

DOING BUSINESS IN VIETNAM

Dr. Oliver Massmann

Partner – General Director

Duane Morris Vietnam LLC

© Dr. Oliver Massmann

All rights reserved. This document and all its parts is protected by copyright, in particular the reproduction of its parts, photomechanical reproduction and storage on electronic media. Unfair copying, translation, microfilming, processing or transmission in electronic form is prohibited. Any use beyond the strict limits of the copyright law, without the permission of the publisher and the author, is forbidden and liable to prosecution.

Neither the publisher nor the author accept any responsibility for the accuracy of the information contained herein.

CONTENTS

DOING BUSINESS IN VIETNAM	4
<i>AN INTRODUCTION TO VIETNAM</i>	4
- <i>Vietnam 101</i>	4
- <i>Useful information on regulatory authorities</i>	4
- <i>Business etiquette 101</i>	5
- <i>International instruments: the EVFTA, EVIPA and the CPTPP</i>	6
- <i>Small-sized and Medium-sized Enterprises (SMEs) in Vietnam</i>	7
<i>FOREIGN INVESTMENT IN VIETNAM</i>	9
- <i>Investment procedures</i>	9
- <i>Conditional sectors in Vietnam</i>	14
- <i>Applicable taxes for businesses</i>	14
<i>INTELLECTUAL PROPERTY RIGHTS (IPR) IN VIETNAM</i>	15
- <i>Protection of IPRs in Vietnam</i>	15
- <i>IPRs' enforcement</i>	16
- <i>Support for IPRs for SMEs</i>	16
<i>EXPORTING GOODS TO VIETNAM</i>	17
- <i>Applicable tariff rates (including tariff rate quotas) and rules of origin for products</i>	17
- <i>Import control</i>	17
- <i>Applicable technical requirements in general</i>	22
- <i>Applicable taxes</i>	24
- <i>Applicable requirements for label of goods</i>	24
- <i>Trade remedy measures against imports in Vietnam</i>	25
<i>DISTRIBUTION OF GOODS IN VIETNAM</i>	26
- <i>Applicable requirements</i>	26
- <i>Applicable restrictions</i>	26
- <i>Applicable procedures for a company to set up outlet/shop for imported products</i>	26
<i>E-COMMERCE IN VIETNAM</i>	29
- <i>Major platforms in Vietnam</i>	29
- <i>Payments on e-commerce platforms</i>	29
- <i>Selling products</i>	29
- <i>Return policy</i>	30

EXPORTING SERVICES TO VIETNAM UNDER THE EVFTA	31
- <i>Method of exporting services to Vietnam.....</i>	<i>31</i>
- <i>Specific commitments under the EVFTA.....</i>	<i>31</i>
- <i>Applicable restrictions under the EVFTA</i>	<i>31</i>
EVFTA CHAPTER ON TRADE AND SUSTAINABLE DEVELOPMENT AND ITS IMPLICATIONS IN VIETNAM	34
- <i>Corporate Social Responsibility (CSR).....</i>	<i>34</i>
- <i>Implications on labor</i>	<i>34</i>
- <i>Implications on obligations to protect the environment and mitigate climate change</i>	<i>35</i>
LABOR.....	36
- <i>Normal working hours</i>	<i>36</i>
- <i>Maternity protection.....</i>	<i>36</i>
- <i>Annual leave</i>	<i>36</i>
- <i>Sick leave</i>	<i>36</i>
- <i>Insurance</i>	<i>37</i>
- <i>Foreign employees</i>	<i>37</i>
LITIGATIONS AND DISPUTES.....	38
- <i>Important provisions to keep in mind.....</i>	<i>38</i>
- <i>Engaging a lawyer.....</i>	<i>39</i>

DOING BUSINESS IN VIETNAM

AN INTRODUCTION TO VIETNAM

- **Vietnam 101**

In 2020, Vietnam was one of the few countries to achieve positive GDP growth in the middle of the Covid-19 pandemic. Recently, according to the General Statistic Office (**GSO**), Vietnam's 2022 GDP growth hit 8.02%, a number higher than the global average of 3.2% and the Asia Pacific average of 4%. Looking forward to 2023, Vietnam's GDP growth target goal is 6.5%. Meanwhile, other international financial institutions such as ADB13, UOB, Standard Chartered, IMF, etc., provide forecasts for Vietnam's GDP growth ranging from 6.3% to 7.2%. Vietnam has also the fastest-growing middle class in the region. Vietnam's middle class accounts for 13 per cent of the total population and this figure is expected to reach 26 per cent by 2026. Vietnam's super-rich population is also growing faster than elsewhere and there is no doubt that it will continue to rise over the next ten years.

As recorded in the City Momentum Index 2020 report covering 130 cities worldwide, the two largest cities in Vietnam – Hanoi and Ho Chi Minh City, are listed as two of the top-10 most dynamic cities due to their low cost, rapid consumer market expansion, strong population growth, and transition towards activities attracting significant amounts of foreign direct investment (**FDI**).

The implementation of the EU Vietnam Free Trade Agreement (**EVFTA**) stimulated growth in bilateral trade between Vietnam and the EU with two-way trade turnover reaching USD 17.8 billion during the first four months of implementation (August-November 2020), reflecting an increase of 2.9 per cent compared to the same period the year before.

- **Useful information on regulatory authorities**

For information, the political system and relevant competent authorities are listed as below:

Authority	Webpage	Address	Contact Email
Ministry of National Defense	http://www.mod.gov.vn	No 1B, Nguyen Tri Phuong St., Ba Dinh Dist, Hanoi, Vietnam	info@mod.gov.vn
Ministry of Public Security	http://www.mps.gov.vn	44 Yet Kieu St., Hoan Kiem District, Hanoi, Vietnam.	
Ministry of Foreign Affairs	http://www.mofa.gov.vn	No.1 Ton That Dam, Ba Dinh, Hanoi, Vietnam	ttl.mfa@mofa.gov.vn
Ministry of Justice	http://www.moj.gov.vn	No. 60 Tran Phu St., Ba Dinh District, Hanoi, Vietnam	btp@moj.gov.vn
Ministry of Finance	http://www.mof.gov.vn	No. 28 Tran Hung Dao St., Hoan Kiem District, Hanoi, Vietnam	support@mof.gov.vn
Ministry of Transport	http://www.mt.gov.vn	No. 80 Tran Hung Dao St., Hoan Kiem District, Hanoi, Vietnam	Vpbaocao@mt.gov.vn
Ministry of Construction	http://www.moc.gov.vn	No. 37 Le Dai Hanh St., Hai Ba Trung District, Hanoi, Vietnam	boxaydung@moc.gov.vn
Ministry of Education and Training	http://www.moet.gov.vn	No. 49 Dai Co Viet St., Hai Ba Trung District, Hanoi, Vietnam	bogddt@moet.edu.vn

Ministry of Agriculture and Rural Development	http://www.agroviet.gov.vn	No. 2 Ngoc Ha St., Ba Dinh District, Hanoi, Vietnam	webmaster@agroviet.gov.vn
Ministry of Industry and Trade	http://www.moit.gov.vn	No. 54, Hai Ba Trung St., Hoan Kiem District, Hanoi, Vietnam	NgocPM@moit.gov.vn
Ministry of Planning and Investment	http://www.mpi.gov.vn	No. 6B Hoang Dieu St., Ba Dinh District, Hanoi, Vietnam	ttth@mpi.gov.vn
Ministry of Health	http://www.moh.gov.vn	No 138A Giang Vo St., Ba Dinh District, Hanoi, Vietnam	byt@moh.gov.vn
Ministry of Science and Technology	http://www.most.gov.vn	No. 113 Tran Duy Hung St., Cau Giay District, Hanoi, Vietnam	ttth@most.gov.vn
Ministry of Natural Resources and Environment	http://www.monre.gov.vn	No. 83 Nguyen Chi Thanh St., Dong Da District, Hanoi, Vietnam	webmaster@monre.gov.vn
Ministry of Information and Communications	www.mic.gov.vn	No. 18 Nguyen Du St., Hoan Kiem Dist, Hanoi, Vietnam	office@mic.gov.vn
Ministry of Home Affairs	http://moha.gov.vn	No. 08 Ton That Thuyet St., Cau Giay District, Hà Nội, Vietnam	vanphongbo@moha.gov.vn
Government Inspectorate	http://www.thanhtra.gov.vn	No. 220 Doi Can St., Ba Dinh District, Hà Nội, Việt Nam	ttcp@thanhtra.gov.vn
State Bank of Việt Nam	http://www.sbv.gov.vn	No. 47-49 Ly Thai To St., Hoan Kiem District, Hanoi	thuky_vp@sbv.gov.vn
Committee on Ethnic Minority Affairs	http://www.cema.gov.vn	No. 80-82 Phan Dinh Phung St., Ba Dinh District, Hanoi, Vietnam	banbientap@cema.gov.vn
Government Office	http://vpcp.chinhphu.vn	No. 01 Hoang Hoa Tham St., Ba Dinh District, Hanoi, Vietnam	vpcp@chinhphu.vn
Ministry of Labor, War Invalids and Social Affairs	http://www.molisa.gov.vn	No. 12 Ngo Quyen St., Hoan Kiem District, Hanoi, Vietnam	tiepnhanykien@molisa.gov.vn
Ministry of Culture, Sports and Tourism	http://www.cinet.gov.vn	No. 51-53 Ngo Quyen St, Hoan Kiem District, Hanoi, Vietnam	bovanhoathethaodulich@cinet.gov.vn

