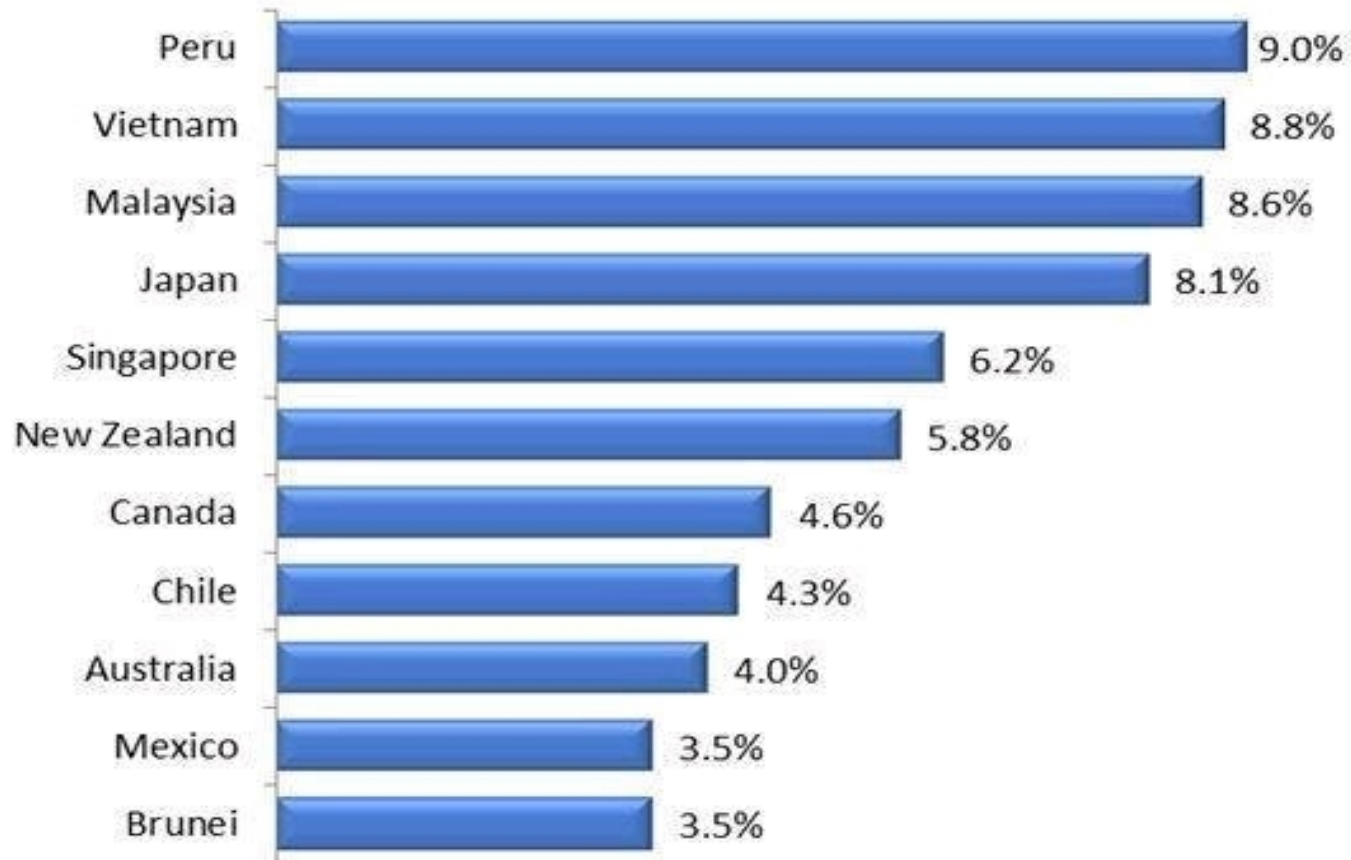
Can be found in side letters between Vietnam and other country members

Gains for Vietnam

CPTPP and AEC intersection



Export growth by 2030 by impact of CPTPP (%)



Source: Peterson Institute for International Economics

Gains for Vietnam

- CPTPP will lead to an increase of 1.32% in Vietnam's GDP
- Vietnam will have access to newer markets and can expand their exports to countries such as Canada, Mexico, and Peru with whom it does not have a trade agreement.
- Opportunity for Vietnam to re-structure the export market portfolio, not rely too much on the United States.

