



VBF VIETNAM BUSINESS FORUM

ANNUAL VIETNAM BUSINESS FORUM & FDI BUSINESS CONFERENCE

FDI Enterprises pioneer in implementing Green Growth Strategies



Hanoi, March 19, 2024

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**PRIME MINISTER MEETING WITH FDI ENTERPRISES &
ANNUAL VIETNAM BUSINESS FORUM**

*Date & Time: 08:00 – 12:00, 19 March 2024
Venue: Lotte Hanoi Hotel, 54 Lieu Giai, Ba Dinh, Hanoi*

FDI ENTERPRISES PIONEER IN IMPLEMENTING GREEN GROWTH STRATEGIES

TENTATIVE AGENDA

07:30 – 08:00	Registration
08:00 – 08:20	Opening Remarks <ul style="list-style-type: none"> • Ministry of Planning & Investment – <i>Mr. Nguyen Chi Dzung, Minister (5')</i> • International Finance Corporation – <i>Mr. Thomas Jacobs, Country Manager (5')</i> • Vietnam Business Forum Consortium <i>Mr. Pham Tan Cong, VBF Co-Chair (5')</i> <i>Mr. Nitin Kapoor, VBF Co-Chair (5')</i>
SESSION 1 FDI'S ROLE IN THE NEW CONTEXT	
08:20 – 09:20	Recommendations from the representative groups of the business community to improve the investment environment in Vietnam <ul style="list-style-type: none"> • British Chamber of Commerce Vietnam – <i>Mr. Denzel Eades, Vice Chair (7')</i> • American Chamber of Commerce in Vietnam – <i>Mr. Joseph Uddo, Hanoi Chair (7')</i> • Korea Chamber of Business in Vietnam – <i>Mr. Hong Sun, Chair (7')</i> • Japanese Chamber of Commerce and Industry in Vietnam – <i>Mr. Muto Shiro, Vice Chair (7')</i> • European Chamber of Commerce in Vietnam – <i>Mr. Gabor Fluit, Chair (7')</i> • Representative of Associate Chambers (SingCham) – <i>Mr. Seck Yee Chung, Vice President (7')</i> Recommendations from several important FDI partners on ways to improve the investment environment in Vietnam <ul style="list-style-type: none"> • Samsung Vietnam – <i>Mr. Choi Joo Ho, President (5')</i> • Bosch Vietnam – <i>Mr. Dominik Meichle, Managing Director (5')</i> • Intel Vietnam – <i>Mr. Phung Viet Thang, Country Director (5')</i>

SESSION 2	
FDI ENTERPRISES PIONEER IN IMPLEMENTING GREEN GROWTH STRATEGIES	
9:20 – 9:45	<ul style="list-style-type: none"> • VBF’s ESG REPORT, <i>Mr. Stuart Livesey – CEO, Copenhagen Infrastructure Partners (CIP) (10’)</i> • Developing a workforce aligned with green growth – <i>Mr. Colin Blackwell, Head of Human Resources WG (5’)</i> • Sustainable infrastructure – <i>Mr. Tony Foster, Co-Head of Infrastructure WG (5’)</i> • ESG Financing – <i>Mr. Dominic Scriven, Head of Capital Markets WG (5’)</i>
9:45 – 10:00	TEA BREAK
10:00 – 10:25	<p>Examples of businesses implementing green growth and ESG strategies</p> <ul style="list-style-type: none"> • <i>Boston Consulting Group – Mr. Arnaud Ginolin, Managing Director & Partner (5’)</i> • <i>Erex – Mr. Honna Hitoshi, President & Representative Director (5’)</i> • <i>Heineken – Mr. Alexander Koch, CEO (5’)</i> • <i>Coca-Cola – Ms. Claudia Chan, Senior Director of Public Policy for ASEAN & South Pacific (5’)</i>
SESSION 3	
GOVERNMENT RESPONSES	
10:25 – 11:00	<ul style="list-style-type: none"> • Ministry of Industry & Trade • Ministry of Planning & Investment • Ministry of Finance • Ministry of Natural Resources & Environment • Ministry of Labor – Invalids & Social Affairs • Ministry of Education & Training • Ministry of Health
11:00 – 11:45	KEYNOTE ADDRESS BY H.E. MR. PHAM MINH CHINH – PRIME MINISTER
11:45 – 12:00	<p>Closing Remarks</p> <ul style="list-style-type: none"> • World Bank – <i>Ms. Carolyn Turk, Country Director (5’)</i> • Vietnam Business Forum Consortium – <i>Mr. Nitin Kapoor, VBF Co-Chair (5’)</i> • Ministry of Planning & Investment – <i>Mr. Nguyen Chi Dzung, Minister (5’)</i>
12:00 – 12:10	MPI’S CERTIFICATE OF MERIT
	NETWORKING LUNCH

SESSION 1

**FDI'S ROLE
IN THE NEW CONTEXT**



POSITION PAPER OF BRITISH CHAMBER OF COMMERCE IN VIETNAM

Ladies and gentlemen,
Prime Minister Chinh, Minister Dung, esteemed guests, and colleagues,

The British Chamber of Commerce extends its sincere gratitude to the Vietnamese government and related agencies for their unwavering support of businesses, particularly in navigating the challenges posed by economic headwinds.

Over the past 50 years, the collaboration between Vietnam and the United Kingdom has made remarkable achievements. The commitment to extend and elevate the strategic partnership has instilled confidence among businesses and individuals, fostering collaboration for mutual benefit, both now and for generations to come.

We applaud Vietnam's dedication to zero net emissions and sustainable development, as well as the government's endeavours to champion this agenda. The UK private sector stands ready to contribute significantly across key sectors such as energy, finance, pharmaceuticals, and consumer goods.

The recent adoption of the Power Development Plan 8 ("PDP8") showcases Vietnam's strong commitment to decarbonization. In alignment with our collective goal of sustainability, we recommend the swift implementation of PDP8, particularly in relation to the development of LNG, solar and wind together with the development of legal regulations to enable such implementation, for example regulations that relate to the Direct Power Purchase Agreement ("DPPA"). To further support this initiative, we recommend the coordinated implementation of the Joint Energy Transition Platform (JETP), aligning it with PDP8 and ensuring the readiness of specific pilot projects, particularly in offshore wind energy.

The UK private sector commits to supporting the Vietnamese government in its sustainability efforts, advocating for the development and implementation of Extended Producer Responsibility (EPR) and promoting a circular economy in plastic waste management. The UK has considerable experience in this area and our recommendations include incentivizing the use of recycled plastics (PCR) in packaging, creating a competitive advantage for these materials, encouraging manufacturers to utilize PCR in their production, and developing the recycling industry to promote a circular economy.

The development of an International Financial Centre (IFC) in Vietnam, supported by the UK-Vietnam IFC Working Group, is a game-changing initiative. To ensure its success, we recommend recognizing the vital role of the Financial Services industry in fuelling.

Vietnam's domestic and export economy and promoting Vietnam's economic capabilities in overseas markets. Vietnam should improve the capacity and conditions for industry operation and growth in line with international standards and practices, pursuing favourable policies in accounting, taxation, securities, and banking. The importance of achieving emerging market status for Vietnam's capital markets and the adoption of International Financial Reporting Standards

(IFRS) throughout Vietnam are key considerations and we, and UK businesses, stand ready to support the Vietnamese government in achieving these objectives.

We highly value the efforts and progress of Vietnam's government on administrative reform. Stronger moves are still needed to better serve businesses and people. Specifically: a) removing advertising pre-approval requirement, transitioning to post-market control; b) Strengthening e-government in managing promotion activities and notification c) simplifying procedure and timeline for obtaining trading license d) consistency between central and local regulations.

We appreciate the innovative ideas and efforts to enhance access to healthcare outlined in the draft revised Pharma Law and Health Insurance Law, including recognising international appraisal results to accelerate local drug registration, and expanding health insurance coverage to include NCDs screening, among other initiatives. To build on these progressive approaches, we strongly propose the automatic extension of drug marketing authorizations to prevent disruptions in medicine supply and the regular updating of the National Reimbursed Drug List by law to ensure patients' access to new medicines. To attract more FDI and technology transfer in life sciences in Vietnam, we highly recommend further regulatory harmonisation for faster approval of clinical trials, providing meaningful incentives for pharmaceutical R&D and manufacturing in drug registration and procurement, creating an enabling environment with effective IP protection, and ensuring adequate FIE rights.

With regard to foreign investment in general, addressing regulatory challenges, such as foreign exchange controls, licensing delays, and the need for consistency and predictability, is crucial. We are grateful for the trade arrangements Vietnam has with the UK, both through the UKVFTA and the CPTPP. Vietnam should avail itself of international treaties to streamline its foreign investment process and remove, as over 100 other countries have done, requirements for foreign documents to be legalised for use.

Attracting global talent to Vietnam still faces challenges, particularly in the inconsistent visa and work permit application process. Given strong competition in the region, Vietnam should continue to ease the burden for talent and other visitors (such as tourists) and accelerate progress on digital application processes and the use of technology at airports.

In the tourism sector Vietnam has not been as quick as our neighbouring competitors to adjust to the post covid reality and Vietnam needs to consider urgent measures to keep pace with the growth seen by our neighbouring competitors, to include further visa exemptions to major target markets e.g China, India, developed Europe, Australia and New Zealand, Canada and USA. We also need to consider longer-stay visas for retirement travel and retirement visas for those wishing to retire in Vietnam.

British businesses express optimism about contributing significantly to Vietnam's economy across all sectors. We urge the government to ensure robust and consistent policy-making to foster an environment where businesses can grow and develop with confidence.

Thank you.



POSITION PAPER OF AMERICAN CHAMBER OF COMMERCE IN VIETNAM AT ANNUAL VIETNAM BUSINESS FORUM

AmCham members thank the Prime Minister, Minister of Planning and Investment, and all our partners in the Vietnam Business Forum and Secretariat for their role in bringing together business and government leaders to discuss how to improve business conditions to contribute to Vietnam's continued sustainable growth.

This year marks the 30th anniversary of AmCham in Vietnam and the beginning of US-Vietnam economic relations, and our members now account for billions of dollars in foreign investment, tens of thousands of direct employees, hundreds of thousands of indirect employees, and a significant share of Vietnam's exports and tax revenues. Our members have played a transformative role in the development of Vietnam and the United States is one of the top foreign investors in Vietnam. More importantly, despite considerable challenges posed by headwinds in the global economy, the U.S. remains Vietnam's biggest export market, driving investment and growth throughout Vietnam.

Opportunities and Challenges in the Year of the Dragon

Last year's economic performance exposed some weaknesses, including a strong dependence on foreign market trends, a vulnerable domestic private sector, red tape slowing progress, and power supply shortage. Additional progress on structural reforms in State-owned enterprises, government administration, and regulatory processes for the private sector is needed to ensure Vietnam regains its pre-pandemic momentum and climbs the manufacturing value chain.

The good news is that over one-half of our members say they are performing on target or better than expected here. The bad news is that over one-half of our members feel the business climate needs improvement or that Vietnam is not headed in the right direction in some key areas.

Government action can help the country maintain its competitive edge as global investors seek investment and manufacturing destinations throughout the Western Hemisphere, Asia, Africa, and Europe. In this regard, AmCham's focus is on Vietnam's priorities of removing bottlenecks in resource mobilization, production, and business; addressing energy development needs and accelerating the transition to clean and renewable energy; unlocking the full potential of the digital economy; ensuring access, affordability, and innovation in the health industry; promoting sustainable investment and supply chain integration; developing the financial sector including capital markets; and creating a clean environment.

Better, Faster, Easier

The most important factor for a favorable investment climate is a fair, transparent, predictable, and streamlined regulatory environment that values innovation - not only to attract new investment, but also to maintain and grow the investment already here. AmCham has been an active advocate for administrative procedure reform in Vietnam for over 15 years through our work on the

Advisory Council for Administrative Procedures Reform and related efforts. While some administrative procedures have been eliminated, new laws and regulations continue to introduce new administrative procedures. We recommend that all the new laws and regulations be reviewed and restricted on new administrative procedures.

For example, our members, like many businesses here today, face delays in approval procedures and time-consuming administrative burdens which hinder or stall their projects and impact Vietnam's competitiveness. Timely approvals are needed: for site master plans and related permits, business licenses, investments, real estate development, visas for foreign workers - especially experts, as well as reliable and consistent use of e-government and e-approvals. In addition, although digitalization is promoted by the government, many administrative procedures such as reporting, registration and notification are still required to be submitted in paper or even in both paper and electronic forms.

AmCham members do business across the economic spectrum here. We work closely with our partners in the government to ensure proposed rules and regulations are consistent and synchronize with existing laws and international standards, and are not overly burdensome on businesses. In recent months, we have conducted advocacy on manufacturing and environment rules such as EPR, energy development such as PDP8, VAT and other tax issues, healthcare policies such as the Pharma Law, and many proposals and regulations impacting growth of the digital economy.

Integrated supply chains must also be compatible with global tax policies. Vietnam should adopt global standards for accounting, audits, transfer pricing, and use the Advanced Pricing Agreement process already approved by the National Assembly. Too many companies currently face nontransparent and unpredictable tax policies and audits, often at the city or provincial level.

We will continue to work with the government to identify and remove these bottlenecks and help work towards a regulatory environment that meets global standards. We encourage the Government to clarify those elements of Vietnamese law that obstruct the efficient deployment of foreign investment and that any additional administrative burdens in draft laws and regulations be carefully considered and avoided whenever possible.

Keeping the Lights On

We welcome the government's focus on supply chain growth and attracting high-tech manufacturing and investment. Without electricity that is consistent, affordable, reliable, and sustainable, many of the goals discussed today will be difficult to reach. The one thing that ties all businesses and any future investors together is the need for energy reliability and immediate access to renewable energy. Keeping energy systems working is an essential goal of good energy governance and granting investors access to renewable energy is a competitive advantage for the country. Power supply and demand dynamics are complex, and a collaborative approach between the public and private sectors is essential to develop affordable, reliable, and sustainable electricity. Vietnam can attract global financing with an effective energy regulatory system.

We encourage continued dialogue between MOIT, EVN, and private sector stakeholders to explore viable short-term and long-term solutions for Vietnam to meet its energy security needs, including advancing approval of large liquified natural gas (LNG) projects that support energy security and transition goals. Energy infrastructure does not happen overnight and planning for Vietnam's sustainable growth needs to happen now. We need to see regulatory uncertainties eliminated and a renewed focus on approving projects in the short term that are realistic and bankable to ensure power supply meets the growing demand here.

The government is keen to make rapid progress on the Resource Mobilization Plan set out by the JETP Political Declaration and we look forward to continue working on this. The private sector's commitment is subject to 1) improvements to the local and international policy and enabling environment; 2) the availability of public finance, including in structures that can de-risk and crowd-in private finance; and 3) a robust pipeline of competitively tendered projects that are consistent with the JETP's transition pathway.

We recommend the Government to consider aligning Power Purchase Agreements (PPA) to international standards to enable multilateral institutions and Development Finance institutions to lend to large projects for Energy Transition and the renewable energy sector.

Current investors need more streamlined regulations to install and provide access to renewable energy, as many new investors and expansion projects need reliable access to renewable energy in order to invest here. The implementation of the national Power Development Plan, the development of the Decree on rooftop solar development, access for renewable energy in industrial zones, and the guidance on the Direct Power Purchase Agreement (DPPA) mechanism are pivotal. We are encouraged by signals that the DPPA could be launched on July 1 as our members – both investors and customers – support the soonest implementation of this long-awaited program.

Supply Chain Opportunities

Vietnam remains well-positioned to capture significant investment as companies increasingly seek to diversify their global supply chains. Like all major sourcing locations, Vietnam needs to continuously evaluate what its competitive advantage is. We believe Vietnam needs to prioritize labor and engineer training, sustainable practices, work permits for foreign engineers, and the country's ability to support a more vertical industry, particularly as companies are looking to diversify tier two and three suppliers from China.

We recommend removing barriers to foreign investment in professional and vocational training to assist development of important skills and capabilities in the workforce. We also urge the government to provide better support for small and medium manufacturers. These companies are part of critical supporting industries, but their individual investments are small. Current Department of Planning and Investment (DPI) metrics often do not favor such investors, causing delays in licensing and permissions. These companies are often premium employers of skilled and professional labor and are critical to building the support system that global manufacturers need here.

To capture the diversification opportunities, our members also urge the government to quickly develop a better regime for approving brownfield investment projects (purchases or leases existing production facilities to launch a new production activity). International manufacturers struggle to sell facilities they have already built/invested in, and potential buyers have trouble getting purchases approved and executed, and business licenses intended in brownfield facilities approved. A functioning brownfield market is an important facilitator for investment here.

Improvements in supply chain financing (facilitation of cash needs during manufacturing transactions) are needed and will help grow investment in Vietnam. In most competing markets, a customer purchase order is sufficient documentation for a bank to provide short-term financing enabling a manufacturer to obtain materials and perform operations prior to receiving payment from the customer.

Unlock the Full Potential of the Digital and Creative Economy

AmCham appreciates the Government's effort to support Vietnam's transition to a digital economy – this is crucial for all sectors of the economy overall. The Government is working on over a dozen key regulations, and we have been very active in this process. Our members work actively to support this transformation, both with Vietnamese partners and individual projects. We urge the Government to take a holistic approach and global view in developing a digital regulatory framework. The free flow of data across borders, and access for Vietnamese users to global-standards for cloud, other services and data protection, are vital to that transition, and vital to all parts of the economy – not just digital companies. Sharing data across borders is essential for businesses to access global markets, interact with customers, carry out research and development, and communicate with suppliers/affiliates around the globe, thereby increasing efficiency and productivity.

One key legislative priority is the current Draft Decree replacing Decree No. 72/2013/ND-CP on management, provision, and use of Internet services and online information. After many rounds of consultation, we understand that most of the concerning requirements remain in the latest draft, despite feedback that our concerns would be acted upon. We remain concerned that companies will be unable to comply with many of its provisions as written.

We are proud that Vietnam has the largest App Economy workforce in South East Asia. This includes app developers and other workers who create, maintain, and support the ever-expanding range of mobile apps. App Economy jobs span many industries of the Vietnamese economy, including information technology, finance, transportation, health and wellness, e-commerce, travel and entertainment, real estate and construction, education, and energy. Growth in this important industry relies on a supportive regulatory environment, which includes streamlining regulations and reducing impediments to cross-border data flows, and removing the licensing regime and minimizing administrative burdens we observe from the Draft Decree.

Innovation and the digital economy are very important to our members. There are several other important Draft Decrees and legislative items that AmCham continues to work with our government counterparts advocating for improvements on, including the Law on Consumer Rights Protection, the Technical Standards Law, the Telecom Law, the Law on Personal Data Protection, the Law on Data, and more.

Another regulation that impacts many of our members is the Draft Decree on Electronic Signatures and Trust Services prepared by MIC. The Draft Decree includes provisions on specialized e-signature registrations which are unreasonable burdens on businesses. By way of examples, the entire equipment system must be located in Vietnam; and 12 staff must be in charge of the system. Many of our members operate as branches and subsidiaries of a parent company and use a common global system. These companies would not be able to comply with the conditions in the Draft Decree. We are keen to work with MIC and other authorities to develop an effective framework for, and formal legal recognition of, e-signatures and digital signatures to help overcome obstacles for companies.

We see great opportunities for growth and encourage Vietnam to prioritize development of digital infrastructure, cloud-based services, and data centers. There are, however, regulations on cloud services and data centers which hinder U.S. companies' ability to invest in these areas. We also reiterate that overly complicated procedures for the import of digital equipment and devices represent a barrier to digital growth and AmCham recommends streamlining import procedures and enabling the acceptance of quality certificates issued by reliable countries.

The e-commerce sector in Vietnam has been growing exponentially. Government and industry focus on online exports and non-cash payments will further boost this sector. We recommend that the government revises its draft regulations promoting online exports and easing customs and payment processes, and simplifies documents required by banks, cards and e-wallets to process lower-value, high-volume e-commerce payments for domestic and international companies.

AmCham looks forward to continuing its partnership with the Government to attract investment and drive innovation to support sustainable growth, to enact policies to continue to attract high-value manufacturing, and to increase the role played in Vietnam by the digital economy. Our members look forward to continuing to contribute to policy frameworks that support economic growth and foster innovation.

Health and Wellness are Key Issues for Sustainable Development

Good policies for health and wellness are also important for Vietnam's sustainable development. The rapidly expanding demand for pharmaceuticals in Vietnam is driven by improved service access, wider healthcare coverage, rising personal incomes, and better health awareness and management. Unfortunately, we see continued challenges related to restrictions and lengthy approval processes for import and distribution of healthcare products and technologies that Vietnam urgently needs.

Vietnam should limit duplicative and expensive paperwork and procedures for importing new medicines into the country expeditiously. We also recommend limiting burdens for companies looking to invest in tech transfer for in-country pharmaceutical production. We are concerned that legislation regulating the pharmaceutical sector still discriminates against foreign invested enterprises (FIEs) which impacts the competitiveness of the sector here. For example, the current draft Pharma Law adds a provision (article 53a) restricting the legitimate rights of FIEs in some business and operational activities.

Reform Capital Markets to Drive Investment

We are encouraged by the strong determination of the government to work towards upgrading the status of Vietnam's capital markets to "Emerging Market" vs. "Frontier Market" status, particularly on removing the prefunding requirement for the stock exchange and on raising Foreign Ownership Limits – especially on banking. This upgrade would open access to greater international capital for Vietnam, creating a virtuous circle: a more positive view of the economy will attract more direct investment and trade, leading to faster economic growth.

We recommend that the State Securities Commission and Vietnam Securities Clearing Depository Corporation implement a safe and effective central counterparty clearing model aligned with international practices, which establishes the roles of participants in accordance with their functions. The roles of securities companies and banks should avoid the transfer of settlement risks of the securities market to the banking system.

Fiscal Stability

Revising the Law on Value-Added Tax, the Law on Special Consumption Tax, and the Law on Corporate Income Tax in the 2024-2025 legislative agenda can greatly impact business growth and investment. We recommend the government conduct a thorough assessment of the socio-economic impacts of these changes before proceeding in such a tight time span.

Trusted Brands and Consumer Protection

AmCham welcomes amendments to the Law on Advertising to facilitate a competitive business environment and we look forward to working with the Ministry of Culture, Sports and Tourism to share industry best practices. To avoid unnecessary burdens for brands when developing advertising content, we recommend a review of Articles 19 and 19a of the draft amendments to ensure clear definitions and guidance on “informational content” and required content for cosmetics advertising. Our members also seek to confirm that the definition and understanding of influential product conveyors is consistent with the definition of “influencers” in the Law on Protection of Consumer Rights.

