

# **VBF** VIETNAM BUSINESS FORUM

**Annual Vietnam Business Forum 2014**

## **ENTREPRENEURSHIP FOR NEW TRADE AGREEMENTS**

*Hanoi, December 2, 2014*

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This publication was created for the Annual Vietnam Business Forum on December 2, 2014.

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## **TABLE OF CONTENTS**

### **TENTATIVE AGENDA**

#### **Section I: REVIEW OF INVESTMENT CLIMATE**

- 1.1.** Perceptions by Foreign & Local Business Associations/Chambers

#### **Section II: BANKING AND CAPITAL MARKETS**

*Main discussions: Financial Market Reforms and State-Owned Enterprises (SOEs) Reforms*

**2.1. Banking**

Position paper of the Banking Working Group

**2.2. Capital markets**

Position paper of the Capital Markets Working Group – Privatization of SOEs

#### **Section III: INVESTMENT AND TRADE**

*Main discussions: Administrative Procedures Reforms and Development of Private Sector*

**3.1. ADMINISTRATIVE PROCEDURE REFORMS**

Review of administrative procedure reform in the business sector

**3.1.1. Education**

Position paper regarding Decree 73 on foreign investment in education & training (Decree 73)

**3.1.2. Land**

Position paper on licensing process in land sector

**3.2. DEVELOPMENT OF PRIVATE SECTOR**

Position paper of the Investment and Trade Working Group

**3.2.2. Tax**

Position paper of the Tax Working Group

**3.2.3. Customs**

Position paper of the Customs Working Group

**3.2.4. Power and energy**

Position paper of the Power and Energy Sub-working group

**3.2.5. Automotive**

Position paper of the Automotive Working Group

#### **Section IV: EMPLOYMENT, EDUCATION AND TRAINING**

*Main discussions: Development of Vietnamese Workforce*

**4.1. Employment**

Position paper of the Human Resources Sub-working group

**4.2. Education and training**

Position paper of the Education and Training Working group

**Section V: REPORTS FROM OTHER WORKING GROUPS**

**5.1. Agribusiness**

Position paper of the Agribusiness Working Group

**5.1. Governance & transparency**

Position paper of the Governance & Transparency Working group

**5.2. Mining**

Position paper of the Mining Working group

**5.3. Tourism**

Position paper of the Tourism Working Group



**ANNUAL VIETNAM BUSINESS FORUM 2014**  
**Entrepreneurship for New Trade Agreements**

*Time: 7:00 – 13:30, Tuesday, December 2, 2014*

*Venue: Song Hong Meeting Room, Sheraton Hotel, K5 Nghi Tam, No. 11 Xuan Dieu Street, Hanoi*

**TENTATIVE AGENDA**

	<b>7:00 – 8:00</b>	<b>Registration</b>
<b>SESSION 1</b>	8:00 – 8:20	<b>Introduction</b>  <b>Opening Remarks</b> <ul style="list-style-type: none"> <li>Ministry of Planning and Investment – <i>H.E. Mr. Bui Quang Vinh, Minister</i></li> <li>International Finance Corporation – <i>Mrs. Wendy Werner, Practice Manager, Trade and Competitiveness, EAP</i></li> <li>Vietnam Business Forum Consortium – <i>Mrs. Virginia Foote, Co-Chairman</i></li> </ul>
	8:20 – 8:50	<b>Review of Investment Climate - Goals to Fulfill</b> <ol style="list-style-type: none"> <li>Vietnam Chamber of Commerce and Industry – <i>Mr. Vu Tien Loc, President</i></li> <li>American Chamber of Commerce – <i>Mr. Gaurav Gupta, Chairman</i></li> <li>European Chamber of Commerce – <i>Mr. Tomaso Andreatta, Vice Chairman</i></li> <li>Korea Chamber of Business – <i>Mr. Kim Jung In, Chairman</i></li> <li>Japanese Business Association – <i>Mr. Shimon Tokuyama, Head of Business Forum Committee</i></li> <li>Canadian Chamber of Commerce – <i>Mr. Antony Nezc, President</i></li> </ol>
<b>SESSION 2</b>	8:50 – 9:20	<b>1. Financial Sector and SOEs Reforms - Next Steps</b> <ul style="list-style-type: none"> <li>Banking Reforms – <i>Mr. Dennis Hussey, Head of Banking Working Group</i></li> <li>SOEs Reforms and Capital Markets – <i>Mr. Dominic Scriven, Head of Capital Markets Working Group</i></li> </ul> <i>Response from the Government</i> <ul style="list-style-type: none"> <li><i>The State Bank of Vietnam</i></li> <li><i>The State Securities Commission of Vietnam</i></li> <li><i>Ministry of Planning and Investment</i></li> </ul>

SESSION 2	9:20 – 10:05	<p><b>2. Administrative Procedures Reforms - Efficient and Modernized</b></p> <ul style="list-style-type: none"> <li>- Mr. Tran Anh Duc, Co-Head of Investment and Trade Working Group</li> <li>- Mr. Khalid Muhmood, Head of Education and Training Working Group</li> <li>- Mr. David Lim, Head of Land Sub-group</li> </ul> <p><b>3. Development of Private Sector - Building the Backbone of Business</b></p> <ul style="list-style-type: none"> <li>- Mr. Fred Burke, Co-Head of Investment and Trade Working Group</li> </ul> <p><i>Response from the Government</i></p> <ul style="list-style-type: none"> <li>- Ministry of Planning and Investment</li> <li>- Ministry of Industry and Trade</li> <li>- Ministry of Natural Resources and Environment</li> <li>- Ministry of Education and Training</li> <li>- Ministry of Construction</li> </ul>
	10:05 – 10:30	<b>Speech by Prime Minister H.E. Mr. NGUYEN TAN DUNG</b>
	10:30 – 10:45	<b>Coffee Break</b>
SESSION 3	10:45– 11:25	<p><b>4. Development of Private Sector - Building the Backbone of Business (Continued)</b></p> <ul style="list-style-type: none"> <li>▪ Tax – Mrs. Huong Vu, Head of Tax Sub-group</li> <li>▪ Customs – Mr. Mark G. Gillin, Head of Customs Working Group</li> <li>▪ Power and Energy – Mr. John Rockhold, Head of Power and Energy Sub-Group</li> <li>▪ Automotive – Mr. Gaurav Gupta, Head of Automotive Working Group</li> </ul> <p><i>Response from the Government</i></p> <ul style="list-style-type: none"> <li>- Ministry of Finance</li> <li>- General Department of Customs</li> <li>- Ministry of Industry and Trade</li> <li>- Ministry of Planning and Investment</li> </ul>
	11:25 – 11:45	<p><b>5. Development of Vietnamese Workforce - A More Competitive Future</b></p> <ul style="list-style-type: none"> <li>▪ Labor – Mr. Colin Blackwell, Head of HR Sub-group</li> <li>▪ Education and Training – Mr. Brian O'Reilly, Co-Head of Education and Training Working Group</li> </ul> <p><i>Response from the Government</i></p> <ul style="list-style-type: none"> <li>- Ministry of Labour, Invalids and Social Affairs</li> <li>- Ministry of Education and Training</li> </ul>

SESSION 4	11:45 – 12:15	<b>Closing Remarks</b> <ul style="list-style-type: none"> <li>▪ Government Leaders <i>(tbc)</i></li> <li>▪ Ministry of Planning and Investment – <i>H.E. Mr. Bui Quang Vinh, Minister</i></li> <li>▪ World Bank – <i>Mrs. Victoria Kwakwa, Vietnam Country Director</i></li> <li>▪ Vietnam Business Forum Consortium – <i>Mr. Vu Tien Loc, Co-Chairman</i></li> </ul>
LUNCHEON	12:15 – 13:30	<ul style="list-style-type: none"> <li>▪ VIP Lunch (Song Da &amp; Song Thao Room)</li> <li>▪ Networking Lunch (Hemispheres Restaurant &amp; Oven Dor Restaurant)</li> </ul>
END OF THE ANNUAL VIETNAM BUSINESS FORUM 2014		

## **Section I**

# **REVIEW OF INVESTMENT CLIMATE**



**STATEMENT BY VIRGINIA B. FOOTE, CO-CHAIRMAN**  
**Annual Vietnam Business Forum 2014**  
Hanoi, December 2, 2014

Your Excellency Prime Minister Nguyen Tan Dung, Minister Vinh, Deputy Ministers, ladies and gentlemen, it is with great pleasure that we open the annual year-end Vietnam Business Forum ("VBF") with the Prime Minister. We are deeply grateful that you have been able to attend and we very much look forward to your comments today.

I am very happy to report to you that since our last meeting in June, some significant progress has been made on issues important to businesses in Vietnam - we are pleased new investment and enterprise laws were passed last week by the National Assembly, tax Law amendments are being implemented to reduce the burdensome time required for tax filing, conditions for work permits have been relaxed, the recognition and enforcement of foreign arbitral awards has seen some actions from the Government, and the cap on advertisement and promotion expenses will be removed following a roadmap. We have included in the VBF book progress reports of areas of improvement and areas where we think more work needs to be done.

Through VBF we particularly hope to work on areas of interest to the Government and the business community - both domestic and foreign.

1. Financial Sector Reforms - we want to address how to speedup banking reform including international best practices on banking and lending practices, dealing with the non-performing loans, financial markets, and public debt.
2. Supporting entrepreneurship to take advantage of upcoming Free Trade Agreements ("FTAs").
3. Development of the workforce - training, education, wages, overtime pay, and work permit issues.
4. State Owned Enterprise reforms - need to speed up the equitization process and implementation of Decision 51, corporate governance and international best practices.
5. Administrative Procedures Reforms - steps to modernize and make procedures more efficient across sectors, especially for permit issuing.
6. Challenges and proposals for Vietnam to take full advantages of new FTAs - how to attract supporting industries, for example the need for improvements in access to land, electric power, and transportation.

These are all key areas that need work to ensure that Vietnam is ready to take advantage of the several trade agreements currently being negotiated. The Trans-Pacific Partnership, the EU-Vietnam Free Trade Agreement, Regional



## VIETNAM BUSINESS FORUM

Comprehensive Economic Partnership and full implementation of the ASEAN Community is also potentially huge opportunities for Vietnam's economy and people.

In my opening remarks here, I want to particularly highlight the overarching issue of the need for administrative reforms that would both address the ease of doing business in Vietnam and provide additional anti-corruption measures. For our companies to further integrate into the global supply chains and to provide the much needed supporting industries, these agreements will require new laws and regulations of high standard, but administrative reform is just as important.

At the Anti-Corruption Dialogue last week, we discussed some additional administrative reforms that under Project 12 the business community can join with Government to fight corruption and add efficiencies. Vietnam can take steps to prepare itself for further economic integration - a key one being the need to greatly reduce the use of cash and face-to-face financial transactions for business to business and business to government payments. We urge the Government to implement preventative systems such as:

- Encourage best practices on moving systems toward non-cash transactions to reduce corruption and encourage time efficiencies,
- Encourage best practices for fair assessment and collection system for taxes, fees and fines that reduce face-to-face requirements and therefore reduce lost time and limit the opportunity for informal/illegal fees while increasing collection of revenues owed,
- Encourage global best practices for procedures regarding watch-dog reporting and whistle-blowing protections,
- Encourage best practices for the increased implementation of paper-free as well as cash free transactions among businesses and between business and Government.

The overuse of cash is dangerous. Countries in the top 10 of non-cash consumption rates see mostly over 80% of their transaction in non-cash forms. For Vietnam, the number is only 3%. Yet global research indicates that in cash-based economies, problems ranging from petty corruption to large scale money laundering are more prevalent and harder to tackle.

Vietnam ranks very high in the use of smart phones and internet connectivity, we need to see these as tools for efficient e-commerce, e-payments and paper free transactions as well. IT innovations are happening daily that greatly assist businesses and governments - Vietnam should support and welcome this.

Money laundering flourishes when large value transactions such as land, property, vehicles and other high value goods are paid in cash. We applaud recent efforts that have lead to Vietnam to no longer be subject to Financial Action Task Force (FTAF) on-going global AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) compliance process. We urge that Vietnam consider amending its related regulations to be practical, implementable, and enforced.

For tax collection, establishing effective technologies for filing and paying taxes and then educating taxpayers and tax officials in their use are essential to



## VIETNAM BUSINESS FORUM

limiting corruption, increasing efficiencies, ensuring fair collection. Effective electronic tax systems greatly benefit both the tax authorities and tax payers. Very importantly, it reduces face-to-face interaction which globally has been seen to provide the opportunity for either side to distort returns.

When the new amended Tax Law takes effect from January 1, 2015, the total amount of tax procedures is expected to be decreased from over 800 hours to 171 hours, which is equal to the average of ASEAN-6 group of countries. We appreciate Government tremendous efforts in this regard and we look forward to assessing the success of this new system and accelerating its use.

"Informal payments" are a growing concern - for every administrative procedure there is the danger of "informal payments". Global best practices allow the charging of fees by Government offices for the cost of providing documents or other services - but only if posted and collected legally. Government offices can charge additional fees for expediting services. But these must be legal fees - publically published, payable in non-cash formats, and come with a receipt. For fines, such as a regulatory violation or traffic ticket, payments again should be non-cash, and a receipt provided.

In the recent "Ease of Doing Business" report by the World Bank, Vietnam is ranked 78th out of 189 economies, by contrast Malaysia is 18 and Thailand is 26. All TPP member countries, except Vietnam and Brunei, are in the report's top 40 performers, leaving a large gap and many countries performing better than Vietnam.

Among important indicators, the index measures ease of starting a business, getting construction permits and electricity, registering property, paying taxes, and cross border trading - all areas where Vietnam ranked quite low and often the steps and time required are 3 to 4 times what other trading partners require. This is a competitive disadvantage for Vietnam - but a fixable disadvantage.

While we applaud the new Investment Law going from a positive list to a negative list approach for prohibited investment, we hope the duplicative steps toward getting a business license do not add delays and administrative burdens for foreign investors. We hope to continue to work with you on this during the implementation phase of the new Law.

In closing, may I emphasize that we all hope to see Vietnam benefit greatly from the tremendous opportunities the upcoming trade agreements provide and to grow and strengthen the Vietnamese economy, and we very much appreciate the Government assistance to working with us through the VBF to make that happen.

Again your Excellency, our deepest thanks for your attendance today.



**APPENDIX**

**I. THE CHAMBERS AND BUSINESS ASSOCIATIONS PARTICIPATING IN THE VBF CONSORTIUM:**

**Consortium members:**

1. Vietnam Chamber of Commerce and Industry (VCCI)
2. American Chamber of Commerce in Vietnam (AmCham Vietnam)
3. European Chamber of Commerce in Vietnam (EuroCham Vietnam)
4. Korean Chamber of Business in Vietnam (KorCham Vietnam)

**Associate members:**

5. Australian Chamber of Commerce in Vietnam (AusCham Vietnam)
6. British Business Group in Vietnam (BBGV)
7. Canadian Chamber of Commerce in Vietnam (CanCham Vietnam)
8. China Business Association Ho Chi Minh City (CBAH)
9. Hongkong Business Association Vietnam (HKBAV)
10. Indian Chamber of Commerce in Vietnam (InCham Vietnam)
11. Japanese Business Association in Vietnam (JBAV)
12. Japanese Business Association in HCMC (JBAH)
13. Nordic Chamber of Commerce in Ho Chi Minh City (NordCham HCMC)
14. Singapore Business Group (SBG)
15. Swiss Business Association (SBA)
16. Taiwanese Chamber of Commerce in Vietnam (TCCV)

**II. VIETNAM BUSINESS FORUM WORKING GROUPS:**

- Agribusiness Working Group
- Automotive Working Group
- Banking Working Group
- Capital Markets Working Group
- Customs Working Group
- Education and Training Working Group
- Governance and Transparency Working Group
- Investment and Trade Working Group
- Infrastructure Working Group
- Mining Working Group
- Tourism Working Group





American Chamber of Commerce in Vietnam ("AmCham")

### **AMCHAM STATEMENT**

Annual Vietnam Business Forum

Hanoi, December 2, 2014

*Presented by  
Mr. Gaurav Gupta  
Chairman*

Good morning and thank you for the opportunity to speak about AmCham's perception of the business environment in Vietnam.

#### **ENSURING LONG-TERM STABILITY**

As 2014 comes to an end, companies and investors have much to be pleased with. Over the years, Vietnam's success in attracting foreign investment has largely been built on the expectation of economic and political stability. In February 2011, the Prime Minister announced that the Government would focus on stability rather than growth. AmCham and many others strongly supported the Government's endeavor. Today, our view is unchanged. While there is concern over weak consumer demand and slow progress in cleaning up the banking system, we are pleased to see a manageable rate of inflation that has not only helped take pressure off Vietnamese families, but has also dampened wage inflation which was a continuing source of frustration for business planning. AmCham hopes that economic policies will continue to ensure long-term stability.

#### **ENABLE AND ENCOURAGE THE PRIVATE SECTOR**

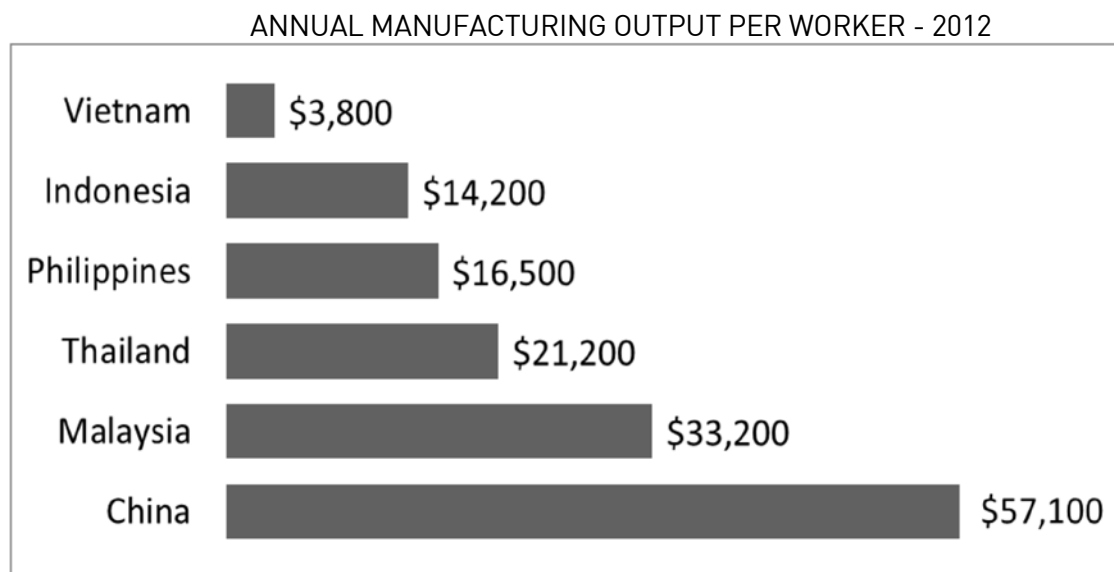
As American businesses in Vietnam continue to grow along with the country's development, many of our members continue to report growing profits and general optimism regarding their business prospects here. Well-established businesses demonstrate their optimism by increasing their capital. However, despite optimism and growth, we too-often see initial interest from potential foreign investors that doesn't materialize due to continued challenges dealing with corruption, human resource constraints, and an over-complicated, restricted, and unclear licensing and regulatory environment.

To improve the likelihood that these early promising inquiries will materialize into solid investments, the country needs to make tangible progress on the issues continually raised at these forums, as well as other challenges that detract from Vietnam's image as an attractive destination for foreign investment. Our members wish to see initiatives that provide further encouragement of private enterprise, and that enable and facilitate rather than restrict business opportunities. AmCham believes that the business climate can best be helped by actions that increase productivity and reduce the costs and risks of doing business in Vietnam.

#### **GREATER WORKFORCE DEVELOPMENT**

The transitions taking place in China - including rising labor costs and the shift toward an economic model that is less reliant on exports - are creating a window of opportunity for Vietnam to capture a greater share of global manufacturing, especially from multinationals that are seeking a lower cost base. Currently, approximately two-thirds of Vietnam's exports and one-half of industrial output come from foreign-invested factories or factories that manufacture for foreign brand owners.

Average costs for factory labor here are only around one-quarter the costs in China. However, the advantage of low labor costs is undermined by weak output per worker. A recent study showed that average labor productivity in Vietnam's manufacturing sector was only about seven percent of that in China.



*(Source: McKinsey Global Institute)*

This productivity challenge, along with slow development of a skilled workforce, can threaten continued growth. Study after study report that curricula are outdated, teachers overmatched and underpaid, and graduates lack the job-ready skills sought by multinationals. To continue attracting investment and to upgrade the skills of its workforce, the Government should take further action to modernize and upgrade its national curriculum, particularly at the vocational and university levels. This will ensure that Vietnam has a skilled workforce of managers, engineers and manufacturing technicians that can move up the value chain as labor costs continue to rise. AmCham and our member companies are very involved in educational programs in Vietnam and are committed to assisting Vietnam in providing better education for its children and workforce.

### **EASE OF DOING BUSINESS**

Our members want the Government to focus efforts on improving the ease of doing business here and addressing areas where inconsistencies, inefficiencies, and unfair practices persist. For many companies and investors that need to fully comply with rules and laws, Vietnam is a very difficult place to be successful and Government efforts to “manage” business activity have caused numerous investors to rethink their business and expansion plans here.

For example, if the Government is concerned about the price of milk in Vietnam - or any other food - there are measures that can be taken to help farmers, or improvements can be made in Vietnam's inefficient and expensive distribution system. Or, if the goal is to make imported products more affordable for Vietnamese consumers, the Government can choose to lower import duties. We don't feel that imposing price controls on consumer products is consistent with Vietnam's goal of an open and modern economy.

Increasing efficiency and productivity also requires additional effort to move forward with the difficult task of restructuring state-owned enterprises to ensure they are managed with transparency, responsibility, and accountability, and that SOEs operate on a “level playing field” with both foreign and domestic private sector enterprises.

## **INVOLVE STAKEHOLDERS THROUGHOUT LEGISLATIVE PROCESS**

Our members experience too many unintended consequences from well-meaning legislation that hinders business activities and contributes to a perception that investors should consider doing business someplace else. Lack of transparency hinders industry understanding of and compliance with laws and regulations. Indeed, inconsistent regulatory interpretation, irregular enforcement, and unclear laws remain significant challenges for our members.

For example, in the financial services sector, Circular No. 23/2014/TT - NHNN greatly increases the bureaucracy, time and expense involved in opening and operating a bank account in Vietnam. Similarly discouraging to foreign investors are requirements under Vietnam's new anti-money laundering laws that require owners to give out a lot of private information to maintain bank accounts. We encourage the State Bank of Vietnam to reconsider some of these burdensome requirements.

Given the importance of foreign investment in the economy here, it is important to work in partnership with AmCham and other groups to help resolve challenges and prevent problems. Our member companies are eager to share regulatory best practices if they are given sufficient time and opportunity to comment on proposed new rules.

For example, AmCham strongly supports the Government's objective of promoting the development of the Internet and digital economy in Vietnam while ensuring data security and the protection of Vietnamese Internet users. Our members have communicated – and continue to communicate – a number of specific and useful recommendations to ensure that current draft legislation aligns with these objectives. Working with us throughout the legislative process can not only prevent unintended consequences, but can also boost investor confidence that helps ensure Vietnam remains an attractive and competitive destination for foreign investment.

## **MORE SERIOUS ENFORCEMENT OF INTELLECTUAL PROPERTY LAWS**

The protection of intellectual property rights encourages entrepreneurialism, supports private sector development, and promotes growth of high-tech ecosystems and high-paying jobs for educated workers. Unfortunately, IPR protection and enforcement in Vietnam remains troubling and falls short of what is expected of a country that aspires to join the Trans Pacific Partnership. The Government's enforcement mechanism needs widespread improvement in order to effectively stop, punish and deter IPR infringement here. Fundamental concerns remain about uneven enforcement, administrative fines that are not significant enough to serve as a real deterrent, and inadequate capacity and competency of inspectors and local officials. Effective enforcement means punishing infringers of IPR in a manner that will deter them and others from engaging in such conduct in the future. It also means increasing public awareness of the need to respect the IPR of Vietnamese and foreigners alike. The IP space also frequently suffers from conflicting internal policies and regulations. This increases the time and expense needed for enforcement actions. When issuing new rules, it is important to consider previous rules which may need to be repealed or amended. Strengthened intellectual property rights protection would better enable Vietnamese and foreign innovators to contribute to economic growth here.

Once viewed by many as a problem limited to purveyors of high-end luxury goods, today counterfeit goods produced in Vietnam, China and other nations can still be found in nearly every rural and urban market in the country. Widely available counterfeit goods include garments and accessories, footwear, food and beverages, cosmetics, pharmaceuticals, computer software, toys, automotive spare parts (car and motorbike), engine lubricants, consumer electronics, music and video entertainment, motorbikes, and even fertilizers and gas. While criminals see the production and sale of counterfeit goods as a lucrative, low-risk business model, this illicit activity not only harms businesses but also can be hazardous to the health and safety of Vietnamese consumers. Fake products often contain substances which have not been approved. These include clothes or toys which contain illegal dyes or medicines and hygienic products containing illegal chemical

substances. Counterfeit electronics and machines also pose a safety risk, because they may break down, self ignite, shock, etc. Online trading in counterfeit products is also a growing concern. Vietnam doesn't necessarily need new laws. But it should enforce existing laws in a fair and serious manner.

### **FASTER AND MORE TRANSPARENT DECISION-MAKING**

AmCham members are frustrated by persistent delays in decision making on key projects and policies. Examples include delays in implementing regulations on important Laws and Decrees, delays in moving forward key infrastructure projects, delays in streamlining administrative procedures, and more. The automotive sector has been severely affected by excessive delays in providing clear and stable policies. The lack of a clear road-map has dampened investor confidence and brings the risk of manufacturers considering alternate plans within the ASEAN region. AmCham looks to the Government to increase efforts that create a more competitive environment where decisions are made faster, procedures are less complicated, rules are fairly enforced, and companies compete on their merits - including for access to capital, land and opportunities. This will provide further encouragement of private enterprise and will prepare Vietnam for the many opportunities that will come through agreements like the Trans-Pacific Partnership.

The uncertainty caused by corruption continues to be a top business challenge faced by AmCham members. Corruption has become corrosive and widespread in Vietnam and is dangerous to the economy and society as a whole. We urge the Government to implement systems well known to reduce the opportunities for illegal payments. A significant step forward would involve actions that greatly limit the use of cash payments and increasing the use of e-commerce. Active Government support and endorsement of anti-corruption measures at all levels of society, government and business is required to tackle this critical issue.

### **CUSTOMS IMPLEMENTATION AND KEY INFRASTRUCTURE FOR GREATER COMPETITIVENESS**

This year's Customs Law and implementing decrees and circulars are designed to implement common elements of the WTO Trade Facilitation Agreement, the Trans-Pacific Partnership Chapter on Customs Administration and Trade Facilitation, the Vietnam-EU Free Trade Agreement, and the ASEAN Economic Community 2015. Those common elements include a National Single Window, Advance Rulings, Authorized Operators, Export Processing Enterprises and Export Processing Zones, Public Notice and Opportunity for Comment, and a National Committee on Trade Facilitation. AmCham urges the Government to implement these common commitments. Successful implementation will simplify customs and other inter-agency import/export procedures, will speed up development of Vietnam's supply chains and increase competitiveness, will reduce costs by 5-15 percent, will reduce corruption, and will allow SMEs in Vietnam greater opportunities to participate in international trade.

Developing high-quality and appropriate infrastructure is neither fast nor inexpensive. We appreciate forward movement on many key projects but prospective investors are still concerned about a lack of adequate power as economic growth rises. We hope faster and more transparent decision-making will move forward key projects in the power sector.

### **CREATING A MORE ATTRACTIVE, TRANSPARENT AND STABLE BUSINESS ENVIRONMENT**

As major investors here, American companies have an interest in Vietnam's continued success. Our members believe that the business climate can best be helped by actions that increase productivity and reduce the costs and risks of doing business in Vietnam. The Government can best ensure growth by maintaining macroeconomic and political stability, building world-class infrastructure, intensifying its effort on upgrading workforce skills and improving the ease of doing business. AmCham works hard to support the success of our members by promoting a healthy business environment in Vietnam and by strengthening US-Vietnam commercial ties. We will continue to play a helpful and constructive role, not just to complain but to also work to identify and



implement solutions, and to be a strong advocate for a better business environment in Vietnam. Much work remains to be done. We want Vietnam to succeed and AmCham remains committed to working with our partners in the Government to help solve problems and to create a more attractive, transparent, and stable business environment here.

I wish good health, happiness and success to the leaders, distinguished guests, and our members here today, and I thank you for this opportunity to address the Vietnam Business Forum.



European Chamber of Commerce in Vietnam ("EuroCham")

**EUROCHAM STATEMENT**  
Annual Vietnam Business Forum  
Hanoi, December 2, 2014

*Presented by  
Mr. Tomaso Andreatta  
Vice Chairman*

Honorable Prime Minister, Ministers, Chambers of Commerce, Ladies and Gentlemen: On behalf of the European Chamber of Commerce in Vietnam (EuroCham) and its partner European Business Groups, I would like to thank the Prime Minister, the Ministry of Planning and Investment, and all the authorities represented here today for engaging in this constructive dialogue through the Vietnam Business Forum.

First of all let me congratulate the very successful work of this government in stabilizing the economy thus giving companies in Vietnam a favorable macroeconomic environment to work in. Now one the next steps to make is to resume investment in infrastructure, which is indispensable to the survival of Vietnam as a viable economy. Massive investment in both logistics and energy is needed to keep producing goods and moving them and to increase the productivity of labor which is still low compared to regional standards, as recently reported by McKinsey & Co.

Government debt, which until recently was at safe levels is fast increasing and may soon reach levels that may have consequences on the international perception of risk of Vietnam. As reported by VCCI, the State budget might be able to meet at most 50% of Vietnam's infrastructure needs, which are estimated at USD 170 billion from 2011-2020.<sup>1</sup> One way to improve this is to improve the revenue from tax, especially by fighting total tax avoidance, and by limiting expenses. This means investment cannot come from the government and we know it cannot all come from local banks, whose capital is limited and whose resources are still tied up in managing the existing portfolio. ODA is a blessing to this country but it is not enough and the gradual move of Vietnam towards middle income levels will progressively reduce the level of grace and subsidy of government to government support and the same for supranational entities.

The only viable option is to attract private capital from the world in the form of project financing. We shall reiterate the opinion of all specialists from everywhere in the world that there is need to rethink the legal framework for projects whose financing is based on cash flow so that international companies' risk is reduced to levels that are really bankable. There is a lot of interest from infrastructure operators and from banks and funds to bring money to Vietnam, but with the current rules it is almost impossible and meanwhile other ASEAN countries, which on average are well ahead of us in terms of rules and experience, are continuing their improvements and attracting increasing investment.

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<sup>1</sup>Available at [http://vccinews.com/news\\_detail.asp?news\\_id=30318](http://vccinews.com/news_detail.asp?news_id=30318)

Another potential great legacy of this government may be in relaunching the local economic activity. This can be done by revamping confidence in the real estate and construction markets, but perhaps allowing for further rapid correction downwards of prices so that the less rich can afford entering the market and by stimulating international commerce, which is already the most dynamic part of the Vietnamese economy. More international companies have to be enticed to come and invest here, in a more diffuse and capillary way, and local companies have to waken up to competition as they would use any form of shelter or protection to delay the process of reform. Finally the reform of SOEs will give more steam to the third of the economy they represent as well as gradually decreasing the resources tied up in that sector by Government and banks alike.

The Vietnamese government is in the process of negotiating Free Trade Agreements that have the potential of providing a strong and long term boost to the economy. In particular work for the EU-Vietnam FTA has been intense and there are hopes that an agreement may be reached in the spring next year. Eurocham is very supportive of this process and contributes as it can to the reaching of a good agreement. We believe that it is crucial to negotiate in a way that can help Vietnam the most: this agreement, as well as TPP with our US friends and many others, can be used to help the realization of reforms be more rapid, the restructuring of the economy more complete and also to increase the level of confidence international investors have for Vietnam. In this light, choosing a rule based approach rather than arguing for a case by case analysis will increase certainty, rapidity of decision and allow all actors, from Customs to Government to Business to investors, to understand the system and be able to cope with the great volume of issues that will arise. And giving everyone the same benefits will greatly simplify the work of managing the adjustment process and will make long term friends in the whole world.

Vietnam will win if it opens the market as widely and rapidly as possible, as its own companies and especially the SOEs will have to evolve and learn to swim in the sea of real competition, otherwise it will be overtaken by the very partners it has teamed up in the ASEAN Economic Community.

Likewise Vietnamese consumers and citizens will lose in terms of price and quality of products and services available to them, but also the Vietnamese industry will be penalized by being induced to use lower quality cheaper imports for plants and equipment and for intermediate inputs, as after applying proportional tariffs they become relatively even cheaper than European ones.

If properly implemented, the FTA will not only facilitate trade by removing tariffs, but may also ensure better consistency between the EU's and Vietnam's quality and safety standards via a stable regulatory framework. This will be made easier through the transfer of technology and skills brought by increased FDI, a necessity for Vietnam to avoid the so-called 'middle income trap'.

Since last June, the confidence of European investors' who are already here, in the Vietnamese economy kept increasing, as is it clearly demonstrated by the results of EuroCham's Business Climate Index for the third quarter of 2014, which climbed from 66 up to 74, approaching levels reached in the first quarters of 2011. The jump observed in the past few months is caused by high expectations from the European business community about a further opening of the market following the successful conclusion of the negotiations of the EU Vietnam FTA.

Yesterday Eurocham launched its annual White Book, our summary of all recommendations to the Vietnamese government. I would like to choose a few big themes that are worth mentioning especially in the context of the negotiation of the EU Vietnam FTA.

## **I. INTELLECTUAL PROPERTY RIGHTS**

While Vietnam has substantially improved its legal framework and enforcement of IPR following the accession to WTO, infringements remain an issue for European and Vietnamese businesses alike, and have serious consequences on Vietnamese consumers and all companies. Vietnam has to ensure an effective protection of IPR in order to develop technologically-advanced industries, and promote innovation. This will attract foreign investment in manufacturing and research and development and will encourage Vietnamese companies to invest in innovative and creative activities. Investment in high-quality products and brand name is encouraged when the risk for the reputation of a company to be undermined by lower quality copies is low. This can only be achieved by ensuring that trademark and copyright infringements face dissuasive legal penalties.

Improving the fight against counterfeiting would also benefit the Vietnamese society as a whole by guaranteeing access to high-quality products for the population, notably when it comes to medicines and pesticides.

## **II. ACCEPTING INTERNATIONAL STANDARDS**

Aligning with or recognizing international will help ensuring transparency and consistency, and will contribute to facilitating trade and investment. It will also reduce an important administrative burden both for foreign businesses and for the Vietnamese authorities, and speed up procedures, especially in the case of fast moving consumer goods.

The recognition of international testing methods and standards is an issue encountered by several sectors. When it comes to food products, it would guarantee the availability of healthy and safe products for Vietnamese consumers. Likewise, the non-recognition of clinical trials conducted by foreign laboratories delays the launch of innovative medicine already available and approved in developed countries for Vietnamese patients.

## **III. FOSTERING THE GROWTH OF ADDITIONAL VOLUNTARY PENSION FUNDS**

On 20 January 2014, Decision No. 144/QĐ-TTg approving the establishment and development scheme of voluntary pension programmes in Vietnam was adopted by Prime Minister Nguyen Tan Dung.

Today there are only three main companies offering them. In part it is due to the very low threshold for tax breaks given to this category of investment. Many companies, especially among the foreign invested ones would be ready to give more generous contributions to voluntary pension funds, and already some do regardless of the tax , for example in the distribution business.

In many countries voluntary pension funds are run by trade unions and Vietnam could also allow trade unions and professional organizations, starting from VCCI, to launch voluntary contribution pension funds. It would be an important addition also for the agricultural sector, where people have less protection as they are usually not employed. Banks are also usually an important player in this market both because of the higher capital available and the distribution power.

The development of Voluntary Pension Funds will help coping with the gradual age increase of the population average and the already well identified problem of the statutory pensions, will immediately create jobs and funnel liquidity now hidden under the mattress towards the Stock Exchange, the Bond Market and the Real Estate, it will also become a major source of funds for PF and PPP, if the funds are allowed to invest in these asset categories. The benefits to the financial and real estate markets would be of a structural increase of level, due to the injection of new funds, invested by long term investors.

#### **IV. DISCRIMINATED INDUSTRIES**

Finally, some sectors are still underdeveloped and discourage foreign investment such as banking with the limitation to foreign participation to the capital of local banks, or insurance and financial companies, pharmacy, where local companies have better or exclusive access to the hospitals and trading and distribution rights are effectively withheld from international companies, and the same applied to consumer distribution, where international companies have many limitations to opening and expanding.

Last June EuroCham proposed 5 main points for priority action by the Vietnamese Government: Respect and implementation of the full spirit of the WTO, even beyond the specific and limited commitments which are not yet fully realised, prior to signing an FTA; distribution licensing for foreign companies; visa issues to facilitate tourism and business visits; removal of any cap for foreign ownership in particular in the financial sector, and a business-to-Government Dispute Settlement Procedure. We also recommended the government to consider carefully the affordability of strategic projects by choosing for example to develop a traditional system of railways that will in total cost as much as just to do the feasibility study of the high speed train, that Vietnam can only hope it will be given as a very expensive present and not so soon.

It is still early to register progress and we monitor the positive efforts this government is making is tackling them.

EuroCham we will continue to work hard to help ensure the successful conclusion of a strong, implementable EU-Vietnam FTA, and if possible within this year. The above suggestions were made having in mind in the interests of our members, the European business community in Vietnam but also the long term interests of the all the people and the companies of Vietnam. We sincerely hope our recommendations will assist the Government in reaching this goal and EuroCham will continue to support, where possible, in striving towards achieving this.