Business etiquette 101

- Unless online communication is the sole option (for example, owing to a lockdown imposed by the government because of the Covid-19 outbreak), Vietnamese people prefer to have discussions in person. Despite the fact that English is becoming more widely used, we advise you to bring a translator with you whenever you can. Ideally, you should learn a few basic Vietnamese words to demonstrate your respect for the language and your desire to conduct business. Likewise, both English and Vietnamese should be on your business card. Use both hands while exchanging or receiving business cards.
- In Vietnam, seniority and hierarchy are important. When addressing an older male colleague, use "Anh" before his first name. When working with an older woman, call her by her first name

and the honorific "Chị". Always shake hands with the person who has the most authority first and give business cards or other important paperwork to them

- Vietnamese names have the following order: family name, middle name, first name. Some people have many middle names, while others do not. People only ever address one another by their first name, middle name, or first name plus middle name (to distinguish from others with the same first name).
- Having all work documentation translated into Vietnamese is strongly advised.
- Vietnamese businesspersons tend to reply to investors introduced to them via a mutual connection, rather than cold calling.
- A foreign national must get an entrance visa from the Department of Immigration under the Ministry of Public Security of Vietnam in order to enter the country (both for first issuance and renewal).
- Visas are available electronically. The e-visa system in Vietnam has been upgraded, enabling travelers with single-entry trips lasting up to 30 days to apply for and get their visas online. After completing registration and paying the cost, e-visas take three working days to complete. Citizens of Denmark, Finland, France, Germany, Italy, Norway, Spain, Sweden, and the UK can enter Vietnam without visa for a stay up to 15 days.
- However, foreigners must apply for longer-term (three-months) single or multiple entry visas in order to work in Vietnam and stay for an extended period of time. When applying for longer-term visas (like those for foreign workers or others), it is advised to contact the Vietnamese Consulate General or Embassy in your country of residence.

- ***International instruments: the EVFTA, EVIPA and the CPTPP***

The EU-Vietnam Free Trade pact (EVFTA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the Investment Protection Agreement with the European Union (EVIPA) were signed by Vietnam within the relatively short period of three years, from 2018 to 2020. The agreements with the world's largest trading bloc – the EU – have cemented Vietnam's position as a potential destination for corporate giants from all over the world. While Vietnam is the only SEA country having successfully concluded an FTA with the EU, Malaysia and Vietnam are the two SEA representatives in the CPTPP. The EVFTA is intended to strengthen bilateral trade and investment ties between Vietnam and the EU and is assisting Vietnam's transformation into an Asian manufacturing center.

In services, Vietnam has not only liberalized additional sub-sectors for EU services and service providers under the EVFTA, but also made deeper commitments than those made under WTO Agreements, offering European services the best possible access to Vietnam's market in sectors and subsectors such as, for example, interdisciplinary Research & Development (R&D) services; nursing services, services provided by physiotherapists and para-medical personnel; packaging services; trade fairs and exhibitions services and building-cleaning services.

In addition, for the sectors listed in Vietnam's Specific Schedule of Commitments under the EVFTA, except where there are specific reservations, Vietnam undertakes not to apply restrictions related to: (i) the number of businesses allowed to participate in the market, (ii) the transaction value, (iii) the number of activities, (iv) foreign capital contribution, (v) the form of legal entities, and (vi) the number of natural persons recruited.

In goods trade, Vietnam committed to eliminate import duties on 48.5 percent of tariff lines, equivalent to 64.5 percent of EU exports to Vietnam from 1 August 2020.

In public procurement, Vietnam committed to treating EU bidders, or domestic bidders with EU investment capital, equally to Vietnamese bidders when the Government purchases goods or requests services worth over a specified threshold.

On another note, the Investor State Dispute Settlement (ISDS) provision under the CTPPP and EVIPA also plays an important role in Vietnam's investment attractiveness since it provides the investors with high standards of legal certainty and enforceability and protection (8). Under that provision, for investment related disputes, investors have the right to bring claims to the host country by means of international arbitration. The arbitration proceedings in conflict cases shall be made public as a matter of transparency. The final arbitration award is binding and enforceable without review of its validity by a Vietnamese court. The Government of Vietnam has to fully implement this commitment within five years from the entry into force of the EVIPA.

- ***Small-sized and Medium-sized Enterprises (SMEs) in Vietnam***

According to the Ministry of Planning and Investment, Vietnam has approximately 900,000 operational businesses. More than 97 percent are SMEs that contribute up to 45 percent of the national GDP and 31 percent of the total budget collection. Together, these companies employ over 5 million employees.

SMEs comprise microenterprises, small enterprises and medium-sized enterprises as determined in Article 6 of Decree No. 39/2018/ND-CP. The determination of SMEs according to the Decree follows two sets of criteria; (1) the sectoral group the enterprise operates in and (2) its average number of employees, its annual revenue and its total investment capital as follows:

Criteria \ Sectors	Agriculture, forestry and aquaculture, industrial, construction	Trade and service
The average number of employees participating in social insurance per year	Microenterprise: 10 or less Small enterprise: 100 or less Medium enterprise: 200 or fewer	
Annual revenue	Microenterprise: max VND 3 billion Small enterprise: max VND 50 billion Medium enterprise: max VND 200 billion	Microenterprise: max VND 10 billion Small enterprise: max VND 100 billion Medium enterprise: max VND 300 billion
Total investment capital	Microenterprise: max VND 3 billion Small enterprise: max VND 20 billion Medium enterprise: max VND 100 billion	Microenterprise: max VND 3 billion Small enterprise: max VND 50 billion Medium enterprise: max VND 100 billion

In order to be categorized as a micro, small or medium size enterprise, an enterprise must satisfy two of the above-stated conditions, i.e. (1) the average number of employees participating in social insurance per year and (2) the amount of their annual revenue **or** total investment capital in their business project. If a company cannot fulfil two criteria, then the local authority has the power to decide its status taking into account various metrics such as the accumulated revenue in the last five years etc.

- What are the most prevalent types of SMEs? (micro, small or medium)

Small and micro enterprises (both local and foreign-invested) account for a very large proportion of SMEs in Vietnam, whereas the number of medium sized enterprises accounts for only 1.6 percent of SMEs.

- In which sectors do SMEs operate?

Most SMEs operate in the commerce, services and industrial sectors especially in traditional handicraft, exploiting and producing raw products such as minerals, seafood, forest products, processing and assembly, manufacturing high-tech products (machinery, electronics, chemicals, measuring equipment, engines, etc.).

In recent years, the trend of developing innovative business models (in the form of startups, which are considered SMEs in Vietnam) has been growing especially in the areas of construction, processing, manufacturing, the automotive industry, air transport, finance and banking. Currently, there are more than 3,000 active innovative startups. Most of them are invested by startup funds from the US or Singapore.

- How ready are SMEs in Vietnam for the 4.0 Industrial revolution (i.e. technology adaptation)?

With a young and technology savvy workforce, increased connectivity and the presence of many large global technology corporations, rapid technology innovation and adoption is diffusing fast in Vietnam including its SMEs.

- Support mechanism for SMEs

Regarding the support for SMEs, the OECD Library contains updated information and studies on [SME and Entrepreneurship support programmes in Vietnam](#).

- Regarding the access to credit

Financial institutions in Vietnam assess the credit “worthiness” of businesses on the basis of criteria such as firm size, firm age, firm ownership, total assets, return on equity, and return on assets which could be challenging for SMEs to satisfy. A 2015 survey conducted by the Provincial Competitiveness Index in Vietnam shows that financial institutions rejected loans to SMEs due to the lack of profitability and the lack of acceptable collateral such as land. The Vietnamese government has made efforts to improve SMEs’ access to credit, namely by setting up the SME Development Fund and the Credit Guarantee Fund. The [OECD](#) has pointed out the following limitations of the Vietnamese SME Development Fund (SMEDF): the lack of incentive for commercial banks to apply the SMEDF loan, difficulties for SMEs to comply with the conditions of the loan, difficult selection process, the lack of awareness of the SMEDF by SMEs (see 7.7 below).

For a detailed analysis of the challenges faced by SMEs in regard to access to finance (credit), please see [this paper](#) published by MDPI and [this paper](#) published by the Asian Development Bank Institute. These papers also contain information on funding and mentorship scheme for SMEs.

FOREIGN INVESTMENT IN VIETNAM

- Investment procedures

The Law on Investment and the Law on Enterprises require foreign investments in Vietnam to apply for and obtain (i) an Investment Registration Certificate (IRC); and (ii) an Enterprise Registration Certificate (ERC). To match with the global trend on the fourth industrial revolution, the registration for the IRC and the ERC are being developed so as to be conducted fully online in order for investors to obtain the ERC/IRC without being forced to physically submit the dossier.

• Certificate of Investment Registration

As a first step, investment projects are required to register with the local investment authority and obtain an IRC which sets out the key details of the investment project, including its objectives, duration, investment capital (equity and debt) and names of investors. Obtaining the certificate of investment registration takes 15 business days on average from the date the relevant investment authority receives the complete application dossier.

Forms of investment for foreign investors:

1. Investment in the form of establishment of a business entity
2. Execution of an investment project
3. Investment in the form of a business cooperation contract
4. Investment in the form of capital contribution or purchase of shares or capital.

