

Issues and Requests Relating to Foreign Trade and Investment - Vietnam

Category	No	Issue	Issue Details	Requests	References
1 Restrictions on Entry of Foreign Capitals	(1) Goods and Services Banned from Business, subject to Business Restriction or to Conditional Business as regards Foreign Investment	<ul style="list-style-type: none"> - A member firm's subsidiary (MFS) is unable to open a lease business by locating a finance lease partner, because the Government of Vietnam (GOV) has not liberalised the lease business to foreign funded enterprises (FFEs). It is difficult for MFS to market high-class products in Vietnam. - Retail business is open only to domestically funded enterprises in principle. - Investment licence is closed to Foreign Capital for Import of Publications (including CD, DVD). <p>(Actions)</p> <ul style="list-style-type: none"> - On 11 January 2007, Vietnam ratified the WTO agreement. Liberalisation schedules in the field of distribution and service are: <ul style="list-style-type: none"> (1) Entry formations in sales agency, wholesale, retail and franchise: <ul style="list-style-type: none"> -- Up to end of November 2007: Joint venture, foreign capital ratio (FCR) 49% maximum -- On or after 1 January 2008: FCR of more than 49% OK -- On or after 1 January 2009: 100% foreign capital OK (2) Foreign funded enterprises starting distribution business simultaneously with WTO accession: is authorised to engage in sales agency, wholesale and retail distribution business of both imported and domestically manufactured products. (3) Franchise: is authorised to open a branch office in Vietnam after three-years of Vietnam's accession to WTO. - Vietnam acceded to WTO in January 2007, and in accordance with its commitment under WTO, establishment of 100% foreign invested enterprises in the sales and distribution sector is authorized beginning 2009, provided, however, that, certain retail market continues to be closed to FIEs as regards gasoline, medication drugs, magazines, books, newspapers, DVD's, cigarettes, rice, sugar, rare metal, crude oil and crude oil products. State enterprises continue to monopolize the retail market for gasoline. The distribution market for steel and cement is due for liberalization to FIEs within three years of Vietnam's accession to WTO. - As regards service sectors in retail business, since January 2009, GOV has repealed restrictions on the foreign investors' participation rates. Nevertheless, under Addendum 2 of the Report of the Working Party on the Accession of Viet Nam (WT/ACC/VNM/48), the schedule of specific commitments in services resulting from the negotiations between the Socialist Republic of Viet Nam and WTO Members annexed to the Protocol of Accession of the Socialist Republic of Viet Nam, it is provided: The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of the "economic needs test" conducted for each case in respect of the number of retail outlets, the geographical scale, market stability, population density in the province or city where the retail outlet(s) is/are to be established, and compatibility of the investment plan., and consistency of the investment project with the master development plan of such province or city. - In October 2010, in its Recommendation "Japan Mekong Industrial Policy Dialogue", GOJ requested GOV to deregulate the restrictions under "Economic Need Test (ENT) for modernisation of distribution services in Vietnam", which GOV requires from the second shop of the FFEs' expansion of business in Vietnam, because precise details of ENT and its process remain undisclosed and nebulous. 	<ul style="list-style-type: none"> - It is requested that GOV liberalises lease business in Vietnam to FFEs. - It is requested that GOV deregulates the requirements for FFEs' entry into retail business. - It is requested that GOV deregulates the restrictions. 	<ul style="list-style-type: none"> - Law on Investment - Law No.59/2005/HQ11 - Decree No.59/2006/ND-CP 	

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			<ul style="list-style-type: none"> - In Vietnam, the Law on Credit Institutions governs non-bank business such as finance lease. While the Vietnamese WTO Accession Protocol authorises wholly foreign owned enterprises to operate finance lease business, the issuance of business licence is de facto held in abeyance, due to the absence of the subordinate legislation such as Decree on Organisation and Operation of Finance Lease Company under the 2010 Law on Credit Institutions, provided, however, that The State Bank Vietnam (or the Central Bank of Vietnam), it is commented, will promulgate shortly the subordinate legislation. ("Legal Affairs of Enterprises entering Asia" (April 2013) at page 299) (Edited by Nishimura Institute of Advanced Legal Studies) - Addendum 2 of the WTO Protocol of Vietnam Accession provides that application for FFEs entry into retail outlets (after the first one) will be examined by "economic needs test" conducted for each case in respect of the number of retail outlets, the geographical scale, market stability, population density in the province or city where the retail outlet(s) is/are to be established, compatibility of the investment plan, and consistency of the investment project with the master development plan of such province or city. - On 27 April 2013, Ministry of Industry and Trade promulgated "Circular 08/2013/TT-BCT Detailing the Goods Trading and Directly Related Activities of Foreign-Invested Enterprises in Vietnam" as a guideline for Retail Sales Activities by Foreign Funded Enterprises, among other things, specifying the Basis and the Procedures for Economic Needs Test (ENT) and deregulating restrictions such as Shrinkage of the Areas subject to ENT from those under control of Provinces or Central Government to Ward or County, and obviating the need for ENT, in the case, where opening the 2nd Store of less than 500 sq.m. in the area under the control of Provinces or Central Government, where construction of infrastructure is completed. - Ministry of Planning and Investment (MPI) promulgated Official Letter No. 6983-BKHD of 12 September 2012, in regard to certain service sectors (such as rental or lease of construction equipment and facilities), deregulating the foreign investment terms as to Japan further than Vietnam's commitment under WTO Protocol, in pursuance of Agreement between Japan and the Socialist Republic of Viet Nam for the Liberalization, Promotion and Protection of Investment of 2003. ("Legal Affairs of Enterprises entering Asia" (April 2013) at page 301) (Edited by Nishimura Institute of Advanced Legal Studies) - <u>On 26 November 2014, New Law on Investment (67/2014/QH13) was promulgated and enforced from 1 July 2015.</u> <ul style="list-style-type: none"> (1) <u>Banned business lines of 51 under the going law on investment have been reduced by large margin to 6 -business lines from 51-business lines:</u> a) The narcotic substances, b) The chemicals and minerals, c) Specimens of wild flora and fauna, d) Animal specimen, e) Prostitution; human trafficking; human tissues and body parts; f) Business pertaining to human cloning. (2) <u>Conditional business lines of 386 have been reduced to 267 (in which the investment must satisfy certain conditions for reasons of national defense and security, social order and security, social ethics, or public health).</u> <p>[Reference] Conditional business lines are listed in "Vietnam law on investment 2014, Appendix 4, catalogue of managerial investment sectors, business lines" at (JICA: http://www.jica.go.jp/project/vietnam/021/legal/index.html)</p> 		
	(2)	Restricted Foreign Capital Contribution Ratio	<ul style="list-style-type: none"> - Foreign Capital Contribution Ratio is held down to a low level of 15% (or 20%, if specially approved by Prime Minister) for investing into the existing local financial institutions, virtually foreclosing the foreign investors influence upon the corporate management. <p>(Actions)</p> <ul style="list-style-type: none"> - In January 2014, GOV raised the maximum shareholding percentage for a foreign investor in a Vietnamese credit institution from 15% to 20% in the case of strategic investors. (Decree No.01/2014/NĐ-CP) 		

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			<p>(Improvement)</p> <p>- On 26 June 2015, GOV promulgated Decree No.60/2015/NĐ-CP, which repeals, in part, the upper limit of 49% on foreign ownership.</p>		
6 Reduction and Elimination of Preferential Policies for Foreign Capital	(1)	Nebulous Terms for Preferential Tax Measures on FFEs	<p>- While law on investment 2014 passed the national diet, the definition of <u>incentive measures remain ambiguous, especially as regards new additional investment.</u></p> <p>- Quite a few auto manufacturers entering Vietnam have already operated <u>large scale manufacturing depots (including export) in other ASEAN member states mainly Thailand. Their production cost is less expensive than Vietnam as they benefit from economy of scale. With tariff repeal already affirmed under the common effective preferential tariff (CEPT). GOV's supportive measures are indispensable for them to continue auto production. While the master plan has been published, as of today, its substantive terms and incentive measures are nebulous</u></p> <p>- Application terms and the method of filing application are ambiguous on <u>the corporate income tax (CIT) incentives.</u></p> <p>- As regards incentive on auto and motor cycle business expansion, there is <u>a gap between tax office legal interpretation and investment licence.</u></p>	<p>- It is requested that GOV issues <u>documents that provide a clear definition of the investment terms and the incentive measures on foreign investment.</u></p> <p>- It is requested that GOV affirms as soon as possible the <u>clear-cut substantive terms and conditions, as well as the application method for the incentive acquisition.</u></p> <p>- It is requested GOV clearly identifies the <u>terms and conditions for application of CIT incentive and the method of filing application.</u></p> <p>- It is requested that GOV continues with <u>incentive under investment licence.</u></p>	<p>- Article 15-18, Law on Investment 2014</p> <p>- Decision 49/2010/QD-TTg and Decision 66/2014/QD-TTg</p> <p>- Auto Industries Development Strategy/ Its Master Plan (Premier Approval in July 2014)</p> <p>- Resolution 63/NQ-CP</p> <p>- Investment Law 2005, Decree 108/2006/NĐ-CP by Gov</p> <p>- Law on Enterprise Income Tax 2008 & revised in 2013</p> <p>- Decree 218/2013/NĐ-CP by Gov</p> <p>- Circular 78/2014/TT-BTC by MOF</p>

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			<p>- Investment projects satisfying the following enjoy preferential tax rates:</p> <ul style="list-style-type: none"> (1) Investment into domains described in "the list of domains entitled to special investment preferences and domains entitled to investment preferences"; (2) Investment into geographical areas described in "the list of geographical areas facing extremely difficult socio-economic conditions and geographical areas with difficult socio-economic conditions"; and (3) Investment into newly established business enterprise (BE) described in "The list of domains entitled to special investment preferences" or "The list of geographical areas with extremely difficult socio-economic conditions". <p>These lists are detailed in Decree No. 108/2006/NĐ-CP (Decree 108) of 22 September 2006, "Detailing and guiding the implementation of a number of articles of the investment Law." Preferential tax rates of 10%, 15%, and 20% are applied in accordance with the circumstances/conditions of each case for the duration of 10, 12 and 15 years, respectively. Upon expiry of the duration prescribed above, the regular CIT rate of 28% applies in general. If BE's relocates the place of business operation, preferential tax rates no longer apply, with the exception of CIT exemptions or reductions. CIT's payable by BE's newly established from investment projects and by BE's which relocate shall be exempted or reduced as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">Exemption and reduction of Corporate Income Tax (CIT)</th></tr> <tr> <th style="text-align: center;">Establishments</th><th style="text-align: center;">CIT Exemption</th><th style="text-align: center;">CIT Reduction</th></tr> </thead> <tbody> <tr> <td>A production establishment newly established from an investment project and a business establishment which relocates from an urban area</td><td>For the first two years from when taxable income arises</td><td>A fifty (50) per cent reduction of the amount of CIT payable for two subsequent years</td></tr> <tr> <td>A business establishment newly established from an investment project in an industry [and/or] sector on "the list of investment incentive sectors"</td><td>For the first two years from when taxable income arises</td><td>A fifty (50) per cent reduction of the amount of CIT payable for three subsequent years</td></tr> <tr> <td>A business establishment newly established from an investment project in a region on "the list of regions with difficult socio-economic conditions" and a business establishment which relocates to a region on the list of "regions with difficult socio-economic conditions"</td><td>For the first two years from when taxable income arises</td><td>A fifty (50) per cent reduction of the amount of corporate income tax payable for six subsequent years</td></tr> <tr> <td>A business establishment newly established from an investment project in "an industry [and/or] sector on the list of investment incentive sectors" and which is implemented in a region on the list of "regions with difficult socio-economic conditions"</td><td>For the first three years from when taxable income arises</td><td>A fifty (50) per cent reduction of the amount of corporate income tax payable for seven subsequent years</td></tr> <tr> <td>A business establishment newly established from an investment project in "an industry [and/or] sector on the list of special investment incentive sectors" or which is implemented in "a region on the list of regions with specially difficult socio-economic conditions"</td><td>For the first four years from when taxable income arises</td><td>A fifty (50) per cent reduction of the amount of corporate income tax payable for nine subsequent years</td></tr> </tbody> </table> <p>(Note) The preferential tax rates prescribed above and the exemption and reduction of CIT only applies to newly established business establishments which practice independent cost accounting and which pay tax pursuant to a tax declaration.</p>	Exemption and reduction of Corporate Income Tax (CIT)			Establishments	CIT Exemption	CIT Reduction	A production establishment newly established from an investment project and a business establishment which relocates from an urban area	For the first two years from when taxable income arises	A fifty (50) per cent reduction of the amount of CIT payable for two subsequent years	A business establishment newly established from an investment project in an industry [and/or] sector on "the list of investment incentive sectors"	For the first two years from when taxable income arises	A fifty (50) per cent reduction of the amount of CIT payable for three subsequent years	A business establishment newly established from an investment project in a region on "the list of regions with difficult socio-economic conditions" and a business establishment which relocates to a region on the list of "regions with difficult socio-economic conditions"	For the first two years from when taxable income arises	A fifty (50) per cent reduction of the amount of corporate income tax payable for six subsequent years	A business establishment newly established from an investment project in "an industry [and/or] sector on the list of investment incentive sectors" and which is implemented in a region on the list of "regions with difficult socio-economic conditions"	For the first three years from when taxable income arises	A fifty (50) per cent reduction of the amount of corporate income tax payable for seven subsequent years	A business establishment newly established from an investment project in "an industry [and/or] sector on the list of special investment incentive sectors" or which is implemented in "a region on the list of regions with specially difficult socio-economic conditions"	For the first four years from when taxable income arises	A fifty (50) per cent reduction of the amount of corporate income tax payable for nine subsequent years		
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			<ul style="list-style-type: none"> - MOST on 19 May 2007 promulgated Decree No.80/2007/NĐ-CP (Decree 80), "On science and technology enterprises". By Decree 80, Vietnamese and foreign organisations and individuals may apply for the setting up of Science And Technology Enterprises under Uniform Law on Enterprise and Law on Science and Technology. An enterprise satisfying the followings is entitled to benefit from the corporate income tax (CIT) incentives: <ul style="list-style-type: none"> -- The enterprise has obtained the grant of Scientific and Technological Enterprise Certificates. -- The revenue from production, sale and purchase of scientific and technological products is more than 30% of the total revenue in the first year, more than 50% in the second year and more than 75% in the third year and thereafter. - In addition to the CIT incentives, the enterprise will be exempted from payment of the registration fee upon registration of land use right or house ownership right. - On 22 June 2007, Prime Minister Nguyen Tan Dung promulgated Directive 15/2007/CT-TTg, directing each governmental agency to conduct research and to lay down the action plan for luring foreign investors. - GOV prepared new draft Decree that provides additional incentive measure for the benefit of projects in the special economic zones to ensure further economic development of Vietnam and to attract foreign investment. The draft Decree provides special incentive measure such as reduction in the CIT rates for the high-tech related projects and projects in the socio-economically retarded area. - In the context of the MOF Circular No. 76/2007/TT-BTC (Circular 76), "Guiding the Financial Regime and Customs Procedures Applicable in Chu Lai Open Economic Zone (CLOEZ) Quang Nam Province", 5 July 2007, the 10% beneficial CIT rate applies to investors investing in CLOEZ for fifteen-years from the beginning of operation in CLOEZ. The high-tech related projects and projects that greatly contribute to the socio-economic development of the area in concern are included in this special incentive measure. GOV plans to construct 22 new special economic zones within the year 2007. - MOF promulgated on 2 August 2007 Circular No. 93/2007/TT-BTC (Circular 93), "Guiding some mechanisms and policies on financial and non-financial incentive measures for Phu Quy island, Binh Dinh Province". The 10% CIT rate applies for 15-years to investing projects that involves establishment of a new production foothold or a new enterprise. CIT is exempted for 4-years from the accounting year showing taxable income for the first time, while the CIT is reduced by 50% in the subsequent 9-years. The 10%-CIT rate applies to high-tech projects and large-scale projects impacting on the socio-economic conditions of the total island. - MOF on 7 September 2007 promulgated Circular No. 108/2007/TT-BTC (Circular 108), "Guiding the financial management mechanism applicable to ODA programs and projects" which serves as implementing regulation for Decree No. 131/2006/NĐ-CP (Decree 131) of 9 November 2006, "Promulgating the regulation on management and use of official development assistance". Circular 108 applies to projects under the preferential borrowing from ODA fund during the preparatory stage and execution stage, free ODA, and partially free ODA. MOF also promulgated Circular No. 123/2007/TT-BTC (Circular 123) of 23 October 2007, "Guiding the implementation of tax policy and tax incentives for programs and projects funded with Official Development Assistance (ODA)", addressed to projects under ODA and its programmes. - MOF promulgated, on 11 October 2007, Official Letter No. 13721/BTC-TCT (OL 1372), "On Tax Policies for Capital Transfer", guiding Provincial/Municipal Tax Departments. By the force of OL 1372, GOV has applied the 28% tax rate for capital gains obtained from January 2004 and thereafter. 		