Creating a more Attractive, Transparent and Stable Business Environment

AmCham values its close partnership and dialogue with the Government and we are pleased that our two countries upgraded their diplomatic relationship last year. As major investors and the key market for Vietnam, American companies have an interest in the economy’s continued success and we are grateful for the opportunity to work with the government on addressing regulatory concerns. The business climate can best be helped by actions that increase productivity, remove technical barriers and business condition, and reduce the unnecessary costs of doing business in Vietnam, for instance by aligning with international banking processes and policies. Decreasing the complications of doing business will also benefit Vietnamese-owned businesses - many of which are SMEs - and will spur entrepreneurship, promoting Vietnam’s international competitiveness.

AmCham is committed to achieving sustainable growth in alignment with Environmental, Social, and Governance values. We will continue to play a helpful and constructive role, in identifying and implementing solutions, and to be a tireless advocate for the growth and strength of the economy in Vietnam.

AmCham wishes good health, happiness and success to the leaders, distinguished guests, and our members here today. Xin chân thành cảm ơn. Thank you very much.

POSITION PAPER OF KOREA CHAMBER OF BUSINESS IN VIETNAM

1. Supplementary Measures Needed Regarding Implementation of Global Minimum Tax

With the full-scale implementation of the Global Minimum Tax system starting in 2024, concerns have arisen over the potential dissolution of the previously enjoyed investment tax incentives by foreign companies operating in light of the new tax framework.

The standard corporate tax rate in Vietnam is 20%. However, for prominent enterprises, the effective tax rate ranges from 5% to 10%, creating a disparity. In the event of paying taxes on the difference, the existing tax reduction benefits are offset.

According to the draft decree announced by the Ministry of Planning and Investment (MPI) of Vietnam on December 19, 2023, plans for establishing an investment support fund for the implementation of the Global Minimum Tax, along with the associated support benefits, support scope, and methods, are outlined. However, criticism is prevailing due to the ambiguity of the support criteria, making it insufficient to attract the interest and consensus of investors.

Furthermore, according to the current draft decree, concerns are rising due to limitations on the eligibility for support, restricting it to investment amounts exceeding \$500 million. This restriction may lead to a very limited number of eligible companies, and there is a significant concern that many foreign-invested enterprises may not benefit. If the investment of these companies is deterred by these measures, it could have a negative impact on the business of all vendor companies that have entered Vietnam alongside them, eventually posing a potential obstacle to the expansion of foreign investment in Vietnam.

Against this backdrop, we earnestly request a thorough analysis and anticipation of the implications of the implementation of the Global Minimum Tax and respectfully request the incorporation of comprehensive industry opinions into the draft decree, making adjustments and enhancements to ensure that foreign investment companies are not adversely affected.

2. Resolution of Power Supply Instability Needed

From June to July 2023, numerous areas in Northern Vietnam, including Bac Ninh Province, Hai Duong Province, Nam Dinh Province, Phu Tho Province, and Vinh Phuc Province, experienced power shortages leading to instances of partial power outages. Additionally, industrial zones in these regions implemented scheduled power outages approximately 1 to 2 times per week.

The Vietnamese government acknowledges that these power shortages pose a significant obstacle to attracting foreign investors and enhancing the manufacturing competitiveness of Vietnamese companies. Efforts are being made to formulate countermeasures, but the situation is challenging to resolve in the short term.

Korean companies, especially those in high-tech industries such as semiconductor manufacturing, aspiring to enter the Vietnamese market, identify the power shortage issue in Vietnam as a significant factor delaying their investment decisions. This sentiment is shared by other global companies in advanced industries that the Vietnamese government aims to attract.

Korean companies currently show keen interest in technology-intensive industries that align with

environmental trends, such as Rooftop Solar Power projects. However, due to the unstable power supply and unclear regulations, they are reluctant to proceed with investments in these areas.

Accordingly, we respectfully request the establishment of effective measures for stable power supply within industrial zones, ensuring that foreign investment companies, including those from Korea, can engage in manufacturing activities with confidence.

3. Simplification of Environmental Impact Assessment Permitting Needed

Concerning investments by manufacturing companies in Vietnam, as of January 1, 2022, amendments to the Vietnamese Environmental Law have strengthened the permitting authority for environmental impact assessments. The authority has shifted from provincial levels to the central government agency, the Ministry of Natural Resources and Environment, based on the potential for pollution, production quantities, and related factors.

As a result, the time and cost for obtaining permits for environmental impact assessments have increased, placing a burden on business operations for companies.

The amended Environmental Law (08/2022/ND-CP) Appendix lists types of productions, businesses, and services likely to cause environmental pollution. However, even for items (such as electronic devices or components) that do not cause environmental pollution, if the production quantity exceeds the specified threshold (1,000 tons or one million units), a permit from the Ministry of Natural Resources and Environment, rather than the provincial government, is required. Additionally, for factory expansion through additional investment or new investments, approval from the central government (Ministry of Natural Resources and Environment) is necessary if the conditions are exceeded.

Therefore, in the electrical and electronic industries, many Korean manufacturers of electronic components often exceed a monthly production quantity of one million units. Consequently, new entrants or companies seeking to expand their investments, who fall under this category, must undergo environmental impact assessments, leading to concerns about excessive time and cost. Delays in obtaining environmental impact assessment permits are causing disruptions in the production schedules of factories.

Currently, the evaluation process has become more streamlined compared to the early stages of legal enforcement. However, the reality is that the environmental impact assessment takes a minimum of 2 months (60 days) to 3 months (90 days), and the documentation required for permits has increased by more than 50-60% compared to the documents submitted for provincial-level permits. This poses a hindrance to the swift investment activities of companies.

While Korean companies fully respect the Vietnamese government's efforts in environmental pollution prevention and management, it is believed that reducing the excessive administrative processing costs and time for permits aligns not only with promoting foreign investment in Vietnam but also with the government's direction toward administrative procedure reforms.

Therefore, there is a need to realistically adjust the criteria for central government (Ministry of Natural Resources and Environment) evaluation during the environmental impact assessment.

<Reference: Existing Environmental Impact Assessment Review and Approval Process>

- Processing Time: 30-40 days

- Submission: Provincial Investment Planning Department and Industrial Zone Management Board

- Process: Initial submission to the Provincial Investment Planning Department and Industrial Zone Management Board (1 day) → Transfer to Provincial Department of Natural Resources and

Environment (25 days) → Final review by the Provincial People's Committee (3 days) → Assessment approval (1 day)

4. Collaboration Needed to Strengthen the Competitiveness of the Vietnamese Material Companies (Materials/Components/Equipment)

The Vietnamese government consistently emphasizes its commitment to fostering supported industries, particularly in the field of advanced manufacturing, for the development and enhancement of the national economy and competitiveness. This initiative is crucial for Korean companies operating in Vietnam, as it ensures a long-term supply of high-quality products from local businesses. They are also actively supporting the expansion of local vendor pools and encouraging participation in supply chain networks, with major investment companies taking the lead.

While the Vietnamese government and industry are hoping that these efforts by Korean companies will expand, there is still a limited number of local companies capable of supplying products/technologies that meet the immediate demands of Korean companies. Additionally, there is insufficient information available about promising local companies. Although efforts, such as the establishment and operation of a database by Vietnam's Ministry of Industry and Trade to support industries, have been made, more proactive measures are required to facilitate substantial business relationships between Korean and Vietnamese companies.

Especially in advanced industries such as semiconductors, electrical/electronics, and IT, the disparity is more pronounced. To secure competitiveness in these industries, not only the supply of products from Vietnamese companies but also the provision of high-quality manpower is crucial.

With this perspective, we hope that the Vietnamese government takes a leading role in fostering manpower in the supporting industries and related fields. While recognizing that resolving this issue may not happen in the short term, we respectfully request the continued efforts of the Vietnamese government to address the problem through more concrete measures. Korean companies operating in Vietnam will also do their best to contribute to enhancing the competitiveness of the Vietnamese industry in response to these efforts.

5. Necessity of Allowing Entry into Next-Generation Distribution Business, Including E-Commerce, for Foreign Invested Enterprises

Currently, the sector (6321 – web portal) that must be registered to engage in e-commerce (electronic platform business) is not 100% fully open to foreign investment under the WTO commitments. Therefore, when pursuing activities in this sector, companies seek opinions from licensing authorities such as the Ministry of Industry and Trade (MOIT) and the Ministry of Information and Communications (MIC).

Recently, the Ministry of Industry and Trade and the Ministry of Information and Communications have maintained their stance of not granting permission for this sector. As a result, the path for Korean companies to invest in the e-commerce sector is effectively blocked.

Therefore, we would like to request a clear explanation of the reasons for the denial and the public disclosure of the requirements for obtaining approval. This would expand opportunities for foreign companies to invest in various e-commerce businesses.

6. Revision Needed for Some Provisions (Article 9, Paragraph 1a) of the Value-Added Tax Amendment Bill

In December 2023, the Standing Committee of the National Assembly of Vietnam resolved to include the amendment of the current Value-Added Tax Law in the legislative plan for 2024. The review of the amendment is scheduled for the regular National Assembly session in May 2024, with a vote on the amendment expected during the October 2024 regular session.

However, Korean companies express serious concerns regarding the proposal to abolish the application of a 0% tax rate on services consumed in non-tariff zones (Article 9, Paragraph 1a) in the proposed amendments. They emphasize the importance of maintaining the current provision that applies a 0% tax rate on services consumed in non-tariff zones.

Both the current law and the proposed amendment lack provisions for VAT refunds on these services, making it inevitable for EPE companies to face a substantial increase in real burdens due to the VAT obligation.

In essence, services consumed in non-tariff zones are activities essential for the production of export goods by EPE companies. Taxing VAT on these services can only hamper the export manufacturing activities and investments of EPE companies. Ultimately, this will also impact local Vietnamese companies providing services to EPE enterprises in these zones.

Therefore, we strongly request the reinstatement of the current provision that applies a 0% tax rate on services consumed in non-tariff zones.

7. Necessity for Diversification of Visa Types

Currently, Vietnam has tourist visas, business visas, and investment visas. However, the maximum duration for visas available to foreigners is 5 years. Even for the 5-year investment visa, the investment amount required is substantial, starting at 50 billion VND. As a result, many long-term residents, including those under business visas, need to renew their visas every 2 years.

We kindly request a review of the visa extension process to simplify documentation procedures. At the same time, we propose considering options such as permanent residency, especially for large-scale investors, to reduce the cost and effort associated with visa extensions, and we urge the exploration of new visa categories that allow for long-term stays.

Considering the global aging societal trend, it might be beneficial to contemplate the establishment of a visa for retirees in Vietnam as a long-term alternative to increase foreign investment.

8. Necessity to Abolish Prior Approval for International Conferences

With the increasing presence of many foreign companies in Vietnam, international conferences are regularly taking place.

The types of international conferences range from various discussions and debates to forums, seminars, exhibitions, fairs, conferences, etc., and their frequency spans from several hundred to several thousand events per year involving businesses, governments, and institutions both within Vietnam and internationally.

However, according to the 'Decision on the Organization and Management of International Conferences in Vietnam,' which was revised on February 21, 2020, replacing the previous decision dated November 30, 2010 (Decision No. 06/2020/QĐ-TTg), obtaining prior approval is a

prerequisite for organizing international conferences in Vietnam.

The key points of the revised regulation state that for international conferences or seminars held within the territory of Vietnam, the organizing entity must apply for international conference permission to the competent authority at least 40 days in advance (if falling under the authority of the Prime Minister of Vietnam) or at least 30 days in advance (if falling under the authority of the relevant agency).

However, foreign companies view the amended legislation as regressive compared to the increasing frequency of international conferences in Vietnam. They consider a declaration system, rather than an approval system, to be more valid. Therefore, we would like to request the repeal of this legislation to facilitate a more proactive and vibrant environment for international conferences.

9. Transparency Needed in Investment Conditions, Including Legal Ownership Percentage Criteria for Korean-Vietnamese Investments

Given the substantial investments by numerous Korean companies in Vietnam, there is a disparate application of legal criteria for ownership percentages across different provinces and cities.

There is a case in which a Korean company, Company A, with a capital investment exceeding 500 billion VND, established a business in Vietnam and sought to acquire 100% ownership of a Vietnamese company holding a Payment Intermediary Services license from the State Bank of Vietnam.

However, despite confirmation from the State Bank of Vietnam that there are no restrictions on foreign investment companies holding shares in companies with such licenses, the local Department of Planning & Investment (DPI) in that region unreasonably demands that the acquiring company must maintain a minimum of 35% local (Vietnam) ownership in the target company, without any legal basis.

As a result, the mentioned transaction did not proceed, and the Korean company is currently considering withdrawing from Vietnam due to these challenges.

Clear and fair criteria for the investment ownership percentage of foreign companies are necessary, and in case issues arise, we would like to request that administrative procedures and guidelines for resolution based on consistent regulations and grounds be promptly established.

10. Elimination of unnecessary M&A approval procedures is essential

DPI requires M&A approval when there is an increase in foreign ownership or for reasons related to national security under the legal framework.

However, in cases of mergers and acquisitions among Korean investors, M&A approval is frequently demanded by DPI even when there is no increase in foreign ownership. Additionally, in instances where two subsidiaries within the same Korean group in Vietnam are merging, the DPI Enterprise department responsible for amending the Enterprise Registration Certificate requests M&A approval from the Investment department within the same DPI.

Consequently, the Investment department, upon receiving the M&A approval application, asserted that M&A approval was unnecessary as there were no reasons such as an increase in foreign ownership.

Therefore, due to the lack of coordination between internal departments within the same regional DPI, foreign-invested companies are spending unnecessary time and effort to resolve this issue.

Hence, we would like to request the abolition of unnecessary approval procedures.

11. Revision needed for the expansion of issuance of ABTC (APEC Card)

In the case of South Korea, according to the provisions of the 'Foreign Investment Promotion Act,' foreign-invested companies that have invested over 1 million US dollars domestically are eligible to apply for the ABTC (APEC Card). However, in the case of Vietnam, foreign-invested enterprises are currently unable to apply.

As the basic condition for ABTC application is carried out in the host country of the company, we would like to request a revision to allow ABTC application for foreign-invested companies that have directly invested in Vietnam.

12. Normalization of value-added tax refund procedures at tax offices is necessary

It is unknown if it's because of some cases of tax officials being arrested for fraudulent value-added tax refunds, but tax offices nationwide in Vietnam often refrain from processing businesses' applications for value-added tax refunds.

This has caused many Korean companies to face difficulties in cash flow management due to delays in value-added tax refunds.

Therefore, we would like to request transparent and expeditious processing of value-added tax refunds and related investigation processes for the smooth operation of overseas companies entering Vietnam.

13. The Duration of Corporate Liquidation Procedures needed to be reduced

After applying for liquidation, the actual duration for companies to complete the process has been increasing. While it used to be completed within approximately 6 months in the past, there are now many cases where liquidation takes more than a year.

The main reason is that the Vietnamese tax and customs authorities do not conduct tax or customs investigations for companies that have applied for liquidation, resulting in delays in tax-related clearance.

Therefore, as the liquidation process is delayed, shareholders face difficulties in recovering the remaining funds after liquidation. This has led to a negative perception that withdrawing investment funds from Vietnam is very challenging. Hence, we would like to request measures to ensure that the liquidation process is carried out within a short timeframe.

14. Provide Specific Guidance on the Korea-Vietnam Social Security Agreement

There has been a Korea-Vietnam Social Security Agreement signed in December 2021 and came into effect in January 2024. However, due to the lack of clear regulations and guidelines on how Koreans in Vietnam should apply it, they have not been able to benefit from it.

Despite being eligible for exemption under the current agreement, Koreans in Vietnam have continued to pay social insurance premiums in January and February of 2024.

We would like to request regulations and specific guidelines for the implementation of the agreement, allowing Koreans in Vietnam to utilize the agreement effectively.



SPEECH OF JAPANESE CHAMBER OF COMMERCE & INDUSTRY IN VIETNAM

“STIMULATING AN INNOVATIVE AND SUSTAINABLE BUSINESS CLIMATE”

H.E. Prime Minister Pham Minh Chinh,
Minister of MPI, Mr. Nguyen Chi Dung,
Ladies and Gentlemen,

It is my great honour to have this opportunity to speak on behalf of JCCI.

To summarize today’s theme in a few words, it is “*FDI enterprises pioneer in implementing green growth strategies*”. For sustainability, we will fully support the carbon neutral goal of the Vietnamese government set by 2050.

Japan will support a “realistic” energy transition to achieve carbon neutrality without hindering the economic growth of Vietnam. This cooperation is based on the concept of AZEC (Asia Zero Emission Community). In line with AZEC, the Japanese private sector is also willing to contribute to green innovation through decarbonization technology, investment, and finance.

Last year, JCCI has launched the AZEC/Green Transformation Promotion Working Group to promote specific projects that will be helpful for Green Transformation and share best practices with relevant ministries.

To further enhance the goal of achieving a sustainable economy, please allow us to raise three points which we think are important.

First, the early development of the legal framework and implementation guidelines necessary for the facilitation of power development projects. These include laws related to the use of sea area for large-scale offshore power plant projects, relaxing eligibility conditions for Direct Power Purchase Agreement (DPPA) for renewable energy projects, and reviewing the existing pricing mechanism for biomass/waste power generation.

Second, the steady implementation of PDP8.

Third, the development of “bankable” environment for attracting long-term infrastructure funds, concretely, by amendments to the Investment Law and PPP Law to enhance bankability of infrastructure projects.

Also, the circular economy in which society as a whole is fairly responsible for recycling costs, and the development of detailed implementation guidance on EPR (Extended Producers Responsibility) are needed.

For navigating innovation, we believe that it is necessary to strengthen the supply chain and to reform administrative procedures. This is because when Vietnamese local companies strengthen their ties

with foreign companies and tap into the global value chain, they will stimulate innovation and transform into high value-added industries.

We have been assisting in the development of supporting industries and industrial human resources through the Vietnam-Japan Joint Initiative.

JETRO has also introduced many Vietnamese companies to Japanese manufacturing companies by organizing supporting industries exhibitions and publishing the directories of good local suppliers.

Regarding administrative reform, JCCI would like to propose to the Vietnamese Government the following points.

First, speed up the issuance of business licenses and permits.

Second, end practices requesting investors to fulfill unreasonable conditions or to submit documents that are not in accordance with laws and regulations.

We would like to emphasize that when making any changes to the tax system, such as amending the VAT law and Global Minimum Tax (GMT), we are very pleased to have opportunities to express our opinions from FDI perspective.

In terms of the Economic Needs Test, the early enactment of a domestic regulation to abolish and replace ENT is needed to comply with the CPTPP.

We believe that Mr. Prime Minister's kind attention and consideration on these issues would be a great support to achieve our target.

In closing, we recently celebrated the 50th anniversary of Vietnam-Japan diplomatic relations and we have elevated our bilateral relations to a "Comprehensive Strategic Partnership". This year 2024 will be the first year of our new cooperation under this partnership.

JCCI will continue to promote and further enhance our mutual relationship for the strong and dynamic growth of both our countries, and JCCI is committed and dedicated to this goal.

Thank you for your kind attention.



POSITION PAPER OF JAPANESE CHAMBER OF COMMERCE & INDUSTRY IN VIETNAM

In 2023, the establishment of diplomatic relations between Vietnam and Japan celebrated its 50th anniversary, and many dignitaries of both countries exchanged visits and held commemorative events to celebrate the occasion. In particular, during the Japan-Vietnam Summit on November 27, Vietnamese President Vo Van Thuong and Japanese Prime Minister Kishida Fumio elevated the relations between the two countries to a "Comprehensive Strategic Partnership for Peace and Prosperity in Asia and the World".

2024 will be the first year of new cooperation under the Comprehensive Strategic Partnership. The Japanese Chamber of Commerce and Industry in Vietnam (JCCI) will take this opportunity to engage in various policy dialogues under the Vietnam Business Forum and the Vietnam-Japan Joint Initiative on important agendas promoted by the Vietnamese government, such as carbon neutrality, innovation, and strengthening of supply chains. We look forward to working and growing together with Vietnam.

To promote these agendas, we would like the Vietnamese government to consider the following policy issues.

1. Carbon Neutrality

JCCI would like to express our respect for the Vietnamese Government's commitment to achieve net-zero greenhouse gas emissions by 2050 at COP26 and the various measures taken under the initiative of Prime Minister Pham Minh Chinh.

We would also like to express our gratitude to Your Excellency for attending the Asia Zero Emission Community (AZEC) summit meeting in Tokyo on December 18th last year. Japan will support a "realistic" energy transition to achieve carbon neutrality without hindering the economic growth of Asian countries based on the concept of AZEC.

- a. In July last year, JCCI established the AZEC/GX Promotion Working Group to cooperate with the Japanese government's actions. With the participation of the Japanese embassy, Japan Bank for International Cooperation (JBIC) and about 40 JCCI member companies from the Japanese side, we will promote specific projects and share best practices with related Vietnamese ministries and agencies that contribute to green innovation through decarbonization technology, investment, and finance. Through these activities, we will work together to achieve carbon neutrality in Vietnam. We look forward to continuing the discussion with leaders from relevant ministries and agencies. Your Excellency's support of this initiative would be highly appreciated.
- b. We believe that it is important to establish the necessary legal systems and implementation guidelines as soon as possible in order to ensure the smooth progress of power development projects. It is also important to prioritize in providing policy measures to realize large-scale renewable energy, especially large-scale offshore wind power projects, which have great potential in Vietnam.

For example, in offshore wind, it would be beneficial to improve the legal systems related to the use of sea area and formulate a development roadmap, including methods for selecting business operators. This is expected to attract the participation of foreign companies and financial institutions with expertise in large-scale renewable energy projects, leading to its early implementation.

In addition, we also propose: i) to develop specific procedures to promote the introduction of rooftop solar panels for self-consumption using reverse power flow control; ii) to relax eligibility conditions for Direct Power Purchase Agreement (DPPA) for renewable energy; and iii) to review the existing pricing mechanism for biomass/waste power generation.

- c. JCCI believes that it is essential to secure baseload power sources to support the transition to renewable energy.

It is well known that gas and LNG thermal power is a transitional energy source for Vietnam to gradually achieve both power generation capacity expansion and decarbonization. It can also play an essential role in stabilizing grid operation to further expand renewable energy capacity.

Gas/LNG thermal power is beyond the scope of JETP, however, under the concept of AZEC, which aims to provide cooperation tailored to Vietnam's circumstances, Japan would like to expand its assistance and contribute to the realization of gas and LNG thermal power in line with the PDP8 of Vietnamese government. We would like to request for strong support from Your Excellency in order to secure a stable power supply which is an urgent issue in Vietnam.

- d. In terms of infrastructure development, JCCI believes that it is essential to create a system and an investor-friendly environment for high-quality investors to secure the bankability. Bankability is indispensable basis for raising long term funds from overseas and for committing to infrastructure investment quickly with confidence.