Gains for Vietnam (cont.)

- Sectors that benefit the most from the CPTPP:
 - Textiles, clothing, footwear
 - Food, beverages and tobacco
 - Chemicals, transport equipment, plastic parts

Gains for Vietnam (cont.)

- Opportunity to involve in new supply chain in the region given strict Rules of Origin
- More incentives for Government institutional and economic reforms towards more transparent, open and predictable investment environment, attracting more foreign investment in Vietnam
- More sophisticated joining of separate business sections to integrate into new profit streams

Yarn-forward rule: Impact on Vietnam's textile industry

- Current status and Issues:
 - Around 6,000 textile companies in Vietnam - ~600,000 machines have to be replaced
 - 60% of imported materials sourced from other non-CPTPP countries (mainly China)
 - Domestic production of materials has not met the demand
 - Yarn production must go together with weaving and dyeing but environment protection is currently an issue.
- Impacts and what to do next:
 - More foreign investment in textile industry with investment value of up to USD1 billion.
 - Sourcing managers are looking for alternatives due to rising costs, labor shortages, strict compliance and environmental regulations and a move to production of high value products in China
 - Establish domestic supply chain
 - Bring into operation domestic yarn production factories

Investor-state dispute settlement (ISDS)

- Through binding arbitration
- Arbitral awards are final, binding and fully enforceable in CPTPP countries
- ISDS provisions include protections commonly found in investment agreements such as non-discrimination; fair and equitable treatment; full protection and security; the prohibition of expropriation that is not for public purpose, without due process, or without compensation; the free transfer of funds related to investments; and the freedom to appoint senior management positions regardless of nationality.
- New protections in the CPTPP:
 - Transparency in arbitral proceedings, disclosure of filings and arbitral awards, and participation of interested non-disputing parties to make *amicus curiae* submissions to a tribunal
 - Safeguards to ensure government's ability to regulate in the public interest (public health, safety and the environment)

Government Procurement

Criteria	CPTPP
Monetary values that determine whether procurement by central government is covered under an agreement	130,000 Special Drawing Rights (SDRs) (US\$191,000) from 25 years since the entry into force of the agreement Initial transitional threshold: 2 million SDRs
Procurement of construction services by central government entities	Initial threshold: 40 million SDRs After 15 years, 5 million SDRs
Entities covered	21 central government bodies 38 other entities No sub-central government coverage - expansion of the list within 5 years since the entry into force of the agreement
Exclusion of preferences for SMEs	applies only to procurement of goods and services whose value is estimated at 260,000 SDRs or less and may not be applied to SMEs with more than 500 permanent full-time employees.
Application of offsets	Based on the total value of covered procurement

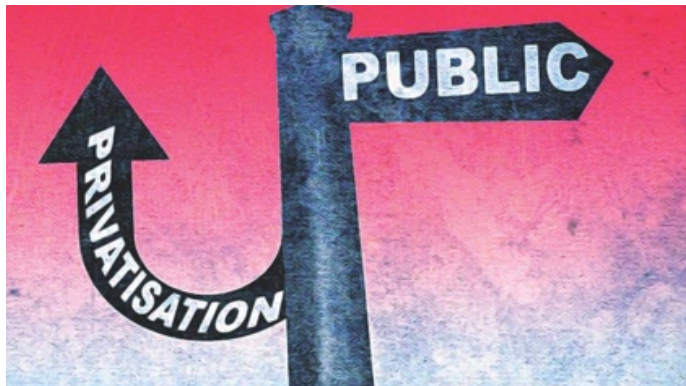
Potential challenges for business in Vietnam

Fierce foreign competition in domestic market



Challenges for business in Vietnam

- Weak supporting industry
- Stagnation of the enterprise system
- Role of SOEs in the system
- Level of IP protection
- Corruption



CPTPP'S ENTRY INTO FORCE

CPTPP's entry into force

6

No. of members
needed to ratify it
before it can
enter into force

60
days

Time needed to
enter into force
after the ratification
requirement is met

How business should prepare for it?