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			<ul style="list-style-type: none"> - MOF promulgated, on 23 November 2007 and enforced from 18 December 2007, Circular No. 134/2007/TT-BTC (Circular 134), "Guiding the implementation of the Government's Decree No. 24/2007/NĐ-CP (Decree 24) of February 14, 2007", "Detailing the implementation of the Law on Business Income Tax". Circular No. 134 stipulates MOF's policy on individuals and enterprises subject to tax levy, on taxable income, deductible expenses and the guidelines for the incentive measures. Circular No. 134 expands the scope of the deductible expenses to include deduction of depreciation cost related to the fixed assets for employees, besides allowing deduction from taxable income of maximum 10% for sales promotion and advertising expenses (excluding market research expenses). While Circular No. 134 permits application of the preferential CIT rate as the special investment preferential measure for projects in "Socio-economically extremely retarded area", it has repealed in principle the tax incentive measure for export textile and clothing industry that uses the domestic raw materials, taking the form of a newly incorporated state industry or other textile and clothing enterprise. Circular No. 134 has repealed Circular No. 128/2003/TT-BTC of 22 December 2003, Circular No. 88/2004/TT-BTC of 1 September 2004 and all other regulations conflicting with Circular No. 134. - On 3 March 2009, Ministry of Finance published Guidance on Repeal of the preferential measures for corporate income tax based on the local procurement rates and export rates, in order to fulfill its undertaking upon accession to WTO concerning the preferential measures for corporate income tax. - On 14 June 2010, General Department of Vietnam Customs released Official Letter 2057TCT-CS, providing that the regular Corporate Income Tax of 25% applies to any income generated from businesses added after the acquisition of the Investment Licence. In this case, no preferential tax measures shall apply. - In February 2012 (5-years after accession to WTO), GOV repealed the Incentive Measures to Enterprises in Border-Gate Economic Zones. The Incentive Measures used to allow the following preferential tax rate compared to the going 25% Corporate Income Tax (CIT) Base Rate: <ul style="list-style-type: none"> -- tax rate of 20% for 10-years for enterprises investing into Socially and Economically Difficult Regions (namely, CIT exemption for the first 2-taxable years, thereafter 50% reduction in CIT for 4-years); -- tax rate of 10% for 15-years (extendable) for enterprises investing into Socially and Economically Especially Difficult Regions (namely, CIT exemption for the first 4-taxable years, thereafter 50% reduction in CIT rate for 9-years); -- tax rate of 10% for 15-years (extendable) for enterprises investing into High Technology, Chemical Research, Technical Development, especially important infrastructure development, software development sector (extendable), CIT exemption for the first four taxable years, thereafter 50% reduction in CIT rate for 9-years). - Prime Minister Nguyen Tan Dung approved "Decision No. 631/QĐ-TTg dated April 29, 2014, promulgation of the List of National Projects in which Foreign Investments are called for by 2020". These Projects will enjoy the exclusive support of Ministry of Planning and Investment. (Improvement) <ul style="list-style-type: none"> - On 2nd March 2009, Prime Minister Nguyen Tan Dung promulgated Decision No. 33/2009/QĐ-TTg concerning application of priorities in terms of tax and finance to enterprises investing in border economic zone (EZ) (enforcement from 1 May 2009). The Decision concerns the EZ under the Administrative Committee and non-tariff areas within EZ under jurisdiction of Vietnam Customs Office. The details of the financial/tax preferential measures comprise of exemption or reduction of corporate income tax, personal income tax, VAT, special sales tax, export/import tariffs, land and sea-surface rental fees, land utility fees, the details of which are as follows: <ul style="list-style-type: none"> -- Preferential 10% tax rate over 15-years, provided, however, that, preferential measures may be extended up to 30-years maximum, for 		

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			<p>projects invested on business sectors so designated under Decree No. 124, Article 15.1(b), high technology as prescribed by law; scientific research and technological development, manufacture of software products, and development of water plants, power plants, water supply and drainage systems; bridges, roads, railways; airports, seaports, river ports; airfields, stations and other infrastructure works of special importance.</p> <ul style="list-style-type: none"> -- Tax exemption for maximum 4-years, and 50% tax reduction for the subsequent 9-years. These measures for tax exemption/reduction will be applied from the year in which enterprises gain profit for the first time. Should there be no profit in the subsequent 3-year period from the first time enterprises gain profit, these measures for tax exemption or reduction will be applied from the 4th year. - On 17 June 2010, Ministry of Finance (MOF) promulgated (and enforced on the same date) Circular No. 92/2010/TT-BTC "Guiding procedures for the payment extension and refund of value-added tax on equipment, machinery, special-use vehicles included in technology lines and on construction supplies which cannot be produced at home and need to be imported to create fixed assets of enterprises". Goods subject to this Circular are: (1) Equipment, machinery and special-use vehicles included in technology lines and construction supplies, and (2) Goods, which are unavailable at home, forming the fixed assets of enterprises. Circular No.92 also provides: "Business establishments newly set up under investment projects which are in the stage of investment and have not yet been put into operation and operating business establishments which have investment projects (on building of new production lines, expansion of production scope, renewal of technology, improvement of the eco-environment or rising of production capacity)." Payment extension and refund of value-added tax are not authorised unless the value of the foregoing imports exceeds VND200 billion. - On 28 December 2010, Ministry of Finance (MOF) promulgated Circular No. 214 /2010/TT-BTC, providing Guidelines for the Policy on Preferential Import Tax applicable to Imported Materials and Equipment for Investment in Production or Project of Major Mechanical Products (entered into force on 11 February 2011). Production and Project of Major Mechanical Products under Decision No. 10/2009/QD-TTg 16 January 2009 of the Prime Minister during 2009-2015 are provided in: Appendix 1 List of Key Mechanical Products During 2009-2015, and Appendix II List of Investment Projects to Manufacture Key Mechanical Products during 2009-2015 of this Prime Minister's Decision. During the period from 2009 to 2015, within 45-days of the completion of manufacture or manufacturing project of Major Mechanical Products, enterprises in concern must complete the requisite procedures on import and import tariff exemption for the subject goods at the Customs Authority at which the Listed Product(s) is (are) registered. - Since 1 January 2014, new investment project (2009 through 2013) industrial zone has been approved as incentive zone entitled to receive tax incentive measures (2-years of tax exemption and 4-years of tax reduction). - Amendment to Tax Law in February 2014 has replaced the goods subject to 10% preferential tax rate for 15-years under the Tax Law before Amendment) with the prioritised high-tech fostering, reusable energy production, environmental protection projects. - On 26 November, 20014, New Law on Investment (67/2014/QH13) was promulgated and enforced from 1 July 2015. <ul style="list-style-type: none"> (1) <u>Investment incentive business lines listed comprise of 13-items, with areas of interest clearly identified. (Article 16)</u> (2) <u>List of investment incentive business lines has been expanded by addition of hi-tech auxiliary industrial products, manufacture of products with added value of more than 30%, energy saving products, peoples credit fund, etc.</u> (3) <u>Administrative divisions given investment incentives include disadvantaged area or extremely disadvantaged areas; industrial parks, export-processing zones, hi-tech zones, economic zones.</u> (4) <u>Beneficiaries of investment incentives include:</u> <ul style="list-style-type: none"> i) <u>Any project in which the capital investment is at least VND 6,000 billion, or at least VND 6,000 billion is disbursed within 03 years from the day on which the certificate of investment registration or decision on investment policies is issued;</u> 		

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			<u>ii) Any investment project in a rural area that employ at least 500-workers; and</u> <u>iii) High-tech companies, science and technology companies, and science and technology organizations.</u>		
7 Procedures for the operation of the Foreign Investment Law	(1)	<u>Ambiguous, Arbitrary Investment Licencing Procedures</u>	<p>- No written guidance is available on investment licence acquisition procedures so that the requisite steps vary by the official in charge. Moreover, it took a long time (8-months in the case of an MFS) from filing application to acquisition of approval.</p> <p>(Improvement)</p> <p>- On 29 June 2015, foreign investment agency, ministry of planning and investment opened foreign investment portal website ("eRegulation Vietnam"). Using the flow chart, it gives the procedural flow of investment into 4-provinces, and 3-direct-controlled municipalities, complete with information in Vietnamese and in English, the relevant institutions, laws and decrees, average examination period. Each investor can confirm the contact point of each official in charge, the requisite documents, expenses, examination period, etc. [Reference]: Web address of ("eRegulation Vietnam") [in Vietnamese and in English] is at (https://vietnam.eregulations.org/).</p> <p>- On 1 November 2015, GOV enforced Decree No. 78/2015/ND-CP "enterprise registration", concerning the procedures for registration of new enterprises, aimed at furthering transparency and effectivity, by addition of penal provisions under the related legislation.</p>	<p>- It is requested that GOV takes step to:</p> <ul style="list-style-type: none"> -- harmonise and standardise the procedures, and -- eliminate differences between the officials in charge. 	Law on Investment
9 Restrictive Export/Import Trade, Duty, and Customs Clearance	(2)	<u>Delayed Negotiation on Compensation for Compulsory Factory Move</u>	<p>- While the municipal authority presses MFS to move its factory site for the sake of the urban planning, its negotiation has not moved forward won't advance at all.</p>	<p>- It is requested that GOV compensates in full the expenses incurred for the move, inclusive of those incurred on account of Japanese expatriates.</p>	

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			<p>(Actions)</p> <ul style="list-style-type: none"> - Law on Export - Import Tax stipulates certain products that are duty exempt such as raw materials, spare parts, and semi-finished products that are imported into Vietnam for the purpose of manufacturing the items of products under the project included in the List of Encouraged Investment Sectors. Accordingly, based on the Lists of commodities (from time to time adjusted) attached to Decision No.827/2006/QD-BKH (Decision 827), "Enterprises and competent authority consider eligibility for duty-exempted treatment". Where commodities not listed in Decision 827 nevertheless correspond to the commodities expressly identified in VAT Law and Law on Export-Import, the import duty and VAT is exempted on the imported commodities in concern. Decision 827 also provides in the course of using the lists, if customs offices' opinions are different from those of enterprises, the customs offices shall coordinate with the provincial/municipal Planning and Investment Services in considering and handling such difference. If there remain any unsolved problems, Vietnam Customs shall propose the Ministry of Planning and Investment to consider and make decisions or amend and/or supplement the lists. - MOF promulgated Decision No. 26/2007/QD-BTC (Decision 26) of April 16, 2007, promulgating Vietnam's particularly preferential import tariff for the implementation of the ASEAN-China Free Trade Area, by virtue of which imported goods satisfying the following conditions will be subject to application of the special preferential import tariffs: <ul style="list-style-type: none"> -- Goods are included in the tariff schedules, -- Goods are imported from the ASEAN Member States and PRC, -- Goods are directly exported to Vietnam, and -- Goods are accompanied by country of origin certificate issued by the competent authority of the originating country. - MOF promulgated on 31 May 2007 Decision No. 41/2007/QD-BTC (Decision 41), "Promulgating Vietnam's Particularly Preferential Import Tariff for Implementation of ASEAN-Korea Free Trade Area" by virtue of which imported goods satisfying the following conditions will be subject to application of the special preferential import tariffs. Further, subject to meeting certain conditions, AKFTA tariff rates apply to imports from Kaesong Industrial Park (North Korea): <ul style="list-style-type: none"> --Goods are included in the Tariff Schedules, --Goods are imported from the ASEAN Member States and ROK, --Goods are directly exported to Vietnam, and --Goods are accompanied by Country of Origin Certificate issued by the competent authority of the originating country. - Under the AJCEP, tariffs are evenly reduced in each year and will be completely repealed after 16-years. While the move toward repeal is welcome, it takes too long for the complete repeal. - On 27 February 2009, MOF amended the tariff rates for vehicle parts (HS8404, 8408, 8409, and 8708). - On 13 April 2009, MOF raised the import tariff rate for certain alloy steel to 10%, which is the WTO Concession Rate. Moreover, on 26 March 2009, GOV amended the import tariff rates on steel products (HS7207, 7209, 7210, 7214, 7215, 7217, and 7306). - Under the Japan-Vietnam EPA enforced in October 2009, the tariffs on Japanese watches have been reduced evenly in stages, while import duty on watches and clocks will be completely repealed after 10-years, while tariffs on movements and parts will be repealed after 15- years, which, while appreciated, is too long. - GOV announced its intention to accede to TPP with the high liberalisation rate of 100%, sometime in future as associate member. - In March 2010, GOV agreed to enter into negotiation with EU on FTA. 		

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			<ul style="list-style-type: none"> - On 25 March 2011, the Ministry of Industry and Trade (MOIT) promulgated Decision No. 1380/QD-BCT on adjustments based on the List of Discouraged Import Items immediately enforced on the same date. This List encompasses a wide range of products including HS Chapters 73, 84, 85, 87, 90, and 91, such as certain steel made household products (such as stove, scrub brush, hygienic porcelain, etc.), laundry machine, computer, electric appliance, camera, cassette tape recorder, record player, golf cart, passenger car (excluding small trucks), motorcycle, bicycle, stand clock, wrist watch, etc. Products used for production materials are excluded from this List. While this measure is not intended to build up import barriers for the listed items, GOV attempts at restricting their imports by directing State Bank of Vietnam (SBV) to make it difficult for importers through commercial banks (CMBs) to purchase foreign currency to import the listed items in its Official Dispatch No. 3215/NHNN-CSTT of 29 April 2010. SBV directs CMBs to carefully examine the request for loan in foreign exchange, severely control, and restrict such loan. Furthermore, by Decision No. 2677/QD-NHNN of 20 November 2010, SBV established an Inter-Department Working Group for monitoring the sale and lending for payment of imported goods, while tightening lending and payment in foreign currencies services. Working Group shall be responsible for monitoring and reporting to the Governor on a daily basis the situation of sale, lending and remittance by credit institutions for payment of imported goods in connection with the list of non-essential imported goods items (under Decision 1899/QD-BCT of MOIT) and the list of essential goods items manufactured locally (under Decision No. 2840/QD-BCT of MOIT of 28 May 2010). SBV does not envisage reducing the MFN tariff rate on the listed items in the near future. - <u>On 2 February 2016, GOV signed trans pacific partnership agreement.</u> <p>(Improvement)</p> <ul style="list-style-type: none"> - On 1 December 2008, ASEAN-Japan Comprehensive Economic Partnership (AJCEP) came into force, whereby GOV immediately repealed tariffs on 2,911 items out of the 11,397 items on the list of tariff concessionary rates. Excluded from the tariff reduction are 1,164 items, while 35,817 items are related to transport machineries and equipment. It is said that the tariff rates for 103 items are more favourable under AJCEP compared to those of AFTA CEPT. - Japan-Vietnam Economic Partnership Agreement signed on 25 December 2008 has become effective since 1 October 2009. The tariff reduction schedule on the part of Vietnam is:- out of the total of 9,300 items, tariffs were immediately removed on 2,586 items, while on 5,873 items, tariffs are reduced in stages until 2025 when they are totally repealed, along with the other 89 items. In terms of amount, 88% will be liberalised within 10-years. - On 28 April 2009, MOF announced the Vietnam's import tariff reduction schedules under AJCEP during 2008 through 2012. 		
	(2)	Raise in Import Duty	<ul style="list-style-type: none"> - GOV's repeated tariff increases have disrupted the distribution: -- On 1 April 2009: GOV raised the tariff on billet: 5%=>8%, construction steel bars: 12%=>15%, CR: 7%=>8%, plated sheet steel: 12%=>13%. -- On 20 April 2009: GOV raised the tariff on boron-added steel bar: 0%=>10% -- In February 2010: GOV raised the tariff on steel bar, wire rod (in part): 5%=>15%, Tin plate 3%=>5%. -- Since 25 August 2011, MFN tariff rate has been raised from 0% to 10% on the boron added Other Alloy steel sheet, wire rod, and shaped steel (HS7225, 7226, 7227, and 7228 however, excluding hot-rolled steel sheet). 	<ul style="list-style-type: none"> - It is requested that GOV reduces tariff rates. 	

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			<p>-- On 11 June 2012: MFN tariff rate has been raised from 0% to 10% on the Stainless Steel Bar (in part).</p> <p>-- On 1 January 2013: MFN tariff rate has been raised from 5% to 10% on the cold rolled steel sheet & welded steel pipe (in part).</p> <p>-- On 19 May 2013: MFN Tariff Rate has been raised from 0% to 3% on wire (in part).</p> <p>-- On 1 January 2014: MFN tariff rate has been raised on steel sheet, shape steel, etc.</p> <p>(Actions)</p> <ul style="list-style-type: none"> - Since 23 March 2009, Ministry of Finance (MOF) have adjusted export/import duty rates for certain coal products so that 5% of import duty and 10% of export duty apply to HS4402.10.00.00 and HS4402.90.00.90 coal products, and 5% export duty to HS4402.90.00.10 coal products.- On 7 July 2013, Ministry of Finance raised export tax to 13% on HS4402.90.00.10 and HS4402.90.00.90 coal products.- On 1 September 2013, GOV raised export duty from 9.1 to 10%, by the request of Vietnamese coal industries. - On 20 May 2013, GOV announced import tariff rates hike on petroleum products (gasoline 16%=>19%, diesel oil 12%=>14%, low quality burning oil 14%=>15%). - On 20 June 2013, GOV effected hike in import tariff rates on motor vehicles seating more than 9-Persons (under 1000 cc USD 4,200=>USD5,000, 1000cc-1500 cc USD9,600=>USD10,000). <p>(Improvement)</p> <ul style="list-style-type: none"> - Pursuant to "The list of products and Vietnam's special preferential import duty rates", preferential import duty rates are expressly stated for the set of automotive parts in CKD format (for full local assembly) along with the import tariff rates for each automotive parts and spare parts. Enterprises engaged in manufacture and assembly of automotive vehicles have until 31 December 2006 to choose either the preferential import tariff rates for the set of automotive parts in CKD format or for each automotive parts and spare parts. Since 1 January 2007, the preferential import tariff rates expressly stated in the Decision 39 for each automotive parts and spare parts are uniformly applied and the preferential import tariff rates expressly stated in Decision 39 for the set of automotive parts in CKD format do not apply. Enterprises entitled to choose either the preferential import tariff rates for the set of automotive parts in CKD format or for each automotive parts and spare parts may register themselves in writing with the convenient local authority and must observe the registered details during the entire period. - With Vietnam's accession to WTO, the import tariff rates on 4-wheel automotive vehicles are reduced in the range of 47-70% in 11 years commensurate with the engine disbursement from the going tariff rate of 90%. - Since February 15, 2009, MOF has reduced export duty on coal and related products from 20% to 10%. 		
	(3)	Fairly Expensive Knock Down Parts Import Tariff Rates	<p>- Customs levied CBU (completely built unit) import tariff rate of finished products.</p> <p>- Import tariff on cars: auto engine CBU 0% on knockdown 5% (disadvantageous to local production)</p>	<p>It is requested that GOV reviews import tariff rates.</p>	<p>- Circular 05/2012/TT-BKHCN by MOST</p> <p>- Circular 19/2006/TT-BTC by MOF</p> <p>- Circular 165/2014/TT-BTC by MOF</p>