- e. Investment from foreign companies and financing from international financial institutions are needed to realize large-scale power generation projects such as offshore wind power, gas/LNG thermal power generation, and other renewable energy projects of a certain scale. We hope that the Vietnamese government will further improve the relevant laws such as the Investment Law and PPP Law, as well as the Power Purchase Agreement (PPA) model, to ensure eligibility for investment and financing by foreign companies and international financial institutions.

2. Achieving a Sustainable Society

The National Action Plan for Sustainable Production and Consumption (2021-2030) (Prime Minister's Decision No. 889/QĐ-TTĐ) aims to reduce the environmental impact throughout the product lifecycle, from production, distribution, consumption to disposal, while defining the responsibilities of related ministries and agencies to realize a sustainable social system.

Based on the National Action Plan, we are aware of the legal framework for environmental protection which includes the revised Environmental Protection Law of 2020 and the forthcoming revised National Technical Standards for the Environment QCVN.

Decree No. 08/2022/ND-CP, which is the implementation regulations of the Environmental Protection Law, specifically stipulates the responsibilities of manufacturers and importers regarding the recycling and waste disposal of product and packaging. In addition, JCCI highly

appreciates this Decree which clarifies the purpose, activities, and funding sources of the Vietnam Environmental Protection Fund (VEPF) and stipulates the foundation for realizing a recycling-oriented society.

- a. In order to achieve a sustainable circular economy, JCCI believes that it is important for the whole society to engage in waste reduction, product reuse, and material recycling, and to share the costs fairly. As the Extended Producer Responsibility (EPR) has been gradually applied since January 2024, it is a concern if the burden of waste recycling costs will be unilaterally imposed only on producers and importers, which will lead to an increase in production costs and thus decrease international competitiveness.
- b. We encourage the Vietnamese Government to take more initiative in designing a sustainable system, such as promoting awareness that the entire population is fairly responsible for the cost of recycling, and providing incentives to encourage voluntary efforts by all citizens to reduce, reuse, and recycle.
- c. We believe that the regulations and detailed implementation guidelines are necessary for companies to fulfill their EPR. We have heard that even high compliance and conscious companies may not know how to respond in order to comply with the law because, for example, the method of recycling lubricants, the method of calculating recycling results, and the scope of responsibility are unclear.

3. Strengthening the Supply Chain

In the face of production disruption by COVID-19 and geopolitical tensions, Vietnam is increasingly gaining reputation for having an advantageous position in the global supply chain. According to a survey by the Japan External Trade Organization (JETRO), Vietnam is ranked as the second most promising country in the world for Japanese companies to expand their business. On the other hand, Vietnam is highly dependent on foreign-invested enterprises. JCCI believes that in order for Vietnam to continue sustainable economic growth without falling into the middle-income trap in the future, it is necessary to stimulate innovation and develop high value-added industries with international competitiveness. The key to Vietnamese economic development is to strengthen the cooperation between Vietnamese local enterprises and foreign-invested enterprises (FIEs) and see how many local companies can participate in the value chain of foreign firms.

- a. According to a JETRO survey, the local content ratio of Japanese companies in Vietnam has only increased by 10% over the past 10 years, which needs to be further accelerated. In order to encourage Vietnamese companies to enter the value chain of FIEs, we believe that it would be more effective for the Vietnamese government to find and develop Vietnamese companies with technological capabilities, introduce them to foreign manufacturers, and provide opportunities for business matching.

At present, JETRO is co-hosting supporting industries exhibitions with VIETRADE and others. Every year, JETRO also publishes the "Directory of the Excellent Vietnamese Companies of Supplier". These publications are fully utilized by the procurement personnel of Japanese manufacturers.

In this way, it is expected that the quality and technology of local Vietnamese companies will improve, and more companies will participate in the supply chain of FIEs.

- b. We believe that the measures to increase the strength of Vietnam's local manufacturing industry and to promote competition will contribute to improving industrial competitiveness.

As members of Vietnam's local manufacturing industry increases, the number of companies which can supply products that meet quality standards will also increase, and the local sources of materials and parts will become more diverse, which will eventually lead to an improvement in the local content ratio.

- c. We believe it is essential to increase the capacity of utilities supply, which is indispensable for the manufacturing industry. Last summer, there was a serious power shortage in the northern region, especially in industrial parks. The inability to formulate production plans and forecast delivery dates had a severe impact on Just-in-Time, the core of the supply chain. Some member companies were considering reviewing their global production systems.

JCCI suggests for the Vietnamese government to consider the following for the smooth operation of the manufacturing sector: (1) Stabilize power supply to industrial parks, (2) Provide advance notice of power outages and power saving requests with enough time to adjust, and (3) Provide incentives for companies that save power and generate electricity.

- d. We believe that it is necessary to strengthen institutions that develop industrial human resources. Japanese companies provide extensive in-house education and on-the-job training and are highly praised in terms of human resource development. However, the competition for human resources is intensifying, and the outflow of trained talent is increasing due to the lure of competitors.

When recruiting personnel, it is desirable to have personnel with basic education and technical training. Therefore, we hope that public human resource development institutions, such as universities and vocational training schools, will strengthen their functions and actively collaborate with Japanese companies.

- e. Export Processing Enterprises (EPEs) play an important role in exporting products. In order to promote economic growth and strengthen the supply chain, Vietnam should maintain competitive conditions for EPEs and cross-border service providers to increase goods and service exports.

However, the draft amendment to the Value Added Tax Law under consideration is imposing VAT on most services for EPEs and services for overseas corporations, which could lead to concerns about the decline in the competitiveness of EPEs and service exports. We hope that an amendment will be made so that services for EPEs or overseas corporations will be subject to 0% VAT regardless of the place of consumption.

- f. We hope that the incentives to mitigate the GMT tax increase will be fair and can be widely available to affected companies.

Due to the introduction of the GMT system, we are aware that alternative support measures are being considered for companies whose tax benefits will be reduced. According to the draft Investment Support Fund currently under consideration, the scope of support is limited and fairness is an issue.

Article 13, Paragraph 2 of the Investment Law of 2020 states that "if a newly enacted legal instrument provides investment incentives that are less favorable than those previously enjoyed by the investor, the investor can continue to apply the investment treatment based on the preceding provisions in the remaining preferential treatment of the investment project". We hope that alternative support measures will be applied to all companies that are subject to unfavorable impact to investment incentives.

4. Reform of Administrative Procedures

According to a 2023 JETRO survey, "complicated administrative procedures such as license issuance" is listed as the biggest risk to Vietnam's investment environment for Japanese companies. Although the Administrative Procedures Reform Advisory Council of the Prime Minister has identified issues and implemented various reforms such as simplifying laws and regulations, and the digitization of administrative procedures, we would like to see more efforts for further administrative procedure reform.

a. Delays in issuing business license / various administrative permits.

In digital fields such as DX and innovation, although progress in the development of innovative products and services is remarkable, some member companies are concerned that they will miss business opportunities in Vietnam due to the slow issuance of business licenses for DX such as e-Commerce.

We believe that speedy issuance of business licenses will help create business using these innovative technologies.

In addition, in large-scale infrastructure development, such as power plant construction and urban development projects, there are cases which take more than 10 years to complete the formalities due to the delay in changing the land use purpose and issuance of related permits, which leads to delay in infrastructure project. The completion of infrastructure development projects can be accelerated by speeding up the examination and issuing required licenses.

b. Requirement to meet conditions or submit documents that are not based on laws and regulations

In many cases, competent authorities require foreign investors to fulfill stricter conditions and submit additional documents beyond those stipulated by law and regulation when registering activities with relevant authorities or obtaining a business license, which leads to the delay of administrative procedures.

For example, as previously identified by the Vietnam-Japan Joint Initiative, there are many unreasonable requirements for acquisition permission, investment and business registration by the Department of Planning and Investment and the Business Registration Office, as well as non-statutory conditions and document requirements for the issuance of various business licenses by the Ministry of Industry and Trade and the Department of Industry and Trade.

Furthermore, the delay in VAT refund procedure due to stricter eligibility conditions imposed by the tax authority also cause financial difficulties for companies because of tight cash flow. We would like to request that administrative procedures be carried out smoothly and promptly without requiring conditions or the submission of documents that are beyond those required by law.

c. Economic Needs Test

According to Decree 09/2018/ND-CP, FIEs engaged in retail business may be subjected to the Economic Needs Test (ENT).

It has been pointed out that the uncertainty of ENT's requirements has caused a delay in administrative procedures and imposed a heavy administrative burden on FIE retail businesses which may hinder the expansion of multiple stores.

In the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Vietnamese government promised to abolish ENT within five years from the date when the agreement came into effect in Vietnam (January 14th, 2019).

Under CPTPP, January 13th of this year was the deadline for the abolition. However, at this stage, there is no progress to revise the Decree. We would like to request the Vietnamese government to comply with the terms of the agreement and promptly enact a domestic regulation that does not require ENT for foreign investors from CPTPP member countries.



SPEECH OF EUROPEAN CHAMBER OF COMMERCE

Kính thưa Ngài Phạm Minh Chính, Thủ tướng Chính phủ CHXHCN Việt Nam,
Kính thưa Ngài Nguyễn Chí Dũng, Bộ trưởng Bộ Kế hoạch và Đầu tư,
Kính thưa Quý Lãnh đạo Cơ quan Ban ngành Việt Nam và các vị khách quý!
Tôi xin phép nói bằng Tiếng Anh, vì hôm nay có sự tham dự đông đảo của các bạn bè quốc tế!

Prime Minister, Vietnam continues to experience world-leading economic growth. The nation's resilience and ambition have rightfully gained global recognition, reflecting the strength of the Vietnamese people. While this is an achievement to be celebrated, our focus must not only be on sustaining growth but also on overcoming current barriers and anticipating future obstacles. EuroCham, our 1,400 members, and our 20 Sector Committees are all dedicated partners in this journey.

Bearing this in mind, I would like to present the key policy priorities of the European business community. Our intent in highlighting these is not just to confront challenges but to convert them into catalysts for growth, innovation, and a strengthened Vietnam-Europe partnership.

A central priority of EuroCham and our Green Growth Sector Committee is promoting **green growth** strategies, such as improving waste management, raising public awareness, and pioneering anti-plastic pollution solutions. Key initiatives we propose include tax incentives to reward sustainable business practices and utilizing recycled waste plastic in road construction projects.

Closely tied to this is Vietnam's **green energy transition**, a process slowed by unclear investor selection procedures, outdated infrastructure, vague Power Purchase Agreements, transmission delays, non-competitive pricing, and financing shortages. Despite positive steps in implementing the Just Energy Transition Partnership, these issues threaten energy security. To combat this, we advocate for a comprehensive approach to boosting efficiency, renewable adoption, especially for offshore wind, and attracting private investment to modernize the grid.

Another area of environmental concern is the **Extended Producer Responsibility**. Currently under this framework, fees charged to producers exceed the recycling system's capacity, risking higher prices for consumers. As a solution, we propose a two-year, penalty-free gradual EPR implementation period from 2024 to prevent business overload while balancing economic and environmental goals. Additionally, transparency in managing the **Vietnam Environment Protection Fund** is vital, with open disclosure of allocations for recycling and technological advancements.

Regarding the **revision of the Pharma Law** in 2024, I would like to draw your attention to the challenges faced by our pharmaceutical sector members operating under the foreign-invested enterprise, or FIE, model. The majority of these companies have established FIE entities, but find themselves in a high-risk policy environment due to draft law language preventing normal interaction with local supply chain partners. This impedes their ability to fulfill global compliance obligations and ensure timely medicine delivery to Vietnamese patients. This inefficiency should be addressed by revising the law.

On the **Tender Law**, government guidance is needed to implement Clause 2 Article 55's "self-pay channel" provision. This would allow public hospitals to procure medicines and vaccines excluded from public insurance coverage, significantly improving patient access and expanding treatment options.

Compounding healthcare difficulties is the backlog of over 6,000 import license applications for **Class C and D medical devices**, with 12,500 more set to expire by the end of 2024. Prompt action on this front is required to avoid delays in accessing advanced medical technologies, which could compromise healthcare delivery in Vietnam.

Shifting focus from healthcare to fiscal policy, to uphold the spirit of the EU-Vietnam Free Trade Agreement and consistent tax policy, we propose a hybrid **Special Consumption Tax** system for wine and spirits, reflecting global tax practices and the Prime Minister's 2030 Tax Reform Strategy. A pause on SCT increases until 2027 would provide the space needed to develop a balanced tax policy.

On a different note, Vietnam's **visa policies deserve attention**. Offering visa exemptions to all EU Member States, the introduction of special visa types for conferences, exhibitions or sporting events, and streamlining immigration procedures overall will boost Vietnam's appeal as a premier destination for travelers and investors, crucial for global economic integration.

As such integration deepens with agreements like the EVFTA and participation in International Labor Organization conventions, raising labor standards becomes more urgent. In this context, ratifying and implementing core international labor agreements is vital, aligning Vietnam's workplace norms with global standards.

To learn more about EuroCham's recommendations for improving Vietnam's business landscape, we highly recommend you to explore our 2024 Whitebook.

As a final note, it is with great pride that we announce the upcoming **EuroCham Green Economy Forum & Exhibition, or GEFE, 2024**. Set to be the leading sustainability event in Southeast Asia, GEFE 2024 will take place from October 21 to 23 in Ho Chi Minh City.

Prime Minister, your presence at GEFE in November 2022 in Ho Chi Minh City, and at our 2023 forum in Hanoi, greatly enhanced their success. Looking forward, we cordially invite you to GEFE 2024. Your participation alongside high-level European Commission representatives will reinforce our collective mission towards a greener Vietnam.



POSITION PAPER OF EUROPEAN CHAMBER OF COMMERCE IN VIETNAM

“FDI ENTERPRISES PIONEER IN IMPLEMENTING GREEN GROWTH STRATEGIES”

H.E. Prime Minister Pham Minh Chinh,

Respected Ministers and Government Officials, Country Directors of the World Bank and International Finance Corporation, colleagues of the Vietnam Business Forum and Chambers of Commerce,

Even with 2022’s global commodity price spikes, inflation and supply chain disruptions, Vietnam stands tall as one of the world’s top growth economies. Vietnam is now well-positioned to show the world its potential as a global leader in sustainable economic development. For this to happen, Vietnamese government officials and European business leaders should continue the productive dialogue we have all been having since EuroCham’s founding in 1998.

The EU-Vietnam Free Trade Agreement (EVFTA), which celebrated its third anniversary in August 2023, has been especially important. The results speak for themselves. In 2019, before the EVFTA took effect, total trade volume between the EU and Vietnam stood at US\$57.81 billion. By the end of 2022, just two years after implementation, this figure jumped to US\$ 66.78 billion – a 15% increase.

The EVFTA has heralded a new epoch of Vietnam-EU economic symbiosis and interdependence, with substantially amplified, diversified trade volumes reflecting deepening strategic ties. With Vietnam’s ascent as a preeminent EU import market player and pivotal block supply chain entity, this relationship’s dynamic is poised to shape future trade patterns. Moreover, addressing the expanding trade deficit can open balance and growth opportunities as both economies thrive in an increasingly connected global landscape.

Mirroring supply chain diversification and sustainability prioritisation strategies, many foreign retailers have selected Vietnam as a strategic global supply chain hub. Since the EVFTA, EU investors have committed over US\$26 billion into nearly 2,250 Vietnamese projects. Denmark’s LEGO Group, for instance, received approval to invest over US\$1 billion in a carbon-neutral Vietnamese factory, while Germany’s Adidas has 51 local suppliers with over 190,000 employees – epitomising surging EU corporate presence as economies integrate.

EuroCham’s Business Confidence Index survey confirmed this uptrend, with 31 per cent of members ranking Vietnam among their top three global investment destinations and over half planning 2023 Vietnamese investment boosts – especially in high-tech manufacturing. This investment boom highlights FTA’s effectiveness in attracting high-quality, sustainable FDI and cementing Vietnam as a strategic destination. To date, the EU constitutes Vietnam’s 6th largest foreign investor with over US\$27.8 billion injected into 2,450 projects in the past three decades, above 60 per cent in manufacturing.

As consumers increasingly favour eco-friendly products amidst the global green transition, firms are professionally prioritising green logistics. However, Vietnam faces barriers in aligning with

the EU’s green supply chain focus, including enforcing more stringent environmental standards and regulations. Additionally, green technology adoption necessitates immense investments, while ensuring transparent, sustainable sourcing from local suppliers can prove challenging.

Considering these challenging circumstances, we believe that the most efficient and effective way for Vietnam to move forward and build a solid foundation for future development is by focusing on a green economy and sustainable development.

The Green Economy Forum (GEF) 2023 in Hanoi demonstrated the power of such an open dialogue to partner with Vietnam to go green. By bringing together 500+ participants, GEF marked an impactful milestone in our collective journey towards a greener future. The presence of figures like Prime Minister Pham Minh Chinh, Dutch Prime Minister Mark Rutte, European Commission Executive Vice President Valdis Dombrovski and other decision-makers from across Europe and Vietnam underscored the determination of our shared Team Europe-Vietnam mission and the belief in our joint ability to achieve the ambition. From that, we offer our biggest thanks to all GEF participants for making it such a productive experience.

On another note, EuroCham, our 20 Sector Committees, and our Board of Directors appreciate the strong cooperation between the Vietnamese government and us in developing policies and regulations to support businesses. In 2023, the EuroCham Advocacy Team sent 175 letters and received 253 letters from government officials¹, conducted 132 Sector Committee meetings, and held 147 meetings with government authorities, as well as many advocacy trainings, seminars, and conferences. Our members were given the opportunity to interact directly with many high-level government officials at meetings and dialogues including with the Prime Minister, the National Assembly, the Party’s Central Economic Committee, the Prime Minister’s Advisory Council for Administrative Procedure Reform (ACAPR), the Government Office (OOG), the Vietnam Business Forum (VBF), numerous ministries and provincial leaders, and the Vietnam Chamber of Commerce and Industry (VCCI). The meetings were held to promote the implementation of the EVFTA, raise issues outlined in our Whitebook, and assist Vietnam in developing a sustainable economy.

To maintain the momentum that the Vietnamese government and the European business community have established, please find below key issues, challenges, and recommendations from our 20 Sector Committees to the Vietnamese government. These recommendations are grouped into five main topics:

- (i) Business Environment/Trade and the Economy;
- (ii) Sustainable Development;
- (iii) Consumer Choice;
- (iv) Health and Beauty; and
- (v) Dispute Resolution.

These remarks and recommendations aim to increase the attractiveness of Vietnam to international investors and to contribute to the development of a green economy.

I. Business Environment/ Trade and the Economy

A. Digital

1. Cybersecurity regulations and Digital Economy regulations

Regarding cybersecurity, the Law on Cybersecurity, reinforced by Decree 53, mandates data localization and the establishment of local offices, impacting both government bodies and domestic enterprises. It requires the storage of certain data within Vietnam and necessitates a

physical presence for foreign enterprises under specific conditions. We seek explicit guidance on the definition of a domestic enterprise in the context of a local branch of an offshore company. Additionally, the potential clash between the data localization requirements of Decree 53 and the cross-border data transfer rules in the Personal Data Protection (PDP) Decree raises concerns about regulatory inconsistencies. A definitive procedure for cross-border data transfer, including the acceptability of duplicating data in Vietnam while transmitting it abroad, is crucial.

2. Harmonisation of the Vietnam personal data protection regulation with EU Regulations

In order to achieve a unified digital framework, the disparities between Vietnamese regulations and the European Union's General Data Protection Regulation (GDPR) must be addressed. We advocate for a facilitating entity and a collaborative approach with relevant institutions from both sides to help companies in complying with these regulations and ensuring smooth data flow.

3. Collaboration in the Digital Age to Advance the Semiconductor Industry

In the digital era, collaboration in the semiconductor industry is essential. The growth in Vietnam's semiconductor sector marks a shift from a reliance on low-cost labor to high-tech, high-value industries. We encourage closer cooperation between European tech firms and Vietnamese manufacturers to elevate local industry standards, potentially transforming Vietnam into a high-tech hub.

4. Telecommunication Regulation

We acknowledge the Ministry of Information and Communications' efforts in amending the Telecommunication Law. Nonetheless, detailed decrees and clear guidelines are imperative for its effective implementation. We suggest open dialogue between the MIC and the business community for a thorough understanding of new policies and to bolster foreign investment confidence.

B. IPR

1. Criminal prosecutions of IP infringement

In order to enhance the efficacy of law enforcement agencies in their efforts to address infringements, it is critical to underscore once more the significance of the SPC issuing authoritative guidance on criminal prosecution of IP infringements with timely direction.

2. Mandatory expert opinion from Vietnamese IP organisations

The requirement for an opinion significantly reduces the efficiency of enforcement actions due to the speed and uncertainty of rendering opinions, as well as a lack of willingness to consider other alternatives. In terms of the speed of rendering opinions, while some IP bodies are making progress, the time taken for an opinion to be rendered tends to be lengthy and unpredictable. There have been opinion requests made for more than one year that have still not received a response.

3. Complexity of copyright registration procedure for enforcement

Currently, the process of registering copyrights with the Copyright Office of Vietnam (COV) presents several challenges for intellectual property owners. Therefore, we recommend encouraging flexibility to consider alternative proof of copyright ownership instead of the copyright registration certificate.

4. Intellectual property right prosecution - Copyright

We recommend amending and supplementing the provisions of Circular 08 on copyright registration declarations as follows:

- Remove the requirement for content-related summaries in works.
- Clarify that the commitment section need not to be completed if the author is deceased.

5. Intellectual property right prosecution – Trademark

Issue comprehensive guidelines regarding the capabilities of agencies tasked with identifying and certifying well-known trademarks, specifically:

- Prescribe detailed regulations regarding the scope of authority, tasks, and powers of competent agencies responsible for reviewing and recognizing well-known trademarks.
- Provide detailed instructions concerning testing regulations and specific criteria for the recognition of well-known trademarks
- Offer guidance on the procedures for coordination and consultation among relevant competent agencies in the process of considering and recognizing well-known trademarks.

6. Delay in the establishment of IP rights

According to Intellectual Property Law and relevant Circulars, the nine-month timeframe for trademark examination is often exceeded, typically taking about two years from publication. To address this delay, we suggest expediting all aspects of the trademark registration process.

7. Guidance from IP Vietnam on the Letter of Consent (LOC)

- It is essential to explicitly define the conditions for accepting the LOC within the Intellectual Property Law and relevant decrees and circulars.
- It is necessary to incorporate provisions addressing scenarios where the LOC is not acceptable.

The development and maintenance of a comprehensive, up-to-date database that is readily and freely accessible to the public is crucial.

C. Merger and Acquisitions (M&A)

1. Environmental, Social, and Governance (ESG) Standards

Despite the rapid development of the Vietnamese M&A market, local ESG regulations are still very sparse and scattered across a variety of different legal sources. These are often unspecific and do not afford any clear instructions or distribution of liability. This uncertainty is likely to hamper investment decisions and necessitate additional resources and spending on the environmental due diligence side of M&A deals.