Korea Chamber of Business in Vietnam ("KorCham")

## **KORCHAM POSITION PAPER**

Annual Vietnam Business Forum 2014

Hanoi, December 2, 2014

*Presented by  
Mr. Kim Jung In  
Chairman*

### **INTRODUCTION**

Honourable Ministers, Ambassadors, Co-Chairs of the Vietnam Business Forum ("**VBF**"), Ladies and Gentlemen: On behalf of the Korea Chamber of Business in Vietnam, we would like to first thank the Vietnamese Government for facilitating this ongoing dialogue at the VBF. We sincerely appreciate the opportunity to contribute at this forum.

Please find below a summary of five (5) key issues that are of concern to Korean enterprises in Vietnam. We hope the legislators will take it under consideration and address them in a prompt manner.

### **I. TRANSFER PRICING INVESTIGATIONS/AUDITS**

In 2012, the Government established a specialized transfer price investigation team under the General Department of Taxation ("**GDT**") to administer the transfer pricing compliance of taxpayers. More specifically, we understand that the Government invited experts in transfer pricing from EU to provide a year-long training course to the public officials.

Since the 4th quarter of 2013, the GDT's transfer pricing investigation team and each provincial tax authorities started carrying out a large-scale compliance investigation/audit with focus on enterprises in textile, shoes and sewing industries in large provinces and cities, including Southern Dong Nai Province, Binh Duong Province, Northern VinhPhuc Province, Phu Tho Province, and Hanoi.

Many Korean leading enterprises in the garment and textile industries have been targets of this compliance investigation/audit. In fact, certain enterprises have already been imposed additional taxes and penalties without being given any opportunity to defend their position. From our understanding, the tax authorities selected four (4) to five (5) similar businesses in Vietnam and imposed tax on them for the difference of transactional net margin (sales profit/[sales unit cost + sales management cost]). And since there is virtually no standard on selection of companies for this comparison, certain enterprises that have been investigated are facing difficulties in taking the appropriate action(s).

While the National Assembly introduced the regulations on Advanced Pricing Agreement ("**APA**") in the Law on Tax Administration (Law No. 21/2012/QH13, Decree No. 83/2013/ND-CP), the enterprises are still left wondering about the details of the new enforcement procedures.

**Recommendation:** While we understand that the tax authorities do not have an obligation to disclose the data that serves as a basis for calculation of comparing price when determining the transfer price (since such data is classified as 'non-disclosable inspection data' under Circular No. 56/2013/TT-BCA-A81 of the Ministry of Public Security), it should be recognized that many foreign enterprises are facing various difficulties in submitting documents to and responding to

transfer price questions from the tax authorities as they are simply unclear about the calculation method that are being employed by the tax authorities.

In light of the above, it is highly recommended that the tax authorities propose a transparent guideline on the said calculation method. In addition, the tax authorities should grant a period-of-grace after the guideline issuance so that the enterprises can carry out proper preparation for the compliance investigation. If urgent changes are not implemented, it appears that most of the foreign enterprises in the manufacturing sector will likely be subject to additional tax and penalties.

## **II. REGULATIONS ON TREATMENT OF WASTEWATER**

According to Decree No. 80/2014/ND-CP, wastewater from a plant can be classified as either domestic wastewater or other types of wastewater. Domestic wastewater refers to laundry, dish-washing and human waste. Domestic wastewater can be stored in a simple septic tank before being discharged into the drainage system. As for other types of wastewater, it must go through an internal wastewater treatment system built at the plant to neutralize or remove the harmful chemicals before being discharged into the drainage system.

In the past, the Government only focused on treatment of other types of wastewater (and not domestic wastewater). However, recently, other types of wastewater as well as domestic wastewater discharged from the plants are being subject to stricter regulations under Decree No. 179/2013/ND-CP and the National Technical Regulation on Domestic Wastewater QCVN 14:2008/BTNMT.

For example, a garment factory which only discharges domestic wastewater from employees has been imposed a penalty for exceeding the maximum level despite having installed a large scale self-septic tank. Moreover, for companies that discharge a significant amount of domestic wastewater, installation of internal wastewater facility is being required.

### ***Recommendation:***

It should be noted that most garment factories do not have their own wastewater treatment facility. Installation of an internal wastewater treatment facility, if required by the authorities, would cost the company at least VND600 million, excluding maintenance cost. However, since domestic wastewater is treatable through the drainage system, it is our view that the requirement to install an internal wastewater treatment facility to process domestic wastewater is unnecessary and unreasonable.

## **III. CERTIFICATE OF ORIGIN ISSUANCE**

Currently, enterprises located in rural areas must travel far, to locations such as Hanoi, to submit application for Certificate of Origin (“C/O”) issuance with the competent authorities. To date, only a handful of provincial authorities are issuing the C/O. Most regional provincial authorities have failed to pay any attention to this issue. Therefore, enterprises located in regions where the provincial authority are not (or unwilling to) issue the C/O are faced with problems of having to travel to Hanoi and incur additional time.

***Recommendation:*** While we understand that Circular 21/2010 of the Ministry of Industry and Trade provides that there are already fifty-four (54) agencies in Vietnam that issue C/O, in practice, we don’t think this is really the case. As such, we hope that each provincial authority may consider engaging in issuing the C/O to ensure consistency in the state of investment management and for convenience of enterprises located in rural areas.

#### **IV. REGULATIONS ON IMPORT OF USED MACHINERY, EQUIPMENT AND PRODUCT LINES**

According to Circular No. 20/2014/TT-BKHCN, used machinery and equipment can be exported to Vietnam only if the following two (2) conditions are met:

- The usage time does not exceed five (5) years; and
- The quality is equal to at least 80% of the original quality.

In order to prove the satisfaction of the above conditions, the importer must present the following documents, among others:

- Technical documents showing the year of manufacturing; and
- Quality Inspection Certificate issued by the designated Vietnamese inspection organization or the qualified foreign inspection organization.

Due to various objections by many foreign-invested enterprises, the Government decided to postpone the implementation of this Circular until further notice. However, since this Circular has not been fully invalidated, many foreign investors are still concerned that in the near future they will have to ensure that their imported machinery, equipment and product lines (i) have not been used for more than five (5) years and (ii) satisfy 80% of the original quality.

In our view, the phrase “satisfy 80% of the original quality” is ambiguous and does not impose any clear standard. Moreover, given machinery and production lines are normally manufactured in-house and/or are strictly protected as business trade secret, it is impracticable to have them evaluated by a third party. Even when the imported products satisfy these criteria, the fact that the importer will be required to produce technical documents and qualification requirements will over complicate the import procedures and potentially cause delays in the process.

**Recommendation:** In our view, the Government should provide more incentives to promote the import of high-technology machinery, equipment and production lines rather than imposing stricter requirements. In fact, such restrictions may discourage/hinder foreign investment. Therefore, the Government should seriously consider loosening the requirements as follows:

- Define in details the concept of “usage time” (what can be considered as starting milestone for the “usage time”? What if the machineries were used intermittently?)
- Lower the threshold of “80% of the original quality” and provide more clarification/explanation on this item to prevent it from being open to many interpretations;
- Vary the regulations on the basis of specific characteristics of the machinery, equipment, and production line in each industry; and  
Simplify the import procedures.

#### **V. IMPORT TAX EXEMPTION**

According to Circular No. 128/2013/TT-BTC, certified high-tech company is eligible for import tax exemption when importing production materials to manufacture hi-tech products. However, even while certain Korean enterprises are certified high-tech company and eligible for import tax exemption, preferential benefits are rarely being granted due to the Customs Authorities’ lack of application and understanding of the related laws. For example, even though certified high-tech companies have been submitting a list of high-tech materials entitled to import tax exemption along with other relevant legal instruments to the Customs Authorities, such requests are rarely being dealt with.

**Recommendation:** We recommend that the Customs Authorities urgently promote the application of preferential benefits to certified hi-tech companies. In short, the Customs Authorities should provide a clear guideline on how to apply for import tax exemption for certified high-tech production materials





The Japan Business Association in Vietnam (“JBAV”)

## STATEMENT BY JBAV

Annual Vietnam Business Forum 2014

Hanoi, December 2, 2014

*Presented by*

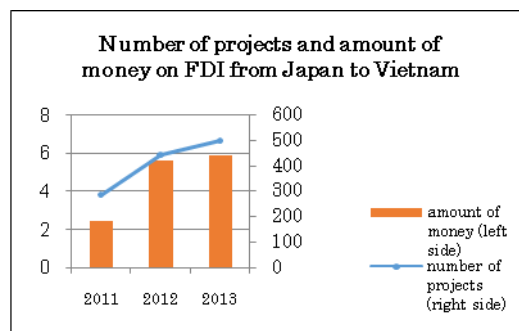
*Mr. Shimon Tokuyama*

*Chairman of Business Forum Committee*

### 1. INTRODUCTION

His Excellency the Minister of MPI and all persons concerned,

On behalf of Japanese companies, we would like to address our appreciation to MPI and the Vietnamese Government for their continued support towards businesses and investments of Japanese companies. Last year, Vietnam and Japan celebrated the 40th anniversary of the establishment of diplomatic relations, and we are very honored that we could establish an irreplaceable relationship with each other. Both the number of investment projects and the total amount of FDI from Japan has improved for last 3 years as the graph below shows. The member companies of three Japanese Business Associations in Vietnam have increased to 1,388, as of Oct 2014. This number is the second largest in ASEAN, after Thailand. The total accumulated amount of permitted investment from Japan is 36.5 billion dollars, which is the largest amount in all countries and regions.



*Source: JETRO HP, Foreign Investment Agency (FIA)*

For improvement of the business environment in Vietnam and further economic development, we would like to present the following 4 challenges that the Vietnamese Government has to tackle.

### 2. FOUR CHALLENGES FOR A BETTER BUSINESS AND INVESTMENT ENVIRONMENT

#### 2.1. Amendment of Law of Investment, and Law of Enterprise

We appreciate the efforts of the Vietnamese Government to amend and improve both Laws to enhance the country's competitiveness. On the other side, we recognize that those 2 draft Laws contain sentences unfavorable to foreign investors, even when compared with current laws. We would like to raise 7 issues to improve both laws, they are as follows:

- a) Government guarantee on availability of foreign currency is a critical condition for foreign investors looking to invest in Vietnam. Therefore, we request the insertion of the clause “foreign currency demand of investment projects in accordance with the Government investment program and of other important infrastructure investment should be guaranteed

under the authority of the Prime Minister” into the new Law on Investment, as in the current Law on Investment.

- b) Preferential treatment given to an investor, for example, exemption of tax and elimination of land fees should not be requisitioned by the Government's own discretion, because it is an important condition for an investor. Therefore, the case of requisition of preferred treatment should be limited to an exceptional cases and enough compensation should be paid to the investor if such a case occurs.
- c) Regarding governing laws and dispute resolution clauses, we would like to request that all foreign investment enterprises in Vietnam (enterprises with foreign owned capital, such as BOT Company) can apply (i) foreign law as governing law and (ii) foreign/international arbitration in dispute resolution.
- d) The Investment Certificate should be maintained as the only requested procedure for establishing a company and starting investment activities.
- e) As for the voting percentage required for the resolution of a members' council, it should be 51% for ordinary resolution and 65% for special resolution in accordance with the international general rule.
- f) Regarding the requirement about capital account used for the settlement of the purchase and sale of shares, there is inconsistency between the draft of the new Law on Enterprise and the Circular 19/2014/TT-NHNN. The requirement must be consistent.
- g) As large projects, such as infrastructure projects, require capital contribution at several hundred million to billions of USD, three (3) years moratorium for the payment of capital, which is provided under the current Law, should be maintained in the new Law on Enterprise.

## **2.2. Restriction on overtime work in the Labor Law.**

Compared with other Asian nations, the restriction on overtime work under the current Labor Law of Vietnam is too strict and is a burden to business operations. Labor Law of Japan stipulates a scheme that can extend the limitation of overtime work based on an agreement by both employer and workers. As we had already submitted a proposal to His Excellency, Prime Minister Nguyen Tan Dung on April 22nd of this year, this challenge can be resolved without amending the Law if such scheme of Japan would be introduced.

## **2.3. Building a transparent system to decide annual minimum wage**

The rapid increase rate of annual minimum wage since the year of 2011, which often by far surpassed that of CPI, is also unfavorable to business operations. Members of The National Council for Wage should include third-party members, such as lawyers or professors, who can state their opinion independently and objectively, and the actual living cost of workers that the Council refers to needs to be independently investigated.

## **2.4. Development of supporting industries**

Approaching to the start of ATIGA, development of supporting industries needs to be accelerated. The decree for development of supporting industries which is now being drafted by the MOIT has to be more effective and consistent. Particularly, a clear cut definition of "supporting industry" must be stipulated, a guideline for screening application of tax incentives be formulated, and implementation of the guideline which comes with the simplest procedures.

Additionally, fostering local small and medium sized enterprises (SMEs) is also essential to develop supporting industries. More effective measures need to be taken, such as providing loans with advantageous interest rate and tax privileges.

### **3. CONCLUSION**

In addition to the above 4 issues, we would like to request the restriction of importing used-machines is judged only by the residual function, and the certification authority of environmental regulation respond more smoothly and quickly.

Finally, under the ASEAN Economic Community (AEC), a single regional common market of 600 million people will be created in 2015. Most of the import duties will be abolished, and competition among the countries will be intense. The Vietnamese Government has to be keen on developing industries through the investment of foreign enterprises, and clarify original industrial policy.

We would like to continue contributing towards the socio-economic development of Vietnam as a representative of Japanese companies in this country. For this purpose, we look forward to collaborating with the Vietnamese Government and all our members & partners from now on.



Canadian Chamber of Commerce in Vietnam ("CanCham")

**CANCHAM POSITION PAPER**  
Annual Vietnam Business Forum 2014  
Hanoi, December 2, 2014

*Presented by  
Mr. Antony Nezic  
President*

**THE PATH TO GROWTH: TRADE AND SOE REFORMS**

**INTRODUCTION**

The Canadian Chamber of Commerce Vietnam ("CanCham") fully supports the Trans Pacific Partnership ("TPP"), not only for the sake of Canadian interests and as a TPP partner country, but for Vietnam business, and society interests as well. The structural reforms and compromises required will be good for trade and therefore, good for Vietnamese national interests and stability and Vietnam's regional and international position. Increasingly, trade is becoming one of the few means by which global growth, and Vietnam growth hinges upon. The benefit of TPP for Vietnam, therefore, is twofold – growth from growth in trade, and growth from structural reform. CanCham would like to emphasise that from our view, structural reform in State Owned Enterprises ("SOEs") is the key to finally unlocking this growth potential with reform of SOE in agriculture and agribusiness as of paramount importance.

In this last quarter of 2014, outside of the US, global growth is stagnating, particularly in Europe and Japan, which are currently in recession and where policies are failing to elicit growth. For Japan and Europe, opportunities for growth are primarily dependent on (a) strengthening Trade and (b) on deregulation. With a Republican Senate, there is likelihood of a stronger trade focus and support in the U.S., as long as the Senate can find a way to support the Administration's trade agenda. The TPP is a key means for Vietnam to diversify its strategic trading interests with Japan and the EU, with a broader trading partnership, of which it can take a leadership role.

This trade and growth codependent scenario is good news for the TPP and offers Vietnam a unique opportunity at present, to take leadership on trade related policy, to the advantage of all Partnership countries, and to accelerate the structural reforms, and the reform of the SOEs, in particular.

Canada particularly supports and understands the position of Vietnam in the TPP negotiations and in the reform of their SOEs.

1. CanCham understands and supports Vietnam, in overcoming the challenges of omnibus trade agreements with larger trading partners. The benefits, similar to the 1987 Canada US Free Trade Agreement ("FTA"), will be critical for Vietnam.
2. Canada has also had the experience of restructuring SOEs to comply with trade policy and economic opportunity in the 80s and 90s.
3. Vietnam will flourish – particularly regionally, and remain sheltered under the 'TPP roof'
4. The critical task of policy implementation and reforms must accelerate in every scenario, and particularly to take a leadership role in the TPP with her larger trading partners.

## SOE RESTRUCTURING

We would like to emphasize the importance of *Implementation*, especially in the context of preparing for new trade agreements. The Government of Vietnam and the Prime Minister are well aware of the need to act. For example, accession to the TPP for Vietnam was early, in 2008, under the stewardship of Prime Minister. The issues are *how to compromise* to achieve the agenda.

The most challenging and most critical task from the CanCham view, is to restructure those SOEs which are burdening not only the financial system, but the social welfare system, human productivity, and the natural environment, in an orderly, market driven manner, and to be able then, to distribute those benefits equitably amongst all Vietnamese. For those SOEs which are simply highly unproductive or ineffective, to open these up for capital and therefore, management and technology infusion...or transfusion. For those that are beyond repair, to write these off and to encourage public private partnerships to fill their mandates.

The results of this will include the strengthening of Vietnam's national position, regionally – as a stronger nation economically and a destination for capital and technical investment, and trade.

## EXPERIENCE IN RESTRUCTURING OUR SOES UNDER THE CANADA US FTA

Adam Smith referred to *monopolies* as '*a great enemy to good management*'. SOEs are monopolies and have proven globally to be a great enemy to good management.

Canada went through a major restructuring of our SOEs during the 1980s in the lead up and in the aftermath of the Canada US FTA. Like Vietnam, Canada had very strong opponents to SOE restructuring – on the basis of national interest, on the incubation of important industries, and on the basis of national interest in the face of becoming "Americanized". In fact, by being a weaker economy, Canada was more likely to be influenced unduly by our stronger neighbour to the South. By being a stronger country economically, Canada was able to forge out private national companies that are globally competitive.

The 1987 Canada – US FTA was an historical agreement creating the largest free trade area by phasing out a wide array of trade restrictions and undertaking a structural reorganisation of the economy over a 10 year period.

A former Canadian Finance Minister at the time asked Canadians, who were largely fearful of losing our "national interests", to take a "Leap of Faith" and pursue a Free Trade Agreement with a more powerful and larger United States.

The result for Canada has been:

- less reliant on a single trading partner as we became more attractive as a single market and single trading area;
- products and services in Canada are now more efficient and productive;
- lower value added industry moved elsewhere;
- Canada's regulatory environment evolved – establishing and ensuring a strong financial and capital market – that was, for example, completely insulated from the Financial Crises of 2008-09; and
- Canada has arguably strengthened our independence and unique values and cultural differences with America as the result of being economically stronger.

Canada restructured Air Canada, PetroCanada, Canadian National Rail, Bombardier, for example – all of which are now internationally recognised and many times more valuable companies. Like Vietnam, Canada had a national oil and gas company – PetroCanada with a stated policy of "economic nationalism", established in 1971. It was fully privatized by 1991 after

the establishment of our free trade agreements. The company valuation has since grown multiple times. The privatization of the Canadian National Rail system occurred a year later in 1992, and was estimated to have generated \$15b of value at that time. The loss of rail system support to farmers and the agriculture sector was not harmful, but was rather strengthened as the Rail system had now sufficient capital to develop infrastructure and establish the most efficient rail network in North America, where Canada can transport from Vancouver to the Mississippi or to Chicago cheaper and faster than if goods are shipped to the U.S.

#### **HIGHLIGHT – STRUCTURAL REFORM IN AGRICULTURE SOE**

Of all the sectors requiring immediate reform, CanCham believes a key sector is agriculture. There is no advantage at all to having commercial state interests in agriculture. For the millions of farmers, or those involved in the agriculture supply chain, it will remain impossible to attract the required and requested agriculture foreign investment and technologies, with State and affiliated companies active in the sector. They work only to simultaneously effect to crowd out the urgently necessary strategic investments required to bring or nurture world class technologies, processes and systems into the agriculture sector.

More policies or studies are not the issue. The woeful and declining numbers regarding FDI in agriculture while simultaneously looking at declining productivity in rice, coffee, and other key commodities over the last decades is a clear indication of the need to reform the willingness of the government to encourage the participation of foreign capital, technology, and systems in agriculture. The linkages that Samsung has brought to the technology and manufacturing sector in Vietnam could be replicated with similar open door policies to licensing investments in the agriculture and agriculture technologies. This industrialization of agriculture will have enormous positive consequences for the rural development and stem the urbanisation and misuse of valuable agriculture land.

The TPP will act like a stock market, in practice. Business owners, capital and investors understand the value of a vibrant stock market with independent rules, transparency, and strong governance. Companies readily 'offer' their listings and their guidance to the rules and regulations that a stock market necessitates, because it offers those companies and participants huge benefits of being 'inside that club' of listed companies. TPP countries will face the same benefits of being 'inside the clubhouse'. Vietnam will be the only country on the peninsula that will be a member of this club, and will attract enormous attention, and international standing as part of this club. However, it requires that the country also must remove those unnecessary and retrograde policies that blemish the face of Vietnam to the outside world. We can urge from our own experience in Canada, and are at the same time partnering and supporting Vietnam to take that 'leap of faith', to implement the necessary rules and policies with confidence for the maturity, development, and benefit of the great people of Vietnam.

Canadian Chamber of Commerce in Vietnam, wishes to share our experience and to confirm with Vietnam that reforms of state ownership should not be seen as a threat to the national interests. The benefits of reform also include the opportunity for Vietnam to take a leadership position amongst Vietnam's friends and partners within the TPP and the global arena, and as a means to strengthen Vietnam interests and position nationally, regionally, and internationally. As always, we are prepared and eager to work alongside our hosts and partners in Vietnam, to achieve both Canadian and Vietnam's commercial and social interests.

## Section II

# **BANKING & CAPITAL MARKETS**

Main discussion topics:  
Financial Sector and State-owned  
Enterprise Reforms

# *Banking*



**BANKING POSITION PAPER**

*Prepared by  
Banking Working Group*

**EXECUTIVE SUMMARY**

Vietnam has achieved tremendous success in developing the economy while also preserving social order and tradition. In the financial sector, Vietnam has weathered several international crises, while successfully taming inflation and the impacts of a credit bubble.

In looking to the future, forces such as ASEAN integration, AFTA and potential trade agreements such as TPP will further shape the economy and competition. The Bank Working Group believes that Vietnam needs to move beyond the challenges in the bank sector of recent years, and begin today to set in place the financial markets to support Vietnam's economic growth in 2020 and beyond. This is about building institutional capacity to compete with and complement regional financial markets.

Some elements we believe that need to have focus in the years ahead are summarized as follows:

- Developing robust local currency debt capital markets for corporate issues to support longer tenor investment needs
- Expanding access to finance for SMEs
- Streamlining FX and Trade documentation to facilitate Vietnam's growing international export manufacturing base
- Leveraging technology advances in banking and payments to reduce cash payments in society (in particular payments to and from the government)
- Continuing the reforms and accelerating restructuring in local banking and SOE sector to ensure that lessons are learned from past, and bank sector is solidly recapitalized
- Improving institutional capacity at banks and regulatory bodies and ensuring ethical conduct in the industry.

Looking at 2014 and the year ahead, the Bank Working Group continues to applaud the strengthening of regulation in the financial sector. However, we continue to note that often legislation is issued where aspects of implementation is unclear. The Bank Working Group is concerned that with stronger enforcement (Decree 96), banks cannot afford to have unclear or ambiguous interpretation of regulation. We strongly urge the SBV and Government to ensure adequate timeframes for consultation and implementation of new laws, and where there is ambiguity, written responses to all banks should be provided on a timely basis.

In this regard, a summary of key issues requiring clarification at present includes:

- FX management: We have submitted letters seeking for the SBV guidance in implementing a number of FX regulations (Decree 70, Circulars 5, 19, 16, 21, 23, etc). Issues regarding licensing, supporting documentation (including consularization requirements), routing payments via capital accounts, FCY savings by foreigners and the structure of accounts by foreign indirect investors require urgent clarification.
- AML: We await a new circular clarifying implementation of 2013 and 2014 AML regulation, in particular as certain aspects of Circular 35 are proving impractical to implement. As AML is a global regulatory priority, the Bank Working Group strongly notes that foreign bank head offices are uncomfortable with continued "verbal" clarifications and we strongly request that proposed changes be published as soon as possible.
- Loan Rollover/Extensions: The BWG understands that new regulations are expected to update Circular 1627. In particular, the BWG notes that the recent OL 7059 restricting loan extensions needs to be reconsidered, as loan rollovers within approved credit lines by good

quality borrowers is not an indication of financial weakness, and is a normal practice in international markets.

- E-customs & Supporting Documentation: The BWG continues to recommend a streamlining of documentation requirements, in particular as E-customs is a reality.
- Decree 96: The BWG recommends that the penalties envisaged under Decree 96 not apply to cases of “self identification” by banks. It is important that bank staff be encouraged to escalate mistakes or errors without fear, and in turn that management act to rectify and report issues proactively.
- Consumer Finance Draft Lending Regulations: The BWG welcomes legislation of this growing non-bank sector, and has raised specific comments regarding topics including scoring, risk acceptance criteria, and supervision of loans. Furthermore, the BWG wishes to ensure clarity of legislation as to coverage of bank consumer lending operations.

The BWG has also provided a detailed list of pending issues of lower urgency than the above, and looks forward to receiving clarification from the SBV.

## **CONCLUSION**

Many of the issues and comments highlighted arise as a result of a clear and urgent drive by the State Bank of Vietnam to create a better governed, more transparent banking system. Vietnam is moving steadily and progressively to this aim and there is increasing confidence that this is the right direction.

The BWG remains committed to help in any way possible in furthering Vietnam’s financial market development to serve the needs of our customers and the nation.

## BANKING POSITION PAPER

Vietnam has achieved tremendous success in developing the economy while also preserving social order and tradition. GDP per capita has gone from below \$100 when renovation (Doi moi) began, to around \$1750 per capita last year. Poverty has dropped; Vietnam is expected to meet 7 of the 10 millennium development goals. In the financial sector, Vietnam has weathered several international crises, while successfully taming inflation and the impacts of a credit bubble.

In looking to the future, forces such as ASEAN integration, ASEAN Free Trade Area (“AFTA”) and potential trade agreements such as Trans-Pacific Strategic Economic Partnership Agreement (“TPP”) will further shape the economy and competition. In this regard, the Bank Working Group believes that Vietnam needs to move beyond the challenges in the bank sector of recent years, and begin today to set in place the financial markets to support Vietnam’s economic growth in 2020 and beyond.

This is not just a question of introducing Basel II or improving governance and risk management frameworks in the domestic banks (which remains critical), it is about building institutional capacity to compete with and complement regional financial markets. Some elements we believe that need to have focus in the years ahead are summarized as follows.

- *Capital markets* – Most local banks in Vietnam are facing with huge asset-liability maturity mismatch with an averaged 80%+ of liabilities are shorter than 6 months tenor while an averaged 40% of assets have duration of more than 3 years. With historical volatility of interest rates, it would pose big interest risks to banks, leading to periodical liquidity crunch and potential systematic risks to the local banking sector. One of the key solutions to address this maturity mismatch risk is to develop further the currently fragile and weak local capital markets.

The development of local debt capital market and efficient platform for asset/liability management will definitely benefit many areas in Vietnam – including but not limited to 1) better access of diverse sources of capital for corporations and financial institutions, 2) more selection of investment tools for financial investors (domestic and foreign), 3) stable usage of local currency as means of business and capital (breaking away from USD or other hard currency), 4) effective management of interest rate exposures for both investors and issuers, 5) less shock and volatility from government’s macro-economic policy shifts, and more.

However, the development of local debt capital market and efficient management of asset/liability will not come easily at the current situation. A lot of efforts and platform building/providing from the regulator (also government and market participant collaboration) will be necessary in order for this to happen. The following are the pre-requisites to enable the development of local debt capital market and enhance asset/liability management;

- Need solid local accounting standards that meet international standards (or at least close to).
- Legal framework involving bankruptcy/default needs to be enhanced significantly to ensure support for investors.
- The introduction of Mark-to-Market (on both market risk and credit risk) methodology will be crucial for the proper assessment of risk and book valuation.
- Unreasonable and ineffective regulations such as limiting IRS & CCS exposure by notional and imposing PL threshold (e.g. cap at 5%) will greatly hinder any development as these are backward moving measures – need to approach from Mark-to-Market and Value At Risk (VaR) perspective,

- The existing government bond and SBV bill market need to be improved substantially vis-à-vis volume and stability of issuances in key tenors as the government credit will be the basis of all local debt products.
  - Introduction of a true interest rate benchmark (need at least a stable 1 month or 3 month tenor) that is governed by the proper regulator (should be SBV),
  - Development of local currency IRS market to enable investors as well as issuers to manage asset/liability risk and tenor mismatch - this will not happen unless above issues are resolved.
  - Foreign bond issuers should be permitted to enter the Vietnamese bond market (for example to finance long term investments) which would create top-tier quality assets to the market and thus help expand bond investor-base
  - Local credit rating agency needs to be established following international best practices to enhance transparency and investor confidence throughout the bond tenor.
  - Foreign banks should be allowed to underwrite VND bonds to be able to bring more international issuers to Vietnam as well as introduce best international practices, corporate governance into the market.
- *SME finance* – Related to the development of capital markets is a related topic of finance to small businesses and entrepreneurs. By developing capital markets in Vietnam, there can be a shift of a portion lending out of bank sector (to pensions and insurance companies). Banks will then have a greater capacity to mobilize lending to other sectors, such as SME. Again, recognition needs to be developed that cash flow based lending needs to develop alongside the traditional secured lending. Small businesses typically will have working capital needs that go beyond the owner's ability to provide security, and if carefully and properly understood by the lender, this type of financing can unlock growth in areas which will strongly contribute to future growth. It is worth noting that in countries like Japan, Korea, and Taiwan, small businesses make up the majority of employment and have been vital to those countries success.
  - *Reducing barriers to international trade* – exports as a percentage of GDP have risen from around 50% of GDP in 2000, to approx. 89% of GDP in the year to date 2014. As regional integration continues, and in order for Vietnam to remain a competitive export manufacturing base, the approach towards foreign exchange, hedging, and documentation will need to be streamlined and modernized. Currently, both banks and their customers carry significant documentation burdens, and this needs to be simplified. Allowing both importers and exporters to better manage (hedge) their foreign currency flows for longer tenors would remove significant volatility and risk from their business. Again, many regional countries have successfully found ways to largely eliminate speculative or hostile currency actions, so we would hope that Vietnam can increasingly liberalize international trade and FX in the years ahead to legitimate trade purposes.
  - *Technology* – the technology available in international financial and payment systems is evolving rapidly, and there may be opportunities for Vietnam to “leapfrog” to new technologies rapidly, while at all times ensuring the safety and security of the country. For example, card or non-cash payment technologies are being adopted by several governments across the region, and being used to reduce the burdens of physical cash handling, enhance transparency and accounting, and reduce corruption related issues. There could be significant advantages to Vietnam in pursuing a robust e-governance strategy, with basic payments to and from the government being a possible area to start.
  - *Conduct* - Banking is an industry based on trust. Ethical and appropriate professional standards in banking need to be upheld. The BWG is currently examining approaches to improve conduct in Vietnam, and will share these ideas with the SBV in due course.

The BWG urges policy makers to consider themes like those listed above to further enhance Vietnam's position as one of ASEAN's leading economies in the years ahead.

Turning back to the situation today, the BWG is pleased to see tangible progress with regard to the restructuring of the financial sector following the release of the Banking Sector Restructuring Master Plan in March 2012. The operating environment for the banking system has stabilised, and government's balance sheet has remarkably improved. However, there remain some key challenges with regard to bank sector governance and risk management – which we expect will be addressed with new legislation shortly. We also would wish to see further changes to see resolution (or restructuring) of NPLs – indeed improvements to the legal framework to allow foreign participation in purchase of NPLs (and associated collateral, notably real estate) would be welcome. Clearly there is a need to recapitalize the banking sector, and we believe that taking clear steps in this regard quickly will benefit Vietnam's economy greatly.

However, we continue to note that often legislation is issued where aspects of implementation is unclear. The Bank Working Group is concerned that with stronger enforcement (Decree 96), banks cannot afford to have unclear or ambiguous interpretation of regulation. We strongly urge the SBV and Government to ensure adequate timeframes for consultation and implementation of new laws, and where there is ambiguity, written responses to all banks should be provided on a timely basis. In this regard, we continue to highlight specific themes for the SBV's attention and guidance along two themes:

- A. Key and emerging issues
- B. Pending and long standing issues.

## **SECTION A – KEY AND EMERGING ISSUES**

### **1. FX management**

We have submitted letters seeking for the SBV guidance in implementing a number of FX regulations (Decree 70, Circulars 19, 16, 21, 23, etc). While waiting for the official guideline from the SBV, we would like to highlight the following concern:

- FX licence: We recommend that banks should be allowed to carry out “basic” FX activities in both domestic and international markets so to meet client's needs, properly hedge associated risks, and ensure liquidity. Importantly, there should have no limitations on basis FX activities in the international market performed by foreign bank branches in term of client categories. Basic FX activities in international market should be licensed on an umbrella basis to reduce the unnecessary and heavy administrative workload for both banks and the SBV.
- Verifying supporting documents: there is a significant conflict between Decree 70 (Article 16) and Circular 16 (Article 9) on the obligation of banks with regard to this topic. We recommend the verification obligation of the bank is only to ensure that we meet the real need of our customer (vs. speculative purpose) and that the bank's service complies with the relevant laws and regulations. Banks should not be responsible for ensuring that clients are doing business in compliance with laws and regulations, which should be the responsibility of the clients and other judicial agencies.
- FCY saving deposit in cash by foreigners is currently not allowed under Article 13 of Decree 70. We would recommend the SBV to reconsider to allow banks to receive FCY saving deposits from foreigners working in Vietnam as it would be a waste of a funding source for banks and would make foreigners to remit all their legitimate income in Vietnam offshore.
- The lack of regulations on opening term deposits for resident organisations and individuals. This has led to different interpretation and thus different approach from banks such as stopping to accept term deposits from individual customers. Request that SBV to urgently issue guidance on this.

- Translation into Vietnamese with notarization and consularization of constituent and identity documents for account opening purposes (Article 12.3 of Circular 23): while we could understand the sovereign issue if those documents are to be submitted to a Government agency, we found this requirement is too much of a burden for commercial banks and foreign investors, particularly while Vietnam is aiming to international integration and commercial banks could have resource to read and understand documents in foreign language. We recommend that this requirement is to be eliminated.
- Opening Indirect Investment capital account under Circular 05/2014. Circular 05/2014/TT-NHNN dated 12/3/2014 stipulates that foreign indirect investment activities must be implemented via one indirect investment capital account (“IICA”) opened at one authorized bank. Sophisticated investors normally diversify their investment and request for multiple accounts opened at one bank for the purpose of their separated management of investment activities. Under international standard banking system, the bank will open multiple accounts for the client under an unique master client ID to accommodate such requirement. With this approach, the SBV management objective on aggregated indirect investment flows by client is still achieved as multiple accounts will be rolled up to one unique client master ID.

The requirement on opening only one IICA for an indirect foreign investor restricts the possibility of managing various investments in foreign investors’ portfolio which would potentially discourage the inflow of indirect foreign investments into the country. This in turn could adversely impact the development of Vietnam stock market. We recommend that SBV would allow the flexibility over multiple account structure in foreign indirect investment in order to meet legitimate demand of investors with the full reporting compliance by banks to SBV.

## 2. Rollover Loan / Loan Extensions

On 29 Sep. 2014, we received the Official Letter 7059/NHNN-TTGSNH dated 26 Sep. 2014 (OL 7059) on credit extension under the rollover scheme, which requires that:

- Credit institutions (“CIs”)/Foreign bank branches (“FBBs”) are to collect the total of principal and interest on the maturity date as agreed with customers in the credit contracts, not to wholly and partially rollover the outstanding amount.
- For the existing revolving contracts, CIs/FBBs are to negotiate with customers to amend the contracts.

We found these requirements and SBV’s decision on banning rollover loan contradicts normal international practices on lending, in particular when lending against normal working capital cash flows which fluctuate during the year.

Currently, a significant amount of credit at foreign banks’ branches and foreign wholly-owned banks that offers to customers is short-term loans for working capital financing purposes. Normally, the tenor of each loan (“**loan tenor**”) is several months which are in line with cash flow of one cycle of producing/trading/import-export goods. The rollover of short-term loans, which is recognized internationally, is preferred both firms and banks as follows:

To firms:

- The use of short-term capital cycle (a few months) helps reduce significantly the borrowing costs of the firms.
- “Healthy” firms often have credit relationships with many banks and the application of short-term tenor for each loan enables firms to choose bank with the most favorable interest rate at each point of time.

To banks:

- Ensures to make the best assessment of credit risk as well as cash flow and a customer’s ability to repay for each period (to decide whether to allow rollover of the loans)

The rollover of loans as presented above does not result from the diminished financial capacity or the customer's credit quality, but from the practical requirements of business operations. This does not in any way imply an increased level of credit risk, as banks will typically approve tenors far greater than actual loan drawdown tenors

However, according to current provisions of SBV as stated in many legal documents such as Decision 1627/2001/QĐ-NHN dated 31/12/2001 of the Governor of the State Bank issuing regulation on lending by credit institutions to clients ("Decision 1627") and Circular 02/2013/NHNN on classification of assets, levels and method of setting up risk provisions, and use of provisions against credit risks ("Circular 02"), rollover of loans will create an unreliable and negative picture of banks' status on non-performing loan which will then affect the reputation and operation of banks and firms in particular and the business climate of Vietnam in general. Furthermore, the quality and status of credit of firms and customers will also not be truly reflected by applying these provisions.

We understand that a new draft circular is in preparation to amend aspects of Decision 1627, and very much hope that the State Bank of Vietnam shall consider allowing rollover of short-term loans (less than 1 year) and more importantly, not consider rollover as extension of debt or negative in terms of provisioning.