Category	No	Issue	Issue Details	Requests	References
	(4)	High Rate of Export Tax	<p>- GOV imposes 10% export tax on export of coal, pushing up the market price.</p> <p>(Actions)</p> <ul style="list-style-type: none"> - Since 23 March 2009, Ministry of Finance (MOF) have adjusted export/import duty rates for certain coal products so that 5% of import duty and 10% of export duty apply to HS4402.10.00.00 and HS4402.90.00.90 coal products, and 5% export duty to HS4402.90.00.10 coal products. - <u>MOF, after raising to 13% in July export tariff on coal products HS4402.10.00.00 and HS4402.90.00.10, from 1 September 2013, reduced it to 10%, in response to coal export industry's request.</u> - <u>On 12 February 2015, MOF banned export of dust coal.</u> - <u>On 25 May 2015, MOF lifted export ban limited to 2015 only, in response to request from Japan.</u> - <u>Since January 2016, export ban continues.</u> <p>(Improvement)</p> <ul style="list-style-type: none"> - Since 15 February 2009, MOF has reduced export tax from 20% to 10% on coal and related products. 	<p>- It is requested that GOV repeals as soon as possible the export tax on coal that causes the constant rise in the market price.</p>	
	(5)	Arbitrary Change in Application of HS Code Commodity Confirmation	<p>- The competent customs authority of MFS in Bac Ninh Factory (new factory operating from June 2013) changed HS code for 4805 kraft paper & paperboard for corrugated board (at 10% customs duty), imported up to now from Taiwan, to 4804 paper & paperboard (at 15% customs duty) on the ground that the former is greater in strength (tensile or otherwise). As a result, competent customs authority levies different customs duty rates on the same products manufactured in MFS's Bac Ninh and Hai Phong factories.</p> <p>(Actions)</p> <ul style="list-style-type: none"> - <u>On 15 August 2013, MOF renewed classification master list for tariff items in implementing Article 17 (list of Vietnam import/export items) of the Decree guiding implementation of the new 2014 customs act (for enforcement from 15 August 2015).</u> 	<p>- It is requested that GOV:</p> <ul style="list-style-type: none"> -- honours the internationally accepted practice of determining the customs duty rates by the mixture percentage of used papers, and -- refrains from raising the applicable customs duty rates merely by the quality. 	
	(6)	Import Restriction by Designated Trade Enterprise Scheme	<p>- MOIT maintains a system whereby only the enterprises designated by MOIT are authorised to apply for import licence and import goods. (Steel products are included in this scheme.)</p> <p>(Actions)</p> <ul style="list-style-type: none"> - On 20 May 2010, MITI promulgated Circular No. 22/2010/TT-BCT Hanoi, setting forth the application of automatic import licenses to flat-rolled products of iron or non-alloy steel, and on 28 May 2010, Circular No. 24/2010/TT-BCT, setting forth the application of regulations on automatic import licensing to animal products, foods, cosmetics, plastics, clothing, footwear, ceramic and earthenware, glass, iron and steel, aluminium, machineries, electric appliances, cars, toys, and furniture. Circular No.22 enforced on 5 July 2010 is valid until 31 December 2010, while Circular No. 24 was enforced on 12 July 2010. Applicants for import licence under automatic route must be registered trader. 	<p>- It is requested that GOV repeals or deregulates the scheme.</p>	

Category	No	Issue	Issue Details	Requests	References
			<p>For registration, the followings are required:(1) Registration dossier signed by the licensing agency,(2) Copies of Business Registration Certificate or Investment/Business Licence Certificate, and (3) A copy of tax registration certificate.</p> <p>To file application for automatic licence, the followings are required:(1) A full set of application dossiers,(2) Import contract,(3) Commercial invoice,(4) Letters of credit, payment deed or bank payment certificate, and (5) Cargo shipping documents including bills of lading (B/L).</p>		
	(7)	Compulsory Acquisition of Import Licence (I/L) on Steel Products	<ul style="list-style-type: none"> - On 5 July 2010, GOV promulgated a rule compelling acquisition of import licence (I/L) on import of cold-rolled steel plate and wire rod, up to the end of December 2010. - On 9 September 2010, GOV likewise promulgated a rule compelling acquisition I/L on import of galvanised steel plate, aluminium-zinc plated steel plate, coloured galvanised steel plate and tin plate, up to the end of December 2010. - On 14 February 2011, GOV postponed the limited period measures for acquisition of I/L on import of the foregoing steel products to the end of December 2010 to "from 14 February 2011 to 31 December 2011". - On 20 September 2012, list of items subject to compulsory import licence acquisition newly added steel bar, stainless steel plate and welded steel pipe (Import HS code Nos. 7214/7215, 7219, 7220, and 7306). <p>(Actions)</p> <ul style="list-style-type: none"> - On 7 August 2012, MOIT promulgated Circular 23/2012/TT-BCT, prescribing the application of automatic import licences to certain steel products with effect from 20 September 2012. Goods subject to the licences are: HS code 7209, 7210-7212: iron or non-alloy steel flat roll products, HS code 7213-7215: iron or non-alloy steel bar, HS code 7219, 7220: flat-rolled stainless steel products and HS code 7306: other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel. - On 12 June 2015, MoIT promulgated Circular 12/2015/TT-BCT, with effect from 26 July 2015. goods subject to the licences are: HS code 7207, 7209, 7210, 7211, 7212, 7213, 7214, 7215, 7219, 7220, 7224, 7227, 7228, 7229, 7306, excluding, however, temporary export/import or import for the purposes of manufacture and processing. - On 26 July 2015, import licence acquisition requirement on iron and steel products import, once notified as repealed in the official gazette of 16 June 2014, was re-introduced. - On 7 March 2016, Ministry of Industry and Trade (MIT) announced its Decision (MIT Decision 862/QD-BCT) to invoke safeguard measures on steel ingots and long steel products, etc. imported into Vietnam (during 22 March through 7 October 2016). 	<p>It is requested that GOV expedites issuance of I/L as any delay means increased warehousing cost and lost business opportunities to importers.</p>	<p>- Decision of the Prime Minister No.41/2005/QD-TTg Hanoi, 2 March 2005 Promulgating the Regulation on Goods Import Licensing</p> <p>- Ministry of Industry and Trade Circulars:No. 22/2010/TT-BCTNo. 31/2010/TT-BCTNo. 42/2010/TT-BCTNo. 23/2012/TT-BCT</p>
	(8)	Restricted Export by FFEs to 3rd Countries of Products Procured from Overseas	<p>- Member firm's subsidiary (MFS) in Vietnam, when contracting with Myanmar / Cambodia enterprises (MCEs), may sell (export) to MCEs products originating in Vietnam, but may not sell (drop ship) products originating from 3rd countries such as Japan. This type of transaction is possible if sellers are Vietnamese enterprises, but it is closed to foreign funded enterprises.</p>	<p>It is requested that GOV authorises MFS's export of finished products procured from 3rd countries for the sake of furthering the Vietnamese advantageous position in the ASEAN member states.</p>	

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		(9) Disapproval of Triangular Trade in Foreign Trade Registration	- Inclusion of triangular trade business is disallowed in foreign trade registration by foreign funded enterprises (FFE), in addition to manufacturing and import/export businesses.	- It is requested that GOV authorises triangular trade business also to FFEs in their line of business.	- KPMG LLP (the Audit, Tax and Advisory Firm) Information, concerning the registration of the change in the Articles of Association (Incorporation) of a Vietnamese legal entity
		(10) Tightened Import Restrictions on Used Machinery, Equipment and Production Line (UMEPs)	<p>- In regard to MoST Circular No. 20 issued in July 2014, while it was decided to suspend its effect until 1 March 2015, it appears both the limit on the service years and the quality warranty provisions remain in the draft amendment circular. If the restrictions on the service years remain as drafted, it will be no longer possible to import good and economical UMEPs, compelling numerous factories to amend their production plan.</p> <p>- Ministry of science and technology (MoST) in July 2014 promulgated Circular No.20 (20/014/TT-BKHCN), that allows import of used machineries and equipment with using time of less than 5-years from the manufacturing date and remaining quality of 80% or more (enforced on 1 September 2004). It was triggered by the closure of approx. 2000-firms in PRC from the use of inefficient and outdated manufacturing machineries and technologies.</p> <p>MoST was afraid of the flood into Vietnam of these kinds of old-fashioned contraptions brought into Vietnam in huge quantities from PRC. MoST was concerned with the negative impact on the domestic industrial efficiency. "The remaining quality of 80% or more" means "almost new" to both enterprises contemplating entry into Vietnam and those already operate in Vietnam.</p> <p>Some of them would be compelled to retreat from Vietnam from the aggravated break-even point. MoST Minister by Decision No.2279/QD-BKHCN promulgated on 1 September 2014 has suspended the validity of Circular No.20 (20/014/TT-BKHCN).</p> <p>However, using time of less than 5-years still remains, giving negative impact upon existing enterprises and those considering investment into Vietnam.</p>	<p>- It is requested that GOV repeals the restrictions on service length.</p>	<p>- Circular No. 20/2014/TT-BKHCN Ministry of Science and Technology on the Import of Used Machinery, Equipment and Production Line 15/07/2014</p>

Category	No	Issue	Issue Details	Requests	References
			<p>- Concerning import of UMEPL, MoST Circular compels from September 2014 service length of no longer than 5-years, or remaining quality of 80% or higher. However, by petition, its implementation was postponed. As of now, deliberation continues on extension until 1 December 2015, and remaining quality of 70% or higher at the end of 10th year.</p> <p>- According to the relevant MoST Circular, Major UMEPL that may be imported into Vietnam must have service length of no longer than 5 years, and remaining quality of 80% or higher. However, due to numerous ambiguities concerning the documents for submission to customs, and the rules concerning the testing institutions, it is impossible to prepare practical work. In transfer of production from Japanese factories to Vietnam, expanded production in Vietnam cannot be achieved, unless GOV allows import of UMEPL used in the Japanese factories.</p> <p>- "Circular regulations on the importation of used machinery, equipment and production line" remains pending implementation. However, it prohibits import of UMEPL with service length of less than 5-years, or remaining quality of 80%. However, quite a few UMEPLs made in Japan, of course, and in third countries can be used for many years. Thoughtless prohibition of such imports is harmful to entry and expansion of businesses.</p> <p>- Circular was promulgated, prohibiting import of UMEPL other than those that satisfy "service length of no longer than 5-years, or remaining quality of 80% or higher requirements" (later annulled). This could result in subsequent difficulty UMEPL procurement.</p> <p>- On import of UMEPL, while by MoST Circular, service length of no longer than 5 years, or remaining quality of 80% or higher requirements have come to apply, by petition, its implementation has been deferred. As of now, "postponement until 1 December 2015, and service length of no longer than 5 years, or remaining quality of 80% or higher requirements" are under deliberation.</p> <p>- (Problems facing enterprises moving in to a member firm's industrial zone) due to the new Circular, sub-standard UMEPL cannot be imported any longer.</p>	<p>- Implementation of this law obstructs Japanese SMEs' / downstream industries' transfer of production and could result in reduced investment into Vietnam. It is requested that GOV repeals at least service length restrictions.</p> <p>- It is requested that GOV ensures preparation of reasonable implementing rules, complete with an ample period allowed for penetration, such as permissible terms concerning proviso for remaining quality, before starting the implementation.</p> <p>- It is requested that GOV deregulates the legislative requirement and reopen implementation, enabling the use of UMEPL by satisfaction of either requirement.</p> <p>- It is requested that GOV repeals the restrictions.</p> <p>- Enforcement of this Circular deters Japanese SMEs transfer of their production to Vietnam, and results in reduced investment into Vietnam. At least removal of service length is requested.</p> <p>- It is requested that GOV repeals the restrictions.</p>	

Category	No	Issue	Issue Details	Requests	References
		<p>(Actions)</p> <ul style="list-style-type: none"> - On 9 August 2013, the Prime Minister promulgated Indication 17/CT-TTG, on "Strengthening Management and Control over the Import of Technologies, Machinery and Equipment by Enterprises". Enterprises upon filing application for investment certificate, should there be plan for importing machinery and equipment for use in business activity, must submit manual giving technical parameters and performance characteristics. - On 9 July 2014, Ministry of Science and Technology (MST), Vietnam promulgated Circular No.20 dated 15 July 2014 (due for enforcement on 1 September 2014), stipulating the new requirements for importing used machineries and equipment, aimed at curbing the inflow from PRC of old-type machineries and equipment. --MST Notification No. 20 (In Vietnamese) (http://www.customs.gov.vn/Lists/VanBanPhapLuat/ViewDetails.aspx?ID=7704) - On 15 July 2014, MST promulgated Circular No. 20/2014/TT-BKHCN. Regulations for used machinery, equipment and technological line imports, requiring the service years within 5-years and the quality level of 80% or more of the new products, on imported used machineries and equipment (of general purpose) - On 15 July, MoST promulgated Circular No. 20/2014/TT-BCT. (on importation of used machinery, equipment and production line, due for enforcement on 1 September 2014), with additional requirements of service length of no longer than 5 years, or remaining quality of 80% or higher. <p>While enforcement was due on 1 September 2014, petition for its extension is now under way. MoST to this date verbally expressed its intent of enforcement on 1st March this year. First draft amendment was formulated in November last year, and after hearing views from related ministries and agencies, 2nd draft was formulated as of 15 January 2016.</p> <p>[Contents of 2nd Draft]</p> <p>THE GIST OF THE LATEST DRAFT:</p> <p>Enforcement: 1 December 2015.</p> <p>Import terms: service length of no longer than 10 years, and remaining quality of 70%.</p> <p>SPECIAL CONDITIONS:</p> <ul style="list-style-type: none"> -- Machining tools (HS84.56~ HS84.66): country of origin (EU/G8): 12 years, 70%. -- Construction machine: country of origin (EU/G8/ROK): 12 years, 70% or higher. -- Paper mill/textile mill machines (HS84.39, HS84.41 ~ HS84.54): country of origin (EU/G8/ROK): 12 years, 70%. -- Agricultural machines: service length of 5 years, and remaining quality of 80%. -- Production line: service length of no longer than 10 years, and remaining quality of 70%. <p>Special condition for production line: in the cases of EU, G8, ROK: service length in excess of 10-years requires filing of request to MoST for approval.</p> <p>-- Parts: approval is granted, if the parts are incapable of local production, and remaining quality is 70% or higher.</p> <ul style="list-style-type: none"> - On 29 August 2014, enforcement of MoST Circular No. 20/2014/TT-BKHCN was terminated and replaced by MoST Minister's Decision No. 2279/QD-BKHCN, having met with strong oppositions from the domestic industries, etc. - MoST released draft amendment for the lapsed "Circular 20/2014/TT-BKHCN (Circular No.20) on the import of used machinery, equipment and Production Line." 			

Category	No	Issue	Issue Details	Requests	References
			<p>- On 13 November 2015, MoST Circular 23/2015/TT-BKHCN was promulgated, due for enforcement from 1 July 2016.</p> <p>1. Used equipment shall be eligible for import if satisfying the following criteria:</p> <p>(1) Use of equipment shall not exceed 10 years (the period from manufacture to arrival at Vietnam port).</p> <p>(2) Equipment manufactured up to the national technical regulations (QCVN) or national standards (TCVN) or G7 nations' standards on safety, energy efficiency and environmental protection.</p> <p>2. Used equipment released from investment projects, including both new and extending projects, under the following circumstances:</p> <p>a) Projects in the approved list for investment;</p> <p>b) Projects to be granted investment certificate but not in the approved list for investment.</p> <p>If a list of used equipment is included in the investment project documents and approved by relevant authorities, such project is not subject to regulations stated in 1. above.</p> <p>(Improvement)</p> <p>- New Circular promulgated on 13 November 2015 concerning the import of used machinery, equipment and production line enables import of used equipment within 10 years in age, satisfying the quality standards. In addition, authenticated copy of the investment policy decision or certificate of investment issued by the authority of competent jurisdiction suffices in the event of new or expansion investment project.</p>		
(11)	Vexatiously Complex and Delayed Customs Clearance Procedures		<p>- It takes substantial amount of time to get the imported goods cleared through customs.</p> <p>- Import customs clearance procedures are indeed time consuming, what with quality inspection and customs requirement for production of voluminous documents both of which take a long time to check and confirm. (Sometimes, it even takes more than one month).</p> <p>- Investigation process after customs clearance is so complex that plural Ministries and Agencies conduct investigation into our member firm's subsidiary (MFS) on the same issue.</p> <p>- All concerned parties cannot help wondering why there exist so many documents, requiring individual signatures and company seals.</p> <p>Frequently, expedited response cannot be obtained from the competent authority.</p> <p>- Vietnam Customs headquarters are in charge of issuing import licence for used equipment. It takes about one month for compilation of the requisite documents and despatch of the used equipment to Vietnam.</p> <p>In addition, new equipment can reach Vietnam in 10-days or so, and the shipper's inability to ship both used and new equipment together results in doubling the transportation cost.</p>	<p>- It is requested that GOV streamlines the customs clearance procedures.</p> <p>- It is requested that GOV streamlines and expedites its inspection and confirmation of documents.</p> <p>- It is requested that each Ministry and Agency will commonly share the submitted information.</p> <p>- It makes one wonder where has gone the electronic customs clearance system. There is no sign of reduction in volume of the requisite documents. It is requested that GOV streamlines and expedites the documental processing.</p> <p>- It is requested that GOV:</p> <ul style="list-style-type: none"> -- reviews the import restrictions on used equipment, and -- cuts down the time required to complete the import process in Vietnam. 	<p>- Article 144, Circular No. 79/2009/TT-BTC</p>