To stay competitive with its regional peers, who have started pushing the ESG agenda mainly through their lending and financing policies, Vietnam can profit from establishing clear-cut standards and accelerating legislation that supports its strong COP 26 commitments to sustainability and net-zero carbon emissions.

We would like to recommend consolidate the ESG standards into specific sources of law and provide additional legislation to close current gaps and clearer circumstances for foreign investors. Additionally, awareness should be raised amongst stakeholders on the ESG standards and M&A investment. Transparency, sustainability, and environmental protection are to be promoted throughout the public administration sector and for M&A investment towards Vietnam's net zero carbon goals and investors' understanding of their environmental implications.

2. Economic Concentration Control

Vietnam has been working on improving its economic concentration control regime, which is already leading to an increase in inbound investments. However, the country often faces challenges in cross-border M&A due to its existing regulations. To reach the next maturity level in the M&A market, it needs to define clear thresholds and comply with approval deadlines. Vietnam should also consider bolstering administrative resources for efficient processing and communication.

We recommend:

- Consider an exemption of internal corporate group re-organizations from the economic concentration control regime;
- Consider raising the threshold amounts under the relevant economic concentration control regulations which trigger notifiable transactions;
- Consider clarifying how the VCC interprets or calculates the merger filing notification thresholds in typical transactions based on VCC's database by way of conferences or guidance;
- Consider clarifying terms of the antitrust/competition law to provide clear and unequivocal thresholds for inbound investments; and
- Upskill staff and increase headcount at the relevant authorities (e.g., the VCC) to bolster resources for an increase in caseload.

D. Real Estate: Land use right certificates for foreigners

We appreciate that Vietnam's legal framework for real estate is currently under review by the legislator. From our understanding of the latest draft regulations, we endorse legal reforms to promote investments in condotels, hometels, and officetels. We also suggest including clear guidelines on land-use terms, and the granting of Land Use Right Certificates (LURCs), which will encourage the interest of foreign investors to put their money into Vietnamese real estate. These reforms, amongst others, are essential to boost the real estate market and contribute to Vietnam's social security, continuous economic growth and increasing sustainability.

Additionally, to further the protection of foreign investors' rights, we recommend expediting the issuance of LURCs in practice. This also pertains to the publication of a "Foreign Ownership Prohibited Projects List" that will increase the transparency of the Vietnamese real estate market for foreign investors.

E. Tax and Transfer Pricing

1. Corporate Income Tax Policies to Adapt With The Impact Of Global Minimum Tax Rate – 15 Per Cent (OECD Pillar 2)

(i) Government takes the opportunity presented by Pillar 2 to undertake a comprehensive review of the tax incentives currently in place. This includes studying the impacts of Pillar 2 on current and future investors and considering practical and effective solutions for encouraged sectors so that Pillar 2 adoption does not create negative impacts on the investment environment and Vietnam still meets its commitments under Pillar 2.

- a. For example, if expenditure-based incentives were to be introduced instead of income-based, such as tax holidays, there would be less impacts from Pillar 2 adoption on foreign investment. Accordingly, foreign investments could be increased for targeted sectors and locations and the commitments under Pillar 2 would still be met.
- b. Examples of expenditure-based incentives that could be considered with reference to international practice including (i) accelerated depreciation for machinery and equipment of the investment projects and (ii) double tax deduction of labour cost or research and development (R&D) costs for encouraged investment projects.
- c. Such expenditure-based incentives may increase the likelihood of generating additional investment as they directly target investment expenses.

(ii) In addition to encouraging investment in R&D, innovation and high-technology incentives could be targeted to support policy objectives such as promoting the green transition;

(iii) Tax revenues generated from QDMTT could additionally be spent on areas to continue to improve the overall investment environment such as infrastructure and labour force skills development; and

(iv) Pillar 2 provides a very good opportunity for Vietnam to consider tax incentive reform, and this should be done as soon as possible so as not to lose either tax revenues or foreign investment, as other countries will impose top-up taxes from 2024 and are also considering revising their tax incentive regimes in response.

2. Input Value Added Tax (VAT) Creditibility and Corporate Income Tax Deductibility of Invoices from Run-away Vendors

(i) To create fairness and transparency for the enterprises, the tax authorities should consider accepting tax credit and deduction of valid invoices with proper payment and supporting documents from the consumer's perspective. Dealing with the run-away vendors should be handled separately by way of legal investigation.

3. Transfer price adjustments for customs declaration Enhancing effectiveness of dispute resolution mechanism by Advance Pricing Agreements (“APA”) and Mutual Agreement Procedure (“MAP”)

(i) It is recommended that the time for of evaluating and negotiating the applications is shortened and consideration is given to conclude MAP applications within a reasonable timeframe;

(ii) The procedures for DTA application should also be revised so that taxpayers can declare their eligibility and don't have to pay taxes outright from the beginning, instead of having to pay taxes upfront and expect to receive tax refunds down the line when the supporting documentation is available;

(iii) In addition, if the tax authorities refuse to receive DTA applications, they should be obligated to provide a written explanation of their legal grounds for such refusals based on quotes of tax laws and regulations, instead of advising the taxpayers verbally.

4. Deductibility of Marketing/Sales Support Offering To Indirect Customers In A Distribution Chain

(i) Government of Vietnam should amend relevant regulations to allow such expenditure to be acceptable for tax deduction on the basis such expenditure directly contributes in increasing revenue of the enterprises.

F. Tourism and Hospitality

1. Visa exemption and extension

While the visa policy does support attracting more foreign tourists, their journeys start not from their presence in Vietnam, but from the visa application and immigration procedures. As such, the administrative procedures, especially the e-visa portal, should be timely updated and upgraded to meet the increasing visa applications and improve user satisfaction. This also applies to immigration procedures, especially in Hanoi and Ho Chi Minh City, where visitors often have to wait for hours to complete entry procedures. We would like to make the following recommendations:

- Vietnam extends the list of visa exemption to all European countries and have a clear roadmap to implement this procedure.
- Vietnam provides short-stay visa exemption in certain situations, in particular in support of forums, exhibitions, and sporting events.
- Vietnam ensures consistency between the Vietnamese and English version of the e-visa portal; and
Vietnam creates specific lines for business class and handicapped, seniors beyond 70 and families with infants.

2. Promoting long-term prospects and sustainability efforts

The trend of sustainable tourism development in Vietnam is currently more focused, as evidenced by the fact that businesses organize tourism development around the principle that it must be accompanied by profits for the community, raising environmental protection awareness, and balancing tourism development and natureconservation.

Sustainable tourism helps economic growth by providing local communities and governments with steady and equitable income. Simply leveraging the cultural peculiarities of a place is an example of a sustainable tourism model in Vietnam; local people in the area can have more income and improve their lives by having tourists visit, use tourism services, and buy products typical of the region and the region.

We would like to make the following recommendations:

- Put a nationally coordinated action plan in place to keep beaches, cities, and cultural heritage sites clean;
- Establish effective recycling campaigns to reduce plastic that ends up in the environment and be consistent in fining those that don't abide by the law;
- Create a national plan to remove single-use plastic entirely from hotels, travel companies, airlines, and hospitality service providers;
- Prioritise sustainable, diverse developments over large-scale projects often focusing on the condotel second-home market only;
- Ensure a more systematic approach to sustainable development in tourism by promoting incentives for responsible commitments and actions taken by stakeholders;
- Support local people through training and economic empowerment;
- Strengthen the capacities of local non-profit organisations and create a framework for 'voluntourism' activities;
- Spread useful tips to tourists including information on sensitive social issues;

- Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives; and
- Strengthen the capacity of stakeholders involved in responsible tourism and support initiatives led by and for locals, to develop income-generating activities as a by-product of tourism.

G. Transportation and Logistics

1. Customs

The Vietnamese market has opened up for more foreign investment and import of goods. Customs valuation is crucial, and we recommend a set of guidelines related to customs procedures and preferential tariffs. We also suggest allowing customs officers to disclose supporting rationale behind values on the database to enable a more transparent and effective price consultation process. HS code classification rulings and notifications need to be clarified, with legal reference sources provided online, a reasonable timeline established, and new tariff and data modifications available at least 7 days before the effective date.

2. On-spot Import and Export procedures

The abolition of import-export policy as referred in Article 35.1 of the Decree 08 including its Point c will increase manufacturers' input costs, leading to increased costs of goods produced and processed in Vietnam. Further, delivery of goods through bonded warehouses instead of directly among factories (when applying on-site import and export) or having to import from abroad will increase operating costs for businesses and shipping time, reducing the competitiveness of goods produced in Vietnam. Consequently, Vietnam could no longer become one attractive destination for investment of international brands.

We would like to recommend keeping the effectiveness of Article 35.1 of Decree 08 including its Point c to allow the continuation of the current on-spot import/export practices.

3. Sustainability

Multinational companies have set sustainability goals for their businesses, including CO2 reduction in logistics. The long-term goal is net-zero carbon dioxide emissions by 2050. A stakeholder forum is recommended to review opportunities and share ideas for a roadmap towards sustainability in logistics. Vietnam's position as a preferred location for production chains would be enhanced by a clear roadmap towards sustainability. Plans should include transitioning to lower or zero-emission vehicles, identifying incentives and policies, and obtaining businesses' support to deliver people, profit, and the planet. Implement a general customs valuation advance ruling mechanism.

H. Construction

1. Resolving difficulties relating to fire safety and firefighting operations

a. Certificate materials

(i) Firefighting and fire prevention equipment manufactured outside Vietnam should be permitted for construction use if it holds a Certificate of Origin and Certificate of Quality compliant with ISO/IEC 17025 standards, issued by internationally recognised certification organisations accepted by the Vietnamese Government Bureau Veritas, SGS, Intertek, etc;

(ii) For equipment made in Vietnam, a Certificate of Quality meeting the ISO/IEC 17025 standards from a Vietnamese Government-approved certification organisation should suffice. This organisation need not necessarily be the Fire and Rescue Police Department.

b. Certification of materials for renovation construction

(i) Firefighting and fire prevention equipment manufactured outside or within Vietnam should be considered acceptable for use in construction projects if it is accompanied by a Certificate of Origin and Quality in compliance with ISO/IEC 17025 standards. This certification should be issued by internationally recognised Certification Organisations approved by the Vietnamese Government, such as Bureau Veritas, SGS, Intertek, among others;

(ii) For renovation projects, there should be a detailed specification that clearly defines the extent of modifications to each system and equipment, especially those that significantly impact the efficiency of the firefighting system. This specification is essential to provide clear guidance on which modifications necessitate review and approval in terms of fire safety measures during renovations.

II. Sustainable Developmentt

A. Renewable energy & Energy efficiency

1. Opportunities from the expansion of renewable energy:

- Provision of additional power generation options and transmission technologies to satisfy current and predicted energy demands.
- Increased energy security in Vietnam to buffer the reliance on international fuels and uncertainties related to supply (availability) and changes in pricing.
- Job creation and upskilling
- Investment and maturation/expansion of the regional and national supply chain
- Meeting Vietnam's COP26 net zero targets
- Export opportunities for green energy and technologies associated with this produced in-country
- Becoming a green energy hub for SE Asia and beyond – exporting products, skills etc

2. Energy regulatory framework:

Transition of coal power generation:

- Effective roadmap for coal-fired power plant transition should be developed at a national level
- Attract further international financing which can no longer support fossil fuel generation
- Meet the targets established in PDP8

Renewable Energy industry development:

- Wind Power: relatively untapped (especially offshore = huge potential)
- Solar Photovoltaics: Roof-Top Solar is deprioritized and huge potential being lost, unproductive management between regional EVN bodies and industrial parks.
- Existing aspects restricting renewable energy growth and progress
 - PDP8 implementation plan: unclear investor process, retail market and power pricing reform
 - Grid availability: missing grid infrastructure detail and commitments, constrained cross-country transmission and balancing systems = poor energy efficiency across Vietnam (lost potential)
 - Amended Electricity Law and Implementation: lack of a clear format to allow developers to directly invest in the transmission network to support EVN etc

- Functionality: current PPA format still creates uncertainty for developers and operators – not functional at a large-scale for international investment.
- Lack of alignment between Vietnamese and International Standards to satisfy quality control, and large-scale international financing/insurance.

3. Power Transmission

Barriers in expanding transmission and increasing efficiency of the network

- Low transmission tariffs
- Limited financing mobilization
- Difficult land acquisition
- Unexpected demand for transmission expansion due to renewable energy development
- Lack of private investment regulations
- Absence of regional power market

Recommendations:

- Prioritise transparent and effective mechanisms to stimulate investment by all power consumers in energy efficiency measures to achieve the national energy efficiency strategy goals. This includes reducing subsidies to electricity prices.
- Attribute existing and future coal power generation transmission systems and their capacity to growth of new renewables and the associated transmission infrastructure they require
- Maximise the contribution of solar, biomass, small hydropower, wind, and offshore wind power within the energy system, by clarifying a timely and coordinated approach to allocating projects (e.g., creation of a one-stop shop approach where one assigned authority/agency has the authority and capability to manage the consent and permitting for renewable energies) and ensuring grid availability.
- Implemented laws and policies to enable further development of renewable energy more widespread and in a controlled and effective manner. Clear decision-making roles and responsibilities, timelines for comments/approvals, increased transparency and reducing risk to unlock large-scale investments in green generation, green transmission, and new technologies such as power-to-X (hydrogen, battery storage etc).
- Power Purchase Agreement: Regulations need to be established to be able to deliver energy from RE projects direct to the end-user (rather than via EVN and the grid), with a direct offtake in the form of Direct Power Purchase Agreements (DPPAs) between generator and end-user.
- Revise the PPA between EVN and clean energy producers to meet international standards to harvest the full cost-reduction benefits of the planned auction processes in exchange for full take-or-pay and key provisions which address concerns of international lenders. A more aligned approach is needed to solve the uncertainties in curtailment, governing/arbitration law, currency-indexed for offtake price stability and compensation in case of contract termination.
- Allow power consumers access to clean energy by implementing DPPAs in pilot schemes and by reducing the front-end regulatory barriers to behind-the-meter clean energy plants.
- Direct Power Purchase Agreement: encourage immediate implementation of the DPPA Pilot Scheme, not necessarily limited to a single project, with suitable criteria and effective procedure to select pilot projects and an easing of the regulatory burden on companies wishing to implement clean energy plants on-site “behind the meter”.

4. Just Energy Transition Partnership (JETP)

- Encourage further engagement from the likes of MOIT, MOF, MPI and others in a coordinated manner;

- Consider the potential to increase the debt to GDP ratio of Vietnam to unlock the widespread loan aspect of JETP;
- Require more of a role for the State Bank of Vietnam;
- Increased additional cross-ministerial dialogue and collaboration is needed if JETP is to be effective;
- Align relevant projects stipulated in PDP8 with proposed projects in JETP Resource Mobilization Plan which are managed carefully according to capacity and associated infrastructure etc.
- Focus JETP funding at more strategic projects that will be beneficial in the long-term and act as a catalyst for further international investment such as grid analysis and upgrade for renewable energy generation and transmission, port upgrade for offshore renewables, legal and strategic support to undertake regulatory reviews and proposals to support policies and decision making, strategic national survey strategy to identify optimum renewable energy generation/transmission areas that have reduced environmental impact to support land planning and marine planning etc.

B. Green Growth

1. Waste management:

The goals of Decision 491 and action plans in Decision 849 are ambitious. To achieve these, all ministries and authorities will need to cooperate in implementing a regulatory framework that incentivises the public and private sectors. Regarding the legal framework, many of these goals require existing laws to be amended. Therefore, it is important to identify these laws and draft a plan to ensure their compliance as soon as possible. Besides, regulations need to differentiate solid waste from ordinary waste and state whether recycled material should be classified as waste (e.g., fly ash or recycled plastic for use as raw material in construction).

Rapid urbanisation means that Vietnamese households – particularly in big cities – are discharging increasing amounts of waste into the environment. Municipal Solid Waste (MSW) generation per capita will reach 1.6 kg/person/day in 2025. The most basic components of solid waste are organic and inorganic waste.

We believe that incentivising the compliant waste treatment sector would have positive results. On the contrary, actors who claim that they provide recycling and other waste treatment services at low cost and in accordance with the law – but then dump collected waste into the rivers, seas, and the general environment – must be held accountable. This is necessary to create a successful and compliant waste management industry. We appreciate how the Government has dealt with violations until now. However, there is always room for improvement.

We propose the following recommendations.

- Continue strict enforcement of waste regulations and fair results-oriented prosecution for non-compliance;
- Complete the legal framework on waste management, especially waste classification and segregation at source;
- Legalise the secondary material marketplace;
- Continue to provide a conducive business environment for compliant waste management businesses;
- Increase public awareness of solid waste management;
- Set up a public-private committee to propose solutions; and
- Provide clear guidance and support infrastructure for waste segregation-at-source at household and companies.

2. Addressing plastic pollution

Decision 491 states that, by 2025, “100 per cent environmentally-friendly plastic bags will be used in trade centres and supermarkets for the purpose of replacing persistent plastic bags to serve daily-life activities”. Vietnam’s National Action Plan on Ocean Plastic Waste Management by 2030 aims to reduce plastic waste discharged into the sea and ocean by 75 per cent, end the use of disposable plastic products in coastal tourist attractions and resorts, as well as the disposal of fishing gear into the sea by 2030.

We propose the following recommendations:

- Implement existing regulations and ensure strict enforcement;
- Promote legislation to incentivise Vietnamese and multinational companies to comply with EU regulations to allow the country to enter global supply chains;
- Ban OXO-degradable technology and introduce compostable plastic that can be certified under international standards to prevent greenwashing;
- Promote investment in composting facilities and dedicated recovery supply chains to reduce the use of single-use plastics linked to organic waste;
- Incentivise cost-effective recycling and treatment of domestic waste at the household level through classification to facilitate the implementation of the EPR law;
- Set up the VEPF as a public-private committee to propose solutions;
- Provide tax-incentivized mechanic for compostable plastics packaging and recycled plastics packaging to encourage transition to environmental-friendly materials and promote local recycling industry; and
- Ban single-use plastic and promote an alternative solution. Work with businesses to develop a plan for phasing out single-use plastic products. This would give businesses time to adjust their operations and to find alternative products to offer their customers.

3. Water supply and Wastewater issues

Vietnam’s development comes at a cost. The country’s natural resources are under immense pressure, resulting in water-stress and subsequent threats to human well-being and biodiversity. In the long run, Vietnam will face severe financial losses if no action is taken to mitigate the current water and environmental crises. If the water sector is to continue supporting the nation’s rapidly-expanding economy, it will need to overcome critical challenges. Water management will need to be more efficient to meet rising demand; income per unit consumed will need to increase; the quality of construction and public awareness will need to rise; and threats from “too dirty, too little, and too much” water will need to be reduced. At the same time, policies, institutions, law enforcement, and financing will need to be improved, and allow private sectors in water and water service investment.

Recommendations:

- Synchronise existing environmental policies to ensure a coherent political framework by better integrating the existing legal basis;
- Improve the situation on the ground by increased transparency and controlling the implementation of environmental policies on provincial and local levels; strengthen law enforcement and the willingness to take regulatory action;
- Introduce and endorse water-sensitive urban design and take advantage of Blue-Green Infrastructure, including modern storm water management;
- Encourage the reuse of wastewater by providing legal frameworks, guidelines, and standards to share quality water for applications like irrigation and industrial production;
- Consider Blue-Green infrastructure for dealing with climate change

4. Air quality control

Vietnam is lacking specific regulations for air pollution. The Vietnam Environment Administration is required to set emissions targets. However, there is a lack of clarity on Government policies on specific targets for air quality control. Moreover, Vietnam has no odour regulations against strong smells from landfills, factories, and aquaculture. The significant improvement of air quality during COVID-19, especially during “lock downs”, indicates that there are ways to improve air quality.

- Introduce clean air as a high-level KPI for energy companies, starting with EVN;
- Invest in filters and other devices that reduce pollution, starting with power stations; and
- Accelerate the development of a non-polluting public transportation sector.
- Accelerate the revision of the Law on Environmental Protection, particularly with regard to air pollution;
- Introduce specific policy targets and regulations for air quality control and emissions;

5. Green Building’s legal framework

Compared to the current growth rate of the construction sector, the number of recognised green buildings in Vietnam is modest compared to other countries in the region. Besides, the legal policy is also a significant barrier that deters many businesses from setting up green buildings. To promote the development of green buildings in Vietnam, it is necessary to quickly complete and/or update the legal framework and raise awareness of relevant stakeholders, mainly Government agencies, as the current legal system in Vietnam is almost devoid of incentives for developers.

6. Passive design and building certification

Construction and buildings are the main users of electricity, accounting for up to 40 per cent of national consumption. As such, buildings in Vietnam need to become more energy efficient. Integrating energy-efficient devices, ideally during construction, will complete the transition and have a durable impact on the sustainability of the city where it is implemented. In this process, architects ensure that it can be applied from the design phase, with passive design and environmentally friendly materials, to energy-efficient devices during construction. This process also applies to urban master planning.

Recommendations

- Integrate “Green Building” wording in subsidiary and ancillary construction laws;
- Enforce and promote the application of sustainable building materials solutions through the Vietnam Association for Buildings Materials;
- Apply a comprehensive life-cycle approach;
- Promote green labels and EPDs;
- Remove subsidies on fossil-fuel-based electricity;
- Publish a Roadmap to Retail Electricity Tariffs for commercial and industrial power consumers;
- Make buildings more energy efficient;
- Make minimal certification a precondition for the licensing of certain types of buildings regardless of their use and incentivise higher levels of certification; and
- Prepare a clear urban planning showcase, including not just green buildings but also water, waste, traffic, and environmental livelihood improvement solutions.

7. Circularity in construction:

- Create regulations to remove barriers and facilitate market entry of secondary building materials from demolition/deconstruction;

- Provide incentives to promote materials and building recovery and reuse, including using financial mechanisms, e.g., planning fee rebates, and reduction in development cost charges where reuse thresholds are met; and
- Create a Circular Economy Roadmap for Buildings that outlines the tools needed to deliver these policies, including the development of local supply chains with material reclamation facilities, databases, and capacity building across the value chain.

C. Sustainable Finance

Vietnam is making bold strides towards a sustainable future, setting a stellar example of green growth and economic development. With visionary policies and strategic initiatives like Decision No. 1658/QD-TTg and Decision No. 882/QD-TTg, the country is firmly on the path to becoming a green, carbon-neutral economy by 2050.

State Bank of Vietnam is instrumental in aligning banking and financial institutions with green growth targets, developing green banking models, and implementing supportive credit policies for green investments. Notable partnerships and agreements with domestic and international financial institutions underscore the growing emphasis on sustainability standards and climate change mitigation efforts within Vietnam's banking sector.