- Be aware of the obstacles when the market is more liberalized
- Actively participate in international trade and regional supply chains
- Carefully examine the CPTPP to find out where the benefits they expect are, what are the conditions to reap such benefits, etc. Each sector will need to do their own homework.
- Learn the rules of the game; and
- **INVEST IN VIETNAM BEFORE IT IS TOO LATE!**

**CONNECTIONS ARE BUSINESS
PLEASE CONNECT WITH ME ON
LINKEDIN:
OLIVER MASSMANN**

WHEREVER YOU ARE - BE ALL THERE

Jim Elliot

DUANE MORRIS VIETNAM LLC

Thank you very much!

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References (1)



International Consulting & Trading Services Ltd.,

Hanoi, 15th October 2015

To Whom It May Concern

Recommendation of Excellent Services of Mr. Oliver Massmann

I am Managing Director of International Consulting and Trading Services Ltd, a company registered in British Virgin Islands with operations based from our Hanoi Representative office. Over 15 years we have assisted many international overseas suppliers, from a wide range of industries, to identify markets and thereafter representing their interests to secure ongoing business here in Vietnam. The majority of our clients are based in Asia, Eastern and Western Europe.

While we endeavour to enforce our contractual rights, this is – unfortunately – not always possible. In this regard, we would like to highlight our satisfaction with the highly professional services rendered by Mr. Oliver Massmann of Duane Morris LLC, Hanoi, who successfully represented us and settled a defaulted payment, due to us for services provided to an international German company.

We would further note that Mr. Massmann’s successful handling of the case exceeded our expectations since he achieved a settlement without the need for costly arbitration in the courts of Vienna.

Mr. Massmann’s capability in legal analysis and his commercial aptitude combined with his exceptional negotiation skills, led to a timely and efficient resolution of the dispute at hand. Of course being German himself was also a significant contributing factor, since he was able to tease out information from the opposing German lawyer, giving him a winning hand.

Mr. Massmann has demonstrated to us his capability as a real problem solver. We regard him and his team at Duane Morris LLC as an excellent choice for dispute resolution services and would not hesitate to entrust them with further work.



Michael Anthony Langrish-Smith
Managing Director

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References (2)



I am Andrew Meyer, CEO of Nine Dragons Group LLC. We have been actively involved in Vietnam Real Estate since 1999. We have gone through many lawyers and law firms, and were disappointed by all of them. Lack of knowledge of the laws, the differences between buying and selling in specific cities, very slow response time and poor client service.

Finally, we met Mr. Oliver Massmann. The first project we did with him was the same as working with our attorneys in NYC. He has a very strong knowledge of the laws, procedures and intricacies of Vietnam. Speaks the language fluently (a rarity) and is a consummate professional who responds to my requests very quickly.