Category	No	Issue	Issue Details	Requests	References
			<p>(Actions)</p> <ul style="list-style-type: none"> - On 12 December 2008, MOIT promulgated its Circular, compelling the AILS on consumer goods, extending broadly over a wide range of items, including certain vehicles, motorcycles, desk top and lap top computers, cameras and video cameras, audio equipment, home appliances, equipment/products, cosmetics and cosmetic goods, and furniture. The new requirements came into force within 21 days from the date of publication. All AILS's issued prior to 1 January 2009 accompanying the contents approvals would thereafter remain valid and effective. - On 20 May 2010, MITI promulgated Circular No. 22/2010/TT-BCT setting forth the application of automatic import licenses to flat-rolled products and bars of iron or non-alloy steel (HS 7209, 7211 and 7213). - On 28 May 2010, MITI promulgated Circular No. 24/2010/TT-BCT, setting forth the application of regulations on automatic import licensing to animal products, foods, cosmetics, plastics, clothing, footwear, ceramic and earthenware, glass, iron and steel, aluminium, machineries, electric appliances, cars, toys, and furniture. - On 14 June 2010, Ministry of Industry and Trade, Ministry of Transport and Ministry of Finance promulgated Joint Circular No. 25/2010/TTLT-BCT- BGTVT-BTC, providing the import of Brand-New under 16-seat Passenger Cars (BNPC), designating the 5-international seaport border gates (Cai Lan - Quang Ninh, Hai Phong, Da Nang, HoChi Minh City and Ba Ria - Vung Tau) for import of BNPC. - MOIT Circular No.20 (20/2011/TT-BTC) of 12 May 2011 additionally requires importers of finished cars (CBU) submission of assignment documents between importing automobile manufacturers and dealers as additional requisite documents upon importers of finished cars (CBU), inclusive of the import contracts dated on and after 12 May 2011. - On 1 April 2014, General Department of Vietnam Customs (GDVC) announced formal implementation of Vietnam Automated Cargo and Port Consolidated System and the Vietnamese Customs Information System (VNACCS/VCIS) at Hanoi and Hai Phong Customs Departments. The spread of its implementation will reach all across provinces and municipalities by June this year. "VNACCS/VCIS" (Vietnam Automated Cargo and Port Consolidated System and the Vietnam Customs Information System) is an automated customs cargo information processing system, designed after the Nippon Automated Cargo and Port Consolidated System and the information system. -- GDVC Official Press Release of 1 April 2014 [in Vietnamese] http://www.customs.gov.vn/Lists/TinHoatDong/ViewDetails.aspx?ID=20840&Category=Tin%20nội%20bát - In March 2015, Ministry of Science and Technology (MoST) promulgated draft amendment on (Circular No.20) Regulation 20/2014/TT-BKHCN on the import of used machinery, equipment and production line (UMEPL), which had ceased its effect by the Industry's opposition. It is due for be enforced from 1 July 2015. - On 15 July 2015, Ministry of transport promulgated Circular No.17/2015/TT-BGTVT, providing guidance on routes and border gate for transport of transit goods that pass through the territory of Vietnam (due for enforcement from 15 July 2015). <p>(Improvement)</p> <ul style="list-style-type: none"> - On 26 June 2001 the National Assembly approved Customs Law 29/2001/QH to improve and facilitate customs clearance procedures. This new law comprises of 8 Chapters and 82 Articles and includes provisions such as: (1) exempting inspection upon export/import for enterprises with proven records of observing customs regulations and; (2) executing inspection on the raw materials imported, representing only 10% of their value. - Effective as of 4 September 2002, GDC was merged into the Ministry of Finance, pursuant to Decision 113-2002-QD-TTg. The Government Pricing Committee was merged into the Ministry of Finance pursuant to Decision No.113-2002-QD-TTG on 19 September 2002. 		

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			<ul style="list-style-type: none"> - On 20 June 2005, GOV promulgated Decision No. 149/2005/QD-TTg on the pilot implementation of e-customs procedures with objectives (1) to implement step-by-step renewal of customs operations in conformity with modern customs standards in the region and the world and (2) to shift from manual customs procedures to e-customs procedures. Decision 149 requires exporters/importers to archive the documentations concerning e-customs related to import or export goods for duration of five years counting from the date of registration of customs declarations and to produce such documentations when so requested by customs offices according to regulations. - 15 December 2005, GOV promulgated Decree No. 154/2005/NĐ-CP (Decree 154), "Providing detailed guidelines for implementing provisions referring to customs procedures and customs control and inspection in the customs law", which replaces Decree No.101 and Decree No.102 and have been enforced since 1 January 2005. The following export and import goods are subject to customs procedures and customs control and inspection under this Decree: <ul style="list-style-type: none"> 1. Export/import goods and goods in transit, 2. Goods in transit, upon embarkation and entry, and 3. Foreign currencies, Vietnamese currency, precious metals, Jewelleries, cultural goods, relics, postal goods, parcels, 4. Accompanied goods of exiting and entering persons, and 5. Other export/import goods in transit or in store within the jurisdiction of customs office. - On 4 April 2007, MOT promulgated Circular No.04/2007/TT-BTM (Circular 04), "Guiding import, export, processing activities, the liquidation of import goods and the consumption of products of foreign-invested enterprises, detailing and guiding the implementation of a number of articles of the Investment Law". Circular 04 has voided the requirement for import plan/approval on tariff exempt imports. With enforcement of Circular 04, Foreign Invested Enterprises have rights to freely import machinery, equipment, materials, spare parts, components, detail components and other goods to carry out the investment activities in conformity with the targets of investment projects defined in the Investment Licences or Investment Certificates, excluding, however, import of the commodities that requires licence of the relevant supervising authorities for industrial control, or import of the banned commodities. - GOV on 7 June 2007 promulgated Decree No: 97/2007/NĐ-CP (Decree 97), "Providing for the handling of administrative violations and the coercive enforcement of administrative decisions in the customs domain", which has been in force since 1 July 2007, in lieu of Decree 138/2004/NĐ-CP (Decree 138) promulgated on 17 June 2004. Furthermore, MOF promulgated on 14 June 2007 and enforced on 1 July 2007 Circular No. 62/2007/TT-BTC (Circular 62), "Guiding the implementation of the Government's Decree 97", replacing Decree 138. - MOF on 6 August 2007 promulgated Decision No. 71/2007/QĐ-BTC (Decision 71), "On non-stamping of 16 imported goods items". - The General Department of Customs of Vietnam (GDC) promulgated on 9 August 2007 Official Letter 4537/TCHQ-KTTT that further clarifies the registration procedure for the list of imported commodities subject to import tariff exemption on the cases authorized up to 31 December 2005 and after 1 January 2006. - On 14 July 2009, GDC promulgated Official Letter No.4190/TCHQ-KTTT (OL) in order to provide a more detailed explanation on issues concerning valuation of import products at customs clearance. The OL points out several significant issues that companies should pay attention to, of which the ruling underlines the use of customs database and other sources to reach proper customs value of imported goods. - As regards Vietnam Automated Cargo and Port Consolidated System and the Vietnamese Customs Information System (VNACCS/VCIS) due for operation from April 2014, GOV announced its State-wide introduction schedule in stages beginning with North Hanoi and Hai Phong No.1 branches of the Customs Department. By late June, the introduction of VNACCS/VCIS will be completed under the schedule. 		

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			<ul style="list-style-type: none"> - On 1 January 2015, GOV promulgated Decree No. 08/2015/NĐ-CP on priority given to enterprises, pre-determination of code, origin and customs value, customs electronic data processing system, customs procedures, customs supervision and (post clearance) inspection processes for exports, etc. [Reference] Decree No. 08/2015/NĐ-CP (URL [in Vietnamese]: http://www.moit.gov.vn/Images/FileVanBan/ 08_2015_ND-CP_15226140.pdf and [in English]: http://www.customs.gov.vn/Lists/EnglishDocuments/ViewDetails.aspx?ID=1201&language=en-US) - On 8 September 2015, customs formally initiated implementation of national single-window system. 		
	(12)	Complex Product Registration Procedures	<ul style="list-style-type: none"> - The procedures are complex for product registration in import and distribution of medical equipment. 	<ul style="list-style-type: none"> - It is requested that GOV: <ul style="list-style-type: none"> -- abolishes the renewal procedures for the product registration, and -- obviates the need for the registration renewal, once the product is registered as in Japan, etc. 	
	(13)	Improper Cap on Import Duty Exemption	<ul style="list-style-type: none"> - Allowable tax exemption (ATX) is up to USD300 only, so that virtually all imports are taxable. 	<ul style="list-style-type: none"> - It is requested that GOV considers adjusting the ATX to an adequate level. 	
	(14)	Frequently amended and nebulous Customs Clearance Procedures and Scheme	<ul style="list-style-type: none"> - The customs authorities frequently change customs clearance procedures and schemes, most of them without notification that serves as guidelines to the implementing authority. It consumes much time for handling clerical matters upon amendment. Sometimes, the contents of amendment are nebulous. 	<ul style="list-style-type: none"> - It is requested that before enforcing new legislation or new system, GOV: <ul style="list-style-type: none"> -- completes thorough preparation, including without limitation, prior disclosure, notification, etc. on new legislation or amendment, and -- introduces a new scheme that grants a simplified procedures to enterprises of good standing with clean past records in observance of laws and regulations. 	
	(15)	Identifying the Requisite Documents for Customs Clearance & structuring the means for Price Leakage Prevention	<ul style="list-style-type: none"> - In on-the-spot export/import transactions (where commodities move directly between the 2-domestic parties, while the flow of the transactions (documents) goes via an overseas enterprise (OE), upon import customs clearance when customs declaration sheet becomes necessary, the OE's purchase prices of the products get leaked out to the purchaser. 	<ul style="list-style-type: none"> - It is requested that GOV clearly identifies the requisite documents for customs clearance (RDCC), and takes step to avoid the purchase price leakage to OE by re-arrangement of RDCC. 	

Category	No	Issue	Issue Details	Requests	References
10 Restrictive Measures for Operations in Free Trade Zones ("FTZs") and Special Economic Zones ("SEZs")	(1)	Nebulous terms on Grant of Licences and Approvals at SEZs	<p>The terms and conditions are ambiguous on the SEZs' licences and approvals that the competent authority grants.</p>	<p>- It is requested that GOV clearly identify the terms and conditions for the grant of SEZs' licences and approvals.</p>	
11 Restriction on Profits Remittance Abroad	(1)	Complex External Remittance Procedures	<p>- Freedom in external remittance is severely restricted. The extent of the requisite documents required exceeds allowable normal range in many occasions. GOV intervenes in the terms and conditions of the transactions between the private parties. Moreover, freedom in external remittance is absolutely minimal.</p>	<p>- It is requested that GOV amends its foreign exchange scheme toward liberalisation of the external remittance.</p>	
	(2)	Attachment of Contract for External Remittance	<p>- In principle, GOV requires attachment of contract on all cases of external remittance (payment). To satisfy this requirement, the applicant must cope with much workload for creating contracts on purchase of raw materials, acceptance of assistance, etc., pursuant to the governing laws of the respective countries.</p>	<p>- The issue in concern could be unavoidable for GOV, it being a traditional practice in Vietnam. There being a room for lessening the burden, if the applicant knew the requirement before entry. It is requested that GOV despatches negative information during the applicant's deliberation of its entry into Vietnam.</p>	
12 Exchange Controls	(1)	Restricted Foreign Exchange Transactions by the Principle of Actual Demand	<p><u>The State Bank of Vietnam (SBV) prohibits speculative trade based on the principle of actual trade, and requires commercial banks to confirm if the transaction is for actual trade (such as invoices, loan agreements, etc.)</u> <u>A member firm's subsidiary (MFS) is unable to execute remittance both ways with one of the companies of its group in Singapore in settlement of account in foreign currency.</u></p>	<p><u>- It is requested that SBV liberalises foreign exchange transactions.</u></p>	<p>SBV Foreign Exchange System</p>
			<p>(Actions)</p> <ul style="list-style-type: none"> - The Foreign Exchange System based on the real demand principles prohibits speculative trading. It is incumbent upon applicants to show the transactions are based on the real demand to financial institutions in purchasing foreign currency. - The Central Bank directs financial institutions to confirm the real demand, and consequently commercial banks require presentation of Transaction Contract, Invoices and proof of customs clearance. Confirmation of the real demand is also necessary for conversion of VND into foreign currencies (inclusive of forward contract). It is equally necessary to confirm real demand in regard to capital transactions for exchange from foreign currency into VND. 		

Category	No	Issue	Issue Details	Requests	References
	(2)	Restricted Loans in Foreign Currency	<p><u>Enterprises without income in foreign currency face difficulty in business operation, being unable to borrow in foreign currency in Vietnam.</u></p> <p>- The following are problems relative to borrowing in foreign currency:</p> <ul style="list-style-type: none"> -- Enterprises without foreign currency revenue are unable to borrow in foreign currency from domestic financial institutions. -- Requirement for submission of documents showing the fund disposal (certificate for actual demand) -- The borrowed fund must be used by the end of the following day. <p>- State Bank of Vietnam (SBV) restricts the application of bank borrowing.</p>	<p>- It is requested that GOV deregulates foreign currency control as soon as possible.</p> <p>- It is requested that SBV deregulates the terms for foreign exchange transactions.</p> <p>- It is requested that SBV makes more fluid the restricted application of bank borrowing.</p>	Circular No.07/2011/TT-NHNN Circular No.37/2012/TT-NHNN of The State Bank of Vietnam on 28 December 2012. SBV Foreign Exchange Scheme
	(3)	Double Tiered Foreign Exchange Quotation	<p>(Actions)</p> <p>- On 25 March 2011, the Ministry of Industry and Trade (MOIT) promulgated Decision No. 1380/QD-BCT on adjustments based on the List of Discouraged Import Items immediately enforced on the same date. This List encompasses a wide range of products including HS Chapters 73, 84, 85, 87, 90, and 91, such as certain steel made household products (such as stove, scrub brush, hygienic porcelain, etc.), laundry machine, computer, electric appliance, camera, cassette tape recorder, record player, golf cart, passenger car (excluding small trucks), motorcycle, bicycle, stand clock, wrist watch, etc. Products used for production materials are excluded from this List. While this measure is not intended to build up import barriers for the listed items, GOV attempts at restricting their imports by directing State Bank of Vietnam (SBV) to make it difficult for importers through commercial banks (CMBs) to purchase foreign currency to import the listed items in its Official Dispatch No. 3215/NHNN-CSTT of 29 April 2010. SBV directs CMBs to carefully examine the request for loan in foreign exchange, severely control, and restrict such loan.</p> <p>Furthermore, by Decision No. 2677/QD-NHNN of 20 November 2010, SBV established an inter-department working group for monitoring the sale and lending for payment of imported goods, while tightening lending and payment in foreign currencies services. Working Group shall be responsible for monitoring and reporting to the Governor on a daily basis the situation of sale, lending and remittance by credit institutions for payment of imported goods in connection with the list of non-essential imported goods items (under Decision 1899/QD-BCT of MOIT) and the list of essential goods items manufactured locally (under Decision No. 2840/QD-BCT of MOIT of 28 May 2010). SBV does not envisage reducing the MFN tariff rate on the listed items in the near future.</p> <p><u>Due to the adoption of the crawling peg system, the gap widens in the foreign exchange quotations between the SBV rate and the unofficial market quotations in relation to USD/VND. It has become impossible to purchase USD in Vietnam, delaying the payment to overseas in USD.</u></p>	<p>- It is requested that Substantive: -- annihilates the unofficial quotation through its own positive involvement in the foreign exchange market, and -- moves into the Floating Exchange Rate System.</p>	SBV Foreign Exchange Scheme Circular No.130/2008/TT-BTC, on Corporate Income Tax Decree No.160/2006/ND-CP

Category	No	Issue	Issue Details	Requests	References
			<p>(Actions)</p> <ul style="list-style-type: none"> - SBV on 10 March 2008 published expansion of the official exchange rate band of VND per day to plus or minus 1% (previously, 0.75%) from the official rate of exchange. This was in response to the First Deputy Prime Minister Nguyen Sinh Hung's direction given on 4 March to expand the band to plus or minus 2% as a measure to combat the record hyperinflation rate. The inflation rate in February of 15.7% against the same month in the preceding year was the record high in 12-years due to the spiraling import cost for foods and oil and the surge of imported products from PRC. The majority of Asian currencies (including RMB) have appreciated against US\$, while the Vietnamese policy maker attempts to curb appreciation of VND, in order to promote export and to achieve the economic growth target of 8.9% per annum. With its financial policy focused on the supply of currency, GOV is redoubling its effort in curbing the VND appreciation, which effort however has brought about the liquidity crunch. In response to the First Deputy Prime Minister 4 March direction, SBV and GOV will take various measures to curb credit expansion and to combat inflation. - On 25 November 2009, the alienation between the spot rate and the unofficial market rate (UMR) has reached 16%, which is the largest alienation in the last 10-years. UMR starting at USD1.00=10,750 (OERB at USD1.00=17,463 Dong) Dong dropped by nearly 12% to USD1.00=10,980 Dong. After this drop, UMR recovered to 19,500-19,700 Dong. However, a large gap continues to exist between OERB and UMR. - On 11 February 2011, SBV depreciated the inter-bank core forex rate from VND18,932 to VND20,693 to the dollar, imposing the trading band at 1% either side compared to the previous 3%. The devaluation took effect on the same day. SBV stated that the Dong depreciation this time is to moderate the rapid increase in import, while it would take a responsible approach to the inter-bank rate in a more flexible manner. - Since February 2011, the margin of spot transactions to and from USD and VND has been ruled within plus or minus 1.0% of the central bank core rate. - In August 2012, the dual exchange rate has revived in response to the precipitous drop of Vietnam Dong. - On 28 June 2013, Central Bank of Vietnam cut down the VND core rate against USD by 1%, lowering the cap rate of interest on bank deposit in VND and USD. - Since 4 January 2016, SBV has set up "the central rate" in the USD Vietnam dong exchange rate, announced each morning linked to other major currencies, including Japanese yen, EURO, and RMB. The change in the central rate will necessitate deliberation on (1) interbank weighted average rate, (2) fluctuations in the overseas' markets in the major currency in the countries having sizable trade, lending/borrowing, and investment with Vietnam. (3) balancing between macro economy and foreign exchange and (4) objectives of exchange policy and its compatibility against the target. 		
	(4)	Rapid Exchange Fluctuations	<ul style="list-style-type: none"> - Radical exchange fluctuations prevail. As it stands, member firm's subsidiary (MFS) benefits from exchange gain on a direct export transaction in yen. Nevertheless, negotiation for raise in price is difficult. In a transaction with its parent company, the prevailing yen depreciation enables MFS to offer special prices to its customers. However, MFS runs on a thin margin, so that if the exchange rate swings toward appreciation of yen, it will instantly show operational loss: such is the severity of the fluctuation band. 	<p>- It is requested that GOP takes step to:</p> <ul style="list-style-type: none"> -- stabilize foreign exchange fluctuations, and -- holds the fluctuation band within a few percents in 6-months. 	