Strategic Policy Recommendations

- a. **Climate and ESG Banking System Stress Testing:** Following the example set by the 2022 European Central Bank stress tests, we recommend the development of a framework for evaluating the resilience of Vietnam's financial system to climate and ESG-related risks. This initiative will not only highlight areas of vulnerability but also underscore the importance of incorporating climate risks into the financial decision-making process.
- b. **Incentives for Green and Sustainable Bonds:** The success of tax-credit or tax-exempt bonds in the US highlights the potential of such financial instruments in mobilizing capital for green projects. We propose the introduction of similar incentives in Vietnam to attract investment in green, social, and sustainability bonds, aligning with global standards and practices.
- c. **Tax Breaks for Banks Issuing Sustainability-Linked Instruments:** To stimulate the issuance of green and sustainability-linked financial products, we advocate for tax incentives for banks, as seen in Japan. Such measures will lower the cost of capital for sustainable projects and encourage banks to integrate sustainability criteria into their lending practices.
- d. **Credit Enhancement Scheme for Green Projects:** Inspired by the partnership between ADB and domestic financial institutions in India, we recommend establishing a credit enhancement scheme to mitigate investment risks for green projects. This scheme will make it more attractive for investors to finance projects that contribute to Vietnam's green growth ambitions.
- e. **Enhanced Support for Assurance Services:** Implementing a grant or tax break scheme, similar to Singapore's Sustainable Loan Grant Scheme, will encourage businesses to adopt sustainability standards and practices. We urge the government to support the creation of such schemes, which will, in turn, boost investor confidence in green and sustainable projects by ensuring credibility and transparency.

D. HR & Training

1. Labor organisations at enterprises and trade union fees

Legislation on guiding the new labour organisations has been drafted for over three years and the Draft Decree hasn't been presented for public input. As a result, even the Labour Code took effect from 1

January 2021, no new labour organisation has been established due to the absence of comprehensive legal framework.

Moreover, the Labour Code 2019 doesn't clarify the relationship between a "new labour organisation" and a "traditional union", if both organisations exist within the same enterprise.⁴ In principle, since employees can choose their representative organizations freely, both types of organisations should have equal rights to represent their members. These roles would encompass all responsibilities and rights related to representation, such as (i) consulting on internal regulations, documents and processes relating to the employment relationship as required by law, (ii) attending and representing employees in communications, dialogue and discussions with the employers and with other union organisations, and (iii) collecting, utilising, and managing trade union fees and union membership fees. However, there is no provision under the Labour Code 2019 to indicate the relationship between the two types existing in the same enterprise, nor on their roles in representing employees. In the relevant laws it should be explicitly stated that the unions will have equal rights and obligations in representing the employees, depending on the ratio of their member employees, and provide mechanisms for cooperation between a "new labour organisation" and a "traditional union" in matters relating to employment relationships.

Financing for the "new labour organisations" is also ambiguous in the Labour Code 2019. Article 174 regulates that their charter must include contents on "Membership fees, source of property and finance, and its usage and management of the organisation", and that "the Government shall detail regulations of this Article". As such, it is unclear on the level of discretion that a "new labour organisation" would have in deciding its financing structure. According to the current Law on Trade Union, the employer has to contribute monthly trade union (TU) fees equal to 2 per cent of the total payroll used for the calculation of social insurance to the upper-level trade union, even if there is no trade union within their organisation. Furthermore, according to VGCL, an enterprise can only retain part of such an amount when there is a grassroots trade union within their organisation. This does not align with the principles of employees' freedom to collect, manage and use their financing structure.

In this light, it is important to ensure trade union laws indicate that the monthly employer-contributed trade union fees should go directly and entirely to the employees' representative organisations at a grassroots level, including both "new labour organisations" and "traditional unions", and the funds should not be shared with the upper-level traditional trade union. These funds should also be distributed between each union organisation based on the ratio of member employees it represents. The employees' representative organisations at the grassroots level should have the right to use the entire trade union fees contributed by employers and union membership fees contributed by their member employees. Furthermore, if no employees' representative body exists yet, employers should hold onto the trade union fees and then transferred to the corresponding employees' representative organisations once such organisations are established. The trade union fees borne by the employer should be revised by carrying out an actual survey of the opinions of enterprises, balancing the budget of the trade union system and considering reducing the rate from 2 per cent to 1 per cent of the payroll of local employees used for the calculation of social insurance; and the payroll of foreign employees should not be used as a basis to calculate monthly trade union fees.

We would like to make the following recommendations:

- Announce the Draft Decree for public feedback.
- Clarify the role and relationship when both a "new labour organisation" and a "traditional union" coexist within a same enterprise in guiding regulations of the new Labour Code 2019 and the amended Law on Trade Union.

- Amend the financing regulations for both types of organisations to ensure clarity, prudence, equality and correctly reflect the rights of employees’ representative organisations.

2. In terms of work permit:

Decree 70 which amends Decree 152 regarding work permits for foreign workers has simplified the work permit application process, notably by (i) loosening the definitions of “expert” and “technician”, (ii) recognising a prior work permit as evidence for work experience, (iii) reducing the time for submitting foreign labour demand report, and (iv) providing more exemptions from obtaining a foreign labour demand approval. These modifications may expedite the work permit application process.

Yet, Decree 70 introduces additional challenges in the work permit application, such as new job post requirements, complex documentation for managers/ executive directors, and ambiguity in the roles of MOLISA and Departments of Labour, Invalids and Social Affairs (DOLISAs) in granting work permits. These challenges warrant immediate review and rectification.

We would like to make the following recommendations to streamline the work permit application in Vietnam:

- Forego the recruitment post prerequisite before submitting foreign labour demand reports.
- Allocate the authority to local DOLISAs to issue work permits in all scenarios.
- Simplify required documentation for Manager/ Executive Director position at branches and representative offices.

3. Expansion of termination rights for employers

Nowadays, termination for cause or “dismissal”, resulting from an employee’s misconduct is happening more often and in a more sophisticated way. The Labour Code 2019, however, restricts dismissals to specific acts of misconduct, excluding many scenarios companies encounter.

While former and current Labour Code do allow an employer to dismiss an employee based on the extent of damages caused, there is no clarity on what constitutes “seriously detrimental” or “posing a seriously detrimental threat”. This vagueness leads to varied interpretations by local DOLISAs during the registration of internal labour regulations, making the application of dismissal more difficult in practice. Moreover, for many acts of serious misconduct, it is not possible to prove material financial damages.

Furthermore, the limited time frame to gather evidence and complete disciplinary actions, especially for covert misconducts, poses significant challenges for employers. The statute of limitations for settling a labour disciplinary action varies from six to 12 months from the date the misconduct occurred. An employer must gather evidence, hold a disciplinary hearing, and issue a dismissal decision within this limitation period. The general limitation period applicable to employee misconduct is six months. This is extended to 12 months where the act of misconduct is directly related to finance, assets, and disclosure of technological or business secrets. This statute of limitations is problematic because employees carry out their acts of misconduct in a secretive manner, so the employer only learns about it after the limitation period has already expired. Another problem is that it often takes a considerable amount of time to gather evidence of the employee’s misconduct, and employers have difficulty completing all the disciplinary procedures within the limitation period.

We would like to make the following recommendations:

- Revise regulations to recognise retrenchments stemming from a company’s business optimisation activities.
- Introduce a provision that allows retrenchment of one employee given the company adheres to legal
- procedures applicable to retrenchment of multiple employees.
- Expand the scope of acts of misconduct subject to immediate dismissal, such as fraud, giving or receiving bribes or kickbacks or aggressive, hostile, and violent behaviour or having violated the internal safety rules which lead to potential risk to human life.
- Extend the statute of limitations for settling labour disciplinary actions from 12 months to 24 months¹⁴ and this period should commence from the date the employer becomes aware of the misconduct.
- Provide clear benchmarks to determine what qualifies as “seriously detrimental” or “posing seriously detrimental damages”, potentially by specifying a monetary threshold.

4. Social insurance contributions for foreign employees

As stipulated in Article 2.2 of the Law on Social Insurance¹⁵ and Article 2 of Decree 143¹⁶, from 1 January 2018, foreign employees in Vietnam are mandated to contribute to Social Insurance (SI) if they possess a valid work permit or practicing license and have a labour contract of at least one year. This SI scheme for foreigners parallels the one of Vietnamese citizens, encompassing five areas: sickness, maternity, labour accident, pension, and survivorship allowance. While contribution of the first three short-term regimes (sickness, maternity, and labour accidents) began on 1 December 2018, the latter two long-term regimes (pension and survivorship allowance) kicked in from 1 January 2022.

Foreign employees can claim a lump-sum SI allowance for the contribution period upon ending their contract or when their work permit expires, provided they no longer reside or work in Vietnam. This allowance and the process to claim it resemble the provisions for Vietnamese employees. However, the SI rules and claim procedures applicable for foreign employees appear impractical and warrant a review.

Currently, MOLISA is drafting an amendment to the Law on Social Insurance, scheduled for National Assembly’s approval in 2024 (Draft SI Law). Regrettably, this Draft SI Law seems to retain the existing regulations on foreign employees’ social insurance.

Mandating contributions to all five SI regimes may not be equitable or feasible for foreign employees who continue contributing to their home countries’ SI. While the Government has been negotiating several bilateral agreements recognising social security contributions with certain countries and signed the social security totalization agreement with several countries (such as South Korea), none takes effect. This leads to augmented costs for both employers and employees, coupled with administrative hassles.

Furthermore, even if the Government could secure more bilateral agreements, they won’t cover all nations from which foreign employees originate. Typically, foreign employees work in Vietnam for limited durations, often due to stringent oversight when Vietnamese authorities assess and approve labour quotas prior to work permit issuance. Although Decree 143 suggests these employees can request a lump-sum payment before departing Vietnam, the associated procedures will amplify administrative burdens for all parties involved. Also, the requisite documentation for foreign nationals, mandated to be translated into Vietnamese and notarised, can be lengthy. These challenges, in terms of heightened costs and administrative hurdles, could detract from Vietnam’s appeal as an investment destination.

The Draft SI Law should provide for the followings:

- Making contributions to the pension and survivorship regimes voluntary for foreign workers.
- Introducing a bilingual template for the lump-sum SI allowance application and facilitate online submission of the related application dossier.

E. Woman in Business

1. Increased paternity leave

We note that presently, men are entitled to only 5 to 14 working days as paternity leave upon the birth of their children. We encourage the government to amend the Labor Code and Social Insurance Law to provide men with more paternity leave. We note that the government is in the process of amending the Social Insurance Law, so now is a great time to amend men's access to paternity leave.

Studies have shown that providing men with increased paternity leave has a direct effect on the gender wage pay gap, and dramatically reduces it. At the recruitment stage, employers would realize that male candidates may also take a long leave at the time their children are born, so female candidates would be less disadvantaged in that respect. Fathers will also form a stronger bond with their children through the increased paternity leave, so going forward, they would more equally share household responsibilities with their wives. Additionally, this stronger bond between fathers and their children will result in happier children and happier families.

We recommend increasing paternity leave incrementally, so that men would now be entitled to one month's leave minimum under the new Social Insurance Law.

2. Encourage women and girls to enter careers in innovation and tech industries

If Vietnam succeeds in encouraging more women to enter the tech sector, it may lead to more technological innovations since research shows that diverse teams generate innovation. Moreover, studies demonstrate that adding women to the workforce complements men – the increases in productivity are greater than those which may be gained through an all-male workforce. The International Monetary Fund (IMF) found that in respect to the bottom half of countries in its sample in respect to gender equality, if the gender gap were closed, GDP could increase by an average of 35%. The advantages gained in respect of innovation and productivity by creating an inclusive workforce would help Vietnam transform its economy from one focused on manufacturing to one based on innovation and technology.

On the other hand, if women continue to be underrepresented in STEM education and careers, the gender wage gap will continue to grow, and women will become more marginalized. As mentioned above, currently the majority of the female workforce works in low-skilled jobs that will be the first to be replaced by automation in Industry 4.0. Innovation in Vietnam would also not meet its full potential.

We would like to make the following recommendations:

- Gather data on female participation in STEM educational programs and careers to ensure that the Government has an accurate perception of the actual STEM gender gap;
- In issuing future policies in respect to Vietnam's digitalization and modernization, or amending existing ones, ensure that the issue of female underrepresentation in STEM and the information and technology sector is addressed;
- Issue legislation implementing national policies on digitalization and modernization which include measures to foster greater female participation, which are time-bound, specific and measurable;

- MOET should cooperate with stakeholders such as tech companies and potential investors to determine a specific direction for STEM education, which ensures the quality of training and that students are being taught the skills which will ultimately be required, as well as addressing negative social norms and gender stereotypes that often discourage girls from pursuing STEM studies from an early age;
- MOET and MOLISA should develop vocational programs targeting the reskilling and upscaling of skills of female workers towards digitalization, particularly those in industries susceptible to replacement by automation; and
- Implement campaigns and inspirational activities to change social awareness about the role of women in STEM professions.

3. Set out clear, concrete incentives encouraging employers to implement female-friendly employers

We believe that setting out clear incentives for employers who adopt policies in line with Article 79.2(a) of Decree 145 in forthcoming decrees would be helpful. Furthermore, the law regarding the tax cut for companies employing many female employees should be amended. It applies only to companies in the production, construction, or transportation industries. Instead, it should apply to all industries in Vietnam. Particular emphasis should be placed on rewarding companies which place women in top management positions, as women are still underrepresented in these positions in Vietnam. Instead of using a quota based on the total number of female employees at a company, we believe that a quota based on the number of female employees in upper-level management positions should be used. Across industries, it is common to see many female employees, but very few occupy key management roles. Finally, we believe a tax cut based on a flat reduction rate for companies with over 50% of their upper-level management team comprised of women would motivate companies to make a real change. Furthermore, childcare support would have a positive impact on male but especially female workers' productivity. Though the Labour Code and Decree 145 do not provide concrete tax incentives or subsidies, the Government should encourage companies to support their workers with childcare which would result in economic benefits.

We would like to make the following recommendations:

- Set out clear incentives for employers who adopt policies in line with Article 79.2(a) of Decree 145 in forthcoming decrees;
- Amend the law regarding the tax cut for companies employing many female employees concerning broadening the scope of applicable sectors and industries and the percentage of tax reduction; and
- Implement a quota based on the number of female employees in upper-level management positions instead of the total number.

III. Consumer Choice

A. Foods, Ari & Aqua Businesses

1. Implementation of agroecology and organic production in fruits and vegetables

Vietnam's agriculture sector faces a crucial moment, and agroecology is a promising alternative to conventional farming. The EU farmers are already transitioning to agroecology. The recommendations include reducing pesticide use, encouraging agroecology adoption, incentivizing organic farming, offering financial assistance, and increasing research and policy efforts. Vietnamese authorities should focus on reducing the use of pesticides that may impact food safety and export requirements.

2. Implementation of a one-health approach in animal production

To benefit from the EVFTA, Vietnam needs to ensure food safety by complying with European regulations, which prohibit antibiotics or forbidden substances. The government has set a roadmap to ban certain antimicrobials by 2026. To achieve this, it is necessary to disseminate the regulations, monitor compliance, engage with the food animal production industry, harmonize regulations, and promote alternative treatments such as biosecurity, vaccination, and nature-based solutions.

3. Financing options for the sustainability development of food, agriculture and aquaculture sectors

The State Bank of Vietnam has set a 4.5% cap on short-term lending rates for the agriculture sector. Sustainable agriculture can benefit from large-scale policies such as the Power Development Plan VIII and the growing focus on ESG and sustainability. Financial institutions and Ministries need to educate corporations about working capital benefits, and a subsidized ESG incentive scheme is needed to encourage investment. Efforts are needed to develop policies with an interconnected impact.

4. Conformity regulation

The Ministry of Agriculture and Rural Development (MARD) has slated the implementation of conformity regulations for veterinary medicinal products for 14 February 2024 in accordance with Circular 10/2018/TT-BNNPTNT.

Acknowledging the rigorous controls already in place from the product registration phase, we propose the following adjustments to facilitate a smoother transition to the new regulations:

- Extend the deadline for the implementation of the conformity declaration for veterinary drugs by at least an additional 12 months or
- Accept the existing Vietnamese batch release documents (local CoA from DAH's lab) as adequate for Conformity Release if they are no older than 12 months, and grant Conformity Release for products that have either a Quality Free Test Certificate (FTC) or have successfully passed quality tests upon their first and second importations.

These recommendations aim to mitigate supply chain interruptions, ensuring continuous access to vital veterinary products for the agriculture sector while allowing MARD the necessary time to develop and fine-tune an effective testing infrastructure to support the new conformity regulation requirements.

B. Automotive

1. Homologation requirements for automotive businesses:

Product composition declaration for customs clearance

We suggest immediate homologation for whole vehicles produced in factories with a valid Certificate of Production, simplification of certificate presentation for CBU imports, recognition of UNECE documents for EU products, this recognition is mandatory as in Clause 3, Article 4, Annex 2-B of the EVFTA: "Vietnam shall accept on its market as compliant with its domestic technical regulations, without further testing requirements." We also recommend amending Decree 60 to implement Annex 2-B by October 2023 and providing clear testing and homologation procedures by the Vietnam Register.

Recognition for safety glass in implementation of EVFTA

In line with the EVFTA's implementation, we would like to recommend the relevant ministries consider recognising ECE certificates for imported frameless Safety Glass and Mirror components (those without heating equipment or other electrical or electronic appliances) classified under Chapter 70, similar to the recognition provided for safety glass and other components under Chapter 87. Beside safety glass and Mirror components, the Rim and Headlamp should be included according to the ECE certificate.

2. Green Growth Action Plan:

We recommend to:

- Facilitate the transition from ICE vehicles to EV, including adding PHEV to the EV support list, providing EV technology transfer incentives.
- For Battery Electric Vehicles (BEV), delay the battery recycling and waste disposal implementation to 2027 in line with the implementation date for vehicles.

3. Importation of re-manufactured parts:

- The EVFTA was enacted on 1 August 2020. As per the EVFTA's Chapter 2, Article 2.6 concerning remanufactured goods stipulates, it mandates that "The Parties shall accord to remanufactured goods the same treatment as that accorded to new like goods. A Party may require specific labelling of remanufactured goods in order to prevent deception of consumers. Each Party shall implement this Article within a transitional period of no longer than three years from the date of entry into force of this Agreement".
- Implementation of importation of remanufactured goods into Vietnam under CPTPP starts effectiveness from 1st January 2024 according to Decree 77/2023/ND-CP. In line with the EVFTA, the Government MUST issue under EVFTA the same decision as Decree 77 for CPTPP regulation allowing the import of re-manufactured parts with the same treatment as that provided to 'like new' goods with specific labelling. There is no reason to deny the same treatment in the EVFTA as Vietnam has allow the same in the CPTPP.

C. Motorcycles

- 1. Regarding limitation of personal vehicles, including motorcycles, in major cities by 2023 and a gradual transition of internal combustion engine (ICE) vehicles to electric vehicles (EV) by 2050,** we emphasize the significance of motorcycles in daily life and addresses pollution by focusing on vehicle quality. We suggest emulating successful practices from other nations for integrating motorcycles and public transport. We also encourage the Ministry of Industry and Trade to expand biofuel usage and explore e-fuel. We advocate for education on ethanol benefits and advises adopting stricter emission standards for new motorcycles, like EURO 4 and 5. Regular emission tests for used motorcycles are also suggested.
- 2. Regarding Tax and Custom Issues:** We suggest excluding motorcycles over 125cc from special consumption tax, extending duty exemptions to all M&Es in the motorcycle sector, introducing a voluntary disclosure mechanism for businesses, streamlining the re-declaration process, and creating a list of goods for HS code disputes.
- 3. For motorcycle road testing before getting Certificate of Confirmation:** We propose removing the need for temporary registration certificates and introducing specific schemes for granting number plates. When the later has not been introduced, it is necessary to amend the current regulation for granting temporary plate applied to motorcycle road testing by removing

the requirement of document certifying that the motorbike meets standards of the quality of technical and environmental safety and is able to undergo road trials issued by Vietnam Register.

D. Nutrition and Milk Formula Products

Infringement of intellectual property rights and quality violations

The increase in intellectual property infringement and quality issues in the dairy and food industry is becoming more prevalent. In pursuit of profit, a significant number of businesses have resorted to producing counterfeit or fake products of well-known brands, as well as engaging in false advertising, to compete unfairly, misleading consumers about the origin and quality of their products. Many of these businesses also use low-quality ingredients, unsanitary production processes, and substandard products, even going so far as to falsify the quality of their products in comparison to their self-declared declarations. In some cases, these businesses have been prosecuted for criminal liability. These acts of intellectual property infringement, quality violation, and false advertising not only have a severe impact on the legitimate rights and interests of conscientious businesses but also seriously jeopardize the rights and health of consumers.

The inadequate implementation of the Law on Intellectual Property³ and Law on Product and Goods Quality in Vietnam: Some underlying factors include:

- Lack of comprehensive and strict inspection and control, especially for online advertising and sales. Some e-commerce platforms have shown signs of tolerating trademark infringement products, even though they have received warning letters from trademark owners, but they refuse to remove the infringing products.
- Lack of self-monitoring mechanisms between businesses in the same associations and industries, therefore the regulatory authorities have difficulty in identifying cases of violation in terms of trademarks, quality, and advertising.
- There is no requirement that food for sensitive consumers such as the elderly, patients, pregnant women, young children be produced in facilities that meet Good Manufacturing Practices (GMP) or equivalent, resulting in difficulties in quality control.
- Law enforcement agencies (such as economic police, market surveillance) have not been adequately disseminated with intellectual property regulations, leading to confusion when enforcing, even with recognizable trademark infringements.
- In many cases, the Vietnam Intellectual Property Research Institute already concluded the violation of a product, which the enforcement agency has proceeded to handle, but then the Intellectual Property Office of Vietnam had an opposite opinion. This causes a lot of difficulties for the enforcement agency when making a decision to resolve and makes violators more “immune” to the Law on Intellectual Property.

We recommend the following measures:

- Organize training programs to enhance expertise and knowledge on intellectual property for enforcement agencies (such as economic police, and market surveillance), and encourage enforcement agencies to proactively handle recognizable trademark infringements without consulting experts;
- Issue a specialized program for the inspection and handling of counterfeit and fake trademarks and quality violations in the food industry. This is because the food industry has a significant impact on public safety and health. The program should aim to identify and strictly handle products with packaging and labels that violate trademarks that have been registered and protected by other businesses, and/or violate quality standards; and

- Take measures to resolve the disagreement in professional opinions between the Intellectual Property Office of Vietnam and the Vietnam Intellectual Property Research Institute.
- Instruct market surveillance forces to inspect and strictly handle acts of counterfeiting/falsifying trademarks and quality violations for the food industry;
- Take measures to require e-commerce platforms to quickly handle counterfeiting/falsifying trademarks, quality violations, and advertising violations when receiving warnings from trademark owners or competent authorities; and
- Take measures to encourage food associations and industries to develop a Code of Conduct, which agrees on detailed guidelines on what should and should not be done; enterprises committed to producing quality products, not infringing on trademarks, conducting business and advertising in accordance with the law; there should be a mechanism for feedback to identify, report, and self-correct violations, as well as a process for reporting violations to regulatory authorities should they persist.
- Amend legislation to require food for the elderly, patients, pregnant women, and young children to be produced in facilities that meet Good Manufacturing Practices (GMP) or equivalent.