### **3. Decree 96/2014/ND-CP on Civil penalization in relation to monetary and banking practices**

Decree 96 is clearly intended to strongly enhance the effectiveness of bank enforcement and oversight in Vietnam. In this regard, we applaud the Government for such a comprehensive and detailed approach.

One important point we would wish to highlight is the concept of "self-identified" issues. Most international banks train and encourage our staff to come forward and report, escalate issues in their work. Whether minor mistakes, or more significant operational challenges, the concept is to encourage ethical and proactive escalation of problems to management. (Management of course then has a duty to act on these matters).

The BWG is concerned that Decree 96 appears to be silent on how "self-identified" issues will be treated. This in turn raises a concern that employees may in future be afraid to escalate mistakes or issues for fear of penalty under Decree 96.

We would respectfully request that a clarification be considered, to allow for and encourage appropriate escalation and self-reporting of issues. Proactive and constructive efforts by bank staff and management to address problems in their organizations should be encouraged, not penalized.

Furthermore, currently with a financial penalty in records (regardless of small or big, material or non-material), banks are not allowed to obtain approval for new products within 6 months or extension of bank network within 1 year. Therefore, we would like to suggest that SBV to consider the seriousness of each violation before applying penalty and/or imposing penalty conditions for licensing/approval/new business etc. to ensure penalty fairly reflects violations and their consequences.

### **4. Commenting Draft circular regulating consumer loan operations of finance companies [FC]**

The conditions stipulated in Item 2 of Article 3 are suitable only for financing consumer goods purchasing at dealer shops. We propose SBV to add the following products to the consumer loan category (i) Cash loans (disbursal in cash or through borrowers' account) and (ii) Mortgages / Home equity loans for consumption purposes.

SBV should encourage rather than compel FCs to build a credit scoring system because it depends on the various conditions, stage of development, business model and specific consumer loan products of each FC.

We propose SBV to allow FCs to have the flexibility when (i) deciding risk acceptance criteria; selecting target customer segments (ii) deciding the maximum loan tenors for each loan type (secured or unsecured) as well as (iii) the necessary loan supporting documents, based on the risk appetite & credit risk management framework of each company.

Point dd, Item 1, Article 12 requires FCs “to supervise & inspect customers’ borrowing process, their using of borrowed money & repayment history”. These requirements do not really help FCs to effectively manage risks in consumer lending, instead they create administrative & financial burdens for FCs to achieve compliance. It is requested that SBV work out a more open & flexible regulations applicable to consumer lending due to the nature of borrowing by individuals & the constraints for Lenders in reality to monitor & follow up with these loans [Borrowers may not have bank accounts, large customer base, small loans ect.]

Due to the (i) Various characteristics of each consumer loan product and (ii) Different business model of each FC, we suggest SBV (in Item 3 of Article 15) not to require FCs to determine & publicize maximum Turn Around Time [TAT] of credit verification & underwriting process.

The draft on consumer lending is presumed to apply to finance companies (and not banks). We would urge the SBV to clarify the applicability of this draft to Banks engaged in consumer lending.

## **5. Anti Money Laundering (AML)**

The Banking Working Group welcomes Circular 31/2014/TT-NHNN amending and supplementing a number of Articles of Circular 35/2013/TT-NHNN detailing implementation of a number of Article of Law on anti-money laundering dated November 11, 2014 (“Circular 31”). The Working Group was very happy to see many recommendations of the Group have been reflected in Circular 31. However, there are still some articles in Circular 31 and Decree 116/2013/ND-CP guiding the implementation of the Law on anti-money laundering are impractical and difficulty to implement. We would like to report to SBV for consideration as follows:

1. Obtaining information of Individual who holds 10% and more of charter capital of the legal entity and individual who holds 20% and more of charter capital of organizations contributing over 10% of capital of the legal entity. Recommend SBV to clarify the unwrapping process.
2. Obtaining information of address, representative person of the parent company, subsidiary, representative office for foreign customers and information of beneficiary beneficiary individuals, entities (ID, passport, tax code, etc.). It is difficult to obtain such information for foreign/non-resident customers.
3. Meeting customers at first establishment of relationship. This is impractical for the case of investors who are non residents or unnecessary when the banks provide a certain types of services to massive customers such as payroll payment.

## **6. Prudential Ratio**

Circular 36/2014/TT-NHNN on prudential ratios (Circular 36) has just been issued by the State Bank of Vietnam with effect from February 1, 2015. We would like to raise some burning issues, request for clarifications as well as some recommendations as follows:

**Article 17.6 governing the ratio on short term funding allowed for long term loans:** Article 17.6 stipulates the 15% and 35% limit ratio of G-bonds holding per short term funding for



Foreign bank branch and Commercial banks respectively. We appreciate the intention of SBV to impose the limit of using short term funding to fund for long term asset (medium term funding ratio issue). However, we are of the opinion that Article 17 is not in line with Basel II and III where banks are required to hold substantially more G-bonds. In addition, banks are perhaps the biggest (if not only) buyers for G-bonds and this requirement may adversely impact the Government plan in funding fiscal deficit next year.

Under Appendix 3 of Circular 36, G-bonds is the most liquid asset only after cash and being used for calculating immediate liquidity ratio under Article 15. In addition, banks can always use their Government bonds to apply for re-financing from the SBV. Accordingly, we understand that this short term funding on long term loan ratio should mainly address to short term funding source for medium and long term loan as well as that for long term investment in G-Bonds and the term on "purchase, invest in Government Bonds" meant to the investment in G-Bonds with the two following conditions:

- Government bonds which are being held till their maturity (i.e Hold Till Maturity Government Bonds); and
- The remaining maturity of these Government Bonds must be longer than 01 year.

Moreover,

- a) We understand that the trading of Government Bonds which are not being held till maturity, i.e those are calculated under Appendix 3 of Circular 36 and booked under category "Available for Sale" or Government Bonds for Trading are not subject to Article 17.6. We respectfully request SBV's clarification in this regard.
- b) If Government bond is a liquid asset and foreign banks with proper mark to market(MTM) process for their bond trading activities, how can they use the long term funding to fund for the bond if the bond can be sold at any time. What should the bank do with their long term funding if the bond position is zero?. In term of liquidity management it is not a safe and effective way for banks to perform. Even if the State Bank of Vietnam has concern on the bond liquidity then they should have a separate ratio for different bond tenor. E.g. bond tenor is 8 months but we cannot use 100% of a 8 month deposit to fund for the bond.

In case of Hold Till Maturity Government Bonds, it is understood that the ratio under Article 17(6) will be calculated after the computation of the medium and long term funding. We look forward to SBV's clarification in this regard.

- c) We also suggest SBV to regard Bank's capital as long term funding. This capital should be able to use to fund for Bond holding. So in the Ratio, the bond which is being funded by Capital (after deducting fixed asset and other investment) should be exclude from this requirement.
- d) We would appreciate if SBV can provide rationales to have different limit ratio for Foreign bank branches and local commercial banks. It is unclear to us on why this ratio is only 15% for foreign bank branch while a fair treatment should be encouraged to benefit all market participants given our local bond market development.

**Article 17.5 governing the use of bank's capital and ratio of short term deposit to fund long term asset:** Article 17.5 stipulates the use of bank's capital and ratio of 60% short term deposit to fund long term assets. Following our comment on point (d) above, It is better if bank can decide if they can use bank's capital to fund the bond or to fund the long term asset. Therefore, we appreciate SBV's consideration in this regard.

**Article 31 on effective date of Circular 36:** The Circular 36 will take effect on February 1, 2015. We are of the opinion that the effective date is too short for banks to prepare their liquidity

situation as it may create a market shock if banks have to reduce their bond position in a short period to comply with new regulation. For the development of Vietnam bond market, we do not expect to have again the experience in 2008-2009 where bond yields up from 7% to 21-25%. Therefore, we would respectfully request SBV's consideration for extending the effective date of Circular 36.

## **SECTION B – REVIEW OF PENDING AND LONG OUTSTANDING ISSUES**

The working group respectfully recommends that SBV reviews and provides its guidance on the following matters raised previously.

### **1. Update of general banking license**

We understand that SBV has put a lot of efforts to work out on approach to sort out the existing licensing risks faced by all banks in the market. This approach is applauded and appreciated by all banks across BWG. However, latest update from SBV shows that all license update is hold until the new regulation on license re-issuance is issued. This exposes many legal risks to banks (or interruption of financial services to clients) and we are looking forward to the guidelines to be issued soon by SBV on this matter.

### **2. Reimbursement of interest subsidy**

Over the last years, banks have been waiting for the reimbursement of 20% of due interest subsidies under the interest rate support initiative that ended in 2009. Following our previous meetings with SBV in late 2012, we note that the figures has been checked and finalized for a number of BWG members. We also understand that this is a complicated matter that may have bearings on the public funding balance sheet and national financial health. However since the unpaid accumulated reimbursements are presenting themselves as a problem with the banks in relation to their internal accounting systems and audited financial statements, the working group would appreciate if SBV wraps this up and starts releasing this interest rate refund as soon as possible.

### **3. Update of commodity product license**

Currently SBV only allows credit institutions and foreign bank branches to offer commodity derivatives on a pilot basis which is normally for one (01) year and subject to SBV approval for any extension. Uncertainty in licensing could result in disruption to banking services to clients, and also to banks risking legal breaches with existing transactions committed to. We request that the SBV re-evaluate the "pilot" license framework for commodity derivatives as a more permanent approach. The BWG will continue to work with SBV to develop the regulation on commodity derivatives to facilitate this process.

### **4. Non- recourse discounting and factoring**

Laws on Credit Institutions and Circular 04/2013/TT-NHNN dated 1/3/2013 only recognise discounting and factoring activities on a with recourse basis to the seller. This is not in line with international practices, for products/ solutions such as factoring, bill discounting and any other product where the bank has enforceable recourse to the buyer or the buyer's bank.

The recourse imposed on the exporters restricts them to access good quality funding to finance their working capital and reduce the payment risk from the buyer. Aligning Vietnam with the international trade finance standards would help protect exporters in Vietnam against buyers' default and delays of payment, ensuring a steady source of funding. As these products offer risk protections against buyer and buyer's country risks, Vietnamese exporters would be more comfortable developing commercial relationships with new markets or counterparties to grow their exports. We recommend that SBV issue the regulation allowing discounting and factoring activities on a with recourse basis to both the seller and the buyer.

**5. Amendment of Circular No. 28/2012/TT-NHNN dated 03/10/2014 on Bank Guarantee**

We have previously addressed our recommendations to the SBV in term of difficulties and challenges on the current regulation on bank guarantee which we are facing with, in particular, the counting of single credit limits to guarantees issued based on counter guarantee granted by our parent banks or subsidiaries or branches within the same group and the requirement on Vietnamese languages of the guarantee related documents.

The above recommendations have been reflected in draft Circular which is proposed to replace Circular No. 28 which was sent to us for our comments.

We much appreciate if the SBV could update us on the progress of this amendment.

**6. FATCA**

We would like to know the progress of the Intergovernmental Agreement that Vietnam intends to sign with USA as well as any clarification or change regarding this issue.

**7. Onshore Loans in Foreign Currency**

We would like to have SBV clarify its intention in connection with its policy on management of Onshore Loans in foreign currency as the current Circular 29/2013 will expire soon (31 Dec 2014).

**CONCLUSION**

Many of the issues and comments mentioned in this paper come from a clear and urgent drive by the State Bank of Vietnam to create a better governed, more transparent banking system. We are moving steadily and progressively to this aim and there is increasing confidence that we are moving in the right direction. As noted in the beginning, we believe that Vietnam can shortly begin work on other aspects of developing the financial markets, so that Vietnam has a solid and robust financial sector for future growth.

The BWG remains committed to help in any way possible in furthering Vietnam's financial market development to serve the needs of our customers and the nation.

# *Capital Markets*

## CAPITAL MARKETS POSITION PAPER

*Presented by  
Mr. Dominic Scriven*

### 1. DECISION NO. 51/2014/QĐ-TTĐ ON PRIVATIZATION OF SOES:

We would like to express our delight and appreciation of Decision No. 51/2014/QĐ-TTĐ on “Guidelines on the capital divestment, sale of shares, trading registration, and share listing on the stock exchange of state-owned enterprises (SOEs)” dated September 15, 2014 issued by the Prime Minister (“**Decision 51/2014**”).

In our opinion, this is a significant breakthrough and a very wise decision, showing the Prime Minister’s determination towards the process of privatization, the main of which is to develop a sound stock market.

However, we would like to emphasize that the compliance and enforcement of, as well as the supervision of compliance and enforcement of, the Decision 51/2014 will play a crucial role in the success of the privatization of the SoEs and the development of the Stock Exchange.

The market capitalization of Vietnam’s stock market is very small in comparison with other countries in the ASEAN region, which is about 1/5 of the Philippines’s, or 1/10 of Malaysia’s. This means that Vietnam has not really attracted the large and long term cash flows of foreign investors. This might be significantly improved if Decision 51/2014 is strictly complied with and actively implemented. This is also an important step for the stock market to become an importance source of mobilizing capital for the economy and reducing budgetary deficits.

In addition, the privatization process needs to be implemented more decisively and faster. The Government should also offer to sell at least a 30% to 40% interest of each SoEs to be privatized in order to provide more liquidity to the market.

### 2. CORPORATE GOVERNANCE AFTER PRIVATIZATION

The State Securities Commission (**SSC**) and government of Vietnam have been actively working on formulating and establishing strict corporate governance policies. Yet, the corporate governance in privatized state-owned enterprises remains a current concern as there is no complete regulatory framework. Our discussions with a number of state-owned corporations indicate that they are not really aware of the importance of corporate governance and the willingness to comply with it.

In our view, good corporate governance is vital to:

- make the operation of a company, its profits and losses, revenues and investments more transparent;
- help the company to achieve sustainable development and growth; and
- attract both domestic and foreign investors.

We consider that a consolidated financial report is the core benchmark against which corporate governance of a company is measured. Both before and after privatization, large corporations cannot excuse their delay in publishing their consolidated financial reports due to reasons of their subsidiaries’ failure to provide them with their audited financial reports. Good corporate governance should improve substantially the transparency and performance of a company.

Also we recommend that the State Capital Investment Corporation (SCIC) needs to make its annual financial reports publicly available. It also needs to disclose quarterly and publicly its investments and divestments for public scrutiny as the monies earned from the divestments and accumulated profits are extremely large and the market should be aware of what the SCIC does with those monies.

### 3. PUBLISHING THE PIPELINE OF COMPANIES TO BE PRIVATIZED

We have noted the government's strong commitment to the privatization process. However, investors in Vietnam, including us, have not seen any list of companies to be privatized and the estimated timing for privatization of those companies (which does not need to have exact dates, but just to outline the estimated timing for each quarter of the year). Instead, we have only known the timing for a company to be privatized through the media, randomly. There is no defined Government plan.

The importance of publishing the pipeline has probably been overlooked. A list containing the names of companies to be privatized, the proposed amounts with a price range and the estimated timing for privatization of those companies will be considered as a definitive, unambiguous and complete message of the Government's commitment to privatization, and also will be a notice to interested investors so that they can do proper due diligence on those companies, as well as be financially ready to invest in those companies.

### 4. SOME KEY FACTORS TO THE SUCCESS OF PRIVATIZATION

In our view, there will be a huge demand for capital (which can be up to \$5 - \$10 billion dollars, depending on the scale of privatization) for investments in the companies to be privatized. The Government should then develop some technical solutions to mobilize the capital for the success of privatization.

We wish to recommend some specific solutions as follows:

- Expedite the creation of domestic pension funds: these funds will provide a significant demand for the financial market and privatization.
- Have an international roadshow for each large company to be privatized promoted by leading international investment banking firms, which would give credibility and global visibility to the company being privatized.
- Consider bringing in strategic investors to participate in the privatization.
- Increase foreign ownership:
  - (a) under the current restrictions on foreign ownership of 49% in listed companies, the total value of listed shares (including good or bad ones) which foreign investors can buy is just under US\$6 billion.
  - (b) For those companies satisfying the requirements of capitalization and liquidity (including both good or bad ones) to be included in VN30, foreign investors will only be able to buy up to additional US\$3.1 billion worth of shares in those companies, which is about 5% of the total market capitalization, which is an extremely small figure.
  - (c) For the business lines and services under the WTO commitments of Vietnam, we suggest that Vietnam allow the full market access as per its WTO commitments.
  - (d) We also suggest that the restrictions on foreign ownership should only apply for business lines/areas which involve national security and thus require special conditions or restrictions. For other business lines/areas, there shouldn't be any foreign ownership restrictions.
  - (e) For Securities Investment Institutions (being securities companies and fund managers), we suggest that the foreign ownership of between 49% and 100% in those securities investment institutions be implemented.
  - (f) Under Decree 58/2012, a foreign investor can:
    - (i) either own up to 49% of a securities company or an asset management company;*
    - or*
    - (ii) own 100% of a securities company or an asset management company.*
  - (g) The foreign investor is prohibited from owning majority interest (between 50% to 99%) of a securities company or an asset management company.
  - (h) In our view, such a prohibition appears to be rigid and illogical. We suggest that Decree 58/2012 be amended to allow flexible foreign ownership of between 50% and

100% in securities companies and asset management companies, including listed securities companies and asset management companies.

- NVDR: Non-Voting Depository Receipt:
  - (a) The Government will be able to attract a significant attention from international investors by sending a strong signal on its loosening the foreign ownership limits through the issue of Non-Voting Depository Receipt (NVDR). Those foreign investors, who wish to pay more attention to Vietnam, would be able to properly evaluate opportunities arising from the privatization of the SoEs. Those potential investors will be part of the new demand for privatizations.
  - (b) Based on our study, the issue of non-voting depository receipts (NVDRs) to foreign investors can be an effective option that may create a relatively broad-based impact on the performance of the stock market. On the one hand, it helps promote the inflow of foreign investment, improve market liquidity and at the same time reduce capital costs of companies. On the other hand, it may also bring positive impact on the state budget and higher revenue from payment of fees, taxes on securities investments, and help speed up the privatization (equalization) process.
  - (c) Concerning risks associated with NVDRs, first, the so-called “foreign control” risk remains minimal. The practice of Thailand and Malaysia allowing nearly unlimited foreign investment in NVDRs is a typical example.
  - (d) Based on the experience of other countries in the region, we suggest that the Government consider applying the NVDR in Vietnam as follows:
    - (i) allow non-voting depository receipts (NVDRs) by adopting Thailand’s model and for a pilot period of two years;*
    - (ii) allow NVDRs to be issued in the trial period at the cap of 20% of the total shares; and*
    - (iii) following the 2-year pilot project, if the NVDR option really helps improve market performance, without conflicts of interests between local and foreign investors, loosen or remove the above NVDR ratio.*

## **Section III**

# **INVESTMENT & TRADE**

Main discussion topics:  
Administrative Procedures Reforms  
and Development of Private Sector



# *Administrative Procedure Reforms*

## ADMINISTRATIVE PROCEDURE REFORM IN THE BUSINESS SECTOR

*Presented by  
Mr. Tran Anh Duc  
Investment & Trade Working Group*

H.E. Prime Minister and honored guests,

The Investment and Trade working group still voices concerns about the existing administrative procedural framework related to investment and trade.

### 1. INVESTMENT CERTIFICATE REQUIREMENTS

The first hurdle that foreign investors find discouraging is the requirement for an investment certificate even if they're acquiring just one share of a Vietnamese company. Our view is that an investment certificate should only be required in the case of conditional investment domains or foreign investors acquiring 51% or more of a company's shares.

Moreover, foreign investors are also concerned about the short terms (5-10 years) for investment certificates granted in the field of services and trade. Investors in this case face the risk of having to sell their portfolios if the investment certificate cannot be extended.

### 2. "RED TAPE"

The procedure to obtain an investment certificate where a foreign party wants to invest or buy into a company in Vietnam is still very complex and cumbersome and a significant amount of time is dedicated to the preparation, explanation and supplementation of unnecessary information to various authorities. For example, investors may be required to explain the origin of funding, their business plans, track records, when they intend to pay for the equity they want to buy, land lease agreements, among other issues. We propose that the licensing agencies review the relevant procedures for the issuance of investment certificates and cut down on the documents to be filed. In addition, they should limit any unnecessary requirements for explanation and supplementation of information and avoid intervening in private agreements between shareholders and investors.

### 3. SOLICITATION OF COMMENTS IS TIME-CONSUMING

The licensing time is also lengthened with cross-consultations between the Department of Planning and Investment and the People's Committee or the relevant ministries. Sometimes, the Department of Planning and Investment may put an application on hold for as long as 2-3 months while it awaits feedback from the various other agencies. We hope that in the future the need for consultation with other agencies is minimized as the investment procedures become more clear and concise.

### 4. TAX VERIFICATION BY LICENSING AUTHORITIES

Oftentimes, a transfer of shares is said to be subject to the parties being able to demonstrate the fulfillment of tax obligations or present written confirmation from the licensing authorities of the fulfillment of tax obligations. In other cases, licensing agencies may make comments on payment agreements or a capital transfer price that they think reflects the market price. Because the licensing authorities may not have the necessary experience to deal with these issues, these should be left to other authorities, such as the tax departments, to handle.

### 5. PUBLIC OFFICIALS' ACCOUNTABILITY IN HANDLING APPLICATIONS

A licensing system will not work if the public officials tasked with implementing it are permitted to refuse applications at their own discretion. The turnaround time for an application is prolonged with multiple requirements for explanation and application replenishment. Sometimes, licensing officials may even take attempt to act in the shoes of the court or of lawyers by reviewing contracts or charters submitted to them for compliance with law.

We understand that the Ministry of Planning and Investment has made great efforts to simplify the investment registration and business registration procedures through various revisions to the Investment Law and Enterprise Law. However, there remain significant concerns with respect to the actual implementation of such laws. With the presence of the Prime Minister here today, we hope that he will direct some of his personal attention to these issues so that the current administrative procedures can be curtailed by 30% to 50%.

# *Education & Training*

## **ISSUES RELATING TO DECREE 73/2012/ND-CP ON FOREIGN INVESTMENT IN EDUCATION AND TRAINING DATED SEPTEMBER 26, 2012 ("DECREE 73")**

*Prepared by  
Education and Training Working Group*

### **1. THERE ARE SEVERAL ISSUES TO DECREE 73 THAT ARE NOT REASONABLE OR NOT APPLICABLE. FOR EXAMPLE:**

- Conditions of establishment: In theory it is easier to set up a foreign language centre than a general education institution (e.g primary school) or a higher education institution, but Decree 73 requires the same procedures and application dossiers for all. Even the work experience requirements for language teachers and lecturers are the same - 5 years experience. The law needs to allow for the different educational institutions.
- Legal procedures: Previously, the process to set up an educational institution required only the investment licenses and operation license (two kind of licenses), but Decree 73 required three kinds of license with the legal process are similar. It links to the results to be: three times inspecting the same location looking for the same criteria by three different authorities.
- There are no provisions to encourage reinvestment of profits:
  - The current legislation has no provisions to encourage foreign and local investors already operational in Vietnam, to re-invest their profits back into Vietnam instead of transferring the profit to the overseas.
  - The legal procedures for granting licenses for new investment projects are the same as the legal procedures of the re-investment projects. For example, if a successful university wished to expand its campus into a new location it has to go through the same application process as if it were a totally new investment. The same applies to short-term educational institutions such as language centers and vocational training centers.

### **2. SOLUTIONS THAT WE HAVE ALREADY PROPOSED TO THE MOET INCLUDE**

- The draft of implementing Circular to Decree 73 (after the Decree 73 have been amended as requested by Government mentioned in the Resolution No. 47), should have detailed and separate provisions on procedures for approving the establishment of short-term training institutions, schools and higher education institutions. This is because the conditions and operations methods of short-term training institution are quite different from those of higher education institutions. The opening of a new training centre for a short-term training institution should be simpler than the establishment of the new campus for higher education institutions.
- Legal procedures for new investment project and re-investment project should be different to create the favourable condition for the investors who have been operating for many years. The current legislation has no provisions to encourage foreign and local investors already operational in Vietnam, to re-invest their profits back into Vietnam instead of transferring the profit to the overseas.
- We have recently had a meeting with MOET to go through each issue. The main challenge is that even when both parties (VBF and MOET) agree on an outcome we have yet to see an implemented change in the law. For example, everyone recognizes that it is not right to require a provider of short term language courses to have to build their own facility and yet in practice the requirement remains.

## KEY ISSUES SURROUNDING DECREE 73/2012/ND-CP OF THE GOVERNMENT ON THE FOREIGN COOPERATION AND INVESTMENT IN EDUCATION (“DECREE 73”)

*Prepared by  
Education and Training Working Group*

### I. LICENSING-RELATED ISSUES

Under the Decree 73, the working group sees that it is much more complicated than before, since it requests to have an investment license, then an establishment license, then an operations license even when setting up a branch of an already licensed organisation. A lot of paperwork/steps are repeated during these processes and assessed by many of the same departments - taking/wasting much time for investors/organizations and agencies issuing licenses. New investors to Vietnam as well as current investors feel that no one would be patient enough to overcome all these complicated licensing procedures - this is in contradiction with what was said by the Government and National Assembly on the investment law (simplify administrative procedures for investors).

The license application now has 3 steps instead of 2 like before (adding the establishment license). The application required is exactly the same for all 3 licenses and involves the same departments for approval, which is a duplicated process and is strongly recommended to be simplified.

The investment certificate requires the involvement of 7 departments/government bodies including the Department of Planning and Investment, the Department of Education and Training (“DOET”), the Construction Department, the People Committee of the District (they need to get 2 more Departments’ approval: the Architects Department and the Fire Department) then approved by City People Committee.

The establishment license requires the involvement of 3 departments/government bodies, which are DOET, the Provincial People’s Committee, and the Department of Internal Affairs.

The operations license requires only the approval of DOET.

Therefore, in order to facilitate investors as well minimize the unnecessary and repeated administrative procedures, we respectfully request the MOET to consider removing “Approve the establishment of the campus of the educational institution” in clause 1.b, 2.b and 4.b of Article 26 regarding Procedures for approving the establishment.

Besides, we respectfully request the MOET to consider establishing a single window system for receiving applications, which will be in line with the spirit of Resolution No. 25/NQ-CP simplifying 258 administrative procedures.

In addition, the guiding Circulars to Decree 73 need to include clear sanctions when government officials process applications in order to avoid time-consuming delays and unnecessary costs for investors.

### Transitional provisions

If the establishment license is still maintained, we respectfully recommend the Ministry to amend Article 74 of Decree 73 as below recommendation so that non state higher education organisations can obtain a decision on approving the establishment of educational institutions and campuses in a timely manner. Currently, some members of the Working Group are preparing dossiers following requirements set out in this Article. However, there are opinions requesting new requirements under Decree 73 that must be met instead of requirements under

Decree 06. Therefore, we respectfully request the Ministry to indicate in the guiding regulations of Decree 73 that it does not require retroactive applications when applying for the decision.

“1. Foreign-capitalized educational institutions and their campuses that have been issued with the Investment certificates concurrently, the Business registration certificates and the Licenses to provide education before this Decree takes effect are exempted from reappraisal, but **have to submit an application for establishment license and report actual activities in the last 3 years** ~~must supplement and complete the dossiers within 06 months as from this Decree takes effect~~ **in order** to be issued with the Decisions on approving the establishment of educational institutions and campuses.”

## II. INVESTED CAPITAL

According to Article 28.6, the total minimum invested capital for establishing a higher education institution is calculated when the estimated education scale is greatest, but must not be lower than 300 billion VND. This provision is not clear and creates confusion for investors. Therefore, we respectfully request the Ministry to elaborate on this provision.

- As the size of the upfront investment has been raised as a deterrent to many providers considering investing in campuses in Vietnam, we respectfully request for MOET to lower the investment capital amounts determined.

Furthermore, according to Article 10, College Charter attached to Circular 14/2009/TT-BGDDT dated May 28, 2009: “6. Charter school capital is not less than 35 billion VND mobilized from legitimate capital sources, excluding land value.” We also seek clarification to elaborate on the reason why the Charter Capital is increased to 300 billion VND.

- According to universities’ operation practices, students have to be at school for one third week to attend class including lectures (theory and discussion) and self-study. Given the school’s working time from 7am to 8pm, from Monday to Saturday, universities can arrange 3 shifts per day. Accordingly, the use of facilities and teachers can be allocated appropriately for 3 shifts. It means that each level of investment dedicated for equipment and teacher can be used 3 times per day.

Therefore, it is requested that the total invested capital to be calculated based on the total number of full-time equivalent students, instead of basing on the time when the estimated education scale is greatest. Because in reality, the total education and training capacity can be 3 times greater than the total number of full-time equivalent students.

### Examples:

According to the training program structure of a private university in Vietnam, for each subject, students will have one 4-hour shift per week (accompanied with instructors/mentors, theory or discussion), two 4-hour shifts of self-study per week or studying in library.

Each class room will be occupied with two shifts accompanied with instructor and one self-study shift. Schools open from Monday to Saturday, allowing arranging maximum 18 shifts per week, 3 shifts per day.

For instance, schools can arrange maximum 4,000 students per shift with 3 shifts per day.

Thus, each day, schools can arrange 4,000 students/shift multiple 3 shifts/day = 12,000 students.

Accordingly, the school total investment capital will be based on the total number of full-time equivalent students, which is 4,000 students, instead of the total number of 12,000 students.

Besides, the fact shows that the total invested capital of the project will be disbursed through each stage based on project's expected implementation progress. Thus, the invested capital must be registered on the investment certificate based on each implementation stage.

### III. CONDITIONS FOR APPROVING EDUCATIONAL ACTIVITIES

It is proposed that there should be separate regulations on establishing educational disciplines of foreign-invested educational institutions.

The establishment of disciplines of university and college is prescribed in Circular No. 08/2011/TT-BGDDT dated February 17, 2011 of the Ministry of Education and Training stipulating conditions, dossiers, procedures for opening disciplines of training university, college level. However, we found this regulation on establishing disciplines very complicated and not really accordant with foreign-invested educational institutions.

In addition, clarification is needed in cases where institutions are allowed to establish disciplines by the MOET. Do they still have to apply for operation licenses to provide educational activities?

Therefore, we respectfully request to make the guiding regulations of Decree 73 clear in term of establishing new facilities for foreign educational institutions to fall under one set of separate regulation **OR** to the existing regulations on establishing new facilities under college and university issued by the MOET.

### IV. FACILITIES AND EQUIPMENT

According to Article 29.5, the area for building the school must reach at least 25 m<sup>2</sup> per student when the education scale in the school development plan is greatest. As mentioned above, clarification on "the education scale in the school development plan is greatest" is required. In line with above recommendations, we respectfully request the surface area conditions to be estimated by the total number of full-time equivalent students.

Furthermore, the facilities and equipment requirements on non-state higher education organisations seem overly prescriptive (especially in terms of land area and floor area per student ratio etc) and this may become an increasing challenge with land pressures. Therefore, we suggest greater transparency in how the specific ratios were determined; perhaps this ratio could be lowered.

Currently, there are no guiding regulation on registration of operation extension leading to misunderstanding in applying conditions for facilities and equipment. Therefore, we respectfully request the MOET to amend Article 29.6 of Decree 73 as follows: A foreign-capitalized educational institution that register **or applies for extension** of operation's license for less than 20 years do not have to build their own facilities.

### V. ORGANIZATIONAL STRUCTURE

The draft guiding Circular of Decree 73 stipulates that "For companies conducting only one educational institution investment project, Board of Members, Board of Directors, owner of the company shall perform as the Board of Directors of the education institution and the educational institution will not have to establish its own Board of Directors."



Article 14.4 of Higher Education Law allows autonomy in organizational structure in foreign-invested educational institutions. However, the regulation in the draft Circular does not reflect this spirit and states that:

- The Board of Directors and school management board to be registered with MOET in case of foreign-capitalized colleges and universities
- The School Management Board is to be registered with Education and Training Departments in case of vocational intermediate schools, high schools, and mixed compulsory education institutions including high schools, training centers, and short-term training institutions.

We understand that the draft Circular stipulates autonomy to a certain extent and that the organizational structure of the company is not allowed for schools. Furthermore, the registration of Board of Directors and School Management Board is necessary to help the Ministry and its Departments contact when needed. On the other hand, this procedure is not separate but integrated at the state of establishment registration.

However, Resolution No. 25/NQ-CP dated Jun 2, 2010 on Simplifying 258 Administrative Procedures under the authority of Ministries has removed the submission procedures to MOET serving decision-making purposes on recognizing Principals of schools (college, university and academy) and allows the Chairman of Board of Directors to designate the Principal and then inform MOET by in writing accordingly. We respectfully request MOET to revisit this Resolution when drafting the guiding Circular of Decree 73.

Besides, we also understand that the drafting team will study and consider the way that the Board of Members, Board of Directors, and owners of the company would have the power to decide. However, Vietnamese universities do have boards of science and training, including board of international science and training, and research consultants to put forward academic proposals/issues. The Board of Directors will only cast a vote. Therefore, we would like to propose that the members of University Board of Directors include members of Board of Members, experienced professors, and members that have been appointed by Board of Members.

## **VI. THE TEACHING STAFF**

We are very much concerned about requirements for teaching staff being too high/challenging for some transnational education delivery especially:

- Foreign teachers must have at least five years of experience to be allowed to teach twinning programs at non-state schools, colleges and universities.
- For tertiary education institutions, 60% of course modules must be delivered by permanent teachers, and 80% of teaching staff must hold postgraduate degrees.
- Article 10.2.b. mandates the minimum qualification of instructors at college level to be a master degree. We respectfully request the Ministry and the Government to re-consider amending this clause to reflect the reality that professional instructors in a range of fields may not have graduate education. However, they earn their expertise and mastery through years of practicing, which may be certified by a professional association. Their instruction is indispensable to the students in the program. Examples of those fields include culinary art, performing art, and fashion design amongst others.
- We also respectfully request the Ministry to add new clauses to address the absence of a legal framework to allow a university to operate a commercial restaurant or hotel as a practicum facility where full time training takes place. This format of hospitality education enables students to conveniently and smoothly learn theory, to practice with real customers, and to return to theory afterwards. This format requires the learning environment to be the same as the practical one, where real customers are served.

Besides, Resolution no. 47 dated July 8, 2014 of the Government has relaxed a condition of 5 year experience for teachers, more specifically: Government agreed to adjust conditions for foreign workers working in Vietnam whom fall under one of the cases below:

- a) Foreigners who are experts, technicians that satisfy requirements for professional training qualification or has been acquiring at least 5 year working experience in the field that they are expecting to work in Vietnam;
- b) Foreigners who have diploma certificate or equivalents and above and who have specialized training suitable to their majors at foreign language training centers (foreign language centers), preschools;
- c) Foreigners who have bachelor degree or equivalents and above and who have specialized training suitable to their majors at general educational institutions.

Therefore, we respectfully request the MOET to consider our aforementioned recommendations and to remove provisions of Article 31.6 and relevant Articles in order to be consistent with Resolution No. 47.

*Land*

## ISSUES ON LICENSING PROCESS

*Presented by  
Mr. David Lim  
Head of Land Sub-Group*

Last year, a new Land Law which consolidated many of the different developments related to land use over the years was passed. On 26 November 2014, we have also seen the passing of the revised Law on Residential Housing and Law on Real Estate Business with provisions which address some of the inequalities between foreign and domestic individuals and corporations. These changes are critical to ensure that Vietnam continues to keep up with trends in the region and to continue to attract foreign investment.

With the passing of the above laws, this position paper is focused on the licensing process faced by domestic and foreign investors seeking to undertake real estate development projects.

### 1. PRE –REQUISITES FOR INVESTMENT CERTIFICATE

It is a requirement under the Law on Investment that investors have to obtain an Investment Certificate with the business line in real estate development/investment to implement a real estate project. However, prior to obtaining an Investment Certificate, investors are also required to obtain the following:

- (i) Decision on the appointment of investor – A decision issued by the People's Committee upon verification on the capability and experience of the investor as well as feasibility and effectiveness to implement the project. The application file for such decision includes documents proving the legal status, expert capacity, experience and financial capacity of the investors; explanatory statement and preliminary plan on eco-technical solutions; capacity; and other advantages of the investor if assigned to act as the developer (if any).
- (ii) Basic design – A document comprising the description and basic drawings of a project. The application file includes the explanation on basic design and basic design drawings.
- (iii) 1/500 Masterplan Approval– A detailed plan of the project which includes criteria of the project, all parameters required for land, construction and technical infrastructure, supply sources, and environmental protection measures. The application file includes explanation about contents of the plan, including miniature colour drawings; colour drawings of prescribed scale; and information on construction planning issued by Department of Planning and Architecture; and
- (iv) Investment Approval– A document which sets out project scale, requirement on technical infrastructure, implementation schedule of the project, basic rights and obligations of the investor, and the plan on product sale. The application file includes project explanation, basic design, decision on appointment of the investor and 1/500 Masterplan Approval.

The documents set out above are in relation to the implementation of a real estate project and are required before an investor even knows if it is permitted to undertake a real estate project. Investors have to incur a lot of time and costs for the purpose of preparing applications for and obtaining such documents. It can take up to 160 days to obtain these documents not including preparation time. These requirements cause unnecessary delays and difficulties to investors seeking to undertake real estate development projects. Further, notwithstanding that the above documents have been issued, an investor may still fail to obtain an investment certificate subsequently to undertake a real estate development project.

**Recommendation:** Remove the requirements in items (i) to (iv) above to obtain the Investment Certificate. The only pre-requisite necessary at the early stage is confirmation on the parameters for the project to be developed on the site. All other approvals can be finalised at a later stage. An investor should only have to go through a one-step procedure in order to obtain the Investment Certificate.

## 2. FIRST TIME FOREIGN INVESTORS

According to Article 34 of the current Law on Residential Housing, foreign investors seeking to undertake development of commercial residential housing for the first time are required to have an Investment Certificate in accordance with the Law of Investment.