Category	No	Issue	Issue Details	Requests	References
14 Taxation Systems	(1) Foreign Contractor Tax Levied upon Foreign Contractors Providing Service in Vietnam Domestic Market		<p>- Where domestic transportation is carried out at the cost of foreign enterprises under the D terms (such as DDP (delivered duty paid) DAP (delivered at place)), GOV levies foreign contractor tax (FCT) of 1% on the total sales amount. It restricts the FFEs activities.</p> <p>- Introduction of foreign contractor tax (FCT) levied upon enterprises purchasing capital equipment from overseas for domestic distribution in Vietnam heavily burdens the end users (purchaser of production equipment).</p> <p>(Note) From webpage: PCT (comprising of CIT and VAT) is levied upon income gained from contracts with individual persons or corporations in Vietnam.</p>	<p>- It is requested that GOV repeals the FCT.</p> <p>- It is requested that GOV reviews FCT to make it applicable only to production equipment currently not readily available in Vietnam.</p>	Circular No.134/2008/TT-BTC Circular No.60/2012/TT-BTC Nil
			<p>(Actions)</p> <p>- On 12 April 2012, Circular No. 60/2012/TT-BTC "Guidance on Tax Obligation applicable to the Foreign Entities, Individuals Who Are In Business or Have Income Derived from Vietnam", a new guideline, was promulgated. Foreign contractor tax (FCT) is levied upon profits gained by the economic activities between individuals and organisations not domestically incorporated in Vietnam and Vietnamese individuals and legal entities. This Guidance has added to the taxable transactions "On-The-Spot Export/Import Transactions", inclusive of DDP, DAT, DAP. As a result, in increasing cases, deemed tax of 1% is withheld against the amount described on the contract (namely, import declaration amount) upon Japanese corporations exporting under DDP, DAT, DAP terms (INCOTERMS). To foreign contractors, on top of the income tax paid in the country of residence, levy of corporate income tax in Vietnam in the name of FCT amounts to "Double Taxation".</p> <p>The Circular No. 60 provides: "Foreign business organizations having or not having Vietnam-based permanent establishments; Foreign business individuals being resident or non-resident objects in Vietnam" (Article 1). GOV's tax levy upon Japanese corporations without permanent establishments in Vietnam is in conflict with Japan-Vietnam Tax Treaty. In increasing cases, Japanese enterprises as a business routine are shifting from INCOTERMS (DDP, etc.) to ex-works (EXW) term. (25 September 2013 JETRO Business News)</p>		
	(2) Tax Levied upon External Provision Of Service		<p>- Ministry of Finance Circular No. 60/2012TT-BTC promulgated in 2014 makes taxable commissions earned on sales/purchase of fixed property ("agency commissions"), irrespective of the location of the service provision. Despite Vietnam Japan tax treaty, such agency commissions have become taxable.</p> <p>The firm in concern receives commission from its customer (a business entity) in consideration for its sales agency activity in Japan. To receive the tax refund, it must file tax refund request by appointing tax consultant at cost. The firm has requested its accounting office to gather more information in detail.</p>	<p>- Prior to promulgation of this Circular regulation in 2012, agency commission earned outside Vietnam was not taxable. It is requested that GOV takes step to revert to its former tax collection scheme (or else exclude from taxable items), agency commissions earned inside industrial zones.</p>	Circular60/2012TT-BTC

Category	No	Issue	Issue Details	Requests	References
	(3)	Double Levy of Personal Income Tax upon Personnel staying for a Short Term providing Services	<p>- GOV demands payment of personal income tax (PIT) for stay in Vietnam on business purposes even for a single day commensurate with the period of stay in Vietnam. In addition, should such stay in Vietnam per year exceed 183-days, PIT becomes payable in Vietnam for the entire annual income of the same year (namely, in addition to the PIT paid in Japan, PIT is doubly collected in Vietnam.)</p> <p>- Under law on personal income tax (law on PIT), PIT becomes payable by all foreigners working in Vietnam or salaries from work performed in Vietnam. However, according to law on PIT, the definition is ambiguous for the terms "businesses / services in Vietnam" (for example, "on short-term business trip", "in the advisory capacity", "attendance in conference", etc.).</p> <p><u>Law on PIT compels all enterprises in Vietnam to declare personal income of individual foreigner 7-days before the start of their work. It is difficult for enterprises in Vietnam to collect the required PIT information.</u></p> <p>- Despite the wage payment takes place for an employee, whose wage is paid in Singapore, on shortage business trip to Vietnam, GOV collects PIT in Vietnam.</p> <p>- While GOV requires withholding of PIT on external employees on short business trip to Vietnam, it is impossible to obtain wage information from external employers should such applicant works under unrelated outside employers.</p>	<p>- It is requested that GOJ takes step to approach GOV that it observes the terms of the tax treaty including the PIT in Vietnam.</p> <p>- It is requested that GOV:</p> <ul style="list-style-type: none"> -- reviews laws and regulations, which do not accommodate the practical circumstances and -- amends the Law on PIT so that the employers of the external employees are responsible for filing withholding tax returns. 	Article 26, Law on Personal Income Tax Circular No. 119/2014 TT-BTC on amendment of Circular No. 111/2013 TT-BTC Law on Personal Income Tax Implementation of Law on PIT
	(4)	<u>Abrupt Tax Examination Without Notice</u>	- After the extremely long absence of 16-years, general department of taxation (GDT) conducted tax audit, quite out of the blue.	- It is requested that GDT conducts its tax audit in every two (2) years.	Law on Tax Administration 2006 & revised in 2012 Circular 156/2013/ TT-BTC by MOF
	(5)	Frequently Amended Nebulous Procedures of the Tax Accounting System	<p>- Due to the inadequacy of legislative maintenance, its interpretation varies frequently by officer in charge. In addition, on occasions, it takes more than a few months before the official interpretation of law is finally released.</p> <p>Enterprises operating in Vietnam must risk additional tax levy, should they be compelled to act before the release of official interpretation or</p>	- It is requested that the Japan business association in Vietnam establishes a forum to exchange information among Japanese affiliated enterprises, accounting offices, etc.	

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			<p>should change in legislative interpretation arise by replacement of officials in charge.</p> <p>- Ambiguous taxation scheme, its complex procedures and abrupt changes.</p>	<ul style="list-style-type: none"> - It is requested that GOV: <ul style="list-style-type: none"> -- establishes a mechanism to distribute the latest information, and -- puts into operation such mechanism. <p><u>It is requested that GOV streamlines the procedures.</u></p>	
	(6)	<u>Excessive burden upon Enterprises for the stringent control of Added Value Tax Invoices</u>	<p>- Invoices and delivery slips on value added tax: enterprises must issue at least two kinds of documents for each delivery to dealers of products (motorcycles, cars, and parts thereof), totaling about 100,000/month in the number of invoices, and sales slips, as proof of the sales transaction for each shipment. Enterprises must prepare at least 2-types of documents (invoices/sales slips), each in this huge volume. It is prepared for the purpose of reconciling the huge volume of paperwork with taxation for payment of value added tax (including special sales tax).</p>	<ul style="list-style-type: none"> - Sales slips or similar documents are used for respective dissemination. - Value added tax invoices may be issued once a month to avoid any change(s) in the taxable amount. It is requested that general department of taxation (GDoT) devises a more simplified method that allows more accurate management of the taxable amount. 	<ul style="list-style-type: none"> - Circular no. 39/2014/TT-BTC dated 31/3/2014, article 16, point 1 and point 2 - Decree no. 51/2010/NĐ-CP dated 14/5/2014 and decree no. 04/2014/NĐ-CP dated 17/1/2014
	(7)	<u>Nebulous Base of Foreign Contractors Tax</u>	<p>- Application base of foreign contractors tax is ambiguous. In the transactions with overseas' enterprises (including headquarters in Japan) tax base is set higher for provisions of "only technical service" than "technical service, including procurement and delivery of machinery and equipment", namely, the lower tax rate applies on transactions that include delivery of machinery and equipment. On the other hand, in practice, in many cases, GOV applies higher tax rates even on transactions including delivery of machinery and equipment by regarding the transaction as "only technical service".</p>	<ul style="list-style-type: none"> - It is requested that GOV levies correct tax rates in accordance with legislative provisions. 	<ul style="list-style-type: none"> - Foreign Contractors Tax in Vietnam
	(8)	<u>The Tax Base Scheme of Special Consumption Tax on Knock Down Parts</u>	<p>- SCT (special consumption tax): completely built up (CBU) car tax is levied on CIF prices, while knock down parts on wholesale prices.</p> <p>(Actions)</p> <p>- GOV envisages amending special consumption tax on passenger cars (seating 9-persons or less): engine displacement 3,000cc~4,000cc: SCT going rate from 60%=>90%, 4,000cc~5,000cc: 60%=>110%, 5,000cc~6,000cc: 60%=>130%, 6,000cc or more: 60%=>150%, a substantial raise, while reducing the going 45% down to 20~40%.</p>	<ul style="list-style-type: none"> - It is requested that GOV takes step to amend taxable price of special consumption tax. 	<ul style="list-style-type: none"> - Law on Special Consumption Tax 2008 & revised in 2014; Circular 05/2012/TT-BTC by MOF

Category	No	Issue	Issue Details	Requests	References
	(9)	Nebulous Transfer Price Taxation System (TPTS)	- While a member firm is anxious to increase export to Vietnam from Japan by offering competitive prices, so doing is curbed by the risk of consequences under transfer price taxation system, which negatively affects its competitive edge.	- It is requested that GOV clearly identifies what constitutes "reasonable margin" such as the markup rates.	- Law on Tax Administration 2006 & revised in 2012 - Decree 82/2013/ND-CP by Gov - Circular 156/2013/ TT-BTC by MOF - Circular 201/2013/ TT-BTC by MOF
	(10)	Double Tax Risk under TPTS	- Particularly under TPTS, due to the inconsistent rules in each country, its interpretation varies. The member firm is faced with the risk of double taxation as a group of companies.	- It is requested that GOV and GOJ work toward developing the World Standard TPTS (in the form of Guidelines, for example).	
	(11)	Insufficient Deduction of Expenses on Welfare and Environmental Protection	- Insufficient deduction of expenses on welfare and environmental protection (1) One month cap on welfare expense (deduction of welfare expense portion of wage in excess of 1-month is disallowed). Consequently, it does not amount to encouraging enterprises that genuinely endeavour to improve the livelihood of their employees. (2) Expenses (for planting trees for the purposes of environmental protection) are not deductible. This shows GOV does not encourage this activity, while the problems on the environmental issues spread worldwide.	- It is requested that GOV: (1) removes one month's cap on average wage for welfare expense to make it deductible in full and (2) makes fully deductible expenses incurred for environmental protection, the same as expenses incurred for education, charity donation, sponsorship, etc.	- Decree no. 91/2014/ND/ CP issued on 1/10/2014; article 1, point 4 - Circular no. 219/2013/ TT-BTC dated 26/12/ 2013, chapter 2, article 9, point 2.n
16	(1)	Work Permit Made More Stringent for Foreign Workers	On acquisition of work permit for foreign workers: -- The amended labour law this time has repealed work permit exemption for short-term (less than 3-months) workers, previously exempted. -- This amendment mandates upon foreign workers acquisition of work permit even for a single day, paid or unpaid. -- This amendment fails to address practical needs, such as despatch of an engineer for the sake of emergency repair, etc., as prior approval of the competent authority is required for work permit exemption. - To file application for work permit where the applicant has stayed even for a single day in Vietnam in the past, it is necessary to obtain "certificate for No criminal record in Vietnam (CFNCR)". => This requirement is unrealistic to comply with in the case there is no record of stay kept at hotels, etc.	- GOV has failed to give clear answer on the issues which must have been brought to their attention. It is requested that GOV repeals the legislative scheme in concern. - It is requested that GOV deletes this provision, which is counterproductive to encouraging investment.	- Decree No.46/2011/ ND-CP - No.102/2013/ND-CP - Circular No.03/2014/ TT-BLDTBXH promulgated on 20 January 2014, enforced on 10 March 2014 - necessary for filing Work Permit Application, (unnecessary for renewal)

Category	No	Issue	Issue Details	Requests	References
			<p><u>Where an applicant has a history of stay in Vietnam in the past, GOV requires submission of certificate for No criminal record (CFNCR) in both Japan and Vietnam. It does not stand to reason.</u></p>	<p><u>It is requested that GOV promulgates additional guidelines to the effect that CFNCR is necessary only when the applicant's stay in Vietnam exceeded 6-months in succession immediately before the filing date of application, etc.</u></p>	<p><u>Resolution No.47 /NQ-CP dated July 08, 2014 on "Labour Law"</u> <u>- Amended Labour Law</u></p>

(Actions)

- With the exception of FIE's there is no compulsory requirement for foreign workers at international enterprises and agencies to hold work permits, provided, however, that, the international enterprises and agencies desiring to employ foreign workers must first obtain approval of the competent authority.
- Prime Minister promulgated on 9 August 2007 Decision No. 131/2007/QD/TTg "Issuing regulations on hiring foreign consultants in construction activities in Vietnam". Decision 131 sets forth the terms for foreign organisations and individuals to provide consultancy services in construction activities, comprising formulation of construction master plans, construction surveys, formulation of investment projects for construction of works, design of construction works, management of construction, supervision of execution of works, selection of contractors in construction activities, and a number of other construction consultancy services consistent with the law of Vietnam. Furthermore, on 2 November 2007, Ministry of Construction promulgated Circular 09/2007/TT-BXD (Circular 09) to guide determination and management of hiring foreign consultant cost in construction activity in Vietnam. Circular 09 serves as implementing regulations for Decision 131. Circular 09 applies to employment of foreign organisations and individuals providing consultancy services in construction activities or formulation of construction master plans under state capital (credit lines for state financial institution for investment and development, state bond security credit line, and other state investment capital, such as ODA).
- GOV promulgated on 25 March 2008 Decree No. 34/2008/NĐ-CP (Decree 34) "On employment and administration of foreigners working in Vietnam" that updated the requirement, the measure and the procedure for permitting foreign workers. Decree 34 provides for the terms of employment of foreign workers and the list of documents required to apply for work permits. Decree 34 stipulates extension of work permits in detail, setting forth 36-months as the maximum period of authorised stay (extension of further 36-months is possible under certain conditions). Noteworthy changes from the previous legislation include the repeal of maximum number of foreign workers (less than 3% of the total employees) per enterprise or organisation, and further repeal of exemption for work permits for foreign workers with certain titles and employment form (chief representative, head of foreign branch, employee of foreign contractor). Decree 34 also provides: "at least 20 per cent of the total number of the managers, executive directors and experts of each enterprise with a commercial presence within the territory of Vietnam must be Vietnamese citizens". Decree 34 was enforced on 12 April 2008, repealing two previous Decrees enforced from 2003 and 2005 respectively.
- In November 2009, at ASEAN Coordinating Committee on Services (CCS) 59th Meeting, By Country Tasks toward liberalisation of Service Sector as to Vietnam were pointed out as follows:
 - More than 20% of the Managerial Class Personnel (Manager, Executive, Specialist) must be Vietnamese, while minimum 3-persons per enterprise of the Managerial Class Personnel must be non-Vietnamese.
 - The cap in percentage or number of foreign employees is determined, while certain conditions are imposed on foreign employees to observe.

Category	No	Issue	Issue Details	Requests	References
			<ul style="list-style-type: none"> - Decree No. 46/2011/NĐ-CP of 17 June 2011 stipulates: "At least thirty (30) days prior to recruiting employees, the employer must publish its need to recruit employees in planned positions of foreigners on at least one of the central newspapers and at least of the local newspapers written, oral, pictorial or electronic form that describes: the number of employees, positions, professional knowledge, salary level and other incomes, working conditions and other contents required by employees. It shall not be necessary to publish the above-mentioned notice if the employer recruits employees via a recruitment agency, or..." - Decree No. 46/2011/NĐ-CP of 17 June 2011, "On Employment and Administration of Foreigners Working in Vietnam", amends and supplements some articles of Decree No 34/2008/NĐ-CP date 25 March 2008 and is due for enforcement from 1 August 2011. In the following 5-items, Decree No 46 has widened the scope of foreigners exempted from work permit acquisition requirement: <ul style="list-style-type: none"> (1) A foreigner working as head of representative office, head of project office, or a foreigner assigned to represent all activities in Vietnam by foreign non-government organization. (2) Foreigners transferred internally from the service companies in 11-sectors (management, communication, construction, distribution, education, environment, finance, medical, tourism, cultural/entertainment, and transportation services) included in the commitments between Vietnam and WTO. (3) Foreigners from ODA project, under the agreement between the competent authority of Vietnam and programmes using ODA fund, providing technical consulting service on research, construction, follow-up evaluation, administration and implementation or other duties entering Vietnam. (4) Foreign journalists licensed by Vietnam Ministry of Foreign Affairs. (5) Others as specifically stipulated by GOV.) - On 18 June 2012, the Vietnam National Assembly approved a New Labor Code. Pursuant to Article 173 of the New Code, the initial duration of a Work Permit for a Foreign National has been reduced from a maximum of 3-years to a maximum of 2-years. - On 1 May 2013, Amended Labour Law came into force. The validity of foreign workers' work permit has been reduced from three (3) to two (2) years (extendable), while the procedure has become mandatory for the applicant to obtain prior approval of "Ministry of Labour - Invalids and Social Affairs" 30 days prior to assumption of duty in Vietnam on "the document giving the reasons why employment of the foreigner is necessary". - On 5 September 2013, Decree No. 102/2013/NĐ-CP "Elaborating Some Articles of the Labour Code on Foreign Workers in Vietnam" was promulgated. Among others, it provides for the following: <ul style="list-style-type: none"> (1) Obligation to submit foreign workers' employment plan report (FWEPR) to presidents of the people's committees of the province or central-affiliated city where the head office of the employee is situated (the authority) for prior approval, (2) Obligation to submit any change in FWEPR to the authority, (3) The validity of the work permit is for two-years maximum, and (4) Commencement of deportation proceedings on foreign workers working in Vietnam without work permit. (Improvement) <ul style="list-style-type: none"> - On 10 March 2014, Circular No. 03/2014/TT-BLDTBXH dated January 20, 2014 of the Ministry of Labor, War Invalids and Social Affairs entered into force, starting its implementation. It provides the guidelines clarifying the requisite documents for attestation of the alien's qualifications relative to acquisition of the alien's work permit and the application documents for prior approval of the aliens' employment plan. 		