E. Wine and Spirits

1. Advertising and Promotion

Given the recent passage of the Alcohol Law 2019, there has been the conflict between the provisions on advertising and promotion of W&S products of this Law and both of the Law on Commerce 2005 and Law on Advertising 2012. Also, the definition of advertisement should be carefully considered not to overlap with the activities of product introduction and brand development which are the backbone of any business in manufacturing consumption products.

Notably, the continued ban on the promotion of W&S products is currently in conflict with the Law on Prevention of Beer and Spirits' Harmful Effects, which only bans the promotion of alcoholic beverages above 15 per cent ABV. Restrictions on alcoholic products should be based on alcohol content, not product category (as beer products are currently not subject to any promotional restrictions), ensuring fairness and stability.

Finally, such a complete ban on advertisement and promotion of spirits risks promoting further consumption of illicit and unrecorded alcoholic products, leading to increased health risks for consumers while threatening the operations of legitimate W&S businesses.

We would like to make the following recommendations:

- Ensure consistency in the revisions of provisions on advertising and promotion of W&S products in the Law on Advertising and Law on Commerce, respectively, with the Law on Prevention of Beer and Spirits' Harmful Effects so as not to introduce further regulatory burdens on the W&S industry.
- Remove the ban on the promotion of all W&S products in the Law on Commerce. These products should instead be subject to the relevant advertising restrictions under the Law on Prevention of Beer and Spirits' Harmful Effects instead of Law on Commerce i.e., promotion of alcoholic beverages below 15 percent ABV should be permitted.
- Review the definition of "advertisement" in the Law on Advertisement to encompass activities conducted by W&S companies, including business and product introduction. This expansion will help establish a clear legal framework for these activities while also promoting the responsible consumption of wine and spirits.
- To promote awareness of responsible drinking and enhance social responsibility, it is recommended to adopt a balanced and inclusive approach to regulating alcoholic products, rather than rely only on ABV. Advertising restrictions should be made on the basis of

where and how the advertisement is placed to give more information to consumers on which products are suitable and how alcohol should be consumed. This approach aims to provide consumers with more comprehensive information about suitable products and responsible alcohol consumption. It underscores the importance of public health and awareness, promoting responsible drinking practices, irrespective of the ABV of the beverage.

- Finally, such a complete ban on advertisement of W&S products above 15% ABV further leads to an increase in unrecorded alcohol products while threatening the operations of legitimate W&S businesses because consumers are not aware of authentic W&S products and licensed sales outlets. The absolute ban should be revised to the specific ban on which advertisement channel and should be distinguished from mentoring activities for reducing alcohol abuse and increasing the awareness of responsible drinking.

2. SCT Reform

Applying a higher SCT rate on recorded W&S products would result in higher price for end consumers, thereby, incentivizing them to switch to other informal, untaxed, and low-cost products with more hidden food safety risks. This would lead to a failure to achieve the Government's objectives on health protection and state budget. Additionally, further cost burden would be imposed on legitimate businesses who always comply with tax obligation, especially in the current challenging environment due to COVID-19 impact. The increase in SCT rate will surely affect long term foreign investments in Vietnam.

The EuroCham Wine and Spirits Sector Committee recently partnered with the Central Institute for Economic Management to conduct research and publish a report titled "Quantitative Assessments of the Impacts of the Excise Tax on the Alcoholic Beverage Industry" to verify the effectiveness of alternative excise tax models compared to the current ad valorem tax model.

The report revealed that a mixed tax model has proven to be superior to the current relative tax method in reducing harmful alcoholic consumption while ensuring stable state budget revenues. In addition, the application of a mixed tax model would likely generate enhanced trading up effects, whereby consumers would switch to consumption of alcoholic beverages of higher quality and better trademarks, while restrict the consumption of cheap products with unclear origins and which do not ensure food safety standards

When the Government makes the decision to revise the Law on Excise Tax at an appropriate time in the future, we propose that the Government consider the application of a mixed tax method based on Liter of Pure Alcohol rather than a relative/ad valorem tax rate due to superiority in helping to achieve the commitment to public health and the fiscal objectives of the State's budget and in line with Vietnam's current development status.

F. CropLife Vietnam

1. Strengthening science and evidence-based decision-making on plant science products and new Agriculture technologies.

(i) Reinforce policies together with stakeholders that encourage agriculture innovation supported by a transparent, science-based regulatory system consistent with international best practices while taking into consideration agronomic realities in Vietnam

(ii) Cooperate with multiple stakeholders to deliver the latest Plant Based Innovations innovations that can help farmers overcome increasingly complex economic and environmental challenges through case studies or demonstration of agricultural technologies that accelerate innovation, promote their responsible use, and mitigate the risks of pesticides;

2. Streamline and accelerate the functional implementation of a comprehensive regulatory framework on agricultural input products.

(i) Accelerate the GM approval process to comply with current regulations to ensure no restrictions on animal feed imports, encourage the cultivation of GM corn by issuing Variety Registrations for Traited Hybrids, and gradually reduce import dependence.

IV. Health and Beauty

A. IQMED

1. Accelerate the amendment of Law on Pharmaceuticals and related laws and regulations Extension of Marketing Authorisation (“MA”)

Under the current regulations⁵, even if technical details of a drug remain unchanged during its extension, its MA applications must be evaluated and submitted to the Council for Granting Certificates of Marketing Authorisation. For years, numerous well-known, tried-and-true drugs have been distributed throughout Vietnam and around the world without any quality concerns. However, the current Pharma Law 2016 mandates a thorough registration process for these drugs, akin to that for new drug registrations. This step is unwarranted and excessive. Such procedures burden the responsible authorities, causing delays in appraisal and subsequently impacting the manufacture, distribution and accessibility of medicines.

In line with international best practices, the validity period of a certificate of MA of drugs and medicinal ingredients is 5 years from the date of first issuance or extension; and an indefinite validity period in the second extension unless the drug needs to be continuously monitored for safety and effectiveness on the basis of the advice of the Advisory Council. Furthermore, the license extension period for MA certificates should be strictly adhered to according to the one-step lifetime extension process. This would enable companies to send an extension application to the relevant bodies, ensuring approval by a set deadline. If authorities are unable to meet this deadline for any reason, the ending or already expired MA, together with the extension request, will stay valid until a fresh MA is provided. Such an approach resonates with the essence of the Prime Minister’s Decision 1661.

2. New drugs registration process

Prime Minister’s Decision 1661 on streamlining administrative procedures under the Ministry of Health’s purview paves the way for potential amendments to the Pharma Law 2016, specifically to endorse simplified lifetime MA extensions.

In recent years, significant collaborative efforts by the National Assembly, the Government, and the Ministry of Health have been made to prevent drug shortage for patients’ treatment and prevention. The Drug Administration of the Ministry of Health has extended the validity of MAs for 10.243 drugs until the end of the year 2022, as per Resolution 127 of the Standing Committee of the National Assembly. However, these extensions expired on 31 December 2022. By the end of July 2023, another 11.291 drugs received extensions until the end of 2024, in accordance to Resolution 80 of the National Assembly. It is important to note that these extensions are only temporary measures due to the ongoing impact of the COVID-19 epidemic. There is still looming concern that the MAs extended under Resolution 80 will expire at the close of 2024 unless comprehensive and long-term solutions are put in place.

Incorporating a sustainable, long-term solution into the Pharm Law 2016 and related regulations is imperative. Such a solution should include a simplified process for lifetime MA extension and establish a mechanism to hold authorities accountable if extensions are not processed in timely manner. Furthermore, there is a need to revise the procedure for the initial registration of drugs to fully unlock the potential of the healthcare sector.

In the interest of the patients' wellbeing and as part of our mission, we recommend the following:

- Revise and redraft the Pharma Law 2016 with consideration for the comments and suggestions of the industry;
- Prepare clear guidelines regarding the introduction of a simplified MA extension process, along with clear transitional steps and implementation milestones;
- Amend first-time drug registration processes with a feasible timeline, transitional steps and milestones;
- Introduce the responsibility of authorities in the case of delays;
- Submit the new draft Pharma Law for National Assembly approval in October 2024;
- Implement regulatory coherence and adjust related regulations by January 2025; and
- A number of regulations, including the extension of MA, need to take effect immediately after the Pharma Law takes effect, to avoid drug shortages for patients' treatment and prevention.

3. Expand the scope of FIE's operations

Under the current regulation, in the case of Contract Manufacturing (CMO) or toll manufacturing/technology transfer, FIEs acting as contract acceptors (manufacturers) are permitted to sell CMO or toll manufacturing/ technology transfer products they produce. However, FIEs acting contract givers can only sell CMO products through registered wholesalers, typically local pharmaceutical companies, who subsequently distribute them to hospitals and pharmacies. Alternatively, FIEs must perform on-spot export and import procedures if they wish to sell their localized products directly. Both of these mechanisms result in a negative impact on patients, who end up paying higher prices to cover unnecessary additional costs, in order to access high-quality, safe and effective medicines.

In essence, foreign investors, despite going through costly technology transfer, manufacturing and registration procedures, are limited in their activities within the sector. This limitation makes investment in CMO, tolling, and pharmaceutical technology transfer for the production of patented drugs, specialised drugs, innovative generic drugs, vaccines, and biological products less appealing for foreign investors. More importantly, these regulations are not aligned with the spirit of Prime Minister's Decision 376, which outlines strategies for developing the domestic pharmaceutical industry to reach level IV on the WHO classification scale. The goal is to have market value ranking among the top three ASEAN regions and enable the provision of affordable, high-quality, safe, and effective microedicines.

To incentivize CMO, toll manufacturing and technology transfer in Vietnam, we ask the government to consider the following recommendations:

- Expand the scope of the rights of FIEs'. Specifically, FIEs which are the contract giver or contract acceptor performing the CMO/technology transfer should be allowed to perform activities related to distribution of the localized products in Vietnam by themselves. This is a-must-have-regulation to boost the local manufacturing of high-quality, affordable, safe, and effective medicines in Vietnam;
- Revise Tender regulation for Tolling and Tech Transfer products following the classification of Marketing Authorization Approval. Tolling and Tech Transfer products should be classified as local products not foreign products; and

- Provide Tender & Procurement incentives for localized high-quality products that will attract more foreign investment in the Pharma industry in the coming time.

4. Increasing patient access to state-of-the-art therapies

Biosimilars serve as an innovative solution to enhance the accessibility challenges faced by patients in obtaining biologics, which are advanced treatment therapies. They not only generate healthcare system saving but also diversify treatment options for healthcare professionals.

We would like to make the following recommendations:

- Consider the early issuance of guidance for biosimilar dossier technical appraisals;
- Include a specific definition for biologics that are not approved as a biosimilar, such as bioscopies and noncomparable biologics, in the Pharma Law to help healthcare professionals have accurate and complete understandings about circulating biologics;
- Consider the early issuance of healthcare professional guidance for using biosimilars in clinical practise to improve patient treatment efficacy and safety; and
- Increase biosimilar’s medical educational and training activities to healthcare professionals and healthcare authorities for improving knowledge.

B. Medical Devices and Diagnostics

1. Licensing

a) Licensing timeline for Class C and D medical devices (MD)

The 12,500 import licenses for Class C & D MD will expire on December 31, 2024 according to Decree 07/2023/ND-CP. Businesses have proceeded to submit the Market Authorization (MA) registration dossier according to Decree 98/2021/ND-CP. According to statistics from the Ministry of Health, 10,391 applications have been received as of December 8, 2023. However, according to the MOH's report on December 8, 2023, only 2,373 applications have been granted TOs and more than 6,000 applications are continuing to queue for the Ministry of Health (MOH) to approve.

As a result, advanced medical devices, systems and technologies have to wait in long queues for appraisal. Although the MOH has made many efforts to read and review the records. But it is still not possible to meet the actual needs of the MD industry with the speed of regular updates on technology, version upgrades, mergers etc. The MOH said it is trying to find ways to overcome the staffing shortage, which is expected to be able to handle by the end of 2024.

- Accelerate the evaluation and licensing process for Class C and D medical devices to ensure essential medical devices are always available and accessible at any time;
- Decree 07/2023/ND-CP only allows automatic extension of import licenses until December 31, 2024. Therefore, it is necessary to come up with a specific solution for those backlog applications that have not yet been issued an MA number by the end of 2024.

b) Manage changes in MD information after issuance of MA number

- We respectfully suggest that the MOH introduce to the regulations another review flow for MDs that have been granted MA numbers and have changes. If so, the experts only needs to focus on reviewing the parts that have been changed, instead of the entire file as it is now. In addition, we hope that the MOH would accept changes that have been reviewed and recognized in the reference countries (e.g. USA, Europe etc.).
- At the same time, we respectfully suggest that the MOH has its own flow for changes in MDR and IVDR regulations.

c) Harmonization of regulations between countries

Vietnam has its own regulations on registration documents. For example, (1) require the provision of a Certificate of Free Overseas Circulation (FSC), while countries in the ASEAN region do not require the FSC or are moving towards dropping the FSC requirement; (2) request consular legalization with FSC documents, Market Authorization certificate (MA), Certificate of Warranty eligibility, and Letter of Authorization. This is not required in other countries in the region.

The above requirements increase the administrative workload, time and cost for preparing documents, for example, spending 2-3 months on consular legalization for documents and an average of 100-200 USD for 1 dossier.

We respectfully recommend MOH to abolish specific requirements for Vietnam and assign responsibility to enterprises to take full responsibility for the truthfulness of submitted documents.

d) Digital healthcare (SaMD – Software as Medical Device)

In the current digital age, there have been many applications/software used for diagnosis and treatment but there is still no clear management mechanism, helping businesses to be more confident to bring advanced technologies to the Vietnamese market, helping health care in our country to develop.

We respectfully request MOH to recognize technologies in circulation in countries in the region that already have regulatory status, such as Singapore and Australia, or reference countries such as the United States or in Europe.

2. Medical Health Insurance

Vietnam's healthcare system is constantly looking for ways to improve to align with global and regional best practices and adopt new techniques to benefit the diagnosis and treatment of patients. However, some new medical equipment, services and technologies have not been updated/listed in the current regulations on the scope of payment of the health insurance fund because these regulations have been issued for a long time (4-6 years ago). For example, 2-level magnetic resonance imaging technology, photon-counting computed tomography technology or low-force superconducting magnetic resonance imaging technology. Failure to update regularly may limit Vietnamese patients' access to modern medical equipment, services and technology.

To ensure that Vietnamese patients have access to new medical equipment, services and technologies, we respectfully recommend the MOH:

- Regularly update the list of medical technical services and coordinate with the Departments of Health and Social Insurance of Vietnam to complete the cost calculation for these services and allow them to be deployed at health facilities nationwide; and
- The Law on Health Insurance is in the process of being amended and will proceed to the National Assembly in May to approve the payment of health insurance for the cost of early diagnosis and screening for a number of diseases such as cervical cancer, breast cancer and chronic diseases such as diabetes, hypertension. This can significantly reduce the burden of treatment later on.

3. Inspection of medical devices

We respectfully recommend MOH: periodic or post-repair inspections should be considered for abolition or exemption from these inspections if the equipment has been approved for circulation in one of the reference countries.

C. Pharma Group

Pharma Group represents the voice of the innovative pharmaceutical industry with 21 member companies from Europe, the U.S. and Japan who all share the same mission of ensuring fast and sustainable access to high quality and innovative medicines and commits to partner with the Government in developing a patient- and innovation-centric pharmaceutical sector.

On the Pharma Law: support Vietnam's timely revision of the Law in 2024. I want to draw your attention to the critical issues our world-leading Pharma Member Companies are facing relating to their FIE operation model. Majority of them have set up the FIE legal entity and operating in a very high-risk policy environment, due to language in the draft law that prevents FIEs from interact normally with their local partners in the supply chain, which creates challenges in fulfilling their global responsibilities and assure medicines reach patients in Vietnam in a timely manner. This is unique to Vietnam and is one of the main barriers that reduce Vietnam's attractiveness for additional FDI from pharma MNCs despite the market potential. Please help us to fix this inefficiency in the Law to enable a vibrant pharma sector in line with the Prime Minister's direction.

On the Tender Law implementation: we seek the Government's direction to soon guide the implementation of the "self-pay channel" as enabled via the Clause 2 Article 55 of the Tender Law, for public hospitals to buy medicines not covered by the public health insurance fund and service vaccines, to improve patient access and doctors choice.

Improve patient's access to innovation

It takes around 12-13 years and a considerable investment of \$2 billion for pharmaceutical companies to introduce new medicines to the market. Unfortunately, only 9% of new medicines launched globally between 2012 and 2021 are available in Vietnam, and it takes 8-9 years on average for a new medicine to reach patients via public health insurance. Medicine shortages and approval delays are ongoing issues. To address this, we recommend speeding up the availability of new medicines, preventing medicine shortages, improving patient access, and enabling the availability of medicines for out-of-pocket payment in public hospitals.

Foster adoption of sustainable Healthcare Financing policies for innovation

Vietnam aims to achieve 95% Universal Health Coverage by 2025 but faces challenges in sustaining the Health Insurance Fund due to an aging population and rising demand for advanced treatment. To improve access to quality care and reduce out-of-pocket expenses, the government plans to regulate Supplementary Health Insurance, develop new financing mechanisms, leverage health data, implement drug assistance programs for patients, and transfer revenues generated from excise duty to the health insurance fund.

Incentivize the Development of an Innovative Pharmaceutical Ecosystem

Vietnam aims to become a regional leader in high-quality medicines by focusing on innovation, technology, and digital transformation. The country has set a target of contributing over \$20 billion to its GDP by 2045. Seven key factors have been identified for building an innovative sector. Reforms to the Pharma Law are recommended to enable foreign invested enterprises to operate more effectively and reduce complexity and cost of doing business. Policies and strict enforcement are also needed to protect clinical trial and patent data and develop comprehensive incentives that align with Vietnam's advantages and market access

D. Cosmetics

1. Simplify administrative procedures in cosmetic management – focus on strengthening post-market surveillance

Considering that CFS is no longer required for ASEAN Member States, it is reasonable to remove the CFS requirement for cosmetics imported from the EU. The EVFTA requires imported products from the EU not to be discriminated against other imported products and prohibits unjustified or unnecessary obstacles to trade. We recommend remove the requirement for cosmetic advertising pre-approval and the Certificate of Free Sale (CFS) for all imported cosmetic and incorporate this removal in the Decree on cosmetic management, with no alternatives required when the CFS requirement is abolished.

2. Strengthen the application of information technology and e-government in cosmetics management

- The DAV and businesses have recently encountered numerous challenges as a result of failures in the imported cosmetics notification system. In addition, the DOHs' reliance on hard-copy dossiers is not aligned with e-Government development. The submission period is prolonged due to objective factors and the reception of dossiers by post.
- The Ministry of Health should develop nationwide online software for cosmetic notification dossiers, applying level 4 public services for both imported and domestically produced cosmetics. This system will streamline processing and support post-market surveillance efforts.
- Provisions in the Decree on cosmetic management should be revised to remove any requirement for hard-copy applications. Businesses should be notified in advance of software upgrades. All provincial Departments of Health should apply a full online approval procedure for Cosmetic Notification. Electronic labelling should be incorporated into cosmetic labelling regulations.

3. Develop a competitive and fair cosmetic market for consumer safety

- The available information on existing e-commerce platforms lacks clarity, making it difficult for consumers to differentiate between the legitimacy and safety of products sold in official stores and those sold in unofficial stores. Besides, the suggestion of products sold by unofficial stores may confuse consumers who are specially seeking for product information in an official store.
- We recommend the Ministry of Industry and Trade updates regulations related to e-commerce management and completes e-commerce management legal framework to upgrade the management level in line with the current development of e-commerce.

4. Streamline the process of registration of skin antiseptics with simple formulation

- We request that the MOH develop a separate notification for skin antiseptics with common formulas and active ingredients similar to other ASEAN countries (Singapore, Thailand, Philippine, Malaysia...) and reduce unnecessary document requirement. This group's safety risk is completely different from that of insecticides, so management requirements should be adjusted to accommodate businesses' and consumers' needs.
- For these products, test results of overseas-qualified laboratories should be accepted for both import and locally manufactured antiseptic products. The guidance regulation on experiment procedures for antiseptic should also be revised and updated.

V. Dispute Resolution

1. Courts and the competition authority

The judicial independence and the efficiency of the legal framework in settling disputes and in challenging regulations and future orientations of government in Vietnam was ranked 89th out of 141 countries in the WEF's annual Global Competitiveness Report (2019) and has not been updated since COVID-19. When planning to invest abroad, the availability of an efficient and transparent judicial system is one of the key factors that foreign investors take into account.

We would like to maintain the predictability and stability of the current system to ensure an enabling regulatory framework. Continue to publish the judgments of courts at all levels. Publish all decisions of the competition authorities. Amend the Law on Lawyers to allow fully-qualified Vietnamese lawyers to represent clients before Vietnamese courts, even if she or he is working for a foreign law firm.

2. Arbitration in Vietnam

While the Vietnam International Arbitration Centre (VIAC) confirmed an increase in the total value of disputes in pre-pandemic years, our members continue to report a number of serious issues in VIAC-managed arbitration.

The main concern remains the intervention of the Vietnamese courts not only before a final award is issued, which may result in the lack of jurisdiction of the VIAC tribunal and the termination of the arbitration proceedings, but also by setting aside the final award once it has been issued by a VIAC tribunal.

The absence of a right to appeal a decision to set aside an arbitral award continues to be a major obstacle for foreign investors who are seeking a fair and transparent resolution of their claims in Vietnam.

3. Recognition and enforcement of foreign arbitral awards

Foreign investors generally choose dispute resolution by international arbitration where the value of the contract is substantial. However, our members have found that it is extremely difficult, in practice, to achieve the recognition and enforcement of foreign arbitral awards through the Vietnamese courts.

One of the main difficulties encountered is the reversal of the burden of proof. In practice, the Vietnamese courts reverse the burden of proof and require the award creditor to prove that any objections raised by the award debtor are invalid or not applicable.

Another difficulty is the rejection of applications by the Vietnamese courts for reasons that are not consistent with the NYC. In many cases, the Vietnamese courts have determined that the foreign party to the arbitration agreement lacked the capacity to sign a contract by wrongly referring to Vietnamese law instead of the relevant law governing the foreign party.