Similarly, according to Article 8 of the Law on Real Estate Business, investors (both foreign and domestic) seeking to receive assignment of a project are required to establish an enterprise registered for real estate business. Hence, a foreign investor is also required to possess such Investment Certificate for the purpose of receiving assignment of a project.

However, pursuant to the Article 50 of the Law on Investment, a foreign investor who undertakes investment in Vietnam for the first time must have acquired or been assigned an investment project in order to obtain an Investment Certificate to undertake a real estate project. In short, an Investment Certificate is required for the purpose of an investor acquiring or being assigned an investment project whilst an investor must have acquired or been assigned an investment project to obtain an Investment Certificate.

Such contradicting and overlapping requirement between the abovementioned laws has made it impossible for the first time foreign investors to undertake any real estate project. It is unclear why the Law on Residential Housing and the Law on Real Estate Business require an investor to secure an investment project prior to obtaining an Investment Certificate when the licensing authorities would have examined the capability of an investor when evaluating the investor's application for an Investment Certificate. The licensing authorities would be provided with the necessary information on the financial capability, experience and expertise of the investor during the application procedure for the Investment Certificate.

This requirement merely adds unnecessary procedures which hinder real estate developers and adds to the confusion of the licence issuing authorities.

**Recommendation:** We suggest that the requirement for an investor to possess an investment certificate prior to being permitted to conduct a commercial residential housing project and to receive assignment of a project be removed.

## 3. LAND USE RIGHTS CERTIFICATE (LURC) FOR PART OF CONSTRUCTION WORKS

Pursuant to Article 32 of Decree 43/2014/ND-CP making detailed provisions for implementation of a number of articles of the Law on Land, the investors shall be issued an LURC upon the completion of sale and purchase of residential property and the whole of construction works. It is not clear whether an LURC will be issued for parts of the construction works, e.g. part of a floor or an entire floor and not the entire construction works, except in the case of individual apartments in a high rise apartment building. The law does not however prohibit the sale of part of construction works. There appears to be some confusion on the part of the authorities as to whether an LURC can be issued in such circumstances leading to uncertainty and inconsistent application.

**Recommendation:** We recommend that an instruction be given to all provincial authorities confirming that LURCs can be issued for part of an entire construction works which is to be implemented according to the request of the rightful parties.

## 4. SUBSEQUENT PROJECT LICENSING

According to the Law on Investments, an investor is required to obtain an Investment Certificate for each project that an investor undertakes. For foreign invested companies, they are required to amend their existing investment certificate to take into consideration the new project. This is complicated as it involves combining the capital requirements, investment timelines and other investment requirements of multiple projects. This makes it very difficult for investors to have

clear and specific requirements for a new project which do not affect other projects of an investor. It also creates complications where a developer wishes to transfer one or more but not all the projects that it is licensed to undertake under its Investment Certificate.

***Recommendation:*** Provide the option to investors to receive separate investment certificates for each project it undertakes. An investor can then choose the most efficient method of managing the licensing requirements of multiple projects.

We have set out above some of the main licensing issues encountered by investors seeking to undertake real estate development projects in Vietnam. Notwithstanding the recent changes in the new laws, the issues set out above continue to limit the growth of the real estate sector in Vietnam in general. As the issues identified are administrative in nature, we would respectfully request that due consideration be given as to whether they are necessary.

# *Development of Private Sector*

## INVESTMENT AND TRADE POSITION PAPER DEVELOPING THE PRIVATE SECTOR - BUILDING THE BACKBONE OF THE ECONOMY

*Presented by  
Fred Burke  
Investment & Trade Working Group*

Your Excellency, Mr. Prime Minister, ministers, vice ministers and honoured guests,

I am very pleased to have the chance to present today on behalf of the Investment and Trade Working Group. The theme underlying my remarks to day goes back to the very roots of the Vietnam Business Forum's initial *raison d'être*, which was namely how to strengthen the private sector and its role in contributing to national economic development.

### **I. ACCOMPLISHMENTS IN 2014**

The year 2014 saw some significant accomplishments in terms of the economy in general and the role of the private sector in particular. While the macro economic situation continued to remain stable, Vietnam looks set to become the largest ASEAN supplier to the United States by the end of 2014 – with a net export value of about US\$30 billion. This is a historical achievement for a nation surrounded by supply chain giants. The prospects for the coming years are even better, though some of the bilateral and multilateral trade agreements that are necessary for this continued growth are facing obstacles that require us to find every possible means to enhance efficiencies and strengthen competitiveness. To that end, 2014 has seen some noteworthy progress.

**Example 1.** After many rounds of stakeholder consultation, the amended Enterprise Law and Investment Law will have been adopted by the National Assembly by the time of this Forum. These are the two most important laws enabling the healthy development of the private sector in Vietnam. The Enterprise Law, in particular, has been the foundation for nearly every business in Vietnam and updating it to reflect the experience of the past eight years since it was last amended is timely and welcome. The Investment Law, for its part, should lay the groundwork for accession to the Trans-Pacific Partnership, the EU FTA and the implementation of AEC 2015 by moving to a more open investment licensing system and introducing new tax reforms to support strategic industrial policies.

### **Example 2. Recognition and Enforcement of Foreign Arbitral Awards**

Since the last Forum, the Ministry of Justice held a productive workshop on the issue of recognition and enforcement of foreign arbitral awards. The fact is that the success rate in enforcing international arbitration awards in Vietnam is dismal. Very few foreign arbitral awards that would pass muster under strict international scrutiny seem to meet the strict criteria imposed by the Vietnam courts when it comes to recognizing enforcing them. All too often, these failures to respect international arbitration awards seem to be for the wrong reasons, and this hurts Vietnam's credibility as a reliable place to do business.

Vietnam's obligations under the 1958 International Convention on Recognition and Enforcement of Foreign Arbitration Awards require it to enforce international arbitration awards through its court system except in cases where the Vietnamese respondent lacked the opportunity to be heard or there was some other fundamental procedural failure in the arbitration process. This is not happening yet, with some reports indicating that as little as one in thirty foreign arbitral awards have been successfully enforced in Vietnam.

The effort of the Ministry of Justice is laudable insofar as it has addressed this important issue head on and we look forward to seeing progress in this area. Meanwhile, we are also encouraged by the steady development of the Vietnam International Arbitration Center. VIAC



provides a viable domestic alternative in appropriate cases and it is becoming a realistic alternative in cross-border trade and investment agreements.

### **Example 3. Freight Tax Exemption under Double Taxation Agreements**

There has been some tangible progress in respect to the issue of freight tax and the requirements for seeking exemption under the relevant double taxation agreements.

As reported in the last Vietnam business forum, Project 30 resulted in an attempt to simplify the process for freight transport companies to claim their legal exemption from the 2% freight tax on international goods where a Double Taxation Agreement applies. However, according to industry experts, this potential reduction of 2% in the cost of export products had been stymied by the fact that the exemption is still too difficult to claim in practice because of the record keeping requirements.

We have exchanged several papers and we have had several constructive working meetings with the relevant authorities to discuss more streamlined solutions, drawing especially from the best practices of other countries in the region. Based on these exchanges, we believe that a workable reform is possible in the very near future. We remain optimistic and engaged in this issue, which directly impacts the competitiveness of Vietnamese exports.

### **Example 4. Elimination of Cap on Marketing and Advertising Expenses**

It has been reported in the press recently that the Ministry of Finance will eliminate the deductibility cap on marketing and advertising expenses. This would address one of the only remaining issues that was raised at the very first Vietnam Business Forum in Hue about 15 years ago. It would help local companies who need to invest in advertising their products to familiarize them with consumers and avoid the situation where enterprises are forced to pay "profits tax" on profits they have not actually enjoyed.

Enterprises are happy to learn of the proposed change, but naturally concerned to know what new system will replace it. If there is a discretionary right of tax officers to disallow expense because they are not deemed related to the production of income, or they are deemed unreasonable, then the opportunities for bad practices may only get worse. If there are still going to be bases for disallowing unreasonable expense in cases of fraud, tax evasion and the like, these need to be spelled out clearly in the detailed implementing rules to that they are transparent and predictable.

There are many other detailed accomplishments, many of which are reflected in the Progress Matrix published for this Forum. But while it is important to recognize achievements, businesses are always looking forward, for new opportunities and new challenges, so let me please move on to some of the newly emerging challenges for the private sector.

## **II. NEW AND EMERGING CHALLENGES**

Generally speaking, the private sector in Vietnam has made amazing accomplishments and numerous entrepreneurs have flourished, notwithstanding all of the challenges. But reduction of market entry barriers and improvement of supporting services are essential elements in a healthy economic development strategy. Today, private businesses in Vietnam still suffer from lack of access to credit, land, energy, and an enabling State administrative apparatus. Tax, customs, transportation, land, trade regulation and other authorities are still too often seen as hostile threats, not as supporting services. While it is impossible to cover all of these challenges in a single paper, a few current examples may provide a starting point for some next steps.

**Example 1. Land Use Rights in Industrial Zones**

Challenges for the private sector arise unexpectedly with the implementation of new laws and regulations. One recent example is the impact of the rule in the 2013 Land Law that requires industrial zones to pre-pay their entire multi-year rent in advance to the State before they are allowed to enter into leases with industrial zone tenants which, in turn, enables those tenants to obtain land use rights certificates. These land use right certificates are critical for obtaining vital financial support in the form of debt from banks for which the security is the prepaid land rent from the tenant.

The issue at hand rose recently in the Department of Natural Resources and the Environment ("DONRE") in Long An province, but it may spread to other provinces where may interpret the new Land Law 2013 the same way. The issue arises out of Article 210.2 of the new Land Law 2013, which took effect on 1 July 2014. This article provides:

*"If an investor leasing land from the State with annual rental payment for construction and commercial operation of infrastructure of industrial parks, industrial clusters or export processing zones has subleased out the land together with infrastructure in the form of full one-off rental payment for the entire lease period prior to the effective date of this Law, the investor shall pay the land rental to the State in accordance with the Government's regulations. Those who sublease the land have the same rights and obligations as leasing land with full one-off rental payment for the entire lease period from the State after the investor has paid the entire land rental payment to the State budget."*

In the past, lessees in industrial zones could mortgage their land use right certificates to Vietnamese banks to raise finance for their working capital needs so long as they had prepaid the entire rent in advance for the term of the lease, typically up to 50 years or the remainder of the industrial zones prime land lease, whichever is less. As a result from the above article, however, after 1 July 2014, it seems that lessees in industrial zone/export processing zones **will not be able** to transfer the Land and its rights and obligations in the land to a third party ***if the industrial zone Landlord has not yet paid the entire land rental payment to the State, even if the lessee fully paid up entire rental in advance.***

Based on this article and from our experience, DONRE in some provinces take the view that the signing of a new sublease agreement after 1 July 2014 and the issuance of LURC for the one off land rental payment for the lessee will be subject to the landlord's fulfilment of its payment obligations of the one off land rental to the Tax Authority.

This article may very well impact the legal rights and financial status of thousands of the existing lessees who have previously fulfilled their one off pre-paid land rental payment obligation to the landlord. What happens if the landlord does not make its payment obligations as required by the new Land Law 2013, as many have not? If all of the leases it has entered into an land use right certificates that have been issued on the basis thereof are suddenly void, this could have a negative impact on the banking system as a whole due to the large amount of collateral involved. If the tenants' land leases become un-transferable under the mortgage agreements they have signed with local banks, their loans may go into technical default.

We suggest Article 210.2 be abolished since it should not link the obligations of the lessee with the obligations of the landlord which the lessee may not control. Short of abolition, the implementing decree should clarify that it will not apply retroactively to void or render un-transferable any existing leases or security arrangements based on them. This issue is an example of the kind of unintended consequence new laws may have, however well-intentioned they may be.

**Example 2. Energy infrastructure and the PPP Program**

The electricity issue needs to be addressed squarely because it may become a serious potential medium term constraint and even a social issue. We appreciate that there is no easy solution but the issue needs to be more openly debated for solutions to emerge.

Energy infrastructure and the supply of electricity at a competitive price is a looming issue for Vietnam. Some investors forecast electricity shortages in the 5 - 10 year future due to the delays in implementation of the large planned coal-fired power plants. Pricing flexibility is a key element in the delays. Even assuming the plants will come on line in several years' time, provisional solutions must be worked out to bridge this gap and maintain investor confidence.

In this area we urge the government to take into account all available options including alternative energy sources such as wind and solar as supplemental sources, energy efficiency programs, more liberal licensing criteria for private and captive power plants, and so on. Non-strategic projects based solely on cheap electricity (e.g., steel mills) should be considered carefully in terms of the demand they place on the power supply.

Vietnam has made remarkable gains and other aspects of its infrastructure, including roads, bridges, and ports. These successes have shown that the private sector has a role to play, but there are concerns regarding the new PPP program and specifically that notion that it might replace the BOT program and even private infrastructure investments. A more flexible PPP regime would be desirable in some early gains in terms of licensing appropriate projects would be helpful, and allowing for more private and captive alternative energy power producers would be welcome.

**Example 3. Labor Costs and Supporting Industries**

One of Vietnam's key challenges is to remain competitive in global markets while meeting the aspirations of its workforce for ever better working conditions. For the last 20 years, this has been made possible by virtue of the low cost of living and related salary structure in Vietnam. However, as industrial wages continue to rise steadily, we need to look to other competitive advantages to maintain our attractiveness as an investment destination for global buyers. Controlling the increases in wage structure and all of the related benefits are crucial given the challenges we face in finding other comparative advantages. This is also one of the crucial preconditions to developing supporting industries for Vietnam's basic manufacturers, whether it be footwear or computer chips, garments or smart phones.

There is a natural attraction to moving supporting industries so that they are close by their major customers. However, up until now, some regulatory distortions have discouraged the location of supporting industries in Vietnam. For example, customs duty exemptions don't always apply for supporting industries happen to be located outside industrial zones export processing zones. In some cases, ironically, this can make it cheaper to source the components from another country than from within Vietnam. The paper work to claim the exemptions is intimidating and the consequences of making a mistake may be disastrous, further discouraging supporting industries. While great progress has been made in the pure export manufacturing sector, the reforms there need to be extended to streamline the environment for local enterprises as well, including foreign invested and local companies outside the zones.

In fact, all of the deficiencies or inefficiencies of the economy work their way into the production cost of the supporting industries. Whether it is transportation, electricity, water, labor, technical experts or the administrative environment in general, all of these factors of production must be addressed to create an environment where the supporting industries can follow their natural tendency to gravitate towards their major customers. If these areas can be addressed, a virtuous cycle can be created where more and more supporting industries will spring up to compete to offer better goods and services.

One of the key supporting industries that we discussed at the last Forum is the textile industry, a necessary precondition to taking advantage of the preferential duty rates of the Trans Pacific Partnership Agreement ("TPP") and its "yarn forward" rule. Simply put, this rule means that if the raw materials for the garments Vietnam makes are not sourced Vietnam or another TPP country, the end product government will not be eligible for the TPP duty rate.

Some progress has already been made in attracting new textile investment. Whether or not the TPP is concluded in the near future, attracting investment in the production of textiles fabrics is a challenge for Vietnam due to the high capital costs and needs for international experts to install and operate these facilities. But the government can help by adopting a favorable investment industrial policy that supports this trend through tax credits, tax incentives, simple customs procedures, allowing importation of used equipment, cleared land nearby the main garment manufacturing zones, stable energy supplies, access to water treatment facilities and other basic preconditions. I know that sounds like a lot, but this is a strategic historical opportunity and it may not happen without the rights conditions being put in place.

### **III. ISSUES THAT REMAIN PENDING**

There are some issues that we have discussed previously that remain unresolved. Some of these need repeating.

#### **Example 1: Trading Companies - Trans-shipment Limitations**

An obvious example of an issue that seems counterintuitive in light of Vietnam's overall strategy to integrate and compete in the global economy is the conservative licensing approach to trading companies engaged in commissioned agent services based in Vietnam but servicing the region.

Specifically, there is the example of trading companies that are foreign invested who would like to engage in trans-shipment of goods from other countries into regional target markets such as Cambodia, Laos and Thailand. Allowing foreign invested trading companies to sell their products not just in Vietnam but into these other markets under the rules governing trans-shipment would be advantageous for Vietnam in terms of creating jobs, taxes and know-how. This should be allowed under Decree No. 187 of 2003, but we do not understand why the Ministry of Industry and Trade still does not favor this kind of business activity. We hope that its concerns can be articulated and addressed so that Vietnam can capture this potential business and not let it go to another competing jurisdiction in the region.

#### **Example 2. VAT on Export Services**

For many years now we have discussed the issue of Value Added Tax on exported services. Most countries grant exported services a 0% VAT rate in order to avoid disadvantaging them in international marketplaces and imposing unfair noncritical VAT burdens on form customers. The law in Vietnam has changed twice, moving from an eligibility test that focused on whether the service was "related to Vietnam" to test of whether the customer had an establishment in Vietnam, and then back to the quote related to Vietnam" test. Many foreign customers complained to their Vietnamese-based service providers about being charged VAT on exported services that are paid for from abroad. Others cave into the pressure of therefore customers and either absorb the VAT themselves or fail to pay it, sowing the seeds of future tax disputes.

In countries where 0% rate is granted as part of a overall policy to support exported services, stimulate hard currency earnings and compete in international marketplaces. Vietnam would do well to follow this model because it can compete in many service sectors. Vietnam could do this by adopting the simple rules that were the service is paid for in hard currency from abroad to a bank account in Vietnam it is eligible for the 0% rate. Vietnam is not risk losing any tax because if the service paid for was later charged back on form customers to its affiliates in Vietnam, the affiliate would be paying foreign contractor withholding tax on the amount charged

back. Under the current system, taxpayers can be taxed twice on the same income exacerbating the negative impact on the competitiveness of the service suppliers.

### Example 3. Work permits

At last Forum, the issue of work permits was one of the key concerns expressed by the private sector. Some progress has been made in terms of correcting the rules so that they are more reasonable, but serious practical problems remain. The strict criteria in the new rules continue to create problems for businesses, indeed, the survey of the employment working group demonstrates clearly that this is one of the top concerns for foreign investors Vietnam today. Vietnamese enterprises also suffer when they can't compete in international markets because they can't hire international talent.

First, it should be clarified when work permits are necessary. For example, workers present in Vietnam for a limited period of time under cross-border service contracts should not be required to get a permit if they are not being paid by a local enterprises and they are not on the local payroll. The measures announced by the Prime Minister on May 19, which involve returning to the old system of five years of experience or four years university level education, rather than *both* of those, would be welcome if applied across the board to all enterprises because, as noted above, all enterprises are in fact being impacted by the current supply chain disruptions.

- **Requirement for 4-year bachelor degree and 5-year's experience**

Second, in respect to the requirements of 4-year bachelor degree *and* 5-year experience for specialists in work permit application: For application for newly issue work permits, according to Resolution 47<sup>1</sup> of the Government, MOLISA issued Official Letter No. 2779<sup>2</sup> dated 4 August 2014, confirming the rules set out by Resolution 47. i.e. only **either** condition applies to specialists. This applies in practice now.

However, Resolution 47 mentions both specialists and technicians. Though, the wording of Resolution 47 and Official Letter No. 2779 is very confusing as to whether technicians can obtain work permits when they just satisfy only one of the two conditions – i.e. one -year training or three-year experience. Therefore, it seems that in practice DOLISAs still apply the old rule to technicians requiring the satisfactory of both two conditions.

- **Extension of work permit granted under the old regulation**

Third, regarding the renewal of work permits granted under the old regulation but which have since expired, DOLISA HCMC issued an official letter specifically requiring companies to apply for a newly issued work permit in accordance with the new criterion, rather than a re-issued work permit (i.e. a renewed one).

Though the DOLISAs may require either condition only, the problem is that under the regime of new issuance of work permit, foreigners need to apply for a Vietnam juridical record if they have been here for a long time, and police check report in their countries which may require them to go back to the countries to obtain.

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<sup>1</sup> Resolution 47/NQ-CP of the Government dated July 8, 2014 - Relaxing the conditions for Work Permits issuance for foreign employees

<sup>2</sup> Official Letter 2779 / VL LDTBXH notified the application conditions were adjusted for foreign workers in Vietnam in Resolution No. 47 / NQ-CP dated 07/08/2014

The wording under Resolution No. 47 is below:

English	Vietnamese
Item 4.a	Điểm 4.a
4. Regarding the conditions for foreign labourers entering into Vietnam to work: The Government decides to adjust the conditions for foreign labourers entering into Vietnam to work in the following circumstances:	4. Về điều kiện đối với lao động là người nước ngoài vào làm việc tại Việt Nam: Chính phủ thống nhất điều chỉnh điều kiện đối với lao động là người nước ngoài vào làm việc tại Việt Nam thuộc một trong các trường hợp sau:
a) Foreigners who are specialists, technicians if satisfying the condition on educational qualification <b>or</b> the condition of at least 5-year experience relevant to the position/ job that the foreigner will take in Vietnam	a) Người nước ngoài là chuyên gia, lao động kỹ thuật nếu đáp ứng yêu cầu về trình độ chuyên môn đào tạo hoặc có ít nhất 05 năm kinh nghiệm làm việc phù hợp với vị trí công việc mà người nước ngoài dự kiến sẽ làm việc tại Việt Nam;

The confusion arises out of the requirement for in 5-year's experience. There is no problem with specialists because they are subject to 5-year experience. However, technicians are only subject to 1-year training certificate and 3-year experience under Decree 102<sup>3</sup> and Circular 03<sup>4</sup>. The wording under this Item can be interpreted to mean that technicians must satisfy either condition of educational qualification (i.e. 1-year training certificate) or **5-year experience, which is unreasonable.**

Therefore, the revised wording should be:

“Foreigners who are specialists, technicians if satisfying the condition on educational qualification **or** the condition of at least 5-year experience **(for specialists) or 3-year experience (for technicians)** relevant to the position/ job that the foreigner will take in Vietnam”

This small change in the language of the rules could significantly ease the uncertainty and burdens on the private sector when hiring foreign talent. Other issues remain, however, such as the inconsistency of the standard Japan health certificate when comparing the requirement of the health certificate under the work permit rules, which makes it hard for Japanese applicants particular. Eventually, a comprehensive overhaul of the work permit requirements would be advisable.

#### **Example 4. Facilitating Environment for e-Government, Notarization Requirements**

There has been some progress, but some backward movement in the area of e-Commerce: While the rest of the world is rapidly and developing e-Government solutions to facilitate the emerging "e-economy", Vietnam remains locked in a paper bound system that is an antiquated holdover from the colonial era. Take just one example:

Requirements for foreign legal documents to be notarized, consularized, legalized, translated and notarised again impose undue burdens on new businesses as well as existing businesses.

<sup>3</sup> Decree 102/2013/ND-CP, issued by Ministry of Labour, Invalids and Social Affairs (MOLISA) on September 6, 2013, provides guidelines on the implementation of provisions of the new Labor Code on the management of foreign nationals working in Vietnam

<sup>4</sup> Circular 03/2014/TT-BLĐTBXH on guiding implementation of a number of Articles of Decree No. 102/2013/ND-CP dated September 05, 2013 by the Government on detailing implementation of a number of Articles of Labour Code on foreign workers in Vietnam

This is required in many circumstances ranging from setting up a new representative offices or companies to getting work permits, etc. Vietnam has taken steps to proceed to the Apostille Convention and this is a move in the right direction, but noting that the concept of Apostille itself is becoming an anachronism in the modern world and better, more "e-friendly" solutions need to be researched and adopted.

**Example 5. Lack of Duly Licensed International Ship/Rig Classification Service Providers**

No apparent change has been reported in the area of opening the market to licensing the international classification societies for international ship repair and ship manufacturing, including offshore oil rigs. Although a few of the several international companies that provide this vital service are operating in Vietnam on an *ad hoc* informal basis under the umbrella of the Vietnam Registry, their operations have not been normalized in the form of duly licensed commercial presences with the relevant business lines in their Investment Certificates. The service suppliers who care about legal compliance would like to set up normal business operations here to support Vietnam's ship building and repair industry. This is a vital supporting service in supporting Vietnamese ship repair enterprises as they try to compete in the international marketplace.

**Example 6. Dissolving Enterprises**

Not much progress has been made in the area of the procedures for dissolving an enterprise. These remain overly cumbersome, prompting the comment remark that there are thousands of enterprises that want to "die" but cannot obtain a death certificate. Delays in completing tax audits are the main reason cited as the tax offices say that they often do not have enough officers to do tax audits.

To find a solution to this problem, the tax office and the Department of Planning and Investment of Ho Chi Minh City had proposed to the People's Committee there that the enterprises should be allowed to be dissolved based on the audit result from an auditing company, but the auditing company will have to be responsible for its audit reports. The enterprise would be allowed to return the Business Registration Certificate and chop to the tax office instead of going back to the Department of Planning and Investment to streamline the process. We do not know what became of this proposal. Perhaps it was not taken up enthusiastically by the auditing companies?

**Example 7. Licensed Production of Medical Equipment for Export and Clinical Trials**

In this area there has been some progress with entity licensing but, not in the area of clinical trials.

Healthcare industry experts suggest that Government should apply common sense in applying domestic regulation to exported products. For example, there should be no need for Vietnamese clinical trials of drugs and medical equipment that are being produced under license exclusively for a foreign export market. Clinical trials, required for medical products sold into the domestic market, are expensive and time consuming and they should only be required for goods sold into the domestic market, and only where reliable international clinical trials are not available.

**IV. CONCLUDING REMARKS - HOW TO CREATE A BROAD BASED PUBLIC - PRIVATE PARTNERSHIP?****The Necessity of a Strong Public Sector**

At the end of the day, a healthy private sector depends on a supportive public sector. The private sector cannot thrive if it is not supported by basic public utilities (such as electricity and water), an appropriate education system, professional government regulators, a well functioning legal system to protect legal and contractual rights, physical security.

In this context, the question is still being debated - should State enterprises be absorbing scarce capital resources in non-productive assets? Should the State raise capital for its urgent core functions by selling off its own non-core assets such as hotels and beer companies, just to name two?

There are plenty of examples around the world where countries have taken advantage of the value of their non-core assets to modernize their functions. Here I am not talking about halfway equalization programs, but a full-scale privatization of non-core assets. At the end of the day, if we want to make the private sector the backbone of business in Vietnam, it will be necessary to create a level playing field by removing the preferences inevitably enjoyed when the State owns the competitors.

Some of these preferences may be very subtle and hard to detect. For example, a private Vietnamese bank competing with the state owned bank suffers a disadvantage because state owned enterprises naturally deposit their funds with state owned banks, reducing the cost of capital for those two don't banks and allowing them to lend on more preferential terms. These are the kinds of subtle forms of discrimination that really can't be eradicated with a simple obligation in an international trade agreement but which must be discussed openly to create consensus domestically about the way forward.

There is much left to be done in creating a stronger private sector in Vietnam, but given the tremendous progress over the past 20 years, there is every reason to be optimistic that working through channels like the Vietnam Business Forum, among others, obstacles can be identified and solutions can be found.

Thank you for your attention to my remarks today and I look forward to our ongoing work to resolve these issues.



*Tax*

## SEVERAL TAX ISSUES

*Prepared by  
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On behalf of Vietnamese Business Forum, we would like to express our gratitude about the recent reform and amendment of the tax policy by the Government. This represents for the comprehension and responsiveness of the Government to legitimate proposals of enterprise community which are raised via dialogues hosted by Vietnam Business Forum, aligning the Vietnam tax policy with international practice.

Among the issues raised by the Vietnam Business Forum and approved by Government, Vietnamese enterprise community highly appreciated and applauded the changes on the followings:

- (1) Foreign contractor tax policy applied for supply transaction in Vietnam accompanied with warranty term
- (2) The phasing out of the cap on advertisement and promotion (A&P) expense.
- (3) The reform and simplification of tax administration procedures which are presented by the elimination of CIT quarterly declaration and the broadening of companies subject to quarterly VAT filling instead of monthly filling.

In this document, through the dialogue channel of Vietnam Business Forum, we would like to raise some tax issues from the perspective of international practice in commercial transactions and incentives for expansion investment which are much concerned by Vietnamese enterprise community in general and by foreign investment enterprises in particular:

### **I. ISSUES ON REFORM OF ADMINISTRATION PROCEDURES IN THE FIELD OF TAX AND CUSTOMS**

#### **1. Declaring norm of material used for export processing and export production**

*Issue:* Pursuant to current regulation on customs, enterprises have to set up actual production norm of exported products and notify the norm to customs authority before or at the time of filling customs declaration of the first product lot of the HS code declared in the notification.

*Shortcomings:* The norm is set up, monitored by enterprise, even in the case the norm changes, enterprises are eligible to notify the change of the registered norm. As such, the notification of the norm to customs authority before or at the time of filling customs clearance is not necessary. To ensure the control of the customs authority toward the production norm, it is necessary for enterprise to keep the norm at their premise and present to authority when requested.

*Proposal:* We would propose to the Ministry of Finance to remove the requirement of enterprises to register the production norm to custom authority. Enterprises shall set up and monitor the norm by themselves and present to authority when requested.

#### **2. Tax payment deadline for imported material used for export production**

*Issue:* Pursuant to the current regulations, imported material used for export production are entitled for grace period of 275 days if satisfying specific conditions. If the products are exported after 275 days, enterprises have to pay VAT and import duty for the imported material plus penalty.

*Shortcomings:* The above regulation has caused difficulties for many enterprises who produce high value exported products (such as ship) since after 275 days the products cannot be finished and exported, meanwhile enterprises have to pay a large amount of VAT and customs duty for the imported material. This could affect cash flow of the enterprises significantly and also

increase the administration procedure as when the products are exported, the paid VAT and customs duty are refunded.

On the other hand, some enterprises having in stock redundant material which are not sold domestically and over 275 days. When carrying on inspection, customs authority imposes tax duty on the materials, forces enterprises to pay imposed VAT and customs duty on this redundant material and late payment interest. This is illogical as the redundant material is still used for the purpose of producing exported products.

*Proposal:* To simplify administration procedures, we would propose to the Ministry of Finance to eliminate the regulations of 275 days deadline applied for imported material used for producing exported products. This kind of material only should be taxed when material or products are sold inland.

### **3. VAT declaration for the activity of peripheral provincial construction**

*Issue:* Circular 156/2013/TT-BTC dated 6 November 2013 provides that: Where the taxpayer engages in peripheral provincial construction, installation, or sale, or real estate transfer without establishing an affiliate in that province (hereinafter referred to as peripheral provincial business), the taxpayer must submit a tax declaration to the tax authority of the locality where the peripheral provincial business takes place.

*Shortcomings:* The provision needs being reconsidered because of the following reasons:

- In many cases, enterprises having construction or installation with small value in the province, but under this provision, they have to file and pay tax at that province. The payable tax amount is very small but enterprises have to carry out procedures to register tax code at that province, suffering unnecessary administration procedures.
- For the peripheral provincial sale, there are no clear regulations to identify which case taxpayer has to pay tax in local province and which case company has to pay tax for the whole revenue of the company. In practice, it is hard for the tax authority to manage those activities; as such the feasibility of the tax management is low.
- In many case, due to the lack of knowledge, taxpayers does pay all tax at headquarter, but the tax authority still request them to pay tax at local province regardless of the payment status. This cause the double tax payments and burdensome to taxpayers
- In nature, this is the allocation of revenue amongst local budgets and is derived from the principle that VAT must be declared and paid at location where business takes place. However, this provision has been causing burden of administration procedure to taxpayers.

*Proposal:* From above situation, we would like to propose to the Ministry of Finance to reconsider the regulations toward a more realistic approach, specifically:

- To eliminate the regulations of local tax declaration for the peripheral provincial construction, installation, or sale
- To keep the regulation of requiring the tax payer to temporary declare and pay VAT at the local tax authority for local infrastructure construction works but limit to contracts, transactions with the value over one billion Vietnam Dong.

## **II. ISSUES ON TAX POLICY**

### **1. Foreign contractor tax policy applied to sale of goods into Vietnam**

*Issues:* Circular No. 103/2014/TT-BTC dated 6 August, 2014 (Circular 103) regarding FCT has expanded the subjects bearing tax which include cases of foreign company distributing goods in

Vietnam. Specifically, Circular 103 set out the applicable subjects of this Circular include: “Any foreign entity that performs the whole or part of goods distribution or service provision in Vietnam, who is still the owner of goods that are delivered to Vietnamese organizations or take responsibility for the cost of distribution, advertising, marketing, quality of goods/services delivered to Vietnamese organizations, or impose prices including the cases in which the foreign entity authorities or hires some Vietnamese organization to perform part of the distribution or service provision pertaining to goods sale in Vietnam.”

*Shortcomings:* This provision should be reconsidered due to the following drawbacks:

- It is clearly that the scope of above provision is quite enormous, and applicable to many cases selling goods from overseas into Vietnam including transactions with purely commercial nature which, up to now, falling under the governed subjects of Law on import and export tax, leading to more cost burden to Vietnamese enterprises since consequently foreign contractor tax will be added to prices borne by Vietnamese buyers.
- In particular, with the current regulations, local tax authorities have full competence to impose tax regarding goods distribution contracts when:
  - **Company A (seller) bears responsibility for quality of goods provided to Company B (buyer):** The seller bearing responsibility for quality of goods provided to Vietnamese buyers is a certain commercial condition. This transaction of goods trading cannot be carried out when the seller does not undertake the responsibility for quality of goods. The Circular 103 recorded one improvement in comparison with the previous regulations when confirming that the agreement for purchase and sale of goods with delivery at Vietnamese border gate accompanying with the warranty condition of the supplier will not bear the foreign contractor tax. However, the provisions lead to confusion, misunderstanding and detriment to tax payers. In practice, the local tax authorities are applying the provision in this Circular to impose tax on goods supplement contract in which the supplier bearing the responsibility for quality of goods via warranty's term.
  - **Company A imposes selling price:** The price is a fundamental component of the value proposition of one enterprise in the market. At the present time, when the borders are blurred, the markets are connected and integrated, the multi-national companies have to calculate a global pricing strategy in order to maintain the competitiveness while still retaining the product's image to the consumers. For this purpose, the foreign supplier shall have a certain control on pricing policy in every market where they sell goods and prevent the unhealthy speculation among markets and undermine the official distribution system. The implementation of pricing strategy – an integral part of business strategy – cannot and should not turn the foreign suppliers into the entities bearing foreign contractor tax.
  - **Company A authorizes or hires a Vietnamese organization to conduct part of a distribution service, other services related to the sale of goods in Vietnam:** The current regulation is too general about what is authorizing or hiring a Vietnamese organization to conduct part of service relating to the distribution and sale in Vietnam. With the current wording, the seller offers free warranty through bartering, replacing goods or supplying parts for buyers in Vietnam to provide warranty service to final consumer or implement the warranty obligation in accordance with commitment could also be considered as conducting “services relating to the sale of goods in Vietnam” and thus subject to the foreign contract withholding tax.

*Proposal:* Under the international practices, which are typically Agreements on avoiding double taxation signed between Vietnam and regions, the distribution activity of foreign sellers, depending on the model and level of participation in Vietnamese market, might create a permanent establishment in Vietnam and might be taxed on the income allocated to such permanent establishment. The Agreements are based on the principle if the business (sales) in

Vietnam is conducted through a broker, a commission agent or any other agent with **independent status** provided that they shall only operate within **the framework of their ordinary business activities**, then foreign contractor shall not be subject to tax.

Based on the above analysis, we propose to the Ministry of Finance to consider and clarify which distribution activities shall be subject to foreign contractor withholding tax. In particular, we would like to propose to Ministry of Finance to study and provide guidance base on the description and regulation about permanent establishment under international practice and standard as the UN and the OECD to identify whether the foreign contractor has permanent establishment, thereby determining the tax liability of foreign contractors. With that opinion, Circular 103 should be amended to exclude the condition when the seller bears responsibility for quality of goods/services and/or imposes selling price from the conditions triggering FCT to seller.

## **2. Applying the Foreign Contractor Tax policies for EPC contracts**

*Issues:* Circular 103/2014/TT-BTC guiding on withholding tax prescribes the applicable tax rate to calculate VAT, CIT on revenue for construction, installation work involving the supply of raw materials or machinery and equipment associated with construction works under two circumstances:

- In the contract, if the value of each business activities could be separated, the foreign contractor is not required to pay VAT on the value of raw materials or machinery and equipment, which has been paid at importation stage or is VAT exempted, for each part of work under the contract, the ratio % shall be applicable for VAT and CIT calculation on corresponding revenue for that business activity.
- If the value of each business activities could not be separated in the contract, the VAT rate of 3% and CIT rate of 2% shall be applied on the whole contract value.

Meanwhile, Circular 60/2012/TT-BTC prescribes that regardless each business activities could be separated in the contract, 3% VAT and 2% CIT shall be applied on the whole contract value.

The change is an important progress on contractor withholding tax policies, reflecting the principles of taxing on each activity implemented by contractors. This improvement will help to reduce significantly the cost to Project Owner as the proportion value of M&E in EPC contracts is normally very high, often accounting up to about 70%-80% of the whole contract value. However, the current provisions of Circular 103 only apply to contracts signed from the date 1<sup>st</sup> October 2014.

*Shortcomings:* In principle, withholding tax is declared and paid on each payment. For a number of contracts, particularly EPC contracts, several payments could be made during contract implementation period.

So if the above guidance of Circular 103 applies only to contracts entered into after the date of 1<sup>st</sup> October 2014, it shall be unfair for those contracts entered into prior to 1<sup>st</sup> October 2014 but the payment made after 1<sup>st</sup> October 2014.