Category	No	Issue	Issue Details	Requests	References
	(2)	Ambiguous Requisite Terms for Acquisition of Work Permit	<p>- As a result of the new law on foreigners' entry into, exit from, transit through and residence in Vietnam, implemented since 1st January 2015, it has become no longer possible for expatriates to Vietnam to continue the previously accepted practice, namely: after entering Vietnam under visa with 3-months' validity, expatriates obtain work permit, temporary residence card to work, and then continue their stay in Vietnam.</p> <p>Thus, it has become necessary to obtain work permit and work visa before entry into Vietnam. However, as to pre-entry work visa acquisition, in many cases, such applications have been practically denied in the past. It remains unascertained if it has become really possible.</p> <p>(Actions)</p> <ul style="list-style-type: none"> - In September 2013 Decree No. 102/2013/NĐ-CP of September 5, 2013, detailing a number of articles of the Labor Code regarding foreign workers in Vietnam. This Decree among others sets forth the requisite documents for application on foreign workers permit, work permit exemption, validity period of the application procedures permit, re-issuance, and deportation of illegal workers. - On 16 June 2014, national congress promulgated "LAW No. 47 2014QH13 on foreigners' entry into, exit from, transit through and residence in Vietnam" (hereafter 'exit/entry law'), tightening control on issuance of entry visas to foreigners. This LAW has been implemented since 1 January 2015. <p>Under exit/entry law, the visa types are precisely defined by the purpose of entry. While this explanation focuses on business (work) and schooling as the purposes of entry into Vietnam, in general, the proof of entry purposes is prerequisite. If it is for working, the applicant must first acquire the newly added "work visa (Code: LD) with 2-year validity" for which work permit is necessary. If work in the local representative office or the local branch office is the purpose of entry, "expatriate visa" [NN2 (Chief representative) or NN3 (staff)] with 12-months validity is necessary.</p> <p>Article 7 of Law No. 47 2014QH13 "visa's uses and formats", new immigration law provides: "1. A visa may be used one or multiple times and its purpose must not be changed" (unofficial english translation by embassy of Japan in Vietnam). While it is interpreted as follows in general, in the absence of official implementation guidance in detail, there remain practical problems:</p> <ul style="list-style-type: none"> (1) After entry into Vietnam with the declared purposes of entry, no change is allowable. (2) Change in the purposes of entry visa, or new filing of application is not possible while the applicant remains in Vietnam. In any event, applicant must exit Vietnam once, before filing new visa application. (BTMU (Global Business Insight)) 		- Law No. 47/2014/QH13, June 16, 2014 on Foreigners' Entry into, Exit from, Transit through and Residence in Vietnam (Article 7, Paragraph 1)
	(3)	Delayed Work Permit for Short Term Work	<p>- While work permit acquisition has become mandatory, even for a short term work of less than 3-months, it takes more than 2-months to complete the requisite procedures. It is heavily burdensome, putting the applicant into a great difficulty.</p>	<p>- It is requested that GOV gives due consideration to the requisite step by step lead-time for each requirement to make the rules practicable without forcing undue hardships upon the applicants.</p>	- 03/2014/TT-BLDTBXH

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			<p>(Improvement)</p> <ul style="list-style-type: none"> - "LAW No. 47 2014QH13 on foreigners' entry into, exit from, transit through and residence in Vietnam ("Law No. 47") has been in force since 1 January 2015. It incorporates as conditions for exclusion of the work permit requirements "specialists, certain managerial staff, and engineers for not more than 30 days stay, and not more than 90 days in total per annum." 		
	(4)	Introduction of Visa Acquisition Requirements for Short-Term Exit and Re-Entries	<ul style="list-style-type: none"> - Since 1 January 2015, even after less than 15-days of the initial stay in Vietnam, it has become necessary to obtain visa for re-entry into Vietnam within 30-days of exiting Vietnam. Previously, re-entry within 30-days did not require new visa. - Under Article 20(1), after less than 15-days of the initial stay in Vietnam, it has become necessary to obtain visa for re-entry into Vietnam within 30-days of exiting Vietnam. 	<ul style="list-style-type: none"> - Previously, re-entry within 30-days into Vietnam did not trigger new visa acquisition. It is requested that GOV takes step to revert to the previous rules. - It is requested that GOV takes step to repeal Article 20. 	-LAW No. 47 2014 QH13 "On Foreigners' Entry into, Exit from, Transit through and Residence in Vietnam", promulgated on 16 June 2014, and enforced on 1 January 2015
	(5)	Prohibited Change of the Purposes of Visa	<ul style="list-style-type: none"> - Since 1 January 2015, the previously accepted operational practice has become no longer possible, whereby a person holding visa with 3-months validity, obtains work permit, and temporary residence card and stay in Vietnam without any additional requirements. - Article 7.1 of Law No. 47 prohibits foreigners' entry into, exit from, transit through and residence in Vietnam. => Acquisition of work permit (WP) and work visa is necessary before entering Vietnam. 	<ul style="list-style-type: none"> - It is requested that GOV takes step to revert to the previous rules. - It is requested that GOV takes step to allow acquisition of work permit and completion of the requisite visa procedures after entry into Vietnam. 	-LAW No. 47 2014QH13 "On Foreigners' Entry into, Exit from, Transit through and Residence in Vietnam", promulgated on 16 June 2014, and enforced on 1 January 2015
	(6)	Nebulous Expatriates Visa Acquisition Procedures	<ul style="list-style-type: none"> - Prior information (on requisite documents, the number of days for acquisition, etc.) is unavailable on visa acquisition procedures at Vietnamese Embassy in Japan. - As regards expatriates' visa in Vietnam, details on requisite documents, validity, etc. are ambiguous. (A Member Firm's expatriate received clarification on the requisite documents only after arrival in Vietnam.) - Since January 2015, the new "Law No. 47" has become effective. While visa-free entry continues including Japanese, applicant "must have a passport that is still valid for at least 6-months, and the entry date must be at least 30 days from the previous exit." Moreover, re-exit within one month requires visa acquisition. - While conversion of work visa into work permit is no longer possible, in practical implementation of the revised scheme has not thoroughly reached the concerned parties so that the conventional implementation continues even today, adding fuel to the fire into the confusions. 	<ul style="list-style-type: none"> - It is requested that GOV: <ul style="list-style-type: none"> -- provides requisite information on its webpage, and -- responds to telephone enquiries. - It is considered necessary that GOV clarifies rules concerning issuance of Visa, particularly Work Permit. - It is requested that GOV ensures the New Scheme is made known thoroughly to all concerned parties. - It is requested that GOV ensures thorough penetration of implementing the new legislative scheme all the way through. 	-Amended Labour Law -LAW No. 47 2014QH13 "On Foreigners' Entry into, Exit from, Transit through and Residence in Vietnam", promulgated on 16 June 2014, and enforced on 1 January 2015

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		(7) Minimum Wage Increase exceeding Commodity Price Indices	<p>(Improvement)</p> <p>- Resolution 47/NQ-CP of the Government released in July 2014 has removed the qualification for "university graduate", requiring only "5-years of service experience in the applicable field for minimum 5-years".</p> <p>(Actions)</p> <p>- While CPI hike has remained within one digit, the minimum wage has gone up by 15-20% in each year, eroding by large margin the attractive features of Vietnam in terms of quality labour at less expensive labour cost, to the extent of threatening business operators' decision on whether to continue business in Vietnam.</p> <p>- Minimum wage has been going up in the figures far apart from the workers' cost of living and CPI. It has pushed up labour cost, peeling off the competitive edge of Vietnam as manufacturing depot.</p> <p>In 2014, while CPI was up by 4.09%, minimum wage up rate was more or less 15% (with some variances by districts).</p> <p>On the other hand minimum of wage government officers was about half of the private enterprises, without rhyme or reason.</p>	<p>- Let bygones be bygones into the year 2018. Thereafter, it is requested that GOV endeavours to manage it within the range of CPI + Alpha.</p> <p>- It is requested that GOV conducts a fair survey of the practical workers livelihood and establishes minimum wage based on the rational reasons.</p>	Decree No. 103/2012/ND-CP: prescribing the regional minimum salaries for employees working for enterprises, cooperatives, cooperation teams, farms, households, individuals, agencies and organisations (2013)

Category	No	Issue	Issue Details	Requests	References
			<ul style="list-style-type: none"> - The National Wage Council has submitted to GOV Draft Amendment for Decree on Minimum Wage Adjustment 2014 for both domestic and foreign affiliated enterprises in private sector. The wage hike percentages have far exceeded the hike in the Consumer Commodity Index: 2.750,000 vnd/month up by 17.0% for enterprises in Region I 2.450,000 vnd/month up by 16.7% for enterprises in Region II 2.100,000 vnd/month up by 16.7% for enterprises in Region III 1.900,000 vnd/month up by 15.2% for enterprises in Region IV. However, due to the downturn in economy and slackening of the inflationary pressure, the minimum wage hike rates were far below the previous numbers of 27%-32% (foreign funded enterprises) in November 2011. - On 1 January 2014, the minimum wage went up from 2,350 to 2,700 thousand VND in Region I. Likewise, the minimum wage in Regions II through IV also went up in the range between 14.3% and 16.7%. - Beginning 1 January 2016, GOV raises legal minimum wage, in the range of 11~13% in 4-regions (region 1: 12.9%, region 2: 12.7%, region 3: 12.5%, and region 4: 11.6%). 		
(8)	Difficulty in Renewal of Fixed Term Employment Contract		<p><u>Employment contract with a fixed term is no longer possible at the third renewal, which must be without term (unlimited). It is difficult for enterprises to adjust flexibly its workforce requirement commensurate with the prevailing circumstances of their business operation.</u></p> <p>(Actions)</p> <ul style="list-style-type: none"> - Amended Labour Code (ALC) promulgated on 2 July 2012 defines as new form of employment "the Despatched Workers". ALC enters into force on 1 May 2013. 	<p><u>It is requested that GOV removes restrictions on fixed term employment contracts.</u></p>	<p>New Labour Code № 10/2012/QH13 (Due for enforcement on 1 May 2013), Article 22</p>
(9)	Restrictions on Overtime Hours		<p><u>The law prescribes the cap on overtime hours, 4-hours a day, 30-hours a week and 200-hours a year (or with permission 300-hours), depriving employers the freedom of a flexible management of the work hours.</u></p> <p><u>Overtime control is stringent, maximum 30 hours/month, 200 hours/annum (300 hours by application). It is difficult to increase work-hours in the development- technology related industries or process industries that run 24-hours a day.</u></p> <p>(Actions)</p> <ul style="list-style-type: none"> - ALC promulgated in July 2012 retains the cap of 200-hours per year on the overtime work, despite the request for substantial increase that had been filed by the U.S. Chamber of Commerce (in Vietnam), etc. 	<p><u>It is requested that GOV takes step to enable fixing the upper limit by voluntary agreement between employers and employees.</u></p> <p><u>Rather than unilaterally fixing the upper limit, it is requested that GOV diversifies regulations commensurate with the occupational category.</u></p>	<p>Labour Code, Article 69</p> <p>New Labour Code № 10/2012/QH13 (Due for enforcement on 1 May 2013), Article 106</p> <p>Labour Code No. 45/2013/NĐ-CP Article 106.2</p> <p>45/2013/NĐ-CP</p>
(10)	High Turnover of Human Resources		<p><u>High turnover of human resources prevails, (impeding business, while increasing personnel costs all around, including costs of hiring, training, etc.)</u></p>	<p><u>It is requested that GOV endeavours to make available a stable supply of high quality labour market.</u></p>	

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		(11) <u>Shortage of Training Human Resources</u>	<p>- With deceleration of domestic business climate, since 2012, it has become less difficult to secure the numbers of workers at factories. However, in Vietnam there are no high schools that provide special professional skills required in business, in regard to technical, commercial, agricultural, fisheries fields. Including universities, practical educational programmes are in short supply.</p> <p>- Local human resources are in short supply, necessitating development of human resources with improved occupational skills and human management.</p>	<p>- It is requested that GOV takes step to organise educational programmes that address to development of human resources responsive to the practical business needs.</p> <p>- It is requested that GOV assures stable supply of high quality labour market.</p>	
17	Implementation of Intellectual Property Rights ("IPRs")	(1) Insufficient Disclosure of IPRs Information	<p>- In the developing countries, including Thailand, where needs for patent issuance are rising, due to the inadequate database for statistical data and information such as the number of pending patent application, it is difficult for the patent applicant to ascertain the risks from the patents of other firms.</p>	<p>- It is requested that National Office of Intellectual Property (NOIP) advances collaboration with IPO's of developed countries and overhauls the database relative to IPRs as soon as possible.</p>	
		(2) Disallowed Filing of Divisional Patent Application upon Examiners Decision of Refusal	<p>- Upon examiners decision of refusal on patent application, the applicant is disallowed to divide the patent application.</p> <p>(Actions)</p> <p>- In Vietnam, the applicant may file divisional patent application "before the concerned state management agency in charge of industrial property rights notifies a refusal or decides to grant a protection title."</p> <p>In addition, as a result of appeal against examiner's decision of rejection, should the case be remanded to state management agency in charge of industrial property rights, during the pendency of re-examination, the applicant may file divisional patent application. (Vietnam law on intellectual property (No. 50/2005/QH11) Article 115(1).</p>	<p>- It is requested that National Office of Intellectual Property of Vietnam (NOIP) allows filing of divisional patent application during denial examination and patent examination.</p>	- Article 115(1)
		(3) Ambiguous Legislative Provision of the First to file Principle	<p>- In the new developing countries where the needs grow for the local development of technology, many countries retain first to file principle in their patent laws. Ambiguous nature of the legislation makes it difficult to secure effective protection of intellectual property right (IPRs). Nowadays when the needs grow for cross-border R&D activities, first to file principle applied in plural countries could result in infringement.</p>	<p>- It is requested that NOIP:</p> <ul style="list-style-type: none"> -- deregulates or repeals first to file principle, or provides a clear cut definition in legislation, -- and deregulates application of first to file principle on the cross-border R&D activity. 	<p>- Decree No. 122/2010/NĐ-CP (Promulgated on 31 December 2010)</p>

Category	No	Issue	Issue Details	Requests	References
	(4)	High Cost of Patent Issue, and Increasing Complexity of Court Proceeding	The filing date of patent application cannot be ensured in any language other than the Vietnamese, (whereas, it is possible to ensure the filing date by filing application in English in Indonesia, Malaysia, Singapore, etc.)	- It is requested that NOIP ensures also the filing date of patent application filed in English or in languages other than the Vietnamese.	
	(5)	Difficulty in performing Truth/False Survey at Customs of the product suspected of infringement	<p>MFS receives information from Vietnamese customs on suspected infringing products, however, giving only names of exporters/importers in principle. The informed party is barred from accessing the suspected products, unless MFS files a formal request for suspension that requires the bond posting. Being denied the opportunity to determine the authenticity of the suspected products, the right holder of IPRs has no alternative but agreeing to the release of the suspected products. The bond-posting requirement disables the measures at the water's edge.</p> <p>Customs authority disallows release of questionable pictures, pending applicant's filing of application and bond posting for seizure of the goods. Thus the only method of determining infringement is the information on exporter and/or importer given in the discovery notice of questionable products.</p> <p>(Actions)</p> <p>- On 15 March 2015, customs, Ministry of Finance (MOF), promulgated Circular No. 13/2015/TT-BTC as a new measure to strengthen customs implementation of (New) "Law No. 54/2014/QH13 on customs, 30 January 2015, defining inspection, supervision, temporary suspension of customs procedures for exported and imported goods that are subjects of IPRs control of counterfeit goods and goods infringing intellectual property right".</p> <p>[Reference] Circular No. 13/2015/TT-BTC: http://www.customs.gov.vn/Lists/VanBanPhapLuat/ViewDetails.aspx?ID=8140 [In Vietnamese] http://www.wipo.int/wipolex/en/text.jsp?file_id=383835 [In English (Version with Automatic Translation Tool)]</p>	<p>- It is requested that NOIP takes steps to modify the scheme that allows the right-holder's opening of cargo in order to ascertain the authenticity of the suspected goods, when it receives information on suspected infringing products.</p> <p>- It is requested that GOV releases the questionable pictures prior to applicant's filing of request for seizure.</p>	
	(6)	Inadequate Restrictive Rules on Reproduction for Private Use	<p>Reproduction should be allowable to the extent deemed necessary to provide search service for internet information. Incidentally, Article 47-6 of the Copyright Act, Japan restricts the right of copyright holder, subject to discontinuing the use upon becoming aware of the fact that the copyrighted materials were illegally made transmittable.</p> <p>Reproduction for private use actually takes place from an officially purchased music CD into a personal computer (PC), from PC to portable audio player, from broadcast programme to audio/video recorder for time-shift, as well as to smartphone (for listening/viewing while away from home), digitization of books purchased for tablet reading, etc. In light of the fact that all of these conducts cannot be considered injurious to</p>	<p>- It is requested that NOIP takes steps to introduce the restriction of the copyright relative to provision of search service for internet information.</p> <p>- It is requested that NOIP introduces restriction on copyright for reproduction for private use on a realistic basis.</p>	Self-reproducing one single copy for the purposes of Science Research and Individual Teaching (Article 25.1.a))