Vietnam does not apply NYC provisions makes it a less attractive destination for foreign investors since any procedure for recognition and enforcement is uncertain and, too often, leads to a decision that would have been different in other parties to the NYC (as evidenced by the figures released by the MOJ and discussed above).

We would like to recommend continuing to publish updated figures on applications for recognition and enforcement of foreign arbitral awards to follow the publication of figures for 1 January 2012 to 30 September 2019. Implement the Civil Procedure Code so that it provides for the strict application of the provisions of the NYC. Introduce the automatic referral to the relevant Superior

People's Courts of all cases where an application has been rejected by the Courts of First Instance. Organise more seminars and training courses to ensure that judges are properly trained to deal with applications for recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.

POSITION PAPER OF VBF ASSOCIATE CHAMBERS

The Associate Members of the Vietnam Business Forum (“**VBF**”) consist of the Singapore Chamber of Commerce Vietnam, the Australian Chamber of Commerce, Swiss Business Association, the Council of Taiwanese Chambers of Commerce in Vietnam, the Thai Business (Vietnam) Association, the Hanoi Business Association, the Indian Business Chamber in Vietnam, and the Hong Kong Business Association of Vietnam.

We appreciate the Government's great effort and initiatives for the purpose of developing Vietnam economy.

We have compiled some high-level proposals that should be considered and addressed in order to boost Vietnam's economy.

1. Streamline licensing procedures

Vietnam can significantly boost foreign investment by simplifying and streamlining the procedures for obtaining and renewing business licenses, permits, and certificates. This is particularly important for foreign investors who may be discouraged by complex bureaucratic processes discouraging. In this respect, we would like to mention the licensing procedure to obtain a Business License under Decree 09/2018/ND-CP (“**Decree 09**”).

So far, the licensing procedure and timing for FIEs to obtain business licenses for sectors including retailing, equipment leasing activities, and e-commerce from the Ministry of Industry and Trade (**MOIT**) is still very burdensome and time-consuming. Typically, this involves several rounds of submissions and follow-up questions with the MOIT and Department of Industry and Trade (**DOIT**). This can take up to 12 months.

Under Decree No. 09, the statutory timeline (depending on the specific activities and application dossier) for obtaining the Business License from the DOIT is 13 working days. If the DOIT needs to obtain further opinion from the MOIT, it takes another 28 working days for MOIT to respond. In most cases, the approval / opinion of the MOIT would be required regardless of the activities specified under Article 5.1 and Article 8.3 of Decree 09.

However, in practice, the timeline can be prolonged for up to 3 months for each of the internal process between DOIT and MOIT. If there are two to three rounds of questions and/or request for supplement of information from the MOIT, then it takes up to 9 - 12 months to complete.

For instance, it took one year for one of our members in the petroleum industry to obtain a Business License for the wholesale distribution of lubricants.

We respectfully request the Government to consider and enact regulations that will shorten the statutory timeline for MOIT and DOIT approvals. We also respectfully request the DOIT and MOIT to observe the current statutory timeline for the issuance of the Business License, and to be clearer and more specific as to what is expected in the application dossier so as to greatly reduce the number of follow up rounds required.

2. Accelerate e-Government

Governments are responsible for providing essential services to residents, but may have limited budgets. They need to find ways to eliminate waste and become more efficient. Technology, especially cloud computing, can be a powerful tool for governments. It can automate processes, save cost, and allow for more innovative services. Cloud computing also makes it easier for different government agencies to work together and share information.

On this basis, we encourage modernizing procedures for investors by:

- **Expanding online portals and e-submissions:** Allow more government applications and procedures to be completed online, making the process faster and more convenient.
- **Adopting e-signatures:** Recognize electronic signatures as valid for official documents, eliminating the need for wet signatures.
- **Encouraging email communication:** Promote the use of email for official communication between businesses and government authorities.
- **Reducing reliance on paper:** Minimize the requirement for paper documents in government applications.

While some procedures, like company registration, are already available online, many processes involving foreign investment still require in-person meetings and physical submissions. These include investment registration, M&A approvals, foreign loan registration, establishing representative offices, and obtaining retail business licenses for foreign investors. By offering online options for these procedures, Vietnam can attract more foreign capital and partners.

By implementing these proposed changes, Vietnam can create a more attractive and enabling legal framework that fosters foreign investment, contributing to sustainable economic development and creating a win-win situation for both foreign investors and the Vietnamese economy.

3. Improving land and real estate laws

We are encouraged by the issuance of the new laws on land, real estate business, and housing.

We recognize the efforts made to improve the regulatory framework around investments and activities in relation to land and real estate. We look forward to the meaningful implementation of these new laws and the issuance of draft decree for further review.

In particular, we hope to see more transparency and efficiency around land clearance and compensation, access to sites by way of auction or project bidding, and land pricing mechanisms. We hope that the implementation of these new laws will create more legal certainty around mixed used development, condotels, and projects which take on separate floors as opposed to the whole building.

It is also important to improve the ability for the public to have access to land related information. For example, the ability to search for the certificates of land use rights.

Finally, with significant number of projects and industrial parks having ten to fifteen years of land tenure left, it is important to have plans and/or guidance as to what happens to these projects at the end of the land tenure.

4. Listing of foreign invested enterprises

It is encouraging to see certain large sized foreign invested enterprises looking to do an IPO on Vietnam's stock exchanges. This shows confidence in Vietnam's stock market and commitment to the Vietnam economy.

On one hand, it is good that Vietnam does have a comprehensive legal framework around the IPO and listing conditions and process; however, in practice, it appears that it is disproportionately time-consuming and uncertain when it is a foreign invested enterprise undertaking such process.

We encourage the Government and the State Securities Commission to guide and facilitate the IPO process of foreign invested enterprises in a way that is non-discriminatory and transparent.

5. Draft Decree on the establishment, management, and use of the Investment Support Fund

Regarding the Draft Decree on the establishment, management, and use of the Investment Support Fund, we observe that the subjects being entitled to support in the Draft are too narrow. With the requirements on very high scale of capital or turnover, only few of enterprises in the High-Tech sector can be satisfied. The subjects of the policy do not fully cover groups of investors in the high-tech sector, or strategic investors as required by Resolution No. 110/2023/QH15. Therefore, VBF proposes to supplement the following subjects to the Decree to ensure the more comprehensive and complete policy:

- Adding subjects being enterprises operating in Hi-tech parks;
- In the field of high technology, it is necessary to consider investors being large Groups which are groups with investment scale in Vietnam of at least VND 20,000 billion or USD 1 billion and above (rather than considering on the basis of single entity or single project);
- The enterprises/projects in other manufacturing fields with total investment capital of at least VND 20,000 billion or USD 1 billion and above.

Currently, several countries are making efforts in researching and promulgating diverse investment support policies. For example, the United States launched many support packages of hundreds of billions of dollars for prioritized areas. Singapore also offered the Refundable Investment Credit (RIC) policy to provide support up to 50% for the expenses meeting the required conditions. Vietnam can study and refer to these policies in the process of developing its supporting policies.

SESSION 2

FDI ENTERPRISES PIONEER IN IMPLEMENTATING GREEN GROWTH STRATEGIES

SPEECH OF HUMAN RESOURCES, EDUCATION & TRAINING WGS

Your Excellency,

For Vietnam to become a first world country as planned, the Vietnamese must become a first world workforce. This has to involve international skills transfer and effective education, both of which I will address.

International skills transfer has to involve an element of foreign specialists coming to Vietnam to transfer their high tech and other skills. We absolutely agree and respect that Vietnam must be very careful in managing this process to ensure that only the most appropriate foreigners are allowed to obtain work permits.

We thank the Ministry of Labour for a number of improvements achieved under the recent Decree 70. However, as always with the work permit topic, there are further clarifications that would benefit both the foreign investment community and Vietnam's development goals.

Firstly, the administrative burden for companies and applicants is still taking months of work, which is not always practical from a commercial and operational perspective. We would encourage administrative streamlining and eliminating additional document requests that are not mandated by law.

We suggest that some procedures such as the job posting requirement and the foreign labor demand request could in some cases not be applied, for example for short term project work, where the foreigner is only working in Vietnam for less than six months. A more streamlined short term work permit application could be used instead.

The conditions for qualification and work experience are more difficult to define in the rapidly changing age of AI, where it is impossible for a person to have a multi-year degree in a technology that could be only months old. So, we recommend using another mechanism popular internationally – minimum wage levels for work permits.

We have always appreciated the move towards digitalising applications and having the ministry handle cases directly and encourage faster progress in this. Some categories such as work permits for financial institutions are especially important to process effectively, so that foreign banks can meet their legal representative requirements to keep operating in Vietnam.

Additionally, there are some potential improvements addressing current inconsistencies between work permit and business visa requirements, such as which companies qualify as sponsoring entities.

There was a suggestion that foreign work permit and temporary residence holders should register with local authorities every time they exited or entered the country. For executives taking regular international business trips and the local authorities, this would be an unnecessary administrative burden in our view.

Next on to the education and training considerations.

With regard to the theme of this year's forum, the Education and Training working group believes that education and training will play an important role in achieving sustainability, innovative practices, and digitization transformation in addition to helping improve the practices in relation to Environmental, Social, and Governance.

The work permit issue is also important for the education sector, who need to frequently bring in foreign educators for skills transfer. Decree 70 regulated the exemption of work permits for lecturers who are allowed by the ministry of education, but the ministry of education has no instructions yet to apply this exemption.

Another issue is in regard to the new draft decree 86. Many investors in the field of education are now confused with what is needed to acquire land to build their campuses. They are having difficulty in finding what land is allocated for education purposes at many people's committees of the provinces and cities.

In the longer term, we believe that the Vietnamese economy needs to be prepared for the challenges and opportunities that will arise in regard to sustainability and innovation. The skills gap is an ongoing issue that is compounded by the new skills needed for the digital economy. This means that all major stakeholders need to move with more urgency to create the environment that will take advantage of the available technology to ensure education at all levels in Vietnam is effective and competitive.

In conclusion, the Human Resources and the Education and Training Working Group, through the VBF and in collaboration with the ministries of labour and education, and the Chambers of Commerce, will continue with our commitment to assist Vietnam in creating advantage from the opportunities and overcoming the problems to help Vietnam achieve its excellent economic potential.

POSITION PAPER OF HUMAN RESOURCES WORKING GROUP

EXECUTIVE SUMMARY:

“RECOMMENDATIONS ON FOREIGN WORK PERMITS”

- Vietnam’s continued advances in sustainability and innovation will require bringing international expertise into the country. Effective work permit procedures are an important element of assisting this.
- The business community would recommend some suggested steps that would help with work permits;
 - Easing the application time burden of administrative procedures
 - clarifying some of the wording of Decree 70
 - accelerating progress on digital applications
 - clearer processes when applying for work permits directly from the ministry
 - Proposed mechanism applicable for WP sponsors when changing foreign labour management authority from provincial DOLISA to MOLISA
- We would encourage more consistency between labour regulations and immigration regulations on sponsor for work permit and visa documents
- We recommend against new policies on de-registration requirement for foreigners going on business in overseas during the validity of their visa/TRC in Vietnam due to its administrative complexity
- Similarly, we recommend some streamlining of the social insurance procedures for foreigners working in Vietnam.
- Further clarity on employee’s representative organizations would be helpful

Firstly, we would as usual like to thank the Ministry of Labor, Invalids and Social Affairs for the excellent cooperation with the HR working group and the business community.

1. Clarification on Work Permits

We thank the ministry for the improvements included in Decree 70. However, we still have some recommendations based on our practical observations of the implementation of the work permit application process:

a) Administrative burden:

The significant impact of unnecessary administrative burdens on companies and foreign workers, causing delays in document issuance approvals, continues to be a concern. For instance in the case of a work permit reissuance due to a change of office address within the same city, the requirement from several provincial DOLISA to resubmit a foreign labour demand request (which takes at least 10 working days to get approved) before submitting the application for work permit reissuance is one example of such unnecessary burdens. We noted that this is not required in all provinces which again shows inconsistency on the implementation of decree 152 amended and supplemented by decree 70 in different provinces.

Recommendation: Exercise greater discretion and refrain from requesting unnecessary additional procedures that are not mandated by law.

Navigating the process of obtaining a work permit for foreigners in Vietnam remains as complex, challenging, and lengthy as ever. An average of 4 to 5 months of preparation is now required. The new job posting requirement introduced by Decree 70, implemented on Jan 1, 2024, without any guidelines until implementation date, combined with the foreign labour demand and the work permit application, do not streamline administrative procedures for simplification and create significant obstacles for companies who still need foreign workers.

The job posting requirement can sometimes pose an unnecessary administrative burden and may not be applicable in all cases. For instance, consider a scenario where a company abroad sells a high-tech product to a company in Vietnam and needs to send personnel for its installation, a process that may extend beyond 30 days. Under the current regulations, the host entity in Vietnam is required to publish a job posting, wait for 2 weeks before submitting a foreign labour demand request for the role, and then wait for at least another 2 weeks for approval before submitting a work permit application. This process can be cumbersome and may not align with the specific needs of certain work activities.

Recommendation: As in many countries, we recommend the creation and implementation of a "short-term work permit" tailored for work missions lasting less than 6 months, exempt from the job posting and foreign labour demand requirements. The current process for preparing the necessary documents for a work permit, which must be duly notarized and legalized, is already sufficiently complex and time-consuming. Introducing a streamlined approach for short-term work permits would greatly enhance efficiency and flexibility for both businesses and foreign workers.

According to Point 5, Article 154 of Labour code of Vietnam, a foreigner is exempted from a work permit if he/she enters Vietnam for a period of less than 03 months to a resolve complicated technical or technological issue which (i) affects or threatens to affect business operation and (ii) cannot be resolved by Vietnamese experts or any other foreign experts currently in Vietnam.

Decree 152 also regulates that documents required for work permit exemption for the case are” documents to prove that the foreign employee is “subject to work permit exemption”. As such, it is understood that the documents required in this case shall be the ones to prove that the business faces complicated technical or technological issue which (i) affects or threatens to affect business operation and (ii) cannot be resolved by Vietnamese experts or any other foreign experts currently in Vietnam. However, in addition to that documents, provincial DOLISAs also require documents to prove that the foreign employees are experts/technicians, which are legalized educational certificates and experience letters which are burdensome, costly and time-consuming for businesses, especially when they must send their foreign employees to Vietnam urgently to deal with such problem.

Also, given that the guidance of the above requirement for work permit exemption in the Decree 152 is quite general, different officers might have different view/guidance on the implementation, making the application of the exemption becomes unfeasible.

Recommendation: Enhance the clarity and consistency of guidance regarding the necessary documentation for work permits or work permit exemptions, ensuring its practical applicability by provincial DOLISA.

b) Clarification of decree 70

Representatives from MOLISA confirmed during workshops on decree 70 that the qualification requirements for technical worker is either 5 years of experience or a certificate, as stated in Article 3 (Definition) of Decree 152:

6. “*technical worker*” means a foreign worker who:

- a) *Has been trained for at least 1 year and have at least 3 years of experience suitable to the job position that the foreign worker intends to work in Vietnam; **OR***
- b) *obtains at least 5 years' experience in corresponding with the job position that he/she will be appointed in Vietnam.*

However, some DOLISA requests both because another article causes confusion. Indeed, article 9.4 indicates:

b: Papers proving technical experts and labourers as prescribed in Clauses 3 and 6, Article 3 of this Decree include the following 2 types of papers:

- *Diplomas or certificates or graduation confirmation letter.*
- *Written certification of the overseas agency, organization, or enterprise on the number of years of experience of experts, technical workers or work permits that have been granted or work permit exemption certificate that have been granted*

This article 9.4 doesn't indicate “one of the 2 documents” so some provincial DOLISAs interpret that both documents are required while others still accept either option above.

Recommendation: It is recommended that MOLISA provides clear instructions to DOLISA regarding the implementation of this requirement for technical workers and, upon the next revision of the decree, amends it to remove this inconsistency.

c) Digital applications

Last year, all companies sponsoring visa applications for foreign workers were requested to register for an account on the government portal for administrative procedures to submit applications online with a digital signature by token. This was a significant step toward streamlining administrative procedures. However, the function of submitting labor-related applications (such as foreign labor demand and work permit applications) is still not possible

through the company's account. Instead, most including DOLISAs including Hanoi and HCMC have requested individual submitters to lodge foreign workers' documents and applications online through their personal accounts on the government portal for administrative procedures. This approach seems inappropriate and raises compliance issues with personal data protection of foreign workers (PDPD). These data cannot be deleted from the personal account of the employee even after they have stopped working for their employer. Additionally, companies are forced to request one of their employees to use their personal account for this purpose, which they are not supposed to agree on.

Recommendation: We would recommend that corporate applications from companies be logically submitted through their company account with their digital signature.

d) Applications at MOLISA

MOLISA is tasked with receiving and approving foreign labour demand and work permits for various business categories, including financial institutions, insurance companies, etc. Since the implementation of Decree 70, MOLISA is also responsible for receiving and approving applications from companies who have foreigners working in multiple locations.

However, it appears that (i) MOLISA faces with some resource constraints in handling these applications; (ii) the interpretation and application of Decree 152 and Decree 70 are not consistently applied among the current officers of MOLISA; (iii) the allocation of tasks is not thoroughly and consistently delegated to specific officers. This results in:

- Applications from a specific company are not assigned to a designated officer. Instead, when the company submits applications via MOLISA's online system, they are randomly allocated to different officers. Due to variations in perspectives among different officers at MOLISA regarding foreigners' work permit applications, there arises inconsistency in assessing applications from the same company.
- When a company chooses to submit its application offline to a specific officer for consistent guidance and assessment throughout the process, MOLISA restricts the acceptance of hard copy applications to Mondays, Wednesdays, and Fridays, with typically only one officer on duty each day, and primarily during the mornings. This scheduling constraint poses challenges for companies seeking to collaborate effectively with MOLISA .
- There is a noticeable lack of clear guidance on how to finalize required documentation for the multiple and specific cases on work in multiple locations.
- Significant delays in responses and approvals are prevalent. In practice, the assessment timeline for explanation on foreign labour demand requests at MOLISA can extend up to 2 months (instead of 10 working days), while the assessment of Work permit exemptions due to marriage with Vietnamese citizens or Work permit applications can take up to 1.5 months (instead of 5 working days). Throughout these processes, there's often a lack of written notification or clarification, despite companies' efforts to follow up. These prolonged waits for work permits significantly disrupt businesses' operations as they await legal authorization for foreigners to work in Vietnam

Recommendation: It is recommended that MOLISA:

- set the mechanism for officers to supervise specific group of companies, based on their businesses, management agency or geographical locations such that applications of each company will be managed by one officer to avoid inconsistency in assessment of the application.
- disclose the contact of the officer in charge of the applications in the acknowledgement of receipt, with tentative date of response in line with statutory timeline, such that companies can follow up in case of any delay.

- address companies' inquiries promptly and providing results within the timeframe stipulated in Decree 152, as amended by Decree 70, starting from the date of application submission.
- review the various scenarios involving foreigners working in different locations and establish clear requirements for the necessary documentation accordingly.

e) Proposed mechanism applicable for WP sponsors when changing foreign labour management authority from provincial DOLISA to MOLISA

Regarding the *procedures for issuance of Work permit and work permit exemption certificates for foreigners working in Vietnam*, since the effective date of the Decree 70/2023/ND-CP, the foreign insurance companies, financial service companies and banks operating in Vietnam (Foreign-invested financial companies) must carry out procedures related to (i) Approval of the demand of foreign workers, (ii) Approval for not subjecting for work permit application; (iii) issuance, renew, and extension of the work permit to foreigners working in Vietnam (commonly referred to as "**Work Permit Procedures**") for foreign workers at MOLISA (instead of at provincial DOLISA in the provinces/cities where the organization was located as the current practice). At the same time, these companies must also return the license previously issued by the DOLISA and apply for a license renewal at the Ministry of Labour, Invalids and Social Affairs.

In recent times, a number of organizations have returned their licenses issued by DOLISA but has not yet received approval or a new license from the MOLISA. This creates timing gaps during which foreigners are working without a valid work permit, leading to potential issues related to the disruption of labour relationships to legal employment relations, especially in the case of management positions such as senior level/legal representative in a foreign-invested financial company. While this is an industry sector that plays an important role in supporting the flow of foreign investment capital into Vietnam.

We would ask for some flexibility in the implementation and interpretation of the work permit process for the benefit of not just the Foreign Invested Financial Companies but the wider economy. Our three recommendations include:

- (i) The existing Work Permits issued by DOLISA should remain valid until their expiration date,
- (ii) In the event an enterprise initiates the process of applying for a new Work Permit or Work Permit Exemption Certificate at MOLISA (the "WP"), while the existing one issued by DOLISA is still valid, it is recommended that MOLISA acknowledges the continued validity of the previously-issued WP from DOLISA.
- (iii) Simplifying application procedures and reducing timelines for addressing inquiries and processing applications would significantly contribute to enhancing business efficiency.

2. Consistency between labour regulations and immigration regulations on sponsor for work permit and visa documents

According to labour regulations, employers of foreign employees include "*c) Representative offices, branches of enterprises, agencies or organizations licensed by the competent authorities;*" and "*h) Executive offices of foreign investors in business cooperation contracts or those of foreign contractors awarded operating licenses by the law;*"

As such, such employers are able to apply for work permits for its foreign employees to work legally in Vietnam.

However, at the stage of applying visa/TRC for such employees, some applications were recently rejected with the reason that such employers are not considered eligible sponsors according to immigration regulations.

Recommendation: we recommend that the sponsors for work permit and visa/TRC should be consistently regulated between labour and immigration regulations.

3. Registration for temporary absence requirement for foreigners temporarily leaving Vietnam during the validity of their visa/TRC in Vietnam

We've noted provincial immigration departments scrutinizing foreigners and their Vietnamese sponsors for potential violations of immigration regulations and have raised concerns about failure to submit temporary absence status notifications when temporarily leaving Vietnam, as well as neglecting to complete re-registration upon returning. This discrepancy between the recorded stay data in the temporary stay registration with the domestic police department and the entry/exit data in the immigration system has emerged. Such challenges can potentially delay other immigration procedures for sponsor companies, as clarification of these violations may be required. Moreover, there's a risk of penalties for non-compliance looming over these companies.

Recommendation: Considering that (i) the current immigration regulations do not explicitly mandate registration for temporary absence and (ii) the immigration system already tracks foreigners' entry/exit when they enter/exit Vietnam, we suggest removing the requirement for notifying temporary absence. This action would alleviate the administrative burden on foreign labor and mitigate the broader impact on their sponsoring companies' immigration processes.