*Proposal:* We understand that Vietnam Government has encouragement and protection policy toward investment of local and foreign enterprises in Vietnam. In particular, investors are entitled for applying more favorable condition if the policy changes. As such, in order to create favorable conditions for foreign contractors as well as to generate the equality among contractors performing EPC contract in respect of the tax payment obligation in Vietnam, we kindly propose Ministry of Finance to consider allowing the EPC contract which signed before the date of 01/10/2014 but the payment done after the dated of 01/10/2014 have choice to apply tax policies prescribed in Circular 103 for payment after 10/01/2014.

The principle of applying FCT policy base on date of contract is unchanged, however if the tax policy changes in the way to offer more favor to taxpayers, taxpayers can apply the new policy at the time of payment to declare and pay tax. We understand that this grandfather clause was stated clearly in the previous change in FCT policy (Circular 60/2012) and was very welcomed by enterprises.

### **3. Identifying expanded investment and regular investment**

*Issues:* Pursuant to regulations on Corporate Income Tax and Investment Law, expanded investment project is project developing on-going project in order to expand and improve the production and capability of business, innovate technology, improve product quality, reduce environmental pollution.

In practice, during the process of production and business activities, the enterprise must constantly invest in fixed assets to replace, supplement assets to maintain productive activities using internal cash flow generated from depreciation fund or retain earnings, without any injection of capital from external sourced, i.e. loan or increase in contributed capital. However the lack of clear guidance in determining point of time starting expanded investment has led to arbitrageous interpretations in practice. In particular:

Firstly, the tax authorities do not consider whether enterprises contribute more capital into exiting project. FDI companies when submitting dossier for establishment must register total investment capital. This is considered as a measure of project scale. Total investment capital includes charter capital and mid-long term loan used for purchasing fixed assets and exclude working capital. As such the figure in the Balance Sheet closely reflecting the capital implementation of the enterprise is the value of fixed asset after accumulated depreciation as opposed to registered capital. If this figure is less than the registered capital, it can not be said the enterprise has expanded investment. However many tax authorities deem all assets newly purchased from 2009 as expanded investment, or deem the excess of total historical value of assets over the registered capital as expanded capital.

Secondly, tax authorities do not consider the cause and purpose of the increase in asset value and treat the regular investment in fixed assets to replace, supplement assets to maintain current productive activities as the same category as expanding investment, accordingly they deem that when the enterprise has increased in asset value, it means enterprise carry on expanded investment.

*Shortcomings:* The regular investment in fixed assets to replace, supplement assets to maintain productive activities is inevitable activity of any enterprise. Capital to invest regularly (replacement of property or buying office property for management activities, improving working condition for employees) can be financed from the source of asset depreciation or retain earnings without the need to increase capital investment. Thus it can not be considered the regular investment in fixed assets to replace, supplement assets to maintain productive activities as expanding investment, also expanded investment cannot be identified only based on indicator of increase in fixed assets.

*Proposal:* Foreign investors when being awarded investment certificate already registered investment capital. We understand that this is very important indicator for Government to consider the incentive mechanism for investment projects. As such for the consistency between Investment Law and Tax Law, we would propose to Government and Ministry of Finance to provide more specific guidance to identify investment expansion for the period prior 2014 in the way that would base on invested capital which includes charter capital and loan capital and is measured by the value of fixed asset after accumulated depreciation on the Balance Sheet. In case enterprises use internal cash flow generated from depreciation source to purchase assets, it cannot be considered as expanding investment. In case enterprise used up all registered

capital but invest using retain earnings to purchase asset to maintain the manufacturing activities without any increase in capital, capacity, scale of business, then the investment should not be deemed as expanded investment and shall be able to applied corresponding tax policy in each period.

#### **4. Tax incentive for regular investment in acquisition of fixed asset**

*Issues:* Resolution 63 newly issued by the Government has brought much positive signal to Vietnamese business community, solving lots of difficulties for businesses as well as for tax authorities. Steering spirit of Resolution 63 is said that it is very common sense. However when Resolution 63 is guided by Circular, it seems that common sense was undermined. Specially, provisions on incentives for regular investment in purchasing property are as follows:

- Point 4, Section I, Resolution 63 specifies: “For businesses entitled to the preferential business income tax of period 2009-2013 with their regular investment in machinery and equipment during production and business, then they will be entitled to the preferential business income tax for the additionally increased income (no re-settlement to cases which have been implemented)”

According to the above we understand that the only exception of those cases have been tax audited for the 2009-2013 period, the business which has investment of acquisition of fixed asset during the 2009-2013 period, will be applied the current tax incentive of project.

- However, the circular 151/2014/TT-BTC provides that: “Investment projects of enterprises applied tax incentive and if in the 2009 – 2013 period, the enterprises had invested in machinery and equipment regularly during production which not belongs to the new investment project and new projects expansion, the part of the additional income by investing in additional machinery and equipment, is also applied tax incentives under the project for the remaining time from the tax period 2014 ”

Thus Circular limits the period of application for preferential tax period only from 2014. Moreover, the guidance of this Circular seems to be illogical due to if the investment is not the new investment project and new project expansion, such investment does not belong to the current project which enjoy tax incentive or has tax obligation as current projects.

*Shortcomings:* We understand that the guidance in Circular seems to be illogical because if the investment does not belong to “*new investment project and expansion project*”, such project must belong to existing project, accordingly it is entitled for tax incentive or tax obligation as current project. Therefore, if enterprise makes regular investment in the period of 2009-2013 which is not new investment project and/or expanding investment project, such project will be applied tax incentive of current project obviously. However, because of the inconsistent perception of the tax authorities and the guidance in Circular as analyzed above, the regular investments are regarded as expanding investment, and are not be applied tax incentive for the 2009-2013 period.

*Proposal:* We kindly propose that the Ministry of Finance should consider adopting guidelines on tax incentives applied for the regular investment in the consistent spirit of both Resolution and Decree in the way that: If the investment project of enterprise is currently enjoying tax incentives and if in the 2009-2013 period, there is an investment in machinery and equipment during operation which is not a new investment project and the expansion investment project, the additional income from the investment in machinery and equipment is entitled for tax incentives same as the current project for the remaining time.

## 5. Applying DTA to determining Permanent Establishment for tax reduction and tax exemption

*Issue:* According to the guidance in Circular 205/2014/TT-BTC and some guidance petitions, tax authorities tend to interpret broadly the Permanent Establishment (PE) definitions in tax treaties to conclude that foreign companies have a PE in Vietnam, specifically for purely commercial activities of foreign contractors such as on the spot imported/exported activity, commodity distribution activity, sales activities delivered at the bonded warehouse and so on.

*Shortcomings:* The interpretation of tax authority sometimes does not take into account the commercial nature of the transaction as well as international trading practices. Some cases are as following:

- For on the spot import/export activity: tax authorities consider that a Vietnamese enterprise deliver goods to another Vietnamese enterprise according to instruction of the foreign buyer, they will be treated as representative of the foreign enterprise so the foreign enterprise is deemed to perform business in Vietnam via a permanent establishment, whereas in the activity of on the spot importing and exporting, such transaction is only a commercial agreement in order to optimize delivery/stock circulation of commercial trading activities.
- For goods distribution activities in which foreign enterprises have control of the sale price in Vietnamese market: the tax authority said that foreign enterprises having control of the sale price means they have control of sale activities of Vietnamese enterprises such that Vietnamese enterprises will become dependent establishment of foreign enterprises leading to constitution of permanent establishments. Meanwhile the implementation of pricing strategy is an integral part of business strategy, especially in an integrated global economy.

The interpretations mentioned above made the application of DTA of foreign enterprises impossible, effectively it obliterate the legitimate benefit of enterprises.

*Proposal:* We would propose the Ministry of Finance to consider and have guidance to local Tax authorities to take into account the true nature of transactions as well as the perspective of international practices when interpreting DTA.



# ***Customs***

## CUSTOMS AND TRADE FACILITATION

*Presented by  
Mr. Mark Gillin  
Head of Customs Working Group*

The General Department of Vietnam Customs (“GDVC”) has been preparing Decrees and Circulars, that will provide detailed regulations to implement the revised Customs Law of 2014,<sup>1</sup> which will go into effect on January 1, 2015.

During September and October 2014, the GDVC has organized consultations on a number of key implementing Decrees and Circulars, including the Decree implementing the revised Customs Law of 2014, Circulars on classification, valuation, authorized economic operators, Export Processing Zone (“EPZ”) and Enterprise Processing Export (“EPE”) operations, import processing procedures, etc.

The Customs Law of 2014 and implementing Decrees and Circulars are designed to implement common elements of the WTO Trade Facilitation Agreement (TFA), the Trans-Pacific Partnership (TPP) Chapter on Customs Administration and Trade Facilitation, the Vietnam-EU Free Trade Agreement, and the ASEAN Economic Community 2015.

Those common elements include: National Single Window (TFA Section I, Article 10.4), Advance Rulings (Section I, Article 3), Authorized Operators (Section I, Article 7.7), Export Processing Enterprises and Export Processing Zones (Section I, Article 9), Public Notice and Opportunity for Comment (Section I, Articles 1 and 2), and National Committee on Trade Facilitation (Section III, Article 2).

Implementing these common commitments would simplify customs and other import/export procedures (Ministry of Health, Ministry of Industry & Trade, Ministry of Agriculture and Rural Development, etc.), speed up Vietnam’s supply chains and increase competitiveness, reduce costs by 5% to 15%, reduce corruption, allow SMEs in Vietnam greater opportunities to participate in international trade. At present, about 66% of Vietnam’s exports comes from FDI factories, and the local content of the exports is very low.

### Recommendations

The following are some key areas of focus for improving customs administration and trade facilitation:

#### 1. NATIONAL SINGLE WINDOW

Vietnam should put priority and resources, including external technical assistance, on implementing the National Single Window for overcoming all of the uncoordinated import and export licensing, registration and other administrative requirements of various ministries and agencies. GDVC is the lead agency but, according to the World Bank, Customs import processing takes only 28% of the average of 21 days now required for clearance. The problem is that imported goods often require some other registration, certificate or license from another Ministry or “specialized inspection”, and agencies other than GDVC still use time consuming one-by-one administrative application procedures to issue documents that are mandatory for import or export.

The new customs law and draft implementing Decree provide that other ministries and state agencies are to “cooperate” with GDVC on a Single Window, but, absent external support and technical assistance from the private sector, in cooperation with development assistance, the

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<sup>1</sup> <http://www.customs.gov.vn/Lists/VanBanPhapLuat/Attachments/7655/LHQ2014.pdf>

Single Window could be more complicated than the new e-Customs system and Vietnam will fall behind other countries in implementation and competitiveness.

## 2. ADVANCE RULINGS

GDVC should set up workable procedures that companies and traders can use for getting **Advance Rulings** on a timely basis to provide more certainty for business strategic planning.

The draft National Decree provides for advance customs rulings that are called “predeterminations” on customs tariff HS classification of goods, on origin of goods and on customs valuation of goods in Articles 32 and 33. These provide for such advance rulings to “automatically expire” in three years. This does not coincide with the five-year period of required customs recordkeeping or liability for additional duties, taxes or customs penalties. It is recommended that, if there must be a time limit for validity of a customs ruling, it should be aligned with the requirements for recordkeeping and liabilities for additional duties, taxes and penalties.

In addition, there is an overly broad requirement that importers or exporters who have received such rulings must notify GDVC of “any change” within 10 days, which is an unrealistic time frame for such notifications. “Any change” may allow customs officers to refuse to honor such rulings as binding in a significant number of cases, rendering the value of such rulings questionable in terms of providing predictability for businesses and traders. It is recommended these elements of the advance customs rulings provisions be revised.

Advance customs rulings are to be issued within either 30 days, or 60 days (depending on complexity) of the date of receipt by GDVC of a “complete dossier.” This “complete dossier” requirement will be specified in a separate Circular (regulation) that can be problematic and burdensome. The current customs regulation (Circular 128<sup>2</sup>) requires copies of purchase and sale contracts and proof of payment that renders such rulings to no longer be “advance.” These appear to have been removed from the new draft Circular however; such requirements have a way of “reappearing” in the final regulation. It is recommended that the draft regulations be monitored to avoid this.

## 3. AUTHORIZED OPERATOR

The current approach to **Authorized Operator** designation of privileged customs status for companies is too restrictive, involving USD 150 million in turnover for imports and USD 50 million for exports to qualify. This discriminates against SME’s which goes against an express provision in the WTO TFA.<sup>3</sup>

Authorized Operators, termed “AEO’s” or Authorized Economic Operators are a requirement of the WTO TFA and other agreements. Articles 9 through 12 of the draft prescribe conditions for companies to qualify for this status as “customs priority regime” companies. There is a potentially contentious issue involving eligibility conditions contained in Article 10.

The early draft limited such status to companies that had a turnover of USD 100 million and were “import/export companies.” We recommend that this turnover requirement be eliminated or greatly reduced because, it may violate or conflict with provisions in the WTO TFA that call for such programs to be implemented in ways that do not discriminate arbitrarily between economic operators and, that do not discriminate against SME’s. Under the currently proposed

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<sup>2</sup> Circular 128/2013/TT-BTC dated September 10, 2013 on customs procedures, customs supervision and inspection; export tax, import tax, and administration of tax on exported goods and imported goods

<sup>3</sup> TFA, Section I, Article 7.7.2 “... the specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member’s laws, regulations, or procedures, ... such criteria shall not ... restrict the participation of small and medium-sized enterprises.”

criteria, even some of the world's leading express courier companies would not qualify and that, in practice, all logistics forwarders, customs brokerage firms and other parties with key roles in international supply chains would be precluded.

There are only 24 such "customs priority regime" companies in Vietnam at this time and all are multinational giants

The current version of the draft National Decree contains in Article 10 the following qualification conditions:

- An import/export enterprise having a turnover of US \$100 million per year;
- An enterprise exporting made in Vietnam goods with a turnover from US \$ 40 million;
- An enterprise importing/exporting agricultural or aqua-cultural goods produced or raised in Vietnam with a turnover from US \$ 30 million;
- Customs brokerage services providers who file at least 20,000 customs documents per year.

These changes are still too exclusionary and preclude companies like transportation, warehousing and supplier firms involved with supply chain security from being eligible for the program.

These conditions would appear to be against national interest in providing facilitation to SME's, which are said to constitute 97% of Vietnamese firms. They also appear to hamper a policy to favor investment in new "supporting industries" that will be important for making Vietnamese goods eligible for TPP trade benefits.

As a result, it is recommended that new and objective criteria for eligibility for the Authorized Operator program be developed to allow for integrated supply chain security and greater access to SME's.

#### 4. CUSTOMS VALUATION

It is positive that the drafting committee accepted the recommendation to implement the Customs Valuation Agreement of GATT 1994 explicitly in the draft National Decree in Articles 20 through 31. However, there have been new provisions added or edited which could lead to confusion and misinterpretation and inconsistencies with GATT rules.

We recommend that major revisions to these articles in the draft National Decree be made to accurately reflect the actual text of the Customs Valuation Agreement of GATT 1994.

GDVC should revise reporting procedures for **Export Processing Enterprises** and **Export Processing Zones** to stop requiring filing of BOMs (bill of materials) and adjustments thereto and, instead, to adopt up-to-date "best practices" similar to international best practices involving Trade Zone procedures.

#### 5. PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT

With respect to the commitment of Public Notice and Opportunity for Comment (Section I, Articles 1 and 2), there needs to be additional time provided. The draft Decree was only published in the second half of September 2014, leaving less than 60 days before November 15, 2014, when the Decree is scheduled to be published. As of October 15, 2014, the draft Circulars regarding Classification, Valuation, Authorized Economic Operators, Export Processing Enterprises/Export Processing Zones, and Import Processing Procedures have not been published, as far as we know. Accordingly, it might be appropriate to either delay the effective date of entry into effect of the law, Decrees, and Circulars, or to issue an "Interim Final Decree," and "Interim Final Circulars," which would be subject to additional review and comment during an appropriate period of time, six to nine months, during which time there would be guidance

and “restrained enforcement”<sup>4</sup> by GDVC, and a Final Decree and Final Circulars be published after the extended review and comment period, based on actual experience, so that the laws and regulations would be more appropriate to commercial operations and business reality in the ports.

## 6. HARMONIZED SYSTEM TARIFF CLASSIFICATION

With regards to the Harmonized systemTariff Classification, it is recommended that in Article 3 “Interpretation of Terms”, an explicit reference to the General Rules of Interpretation to the Harmonized Commodity Description and Coding System of the WCO be added in lieu of a reference to “common rules.” Similarly, it is also recommended that an explicit reference to the Explanatory Notes to the HS as published by the WCO be added to these terms as an “authoritative guide” for classification of goods for customs purposes.

This is necessary to reduce the number of spurious and erroneous tariff disputes and misclassifications that are occurring and are a burden to importers and exporters. It will also enhance greater uniformity in tariff classification of goods by customs officers at various ports throughout Vietnam. In addition, accurate HS tariff classification and application of these rules will be necessary for purposes of anticipated TPP Rules of Origin, as wells as, for an Advance Customs Rulings program to be developed by GDVC. It is reported that the WCO’s Explanatory Notes to the HS have not yet been fully translated into Vietnamese and it is hoped this will stimulate completion of this project.

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<sup>4</sup> Delayed enforcement [http://www.cbp.gov/sites/default/files/documents/import\\_sf\\_carry\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/import_sf_carry_3.pdf)

How Will the Rule be Enforced? The interim final rule includes a delayed enforcement date of 12 months after the interim final rule takes effect. During this 12-month period, CBP will show restraint in enforcing the rule. CBP will take into account difficulties that importers may face in complying with the rule *as long as importers are making a good faith effort and satisfactory progress toward compliance.*

# ***Power and Energy***

## POWER AND ENERGY POSITION PAPER

*Prepared by  
Mr. John Rockhold  
Power and Energy Sub-Working Group*

The government has done a good job in ensuring sufficient energy through 2014, however the members of the Working Group and their respective Chambers, Business Associations and memberare quite concerned about the uncertain outlook of power supply over the next 7 years.

Vietnam's plans to move from dependence on hydropower to coal haven't been realized thus far, with new coal capacity failing to come online as expected and Vietnam becoming a net coal importer ahead of schedule. Meanwhile electricity demand is expected to continue to grow at high double digits rates through 2020.

When looking at alternate energy sources, large hydro is almost fully tapped, and natural gas and nuclear have potential, but the rate of development has been slow and targets are not being met. Overall, there have been continued public infrastructure delays, resulting in delays of expected benefits.

Hence, the newly activated Power and Energy Sub-Working Group is concerned that energy supply may fall below peak demand, especially in the south, and intensely in the dry season. During the National Workshop on Renewable Energy Pilot project in Me Kong held in September 2014, participants heard that rural communities reported not having electricity one day a week. The Working Group would like to focus on Renewable Energy as a solution to Vietnam's short-term energy needs and tocontribute by proposing and working out solutionsfor Vietnam based on approaches that have worked in other countries, with the support of Ministry of Industry and Trade ("MOIT").

The main positions of the Power and Energy Sub-Working Group follow:

- Renewable energy is best positioned to support Vietnam's energy needs in the near future due to its scalability during a short time frame (2 years), with wind at the forefront due to extensive pipeline (4.4 GW of registered projects) and existing government support policy.
- In order to bolster renewable energy, the Working Group supports the creation of an attractive investment environment for these sectors. As such, the Working Group backs the recommendations put forth by MOIT consultants, which call for an increase in the Feed-in tariff ("FIT") level for wind energy and simplification of application processes. The Working Group is also in support of MOIT's work on a FIT for biomass. Additionally, in order to improve the investment climate for solar PV, fiscal supports are proposed e.g. accelerated tax credits to allow the cost of solar power investments to be recovered against corporate taxes in the first 2 years following investment, and a value added tax reduction.
- Critical to realizing the scalability benefits of renewable energy will be the ability of the state grid to absorb the additional energy capacity from renewable energy sources. Hence, the Working Group supports efforts to modernize the grid and prepare the grid system for connecting to large-scale renewable energy capacity. This includes both infrastructure hardware and legal framework for direct power purchase agreements between generation utility and end users as was discussed in June's VBF Mid-Term Forum.
- Vietnam Electricity Group ("EVN") continues to run at a loss and electricity costs remain the lowest in the region. This limits both direct investments in grid infrastructure and energy efficiency efforts by customers. It is suggested to continue and accelerate the adjustment of energy tariffs for a sustainable power sector development in Vietnam. This will enable EVN

in restructuring and becoming more profitable following international practices, hence will open access to private investment both domestically and internationally, and will stimulate greater energy efficiency efforts from end use customers. Price adjustments enabling a healthy energy market would prevent brownouts, and power shortages, which currently impact industrial development and employment.

- The donor community has an important role to play to ensure a thriving, sustainable, private sector-backed renewable energy industry. The Working Group requests the assistance of donor organizations to target financing towards private sector investments in the energy sector and to facilitate project finance structures with credit/sovereign risk to be covered by bilateral governments as opposed to the need for government guarantees, which are accessible to few projects.
- Finally, the Power and Energy Sub-Working Group emphasizes that the proposed strategy to support Vietnam's successful exploitation of natural resources for stable energy supply goes in line with the expected realization of Free Trade Agreements ("FTAs") and to strengthen the private sector and SMEs to take advantage of upcoming FTAs. The expected boost in Vietnam's GDP and economic development, which is expected as a result FTAs, will be founded on a strong power supply.



***Automotive***

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**AUTOMOTIVE POSITION PAPER**

*Prepared by  
Automotive Working Group  
Vietnam Business Forum*

The Automotive Working Group – Vietnam Business Forum, comprises interests of the following sub sections of the industry:

- a) Passenger Cars and Commercial Vehicles
  - i. CKD (Local Assembly/Manufacturers)
  - ii. CBU (Imports)
- b) Two Wheelers (Scooters/Motorbikes)

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**We would like to thank the Government for, including the manufacture of automobiles and automotive parts/components into the incentive investment sector list of the revised Law on Investment, removing controlled expenses in Law No.32/2013 to amend the law on enterprise income tax , allowing enterprises to conduct any business lines that the law, ordinary and decree, does not prohibit, and for some other changes in the laws recently adopted by the National Assembly to improve investment and the business environment in Vietnam.**

**I. PASSENGER CARS & COMMERCIAL VEHICLE INDUSTRY (CKD/CBU)**

We would like to give special thanks to the office of the Government for obtaining the Prime Minister's approval on the Automotive Master Plan for Vietnam's automobile industry development to 2020 with a vision to 2030 at the decision No: 1211/QĐ-TTĐ dated July 24th, 2014. This reinforces the interest of the Government to develop Vietnam's automobile industry by enabling healthy competition and promoting a level playing field for all players.

However despite having more than 20 players and 40 brands in the automotive industry in Vietnam, the growth in the overall automotive sector has not been as per expectations of both the investors and the Government. Although the industry is witnessing good growth in 2014 and based on Vietnam Automobile Manufacturers Association's forecast it is expected to be in the range of 150,000 units in CY 2014, this is still lower than the industry in 2009 and this growth comes with the backdrop of a 40% drop in 2012. The total Industry in 2014 of around 150,000 units is split across CKD and CBU with CKD being approximately 80% of the industry. The overall capacity utilization of the industry is a mere ~30% since the total available capacity is in the range of ~500,000 units. Lack of growth and sub optimal capacity utilization has hurt the investor confidence and also questioned the future returns for new investments.

The growth and development of the automotive industry of Vietnam has been affected by:

- a) Frequent changes in the policies and erratic proposals during the last few years;
- b) Delay and lack of consistent /transparent policy aimed at the development of the industry;
- c) Lack of clarity of business impact to CKD/CBU after full integration with ASEAN in 2018;
- d) Continued high and multiple taxation; and
- e) Inadequate implementation of programs to address the under developed infrastructure.

A key factor to attract investment in a country is to grow the overall size and competitiveness of the CKD and Component industry. Investors plan their strategy based on the overall size of the industry and the cost competitiveness of the CKD.

The Government of Vietnam should consider steps to accelerate growth of the overall industry and to drive cost competitiveness of CKD to maintain a sustainable automotive industry in Vietnam. These factors will lead to suppliers and investors coming to Vietnam, which in turn, would aid the growth and development of the industry.

With the recent approval of the automotive master plan we are hopeful of stability and transparency in policy going forward.

Based on the above and the working of the group and interactions with different bodies, we present below a set of recommendations corresponding to the issues raised by the CKD manufacturers that could possibly help in the growth and development of the automotive industry in Vietnam.

### **1. Cost gaps and weak cost competitiveness of local CKD operations**

A key guiding principle to promote a level playing field and drive sustainable cost competitiveness of CKD should be to eliminate the cost gap of CKD and CBU. The policy should aim at recognizing the investments of CKD players in Vietnam and ensuring safe guarding of interest of CKD during the transition to the AFTA regime from 2018 onwards. It is estimated that CKD production is approximately 20% higher in Vietnam than in neighboring countries.

**Recommendations:** Some of the actions that may be considered to retain cost- competitiveness of the CKD industry are:

- Providing adequate production linked incentives for CKD
- Review the methodology of taxation across the industry – for example SCT.
- Impose stricter control and enforce transparency on the import of vehicles
  - Verify declared value of imported cars
  - Tighten the control of “Used Car” imports

### **2. Need for transparency and speed on duty road map within ASEAN & Other FTAs**

Investors and industry players look towards a minimum of a 5 year window on tax policy. Currently, in the auto sector the import duty rates are declared 1 month prior to each year. For example: November 2014 for the rate starting Jan 2015. This has put an immense strain on the ability of the players to plan for an extended term regarding their operations in Vietnam. There are different versions of import duty road maps between 2015 and 2018 - some at 50-50-30-0, others at 50-40-30-0. A lack of clarity prevents companies from planning for the medium-long term in Vietnam.

**Recommendations:** Since the year 2018 is very significant for integration with ASEAN for Vietnam and is only 3 years away, we sincerely request the Government to finalize this import duty road map. It will also be helpful to share the ongoing discussions with regards to different Free Trade Agreements (biateral or otherwise) and the possible impacts on the auto sector.

By doing the above, the industry players will be able to plan and serve the customers better.

### **3. Continued high taxes/Special Consumption Tax (“SCT”)\_**

Vietnam is going to fully integrate into ASEAN by 2018 and the future (survival and growth) of Vietnam's automobile manufacturing industry largely depends on the Government's policies on taxes and fees in which the SCT is of importance. Due to disadvantages of small production and economic scales, automotive production costs in Vietnam are 20% higher than those of automobiles imported from Thailand. Key issues affecting the industry are:

- (i) SCT – rate etc;
- (ii) Import duties on auto parts and components for CKD-produced operations are still at high rates, in the meanwhile Thailand CKD-produced operations are in the industrial cluster or exporting processing zones, which are duty free for auto parts and components imported from all over the world;
- (iii) Automobile production costs in Vietnam are very high due to output being too small.

**Recommendations:** However, to let the Vietnam's industry of automobile manufacturing live up to its full potential, automobile manufacturers in Vietnam would respectfully request the Government consider revising SCT tax rate applied to the industry as follows:

- (i) Apply the ex-factory price for CKD-produced automobile SCT calculation as is the case in Thailand and Indonesia.
- (ii) Have necessary incentive policies for the local production to compensate for higher production costs, especially in the context of transition periods when the market size is not big enough. We would like to propose production incentives that are compliant with WTO norms, i.e. amount equivalent to 10% of SCT taxable price.
- (iii) The reduction in SCT will help to expand the market and support the manufacturers to improve the economies of scale for small passenger cars. A potential roadmap, if shared, will help the industry and customers to plan.
- (iv) Reduction of SCT for the low fuel consumption and environmentally friendly vehicles in accordance with the approved Master Plan for Automobile Industry development toward 2020, with a vision to 2030. VBF proposes a joint workshop between the industry and Government to align for definition for environmentally friendly vehicles.
- (v) Eliminate the SCT rate for (16-24)-seat-buses and pick-ups, as they are commercial vehicles that are supporting a lot of Vietnamese people in travelling or in the carrying of goods, especially in suburban and/or countryside areas.

Furthermore, the reduction on SCT will support the automotive supporting industry and also promote economic development. An example of resultant economic development is that tax reduction leads to lower vehicle prices, thus increasing market size, in turn, increasing the state budget.

### **IMPORTANT IMPACT BY ENABLING MOTORISATION**

By enabling increased vehicle ownership, people can have the option of living in suburban areas and commuting into the city for work. This will indirectly help in the development of suburban areas, reduce pressure on city infrastructure and also promote overall growth of the real estate sector.

## **II. TWO WHEELER INDUSTRY (Scooters and Motorcycles)**

### **1. Number plate fee**

Effective as of January 1st 2012 in Hanoi, and based on the decision from the Government to resolve the traffic issues in big cities. A regulation was issued by the People's Committee of Hanoi, which implemented the increase of number plate fees in three categories of motorcycle (of value above VND 40million; of value from VND 15million to VND 40 million; of value below VND 15million). Accordingly, the highest rate of VND 4 million/per motorcycles is imposed upon motorcycles with a value of VND 40 million or more.

We believe that limiting the number of motorcycles circulating on the roads by imposing a significantly higher number plate fee, upon only motorcycles with the value of over VND 40 million, is not an effective resolution to the traffic problems. Actually, the traffic situation in Hanoi, since this policy was applied, has improved little. This is because the majority of motorcycles circulating in Hanoi do not belong to the above VND 40million bracket.

**Recommendations:** This issue has been raised since 2013; however, it has not yet been resolved. Therefore, we would like to reiterate this issue with a recommendation that the highest fees should not be imposed on motorcycles with a value of VND40 million. In addition, we strongly recommend that the Government work on more sustainable solutions, such as the development of public transportation means, road infrastructure in big cities, as well as

education on good traffic practices for traffic users that will effectively resolve the traffic problems in the long-term.

## **2. Special Consumption Tax (SCT): Remove 125cc motorcycles from the list of which SCT is applied**

In accordance with the Draft Law, SCT, at a rate of 20%, is still applied to motorcycles with capacities over 125cc. In fact, this provision is no longer practical, therefore, we strongly recommend the National Assembly and the Government, during its legislation making, to amend the Law amending and revising a number of Articles of the Law on Special Consumption Tax, to consider NOT applying SCT to motorcycles with capacities under 150cc or at least having a roadmap reducing the SCT tax rate for scooters over 125cc.

Our above proposal has been based on the following grounds:

- The motorcycles with capacities under 150cc are in fact a suitable means of transportation for Asian and Vietnamese terrain. These vehicles are considered as a transportation means with advanced technology, comfort, environmentally friendly, and have the potential for an exporting market in the regional area.
- Specification, composition and design of a 150cc motorcycle is no different to that of a 125 cc motorcycle, except for its capacity.
- In reality, driving/using a 150cc motorcycle is similar to driving one with a capacity of 125cc (Government provisions on issuance of driving licenses for two-wheelers with a capacity below 175cc is the same and not limited); therefore, they should not be considered as luxury goods. The definition/classification of these motorcycles as luxury was relevant a few years ago; but now the overall market has graduated.
- A SCT of 20% puts pressure on locally produced vehicles and domestic manufacturers. Vietnamese manufacturers will not be encouraged accordingly to invest in and develop this business segment.
- Regulations and provisions of competent authorities on import duties of two-wheelers with a capacity from 50cc to 200cc are the same, and there is no discrimination between a 125cc and a 150cc motorcycle.
- The application of SCT to 135cc and 150cc motorcycles has not contributed much more to the State budget, in fact, it has caused the contribution of Value Added Tax (VAT) to decrease due to the fall in sales volume of these types of vehicles (since the customer has to pay more tax when purchasing them).

## **3. Limitation on the number of two wheel vehicles up to 2020**

Further to Decision No.356/QĐ-TTg dated 25th February 2013 (Road Transportation Plan) providing a limitation of the number of motorcycles circulating on the roads (also referred to as 'Units in Operation' (UIO's) motorcycles) to 36 million units by 2020, on 27th January 2014, the Prime Minister sent Letter No.148 to five big cities (Hanoi, Hai Phong, Da Nang, Can Tho and Ho Chi Minh city) requiring them to submit goals to limit the number of vehicles and plans to develop public transportation in accordance with Decision No. 356 and the Scheme of development of suitable transportation means in big cities in Vietnam. We know that the authorities of the five big cities are working on setting goals/implementing a schedule to limit personal vehicles as requested.

As a result of the above, the motorcycle industry is facing difficulties in developing its strategy for the future. The limitation of vehicles circulating on the roads, under Decision 356, does not seem to encourage nor support the development of the motorcycle industry.

**Recommendations:** We would like the competent authorities to consider the following factors when working on their goals/schedules, such as the referencing and harmonization of some factors such as:

- Big immigration numbers in the big cities;

- People's travel demands;
- A mechanism to manage the exact number of motorcycles circulating on the roads;
- The effects on the local economy

These elements could be taken into account to build effective objectives and implement the relevant roadmaps on "Decision No. 356" and on the "Development Scheme of suitable transportation means in big cities in Vietnam", in order to minimize the negative impacts of such limitation on society and the motorcycle industry.

### III. COMMON ISSUES ACROSS TWO WHEELER / PASSENGER & COMMERCIAL VEHICLES

#### 1. Corporate Income Tax (CIT) incentives for supporting industries

Currently, the Ministry of Industry and Trade is working on a draft Decree on the development of supporting industries in Vietnam. Accordingly, CIT incentives shall be given to projects investing in supporting industry that meets conditions as stated in the draft decree. Supporting industries are industries involved in the manufacture of spare parts, parts, components and materials to supply for the manufacturing industries and assembling completed products which are materials for manufactures of consuming products. We expect this definition to also cover supporting industries for motorcycle manufacturing.

It is drafted that such decree will be issued and come into force in 2014 (it remains to be seen whether it will come into force by the end of 2014). However, it is not clear in the draft whether the incentives will be retroactively applicable to projects which were granted investment certificates or operated before the effective date of the new decree.

The incentives given to supporting industry gives very good encouragement from the Government to the development of this industry. However, given that the new decree and its implementing regulations do not allow investors to enjoy tax incentives for projects invested and operated before the effective date of the decree, investors might deem the business environment as unfair and inconsistent. Since those investors have invested a lot of money and efforts into their projects, they should enjoy the same treatment as other investors investing in the same sector in a different period of time.

**Recommendations:** The decree should also be applied to projects meeting conditions to enjoy incentives but operated before the effective date of the decree (provided that those projects are still running in the period for enjoying tax incentives).

#### 2. CIT incentives for expansion projects prior to 1st January 2014

On 19th June 2013, the National Assembly passed Law No. 32/2013/QH13 on Amendment and Supplementation of a number of Articles of the Law on Corporate Income Tax (Law on CIT no.32), to be effective from 1st January 2014. Decree No. 218/2013/NĐ-CP and Circular 78/2014/TT-BTC providing detailed guidance to the new Law were also adopted by the Government and the Ministry of Finance on 26th December 2013 and on 18th June 2014. Accordingly, any enterprise with a project for investment and development, currently operating in a sector or geographical area entitled to CIT incentives (tax exemption and reductions applicable to increased income from investment expansion) as prescribed in these regulations, subject to certain conditions prescribed in the regulations.

However, such treatment under these regulations is only applied for (i) expansion projects implemented before 31st December 2008 with operations starting before 2009; (ii) projects invested after 1st January 2014 and (iii) projects before 1st January 2014, but starting operations and generating revenue from 1st January 2014. We would like to particularly ascertain old investment expansion projects during the period from 1st January 2009 to 31st December 2013, which meet the criteria for tax incentives entitlement and have been

contributing to the development of the economy of Vietnam, but are not entitled to incentives, while the new investments from 1st January 2014 are entitled to CIT incentives.

Given that the new Law and its implementing regulations do not allow investors to enjoy tax incentives for project expansions which have been implemented during the period from 1st January 2009 to 31st December 2013, investors might find the business environment to be confusing. Investors may see the inconsistencies in treatment from the Vietnamese Government and they will feel unprotected and unfairly treated. This will seriously impact the confidence of investors when they plan to invest in Vietnam.

We respectfully request the Government and the MOF to allow the tax incentive entitlement for investment expansion which has been implemented during the period from 1st January 2009 to 31st December 2013, if all criteria for tax incentives are met, to investments implemented in other periods.

### **3. Importation of Remanufactured Parts**

Currently, there is no regulation providing a definition for so-called “re-manufactured” parts as was explained in last year’s forum. Therefore, Vietnam Customs interprets any part which is not ‘brand new’ to be a ‘used part’ and hence, makes the importation of re-manufactured parts impossible.

Re-manufacturing saves energy, cuts CO<sup>2</sup> emissions, conserves resources and benefits customers and consumers in Vietnam. Furthermore, re-manufacturing saves thousands of tons of precious raw materials and many tens of thousands of megawatt hours of electricity. In brief, re-manufacturing reduces the burden on the environment. Every European country and most Asian countries have understood the importance and environmental significance of re-manufactured parts and therefore allow the importation and trading of such parts. This has also been demonstrated by various life cycle assessment studies certified by independent testing organisations such as ‘TÜV SÜD’ in accordance with international standards.

**Recommendations:** We, once again, recommend the Government of Vietnam to allow the import of re-manufactured parts subject to clear definitions. Genuine re-manufactured parts meet the same quality standards as brand new parts. They are produced according to strict quality requirements and undergo final quality examination that has exactly the same standards as brand new parts. Furthermore, genuine re-manufactured parts are supplied by car makers with the same warranty given as for new parts, and are more cost effective for customers and they align with environmental protection trends.

### **4. End of life treatment for products**

According to Prime Minister’s Decision No. 50/2013/QD-TTg dated 9th August 2013 on collecting and treating discarded products and a road map for collecting and treating discarded products: batteries and oils from 1st January 2015, tires from 1st January 2016 and motor vehicles from 1st January 2018, etc.

The Ministry of Natural Resources and Environment (MONRE) has drafted a circular detailing and guiding the implementation of Decision No. 50/2013/QD-TTg dated 9th August 2013. Based on discussions between VAMA and Vietnam Environment Administration (VEA), MONRE will draft some legal documents, including an update of relevant decrees and issuance of circulars instead of only one circular for detailing and guiding the implementation of Decision No. 50/2013/QD-TTg.