Category	No	Issue	Issue Details	Requests	References
			<p><u>copyright holder, the right of copyright holder requires restrictions.</u> <u>Nevertheless, in certain countries, these conducts are considered illegal,</u> <u>or even if stipulated as legal on certain conducts, such stipulation could be</u> <u>insufficient. Furthermore, in Japan, Article 30 of the Copyright Act restricts</u> <u>copyright relatively broadly in regard to reproduction for private use.</u></p> <p>- Reproduction of copyrighted materials should be permissible to the extent deemed necessary for developing or testing practical application of audio/video recording technology. <u>Incidentally, in Japan, under Article 30-4 of the Copyright Act,</u> <u>restrictions on copyright are about to be enforced.</u></p> <p>- Reproduction of copyrighted materials should be permissible to the extent necessary for information analysis using computers, etc. <u>In Japan Article 47-7 of Copyright Act restricts copyright in this regard.</u></p> <p>- Study/analysis of computer programme amounts to a conduct for extracting ideas. Copyright should not extend to the extent of intermediate reproduction / adaptation made in its process. In addition, in Japan, The copyright subcommittee on legal issues of the Council for cultural affairs has reached the conclusion that certain restrictions on copyright are necessary. It only awaits amendment of the Law.</p> <p>- Reproduction of copyrighted materials should be possible to the extent deemed necessary to carry out, smoothly with high efficiency, provision of service that employs telecommunication technology in its process of communication, viewing, listening and/or executing copyrighted materials. Furthermore, in Japan, copyright is restricted under the Copyright Act 47-8 (reproduction for use of copyrighted materials in computer), and 47-5 (reproduction for prevention of transmission interference, etc.) (Pending enforcement), and Draft Amendment of 2012 copyright Act 47-9 (use of copyright necessary to process information employing telecommunication technology).</p> <p>(Actions)</p> <p>- In Vietnam, while it is possible to seek primary liability upon the primary internet user under the conventional copyright scheme, the legislative system is not yet established for seeking secondary liability upon the secondary party such as internet service provider. In Vietnam deliberation has begun since common Circular of July 2012 on "proposed drafting of legislation on the secondary liability upon internet service provider and other intermediary institutions". (Source: Article dated 31 March 2015 on "copyright infringements in Vietnam on use of internet service", national center for industrial property information and training (INPIT) "IPRs information data bank in developing countries, etc.")</p>	<p>It is requested that NOIP introduces restrictions on copyright, relative to testing for technological development or for practical application of the technology.</p> <p>It is requested that NOIP introduces restrictions on copyright relative to reproduction for the purpose of information analysis research.</p> <p>It is requested that NOIP takes steps to introduce restrictions on copyright for the purpose of reverse engineering.</p> <p>It is requested that NOIP takes steps to introduce restrictions on copyright for the purpose of:</p> <ul style="list-style-type: none"> -- temporary storage for use of appliances/in the communication process, and -- provision of service using the telecommunication technology. 	

Category	No	Issue	Issue Details	Requests	References
19	Industrial Standards, Approval of Safety Standards	(1) Marking Requirement for Compulsory Technical Standard Certification	<p>- On 1 June 2011, Ministry of Science and Technology (MOST) released promulgation on 1 August of proposed regulation for technical standard, including concrete reinforcing steel (RFS) Standard under WTO for enforcement from January 2012. Manufacturers and Importers of RFS (both domestic and foreign) must declare the Standard Name, Certification and provide the appropriate marking.</p> <p>On 3 June 2013, Ministry of Industry and Trade (MOIT) notified joint implementation with Ministry of Science and Technology "draft technical standard, including steel standard for concrete reinforcement". If enforced, all manufacturers and parties concerned with manufacture / import of the products must conform to the requirements contained in this circular. (Dates of circular and enforcement both remain undecided.)</p> <p>(Actions)</p> <ul style="list-style-type: none"> - On 1 June 2014, Ministry of Industry and Trade (MIT), Ministry of Science and Technology (MST) Joint Circular No. 44/2013/TTLT-BCT-BKHCN dated December 31, 2013 entered into force. It provides for the management of the compulsory standard for the domestically produced and imported steel quality. <p>(Improvement)</p> <ul style="list-style-type: none"> - On 25 August 2014, MoST promulgated MoST Circular No.1591, formally approving JICQA and JQA as foreign test laboratory (foreign accreditation body). - Since 24 June 2014, MIT and MST Joint Circular No. 44/2013/TTLT-BCT-BKHCN concerning compulsory standard for the steel products has excluded steel products from quality inspection requirement (1) steel products imported for further processing of the end products destined to export, and (2) steel products imported by export processing enterprises with manufacturing depots located outside EPZ. 	<p>- It is requested that MOST and MOIT</p> <ul style="list-style-type: none"> -- refrain from introduction of the measures, and -- provide adequate exclusionary provisions. 	
21	Restrictions on Land Ownership	(1) Land Ownership not authorised to FFEs	<p>- <u>Landownership is not authorised to wholly foreign owned enterprises.</u> (<u>Vietnam, being a Communist State, does not authorise such ownership to its own people</u>).</p> <p>- <u>Land ownership right with unlimited term is not authorised in Vietnam for 100% foreign owned enterprises.</u></p> <p>(Actions)</p> <ul style="list-style-type: none"> - Foreign entities continue to be denied land use rights in Vietnam. However, the Government extended land use rights to business establishments of the foreign investors in Vietnam in the form of FIE's. FIE's are entitled to mortgage the value of land use right with Vietnamese local banks or foreign bank branches. The General Department of Land Administration drafted a revised Ordinance on the Rights & Obligations of Foreign Individuals and Organizations Leasing Land in Vietnam and submitted it to the Prime Minister in 2002. The draft included transferal, increasing land lease periods, and providing for leasing land from private individuals. 	<p>- It is requested that GOV authorised FFEs landownership to FFEs for the sake of their stable operation.</p> <p>- For the sake of stable business operation, it is requested that GOV takes step to amend the law, enabling 100% foreign ownership.</p>	Circular No.94/2011/TT-BTC

Category	No	Issue	Issue Details	Requests	References
			<p>- In November VNA passed the New Land Law effective 1 July 2004. Under the New Land Law, FIEs established under Foreign Investment Law are authorised to lease the Land Use Rights (LURs). An FIE leasing the land and making a lump sum payment for the entire lease period is authorised to:(1) transfer or sub-lease during the lease period the LURs or the assets, which belongs to the land;(2) put up during the lease period as mortgages or collaterals LURs and the assets to credit institutions; and (3) use as capital investment in kind LURs and the assets during the lease period.On the other hand, land users paying the lease fees on annual installments are authorised to transfer, sell or submit as collaterals only the assets, provided however that, most land users of foreign nationals are not able to enjoy much of the benefit by the change of the Law. To enjoy the benefit, foreign investors are forced to purchase the land in effect. To many foreign investors, this is not a feasible proposition since the huge amount of the upfront capital outlay is required just to lease the land. Thus, most foreign investors choose the annual installment system. It is especially burdensome for investors considering investment in the housing assets sector, forcing them even to scrap the plan. Moreover, this change in Law presents a difficult problem to land users of foreign nationality desiring to mortgage the LURs of having to pay in lump sum in advance, the entire sum of the land lease fees. Suppose many of the foreign land users do not pay in advance the lease fees for the entire lease period, or are incapable of doing so, to many foreign land users, the LURs themselves are beyond their reach, even if they could use mortgage the land property.</p> <p>- On 29 November 2013, National Assembly approved the Land Reform Law Bill, which entered into force from 1 July 2014. Foreign investing enterprises making investment relative to land property or using fixed assets have no alternative but to acquire the land utility right from GOV.</p> <p>(Improvement)</p> <p>- Ministry of Natural Resources and Environment (MONRE) on 19 November 2007 promulgated Directive No. 02/2008/CT-BTNMT (Directive 02) to promote implementation of the Land Law No. 13/2003/QH11 (2003 amendment). Directive 02 provides for various measures to accelerate implementation of the Land Law by the authority in each Province. More precisely it lays down expansion of laws, promotion and execution of educational edification programmes, organisational, administrative improvements for agencies and measures related to implementation of the Land Law. Three Directives have already been promulgated on implementation of the Land Law, namely, Directive No. 05/2004/CT-TTg of 9 February 2004 by the Prime Minister "On the implementation of the 2003 the Land Law", Directive No. 05/2006/CT-TTg of 22 February 2006 "On remedying weaknesses and violations in and further accelerating the implementation of the Land Law", and Directive No. 09/2007/CT-TTg of April 6, 2007, "On enhancing the management of land use under planning and investment projects".</p> <p>- On 1 January 2007, the Law on Real Estate Businesses No. 63/2006/QH11 (Law 63) was enforced. Domestic enterprises and FIEs are permitted to conduct real estate businesses specified in the following under Law 63:</p> <ol style="list-style-type: none"> 1) Investment in construction of houses and buildings for sale, lent, loan or sale under installment payment; 2) Leasing land property after investing into improvement of land property and preparation of infrastructure; 3) Real estate ("RE") brokerage service 4) RE appraisal service 5) Management & operation of RE trading floors 6) RE consulting service 7) RE auction service 8) RE advertising service 9) RE management service 		

Category	No	Issue	Issue Details	Requests	References
			<p>- Under Law No. 63/2006/QH11 of June 29, 2006 on Real Estate Business, enforced on 1 January 2007, Vietnamese individuals and business establishments are permitted to conduct all types of real estate business activities. Individuals and business establishments engaged in real estate business activities (real estate business and real estate related service) are required to satisfy the specified conditions and business registration requirements. Individuals engaged in appraisal and brokerage (including staff members of real estate businesses) must have special business licence issued by the People's Committee of the Province. One of the important issues incorporated into the Law on Real Estate is its transferability of new urban zone project, housing zone project, and industrial zone project.</p> <p>Law 63 requires as a general principle the observance of the followings:</p> <ul style="list-style-type: none"> (1) Approval by the competent national authority; (2) The investor, being transferee, must satisfy the conditions as organisation or individual to conduct real estate businesses and must undertake to fully fulfill its responsibility as transferee; (3) Transfer must be made by written contract. However, substantive provisions concerning the transfer of these projects have not yet been disclosed. 		
22	Environmental Pollution and Waste Disposal	(1) Difficulty in Collecting Electric and Electronic Products Waste	<p>- In regard to retrieval of Waste Electrical/Electronic Equipment (WEEE), it is difficult for manufacturer/importer to obtain consumers' undertaking for wastes' retrieval.</p> <p>While Ministry of Natural Resources and Environment (MONRE) intends to hold manufacturers and importers responsible for "establishment of retrieval point", "retrieval" and "disposal", it has not published implementing regulation in detail (targeted promulgation in January 2015). In the first place, in Vietnam, scrap dealers repurchase and resell after refurbishment used WEEE.</p> <p>(Actions)</p> <p>- On 22 May 2015, GOV promulgated Decision No. 16/2015/QD-TTg (amending Decision No. 50/2013/QD-TTg) prescribing liabilities, rights and benefits, retrieval and disposal of discarded products (DISCARDED electric/electronic products, cars, motor-cycles) on Vietnam's territory (enforced from 15 July 2015). This amendment has removed certain chemical goods and products for industrial, agricultural, human medication, and fishery, and deferred the execution deadline for collection and disposal of the subject goods and products against manufacturers and importers.</p>	<p>- It is requested that GOV takes steps to hold manufacturers/importers responsible for the retrieval rates from the retrieval points of WEEE.</p>	Decision Providing Regulations on Retrieval, Treatment of Discarded Products dated 28 September 2012
		(2) The Unique Energy Efficiency Regulation is Burdensome	<p>- The energy efficiency legislation requires for each shipment either certification on 1) factory inspection or 2) product inspection. This is a requirement unique to GOV, as no similar legislative requirements are found in other countries. This is an excessively heavy demand upon the concerned parties, not found elsewhere.</p>	<p>- It is requested that GOV takes steps to amend the legislation so that Acquisition of certification for each product model or each representative model suffices (plus sampling inspection without advance notice as necessary) as it is done in other countries.</p>	Circular No. 07/2012 TT-BCT dated April 04, 2012 of the Ministry of Industry and Trade defining the energy labeling for means and equipment using energy

Category	No	Issue	Issue Details	Requests	References
			<p>(Actions)</p> <ul style="list-style-type: none"> - Circular No. 43/2014/TTLT-BGTVT-BCT, promulgated on 1 January 2015, compels energy saving (fuel consumption) labeling on passenger cars seating 7-persons or less. [Reference:] See this Circular at the following URL: http://www.customs.gov.vn/Lists/VanBanPhapLuat/ViewDetails.aspx?ID=7880 - On 1 February, Ministry of Transport promulgated new car emission standard under QCVN 86:2015/BGTVT corresponding to EURO-4 addressed to domestic finished car, domestically assembled car, and imported finished car, due for enforcement from 1 February 2016. [Reference:] Ministry of Transport Circular No.33/2015 at the following URL in Vietnamese: http://www.mt.gov.vn/vn/tin-tuc/37569/ban-hanh-quy-chuan-ky-thuat-quoc-gia-ve-khi-thai-muc-4-doi-voi-xe-o-to-san-xuat--lap-rap-va-nha-p-khau-moi.aspx 		
	(3)	Issues on WEEE Draft	<ul style="list-style-type: none"> - Despite the fact that no legislation on WEEE has been promulgated to this date (probably in effect in early part of 2015), it is under review at the prime minister's office (PMO). The latest draft permits importers/manufacturers' determination of the number of collection points, etc. On the other hand, requires submission of sales results report, which is a pending issue. On the other hand, the price negotiation by and among the consumers-importers/ manufacturers of waste products should be left to the consumers-importers/ manufacturers to decide. 	<ul style="list-style-type: none"> - It is requested that GOV: -- repeals the requirement for sales results information on the markets outside the scope of the sales results report, and -- refrains from including "price negotiation" in the legislative provisions 	<ul style="list-style-type: none"> - Draft Decision and Guiding Circular on WEEE (latest versions)
23	Inefficient Administrative Procedures, Regimes and Practices	(4) Arbitrary Application of Environmental Control	<ul style="list-style-type: none"> - Out of the blue, an environmental authority visits factories for inspection of waste materials control, environment related documents, etc. Moreover, should inadequacies be found, the inspector decides fines on the spot, simultaneously providing guidance for improvement. 	<ul style="list-style-type: none"> - While nothing can be stated about immediate cash payment of fines, should factory wastes/pollution give direct impact on the environment. However, should the inadequacy relate to documenting records, etc. without negative effect on environment actuary, fines should be payable only when the party disobeys instructions for improvement. 	
	(1)	Vexatiously Delayed / Arbitrary Implementation of the Procedures for Approvals and Permits	<ul style="list-style-type: none"> - It takes much time for acquisition procedures on investment licences, approvals, etc., while the requisite documents and additional procedures differ from one officer in charge to another. 	<ul style="list-style-type: none"> - It is requested that GOV takes step to: -- improves the systems crystal clear, and -- takes all means possible to mature the systems and the society. 	