(1) Investment in the form of establishment of a business entity

An application dossier for the Certificate of Investment Registration should include:

- ✓ An application form for execution of the investment project
- ✓ A document concerning the legal status of the investor (passport for individuals, certificate of incorporation for corporations as well as the passport of the legal representative of the corporation);
- ✓ Document(s) proving the financial capacity of the investor including at least one of the following: the investor's financial statements for the last two years; commitment of a parent company to provide financial support; commitment of a financial institution to provide financial support; guarantee for the investor's financial capacity; other documents proving the investor's financial capacity;
- ✓ Proposal for the investment that addresses the following: investment objectives, investment scale, investment capital and plan for raising capital, location, duration and schedule of the investment, information about the current land use in the location of the project and proposed demand for land use (if any), demand for labor, proposal for investment incentives, impact and socioeconomic efficiency of the project and preliminary assessment of environmental impact (if any) in accordance with the Law on Environmental Protection; and
- ✓ If the Law on Construction requires formulation of a pre-feasibility study report, the investor is entitled to submit the pre-feasibility study report instead of a proposal for the investment project;
- ✓ If the investment project does not require the State to allocate or lease out land or to permit land repurposing, a copy of the document regarding the land use rights or other document

identifying the right to use the land for execution of the investment project is required to be submitted; and

- ✓ Explanation on any technology to be used in the investment project (if relevant). For example, information on the technology of the solar panel to be used for a solar power development project

(2) Execution of an investment project

This form of investment applies to projects:

- ✓ That need to meet requirements concerning national defense, security and state secrets;
- ✓ where only one investor enters in open bidding.

The selection of investors shall be carried out by bidding by means of one of the following methods:

- ✓ Bidding for land use rights;
- ✓ Bidding for selection of investors; or
- ✓ Investor appointment

An investment in project execution form requires an application for a Decision on Investment Policy from the local People's Committee or the Prime Minister. Within five days from the date of issuance of the Decision on Investment Policy, the People's Committee or the Prime Minister shall instruct the local Department of Planning and Investment to issue the IRC for the foreign investor. It takes 35 working days for the People's Committee to provide a Decision on Investment Policy application result to the investor and there is no fixed time for the Prime Minister to issue a response.

The application dossier for the Decision on Investment Policy is the same as the one submitted for the purpose of the Certificate of Investment Registration.

Projects that are subject to approval by a Decision on Investment Policy are listed in Articles 30,31 and 32 of the Investment Law.

(3) Investment in the form of a business cooperation contract

An application dossier for the Certificate of Investment Registration should include:

- ✓ An application form for the execution of the investment project
- ✓ A document concerning the legal status of the investor (Passport for individual, Certificate of incorporation for a corporation as well as the passport of the legal representative of the corporation);
- ✓ Document(s) proving the financial capacity of the investor including at least one of the following: the investor's financial statements for the last two years; commitment of a parent company to provide financial support; commitment of a financial institution to provide financial support; guarantee for the investor's financial capacity; other document proving the investor's financial capacity;
- ✓ Proposal for the investment project that addresses the following: investment objectives, investment scale, investment capital and plan for raising capital, location, duration and schedule of the investment project, information about the current land use in the location of the project and proposed demand for land use (if any), demand for labor, proposal for investment incentives, impact and socioeconomic efficiency of the project and preliminary

assessment of environmental impact (if any) in accordance with the Law on Environmental Protection.

- ✓ If the project does not require the State to allocate or lease out land or to permit land repurposing, a copy of the document regarding the land use rights or other document identifying the right to use the land for execution of the investment project is required to be submitted;
- ✓ Explanation on any technology to be used in the investment project (if relevant). For example, information on the technology of the solar panel to be used for a solar power development project; and
- ✓ The business cooperation contract.

(4) Investment in the form of capital contribution or purchase of shares or capital

Foreign investors who wish to invest in the form of capital contribution or purchase of shares or capital shall follow procedures for registration of capital contribution or purchase of shares or stakes of a business entity and then proceed to carry out any necessary amendments to the enterprise's details of members or shareholders.

An application for registration of capital contribution or purchase of shares/capital consists of:

- ✓ A registration form for capital contribution or purchase of shares/capital, which specifies enterprise registration information about the business entity to which foreign investors contribute capital or whose shares/stakes are purchased by foreign investors; business lines; list of founding shareholders, list of shareholders that are foreign investors (if any); holding of charter capital by the foreign investor before and after capital contribution or purchase of shares/stakes; transaction value of the contract for capital contribution or purchase of shares/stakes; information about the business entity's investment project (if any);
- ✓ Copies of legal documents of the individual or organization that contributes capital or purchases shares/stakes and of the business entity to which foreign investors contribute capital or whose shares/stakes are purchased by foreign investors; and
- ✓ A written agreement/contract on the capital contribution or purchase of shares/stakes between the foreign investor and the business entity receiving capital contribution from or selling shares/stakes to the foreign investor.

Investors shall submit the application to the local Department of Investment and Planning (DIP) and shall receive the result of the application within 15 business days. In practice, the time period may be longer if the DIP needs to solicit the views of relevant government agencies on the application. In such cases, the DIP will notify the investor.

- **Enterprise Registration Certificate (ERC):**

After the investor obtains the Certificate of Investment Registration, the investor needs to register the legal entity/project company that will carry out the investment at the business registrar of the DPI and obtain an ERC.

Once the ERC is issued, the project company is officially established with a legal entity status and can commence its commercial operations under its own name pursuant to Vietnamese law.

Please refer to the Section below for the requirements and procedures to obtain an ERC for the various forms of legal entities / companies.

- ***Company registration in Vietnam***

There are four types of legal entities in Vietnam but the most common are (i) the Limited Liability Company (LLC) and (ii) the Joint Stock Company (JSC).

Kindly find below the application dossier for each type of legal entity:

- **Sole proprietorship**

A sole proprietorship is an enterprise:

- ✓ that is owned by a single individual whose liability for its entire operation is equal to his/her total assets;
- ✓ that must not issue any kind of securities;
- ✓ that must not contribute capital upon establishment or purchase shares or stakes of partnerships, limited liability companies or joint stock companies; and
- ✓ whose owner may establish only one sole proprietorship. The owner of a sole proprietorship must not concurrently own a household business or hold the position of a general partner in a partnership.

The dossier for the ERC of a sole proprietorship should include:

- ✓ Application for enterprise registration as per the below form
- ✓ Legalized copies of legal documents of the sole proprietorship's owner (i.e. passport)
- ✓ MOU or contract for office lease
- ✓ Company charter
- ✓ Copies of the Investment Registration Certificate

- **Partnership**

A partnership is an enterprise in which:

- ✓ there are at least two partners that are joint owners of the company and do business under the same name ("general partner"). There can be capital contributing partners in addition to the general partners;
- ✓ a general partner shall be an individual whose liability for the company's obligations is equal to all of his/her assets; and
- ✓ a capital contributing partner can be an organization or an individual whose liability for the company's debts is equal to the promised capital contribution.

A partnership must not issue any kinds of securities.

The dossier for an ERC for a partnership should include:

- ✓ Application form for enterprise registration as per the below form
- ✓ Company charter
- ✓ List of general partners
- ✓ Legalized copies of the following documents:
 - Legal documents of general partners who are individuals (i.e. passports); Legal documents of general partners that are organizations (i.e. certificate of incorporation);

- Legal documents of authorized representatives (i.e. passports) and letters of appointment of authorized representatives.
- Investment registration certificate.
- MOU or contract for office lease.

- **Multi-member limited liability company and joint-stock company**

A multi-member limited liability company:

- ✓ is an enterprise owned by 2-5 organizations or individuals ("members"). A member's liability for the company's debts and other liabilities shall be equal to the amount of charter capital contributed to the company by the member;
- ✓ must not issue shares except for upon conversion into a Joint Stock Company; and
- ✓ may issue bonds.

A joint stock company is an enterprise in which:

- ✓ the charter capital is divided into units of equal value called shares;
- ✓ shareholders can be organizations and individuals; the minimum number of shareholders is three; there is no limit on the maximum number of shareholders;
- ✓ a shareholder's liability for the company's debts and other liabilities is equal to the amount of capital contributed to the company by the shareholder;
- ✓ shareholders may transfer their shares to other persons in accordance with the Law on Enterprise.

A joint stock company may issue shares, bonds and other kinds of securities.

The dossier for an ERC for a multi - member liability company or joint stock company should include:

- ✓ Application form for enterprise registration
- ✓ Company charter
- ✓ List of members of the multi - member limited liability company; lists of founding shareholders and shareholders that are foreign investors of the joint stock company.
- ✓ Legalized copies of the following documents:
 - Legal documents of the enterprise's legal representative (i.e. passport);
 - Legal documents of members or founding shareholders and foreign shareholders that are individuals (i.e. passports); legal documents of members or founding shareholders and foreign shareholders that are organizations (i.e. incorporation certificate); legal documents of authorized representatives of members or founding shareholders (i.e. passport) and foreign shareholders that are organizations (i.e. passport) and their letters of appointment of authorized representatives.
 - Copies of Investment registration certificate
 - MOU or contract for office lease

- **Single-member limited liability company**

A single-member limited company:

- ✓ is an enterprise owned by a single organization or individual (“owner”). The owner’s liability for the company’s debts and other liabilities shall be equal to the company’s charter capital;
- ✓ must not issue shares except for conversion into a joint stock company;
- ✓ may issue bonds.

The dossier for an ERC for a single - member limited company should include:

- ✓ Application form for enterprise registration
- ✓ Company charter
- ✓ Legalized copies of the following documents:
 - Legal documents of the enterprise’s legal representative (passport);
 - Legal documents of the company’s owner that is an individual (passport); Legal documents of the company’s owner that is an organization (certificate of incorporation); Legal documents of the authorized representative (passport) and letter of appointment of authorized representative.
 - Investment registration certificate
 - MOU or contract for office lease

- ***Conditional sectors in Vietnam***

A complete list of conditional investment sectors for foreign investors according to international treaties and Vietnamese laws can be found [here](#).

A complete list of conditional business activities under different sectors (together with required license/ permit/ etc.) can be found [here](#).

- ***Applicable taxes for businesses***

Among others:

- Corporate Income Tax
- Value added tax
- Foreign contractor tax

Details regarding applicable taxes can be found [here](#).