However, those legal documents for detailing and guiding the implementation of Decision No. 50/2013/QD-TTg dated 9th August 2013 have not yet been further drafted and issued.

## 5. Law making process

There is a concern about the time period between announcements regarding changes in duty and implementation dates. For example: For the registration fee reduction, it takes 3 months to implement the new fee structure since Government Resolution 02 on January 7th until Decree 23/2013/NĐ-CP dated 25/3/2013 with the effective date of 1st April 2013. As a result, purchases were delayed and the overall industry suffered during this period.

**Recommendations:** We recommend improved time planning between the date of decision making, announcement and the effective date. We also urge the Government to discuss proposals and changes with industry bodies to assess the implication of changes prior to announcing the proposals in the media and also look at ways to reduce the time gap between announcement and implementation, especially when reducing duties.

## 6. Greater incentive for Eco-Green Vehicles

With the current plans for motorization, the Government should also start to consider factors that can impact automotive solutions for Vietnam in the medium to long term. Some of these are:

### a) Environmentally Friendly solutions:

Currently the availability of eco/environmentally friendly cars is limited primarily due to costs and infrastructure. The Government should consider promoting increased availability of eco/environmentally friendly technologies in the auto sector. The Government should consider abolishing duties and taxes for eco/environmentally friendly cars with a defined road map. The current duty advantage is not adequate to promote these vehicles.

### b) Fuel Efficiency/Emissions Guidelines

The Government should consider investment to enhance infrastructure as road conditions and traffic management play a key role in improving fuel efficiency. Additionally the Government should commence work on guidelines for establishing benchmarks for fuel efficiency – for example: CAFE (Corporate Average Fuel Efficiency) norms in developed countries.

## 7. Improved road safety needs

Although 4 wheelers are safer than 2-wheelers, the era of motorization will also bring its own potential challenges –a key challenge being “safety requirements” (e.g. driving skills and traffic rule compliance, vehicle safety features, upgraded infrastructure, etc.)

Therefore, the Government should approach safety from the aspects of:

- People (compliance, attitudes and skills of drivers, passengers and other traffic attendants),
- Vehicles (step-by-step enhancement of vehicle safety features in line with the regional level)
- Infrastructure (including roads, parking and traffic control systems, etc.).

Since the issues above need longer gestation time frames, we recommend that the Government should start to develop a joint forum inviting a comprehensive dialogue from different ministries – MOST/MOF/MOT (VR) etc. to discuss and develop a policy framework with key parameters and milestones for the automotive industry of Vietnam.

## IV. OVERALL CONCLUSION

Joint working and cooperation with industry bodies like VBF to address the situation in the automotive sector will help in having inclusive growth policies that will develop the overall industry and serve to increase tax revenue for the Government.

The players in the automotive industry are committed to develop the industry in Vietnam and we request the Government to consider the above mentioned key factors for both -Two wheeler and Passenger/Commercial vehicles (CBU-CKD).



## Section IV

# **EMPLOYMENT EDUCATION & TRAINING**

Main discussion topics:  
Development of  
Vietnamese Workforce

# ***Employment***

## **EXECUTIVE SUMMARY – HUMAN RESOURCES POSITION PAPER**

*Presented by  
Mr. Colin Blackwell  
Human Resource Sub-group*

- To find out which employment issues will have the largest impact on making the Vietnamese workforce more competitive, we surveyed over 400 foreign investor companies in Vietnam.
- Our survey showed that unresolved HR issues are having a big impact on companies operations, especially in manufacturing.
- Removing these obstacles will improve the competitiveness, especially in the private sector, to take advantage of the new Free Trade Agreement (“FTA”) opportunities.
- The biggest concerns remain minimum wage increases, unclear labour legislation, foreigner work permits and overtime limits.
- Investors are concerned as minimum wage increases are now ahead of inflation, whilst at the same time, other employment costs are also rising.
- These employment costs and minimum wage increases are especially challenging for the Vietnamese private sector, especially when compared to their regional competitors.
- Whilst the clarification on work permits is welcome, we are concerned about implementation. In our survey, very few companies have seen any improvement when making applications recently and they say that it is usually much faster in other ASEAN countries.
- Vietnam has the lowest overtime cap in the region and many foreign investors say this causes significantly lowered output.
- 27% of foreign investors say these HR issues have a serious effect on their profit and a further 8% are actively considering moving to another country because of this.

## **HUMAN RESOURCES POSITION PAPER**

Firstly, I would like to thank the Prime Minister for his decision on work permits and the Ministry of Labour - Invalids and Social Affairs for their excellent cooperation with the business community. With the opportunities of the new foreign trade agreements also comes more transparent competition in labour conditions between member countries. Therefore, these issues are more important than ever this year to develop and increase the relative competitiveness of the Vietnamese workforce.

To see just how important, earlier last month we conducted a survey and received responses from over 400 foreign investor companies saying what their HR concerns were. The survey was conducted in English, Japanese and Korean languages to get a good representative response. The large majority of all companies responding were Japanese, but 13 other foreign chambers also participated. Over half of responses were from manufacturing and most have more than 100 employees in Vietnam. Investors' concerns in order of importance were:

- Minimum wage increases
- Uncertainty about new labour code
- Work permits for foreign employees
- Overtime limits
- Trade union rules
- Sub-leasing

Fixing these issues has great potential to improve Vietnam's employment competitiveness. However, without improvement in these HR regulations, investors believe:

- Only 18% saw no impact on their business in Vietnam
- 47% said there would be some impact reducing their profitability
- 27% said there was a big impact that seriously affected their business
- 8% were concerned enough to consider moving their investment to another country

### **1. WORK PERMITS**

To compete as effectively as possible in international markets, Vietnam benefits immensely from knowledge and technology transfer from foreign investors. Being able to communicate effectively in foreign languages and to be trained in the latest technology are essential to succeeding within the realities of competition of an international workforce when part of a foreign trade agreement. Central to making this skills transfer possible is the issuance of foreigner work permits in Vietnam, this is especially important for the education and the training sector in Vietnam. Every day in Vietnam, these specialist foreign workers are actively improving the quality and international competitiveness of the workforce.

According to our survey, work permits are in the top three HR issues for foreign investors. The issuance of Resolution No.47/NQ-CP dated July 8th, 2014, the Government's regular meeting in June as well as Circular No. 03/2014/TT-BLĐTBXH dated January 20th, 2014, guiding implementation of Decree No. 102/2013/ND-CP detailing implementation of the labor code on foreign workers in Vietnam ("Circular No. 03), have been positive developments and appreciated by foreign investors. However, according to our survey, implementation should be improved as it is severely impacting foreign employees working in some typical sectors, such as education and training, where the availability of teachers in Vietnam working for educational training and foreign language centres are strongly affected. Furthermore, the qualification documents of applicants remain the most challenging requirement for work permit applications in Vietnam.

Several other important issues remain in the management of foreign employees working in Vietnam:

First of all, the fact that short term foreign assignees to Vietnam – whatever the duration of their mission - must apply for a similar work permit as a long term foreign assignee is not reasonable and workable since the preparation of a Vietnamese work permit may take up to four months in itself. It is also a disproportional administrative requirement when a foreigner is only working for a short period of time, such as a couple of weeks or even days. According to the VBF HR survey 2014, 65% of companies stated that it takes at least twice as long to get a work permit in Vietnam compared to other ASEAN countries. The implementation of a lighter procedure to apply for work permits for these short term assignees is required.

Furthermore, a lack of guidelines and discrepancies still exists in the procedures and implementation of the law on work permits between different provinces. This has raised several concerns related to administrative and compliance issues and might potentially impact on Vietnam's competitiveness in attracting foreign investors.

Since the Circular No. 03 took effect, the Labour Department in some provinces request foreign nationals, who have been in Vietnam for a couple of days or just visited Vietnam once, to provide a Vietnam police record in addition to a foreign police record when filling work permit applications. Getting a Vietnam police record is troublesome, especially for foreign nationals who have only stayed for a short period of time. In addition, foreign nationals who have been living in Vietnam for an extended time are burdened with obtaining police clearance from their home or third country. These requirements do not seem to be relevant and contribute to the frustration foreign investors experience in Vietnam.

Under Decree No. 102/2013/ND-CP detailing the implementation of the labor code on foreign workers in Vietnam dated September 5th, 2013, certain foreigners working in Vietnam should be exempt from a work permit if their business sector falls under one of the eleven service sectors as set out in the WTO commitments. However, this has still not been clarified nor applied in practice despite several of our meetings, discussions and follows up with the Ministry of Labour - Invalids and Social Affairs and the Ministry of Industry and Trade since September last year.

The processing time to obtain the People's Committee approval is about 60 days in some provinces, whereas Circular No. 03 states 15 days. This has significantly delayed the processing time to obtain a work permit and has had a negative impact on companies' operations.

Let us imagine a situation of a Japanese export manufacturing investor with several factories across Asia. Imagine they would like to quickly add a piece of high technology manufacturing equipment to just one of their factories and know that they will need to send over a few Japanese specialist engineers for a week to install it. When choosing which country to invest in, they see that only Vietnam requires a work permit in this situation, which could take months to obtain. This imaginary example shows how important this simple administrative procedure is to Vietnam's economic and workforce competitiveness.

## **2. OVERTIME**

Vietnam is competing globally for new manufacturing and business activities and needs to be as competitive as possible. The current overtime limit is significantly below the global average, and as shown previously, is way below that of the regional ASEAN countries. Improvements in this would assist especially the export-manufacturing sector within the FTA environment.

In our survey, 55% of companies said they found ways to be flexible around overtime limits – this shows in effect that the overtime cap is difficult to enforce anyway. 13% of companies said it caused business delays and for 31% it significantly lowered output. This clearly shows a potential way to improve Vietnamese workforce competitiveness in the future. If a factory in China or Thailand has the option of 1,872 hours of overtime annually, whereas Vietnam has only

300, then foreign investors will of course factor this into their country investment decisions within a FTA environment.

The low cap disadvantages workers who happily volunteer for additional work in order to gain a higher income. We would like to suggest an overtime limit cap of 800 hours for all industries and up to 1200 hours for specific industries. One alternative to this has been suggested by the Japanese Chamber of Commerce, and has proved to be very successful in Japan, is their 'Article 36 Agreement' where companies, employees and trade unions voluntarily agree on a mechanism for paid overtime as needed. Again, we would be delighted to provide the Ministry of Labour - Invalids and Social Affairs with more information on this.

### **3. MINIMUM WAGE INCREASES**

In our survey, most companies said that minimum wage increases had a noticeable or major impact on their profit in Vietnam. If the original minimum wage increase recommendation by the Vietnam General Confederation of Labour of 26-34% had been implemented, then many foreign manufacturing investors indicated they would have considered relocating to another country. Especially in export manufacturing, much of the international competition is in price competitiveness, so more reasonable cost increases would benefit both businesses and the economy in Vietnam.

The Government has just issued Decree 103/2014/ND-CP stipulating region-based minimum wage increases on November 11th, 2014 ("Decree 103"). As stated in Decree 103, the minimum wage increase corresponding to each region falls into 13% ~ 15%. We understand and appreciate that these minimum wage increases were introduced after considering and taking recommendations from the business community.

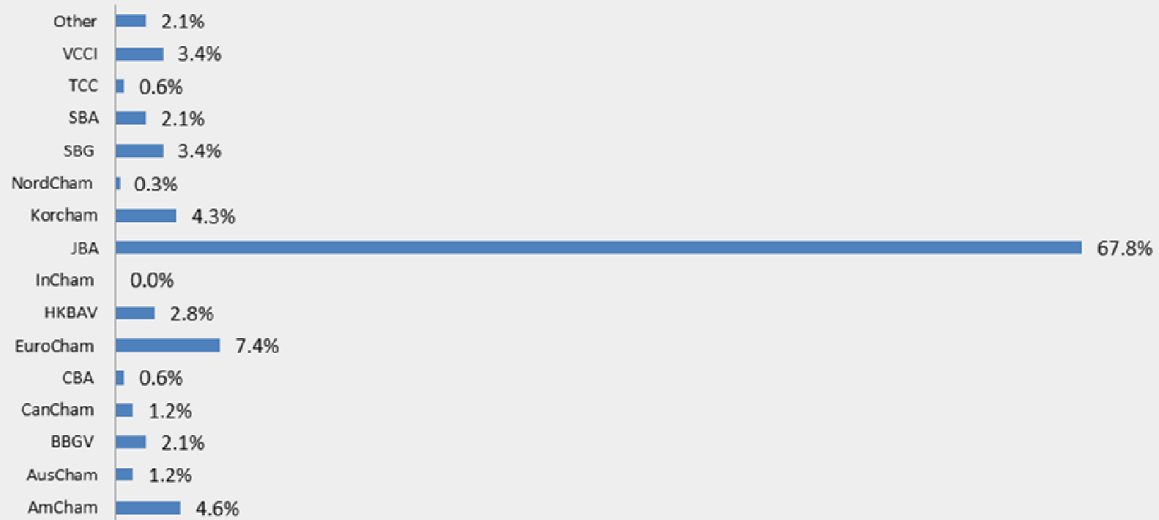
However, we would like to herewith provide some comments for Government consideration regarding minimum wage increases, take 2014 as an example as below:

- When inflation is lower, wage catch up is not an issue
- There have already been significant minimum wage increases in recent years
- Public sector increases are much lower, discriminating against the private sector, which is against the international trade agreements and makes private companies less competitive regionally
- The new labour code already increases many benefit costs
- This is a sensitive time for the economy when competitiveness is more important than ever to benefit from FTAs

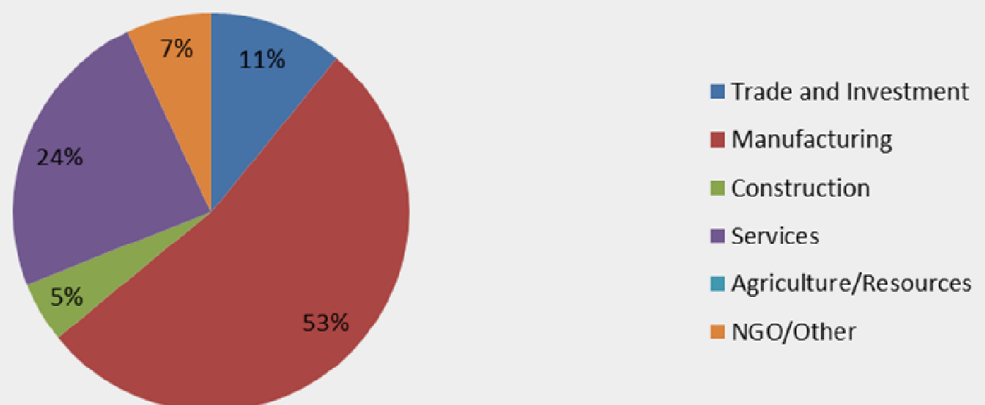
We recommend that minimum wage increase in the future should be only slightly ahead of inflation. For example, KORCHAM's members thought a 10% increase in minimum wage was much more appropriate.

## APPENDIX: FOREIGN INVESTOR EMPLOYMENT SURVEY RESULTS

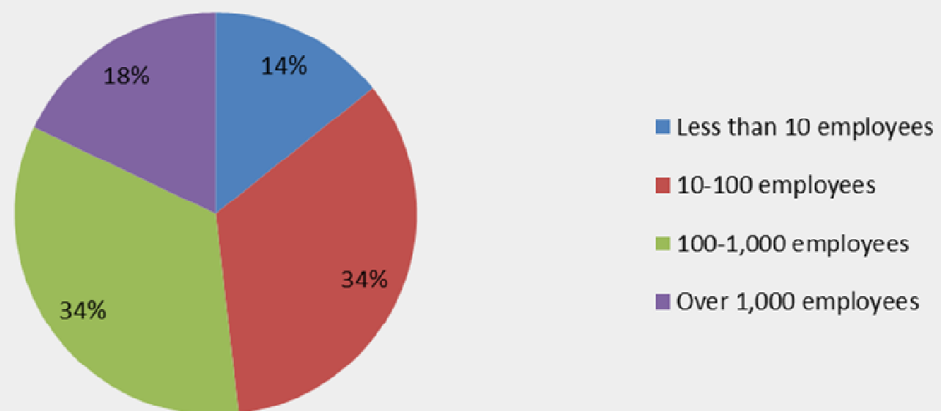
### 1. Chambers' participation percentage



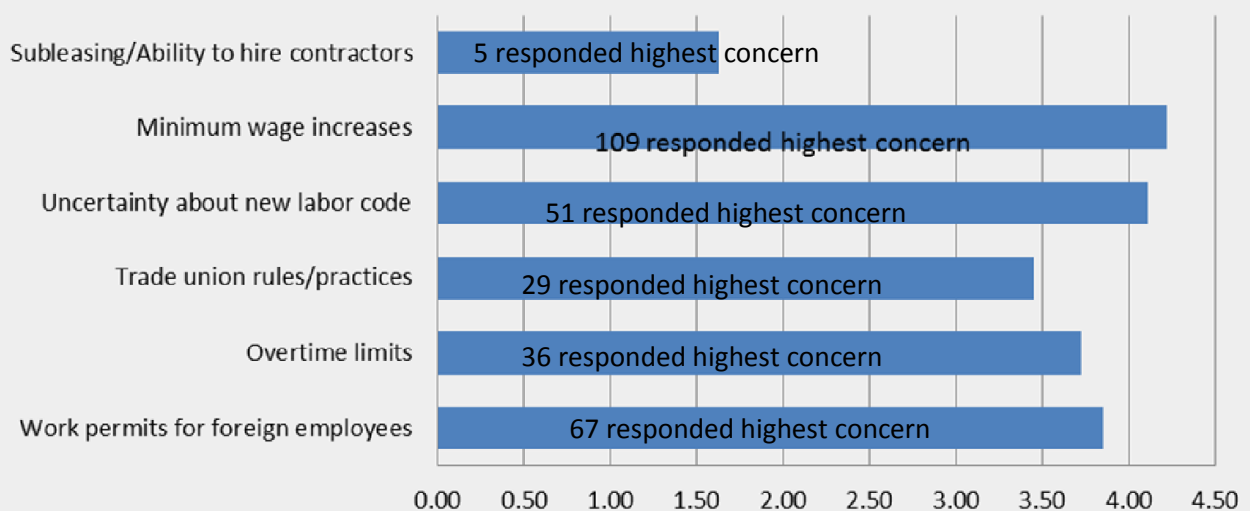
### 2. Your company's primary business is in?



### 3. Your Vietnam staff size is

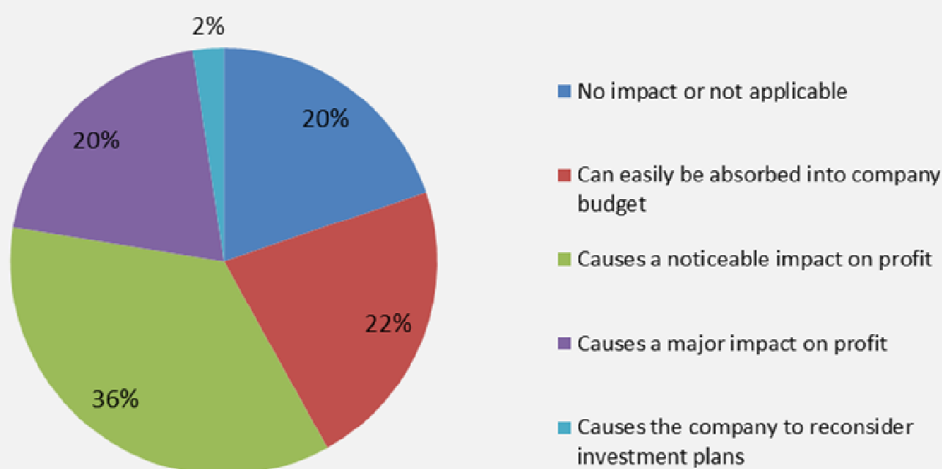


### 4. Which employment issues most concern you in Vietnam at the moment (scale from 1 to 6)

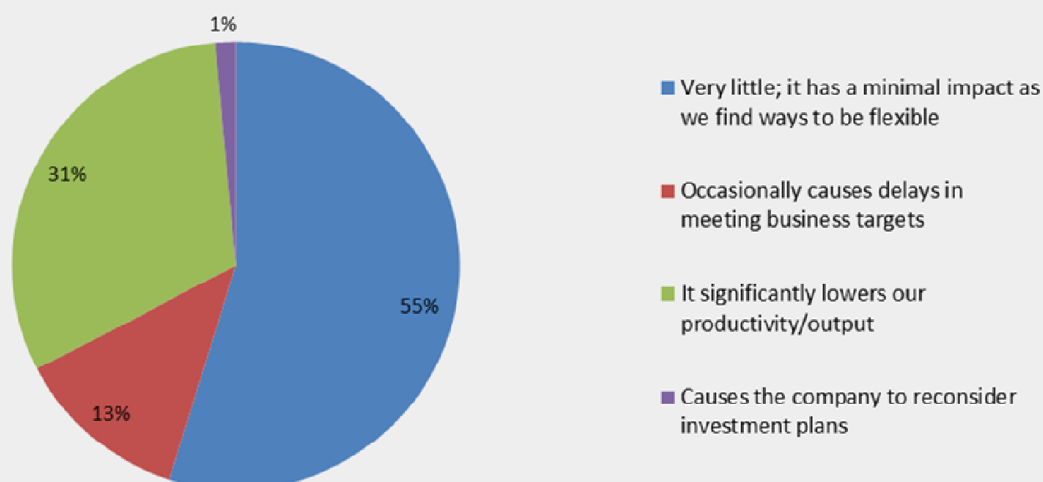




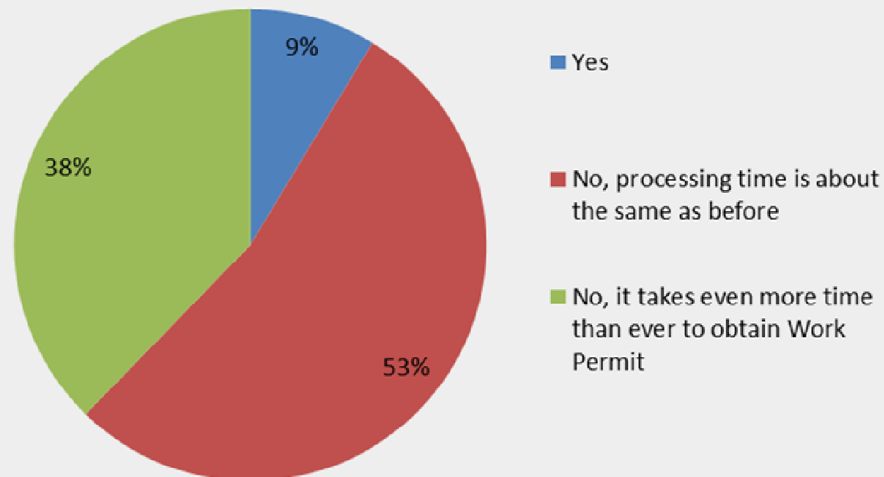
### 5. How much concern do government minimum wage increases give your company?



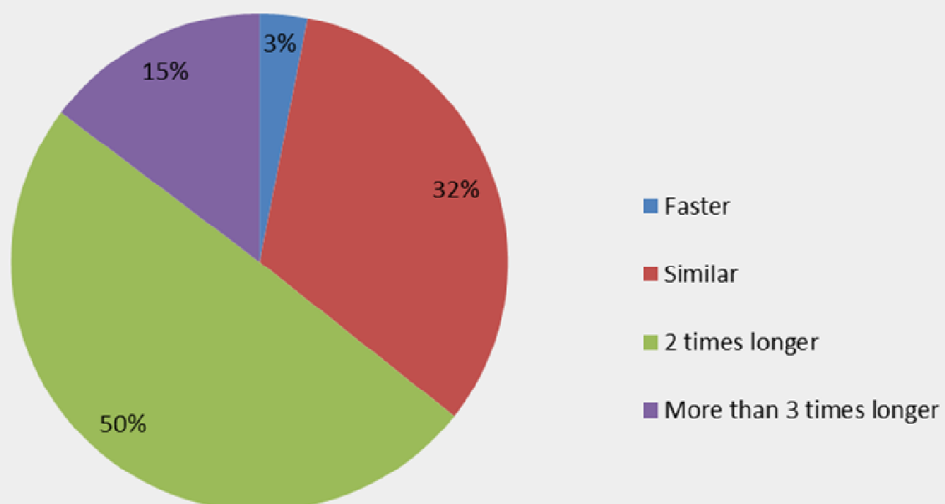
### 6. What practical impact do the overtime limits have on your business?



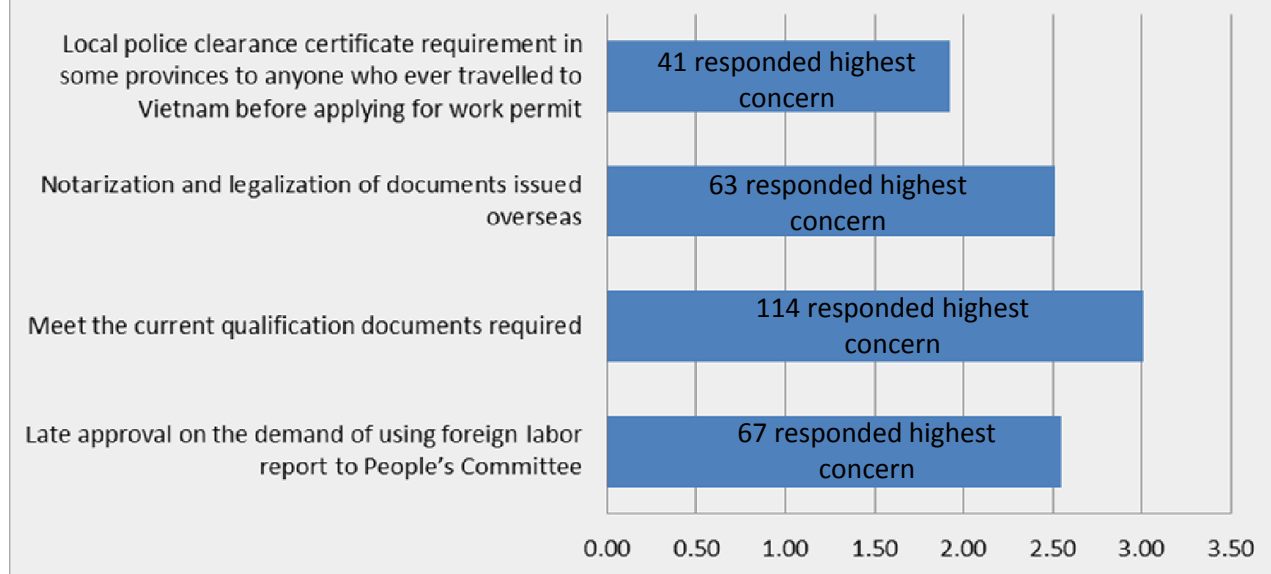
### 7. Further to the recent work permit regulations, have you noticed improvement?



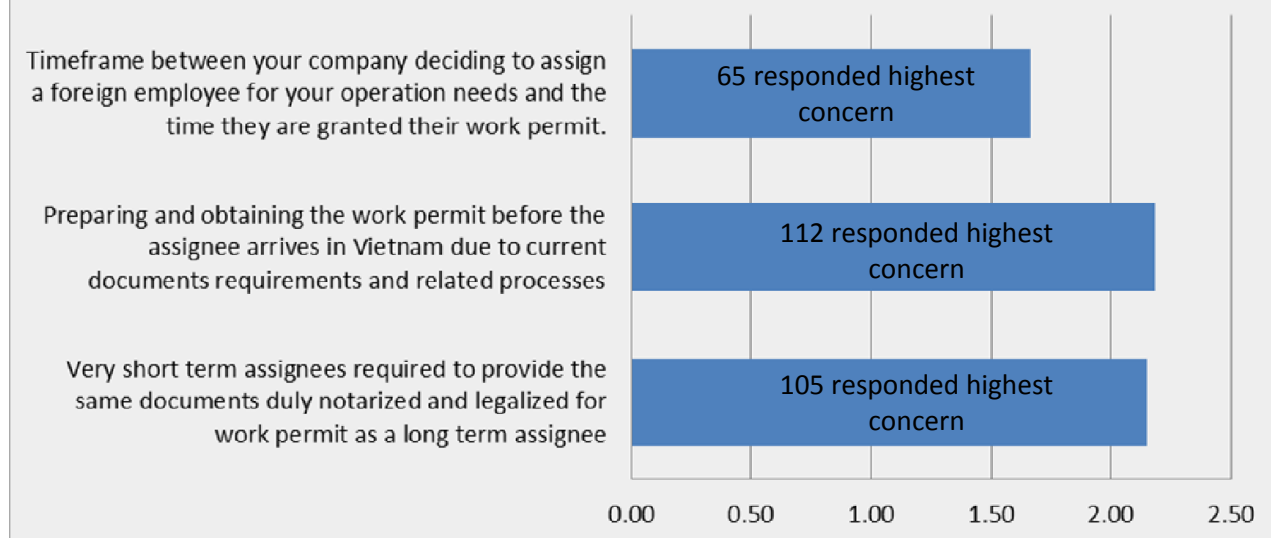
### 8. Timeframe to prepare a work permit application in Vietnam compared to other ASEAN countries



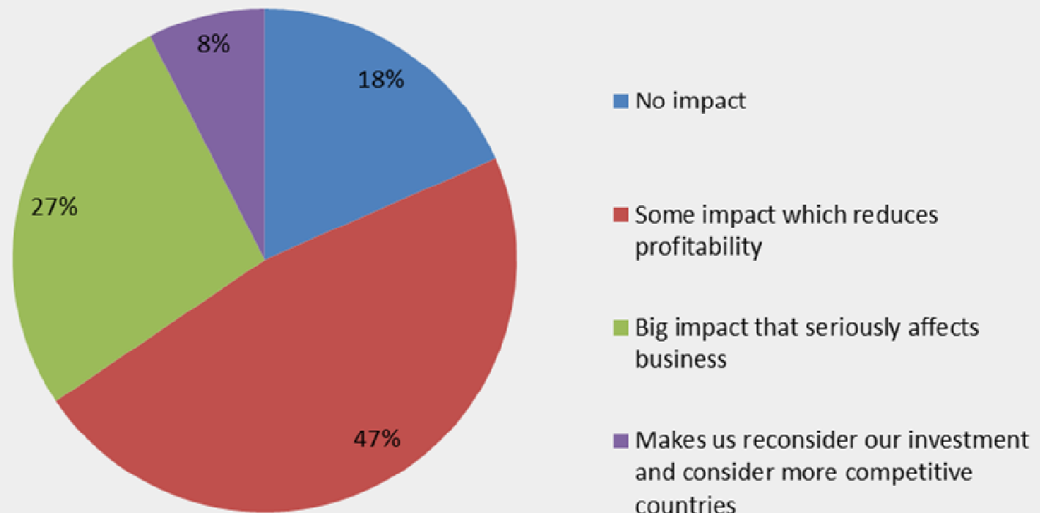
### 9. What steps have made work permit application preparation the most challenging? (scale from 1 to 6)



### 10. What are the main challenges your company has to be compliant with the management of your foreign employees in Vietnam (scale from 1 to 6)



**11. What will most likely be the impacts on your company's business plan in Vietnam if no improvement is made on the main HR challenges discussed in the survey?**



# ***Education and Training***

## EDUCATION AND TRAINING POSITION PAPER

*Prepared by  
Education and Training Working Group  
Vietnam Business Forum*

In most developed countries higher education institutions are struggling to change from how they have operated for the past century to how they need to be for the upcoming decades. For example, the facilities were constructed for how people learnt 100 years ago using standard lecture rooms, yet today, students learn in many different ways –online, peer to peer sharing, flip methodology, open discussions and debates. Many people will also be able to study whilst working. This requires different styles of facilities.

In the same way that Vietnam leapfrogged in the telecommunication sector, from no phones to mobile phones, the country can do the same in higher education and vocational training. That's the opportunity for Vietnam. To take the opportunity the legislation needs to be more forward thinking rather than trying to replicate what is already out of date in developed countries.

The Education and Training working group is focusing on the following key areas

- **The National Administration of Higher Education**
- **Issues relating to Decree 73/2012/ND-CP on foreign investment in education and training**
- **Work permit for academic personnel**
- **Improvement of vocational training based on industry skill demands**

### **I. THE NATIONAL ADMINISTRATION OF HIGHER EDUCATION**

Our focus is to work with the Ministry of Education and Training ("MOET") to obtain more autonomy to already licensed, reputable non state universities. Even though the education law may give institutions more autonomy, in practice the MOET still requires Universities to obtain several approvals. For example

- Renewal of current degrees, approximately every 2 years.
- Number of students per intake even when a University has been approved to register a total number of students.
- Making any changes, even minor ones, to current degrees.
- Cooperating with foreign universities.

The MOET also decided to ban the offering of new degrees in the areas of Business Administration, Economy, and Finance, giving the reason that graduates are exceeding the demand. It's another example of too much control. Progress is being made in the legislation but the implementation has not yet happened.

Our constructive suggestions are that:

- The MOET should not legislate on which degrees the higher education sector should/should not be able to offer. It should be left to the need and demands of society.
- There should be a clearer legal framework that gives more autonomy to local institutions to cooperate and make joint ventures with foreign institutions.
- Provide educational institutions with a robust framework to work within. At the same time give sufficient autonomy to function in an efficient and effective manner. The Law on Higher Education has allowed the foreign-capitalized higher education institutions, with independent organizational structures, but it needs the guiding Decree/Circular to define the structure to apply at the educational institutions.
- Allow institutions more autonomy to adapt current offerings as long as it does not change the fundamental nature of the program.
- Avoid unrealistic targets such as saying X% of lecturers must have a PhD when in reality a Masters qualification is adequate.

## **II. ISSUES RELATING TO DECREE 73/2012/ND-CP ON FOREIGN INVESTMENT IN EDUCATION AND TRAINING DATED SEPTEMBER 26, 2012 (“DECREE 73”)**

### **1. There are several issues to Decree 73 that are not reasonable or not applicable. For example**

Conditions of establishment: In theory it is easier to set up a foreign language centre than a general education institution (e.g primary school) or a higher education institution, but Decree 73 requires the same procedures and application dossiers for all. Even the work experience requirements for language teachers and lecturers are the same - 5 years experience. The law needs to allow for the different educational institutions.

Legal procedures: Previously, the process to set up an educational institution required only the investment licenses and operation license (two kind of licenses), but Decree 73 required three kinds of license in which the legal processes are similar. It leads to: three inspections of the same location looking for the same criteria by three different authorities.

There are no provisions to encourage reinvestment of profits:

- The current legislation has no provisions to encourage foreign and local investors already operational in Vietnam, to re-invest their profits back into Vietnam instead of transferring the profit overseas.
- The legal procedures for granting licenses for new investment projects are the same as the legal procedures of the re-investment projects. For example, if a successful university wished to expand its campus into a new location it has to go through the same application process as if it were a totally new investment. The same applies to short-term educational institutions such as language centers and vocational training centers.

### **2. Solutions that we have already proposed to the MOET include**

The draft of implementing Circular to Decree 73 (after the Decree 73 have been amended as requested by the Government as mentioned in Resolution No. 47), should have detailed and separate provisions on procedures for approving the establishment of short-term training institutions, schools and higher education institutions. This is because the conditions and operations methods of short-term training institutions are quite different from those of higher education institutions. The opening of a new training centre for a short-term training institution should be simpler than the establishment of the new campus for higher education institutions.

Legal procedures for new investment projects and re-investment projects should be different to create favourable conditions for the investors who have been operating for many years. The current legislation has no provisions to encourage foreign and local investors already operational in Vietnam, to re-invest their profits back into Vietnam instead of transferring the profit overseas.

We have recently had a meeting with MOET to go through each issue. The main challenge is that even when both parties (VBF and MOET) agree on an outcome we have yet to see an implemented change in the law. For example, everyone recognizes that it is not right to require a provider of short term language courses to have to build their own facility, and yet, in practice the requirement remains.

## **III. WORK PERMIT ISSUE**

The Vietnam Government has a good record of reversing unworkable legislation, but in the case of the work permit regulations we are sorry to report this is not the case. The Government has already issued the Resolution no. 47/NQ-CP to relax the conditions for work permit issuance for foreign employees (“Resolution no. 47”). This was a positive step but the Department of Labour, Invalids and Social Affairs is still requiring conditions for work permit issuance which remain different to the conditions stipulated in the Resolution no. 47.

The solution we have suggested is that the Ministry of Labour, Invalids and Social Affairs should issue an instruction on how to apply and understand the contents of Resolution no. 47 as soon as possible to help resolve this key issue that impacts educational organizations throughout Vietnam.