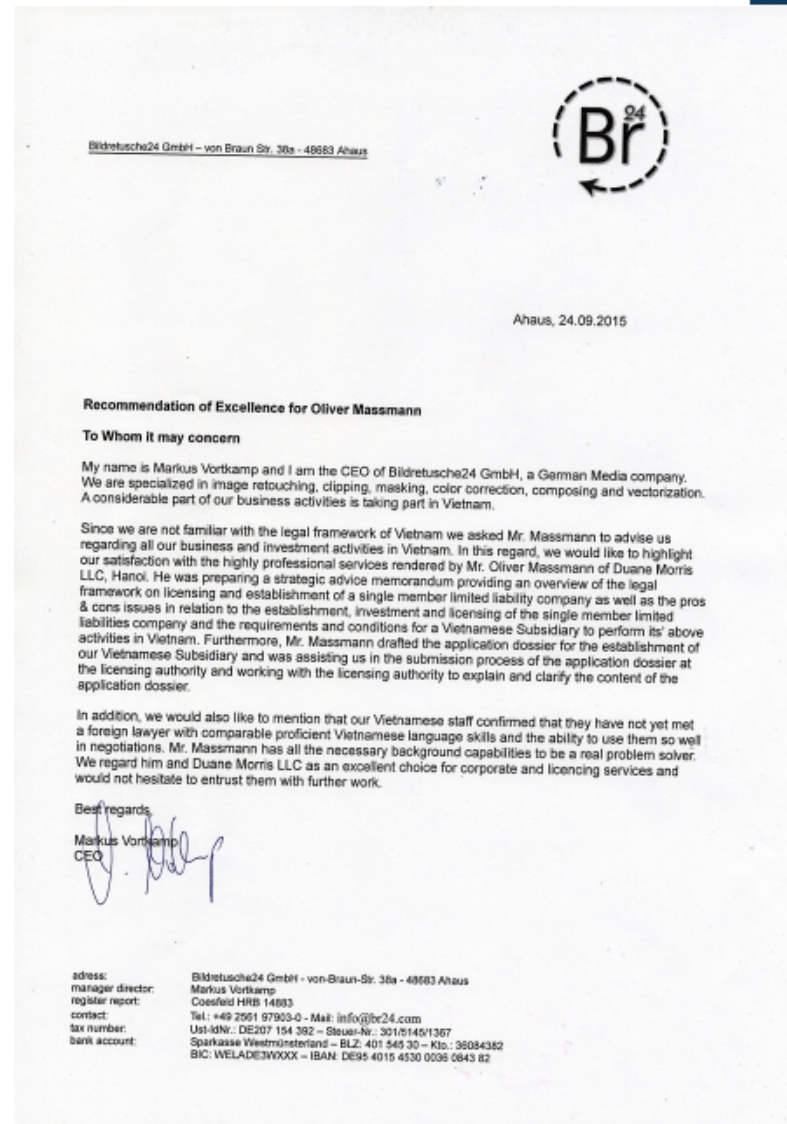
We continue to work with Mr. Oliver Massmann and are thrilled to have an attorney who brings so much to the table working on our team.

I highly recommend Mr. Oliver Massmann and his firm, Duane Morris Vietnam LLC. Should you have any questions, please feel free to contract me at any time.

Andrew Meyer

CEO

References (3)



References (4)



Hong Kong, 01 Jan 2015

To Whom It May Concern

My name is Thomas Domanski and I am Managing Director of Bauer Hong Kong Ltd shareholder of Bauer Vietnam Ltd). Bauer Hong Kong Ltd is a member of the German based Bauer Group of Companies and a subsidiary of the Bauer Spezialtiefbau GmbH which belongs to the MDax listed ultimate holding company Bauer AG. The Bauer Group is specialized in foundation engineering, machinery, and Resources related services. A considerable part of Bauer Group's corporate activities takes place in Asian countries, among them Vietnam.

While we try our utmost to avoid entering into legal proceedings to enforce contractual rights, this is – unfortunately – not always possible. In this regard, we would like to highlight our satisfaction with the highly professional services rendered by Mr. Oliver Massmann of Duane Morris LLC, Hanoi, who successfully represented Bauer in Singapore (SIAC) based arbitration proceeding concerning a dispute about payment for construction works provided by Bauer in Vietnam.

We would like to note that Mr. Massmann's handling of the case significantly contributed to the successful conclusion of the case out of court/Arbitration. Mr. Massmann's services combined thorough legal analysis with a strong commercial approach, lead to a timely and efficient resolution of the dispute at hand. In addition, we would also like to mention that our Vietnamese staff confirmed that they have not yet met a foreign lawyer with comparably proficient Vietnamese language skills and the ability to use them professionally in negotiations. Mr. Massmann has proven himself to be capable to use local knowledge paired with legal competence to resolve disputes in an efficient manner. We regard him and Duane Morris LLC as an excellent choice for dispute resolution services and would not hesitate to entrust him with further work.

Best regards

Thomas Domanski
Managing Director

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