INTELLECTUAL PROPERTY RIGHTS (IPRS) IN VIETNAM

- Protection of IPRs in Vietnam

By law, protection is provided for the following IPRs:

- Copyright, including the right to literary, artistic and scientific works: subject matters of copyright-related rights include performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.
- Industrial property rights, including rights to inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications.
- Rights to plant varieties, including rights to reproductive and harvested materials.

The EVFTA covers all categories of intellectual property that are referred to in Sections 1 to 7 of Part II of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), namely:

- copyright and related rights;
- trademarks;
- geographical indications;
- industrial designs;
- patent rights;
- layout-designs (topographies) of integrated circuits;
- protection of undisclosed information; and
- plant varieties.

- Registration of IPRs in Vietnam

Registration of copyrights is conducted at the National Copyright Office. Copyrights also apply to computer programs that cannot be patented. While no copyright registration is required in Vietnam, most patent experts suggest registering copyrights with the country's copyright authorities.

The registration dossier for copyrights and related rights should include:

- A declaration for registration of copyright or related rights;
- Two copies of the work subject of the application for copyright registration, or two copies of the formulated object that is subject of the application for related rights registration;
- A letter of authorization where the applicant is an authorized person;
- Documents proving the right to file the application where the applicant acquires such right by way of inheritance, succession or assignment;
- Written consent of the co-authors in the case of a work under joint authorship;
- Written consent of the co-owners if the copyright or related rights are jointly owned.

Individual patent registrations (such as industrial designs and inventions) must take place in Vietnam. However, for patent rights other than industrial designs, applications can be handled by the [Patent Cooperation Treaty](#).

The registration dossier for industrial property rights should include:

- Declaration for registration;

- Documents, samples and information identifying the industrial property object registered for protection;
- Power of attorney, if the application is filed through a representative;
- Documents evidencing the registration right, if such right is acquired by the applicant from another person;
- Documents evidencing the priority right, if such right is claimed;
- Receipt for payment of fees and charges.

The trademark system in Vietnam protects symbols, three-dimensional objects, colors, and other visual devices that are used to identify a business' products or services. Trade name rights are established through use rather than being formally registered. With respect to online domains, these are handled on a first-come, first-served basis. Trademarks can be registered in Vietnam at the [National Office of Intellectual Property](#) (NOIP) or by using the [Madrid Protocol](#).

The registration dossier for right to plant varieties at the Department of Crop Production- Ministry of Agriculture and Rural Development should include:

- A written application for protection of plant varieties;
- A declaration of the distinctness, uniformity and stability testing techniques (DUS testing) according to the templates in the regulation on DUS testing of each kind of plant;
- Copies of the receipts, or the fax of the papers proving that the registration fee has been transferred to the account of the Department of Crop Production;
- A letter of authorization (if the application is submitted by a representative);
- At least 3 pictures (size 9 cm x 15 cm) of the variety that demonstrate its 3 distinct characteristics.

For copyright registration: 15 days from the receipt of a valid registration dossier

For industrial property right registration:

- Formal examination: one month from the date of application;
- Announcement of applications: within two months from the date of accepting valid applications;
Substantive examination: no more than seven months from the date of publishing the application.

For registration of rights to plant variety: 30 days from the receipt of a valid registration dossier.

Types of unregistered IP being protected by the laws include copyright, common law trademarks and database rights, confidential information, and trade secrets.

- ***Enforcement of IPRs***

Information on IP enforcement in Vietnam can be found [here](#).

Information on the enforcement of the IP rights under the EVFTA can be found [here](#).

- ***Support on IPRs for SMEs***

The South-East Asia IP SME Helpdesk is a European Commission co-funded project that provides free, practical, business advice relating to European SMEs to protect and enforce their IPR in South East Asian countries including Vietnam. To learn about aspects of intellectual property rights in South-East Asia and how to enforce these rights, please visit the online portal at www.southeastasia-iprhelpdesk.eu. For free expert advice on IPR protection for your business in Vietnam, please e-mail your question to: question@southeastasia-iprhelpdesk.eu. You will receive a reply from one of the Helpdesk's experts within five working days.

EXPORTING GOODS TO VIETNAM

- *Applicable tariff rates (including tariff rate quotas) and rules of origin for products*

The Ministry of Industry and Trade issues the annual quotas for products every year.

To enjoy preferential in quota tariff rates, importers need to obtain an import quota license from the Ministry of Industry and Trade. The application dossier, to be submitted to the Import - Export Department of the Ministry of Industry and Trade, shall include:

- An original request for import tariff quotas;
- A self-certified true copy of an Investment Registration Certificate or Enterprise Registration Certificate of the importer.

Please note that for the import of tobacco raw materials, the importer must have a license to produce cigarettes issued by the Ministry of Industry and Trade and have a demand to import tobacco raw materials for cigarettes production.

The in-tariff quotas for refined sugar and raw sugar is currently subject to a pilot auction program by the Ministry of Industry and Trade.

- *Import control*

The list of prohibited imports into Vietnam as issued by the Government includes:

- Weapons, ammunition, explosive materials (except for industrial explosives), and military technical facilities and equipment, including:
 - ✓ Products bearing HS codes 3601.00.00, 3602.00.00, 3603, 8710.00.00, 8802, 8906.10.00, 9301, 9301.10.00, 9301.20.00, 9302.00.00, 9305, 9306;
 - ✓ Equipment for electronic warfare, breaking waves, jamming, intercepting, monitoring radio and satellite communications... specialized for military use:
 - Countermeasure and counter measurement electronics (i.e. equipment designed to emit false, artificial, or jamming signals to radar or transmitted radio receivers) communicate, or interfere with the reception, operation, or disablement of enemy electronic equipment including countermeasures) including jamming, and anti-jamming equipment;
 - Electronic equipment or systems designed for the purpose of monitoring and testing the electromagnetic spectrum for military intelligence and security purposes or against such surveillance and control itself;
 - Equipment for underwater countermeasures, including transmitters of camouflage, interference, and equipment designed to generate false, misleading signals to distract receivers receive ultrasound waves;
 - Equipment for data security, data processing, transmission and signal transmission used in encryption and decryption processes to protect state secret information (except for civil cryptographic products);
 - Equipment used in identification, authentication, key generation and management, production and distribution of cryptographic equipment to protect state secret information.
 - Specialized military guidance and steering equipment (such as guidance, missile pilot);
 - Digital de-modulators specially designed for intelligence signals.

- Military communication machines, specialized military command machines of all kinds.
- ✓ Various types of firecrackers (except for flares used for maritime safety pursuant to guidelines of the Ministry of Transport), sky lanterns, and various types of equipment interfering with road traffic speed-measuring instruments.
- ✓ Type I chemicals stipulated in the Treaty Prohibiting Development, Production, Storage, Use and Destruction of Chemical Weapons and Appendix 1 to Decree 38/2014/ND-CP dated 6 May 2014 regulating management of chemicals subject to control and listed on the above Treaty.
- ✓ Chemicals on the list of prohibited chemicals in Appendix 3 issued with Decree 113/2017/ND-CP dated 9 October 2017 implementing the *Law on Chemicals* (available only in Vietnamese).
- Second hand consumer goods, medical equipment, and vehicles, comprising the following groups of goods:
 - ✓ Textiles and garments, footwear and clothing.
 - ✓ Electronic goods.
 - ✓ Refrigeration goods.
 - ✓ Household electrical appliances.
 - ✓ Medical equipment.
 - ✓ [Home] interior decoration goods.
 - ✓ Household goods comprising porcelain, terracotta and china, glass, metal, resin [plastic], rubber, plastic articles and other materials.
 - ✓ Bicycles.
 - ✓ Motor vehicles and motorcycles.
 - ✓ All types of cultural products in the category prohibited from dissemination or circulation or for which there is a decision suspending dissemination, circulation, recall, confiscation or destruction in Vietnam.
 - ✓ Goods being second hand information technology products, including products having HS Codes 8443.31.19, 8443.31.29, 8443.31.39, 8443.32.19, 8443.32.29, 8443.32.39, 8443.32.49, 8443.32.90, 8443.99.20, 84.70, 84.71, 85.17, 85.18, 85.25, 85.26, 85.27, 85.28, 85.34, 85.40, 85.42, 85.44.42.11, 85.44.42.13, 85.44.42.19, 85.44.42.21, 85.44.42.23, 85.44.49.11, 85.44.49.13, 85.44.49.19, 85.44.49.21, 85.44.49.22, 85.44.49.23, 85.44.49.24, 85.44.49.29, 85.44.49.31, 85.44.49.32, 85.44.49.39, 85.44.70.10, 85.44.70.90.
- All types of publications in the category prohibited from dissemination and circulation in Vietnam.
- Postal stamps in the category for which trading, exchange, display or dissemination is prohibited by the Law on Post.
- Wireless equipment and wireless wave application equipment which is not compliant with the master planning on frequency and with the relevant technical specifications in the Law on Wireless Frequency.
- Right hand drive [RHD] vehicles (including vehicles in a disassembled state and vehicles with a RHD mechanism which has been rearranged prior to import into Vietnam), except for specialized

use RHD vehicles used on a small scale and not on road traffic comprising cranes, canal and drain digging machines, road sweepers, road watering vehicles, rubbish collecting vehicles, road surfacing vehicles, passenger vehicles at airports, forklift trucks for warehouses and ports, concrete pump trucks, and small buggies for golf courses and parks.