#### **IV. IMPROVEMENT OF VOCATIONAL TRAINING BASED ON INDUSTRY SKILL DEMANDS**

In order to go forward to the next step of industrialization, with higher value-added manufacturing processes, Vietnam requires high-skilled industrial human resources, who can improve product quality and production operations. In particular, the lack of competent technicians is an immediate concern, considering that Vietnam is aiming to move up to the next stage of industrialization, which requires more value added processes with stronger supporting industries<sup>1</sup>. According to the survey conducted by the Japan International Cooperation Agency (“JICA”) with more than 100 Japanese enterprises, 80% of respondents replied that they currently need technicians and 89% replied they will need technicians in the future<sup>2</sup>. However, a survey conducted by the World Bank indicated that more than 80% of responding employers reported that job applicants for the position of professionals and technicians lack the skills required for the jobs.<sup>3</sup>

In order to reduce the mismatch of skills demand and supply at the technician level, Technical and Vocational Education and Training (“TVET”) institutions should make more effort to improve training programs by carefully analyzing the needs of industry. We noted that the Government is currently revising the Law on Vocational Training in a way to add a clause which asks enterprises to provide information on training and recruitment demands for the state management agency of vocational training. We are aware that enterprises need to cooperate with TVET institutions and provide information of skills demands. However, the Government should urge TVET institutions to come to collect information from enterprises, not to wait for the enterprises or the Government to provide the information for them. This is because TVET institutions should be the ones who know the kind of specific information that is needed to improve training programs. In order to improve training programs based on skill needs which change dynamically, TVET institutions should communicate with enterprises more proactively and determine current and future skill needs in cooperation with industry.<sup>4</sup>

In addition, while TVET institutions should make more efforts to improve their training programs, we also need to realize that TVET institutions cannot solve all the issues alone. For example, the improved training program may not reduce the skills mismatch, if applicants for TVET programs keep decreasing. In fact, Vietnam is suffering from the same issue that faces many other countries in that the labour force prefers to obtain academic qualifications, when the needs of the economy is for vocational qualifications. For example, in Germany for the first time in decades the percentage of students obtaining academic qualifications is higher than vocational. The result is that people can obtain a degree but not a job. In order to attract more young people to TVET programs, it is necessary to improve the social and economic status of technicians through some concrete measures, such as, the expansion of national skills tests. The stronger commitment from the Government is needed for the expansion of national skills tests, while enterprises will need to consider applying skills tests for their human resource management practice in order to improve the status of technicians.

Over the upcoming 12 months we want to make constructive suggestions on how to improve the quality of TVET programs and reduce skills mismatch at the technician levels in partnerships between TVET institutions, industry, and the Government.

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<sup>1</sup> Refer to JICA (2014a). “Promoting Tripartite Partnerships to Tackle Skills Mismatch: Innovative Skills Development Strategies to Accelerate Vietnam’s Industrialization”. JICA Policy Paper. Hanoi, Vietnam: JICA.

<sup>2</sup> Refer to: JICA (2014b). The Survey Report on Japanese Companies’ Human Resource Needs in Vietnam. Hanoi, Vietnam: JICA.

<sup>3</sup> Refer to: World Bank (2014). “Skilling up Vietnam: Preparing the workforce for a modern market economy”. Vietnam Development Report 2014. Hanoi, Vietnam: World Bank.

<sup>4</sup> Refer to JICA (2014a)



## Section V

# **REPORTS FROM OTHER WORKING GROUPS**

# ***AgriBusiness***

## EXECUTIVE SUMMARY

*Prepared by  
Mr. David Whitehead  
Head of AgrBusiness Working Group*

This Position Paper reflects the concerns of the members of the VBF's Agribusiness Working Group and follows the inaugural Position Paper and presentation made at the mid-term VBF meeting in June 2014.

At an inter-ministerial meeting between members of the Working Group and representatives of the Ministries of Agriculture and Rural Development, Planning & Investment, Industry & Trade and Finance on Monday 17 November 2014, there was robust and positive discussion about the detail of the issues in this Position Paper.

This paper is divided into 2 parts. Part I covers new **Specific and Technical Issues** facing international business in this sector in Vietnam and Part II repeats the outstanding **General and Long Term Issues** raised in the previous paper.

Part I covers five areas: **CROPS PRODUCTION, FOOD SAFETY, ONE-TIME LICENSING, TAX-RELATED ISSUES, and REGULATIONS ON CHEMICALS AND ANTIBIOTICS IN ANIMAL FEED.**

1. **Crops Production:** We discuss Decision No. 95/2007/QĐ-BNN promulgating the Regulation on recognition of new agricultural plant varieties. Currently, MARD, through Department of Crop Production is reforming seed regulations in order to streamline procedures and at the same time to release high quality seeds. We raise some issues and recommendations to help MARD come up with a circular that could meet the market's need and social development. We are also concerned about procedural bottlenecks for introducing new seedling technologies. Introduction of new technology e.g. GM Seeds, Biologicals, etc. require the development of an appropriate framework and governance. This requires significant coordination within and across Ministries and relevant government bodies and is often time-consuming.
2. **Food Safety:** We raise the issue of quarantine responsibilities between Ministries for fresh dairy products and processed dairy products. We believe that there should be specific guidelines, clearly defining quarantine responsibilities in each case and that all dairy products should be regulated under the same Ministry.

Another important issue we raise is in regard to hygiene standards of food safety for food processing facilities. Food Safety Law (Article 19) provides requirements for establishment of a food processing factory in accordance with standards prescribed by MARD, but, so far, there is no regulation from MARD on these standards.

Further, Circular 128 regarding quarantine and food safety testing on products (goods derived) from plants and animals is of concern. It requires quarantine and food safety testing on products (goods derived) from plants and animals which must be carried out at a Customs checkpoint following certain procedures. The designated inspection location is unreasonable, causing cargo congestion, and time delays, there needs to be another arrangement away from the port.

3. **One-Time Licensing:** Circular 35/2014/TT-BCT of MOIT dated 15 October 2014 regulates automatic import license applicable to fertilizer. A company needs to apply every time for a one-time license for each lot of fertilizer imported. Since a company already has a business

license for importing and trading fertilizer in Vietnam, this requirement only adds complication to the actual process.

There is an additional requirement for issuing that one-time license which is to have confirmation from a specific bank at the time of the importation. We believe that this is an unreasonable requirement.

4. **Tax-related Issues:** We appreciate that the Vietnamese government recognizes the importance of agribusiness and, to promote its development, the Government has cut down or removed many agricultural taxes and fees in order to reduce the financial burden and help cutting costs and increase competitiveness for agricultural products. Businesses welcome a variety of positive reforms including the removal of VAT for raw and semi processed agro-products, with coffee and rice benefiting most. More recently, the Government has exempted VAT from animal feed. Nevertheless, a number of agro-products, especially inputs such as fertilizers, chemicals and so on are still subject to VAT, despite the end-users of such products being mostly farmers. These farmers, in turn, without the right to a tax refund, must include all their tax expenses in their production cost when selling in the market. We believe the government should provide additional guidance on classification of semi-processed agro-products that are not subject to VAT filing and declaration, possibly through a detailed list of products under this category, and shorten VAT refund time as well as remove VAT for materials including fertilizers, insecticides, crop protection chemicals, and so on.
5. **Regulations on chemicals and antibiotics not allowed to be used in animal feed:** Regulations on chemicals and antibiotics not allowed to be used in animal feed are currently mentioned in various documents. There are too many legal documents on prohibited substances which do not facilitate management agencies and businesses in referring and fully updating. There should be focused and unified regulation on prohibited chemicals and antibiotics in animal feed in order for businesses to comply.

Part II covers three areas: **MARKET ACCESS, SEEDS AND SEEDLINGS, AND THE ROLE OF LOCAL AUTHORITIES AND INDUSTRY ASSOCIATIONS.**

1. **Market Access:** Market access is the ability of private agriculture and food companies to access markets for their products. These products may be either fresh or processed. These companies may be domestic or foreign. Access refers to access to Vietnam markets for foreign agriculture companies, as well as access of Vietnamese companies to domestic and foreign markets. The Working Group intends to focus on supporting policies to enable market access in these terms. We discuss the ongoing issues in each of these sectors and we believe that the solution includes a clearer domestic and international market access strategy based on international standards and norms.
2. **Seeds and Seedlings:** Vietnam is one of the market leaders in global rice exporting, being the second largest rice exporter in volume. However, the large volume cannot guarantee a high export value for Vietnam's rice due to the perception of low and inconsistent quality by the global marketplace. Part of the main reasons for this is the situation of the seed industry in Vietnam, with more than 300 seed varieties in circulation, of which a vast majority is low quality. There are more than 200 seed companies in the country, of which very few have sufficient resources for serious investment in the sector. We propose reform in administrative procedures, removal of local authorities' involvement on choice of crop structures, increased investment in research and development, creation of a cohesive information exchange mechanism, development of land policy to encourage land consolidation, and more focus on international cooperation and technology transfer.

3. **The Role of Local Authorities and Industry Associations:** Vietnam's agricultural industry is fragmented to regions with significantly different attributes at each locality. Government policies do not truly reflect the general and local issues. The industry associations inefficiently perform their roles in maintaining strong linkages amongst various stakeholders in the industries. Local authorities should be given more discretion to customize policies into real practices at their localities. We believe that there should be a requirement that within a certain number of days the local authorities must provide official guidance to implement the policies issued by higher level. Industry associations should be assigned specific responsibilities to help the implementation.

## **CONCLUSION**

In conclusion, the VBF Agribusiness Working Group is very pleased with the level of cooperation we have received from the Ministries and individual officers within the Ministries with whom we have inter-related. We hope that this cooperation will continue into the future and that we can work together to improve and modernize the agribusiness sector in Vietnam.

We recognize there are a number of issues to be addressed, but we understand that these things take time. We are willing to work closely with the Ministries to bring about reform and improvement in this extremely important sector in Vietnam.

**AGRIBUSINESS POSTION PAPER**

*Prepared by  
AgriBusiness Working Group*

**I. SPECIFIC AND TECHNICAL ISSUES****1. CROPS PRODUCTION****1.1. Issues surrounding Decision No. 95/2007/QĐ-BNN promulgating the Regulation on recognition of new agricultural plant varieties**

**Context:** Viet Nam is the world's leading exporters of some farm produce. However Vietnamese exports are always branded with low quality in the world market. Vietnamese exporters have to accept lower prices compared with other peers in the region. One of the main reasons is the underdevelopment of seed and seedling industry which is unable to provide high quality inputs for high quality products. Currently Ministry of Agriculture and Rural Development, through Department of Crop Production is reforming seed regulations in order to streamline procedures and at the same time to release high quality seeds. Taking this opportunity, we would like to raise some issues and recommendations to help MARD come up with a circular that could meet the market's need and social development.

**Issues**

- The recognition process for a new variety is too long. For example it takes at least three to four years for a new rice variety to be recognized. Meanwhile some countries only allow exporting their nationally recognized seeds after several years, for example China require five years. Therefore new variety, especially an imported seed, is out of date after being recognized.
- There are seeds having been recognized by the MARD for production and trade, but such recognition is not accepted by a number of provinces, and testing is required all over again.
- As industry has now developed to an advanced level, and before testing is done in the national testing network, applying companies have often completed very careful tests, including from baseline comparison experiments (1-2 seasons), post-experiment comparison (1-2 seasons), to production test (1-2 seasons) with a minimum planting space of 100-1,000 m<sup>2</sup> per variety, in different ecological areas, and especially in areas defined for the targeted markets. Only when good test results are confirmed, submission to the national testing network will begin. Nevertheless, a testing process that repeats the steps already taken by applying companies in the previous 2-3 years is again required. This is a waste of resources and may delay the introduction of good seeds to production. That is not to mention that many laboratory facilities of the National Testing Center, due to poor testing quality, often produce lower productivity than actually the case, preventing the offered seeds to present fully their potentials.
- Even when basic testing and production test results are available, the seed registration board still lacks the trust to grant official recognition, but instead only allow trial production. Why not set the criteria to grant official recognition once and for all?
- As Decision 95 is not specific enough, even seeds that have been recognized by the ministry are required of a re-test by several provinces, or in other cases, if the seeds are not included in the official list of the province, production and trade will not be allowed on the ground.
- Seed production and trade may be done, taking into account geographical conditions. Many seeds having been recognized for use in the North, however, are not permitted to be put to production in the South, as this is not stated in the recognition decision.
- Many have said that while recognized seeds are plenty, those in real production are few. Are seeds being tested and recognized by individual applicants just for listing sake, and not any realistic purpose? It appears to us that only institutional applicants may register for testing. Individuals must enter into some sort of partnership with business entities, so that in case of poor harvests or output, the government has something to rely on to demand

compensation. Most companies want to exist and develop, and the seeding business does not pay off over night. Thus, if a company decides to register a seed, it should be really good for the company to come up with such decision. And the company will also be fully responsible for any harm caused by the introduction of the seed. Because any illusive acts will result in the buyers turning their backs on the company.

### Recommendations

- Companies' test result should be recognized, and the companies are fully responsible for the declared results. The test results must be summarized and published on zines, to allow agricultural regulators nationwide to verify within one month (or another reasonable time line). If no litigation entails, formal recognition will be granted. This is similar to seed protection. Businesses only need to make declarations and be responsible in full for their claims.
- A feature-based recognition approach should be used, e.g. based on the resilience for drought, flooding and pests of seeds. Example: A *Xanthomonas Oryzae* Xa21 genetically modified seed should be recognized by the ministry as one with anti-*Xanthomonas Oryzae* Xa21 genetic feature, and not a general anti-*Xanthomonas Oryzae* seed. Because the seed may still be infected with other strains of *Xanthomonas Oryzae* that are capable of overriding the Xa21 gene. The same applies to anti-plant hopper genetically modified rice varieties. Please have a look at the table below.

*Rating of anti-plant hopper Biotype genetic groups, by classification of Japan and the Philippines (Ikeda and Vaughan, 2006)*

Status	Bph 1	Bph 2	Bph 3	Others
<b>Resistibility</b>	Resistibility to Biotype 1 and Biotype 3	Resistibility to Biotype 1 and Biotype 2	Resistibility to all Biotypes	
<b>Vulnerability</b>	Vulnerable to Biotype 2	Vulnerable to Biotype 3	0	
<b>Host genes</b>	-	-	Bph 3, Bph 4, Bph 8 and Bph 9	Bph 5, Bph 6, Bph 7 resistant to Biotype 4

- Removal of trial production recognition, because:
  - o The varieties of plants Ordinance does not required trial production.
  - o Seeds recognized for trial production must be put to trial production for two seasons, with a maximum quantity of hybrid rice variety of 150-2,000 ha (4.5 - 60 tons \* VND100,000 = VND450 million – 6 billion). As this is a sizable amount of money, not allowing sales is unreasonable, since no business can give out several billion dong for free. Selling is illegal, so they have to think of something else. In brief, unnecessary trial production should be repealed.
- Recognizing seeds should mean that once production and trade is permitted in a specific area, all the provinces in such area should also accept that recognition and comply with the decision of the MARD. The provinces must provide companies with the liberty of doing business with the recognized seeds, without the seeds being listed in the plans of the provinces and districts. Only if local subsidies are involved, narrative statements and convincing of the local governments by companies should be required.
- Increased responsibility of testing agencies. Test results in different ecological areas should be produced with the involvement of the local DARDs to make sure that the results presented by the Testing Center are impartial and recognized by local agencies.
- Defining the responsibilities of the National seed recognizing board. To be specific, the board should be responsible for its seed testing and recognition. The ministry can require an additional fee to cover its field evaluation and testing costs, and document processing.
- Collection of maintenance fee for permitted seeds. This will help the ministry to take quick actions in removing seeds that are no longer in existence and those without economic

benefits. Any creators who may find their seeds no longer fit for production but want to keep the name for whatever reason should pay this maintenance fee.

- Learning from the model of cross-evaluation between different entities and individuals for every seed.
- The ministry can ask the local Departments to update on a seasonal basis the farming area of individual varieties of plants, so that it can easily envision and put together strategies and guidance on pest control and so on, in a timely manner.
- Removal of the requirement for seed production three years after formal recognition as in the draft. As we may know, as much as 70% of hybrid rice seeds are being imported from China. It is a China's policy that nationally recognized seeds should only be exported to Vietnam five years later. Furthermore, seed production in Vietnam is still facing huge challenges in terms of land acquisition, unpredictable weather conditions, non-existent infrastructure and investment for dedicated seed production hubs.

## **1.2. Procedural bottlenecks for introducing new seedling technologies**

**Context:** Introduction of new technology e.g. GM Seeds, *Biologicals* and others require the development of an appropriate framework and governance. This requires significant coordination within and across Ministries and relevant government bodies and is often time-consuming.

### **Outstanding problems/obstacles**

- They are substantive delays in finalizing the framework for new technology introduction due to bureaucratic issues in coordination across government functions. Timelines for finalization are delayed and postponed.
- Companies are unclear on planning new product introductions, and assessing commercial and technical viability in Vietnam.

### **Proposal**

- Expedite review and finalization of new technology introduction procedures through timely coordination across functions and collaborate with key industry players for developing regulations for new technology introduction.

## **2. FOOD SAFETY**

### **2.1. Quarantine responsibilities of processed milk**

#### **Context**

- In accordance with Decision No. 45/2005/QĐ-BNN, the Ministry of Agricultural and Rural Development has the quarantine function for "Fresh milk, yogurt, butter, cheese, bottled milk and dairy products".
- Under Article 63, 64 of Food Safety Law, MARD is only in charge of food safety management for raw milk; the Ministry of Industry and Trade is in charge of processed milk management.

#### **Outstanding problems/obstacles**

- Currently, the Agency that has the quarantine function for processed milk is still unclear, making it difficult for businesses to export (businesses cannot export their products without a quarantine certificate from the competent authority)

#### **Proposal**

- There should be specific guidelines, clearly defining quarantine responsibilities in each case.
- The same products should be regulated under the same Ministry.



## 2.2. Hygiene standards of food safety for food processing facility

**Context:** Food Safety Law (Article 19) provides requirements for establishment of a food processing factory in accordance with standards prescribed by MARD. So far, there is no regulation from MARD on these standards.

### Outstanding problems/obstacles

- Food processing manufacturing is potentially deemed as unqualified (since no clear standards or requirements are in place).

### Proposal

- MARD should issue a legal document to specify hygiene standards of food safety for each type of food processing facility for businesses to implement.

## 2.3. Circular 128 regarding quarantine and food safety testing on products (goods derived) from plants and animals

**Context:** Circular 128/2013/TT-BTC requires quarantine and food safety testing on products (goods derived) from plants and animals which must be carried out at a Customs checkpoint following certain procedures,

### Outstanding problems/obstacles

- The designated inspection location is unreasonable, causing cargo congestion, and time delays.

### Proposal

- Circular 128/2013/TT-BTC should be amended so that businesses are allowed to bring imported frozen food products to their storage facility for quarantine and food safety inspection in accordance with current regulations instead of checking at the port checkpoint.

## 3. ONE-TIME LICENSING

**Context:** Circular 35/2014/TT-BCT of MOIT dated October 15<sup>th</sup>, 2014 regulating automatic import license applicable to fertilizer.

### Outstanding problems/obstacles

- Company has to apply every time for a one-time license for each lot of fertilizer imported. Since company already has business license of importing and trading fertilizer in Vietnam. This requirement only adds complication to the actual process.
- There is an additional requirement for issuing that one-time license which is to have a confirmation from a specific bank at the time of the importation. It is unreasonable as companies are uncertain what bank they will select for payment to supplier at the time of importation. It depends on the competitiveness of banks and exchange rates when payment to supplier is due.

### Proposal

- Should not apply “one-time license” requirement to companies that already have import rights in their business license.
- There is no need for confirmation letter from the bank in order for companies to obtain permission to import fertilizer to Vietnam.

## 4. VAT RELATED ISSUES

**Context:** Aware of the importance of agribusiness and to promote its development, the Government has paid substantial attention to cutting down or removing altogether many agricultural taxes and fees, in order to reduce the financial burden and help cutting costs and increase competitiveness for agricultural products. Businesses in the sector recently welcomed

a variety of positive reforms including the removal of VAT for raw and semi processed agro-products, with coffee and rice, among others – the two leading exports of Vietnam, benefiting the most from them. More recently, the Government has decided to exempt VAT from animal feed. Nevertheless, a number of agro-products, especially agribusiness inputs such as fertilizers, chemicals and so on are still subject to VAT of 5% or 10% tax rate, despite the end-users of such products being mostly farmers. These farmers, in turn, without a right to tax refund, have to include all their tax expenses in the production cost when selling their agro-products in the market.

### **Outstanding problems/obstacles**

- Imposing a 5% tax rate for fertilizers and other inputs of crop production and livestock have increased the market price of many agro products. With regard to zero rated products, VAT refund has been taking for a long time. These are the challenges being faced by agribusinesses, which are often small-sized companies. Moreover, classification of semi-processed agro products that are not subject to VAT filling and declaration is not clear which led to inconsistent implementation between the national and local tax authorities. This has also led to rampant tax fraud and evasion in many areas and sectors, deteriorating the business environment and State budget.

### **Proposals**

- Provide additional guidance on classification of semi-processed agro-products that are not subject to VAT filling and declaration, possibly through a detailed list of products under this category.
- Shorten VAT refund time.
- Remove VAT for materials including fertilizers, insecticides, crop protection chemicals, and so on.

## **5. REGULATIONS ON CHEMICALS AND ANTIBIOTICS IN ANIMAL FEED**

**Context:** Regulations on chemicals and antibiotics not allowed to be used in animal feed are currently mentioned in various documents, for example:

- Article 7 of Circular 57/2012/TT-BNNPTNT dated November 7, 2012 on the inspection, supervision, and penalties for the use of substances in the group of beta-agonist that are banned from breeding.
- Circular 61 /2011/TT-BNNPTNT dated September 12, 2011 promulgating the national technical regulation on animal feed.
- Circular 81 /2009/TT-BNNPTNT dated 25/12/2009 on the promulgation of national technical regulations on animal feed (4 Technical Standards), Decision No. 3762/QĐ-BNN-CN dated November 28, 2008 on management of melamine in livestock production and aquaculture, etc.

### **Outstanding problems/obstacles**

- There are too many legal documents on prohibited substances which do not facilitate management agencies and businesses in referring and fully updating.

### **Proposal**

- There should be focused and unified regulation on prohibited chemicals and antibiotics in animal feed in order for businesses to comply.

## **II. GENERAL AND LONG-TERM ISSUES**

### **1. MARKET ACCESS**

Market access refers to the ability of private agriculture and food companies to access markets for their products. These products may be either fresh or processed. These companies may be

domestic or foreign. Access refers to both access to Vietnam markets for foreign agriculture companies as well as access of Vietnamese companies to domestic and foreign markets. The Working Group intends to focus on supporting policies to enable market access in these terms.

**Key Issues:** Market access limitations relate to a wide range of issues – many of which are so-called ‘cross-cutting’.

Domestic market access for Vietnamese companies

1. Quality and consistency of the product (cross-cutting).
2. Input, process and supply chain technologies to improve quality and stability of quality.
3. Research and development of technologies in-house to develop company products.
4. Management capability to oversee and develop team and product quality.
5. Inconsistency of development and implementation of government policy.

Domestic (Vietnam) market access for foreign companies

1. Licensing and foreign interest limits as barriers to entry.
2. Tariff and Non-tariff barriers and custom controls.
3. Inconsistent/ incoherent policy development and implementation.

Foreign market access for domestic companies

1. There is limited understanding of market need – it is a supply driven market.
2. Anticipating markets.
3. Market information versus market intelligence and insight.
4. How to obtain more buyers – and diversify products?
5. Key issues are: how to change management style/ adopt and obtain new technology/ understand effective marketing strategies.
6. Quality control and inconsistencies in production and processing.
7. Non-uniformity – decreasing quality over time.
8. The need for value-added processing to expand the market – e.g. in aquaculture – filet production is consistent but without well developed value added processing, the market access is limited.
9. Overproduction of similar products – many examples of a ‘rush for the same product’ all at the bottom of the value chain – e.g. dragon fruit, Robusta coffee, basa fish.
10. Demand driven markets – local governments and local companies.

The result is competition at the bottom end of the market – and perpetual self-limiting the opportunity for market access. The comparative advantage becoming a perpetual disadvantage.

The solution includes a clearer domestic and international market access strategy based on international standards and norms which would be supported by:

- a) ‘Less and smarter policy’ and fewer market access obstructions from government regulations;
- b) increased substantive openness to foreign technology and investment to revitalise the agriculture sector and ensure it is of world standard; and consistent implementation of smart and progressive policy – anticipating the long term gains for millions of producers; healthier rural economies; competitive Vietnamese companies; and world class technologies and practices in place in Vietnam.

## 2. SEEDS/SEEDLINGS

### Context

- Vietnam is one of the market leaders in global rice exporting, being the second largest rice exporter in volume. However, the large volume cannot guarantee a high export value for

Vietnam's rice due to the perception of low and inconsistent quality by the global marketplace.

- Part of the main reasons for this is the situation of the seed industry in Vietnam, with more than 300 seed varieties in circulation, of which a vast majority is low quality. There are more than 200 seed companies in the country, of which very few have sufficient resources for serious investment in the sector.

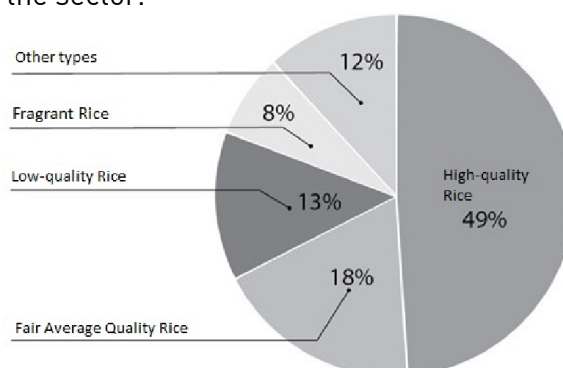


Chart 1: Vietnam's rice types for exports

- However, the root cause lies in the fact that a master plan for input material production zones is non-existent. This requires collaboration between MOIT and MARD. MOIT will need to conduct market research and needs assessment for both the domestic and international markets so that orders can be placed with MARD to guide production.
- The orders should indicate SPECIFIC TYPES (long, short, aromatic etc. types) and how many tons/crop or year (needs not place orders for any specific variety of rice given the existence of hundreds of such varieties). Based on such orders, MARD can start zoning work and coordinate production of different varieties that meet the same standards for such TYPES OF RICE.
- However, the problem is that MARD does not have a master plan for input material production zones for export in place yet due to lack of information regarding market research and needs assessment.

### Outstanding problems/obstacles

- The rate of commercial seed usage is low (~30% for conventional rice seed, ~40-50% for vegetables and fruit); a large majority of farmers re-use the seed they save from previous crops, leading to low productivity, low resistance to diseases, also resulting in low economical return.
- Limitations in R&D and inadequate investment in R&D; consequently, there is a limited number of seed varieties that can adapt to different climates across the country, and that are rapidly degradable. Therefore, the current situation is that too many seed varieties are recognized and utilized, resulting in inconsistency in the quality of agro-products. For example, Thailand only has 5-6 varieties in use, whereas Vietnam has 300, with tens of new seed varieties being recognized every year.
- Inefficiency in the seed market mechanism due to subsidy policy. Local authorities take advantage of these subsidy programs to support low quality, inefficient seed varieties that are not suitable for the local climatic conditions. Farmers, due to financial burdens, or being affected by the crop and seed structure and planning by the local authority, use the low quality varieties.
- Lack of cooperation and linkage within the value chain. For many products, high demand is not sufficiently met by supply; whereas for others, there is no market for products of high quality. The production chain elements such as SEED – PRODUCTION – PROCESSING – CONSUMPTION are not linked together. As a result, there exists many seed varieties that do not suit the tastes of the consumers.
- Bureaucracy in the recognition procedures for new seed varieties takes a vast amount of administration time, and demonstrates the lack of monitoring from science organizations.

The consequence is that when the seed is accredited for commercial usage, it no longer meets market needs.

- Fragmented farming (due to the current land ownership policy) leads to difficulties in applying modern technologies in the agriculture and seed industry.
- Human resources – the quality of human resources in agriculture is not high, due to the lack of training and favorable remuneration policies. There has not been a mechanism to attract talent, and there is a shortage of well-trained leading experts.

### **Proposal**

- Public administration reform in administrative procedures during the recognition process for new seed; and enhance the capacity of scientific supervision organizations, to ensure that the new varieties are superior to the existing ones, to avoid low quality seed being used widely.
- Removal of the distortive lobby practice at the level of local authorities, to allow the farmers to use seed according to farming demand and market demand, rather than using the varieties that are chosen by the local authorities in their crop structure, but are not market-oriented.
- Increased investment in R&D for applying technologies, to limit the introduction and circulation of poor quality seed that does not suit market demand.
- Creating a cohesive information exchange mechanism among different segments in the production value chain in order for farmers to understand and effectively meet market demand, reducing the role of intermediaries/ traders (those who take advantage of farmers' lack of information for profiteering purposes)
- Development of agricultural land policy to encourage land consolidation; thereby encouraging long-term investment in arable land and application of science and technology in production.
- Better focus on international cooperation and technology transfer, together with increased investment in human resources policy, even as early as the vocational stage.

## **3. ROLE OF LOCAL AUTHORITIES AND INDUSTRY ASSOCIATIONS**

**Context:** Vietnam's agricultural industry is fragmented to regions with significantly different attributes at each locality. Government policies do not truly reflect the general and local issues. The industry associations inefficiently perform their roles in maintaining strong linkages amongst various stakeholders in the industries.

### **Outstanding problems/obstacles**

- Difficulties arise in implementing policies in reality. Hence the root of many problems can not be comprehensively tackled.
- Conflict of interests amongst the parties occurs due to lack of co-operation.
- Unprompted development in the industry drives the demand and supply to be mismatched, causing instability and potential damage to the wealth of every stakeholder.
- The domestic agricultural industry is not sufficiently protected against international competition and threats.

### **Proposal**

- Local authorities should be given more discretion to customize policies into real practices at their localities.
- There should be a requirement that within a certain number of days the local authorities must provide official guidance to implement the policies issued by higher level.
- Industry associations should be assigned specific responsibilities to help the implementation.

# ***Governance & Transparency***

**13th Annual Anti-Corruption Dialogue**  
**November 26, 2014**  
**JW Marriott Hotel Hanoi, Vietnam**

*Present by*  
*Virginia B. Foote*  
*Co-Chair of the Vietnam Business Forum*  
*Chair of VBF Transparency and Governance Working Group*  
*Board of Governors, American Chamber of Commerce*

Your Excellency Deputy Prime Minister Nguyen Xuan Phuc, Ministers, Director General, Ambassador, ladies and gentlemen, the Vietnam Business Forum very much welcomes the opportunity to participate today at this important 13th Anti-Corruption Dialogue with donors and Government officials. You will recall that the business community first joined the Dialogue at the 12th Anti-Corruption meeting last year and pledged to work with Government to tackle the very difficult and growing issue of corruption. It was at that meeting that Dr. Loc from VCCI coined the term Project 12.

As the Anti-Corruption Dialogue moves to a new stage, the business community is increasingly concerned about the level and pervasiveness of corruption and the need for us all to face it head on. Since last year, under the banner of Project 12 and elsewhere, many new initiatives have been implemented. Corruption affects us all - foreign and domestic businesses alike - and working with the Government to find solutions is our joint effort. We are working to find methods of prevention as well as enforcement.

You will hear today from the Vietnam Integrity Alliance - an effort by foreign companies operating in Vietnam to unite around a common pledge for integrity.

You will hear from VCCI where a Project 12 initiative is designed and has received approval to work with the domestic business community and Government to established standards, better corporate governance criteria, and a business integrity pledge.

At VBF we established a Working Group on Transparency and Governance in particular but many of the sector Working Groups have also incorporated attention to where corruption affects doing business.

Many of our member Chambers have asked their membership for information on how and where they are confronted with corruption and for ideas learned from global best practises on how to tackle the problems. Corruption and administrative hurdles are often cited as their main barriers - they often are one and the same - "informal" payments being expected as solution to administrative road blocks.

As we all hope, Vietnam will soon be part of an even wider network of trade agreements such as TPP, the EU FTA, and full implementation of the ASEAN Community. This can lead to great benefits for Vietnam with greater integration into global supply chains, the growth of supporting industries and of the economy as a whole. Corruption is global, rarely is there anything unique, but corruption and administrative reform has become one of the biggest bottle neck for Vietnam being prepared to take advantage of these global opportunities. The trade agreements do not solve these problems.

On Transparency International's ranking Vietnam is 116 out of 175 on the level of corruption index. In the recent "Ease of Doing Business" report by the World Bank, Vietnam is ranked 78th out of 189 economies, by contrast Malaysia is 18, Thailand is 26. All TPP member countries, except Vietnam and Brunei, are in the report's top 40 performers, leaving a large gap and many countries performing better than Vietnam. Among important indicators, the index measures

ease of starting a business, getting construction permits and electricity, registering property, paying taxes, and cross border trading - all areas where Vietnam ranked very low and where the systems are susceptible to delay and corruption.

VBF has a lengthy report and specific recommendations, but I would like to outline some overall recommendations and goals here today. We would like to see business, Governments and donors work together to:

- Encourage global best practises on moving toward non-cash transactions systems to reduce corruption and encourage efficiencies,
- Encourage global best practises for fair assessment and collection system for taxes, fees and fines that reduce the face-to-face opportunity for informal/illegal fees while increasing collection of revenues owed,
- Encourage global best practises for procedures regarding watch-dog reporting and whistle-blowing protections,
- Encourage global best practises for the increased implementation of paper-free and cash free transactions among businesses and between business and Government.

## 1. TAX ASSESMENT AND COLLECTION SYSTEMS

One rather shocking statistic from the World Bank report's *Doing Business 2015* was on systems for paying taxes - Vietnam ranked 173 out of 189 - 16th from the bottom. But thanks to Government's tremendous efforts recently, the new regulations expect to significantly reduced the average of 873 hours needed to pay taxes here, to 247 hours per year from 2015. And when the new amended Law supplementing a number of articles to solve difficulties for production and business takes effect from January 1, 2015, the total amount of tax procedures is expected to be decreased to 171 hours, which is equal to the average of ASEAN-6 group countries. We appreciate Government tremendous efforts in this regard and we look forward to assessing the success of this new system with you.

As the World Bank report notes, establishing effective information, communication and payment technologies for filing and paying all taxes and then educating taxpayers and tax officials in their use are essential to limiting corruption and increasing efficiencies. Effective electronic tax systems greatly benefit both the tax authorities and tax payers. And very importantly, it reduces face-to-face interaction which globally has been seen to provide the opportunity for either side to cheat, bribe or distort returns.

Therefore, we are very grateful to see Government's actions in reducing tax payer time and implementing e-tax systems. The full implementation of these programs will be key to their success.

## 2. A SHIFT TOWARD CASHLESS ECONOMY

The overuse of cash is dangerous. Countries in the top 10 of non-cash consumption rates see over 80% of their transaction in non-cash forms. For Vietnam, the number is only 3%. Yet global research indicates that in cash-based economies, problems ranging from petty corruption to large scale money laundering are more prevalent and harder to tackle. Money laundering can flourish when large value transactions such as land, property, vehicles and other high value goods are paid in cash. We applaud recent efforts that have lead to Vietnam to no longer subject to Financial Action Task Force (FTAF) on-going global AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) compliance process. We urge that Vietnam will work with APG as it continues to address the full range of AML/CFT issues identified in their report.

But in general, the use of cash between consumers, businesses and the Government can breed an environment for "informal fees", bribes, a lack of efficiency, and suspicious accounting and auditing trails that will not meet global standards. Alternatively, in jurisdictions where cash



transactions are limited, corruption and money laundering is easier to identify, to prosecute and to prevent. Corruption and money laundering are global, and work to limit it must be an ongoing.

Many developing countries like Vietnam are encouraging the move to non-cash financial arrangements to conduct business - including electronic methods such as e-payments, debit and credit cards, cash cards, checks, bank to bank transfers and the many other non-cash systems available today. Other major advantage to this is that tax authorities are more able to accurately assess tax obligations of businesses and businesses have better records for accounting and auditing purposes. It is often tax revenue and not money laundering that is behind a jurisdiction's drive to reduce their cash based systems - but the results are the same and both important goals achieved.

For example in the Philippines, they have recently implemented a Government financial transactions pilot program with the goal of Government agencies being 80 percent cashless before the end of this year. With the first phase of their Cashless Purchase Card, accounting for transactions is automatically done and suspicious use of the card can be tracked easily. This system is also designed to allow them to capture and collate the correct data which the Government can use in future decision making. It is one of many models to examine.

We would like to continue to work with the Government on implementing global best practises for moving forward towards reducing the use of cash in transactions in Vietnam. Vietnam ranks very high in the use of smart phones and internet connectivity, we need to see these as tools for efficient commerce as well. For domestic and foreign companies operating in Vietnam, to be ready to take advantage of the opportunities provided by the new trade agreement the use of non-cash payments for services, fees, taxes, utilities, major purchases and the like is essential to reduce the cost of doing business and the vulnerability we face for corruption.

### **3. A SYSTEM FOR FEES AND FINE COLLECTION TO REDUCE "INFORMAL FACILITATION FEES"**

We note the Governments increased efforts and attention toward the elimination of bribes and corruption in particular areas such as customs clearance, permits and applications, and regulatory penalties. However, our members remain very concerned about either direct pressure or pressure for their intermediaries to pay systematic and sometimes "standard facilitation fees" to clear shipments, obtain documents, and register paperwork - all without transparent posting or receipts provided. Some offices appear dependent on pooled "informal" payments and a closed system of bribe collection and distribution. But if the fee is "informal" it is illegal, and both sides are performing a criminal act that can destroy future business opportunities.

Global best practises increasingly allow the charging of small fees - posted and payable on line - for providing documents or other services. Government offices can charge additional fees for expediting services incurring cost to the specific office. But they must be published, payable in non-cash formats, and come with a receipt. For fines due, such as a regulatory violation or a traffic ticket, payments again should be non-cash, and a receipt provided.

We look to work with the Government to establish an appropriate plan designed and implemented to ensure all fees and fines to the Government be clear and transparent, and receipts provided. And that the Government move towards a system where fees and fines are payable in non-cash formats.

### **4. IMPROVEMENTS SUGGESTED FOR REPORTING AND WHISTLE-BLOWING PROTECTION**

Whistle-blowing and reporting are also essential aspect of encouraging transparency and combating corruption. Without protection from retaliation, complaints will not be forthcoming

nor can complaints be used to assist the Government in closing loopholes that make systems vulnerable to abuse and the individuals who allow it.