Category	No	Issue	Issue Details	Requests	References
			<p>(Improvement)</p> <ul style="list-style-type: none"> - Vietnam makes commitments in the BTA that both automatic and non-automatic licensing procedures must be implemented in a transparent and predictable manner. Vietnam agrees further that their measures will comply with international standards. This means a commitment to be no more administratively burdensome than absolutely necessary to administer the measure, to publish sufficient information so as to enable traders to understand how to obtain licenses and to ensure that the period of license validity is of reasonable duration and not so short as to preclude imports. Vietnam has made tremendous efforts to improve her administrative measures in an attempt to eliminate excessive bureaucracy and to conform to the commitments in the BTA. For example: -- The period of time for granting investment licenses for foreign investors is shortened. -- Enterprises have more freedom when engaging in import-export activities. Import or export licenses are remained for certain goods as defined by the Government from time to time. -- A number of licenses or approvals required to do certain businesses are abolished. Further, the Government establishes a committee to review and make suggestion to the Prime Minister on what business licenses or approvals need to be abolished from time to time. -- Many laws and implementing regulations are promulgated in the field of customs, settlement of administrative complains of individuals and organizations, taxation and etc. However, there are still many obstacles and difficulties to be dealt with. Implementation results of the laws and regulations sometimes are not high because of lack of cooperation among the government agencies or of the discrepancies among the laws and regulations themselves. - Vietnam has a very ambitious program for amending and updating her legal system in conformity with the BTA provisions. - Prime Minister Nguyen Tan Dung on 30 November 2007 promulgated Resolution No. 59/2007/NQ-CP (Resolution 59), "Providing measures to solve problems in construction investment and reform of administrative procedures applicable to enterprises". Resolution 59 sets forth, among others, procedure for issuance of investment licence for the domestic investment project, integration of business and tax identification number registration, the development of a national database on business registration online, payment of compensation for ground clearance upon the request of district-level boards for ground clearance compensation, integration of mineral survey with mineral exploration permits, and mineral processing with mineral exploitation. - It is provided that investment licence is issued within 15-business days from the date of filing application. 		
(2) GOV's Nebulous Procedures on Investment Licenses and Approvals			<ul style="list-style-type: none"> - Relative to acquisition of licences and approvals of various kinds necessary for production start-up of MFS's new factory. MFS is faced with numerous ambiguities in law and in its employment. Their interpretation differs by Ministries and Agencies and their personnel in charge. It takes time and energy to cope with the work relative to establishment of a new factory operation. 	<ul style="list-style-type: none"> - It is requested that GOV defines its implementation procedures clearly for each licence and approval based on laws. 	<ul style="list-style-type: none"> - Law on Foreign Investment
			<ul style="list-style-type: none"> - Relative to establishment of locally incorporated legal entity, no clearly defined guidance is available on the procedures for acquisition of investment licence. It varies by persons in charge. In addition, it takes a long time from filing application to licence acquisition (8-months in the case of a Member Firm). 	<ul style="list-style-type: none"> - It is requested that GOV takes step to: <ul style="list-style-type: none"> -- harmonise the requisite documents for filing application, -- standardise and harmonise the application procedures, 	

Category	No	Issue	Issue Details	Requests	References
				<ul style="list-style-type: none"> -- <u>eliminate differences between personnel in charge, and</u> -- <u>expedites the procedures for licences and approvals.</u> 	
24 Indigested Legislation, Abrupt Changes	(1)	Deficiency and Ambiguity in Legal System	<ul style="list-style-type: none"> - While in more and more cases, the administration seeks public comment (including enterprises) before promulgation of laws, the legal system including revenue code remains undeveloped. Interpretation of laws varies from one government employee to another. It negatively affects the business activity of enterprises. - Due to the nebulous, inadequate implementing legislative rules and regulations, fines and additional tax are levied, on occasions, at the sole interpretation/ discretion of the tax investigator in charge. - Due to the nebulous, inadequate legal system including tax laws, variances in the tax investigators' interpretation of tax legislation have caused all kinds of problems in business activity of enterprises. It appears promulgation of New Laws is no help as they do nothing but make the matters more complex defying interpretation. 	<ul style="list-style-type: none"> - It is requested that in advance of legislative promulgation, GOV makes effort to hear from enterprises, and spares ample time to study practical implementation of the legislation. - It is requested that GOV takes step to concretise and elucidate the implementing rules and regulations. - It is requested that GOV overhauls the entire legal system (including refinement of the language used in the laws, legal documents, etc.) and thoroughly ensures uniform interpretation before promulgation of each legislation. 	
<p>(Actions)</p> <ul style="list-style-type: none"> - The National Assembly in April 2002 approved price treaty concerning dumped prices, and monopoly pricing, and in May, approved national treatment and most favoured nation treatment in international trade, and in the same month, approved treaty on safeguard provisions on import of foreign goods. <p>(Improvement)</p> <ul style="list-style-type: none"> - On 4 October 2002 the National Assembly approved the transfer of judicial tasks from the Ministry of Justice to the Supreme People's Court of Vietnam in an effort to develop a more independent judiciary. The Government issued Ordinance on Judges of People's Courts and the Ordinance on Prosecutors of the People's Procuracy, which regulate the activities permitted to be undertaken by judges and prosecutors. This is an effort to limit corruption and restore public confidence in the judiciary. - English version of the existing laws and regulations and implementing regulations have now become available. - On 8 April 2005, Prime Minister's Directive "On measures to create new development in foreign direct investment attraction in Vietnam" was promulgated, the measures of which are epitomised as follows: <ul style="list-style-type: none"> (1) Do not issue documents restricting or ceasing investment licensing that do not comply with the Law on Foreign Investment and related legislative documents and international commitments. (2) Focus on implementing the pledges stipulated in the AFTA, the US-Vietnam Bilateral Trade Agreement, the Vietnam- Japan Joint Initiative as well as agreements signed with the EU. 					

Category	No	Issue	Issue Details	Requests	References
			<p>(3) Promulgate legislation providing a guideline for implementing the Investment Law and Company Law, assuring uniformity, transparency and predictability of such legislation. The measures must satisfy transferability, non-retroactivity, and attractiveness requirements.</p> <p>(4) Completely execute the taxation provisions that do not affect the investment incentive measures as regards investment incentive for the projects specifically authorized by GOV.</p> <p>- (Registration of Shareholders)</p> <p>Pursuant to Law on Enterprise No. 60/2005/QH11 (LOE2005), shareholders holding more than 5% of the total shares must register with the business registration body within seven working days from the date of obtaining the shares.</p> <p>(Manager of Enterprise)</p> <p>Pursuant to LOE2005, the legal representative of a limited liability company (LLC) and a shareholding company (SC) must be a resident in Vietnam. If he/she is absent from Vietnam for more than 30 days, he/she must provide a power of attorney to another person to exercise the rights and follow the obligation.</p> <p>(Publication of business registration)</p> <p>Within 30- days from the date of issuance of a business registration certificate, the enterprise must publish its business registration in the network of information on enterprises or a written or electronic newspaper in three consecutive issues. When any alteration is made to the business registration, the enterprise must arrange for the publication of such alteration within the time limit and in the manner as stipulated in this article.</p> <p>(Investment Procedure)</p> <p>Decision No.1088/2006/QD-BKH (MPI 19 October 2006) (Decision 1088) details Standard Forms for conducting investment procedures in Vietnam, Pursuant to Decision 1088, investors must use Standard Forms in preparing investment documents in filing applications for investment registration, investment evaluation, and business registration under the new regime for the new investing enterprises system. The investment procedure formally made into Standard Forms is contributory toward enhancing efficiency and transparency in the investing business environment.</p> <p>- GOV promulgated on 5 September 2007 Decree No. 139-2007-ND-CP "Providing detailed guidelines for implementation of a number of articles of the Law on Enterprises No. 60-2005-QH11, promulgated on 29 November 2005" (Decree 139). Decree 139 sets forth, among others, the guidelines for:</p> <ul style="list-style-type: none"> (1) Foreign investors investing in Vietnam for the first time, (2) FIEs not yet completing re-registration of investment certificates pursuant to Decree No. 101/2006/ND-CP of September 21, 2006, (3) Shareholders attending the general shareholders meeting, and (4) Guidelines for cumulative voting. <p>If a foreign investor investing for the first time in Vietnam owns more than 49% of the charter capital, such investor must complete the investment registration. If the share ownership is less than 49% of the charter capital, the provisions under Decree No. 88/2006/ND-CP, on Enterprise Registration applies. Foreign investors not completing the re-registration of the Investment Certificates are subject to constrictions in respect of the scope of business, the period of investment and the various conditions under the existing investment certificate. Regarding the shareholder's right, any institute holding more than 35% of the charter capital of a limited liability company or any institute holding more than 10% of common shares of an enterprise is entitled to appointment of three directors maximum in the General Staff Assembly and also in the General Meeting Of The Shareholders (GMS). Decree 139 also permits shareholders cumulative voting by the affirmative voting of GMS.</p>		

Category	No	Issue	Issue Details	Requests	References
	(2)	Inadequate Corporate Reorganisation Scheme	- Inadequate legislation in Vietnam to materialise minority squeeze out scheme (MSOS) gets in the way of corporate reorganisation.	- It is requested that GOV advances its legislative overhauls that enable MSOS.	
	(3)	Inadequate/Delayed Issuance of Detailed Implementing Regulations for New/ Amended Laws (Legal Systems)	<p>- Promulgated laws are not followed up by their implementing regulations, decrees, etc. (as in Japan) so that in many cases, they remain effectively unexecuted. In addition, GOV's announcement of foreign trade legislation in many cases gets implemented with extremely short notice. Moreover, some of them get effectively aborted by the opposing voices from enterprises, association of commerce and industry, etc. Sense of uncertainty prevails.</p> <p>- Upon enactment or amendment of law, promulgation of their detailed implementing rules/decrees lags behind, followed by confusions in administrative agencies, procedural delays, etc. impacting business operation of foreign enterprises entering Vietnam. Ambiguity in the implementing rules and regulations compels administrative officers' resort to their own discretionary judgement. It causes inconsistency from their previous judgement, while from time to time giving vent to their demand for illicit payments, giving a hard time to the applicant.</p>	<p>- Establishment of Forum is desirable for exchange of communication by and among Japanese affiliated enterprises, accounting offices, etc..</p> <p>- Implementation of the mechanism for distribution of the latest information.</p> <p>- It is requested that GOV takes step to ensure completing of the implementing decrees, rules and regulations are ready and in good order, upon enactment of laws and regulations and their amendments.</p>	<p>- Foreign Exchange Regulations</p> <p>- Law No. 27/2001/QH10 on Fire Prevention and Fighting</p> <p>- Taxation System on Foreign Contractors, etc.</p>
	(4)	Abrupt Revision of Laws and Fees	<p>- In Vietnam amendments in laws and public charges take place abruptly without advance notice in many cases. By all rights, all amendments in laws and public charges should provide an adequate grace period necessary for all concerned to get well informed about the details.</p> <p>Otherwise it can be problematic to business operation. Especially, the recent changes in immigration law (amendment on visa exemption as to Japanese), the rate of increase in wage, import restrictions on used goods (repealed this time), water charge increase (in excess of 30% only in Dong Nai), etc. have given great impact upon the company operation.</p>	<p>- It is requested that GOV takes step to collect views of enterprises especially foreign funded enterprises before amending laws and public charges to avoid occurrences of serious problems. Also, in deciding legislative implementation, it is requested that GOV allows sufficient period to have the new laws and fees known by all concerned.</p>	<p>- LAW ON ENTRY, EXIT, TRANSIT, AND RESIDENCE OF FOREIGNERS IN VIETNAM</p>
	(5)	Frequent Changes in Legal System/ Confusions in Employment	- Confusions arising from frequently changes on law on labour, labour practices, official's implementation.	- It is requested that GOV works toward clarification of legal system, and maturing of environment and society	

Category	No	Issue	Issue Details	Requests	References
26 Others	(1)	Inadequate Transportation Infrastructure	<p><u>Development on the road from industrial zone to harbour/airport has made a fair progress. On the other hand, traffic congestions have grown to the extreme in the metropolitan areas. As alternative means of transport, development and overhaul of railways are keenly awaited.</u></p> <p><u>Subsequent to the CEPT tariff repeal in 2018, there will be increased import of finished cars from Asia pacific countries, filling up the capacity of Cai Lan port (current unloading port). It is time to consider whether to stay with the current Cai Lan port or to move to another port.</u></p> <p><u>On the other hand, the construction project is underway for Lach Huyen international gateway port (LHIGP) in Hai Phuong District, being inclusive of development in the adjoining areas of the Hanoi<=>Hai Huong express way. Including the accessibility to TMV, LHIGP is a strong candidate site for move of MFS operation. However, LHIGP being exclusive for container vessels, MFS desirous of activating RORO (roll on/roll off) vessels has a unique problem in mapping out its future plan.</u></p>	<ul style="list-style-type: none"> - One-step further development is imperative on railways leading to the Harbours. - Development on metropolitan railways required for relaxing traffic jam in metropolitan areas. - It is requested that GOV reviews the operation of LHIGP, including its acceptance of the RORO operation. 	<p><u>Construction Project for Lach Huyen International Gateway Port (Since May 2013~)</u></p>

(Actions)

- On 24 September 2009, the Governments of the 4-countries, Vietnam, Thai, Cambodia and Laos signed "the Memorandum of Understanding (MOU) on Compulsory Cross-Border Motor Insurance Co-operation" based on which drivers crossing the national borders of these countries can be covered with Compulsory Cross-Border Motor Insurance.
- On 18 March 2010, Ho Chi Minh City People's Committee (comprising of 13 directors of the City) promulgated Decision No. 15/2010/QD-UBND, prescribing incentive measures to promote investment into overland traffic for road transport (enforced from 28 March 2010).
- Investors satisfying the requirements under Decision No. 15 are entitled to receive various preferential measures under Investment Related Laws, Investment Certificate that guarantees financing during the investment project, and exemption of additional charges for change of land utility and compensation for compulsory land purchase.
- On 19 June 2010, National Assembly voted against the Government Bill on "North-South Express Railway" based on the Shinkansen Technology with the majority voting.
- In August 2012, the construction work began on Ho Chi Minh Railway Metro No.1, due for completion by 2018.
- In July 2014, construction of expressway got under way between Ben Luc, Long An Province and Long Thanh, Dong Nai Province.

(Improvement)

- In June 2012, the New Express way was opened. It spans 56-kilometres between Cau Gie in Hanoi City (on National Route 1A) and Ninh Binh (on National Route 10), substantially cutting down the transport time.
- In January 2014, expressway between Ho Chi Minh and Long Thanh was opened to traffic.

Category	No	Issue	Issue Details	Requests	References
	(2)	Inadequate Power Infrastructure	<p>- <u>Delayed Notice of planned power outages for maintenance, construction, etc. from time to time disrupts production. While planned outages have dropped in frequency in northern part of Vietnam, momentary blackouts occur from time to time.</u></p> <p>- <u>During 2014, due to the drop in the power demand from economic depression, no planned power outage occurred. However, the tight balance continues between the demand and supply.</u></p> <p>(Actions)</p> <ul style="list-style-type: none"> - On 29 June 2011, Prime Minister Nguyen Tan Dung promulgated Decision No.37 On Development and Promotion of Wind Power Generation (entered into force on 20 August 2011). Investors into Wind Power Generation will receive Preferential Measures on Import Tariff, Corporate Income Tax, Land Cost, Land Utility Fees, and Financing. Operators are exempted of Import Tariffs for goods, materials and domestically unavailable semi-finished goods, which are imported for construction of the fixed property. Operators will also receive like preferential measures under Investment Act, Corporate Income Tax (CIT) Act and their respectively detailed implementing regulations for CIT, Land Cost, and Land Utility Fees for the Project in the Specially Encouraged Sector. - Power Master Plan VII came into force in 2011 envisages the target power charge of 8-9 cents per kWh to ensure a stable power supply over a long-term. - On 22 December 2012, Ministry of Industry and Trade (MOIT) raised the power charge by 5%. - On 1 August 2013, MOIT raised the power charge by 5%, to bring the power charge to 1,508.85/VND (about 6.9 yen) per kWh. 	<p>- <u>It is requested that operators in Vietnam will develop power distribution network for securing stable power supply under systematic construction schedule, and give ample lead-time in the advance notice of construction and/or planned power outages</u></p> <p>- <u>It is requested that power suppliers will expedite strengthening power generation capacity corresponding to the demand.</u></p>	
	(3)	Shortage of Supporting Industry	<p>- Member firm's subsidiary (MFS), being anxious to improve cost competitiveness, has sought local procurement of parts, moulds, jigs and processing, finds fostering and developing of the downstream industries (DIs) lag behind. While a number of ministries and agencies/organisations grapple with the growth and development of DIs, it seems they do so without initiatives.</p> <p>(Actions)</p> <ul style="list-style-type: none"> - Numerous construction works are underway for rental or apartment-type factories addressed to the needs of Small and Medium Enterprises (SMEs). - In March 2014, the joint Communiqué released during the visit to Japan of the President Truong Tan Sang of Vietnam confirms Japan's continued cooperation for development of the downstream industries in Vietnam. - In July 2014, Hochi Minh City Export Processing and Industrial Zones Authority (HEPZA) established "Japan-Vietnam Support Industry Forum" to develop the downstream industry in South Vietnam. 	<p>- <u>It is requested that GOV extends its support to entrepreneurial investment for starting the company, and for inviting experts from overseas.</u></p>	

Category	No	Issue	Issue Details	Requests	References
			<p>- On 3 November 2015, GOV promulgated Decree No. 111/2015/NĐ-CP of November 3, 2015, on <u>Development of Supporting Industries</u>, enforced from 1 January 2016. "Priority Development Industry Product List" divided into 6-Sectors, lists Specific Product Names: "Textile/Clothing", "Leather/Shoes", "Electronics", "Car Manufacture/Assembly Industry", "Machine Manufacture Sector", and "Industrial Products Supporting High-Tech Industry". It incorporates GOV's Support Policy on Research & Development, Application/Technology Transfer, Human Resources Development, Market Development, and SMEs' Support Policy.</p> <p>(Improvement)</p> <p>- On 4 July 2011, MOF promulgated Circular No. 96/2011/TT-BTC to implement Decision No. 12/2011/QD-TTg of February 24, 2011, on policies on development of a number of supporting industries of manufacturing mechanical engineering, electronics-informatics, manufacture and assembly of automobiles, textile and garment, leather-footwear and hi-tech industry development (entered into force on 18 August 2011). This Circular exempts import tariff on (1) Specified equipment and machinery, (2) Domestically unavailable raw materials and supplies which are imported for software production, and (3) Goods imported for scientific research and technological development (machinery, equipment, spare parts, supplies and means of transport, scientific documents, etc. Furthermore, Projects to manufacture supporting industry products for hi-tech industry development are eligible for Corporate Income Tax Rates and Tax Exemption or Reduction under Corporate Income Tax Act. This Circular also stipulates financial assistance policies, VAT refund, exemption of tax land, etc., according to regulations on development support for small-and medium-sized enterprises.</p>		
	(4)	Improvement of Living Conditions in the Industrial Park to Attract the Needed Workforce	<p>- A comfortable living environment hardly exists to attract workforce into industrial parks, located in the outskirts of the metropolitan area: roads, public transportation, educational facilities, hospitals, shopping centers, amusement facilities, etc.</p>	<p>- It is requested that GOV systematically develops these facilities as an attractive foothold for the workforce.</p>	
	(5)	Non/Delayed Payments	<p>- MFS, having experienced nonpayment/delayed payment of accounts receivables, due in part to differences in traditions in commerce, business ethics, balance of power, etc., has switched to advance payment in its terms of sale. However, on products with short life expectancy cycles (such as manufacturing equipment for smartphone parts), the delivery terms and the prices claim the top priority, so that even if collection is completed successfully, the delay in payment severely affects the profitability of the MFS operation.</p>	<p>- It is requested that GOI:</p> <ul style="list-style-type: none"> -- extends its helping hands to the less powerful SMEs by provision of information, and -- facilitates collection of accounts receivables. 	