- Various types of automobiles, 4-wheeled motorized vehicles and sets of components to assemble automobiles the frame number or engine number of which has been erased, modified or re-stamped.
- All types of motor bikes and mopeds the frame number or engine number of which has been erased, modified or re-stamped.
- All types of specialized automobiles and motorcycles the frame number or engine number of which has been erased, modified or re-stamped.
- Second hand materials and transport facilities comprising:
 - ✓ Machines, frames, tires and tubes, accessories and engines of automobiles, tractors, mopeds and other motorized vehicles.
 - ✓ Chasses attached to automobiles, tractor engines (including new chasses attached to second hand engines, and including second hand chasses attached to new engines).
 - ✓ Various types of automobiles the structure of which has been modified to convert the original designed function.
 - ✓ Various types of automobiles, motorcycles and mopeds (excluding any second hand items), and 4-wheeled motorized passenger vehicles which are second hand for more than five (5) years calculated from the year of manufacture up until the year of import.
 - ✓ Ambulances.
- Chemicals in Appendix III of the Rotterdam Convention.
- Plant protection agents prohibited for use in Vietnam.
- Specimens of rare and precious animals and plants listed in Appendix I of CITES derived from nature, imported for commercial purposes.
- Specimens and processed products from white rhinoceros, black rhinoceros and African elephants.
- Scrap and waste, and refrigerating equipment using CFC.
- Products and materials containing asbestos of the amphibole group

Import permits are required for the importation of the following products:

- Goods subject to the tariff quota regime:
 - ✓ Salt;
 - ✓ Tobacco raw materials;
 - ✓ Poultry eggs;
 - ✓ Refined sugar and raw sugar.
- Chemicals and products containing chemicals.
- List 2 and List 3 chemicals in the Appendix A issued with Decree 38 of the Government dated 6 May 2014 on management of chemicals under control pursuant to the Treaty Prohibiting

Development, Production, Storage, Use and Destruction of Chemical Weapons (available in Vietnamese);

- Industrial precursors.
- Explosives materials and industrial explosives materials.
- Tobacco raw materials, tobacco products, tobacco/cigarette papers, and specialized machinery and equipment used to produce tobacco and replacement accessories.
- Flares used for maritime safety.
- Plant protection agents not yet on the list of plant protection agents permitted to be used in Vietnam in order to temporarily import them for re-export or to import them for production in Vietnam for the purpose of eventually exporting them pursuant to a contract signed with a foreign party.
- Plant protection agents used for fumigation purposes but not containing the chemical methyl bromide or other extremely toxic chemicals of Type I and II pursuant to the globally harmonized system of classification and labelling of chemicals (GHS).
- Plant protection agents not yet on the list of plant protection agents permitted to be used in Vietnam, imported for testing and then for registration as [legal] plant protection agents.
- Plant protection agents not yet on the list of plant protection agents permitted to be used in Vietnam, imported for testing and research; or for use in an FI investment project; or for use as samples at an exhibition; or in other cases pursuant to a decision of MARD
- Agents on the list of plant protection agents not permitted to be used in Vietnam but imported as reference materials
- Animal breeding materials outside the list of those permitted to be produced and traded in Vietnam; various types of insects which are not yet found in Vietnam; and the essence of animal breeding materials imported for the first time into Vietnam.
- Seedlings for growing crops and raising plants in the sector of plant protection and other objects on the list of those subject to quarantine and plant pest risk analysis prior to import into Vietnam.
- Seedlings for growing crops and plants not yet on the list of objects permitted to be produced and traded in Vietnam and which are imported for purposes of research, testing, trial production, or imported for the purpose of international co-operation, samples at an exhibition, as a gift or in order to implement an investment program or project.
- Feed for livestock and raw materials for production of animal feed; aquaculture feed and raw materials for producing feed for aquatic creatures not on the list of items permitted to be circulated in Vietnam.
- Fertilizers not recognized for circulation in Vietnam in the following cases:
 - ✓ Fertilizer for testing purposes;
 - ✓ Specialized fertilizer used for sports stadiums and entertainment areas;
 - ✓ Specialized use fertilizer of enterprises with foreign owned capital to assist production within the scope of the enterprise or to use in foreign investments in Vietnam;
 - ✓ Fertilizer used as a gift or as a sample;
 - ✓ Fertilizer to be presented at a fair or exhibition;
 - ✓ Fertilizer imported in order to produce fertilizer for export;

- ✓ Fertilizer serving scientific research;
- ✓ Fertilizer raw materials in order to produce fertilizer.
- Genes of plants, animals, and micro-organisms serving scientific research and scientific and technical exchange.
- Finished products not yet on the list of items permitted to be circulated in Vietnam, or on the list of products the import of which is conditional.
- Marine seedlings not on the list of permitted items for first time normal import into Vietnam.
- Live products of aquaculture/fisheries not on the list of such products permitted to be imported into Vietnam for use as food.
- Postal stamps, publications on postal stamps and other lines of post stamp articles.
- Cybersecurity products comprising:
 - ✓ Products for testing and assessing network safety;
 - ✓ Products for surveying network safety;
 - ✓ Anti-hacking products.
- Medicines which must be subject to special control.
- Raw materials for production of medicines which must be subject to special control.
- Raw materials for production of medicines which do not have certificates of registration for circulation in Vietnam, except for raw materials for the production of medicines subject to special control.
- Reference materials and packaging which directly contacts the medicine [contained therein].
- Medical equipment and facilities without a circulation number which are imported for scientific research or for testing or for the purpose of guiding the use and repair of medical equipment and facilities.
- Medical equipment and facilities without a circulation number which are imported for aid purposes.
- Medical equipment and facilities without a circulation number which are imported for use for purposes of individual medical treatment.
- Chemicals and chemical preparations which are imported for research purposes.
- Chemical preparations which are imported for serving aid purposes; or which are used for other special purposes (such as donations, or on a market which does not have products and methods of use consistent with the requirements of use of the applicant for import).
- Registered medical equipment containing narcotic substances or precursors; the materials for manufacture of medical equipment are narcotic substances or precursors.
- Medical equipment containing narcotic substances or precursors being imported for scientific research or inspection.
- Raw materials for manufacture of medical equipment being narcotic substances or precursors and imported for scientific research or inspection.
- Gold raw materials.

- ***Applicable technical requirements in general***

Goods are divided into two groups: Group 1 includes goods that cause no harm to humans, animals, plants, assets, or the environment. Group 2 include goods that can latently cause harm to humans, animals, plants, assets, or the environment. While the quality control of goods in Group 1 is based on applicable standards announced by producers, the quality control of goods in Group 2 is based on relevant technical requirements issued by relevant competent authorities.

All imported goods must have their applicable standards announced. Producers and importers shall announce fundamental properties, warning information and standard codes on goods or on (i) goods package; (ii) goods labels; or (iii) documents accompanying products or goods.

Imported goods of Group 2 must pass a quality inspection. The inspection of these goods includes the examination of conformity evaluation results, goods labels, standard or regulatory conformity stamps, and documents accompanying the goods subject to examination. In addition, imported goods samples must be tested according to announced applicable standards and relevant technical regulations as necessary.

Technical requirements for goods in Group 2 are issued by the government agency/ministry in charge of the product. In particularly:

- Products and goods under the management authority of the Ministry of Agriculture and Rural Development, together with relevant technical standards/ regulations and form of inspection can be found in Circular No. 14/2018/TT-BNNPTNT.
- Products and goods under the management authority of the Ministry of Labor, Invalids and Social Affairs, together with relevant technical standards/ regulations and form of inspection can be found in Circular No. 01/2021/TT-BLDTBXH.
- Products and goods under the management authority of the Ministry of Public Security, together with relevant technical standards/ regulations and form of inspection can be found in Circular No. 08/2019/TT-BCA.
- Products and goods under the management authority of the Ministry of Industry and Trade can be found in Circular No. 33/2017/TT-BCT (available only in Vietnamese).
- Products and goods under the management authority of the Ministry of Transport, together with relevant technical standards/ regulations and form of inspection can be found in Circular No. 41/2018/TT-BGTVT.
- Products and goods under the management authority of the Ministry of Information and Communication can be found in Circular No. 01/2021/TT-BTTTT.
- Products and goods under the management authority of the Ministry of Science and Technology can be found in Circular No. 01/2009/TT-BKHCN.
- Products and goods under the management authority of the Ministry of Culture, Sports and Tourism can be found in Circular No. 24/2018/TT-BVHTTDL.

Registration dossier for the declaration (announcement) of conformity with technical standards:

The product owner shall make two sets of applications for registration of the declaration of conformity with technical standards. The first one shall be submitted directly or through post to the local Department of Standards, Metrology and Quality where the manufacturer is registered while the second application shall be kept with the product owner. The application shall include the following documents:

- If the declaration of conformity with standards is based on results of certifying the conformity with standards by a registered certifying organizations (the third party), application for registration of the declaration on conformity with standards shall include:
 - ✓ Declaration of standard conformity;
 - ✓ Original copies of documents proving business operation of the organization or individual declaring product standard conformity (Enterprise Registration Certificate, Investment Registration Certificate or other equivalent documents);
 - ✓ Original copy of the applied standard;
 - ✓ Original copy of the standard conformity certificate issued by the registered certifying organizations, enclosed with standard conformity marking specimen.
- If the declaration of conformity with standards is based on the results of self-assessment of the organization or individual (the first party), application for registration of the declaration on conformity with standards shall include:
 - ✓ Declaration of conformity with standards;
 - ✓ Original copies of documents proving business operation of the organization or individual declaring conformity with product standards (Enterprise registration certificate, Investment Registration Certificate or other equivalent documents);
 - ✓ Original copy of the applied standard;
 - ✓ In case where the product owner has not yet obtained the certificate of conformity with standards on management system such as ISO 9001, ISO 22000 or HACCP, for example, granted by a registered certifying organization, the application must include the production process enclosed with the plan on quality control formulated and applied and the plan on supervising the management system;
- In case where the product owner has obtained the certificate of conformity with standards related to management system (ISO 9001, ISO 22000, HACCP, other) granted by a registered certifying organization, the application must include a copy of the valid original certificate of conforming with standards on management system;
- Report on assessing the conformity with standards, enclosed with an original copy of the test result of the sample within 12 months calculated up to time of submitting application for registration of the announcement on standard conformity made by the registered testing organizations.