For example, in handling complaints with Customs, one mechanism used in other countries is to create an online capability on the Customs website to allow for both responsive communications about such matters with Customs authorities and to allow anonymous reports of illegal activity. Through such on-line mechanisms the reporting of loopholes can help systems to be improved and corruption decreased.

Also, the current legislation in Vietnam provides too little protection to whistle-blowers reporting corruption. Under corruption legislation and the Labor Code, employees have few means to address retaliation undertaken against them in response to their reports on corruption. Job protection is extremely limited, and only applies where an employee has made a general report about misconduct, rather than corruption, and even in this case, the authorities may only directly intervene in respect of a public sector employee.

VBF has put together an extensive analysis of the needs for improving the whistle blower legislation that we will include in the VBF report next week. (Below, Appendix 1)

In closing, may I emphasize that to benefit from the tremendous opportunities the upcoming trade agreements provide and to grow and strengthen the Vietnamese economy, building systems that close the doors of corruption are as important as building the systems that open the doors of global trade.

## APPENDIX I: IMPROVEMENTS SUGGESTED FOR LEGISLATION REGARDING WHISTLE-BLOWING

### Objective

This paper seeks to outline suggestions for improving corporate policy or procedures to protect whistle-blowers from employment termination and other forms of retaliation, and government policies to encourage whistle blowing within government agencies.

In doing so, we take into account the actual domestic situation as well as the international best practices with the aim of encouraging and protecting employees who report crimes of corruption and bribery.

### 1. Job protection to whistle-blowers

**Issue:** The law presently provides only limited job protection to whistle-blowers. An official complaint to the authorities is necessary to engage these provisions, and under the present wording of the law it is unclear whether such protection would apply to a report on corruption or only to a report about other forms of misconduct. This is because job protection for whistle-blowers is addressed in regulations implementing the Law on Denunciations,<sup>1</sup> and while the Anti-Corruption Law<sup>2</sup> specifies that the Law on Denunciations applies, it is unclear which provisions apply.

Decree No. 76<sup>3</sup> implements the Law on Denunciations and provides some job protection to whistle-blowers. In the case of a public employee, the authority to whom the complaint is made may directly intervene to transfer the complainant to another agency, organization or unit in order to protect him or her from discrimination.<sup>4</sup> The official may also implement measures to discipline the individual who retaliates against the whistle-blower, or request another authorized party to do so.<sup>5</sup>

Employees in the private sector, on the other hand, have far less sufficient protection. The authority handling the complaint cannot directly intervene in their case. Instead, private-sector employees must rely upon their corporate trade union, the labor management agency or "another competent agency" to take protective measures.<sup>6</sup> There is no definition provided for "another competent agency", so the identity of this party is unclear. While the law provides that those who intervene on behalf of the employee may request the employer to cease retaliatory acts and request a competent person to handle those responsible for the retaliation,<sup>7</sup> the union would have no authority to make decisions or orders, so the efficacy of this provision is questionable.

**Proposal for Corporate Policies:** The Labor Code<sup>8</sup> does not provide any specific protection for whistle-blowers, but there are legally binding measures employers could take to provide protection to whistle-blowing employees. An employers' Internal Labor Regulations, the labor rules of an organization which are registered and approved by the labor authority (the "ILRs"), could include provisions stating that the employer will not undertake any disciplinary action in relation to a good faith report on suspected misconduct. The ILRs could also include provisions

<sup>1</sup>Law No. 03/2011/QH13, dated 11 November 2011, of the National Assembly, on Denunciations ("Law on Denunciations").

<sup>2</sup>Law No. 55/2005/QH11 on Anti-corruption which is amended in the Law No. 01/2007/QH12 and the Law No. 27/2012/QH13 ("Anti-corruption Law").

<sup>3</sup>Decree No. 76/2012/ND-CP of October 3, 2012 of the Government, detailing the implementation of a number of articles on the Law on Denunciations ("Decree No. 76").

<sup>4</sup>*Ibid.* at Article 17.

<sup>5</sup>*Ibid.*

<sup>6</sup>Decree No. 76, at Article 18.

<sup>7</sup>*Ibid.*

<sup>8</sup>Labor Code No. 10/2012/QH13 adopted by the National Assembly dated 18 June 2012 ("Labor Code").

specifically addressing disciplinary action to be taken where another employee has retaliated against a whistle-blower.

The employees' labor contracts could also provide them with legally binding protection. Contracts could include provisions stating that the employer is not entitled to take any disciplinary action against the employee for good faith reports, and is obligated to protect the employee from retaliation.

**Proposal for Legislative Reform:** In respect of legislative reform to provide better job protection, the Labor Code could be amended to extend protection from unilateral termination by the employer to whistle-blowers who make reports in good faith. Decree No. 76 could also be amended to grant the power to authorities receiving complaints to directly intervene in employment in the private sector, similar to their rights in respect of public sector employees.

## **2. Specific defects in government policies to encourage whistle-blowing within government agencies**

Under the current legislation, the following issues discourage whistle-blowing within government agencies: the lack of anonymity provided to whistle-blowers, the potential conflict of interest of those to whom reports are made, the assumption that incorrect accusations are deliberately untruthful and the minimal monetary rewards. The means by which defamation is addressed under the law provides additional disincentive to report, as defamation is a criminal offence and there are no categorical defences to a civil claim for defamation.

### **A. Lack of Anonymity**

**Issue:** The Law on Anti-Corruption provides that citizens must provide their full names and addresses when reporting.<sup>9</sup> In respect of anonymous reports, the law provides that they shall only be investigated if there is clear evidence.<sup>10</sup> In contrast, denunciations in respect of misconduct which does not involve corruption may be made anonymously. Decree No. 76 provides that if necessary, the full names and identifying information of reporters may be omitted from evidence in order to keep their identities confidential.<sup>11</sup>

**Proposal for Legislative Reform:** Reporting on corruption would clearly be encouraged by extending the application of the confidentiality provisions as stated in Decree No. 76 to reports on corruption. The rationale behind disallowing anonymity for reports on corruption while permitting it for reports on general misconduct is presently unclear. Thus, we recommend amending the Law on Anti-Corruption to provide that the full names and identities of whistle-blowers may be omitted from reports if confidentiality is deemed necessary.

### **B. Potential Conflict of Interest of Those Receiving Reports**

**Issue:** The current wording of the law creates a potential conflict of interest, as it requires civil servants to report acts of corruption to the heads of their agencies,<sup>12</sup> while heads of agencies themselves face liability for any corrupt act occurring within the agency under their authority.<sup>13</sup> Heads of agencies are *prima facie* liable for the corruption, but may disprove their culpability by demonstrating that they took necessary measures to prevent or remedy the consequence of a corrupt act or that they dealt with it strictly and reported it in a timely manner.<sup>14</sup> The degree of the head of the agency's liability depends upon his or her management capability, exercise of responsibility in carrying out his or her management duties and whether

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<sup>9</sup>Anti-Corruption Law, at Article 54.

<sup>10</sup>*Ibid.*, at Article 55(4).

<sup>11</sup>Decree No. 76, at Article 12.

<sup>12</sup>Anti-Corruption Law, at Article 38.

<sup>13</sup>*Ibid.*, at Article 5(2).

<sup>14</sup>*Ibid.*, at Article 55(3).

or not he or she has attempted to conceal the corrupt act.<sup>15</sup> Thus, civil servants are required to report corruption to the very individuals who may face criminal and disciplinary action due to the occurrence of the act within itself.

Heads of agencies are also in charge of investigations. The law provides that upon receipt of an accusation, the head of an agency must consider and deal with the complaint as well as protect the safety and confidentiality of the whistle-blower.<sup>16</sup> It appears that this provision would apply to reports of corruption from the general public, as well as to those from civil servants. Where the reported act of corruption has met the threshold for criminal liability (for example, a bribe of over VND2,000,000), it would be transferred to the police, however, it appears that investigations in respect of those below this threshold would remain in the hands of the head of the implicated agency.<sup>17</sup>

This approach of placing the safety and confidentiality of the whistle-blower under the responsibility of the head of the agency while he or she conversely faces criminal liability or disciplinary action upon the occurrence of a corrupt act, clearly creates a strong conflict of interest. Because the head of the agency would have a great deal to lose if the accusation were true, he or she would have a strong incentive to find the accusation groundless or hamper the investigation.

**Proposal:** We recommend revising the legislation so that an independent body deals with investigations into corruption. It would be ideal if an independent branch of government received and investigated corruption complaints rather than the agencies in which they occur.

### **C. The Assumption that Incorrect Accusations are Deliberately Untruthful**

**Issue:** The current wording of both the Anti-Corruption Law and the Law on Denunciations fail to contemplate the situation where an individual has reported an instance of corruption in good faith, which turns out to be incorrect. Both acts provide that upon concluding that the report of corruption is incorrect, those who make "false denunciations" or "who deliberately make untruthful accusations" will be dealt with immediately.<sup>18</sup> The legislation does not make any mention of a good faith, but incorrect report.

#### **Proposal:**

We recommend amending the law so that provisions are included to address this situation, and to ensure that those who made a bona fide report are offered protection even if the report cannot be proven.

### **D. Minimal Monetary Rewards**

**Issue:** The Law on Anti-Corruption provides that whistle-blowers can receive cash rewards for putting forward their reports.<sup>19</sup> However, these rewards are very low and are only around VND300,000.

**Proposal:** Considering the high risk nature of reporting corruption, and the extreme stress whistle-blowers experience, we recommend raising the amount of the award so that it is equivalent to at least one month's salary under the regional minimum wage.

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<sup>15</sup> *ibid.*, at Article 55(4).

<sup>16</sup> *ibid.*, at Article 65(2).

<sup>17</sup> Decree No. 59/2013/ND-CP of 17 June 2013 of the Government detailing some articles of the Anti-Corruption Law ("Decree No. 59") at Article 53 states that the provisions of the Law on Denunciation apply, so it appears that Article 12 of the Law on Denunciation would direct the complaint to be dealt with by the head of the agency unless it were criminal.

<sup>18</sup> Decree No. 59, at Article 56; Law on Denunciation, at Article 25(1).

<sup>19</sup> Anti-Corruption Law, at Article 67; Decree No. 59, at Article 59.

## E. Defamation

**Issue:** Defamation is criminalized under the Penal Code, and those who are convicted may face sentences ranging from a warning to two years in prison under normal circumstances, or between one and seven years where they have defamed an individual in the course of performing official duties.<sup>20</sup> The Penal Code provides that the statement must be fabricated or deliberately untruthful to attract criminal liability, suggesting that a good faith but incorrect report of corruption would not be subject to criminal sanctions. Nonetheless, because defamation is a criminal offence, whistle-blowers face considerable risk in coming forward.

In addition to the risk of facing criminal liability, whistle-blowers also face the risk of facing a civil suit for defamation. The Civil Code provides that an individual who causes spiritual damage to another by damaging his or her reputation must make restitution.<sup>21</sup> While defamation is a basis for civil liability in many common law jurisdictions, these legal systems also have categorical defences to defamation, such as qualified privilege. The defence of qualified privilege provides that if a statement is made in the course of one's duty, and is received by another individual also in the course of his or her duty, the individual making the statement would not face liability. Thus, an individual reporting corruption to the authorities or to his or her manager would have a clear defence to defamation. In Vietnam, on the other hand, there are no categorical defences to defamation but instead each defence is subject to the judge's discretion. This introduces far more uncertainty and risk into reporting on corruption.

**Proposal:** We recommend to decriminalize defamation, as the extreme sanctions a whistle-blower may face has a chilling effect on reporting. We also recommend to amend the Civil Code to recognize a defence similar to qualified privilege in order to protect those making good faith reports.

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<sup>20</sup>The Penal Code No. 15/1999/QH10 adopted by the National Assembly dated 21 December 1999, and amended in 2009 ("Penal Code"), at Article 122.

<sup>21</sup>Civil Code No. 33/2005/QH11 of the National Assembly dated 14 June 2005 ("Civil Code"), at Article 307 [3].

# ***Mining***

## **MAKING VIETNAM INTERNATIONALLY COMPETITIVE IN ITS MINING INDUSTRY IN THE ERA OF NEW TRADE AGREEMENTS**

*Presented by  
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### **THE ISSUE**

Vietnam is a mineral rich nation, but the country's known mineral inventory is only a fraction of what may yet be found.

This is because the discovery and extraction of Vietnam's mineral resources, except for three modern mining operations and some coal and coal-gas projects, have so far only literally scratched the surface to depths generally in the order of 50 to 100 meters, using in too many cases outdated and wasteful mining and processing methods. Below the depth of 100 meters there are almost certainly many large and valuable deposits awaiting discovery, which can only be found and developed by modern state-of-the-art technology and equipment not currently used in Vietnam.

Unfortunately, the much-needed major investment in modern exploration, mining and processing technology and know-how not coming to Vietnam to develop its minerals industry. Excessive and inconsistent taxation and other regulatory controls on mining continue to leave Vietnam in the position of being by-passed for vital international and local investment funding that should be flowing into the country to build the mining sector as an important part of, and sustainable contributor to, Vietnam's growth.

Although the National Assembly did not support a Ministry of Finance proposal to increase royalties on some minerals in 2104, royalties in Vietnam are still well above world average. For example, royalty on gold remains at 15% whilst the general range in world-wide royalty rates for gold is between 1-5%. This has been compounded by the introduction of a "mining rights" fee which in effect is an additional royalty by a different name.

As long as Vietnam's royalties/fees/taxes exist, international best-practice methods and investment in Vietnam's mining industry will continue to be discouraged, which in turn encourages inefficient and wasteful mining practices and degradation of Vietnam's existing known mineral resources and in particular its environment

Moreover, the high taxation rates have also encouraged increased illegal mining and illegal export of minerals on which no tax is paid. At the same time, small-scale illegal mining only exploits the higher grade, richer portions of a deposit, meaning that a significant percentage of Vietnam's valuable total mineral wealth will never be recovered:

- a) either lost because of primitive and inefficient processing methods; or
- b) permanently left in the ground, as it is usually not economically feasible to go back later to mine only the lower grade material left behind.

Imposing excessive mineral royalty rates and other multiple taxes are having the opposite effect to that intended by the Ministry of Finance in trying to raise revenue for the Government. Rather than increasing revenue, such fiscal policies discourage legitimate, legal investment in mining and thereby reduce revenue flowing to the Government and to the local communities impacted by mining.



## **SUGGESTED ACTIONS**

The mineral wealth of Vietnam is owned by Vietnam as it should be, but as Vietnam prepares to enter into new trade agreements, we respectfully urge the Government to improve investment confidence in Vietnam's minerals industry by:

1. Introducing more investor-friendly mining legislation which is competitive with other countries, and which includes an equitable tax system that is fair to both the Government and the investor, and legislation that provides for consistent policies for long-term commitment. This will:
  - encourage exploration to increase Vietnam's mineral inventory by new discoveries using modern technological methods;
  - allow development of the country's mineral wealth in an environmentally responsible, efficient and safe way;
  - increase revenue to government and communities;
  - accelerate development of infrastructure and service industries in the more remote and often mountainous parts of Vietnam, where mineral deposits tend to be found.
2. Establishing a task-force to investigate the incorporation of the best elements of other successful mining legislation around the world where a balance has been achieved between attracting modern, high technology in exploration, mining and processing of mineral resources, while at the same time returning equitable revenue to the host nation whose resources are extracted. This will enable Vietnam to better manage and build up its valuable mineral reserves by attracting world-best practice methods in exploration, mining and processing in order to:
  - maximize efficient extraction;
  - maximize returns to government, the investor and communities involved; and
  - minimize the damaging environmental, health and safety issues that are so apparent at present in many low technology mining operations.

## **PROGRESS**

The VBF in collaboration with MPI's Foreign Investment Agency convened a meeting on 31 October 2014 to bring together representatives of MOF, MONRE and the General Department of Taxation to discuss issues surrounding the royalty tax, mining rights fee and environmental protection fees. Earlier, on 10 October 2014, VCCI and MONRE jointly held a national workshop to examine efficiencies of revenue collection and governance shortcomings in the minerals extractive industry in Vietnam.

Vietnam does not have a long, established record of modern exploration, development and mining of minerals, but with increasingly greater knowledge of mining, the high risks and potential rewards involved, and the long uncertain lead-time required to convert mineral discovery into successful development and mining, the Mining Working group believes that the Government will recognize the benefits of encouraging a strong minerals industry to contribute to Vietnam's economic growth.

# ***Tourism***

**POSITION PAPER - TOURISM AND HOSPITALITY**

*Prepared by  
Tourism Working Group  
Vietnam Business Forum*

**1. OVERVIEW**

In the first 9 months of 2014, the Vietnam tourism sector reached VND178,970 billion in total revenue, increasing 19.2% compared to the same period in 2013. This amount accounted for 81.4% of the targeted tourism revenue in 2014.<sup>1</sup>

In 2014, the tourism industry aims to attract 8 million international and 40 million domestic arrivals, generating total revenue of VND 220,000 billion and contributing for around 5.2% of Gross Domestic Product (GDP).

The travel and tourism's direct contributions to Vietnam's GDP is expected to grow by 6.3% per annum and reach VND 299,846 billion by 2024 (4.7% of GDP). In addition, the total contribution of travel and tourism to the GDP is forecast to rise by 6.0% per annum and reach VND 607,858 billion by 2024 (9.6% of GDP)<sup>2</sup>.

According to the Vietnam National Administration of Tourism (VNAT), the country needs an additional 40,000 tourism workers annually, whilst the number of graduates to this sector is only 15,000. The tourism sector currently employs approximately 500,000 directly and 1,000,000 indirect workers in the year 2014. This is expected to reach 650,000 direct and 2,000,000 indirect workers in 2015. The number of workers employed at management level is expected to increase 25%<sup>3</sup>.

In 2015, when the ASEAN Mutual Recognition Arrangement on Tourism Professionals (ASEAN MRA-TP) will be implemented, requirements as to the quality of the workforce will further increase. The VNAT has addressed this by developing national tourism standards under the MRA-TP, in the form of the Vietnam Occupational Skills Standards (VTOS).

In June 2014, the Environmentally and Socially Responsible Tourism Programme (ESRT) completed the handover of equipment for 5 vocational training schools in 10 tourism and cultural community centres. The recipients were supported within the project by improving vocational tourism training with a budgeted amount of 300,000 Euro. The recipients took advantage of developing training courses for responsible tourism and the centres were responsible for training in home-stay tourism<sup>4</sup>.

The Tourism Advisory Board (TAB) supported by the ESRT programme held its 4th meeting on July 10th in Hanoi. The culmination of the meeting was the establishment of three working groups to address key industry issues, including Tourism Services & HR Quality, Destination Branding & Marketing and Policies & Regulations. The working groups will be led by members of the TAB in partnership with officials from VNAT.

In the first four months of 2014, Vietnam saw an increase in visitor arrivals of 27% over the same period in 2013, with a significant rise in arrivals from China and Hong Kong – mainly to the Central Coast, highlighting the success of the Central Coast DMO (Destination Management Organisation), from Russia – mainly to Cam Ranh, but also Phu Quoc, and Japan and Korea. We believe that this increase was in part due to a drastic decline in the number of visitors to Thailand, because of the political unrest and travel advisories, although there is no hard

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<sup>1</sup> Vietnam Tourism review

<sup>2</sup> [http://www.wttc.org/site\\_media/uploads/downloads/vietnam2014.pdf](http://www.wttc.org/site_media/uploads/downloads/vietnam2014.pdf)

<sup>3</sup> Vietnam Administration of National Tourism VNAT

<sup>4</sup> ERST Issue No.7 June 2014

evidence to support this. However, the disturbances arising from the East Sea issue in May 2014 had a profound impact on visitor arrivals, particularly from China to Halong Bay and the Central Coast. In June 2014, the number of Chinese arrivals decreased significantly by 29.5% compared with the previous month. However, since August, the number of Chinese visitors to Vietnam has shown a steady improvement, with an average monthly growth rate from July to September of 1.6%, and for the first 10 months, an increase of 9.6% compared with the same period last year. In the first ten months of 2014, the number of international arrivals in Vietnam reached more than 6.6 million, increasing by 8.0% over the same period last year.

Phu Quoc showed its tourism potential, when it was voted as the top 3 out of the 15 most attractive destinations for the winter season 2014 by National Geographic. In early 2014, Phu Quoc International Airport established direct flights from Russia and Singapore. In December 2014, Phu Quoc is expected to open additional International flights from Cambodia. Further measures which contributed to tourism growth on the island were the connection to the mainland electricity grid and the exemption of visa requirements for foreign visitors for 30 days, to date an unprecedented move in Vietnam. This led to a further sudden influx of foreign guests. Whilst these developments were generally welcome by the industry, Phu Quoc's infrastructure remains ill-prepared and already showing the first signs of distress, so for example with fresh water supply, garbage collection and waste disposal.

## 2. VISA EXEMPTION AND VISA WAIVER

Currently, only Foreign Independent Travellers (FIT's), who are ASEAN passport holders are exempt from visas for stays of up to 30 days, and only FIT's, who are passport holders from Denmark, Norway, Finland, Sweden, Japan, Korea and Russia are allowed to enter the country for a period of up to 15 days without a visa.

The benefit of visa waiver programs is evident from the significant increases in visitors from visa-exempt countries<sup>5</sup>:

	<b>Increase in 2013 over 2012</b>	<b>Increase in 8 months 2014 over 8 months 2013</b>
Japan	+4.8%	+8%
Korea	+6.8%	+9%
Russia	+71.1%	+27%
<b>Nordic Countries</b>	<b>Negative</b>	<b>+15%</b>

Source: VNAT

In comparison, tourists from higher-spending countries experienced the following changes:

	<b>Change from 2012 to 2013</b>	<b>Change from 2013 to 8 months 2014</b>
Germany	-6%	-8.4%
France	+4%	-4.4%
Russia	71.1%	27%
England	+9%	+8% <sup>6</sup>
Holland	+2%	+3%
Australia	±0%	+10%
USA	±0%	-2.6%

We believe that there are strong arguments for broadening the visa-exempt category and we would like to commend the Government for extending the pilot project to include the before mentioned countries.

<sup>5</sup> Source: VNAT

<sup>6</sup> Positive since the introduction of direct flights between London and Vietnam.

The annual report published by the World Tourism Organisation (UNWTO) and the World Travel & Tourism Council (WTTC)<sup>7</sup> also highlighted that Vietnam could potentially increase tourism arrivals by 8 to 18%, if it were to move to a programme of visa facilitation (i.e. Visa-on-arrival).

**Recommendations:**

- Expand visa exemptions to include countries that can potentially account for a significant increase in tourism revenues, such as the EU member states, the United States and Canada, Australia, Hong Kong and Taiwan. Visa exemptions to these countries should generally be granted for stays of up to 30 days.
- Establish an efficient 'Visa-on-Arrival' procedure. Vietnam could possibly refer to the examples of Laos or Cambodia, where visas are issued and fees are collected upon arrival.
- Enable qualifying passport holders to enter Vietnam for a period of at least 15 days without any documentation other than their passport.
- 'Visa-on-Arrival' procedures and policies should be transparent, consistent and effective, they should include an explanation of the process, a set fee schedule and a consistent enforcement of these rules at various airports.

**3. DESTINATION MARKETING<sup>8</sup>**

The VNAT, being an administrative body, generally follows the direction and guidance set out by the MCST on issues including marketing. On the one hand, this influence is justified as the MCST is responsible for monitoring the effective and efficient use of public funds. In addition, the VNAT may be responsible for tasks other than tourism marketing, for example tourism development and planning. On the other hand, in order to optimise national spending on marketing, we feel the VNAT should have greater autonomy in the areas of marketing and its position as the national marketing body needs to be enhanced.

Furthermore, as destination management involves cooperation between the service providers, to ensure continuous service chains and consistent marketing across the region, the current lack of effective regional coordination and DMO's in Vietnam also poses functional and institutional challenges for the sector. We believe that marketing dependencies on politics, and overlaps with other authorities or ministerial agendas need to be avoided. A high level of alignment between the public and private sectors - through effective stakeholder engagement - and the reinforced role of DMO's need to be ensured.

The Working group recognises that progress has been made in the above areas. In November 2012, the Tourism Advisory Board (TAB) was established under the guidance of the EU-funded ESRT programme. Directly reporting to the VNAT, the TAB creates an official mechanism for direct dialogue and cooperation between Vietnam's private and public sectors. Under the ESRT, a National Tourism Marketing Strategy to 2020<sup>9</sup>, and an Action Plan for 2013-2015 were prepared. These well-researched Strategy and Action Plans have been based on international best-practices, with the aim of bringing Vietnam up to par with its regional competitors.

Visitor arrivals for the first ten months of 2014 reached 6,608,391, an increase of 8% compared to the same period in 2013. Tourist's stay in Vietnam tends to be relatively short and the repeat rate of visitors is low (17% or less). There are limited entertainment and sightseeing options available at key tourist destinations. It is worth noting that, in comparison, a high percentage of Thailand's foreign visitors are regular/repeat visitors (approximately 50%). Whilst we are seeing strong growth from Russia, China, Hong Kong and Taiwan, these are largely group travellers and lower spending tourists, than those FIT's from Europe and North America.

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<sup>7</sup> Report published in May 2012

<sup>8</sup> The term destination marketing refers to the strategic management and marketing of a specific tourism destination.

<sup>9</sup> <http://esrt.vn/default.aspx?portalid=5&tabid=391&itemid=518>

**Recommendations:**

- Continue a concerted promotional campaign on both national and international levels, in order to address the negative perception of tourism service standards in Vietnam.
- Continue to highlight Vietnam's attractiveness due to its rich cultural heritage, outstanding natural beauty including beaches and friendly people. Whilst good progress has already been made in this area nationally, and to a limited extent internationally, we feel that further minimal investments could significantly improve the visitor's introduction to and perception of Vietnam.
- Handover full budgetary functions and responsibilities from the MCST to the VNAT. Whilst the MCST is the governing authority, the VNAT possesses the fiscal, technical and operational know how and first-hand expertise for an effective and timely planning of tourism marketing and promotional activities in- and outside of Vietnam. The planning and execution of marketing and promotional activities by VNAT is currently removed from the budgeting, approval and disbursements of funds done by the MCST, making most marketing and promotional activities of Vietnam as a travel destination untimely, uncoordinated and ineffective.
- Allocate a higher marketing and promotion budget to enable Vietnam to compete effectively with neighbouring countries, who spend annually significantly more than Vietnam (USD1-2 million), such as Thailand (USD80 million), Singapore (USD100 million), Malaysia (USD98 million) and Philippines (USD278 million).

**4. EDUCATION AND TRAINING**

The tourism and hospitality sector continues to experience serious shortages of adequately educated and trained human resources, on all levels and positions, from entry-level staff to supervisors, managers and executives. Firstly, the regulatory framework of the education and training system remains complicated and cumbersome. Secondly, the overall strategic and pedagogic approach to education and training remains based on outdated models, which are not in touch with the needs of modern societies, open market economies or the professional industry. Thirdly, regulatory bodies as well as established and influential academic institutions continue to take a rather 'abstract' than 'practical' approach to tourism and hospitality education. There is very little exchange and cooperation with the private tourism and hospitality sector, neither with local nor foreign companies. Curricula, syllabi and teaching methods remain largely academic and theoretical in nature, and much of the training is being delivered by lecturers with mainly academic qualifications, but no or very little practical work experience in the sector. Lastly, the overall teacher education system remains inadequate and a training-of-trainers approach is new and unfamiliar.

Certain measures aimed at resolving the issue have been put in motion. In conjunction with the VNAT, the ESRT programme conducted a nation-wide training needs assessment, with the purpose of providing up-to-date information on the skills and training needs of both public and private sector organisations and enterprises in the tourism industry. Moreover, in view of the upcoming establishment of the ASEAN Economic Community in 2015, VNAT, with the support of the ESRT programme, is in the process of implementing the ASEAN MRA-TP, which aims at establishing common competency standards for tourism and hospitality professionals and thus facilitating the mobility and transfer of human resources in the region. Following the guidelines of Decision 09/2008/QĐ-BLĐTBXH dated 27 March 2008, in partnership with VNAT, the ESRT supported the revision of the Vietnam Tourism Occupational Standards (VTOS), in collaboration with representatives from tourism and hospitality businesses, and with the aim to prepare national standards for the fast growing tourism industry and to set internationally recognisable standards for tourism jobs as the ASEAN Economic Community will come into effect in 2015.

Whilst the industry fully supports the introduction and application of VTOS in Vietnam, for the purpose of developing a larger and better qualified and skilled pool of tourism and hospitality workers, the industry also feels that more recognition should be given to international branded

hotels who have spent considerable amounts of time and money to train their employees towards recognized international global standards. Whilst these international hotel companies are not training institutions per se, however they are focused to deliver upon their respective brand standards, which create points of service differentiation between one hotel and another. Therefore, it will be more appropriate, if VTOS is made first and foremost mandatory for all educational and training institutions in Vietnam, and that their application is in particular pushed for the mostly locally managed 1 to 3 star properties, which do not have international standard training programs. This would recognize the quality and benefits of international standard training programs which global hotel chains use, at a time when the revised VTOS will be made mandatory, tested and implemented in wider circles of the training and education as well as tourism and hospitality sectors.

We would therefore urge that a consultation process be put in place, whereby a solution must be found to recognise the existing high level standards within the internationally branded hotel, in the form for example of a quick and simple “balance” accreditation of entire hotel chains or properties in Vietnam, in line with the simple and non-bureaucratic assessment criteria as prescribed in the MRA -TP.

However, to potentially remove the star rating of a recognised global hotel chain and administer financial penalties for non-compliance with the VTOS and accreditation requirements would be a major step in the wrong direction.

Increasing the number of trained and qualified personnel in all sectors of the tourism and hospitality industry would enhance the quality of products and services that are on offer. This, in turn, would have a positive impact on Vietnam’s image and reputation. Better services also translate into greater competitiveness, more visitors hence increasing potential GDP contribution and revenue for the Government. As tourism is a significant sector for the country, there might also be positive knock-on effects in other industries, improving overall skill levels across the supply chain. This is likely to increase employment and wages for the local population.

The implementation of the MRA-TP in Vietnam is late and not very transparent. Each ASEAN member state is to implement competency standards and a certification body on national level. At its current state, the Vietnam Tourism Certification Board (VTCB) has not yet reached full and independent status to be able to effectively execute its role as the a National Tourism Professional Board (NTPB) and Tourism Professional Certification Board (TPCB) under the MRA-TP. Moreover, though the revised VTOS have formally been endorsed by VNAT, they have not yet been officially recognized as mandatory national standards and have not been put into binding law by the MCST and MOLISA. Without legalization and mandatory application on national level, neither training and education institutions, nor the wider tourism and hospitality industry will fully implement the revised VTOS, meaning in effect the failure of the MRA-TP in Vietnam. According to unofficial sources, legalization by the relevant ministries is envisioned for mid 2015, which is however far from certain and way behind schedule of the MRA-TP and as agreed between ASEAN members.

**Recommendations:**

- Make the revised VTOS mandatory for those institutions in Vietnam, which deliver any form of training and education related to tourism, hospitality or travel
- Provide legal status to and establish effective and professional management and working structures for the VTCB, in order to properly fulfil its role and function as the National Tourism Professional Board (NTPB) and Tourism Professional Certification Board (TPCB). Establish the VTCB under participation and fair representation of all relevant sectors, public and private, but particularly of the domestic and foreign tourism and hospitality sector.

- Allow foreign nationals, in line with the MRA-TP framework, to acquire VTOS master trainer, trainer-of-trainer and assessor status, in order to support the certification of industry professionals, share international experience and transfer know how to the Vietnamese people
- Encourage the industry and all training establishments to utilise the results of the Vietnam Training Needs Assessment 2013<sup>10</sup>, which provides up-to-date information to complement MCST's plan for "Human Resource Development in Tourism till 2015 and Vision 2020".
- Establish a permanent platform and consultation process for a regular and effective dialogue between the public and private tourism and hospitality sector, between MCST/ VNAT, MOLISA, MOET and representatives from the tourism and hospitality industry, with the purpose of advising authorities on skill requirements and the development of suitable tourism curricula in Vietnam.
- Consider, recognize, accredit and certify hotel companies which already have internationally recognized and high quality training standards.
- Separate the assessment of hotel properties for the purpose of licensing and star rating from the process of assessing staff's competency levels. This practice has led to the absurd situation where international and globally operating hotel management companies, with well established training programs and highly recognized quality standards, have been withheld the timely or appropriate star rating, or even been penalized. As the VTOS is a system in the making, from which Vietnam will benefit as a whole, it should not be mishandled by authorities to single out hotel operators and create administrative bottlenecks, bureaucratic hassles and additional and undue costs.

## 5. EMPLOYABILITY, LABOUR MOVEMENT AND TOURISM COMPETITIVENESS

In relation to the points already raised in Section 4 – Education and Training, the establishment of the ASEAN Economic Community in 2015 will be a tremendous opportunity for Vietnam, and in particular for its tourism sector. The ASEAN common market will not only simplify the flow of goods and services, but also the movement of labour and human resources. Vietnam will only be able to take part and benefit from this, if the Government makes the right long-term decisions and implements effective human resources development policies now. This will increase the levels of competency and productivity, foster employability, free labour movement and the competitiveness of the Vietnamese tourism industry.

Within the region, Vietnam's tourism sector benefits from a young population, central geographic location and increasingly travel-savvy middle class. On the other hand, the tourism and hospitality industry suffers from a severe shortage of skilled workers, by quantity and quality, which poses a serious threat to the sustainable development of the sector. The "Government's Strategy for Tourism Development in Vietnam 2011–2020" estimates that up to 2.2 million workers will be needed in the tourism sector by 2015, and 3 million by 2020. This problem has been well recognized and endeavours to address this have been undertaken, least through the implementation of the ASEAN Mutual Recognition Arrangement on Tourism Professionals (ASEAN MRA-TP).

The ASEAN MRA-TP is a comprehensive framework with the goal to establish common tourism competency standards, develop training and education, facilitate employability and free labour movement, and improve competitiveness of the tourism sector within ASEAN countries. It is envisioned that tourism and hospitality enterprises, for the first time, will be able to move and transfer employees freely, duly certified within a national competency standard system under the MRA-TP's framework, within ASEAN countries and without the normal visa and work permit restrictions, thus contributing to ease the shortage of skilled labour.

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<sup>10</sup> <http://www.esrt.vn/default.aspx?portalid=5&tabid=391&itemid=551>



To be effective and sustainable, the implementation of the MRA-TP needs to follow a clear and distinct roadmap as agreed between ASEAN members. By 2015, Vietnamese workers will be in direct competition with regional labour. Implementation of the MRA-TP in Vietnam has overall been slow and ineffective, despite recent efforts of establishing the National Tourism Professional Board (VNAT) and Tourism Certification Board (VTCB), as well as the revision of the National Occupational Skills Standards (VTOS). Major concerns remain with the tourism and hospitality industry in Vietnam in regards to the implementation of the new VTOS, their mandatory nationwide implementation and practical application within education and training institutions, and most importantly, about the certification of competency standards, control of access to the ASEAN Tourism Professionals Registration System (ATPRS), and the actual liberalization and free movement of the labour market. Industry practitioners in Vietnam fear that the new system of VTOS and the VTCB will create just another bottleneck, administrative costs and bureaucratic hassle. Whereas most local businesses take an indifferent stance towards the issue, many international hotels, restaurants or travel operators have expressed considerable scepticism or even adversity towards the implementation of MRA-TP and the revised VTOS in Vietnam.

**Recommendations:**

- Establish a permanent platform for an effective partnership and regular dialogues between the public sector, Government agencies and relevant authorities, and the private tourism and hospitality sector, national and international airlines, hotel chains, restaurants operators, travel agencies, tour operators, tourism and hospitality training and educational institutions, relevant trade associations and business groups.
- Involve the tourism and hospitality industry in the implementation of the MRA-TP and VTOS, exchange experiences in training and education, especially with international hotel chains.
- Raise awareness, increase understanding and knowledge, and explain the significance of the implementation of MRA-TP and VTOS for Vietnam's tourism sector.
- Implement the MRA-TP strictly in accordance to the roadmap as agreed by ASEAN members, make VTOS mandatory for all tourism and hospitality training institutions, as minimum competency standards, not as curriculum, establish an effective and transparent certification system under the VTCB, create an effective ASEAN Tourism Professionals Registration System with free and open access for all, and liberalize the labor market for free the movement of Vietnamese and foreign workers in the tourism and hospitality sector.

**6. LICENSING OF TOURIST-RELATED SERVICES**

If Vietnam is to be able to meet the quality standards required of the industry and to reach the employment targets<sup>11</sup> set in the Strategy for Tourism Development in Vietnam to 2020<sup>12</sup> then the management of the industry through licensing is imperative. With the increase in visitor arrivals and the opening up of new areas to increased tourism such as Phu Quoc and Phu Yen, it is imperative that the number of professionally trained staff is increased not just in the major cities.

Licences for the provision of tourist-related services should only be granted to well-trained personnel with a formal education and qualification related to the service industry. This is also critically important with the implementation of the free movement of labour within ASEAN from 2015.

These support industries are crucial if Vietnam is to maintain its attraction and maintain the growth in visitor arrivals. Better service standards attract further investment and create more jobs. Formally licensed activities help drive out illegal activities and lead to better control and

<sup>11</sup> Page 6 states "million jobs are to be created, of which 870,000 labourers will be directly involved in tourism industry"

<sup>12</sup> Strategy for Tourism Development in Viet Nam to 2020, vision 2030 developed by VNAT with the support of ESRT and approved by the Prime Minister on December 30, 2011.

tax collection. At the same time, proper licensing also helps drive better health and safety standards which will also become increasingly important in the coming years.

**Recommendations:**

- Grant licenses for tourist-related services only to well-trained personnel with a formal education or qualification relating to the service-industry, regardless of their nationality.
- Remove additional restrictions for foreigners to work as tour operators in the tourist-industry and improve the licensing process for tourism companies.