Registration dossier for the declaration (announcement) of conformity with technical regulations:

Organizations and individuals declaring conformity with the technical regulations shall prepare dossiers of their declaration of conformity with the technical regulations and submit them directly or by post to the Ministry in-charge (see list below). The dossier shall include:

- If the declaration of conformity is based on the self-assessment of the organization or individual (first party), the dossier for declaring the conformity with the technical regulations shall include:
 - ✓ Declaration of conformity with technical regulations and the following additional content:
 - ✓ The self-assessment report, signed with a date by the leader of the organization or individual, shall include the following information:

- Name of organization or individual; address; telephone and fax number;
- Names of products and goods;
- Number of technical regulations;
- Conclusion that products and goods conform to technical regulations;
- Self-declared commitment to product and goods quality in accordance with technical regulations and the announced applicable standards and taking full responsibility before the law for product and goods quality and self-assessment results

The self-assessment report is based on the results of self-implementation of the organization or individual or based on the assessment results of the registered conformity assessment organization.

- In case the declaration of conformity is based on the certification results of a registered testing organization (third party), a dossier for the declaration of conformity with technical regulations shall include:
 - ✓ Declaration of conformity with technical regulations;
 - ✓ The name of the registered testing organization, certificate number, certificate issue date;
 - ✓ A copy of the original certificate of conformity with relevant technical regulations, enclosed with a specimen of the regulation conformity seal, issued to the organization or individual by the registered testing organization.

- ***Applicable taxes***

Imported products could be subject to value added tax (VAT) and special consumption tax.

Generally, goods are subject to a 5% or 10% VAT except for certain goods that are exempt from VAT or imports that are exempt from VAT under circumstances such as goods transiting through Vietnam's territory, goods temporarily imported for re-export, etc.

Moreover, importing the goods is subject to the special consumption tax, whose rate varies from 7% to 150% depending on the type of goods:

- Cigarettes, cigars and other tobacco preparations used for smoking, inhaling, chewing, sniffing or keeping in mouth;
- Liquor;
- Beer;
- Under-24 seat cars, including cars for both passenger and cargo transportation with two or more rows of seats and fixed partitions between passenger holds and cargo holds;
- Two- and three-wheeled motorcycles of a cylinder capacity of over 125 cm³;
- Aircraft and yachts;
- Gasoline of all kinds;
- Air-conditioners of 90,000 BTU or less;
- Playing cards;
- Votive gilt papers and votive objects.

- ***Applicable requirements for label of goods***

Generally, a good's label must contain the following information: the good's name, the name and address of the organization or individual who is responsible for the good, and the good's origin.

A supplementary label presenting the compulsory information in Vietnamese is required for imported goods along with the original label. The information on the label must be the direct Vietnamese translation of the label in its original language. In addition, where the original label of imported goods does not fully contain the above compulsory information in Vietnamese, the importer must add a subordinate label in Vietnamese to the goods before or after customs clearance but before their circulation in the market.

Depending on the types of goods imported and the specific laws governing such goods, there may be additional compulsory labeling requirements. Please refer to the attached document for these labeling requirements.

- ***Trade remedy measures against imports in Vietnam***

Vietnam imposes additional duties or measures on imported goods if these goods cause (i) injurious dumping or (ii) injurious subsidization or (iii) in case of injurious sudden increases of imported goods.

- **Anti-dumping duties**

By law, imported goods are subject to anti-dumping duties if an anti-dumping investigation shows that the export price of the imported goods is lower than its normal price, thereby causing or threatening to cause material injury to the affected domestic industry.

Currently Vietnam does not impose any anti-dumping duties on goods imported from the EU.

- **Countervailing duties**

While anti-dumping duties address the private commercial conduct of exporters, countervailing measures address certain types of subsidies granted by governments. Countervailing measures are applied where the subsidized goods imported into Vietnam cause substantial injury or threaten to cause material injury to the domestic industry or prevent the formation of a domestic industry.

Currently Vietnam does not impose any countervailing duties on goods imported from the EU.

- **Safeguard measures**

Safeguard measures are measures applied in cases where goods are excessively imported into Vietnam, causing serious damage or threatening to cause serious damage to the domestic industry.

Safeguard measures include applying (i) safeguard tax, (ii) import quotas; (iii) tariff quotas; (iv) import permits; and other safeguard measures.

DISTRIBUTION OF GOODS IN VIETNAM

- Applicable requirements

To implement distribution of goods in Vietnam, it is required first that the IRC and the ERC be obtained with the information as provided above.

To sell the goods to final customers, a Business License and a License to Establish an Outlet are also required.

For ease of reference, distribution includes:

- wholesaling: selling goods to wholesalers, retailers, other organizations and traders;
- retailing: selling goods to individuals, households, other organizations for consumption purpose. Retailing also includes operating a retail outlet which means the place where retailing is conducted;
- sale agencies; and
- franchising.

- Applicable restrictions

Note that an import right is the right to import goods from foreign countries into Vietnam for sale to traders that have the right to distribute those goods in Vietnam. An import right does not include the right to establish, or participate in, a goods distribution system in Vietnam.

Thus, if you have the right to import your products into Vietnam, you have the right to sell them to traders that have the right to distribute those goods in Vietnam.

In case your products are lubricants, the local Department of Industry and Trade will consider granting import right and wholesale distribution right to a foreign-invested business entity performing one of the following activities:

- Manufacturing lubricants in Vietnam;
- Manufacturing or distributing machinery, equipment or goods using particular lubricants in Vietnam.

In case of rice; sugar; recorded items; books, newspapers and magazines: The local Department of Industry and Trade will consider granting retail distribution right to a foreign-invested entity already having retail outlets in the form of supermarkets, mini supermarket, or convenience stores to sell the above goods.

- Applicable procedures for a company to set up outlet/shop for imported products?

A foreign-invested entity must apply for a License for Establishment of Retail Outlet after obtaining Business License and retail outlet documentation.

If the retail outlet is in the same province/ city as the headquarter, the foreign invested entity must apply for a Business License and a License for Establishment of Retail Outlet at the same time.

The foreign invested entity submits an application dossier directly, via post or online to the local Department of Industry and Trade.

Application dossier for a Business License should include:

- An application form for a business license;
- An explanation document specifying:

- ✓ Conditions for issuance of a business license;
- ✓ Business plan: business activities and methods of doing business; presentation of business plan and market development; labor demand; evaluation of the implications and socio-economic effectiveness of the business plan;
- ✓ Financial plan: An income statement made on the basis of the last audited financial statement if the enterprise has been established in Vietnam for at least one year; explanation of capital, sources of funds and fund raising plans; enclosed with other financial documents;
- A document justifying that the enterprise incurs no overdue tax issued by the tax authority.
- Copies of: the enterprise registration certificate; investment registration certificate for sale of goods and other related activities.

Within three working days from the receipt of the application dossier, the local Department of Industry and Trade may request the submission of additional documents in case of an invalid dossier. Within ten working days from the receipt of a valid dossier, the local Department of Industry and Trade will issue the Business License if the foreign invested entity satisfies the requirements for issuance of a business license.

In case the foreign invested entity applies for the Business License and the License for Establishment of a Retail Outlet at the same time, the application dossier should include:

- An application form for a business license;
- An application form for a License for Establishment of a Retail Outlet;
- An explanation document specifying:
 - ✓ Conditions for issuance of a business license;
 - ✓ Business plan: business activities and methods of doing business; presentation of business plan and market development; labor demand; evaluation of the implications and socio-economic effectiveness of the business plan;
 - ✓ Financial plan: An income statement made on the basis of the last audited financial statement if the enterprise has been established in Vietnam for at least one year; explanation of capital, sources of funds and fund raising plans; enclosed with other financial documents;
- An explanation document specifying:
 - ✓ Location of the retail store: address of the store; description of the general common area, related areas and areas to be used for establishing the store; and an explanation on satisfaction of the conditions prescribed, enclosing the retail store location data;
 - ✓ Business plan on trading by the retail store: presentation of the business plan and market development; the labor demand; and an assessment of the impact and socio-economic efficiency of the business plan;
 - ✓ Financial plan for establishment of the retail store: business operational results on the basis of the audited financial statements for the most recent year if the applicant has been established in Vietnam for one year or more; and an explanation of capital, capital sources and methods for mobilizing capital, enclosing financial data.
- A document specifying that the enterprise has not incurred overdue tax debts
- Copies of: the enterprise registration certificate; investment registration certificate for sale of goods and other related activities and establishment of a retail outlet (if any).

Within three working days from the receipt of the application dossier, the local Department of Industry and Trade requests additional submission of documents in case of invalid dossier. Within 20 working days from the receipt of a valid dossier, the local Department of Industry and Trade will issue the Business License if the foreign invested entity satisfies the requirements for issuance of a License for Establishment of a Retail Outlet.

In case a foreign invested entity applies for a License for Establishment of a First Retail Outlet which is not in the same province/ city as the headquarter, after obtaining the Business License, it must apply for another License for Establishment of a Retail Outlet. An application dossier should include:

- An application form for a License for Establishment of a Retail Outlet;
- An explanation document specifying:
 - ✓ Conditions for issuance of a business license;
 - ✓ Business plan: business activities and methods of doing business; presentation of business plan and market development; labor demand; evaluation of the implications and socio-economic effectiveness of the business plan;
 - ✓ Financial plan: An income statement made on the basis of the last audited financial statement if the enterprise has been established in Vietnam for at least one year; explanation of capital, sources of funds and fund raising plans; enclosed with other financial documents;
- An explanation document specifying:
 - ✓ Location of the retail store: address of the store; description of the general common area, related areas and areas to be used for establishing the store; and an explanation on satisfaction of the conditions prescribed, enclosing the retail store location data;
 - ✓ Business plan on trading by the retail store: presentation of the business plan and market development; the labor demand; and an assessment of the impact and socio-economic efficiency of the business;
 - ✓ Financial plan for establishment of the retail store: business operational results on the basis of the audited financial statements for the most recent year if the applicant has been established in Vietnam for one year or more; and an explanation of capital, capital sources and methods for mobilizing capital, enclosing financial data.
- A document specifying that the enterprise incurs no overdue tax issued by the tax authority.
- Copies of: the enterprise registration certificate; investment registration certificate for sale of goods and other related activities and establishment of a retail outlet (if any).

Within three working days from the receipt of the application dossier, the local Department of Industry and Trade may request additional documents in case of an invalid dossier. Within 20 working days from the receipt of a valid dossier, the local Department of Industry and Trade will issue the Business License provided the foreign invested entity satisfies the requirements for issuance of a License for Establishment of a Retail Outlet.

E-COMMERCE IN VIETNAM

- Major platforms in Vietnam

E-commerce sales website: It is an e-commerce website developed by traders, organizations or individuals to conduct their sales, commercial promotion or service provision.

E-commerce service provision website: It is an e-commerce website developed by traders or organizations to provide an environment for other traders, organizations or individuals to conduct their commercial activities.

The e-commerce service provision website could be of the following types:

- E-commerce trading floor;
- Online auction website;
- Online promotion website.

The major e-commerce platforms in Vietnam are:

- www.tiki.vn
- www.lazada.vn
- www.shopee.vn
- www.sendo.vn

- Payments on e-commerce platforms

Payments can be made by cash on delivery, bank transfer, e-wallet, credit card or scratch cards.

Apart from cash on delivery, which remains a popular payment method in Vietnam's online shopping market, card payments were used for 34 percent of transactions in 2019. With debit card ownership standing at 1.29 per capita compared with credit card ownership at 0.08 per capita, debit-based payments are far more likely than credit card payments.

Digital wallets are the fastest-growing e-commerce payment method. At present, popular digital wallet brands include PayPal®, and the domestic brands Momo and ZaloPay.

- Selling products

Under Decree No. 52/2013/ND-CP on e-commerce activities in Vietnam, the following categories of persons are prohibited from selling products through e-commerce platforms:

- Foreign individuals residing in Vietnam; or
- Foreign (offshore) traders and organizations having a presence in Vietnam through: (a) investment activities (establishment of local entities or buying shares/capital contributions in Vietnamese companies); (b) establishment of branches or representative offices; or (c) website set-up under a Vietnamese domain name (.vn)

In the latest Draft Decree revising Decree No. 52/2013/ND-CP, foreign individuals or organizations can also participate in e-commerce activities in Vietnam. However, this Draft Decree is not yet in effect.

In order to sell your products on major e-commerce platforms in Vietnam, you will have to comply with each platform's policies for seller registration.

For selling products on www.tiki.vn, please see [here](#).

For selling products on www.laza.vn, please see [here](#).

For selling products on www.shopee.vn, please see [here](#).

For selling products on www.sendo.vn, please see [here](#).

- ***Return policy***

Each e-commerce website has their own return policy.

For www.tiki.vn, please refer [here](#).

For www.lazada.vn, please refer [here](#).

For www.shopee.vn, please refer [here](#).

For www.sendo.vn, please refer [here](#).

EXPORTING SERVICES TO VIETNAM UNDER THE EVFTA

- Method of exporting services to Vietnam

As provided above, Vietnam is now a member of the WTO and a signatory party of the EVFTA and the CTPPP. In other words, Vietnam has opened its market to trade in services with/from the other parties in a wide range of service sectors/subsectors from business services to communication services and from financial services to education services as reflected in its schedules of specific commitments under each of the international instrument.

Foreign services can be exported to Vietnam through one or more of the following modes of supply:

- **Cross-border supply (Mode 1):** services flow from the territory of one trading partner (country) into the territory of another partner.
- **Consumption abroad (Mode 2):** the service consumer travels to the territory where the service is provided to consume it.
- **Commercial presence (Mode 3):** the service is supplied through the establishment of a commercial presence in the territory of the consumer
- **Temporary Presence of natural persons for business purposes (Mode 4):** Service providers from one party are temporarily present in the territory of the consumer

- Specific commitments under the EVFTA

The EVFTA offers traders and consumers predictable and reliable access to European and Vietnamese services markets under conditions – referred to as reservations. In terms of market access, Vietnam committed to according European services and service suppliers treatment not less favourable than that provided for under the terms, limitations and conditions agreed and specified in its [Annex 8-B \(Viet Nam's Schedule of Specific Commitments\)](#).

In sectors where market access commitments are undertaken, Vietnam shall not adopt or maintain measures either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments.

In terms of national treatment, in the sectors inscribed in [Annex 8-B \(Viet Nam's Schedule of Specific Commitments\)](#) and subject to any conditions and qualifications set out therein, Vietnam shall accord to services and service suppliers of the EU, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

The EVFTA covers the supply of all services sectors/subsectors, except:

- audio-visual services;
- national maritime cabotage; and
- domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than: (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; (ii) the selling and marketing of air transport services; (iii) computer reservation system (CRS) services; and (iv) ground handling services.

- Applicable restrictions under the EVFTA

Restrictions to cross-border services can take the following forms:

- Limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

- Limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; and
- Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.
- Licensing requirements and procedure and qualification requirements.

Restrictions to the presence of natural persons providing services in Vietnam include:

- *The entry and temporary stay:*
 - ✓ for managers or executives, a period of up to three years;
 - ✓ for specialists, a period of up to three years;
 - ✓ for trainee employees, a period of up to one year. This restriction is effective from 1 August 2023;
 - ✓ for business visitors for establishment purposes, a period of up to 90 days;
 - ✓ for business sellers, a period of up to 90 days.
- *For contractual service suppliers in the following sectors and sub-sectors:*
 - ✓ architectural services;
 - ✓ urban planning and landscape architecture services;
 - ✓ engineering services;
 - ✓ integrated engineering services;
 - ✓ computer and related services;
 - ✓ higher education services (only privately funded services);
 - ✓ foreign language training; and
 - ✓ environmental services
- a natural person shall be engaged in the supply of a service on a temporary basis as employee of a juridical person, under a service contract not exceeding 12 months;
- the natural person entering Vietnam should be offering such services as employee of the juridical person supplying the services for at least two years immediately preceding the date of submission of an application for entry into Vietnam; in addition, the natural person shall possess, at the date of submission of an application for entry into Vietnam, at least five years' professional experience in the sector of activity which is the subject of the contract;
- the natural person entering Vietnam shall possess: (i) a university degree or a qualification demonstrating knowledge of an equivalent level; and (ii) professional qualifications in the case that this is required to exercise an activity pursuant to the laws, regulations or legal requirements of Vietnam where the service is supplied;
- the natural person shall not receive remuneration for the provision of services in Vietnam other than the remuneration paid by the juridical person employing the natural person;
- the entry and temporary stay of natural persons within Vietnam shall be for a cumulative period of not more than six months or for the duration of the contract, whichever is less;

- the number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as may be required by the laws and regulations or other measures of Vietnam where the service is supplied; and
- other discriminatory limitations, including on the number of natural persons in the form of an economic needs test, are specified in [Appendix 8-B-2, Chapter 12, EVFTA](#).

All requirements pursuant to the laws and regulations of Vietnam regarding entry, stay, work and social security measures continue to apply, including regulations concerning the period of stay, minimum wages as well as collective wage agreements.

EVFTA CHAPTER ON TRADE AND SUSTAINABLE DEVELOPMENT AND ITS IMPLICATIONS IN VIETNAM

- *Corporate Social Responsibility (CSR)*

The EU and Vietnam commit to promote sustainable development by fostering the contribution of trade and investment related aspects of labor and environmental issues. Vietnam has the right to establish its own levels of domestic protection in the environmental and social areas, as well as modify its policies to match international treaties to which it is a signatory. [Chapter 13](#) of the EVFTA requires Vietnam to uphold multilateral labor standards and agreements (e.g. ILO standards), multilateral environmental agreements, commitments under climate change protocols and commitments to protect biological diversity. Vietnam undertakes to ensure its laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas, meaning companies operating in Vietnam shall be required to comply with EVFTA-related CSR standards.

If there is a dispute regarding any CSR issues, EU investors may directly appeal to the EU Committee on Trade and Sustainable Development (Government Consultations). If the Committee is unable to resolve the issue satisfactorily, a Panel of Experts under the EVFTA will be established to address the issue.

Although Vietnam does not have specific CSR laws or regulations, CSR obligations are evident in important laws like the Law on Enterprise, the Labor Code, and the Law on Environmental Protection, and CSR has undoubtedly gained popularity among businesses in recent years. In fact, since 2005, the Vietnam Chamber of Commerce and Industry has given out the "Corporate Social Responsibility towards Sustainable Development" award each year to recognize companies that uphold their CSR obligations in the context of integration. The award is given in collaboration with the Ministries of Labor, Invalids and Social Affairs, Industry and Trade, and other associations.

- *Implications on labor*

The 1998 ILO Declaration on Fundamental Principles and Rights at Work serves as the foundation of EVFTA. The Declaration focuses on pledging its signatories' commitment to uphold and advance fundamental norms on the abolition of child labor and forced labor, the abolition of workplace discrimination, the promotion of gender equality, the right to free association, and the right to collective bargaining.

With assistance from the ILO and other partners, such as the EU, the Ministry of Labor, Invalids and Social Affairs (MoLISA) amended the Labor Code to be more in line with global labor norms. An analysis of Vietnam's latest labor code conducted by the International Labor Organization (ILO) can be found [here](#).

The main labor rights covered by the EVFTA and the domestic laws that relate to them are listed below:

- the freedom of association and the effective recognition of the right to collective bargaining. This right is recognized by the Vietnamese Labor Code under Article 3, 7, 36, 44, 63 and 65. However the strict control of the State poses a challenge to the implementation of this provision.
- the elimination of all forms of forced or compulsory labor. This right is recognized by the Vietnamese Labor Code under Article 8.
- the effective abolition of child labor. Although the minimum working age in Vietnam is 15 years, chapter XI of the Labor Code still allows enterprises to employ children from the age of 13 years if the enterprises satisfy simple conditions such as taking care of these children, obtaining their parents' approval and making sure they carry out works within their physical and mental capacity. This is not in line with EVFTA standard.
- the elimination of discrimination in respect of employment and occupation. This right is recognized by the Vietnamese Labor Code under Article 8.

- ***Implications on obligations to protect the environment and mitigate climate change***

Central to the EVFTA provisions on environment protection and climate change is the parties' commitment to adhere to international treaties that they are parties to, namely the *United Nations Framework Convention on Climate Change* of 1992, the *Kyoto Protocol to the United Nations Framework Convention On Climate Change* and the *Paris Agreement*.

Under Article 5 of the Commercial Law, where a treaty to which Vietnam is a contracting party stipulates the application of foreign laws or international commercial practices, or contains provisions that are inconsistent with this Law, the provisions of such treaty shall apply. This means that, where the EVFTA provides more protection to EU investors than Vietnamese laws do, investors could rely on and make use of provisions of the EVFTA in order to ensure compliance.

LABOR

Some basic obligations regarding labor under Vietnam laws are as follows:

- Normal working hours

- Normal working hours shall not exceed eight hours per day or 48 hours per week. However, employers have the right to determine the daily or weekly working hours and inform the employees accordingly. The daily working hours shall not exceed 10 hours per day and 48 hours per week where a weekly basis is applied.
- The State encourages employers to apply 40-hour workweeks.
- Employers shall limit the time of exposure to harmful elements in accordance with relevant National Technical Regulations and laws.

- Maternity protection

- The employer must not dismiss an employee or unilaterally terminate the employment contract with an employee due to his/her marriage, pregnancy, maternity leave, or nursing a child under 12 months of age.
- Upon expiration of the employment contract with female employee who is pregnant or nursing a child under 12 months of age, conclusion of a new employment contract shall be given priority.
- During her menstruation period, a female employee shall be entitled to a 30 minute break in every working day; a female employee nursing a child under 12 months of age shall be entitled to 60 minutes breaks in every working day with full salary as stipulated in the employment contract.

- Annual leave

- Any employee who has been working for an employer for 12 months is entitled to fully-paid annual leave, which is stipulated in his/her employment contract as follows:
 - ✓ 12 working days for employees who work in normal working conditions;
 - ✓ 14 working days for employees that are minors or disabled, employees who do laborious, toxic or dangerous works;
 - ✓ 16 working days for employees who do highly laborious, toxic or dangerous works.
- An employee who has been working for an employer for less than 12 months will have a number of paid leave days proportional to the number of working months.
- An employee who, due to employment termination or job loss, has not taken or not entirely taken up his/her annual leave shall be paid in compensation for the untaken leave days.

- Sick leave

- Employees can enjoy insurance-paid sick leaves, if they are:
 - a. Employees who have to take leave due to sickness or accidents other than labor accidents, with the certification of a competent health establishment under the Ministry of Health's regulations.

The sickness regime does not cover employees who take leave due to sickness or accidents as a result of self-infliction, drunkenness or use of narcotics or narcotic precursors on the Government-prescribed list.

- b. Employees who have to take leave for caring for sick children aged under 7 years, with the certification of a competent health establishment.

- Employees working under normal conditions benefit from the regime for the following duration:
 - ✓ 30 days, if they have paid social insurance premiums for under 15 years;
 - ✓ 40 days, if they have paid social insurance premiums for between 15 years and under 30 years; or
 - ✓ 60 days, if they have paid social insurance premiums for 30 years or more
- **Insurance**
 - Employer and employee agree on the payment of social insurance, health insurance and unemployment insurance. Employee can pay for these insurance by themselves or this is the employer who pays on the employee's behalf by deducting the corresponding amount from the employee's salary.
- **Foreign employees**
 - *Work Permits*
 - ✓ Except for individuals who meet the requirements for an exemption under the legislation, foreign nationals must get a work permit in order to work in Vietnam. Foreign nationals entering Vietnam to work must also have a visa or temporary residency card.
 - ✓ The employer must apply for a work permit on the employee's behalf by submitting an application file to the local labor authority at least 15 business days before the foreign worker is scheduled to start working in Vietnam. Upon receiving a comprehensive application dossier, the labor authority has five business days to grant the work permit.
 - *Residency Permits*
 - ✓ An invitation letter from a Vietnamese sponsor asking the foreign employee to come to Vietnam to work is required in order to acquire a visa to work in Vietnam. The application file for the foreign employee must be submitted to the Vietnam Immigration Office by the sponsor, who must be a Vietnam-based organization. The maximum duration of a work visa in Vietnam is two years, and both the work visa and the work permit must have the same duration. Depending on the type of work visa requested, it might take anywhere between five and eight working days to get a visa to work in Vietnam.
 - ✓ Long-term foreign workers in Vietnam may be able to submit an application for a temporary residency card rather than a work visa. Foreign citizens who have secured a work visa to work for a Vietnamese firm or a representative office of a foreign corporation in Vietnam, among others, are eligible to apply for a temporary residency card. A temporary residency card is granted by the authorized provincial office controlling entrance and exit under the Ministry of Public Security and is valid for at least a year up until the expiration date of the foreign national's work permit, work permit exemption certificate, or practicing license. The timeframe for obtaining a temporary residence card is five working days from the submission of a complete application file.

LITIGATIONS AND DISPUTES

Under the EVIPA, which incorporates important tenets of the ICSID 1965 and the New York Convention 1958, investors are afforded a high level of protection. The EVIPA allows EU investors to bring legal action against the Vietnamese government for decisions made regarding investments. The local courts have no right to challenge the legality of the final arbitral ruling because it is binding and enforceable.

In particular, EVIPA specifies the two-tier arbitration procedure, under which parties may appeal a panel's first ruling if they are dissatisfied with it. The interim award, however, becomes final and "shall not be subject to appeal, review, set aside, annulment or any other remedy" if neither contesting party has appealed it (Article 3 of the EVIPA).

Vietnam now reserves the right to carry out this promise for a period of five years following the EVIPA's effective date (NOTE: The EVIPA has not yet taken effect).

In the event of disagreements, investors are urged to turn to international arbitration organizations like the ICC or SIAC.

- Important provisions to keep in mind

When reviewing a general sales and purchase contract, key provisions to look out for include:

▪ Dispute resolution:

- ✓ A sample dispute resolution clause in a commercial contract would look like this:
 - Any differences or disputes arising from this Contract or other agreements related to the Contract performance will be resolved by the mediation efforts between the Parties;
 - Any disputes or differences related to the contract which cannot be settled based on mediation will be resolved at the Vietnam Arbitration Center.
 - The costs of arbitration and/or other expenses (includes the cost of hiring a lawyer) shall be borne by the plaintiff;
 - The language of arbitration is Vietnamese.

▪ Termination:

- ✓ Force majeure: Under Article 156 of the Civil Code, an event of force majeure is an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and admissible measures being taken.

Typical Force majeure circumstances in contracts include:

- Natural phenomena such as rain, flood, fire, storm, tsunami, volcanic eruption.
- Social phenomena such as wars, coups, strikes, embargoes, changes in government policies
- In addition, the parties can agree on events such as: lack of fuel, power failure, network failure, etc., to exempt liability in case of violation.

▪ Events of Default:

- ✓ An event of default is an event specified in a commercial agreement that gives the non-defaulting party the right, among other things, to terminate the agreement. Events of default are common in loan agreements or debt instruments. An event of default entitles the lender to cancel the facility and/or declare all amounts owing by the borrower to be immediately due and payable. Typical events of default in loan agreements include:

- non-payment or late payment of amounts due;
 - breach of certain material [representations and warranties](#);
 - breach of certain material [covenants](#);
 - [cross-default](#);
 - breach of [change of control](#) provisions;
 - [insolvency](#).
- ✓ Description of events of default should be clearly listed rather than using vague terms such as “in accordance with laws” as the laws cannot cover all possible circumstances and it would be difficult for the investors to comprehend whether a specific activity is an EoD.

- ***Engaging a lawyer***

Once you decide to conduct business in Vietnam, it is advised that you hire a Vietnam-based law firm to guide and help you. If you want to start a new business or negotiate a business partnership agreement with a local partner, a qualified attorney can help you avoid unnecessary delays and expenses caused by fraud or legal disputes by advising you on the necessary licenses, risk-reduction strategies, and in-person negotiations.

Businesspersons in Vietnam prefer to discuss and negotiate in person rather than via electronic means of communication unless that is the only way since Vietnamese people prefer the rapport that parties can build face-to-face. As such, it is helpful to have someone on the ground to work on your behalf at least until you arrive in Vietnam.

Please do not hesitate to contact Dr. Oliver Massmann under omassmann@duanemorris.com if you have any questions on the above. Dr. Oliver Massmann is the General Director of Duane Morris Vietnam LLC.