4. Social insurance contributions for foreigners

Pursuant to Article 2.2 of the Law on Social Insurance and Article 2 of Decree 143, generally, foreign employees possessing a valid work permit or practicing license and having a labor contract of at least one year are also among the subjects participating in compulsory social insurance. Currently, the social insurance contribution scheme for foreigners is identical to that for Vietnamese employees, which includes five (5) regimes: sickness, maternity, labour accident – occupational disease, pension, and survivorship. While contribution of the first three short-term regimes (sickness, maternity, and labour accidents) began on 1 December 2018, the latter two long-term regimes (pension and survivorship allowance) kicked in from 1 January 2022.

Foreign employees can claim a lump-sum social insurance allowance for the contribution period upon ending their contract or when their work permit expires, provided they no longer reside or work in Vietnam. This allowance and the process to claim it resemble the provisions for Vietnamese employees. However, the social insurance rules and claim procedures applicable for foreign employees appear impractical and warrant a review.

Mandating contributions to all five social insurance regimes may not be equitable or feasible for foreign employees who continue contributing to their home countries' social insurance. While the Government has been negotiating several bilateral agreements recognising social security contributions with certain countries and signed the social security totalization agreement with several countries (such as South Korea), none has taken effect. This leads to augmented costs for both employers and employees, coupled with administrative difficulties.

Furthermore, even if the Government secures more bilateral agreements, they won't cover all nations from which foreign employees originate. Typically, foreign employees work in Vietnam for limited durations, often due to stringent oversight when Vietnamese authorities assess and

approve labour quotas prior to work permit issuance. Although Decree 143 suggests these employees can request a lump-sum payment before departing Vietnam, the associated procedures will amplify administrative burdens for all parties involved. Also, the requisite documentation for foreign nationals, mandated to be translated into Vietnamese and notarized, can be lengthy. These challenges, in terms of heightened costs and administrative hurdles, could detract from Vietnam's appeal as an investment destination.

Currently, the Ministry of Labour, Invalids and Social Affairs (MOLISA) is drafting an amendment to the Law on Social Insurance (Draft Social Insurance Law). According to Article 3.1 of Resolution No. 89, the Draft Social Insurance Law will be submitted to the National Assembly for approval in May 2024. Regrettably, based on the latest version published on 28 July 2023, the Draft Social Insurance Law seems to retain the existing regulations on foreign employees' social insurance.

We recommend the Draft Social Insurance Law could provide for the following:

- Making contributions to the pension and survivorship regimes voluntary for foreign workers.
- Introducing a bilingual template for the lump-sum social insurance allowance application and facilitate online submission of the related application dossier.
- Providing solutions to the problem of double insurance in case foreign workers who come to Vietnam to work may have participated in social insurance in their host country and vice versa.

5. Draft Decree on guide to the 2019 Labour Code regarding employee's representative organisations at the grassroots level

For the first time, Vietnam has introduced the concept of "labour organisations at enterprises" (or new labour organisations) as defined under the Labour Code 2019, came into effect as of 1 January 2021. This is alongside the grassroots trade union (or "traditional union") part of the Vietnam General Confederation of Labour (VGCL) system. We appreciate this remarkable effort to align Vietnam's labour laws with global standards and uphold employees' right to "freedom of association". As assigned by the Prime Minister, since 2020 MOLISA has been drafting a decree to guide the Labour Code 2019 regarding employees' representative organisations at the grassroots level (Draft Decree). The Prime Minister recently issued an official letter urging MOLISA to expedite this and asked the Ministry of Justice to provide an update on the status of this document's issuance in August 2023. As of now, the Draft Decree has not been made available for public comments.

The fact that there are no new labour organisations to be established to date since lacking guiding document for the formulation of these organizations. Furthermore, financing for the "*new labor organizations*" is also ambiguous in the 2019 Labor Code. Article 174 regulates that their charter must include contents on "*membership fees, source of property and finance, and its usage and management of the organization*", and that "*the Government shall detail regulations of this Article*". As such, it is unclear on the level of discretion that a "*new labor organization*" would have in deciding its financing structure. According to the current Law on Trade Unions, the employer has to contribute monthly trade union fees equal to 2 per cent of the total payroll used for the calculation of social insurance to the upper-level trade union, even if there is no trade union within their organization. Furthermore, according to VGCL, an enterprise can only retain part of such an amount when there is a grassroots trade union within their organization. This does not align with the principles of employees' freedom to collect, manage and use their financing structure. In this light, it is important to ensure trade union laws indicate that the monthly employer-contributed trade union fees should go directly and entirely to the employees' representative organizations at a grassroots level, including both "*new labour*

organizations” and *“traditional unions”*, and the funds should not be shared with the upper-level traditional trade union.

We look forward to receiving clarification on this topic and as always we are happy to assist with our recommendations schedule

SPEECH OF INFRASTRUCTURE WORKING GROUP

ACCELERATING AND ADOPTING NEW POLICIES FOR THE DEVELOPMENT OF SUSTAINABLE INFRASTRUCTURE IN VIETNAM

The Vietnam Business Forum Infrastructure Working Group would like to thank the Government for the continued opportunity to contribute to this important policy forum and valued engagement with the private sector.

The Government's approval of the National Power Development Plan VIII on 15 May 2023 (PDP8) was widely welcomed by the international investor community. We are looking forward to the approval of the PDP8 Implementation Plan and new policies to on build up sustainable infrastructure and new supply chain industries towards Vietnam's net zero emission goal by 2050. The Infrastructure Working Group would respectfully like to recommend on key issues below.

1. Access to international finance to realize Vietnam's infrastructure potential and sustainable growth

Whilst significant wind and solar capacity has been developed in Vietnam over recent years this has largely been funded by a combination of local and regional banks or banks assessing corporate rather than project risk. Structures have also commonly relied on a form of credit risk mitigation, often a guarantee, from local banks or project sponsors.

Due to the persistence of bankability issues under the IPP framework non-recourse project finance, which confers a lower cost of capital and is available for a longer term than local financing, has not generally been available.

Critically for Vietnam reliance on credit risk mitigation support from local banks or project sponsors is not viable for large scale project development. In addition, the constrained liquidity, high interest rates, lack of long-term financing, and sector limits of the local bank sector will require an increased reliance on foreign debt to fund infrastructure development in the next decade.

The Government should work with leading private sector and multilateral finance institutions to unlock the project financing required for Vietnam's infrastructure projects in the period through to 2030.

Multilateral finance institutions should be engaged for the availability of guarantees to mitigate country risk and support large scale infrastructure, renewable energy and LNG project development.

2. Acceleration to approve the PDP8 Implementation Plan

The implementation plan for the first phase by 2030 should be adopted to implement PDP8 without further delay.

The implementation plan in this first phase should address realistic timeline for the implementation of transitional or delayed projects as well as projects under conversion of fuel source.

The implementation plan could not be realized without specific policies for each sector: offshore wind, LNG/gas to power, export of electricity and new energy production.

The concept of eco-system and regional hub on renewable energy production and services has been introduced, integrating equipment and machinery production, logistic and seaport, green

industrial park (and green city as well), etc. Government to government framework should be proposed to bring in capable development partners with strong international experience, expertise and finance.

3. Development of sector specific policies to enable long term and large scale investment

As Vietnam transitions away from traditional technologies it can be expected that new and emerging sectors have specific policy requirements. In order to maximize the allocation and flow of capital to these sectors we have recommended devising sector specific policies as required below.

- A Feed in Tariff for the offshore capacity approved for the period through to 2030. The increased offshore wind capacity proposed for 2030 for the PDP8 Implementation Plan is welcome and a FIT applicable to this capacity recommended. This will create price certainty and foster the investor confidence and commitment required to establish Vietnam's offshore wind market and related supply chains necessary.
- LNG to power projects be exempt from participating in the wholesale electricity market and be entitled to a fixed competitive tariff with two components (capacity charge and energy charge).
- Devising national marine spatial planning in conjunction with the development of regional power centers, LNG projects and the offshore wind sector to determine the optimal use and allocation of sea areas.
- Reviewing the basis on which sea area allocation decisions are allocated under Decree 11/2021/ND-CP in order that sea use levies are commensurate with the development and operational costs of offshore wind and gas to power projects.
- The development of additional cargo capacity in international transport hubs (air and sea) to support trade expansion and economic recovery.
- Development of a national agency and a national training program to support the development of both the LNG and offshore wind sectors with a view to Vietnam becoming a regional and world leader in the sector, exporting skills and clean energy globally.

4. Development of a new PPA templates for the LNG and offshore wind sectors with risk allocation provisions acceptable to international lenders

- Given that it is anticipated that new large scale power projects (LNG, offshore wind and other renewable sources) will be mainly developed on an IPP basis (not a PPP basis), the absence of international project financing poses a material funding and development risk for Vietnam in the near term. With approximately 8-9GW of new power generation capacity required annually through to 2030 and with a plan to facilitate a transition to renewables through the development of an LNG baseload a bankable framework for large scale LNG and wind power projects is essential.
- A review as to how Ruling 1604 applies to PPP projects and to some extent for IPP projects. This was as a bankable solution for BOT project development and the same clarification would be welcome to support the PPP Law.

- Key bankability issues to be addressed in revised PPAs include curtailment, deemed commissioning, agreed termination payment, differentiation between natural and government force majeure, change in law and tax protections, lender step in rights, dispute resolution and governing law.
- The PPA template applicable for LNG projects should contemplate arranging for fuel pass through and take or pay responsibility resulting from the fuel supply agreement.
- We have recommended two groups of issues to address a bankable PPA, comprising (A) legal issues: mortgageability of construction works with international lenders through onshore security agent; lack of a national sea area planning; lack of legal definitions and risk allocation regime under international project contracts and financing contracts (change in law, termination payment, natural and government force majeure, deemed commissioning, indemnities and liquidated damages); risk on convertibility of foreign currency; risk on offtake payment obligation; lenders' step in rights; and international arbitration and (B) technical issues: tariff formula based on capacity charge and energy charge; change in law affecting and reducing IRR and debt service payment; payment for early termination due to EVN default; take or pay obligation; curtailment risk; cost of grid connection; direct PPA and alternative offtake.
- As long as regulations and laws could not address all relevant issues, it should be permitted for the parties to negotiate contractual terms which are subject to approval by the relevant authorities. That is international best practice and how precedent projects have been successful in Vietnam.

ANNUAL VIETNAM BUSINESS FORUM 2024

ESG FINANCING

Presented by:
Dominic Scriven
Head of VBF Capital Markets Working Group

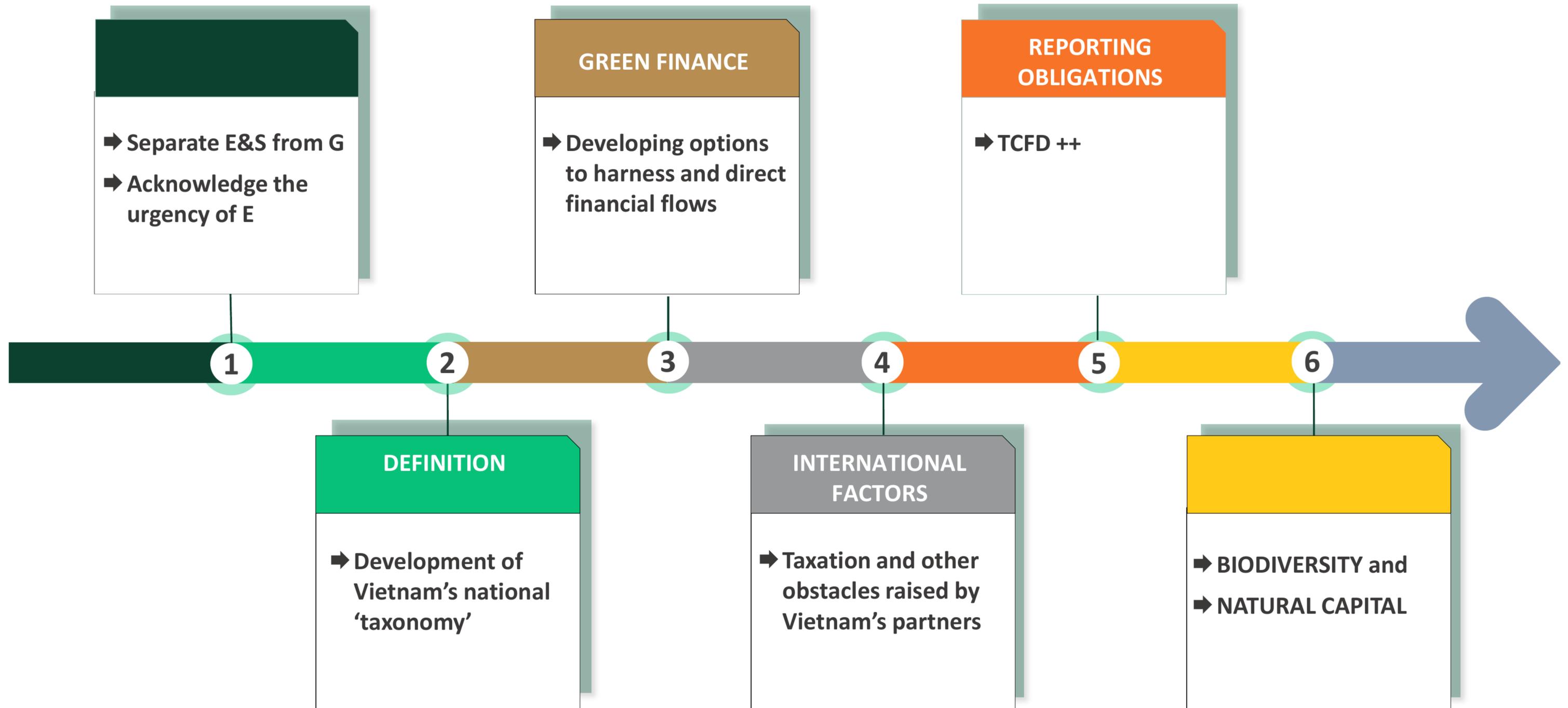
March 19, 2024

VBF VIETNAM
BUSINESS
FORUM



ESG FINANCING

COMBINED BRIEF COMMENTS FROM ENVIRONMENT, BANKING, CAPITAL MARKET WORKING GROUPS



KEY ISSUES OF THE STOCK MARKET

1. Institutional Investor (Funds and Fund Managers' issues)

- 1.1 Legal entity for an investment fund; tax treatment and corporate governance specially applicable to a securities investment company;
- 1.2 Diversification of investment objectives and types of investment funds;
- 1.3 Development of financial product distribution channels: Professionalising and tightening financial advisory services and distribution of investment products;
- 1.4 A pilot project to develop the bond market following the Japanese experience (pro-bond market) by issuing bonds only to professional and **institutional** investors, and bonds can only be transferred among these institutional investors;
- 1.5 Improvement of the legal framework for Exchanged Traded Funds by simplifying information disclosure for market-making activities;
- 1.6 NAV deviation: NAV may have insignificant deviations due to various reasons such as rounding. In case of a small deviation in NAV that does not affect investors' interests (e.g. less than 10 VND/fund certificate), the fund management company will only report to the regulator.

2. Market Upgrading

- 2.1 Removal of the prefunding requirement by amending relevant regulations and establishing a streamline operational mechanism for the market;
- 2.2 Establishment of CCP in accordance with **the international standard and practice**;
- 2.3 Issue of Non-Voting Depository Receipt (NVDR) as a solution to the foreign ownership limit;
- 2.4 Enhance corporate disclosure to ensure equal rights to access information for foreign investors.

3. Social Security (voluntary pension scheme)

- 3.1 Develop a comprehensive tax scheme, including tax incentives, for the pension for to promote and encourage individuals and companies to participate in the voluntary pension scheme;
- 3.2 Relax the investment restriction on the Government's bonds for the pension funds;
- 3.3 Create a policy to promote and encourage farmers, tradesmen, and self-employed people to participate in the voluntary pension scheme to reduce reliance on the Government's social security.

4. Foreign Investors

Amend the current regulations on foreign ownership limit (**FOL**) in public companies to address the negative FOL in those company. (*Negative FOL means that the FOL applicable in a company is lower than the current and existing FOL in that company*).

5. Fund supervisory services of Foreign Banks' Branches

Amend Clause 1, Article 116 of the Securities Law on the definition of Fund Supervisory Bank to be consistent with the provisions in the Law on Credit Institutions 2024 regarding other business activities of FBBs, which includes Fund supervisory services.

ISSUES OF CMWG CUSTODIAN BANK MEMBERS

I. NEWLY ARISING ISSUES

<i>No</i>	<i>Issues</i>	<i>Difficulties, barriers</i>	<i>Proposals</i>
1.	<p>Opening (01) indirect investment account for foreign investors - Money accounts for foreign institutional investors in the market have special/specific investment structures</p>	<p>According to the current regulations set out in Clause 2, Article 145 of Decree 155/2020/ND-CP dated 31/12/2020, foreign securities companies, foreign investment funds, and multi-investment-manager funds (MIMF), foreign government-owned investment institutions, or intergovernmental international institutional investors are entitled to register for more than 01 securities trading code (STC) and are allowed to open multiple depository accounts corresponding to such codes. This provision aims to support major foreign investors with special investment structures and significant capital to flexibly organize the management of their securities portfolios in Vietnam by separating securities depository accounts.</p> <p>However, according to Clause 1, Article 4 of Circular 05/2014/TT-NHNN, all foreign indirect investment activities in Vietnam (including transactions on Vietnamese securities market) are required to be conducted via an indirect investment account with a licensed bank. This provision is applicable to all foreign investors, including foreign investors in the securities market, causing difficulties for foreign investors in separating the management of funds in their different investment portfolios.</p> <p>In addition, according to the law on securities, foreign securities companies are required to register (02)</p>	<p>It is proposed that the State Bank of Vietnam allows foreign investors with the above-mentioned operating structure to open separate money accounts corresponding to securities trading codes (STC)/depository accounts corresponding to STCs at a sole depository bank for the purpose of foreign capital flow management.</p>

<i>No</i>	<i>Issues</i>	<i>Difficulties, barriers</i>	<i>Proposals</i>
		<p>transaction codes to separate securities for proprietary trading and for brokerage. However, they are only allowed to open one money account, thus it is impossible for them to separate the funds for proprietary trading and brokerage. According to international law, they are required to separate their own assets (proprietary trading) and their customers' assets (brokerage). In order to comply with Vietnamese laws and home country laws, they have to terminate their own investments in Vietnam which have limited the flows of foreign investments into Vietnam.</p> <p>According to Clause 1, Article 6 of Circular 05/2014/TT-NHNN, foreign investors must open (01) indirect investment account at (01) licensed bank, causing difficulties for foreign investors because, according to the law on securities, they must register multiple securities trading codes. Foreign securities companies have both securities for proprietary trading and brokerage to be invested in Vietnam on behalf of their customers.</p>	
2.	<p>There are currently no guidelines on money accounts for certain specific activities in the securities market</p>	<p>Articles 5 and 7 of Circular 05/2014/TT-NHNN specifically provide for a number of activities considered “foreign indirect investment in Vietnam” and sources of receipts/payments allowed to be made via the foreign indirect investment account.</p> <p>However, throughout the actual developments of the securities market, there have been cash flows from a number of specially structured transactions such as: options contracts, commercial agreements to ensure payment of subsidy/compensation if an investment in a</p>	<p>It is proposed that SBV consider developing general guidelines for these special transactions in the direction of allowing cash flow through the foreign indirect investment account or provide for the legal basis for SBV to flexibly consider and provide specific guidelines for each case in practice.</p>

<i>No</i>	<i>Issues</i>	<i>Difficulties, barriers</i>	<i>Proposals</i>
		<p>listed stock fails to reach the guaranteed profit, fines in case of violation of contractual commitments, etc. These agreements are concluded based on commercial agreements in compliance with the Civil Code and concluded by reputable law firms to ensure it does not violate the law.</p> <p>There are currently no specific provisions on recording the above flows of funds via foreign indirect investment accounts or any other types of accounts to support such transactions when they happen.</p>	

II. PENDING ISSUES SINCE ANNUAL FORUM, MARCH 2023

<i>No</i>	<i>Issues</i>	<i>Difficulties</i>	<i>Proposal</i>
1.	There is currently no legal basis for licensing Depository and Custodian Banks to provide custodian banking services for Unit-Linked Funds of insurance enterprises.	In practice, a number of depository and custodian banks have been providing custodian banking services for unit-linked funds of insurance enterprises for more than 10 years. However, legal normative documents fail to include specific provisions on licensing the operations.	It is recommended to amend Article 19a, Circular 28/2021/TT-NHNN: b) For custodian banking operations in compliance with the law on securities and related laws : commercial banks are granted with a Certificate for registration of securities depository activities by the State Securities Commission;
2.	It is necessary to clarify the interpretation about the licensing of investment fund management services and transfer agency	The provisions in Circular No. 40/2011/TT-NHNN dated 15/12/2011 and Circular 28/2021/TT-NHNN dated 31/12/2021 fail to specifically mention fund management and transfer agency services, thus we understand that these are ancillary services in Securities Depository activities (as defined in Clause 19, Article 2 of Circular	SBV is kindly requested to confirm our understanding.

<i>No</i>	<i>Issues</i>	<i>Difficulties</i>	<i>Proposal</i>
	services of Depository and Custodian Banks	98) and do not need to be separately licensed by SBV. However, this interpretation has not been officially confirmed.	
3.	There are no specific provisions on money accounts for securities transactions	<p>Currently, the opening of money accounts for foreign investors' investment activities in the securities market has to comply with the provisions in Circular 23/2014/TT-NHNN and Circular 16/2020/TT-NHNN, which include multiple provisions that are not suitable for the specific operations of foreign indirect investment accounts and foreign currency accounts for securities transactions.</p> <p>It is worth noting that the use of SWIFT messages and the Global Depository Bank model in opening and operating foreign investors' accounts have not been recognized in the Circulars.</p>	<p><i>Due to the extreme differences between the indirect investment accounts and other types of payment accounts, SBV needs to separate the provisions on opening foreign indirect investment accounts in a separate circular, in the direction of amending Circular 05/2014/TT-NHNN, with additional provisions on electronic opening of foreign indirect investment accounts using SWIFT messages, in line with international practices regarding foreign institutional investors' indirect investment operations and the use of SWIFT messages.</i></p> <p>It is proposed that SBV study and examine the actual activities of foreign investors in the securities market and work with the Ministry of Finance/State Securities Commission to develop appropriate regulations on this issue.</p>
4.	SBV requires documents issued by foreign regulators to be legalized in foreign investors' applications for opening of money accounts.	According to Clause 4, Article 12 of Circular 23/2014/TT-NHNN (amended and supplemented by Circular 16/2020/TT-NHNN): documents issued by foreign competent authorities must be legalized in line with the provisions of the law on consular legalization. This is seen as a step backward from previous improvements in SBV's regulations on applications for payment account opening and is also not in line with the provisions of securities law to simplify account opening	<p>According to Section 4, Article 9, Decree No. 111/2011/ND-CP, papers and documents are exempt from consular certification and consular legalization in the following cases: "The agency receiving the papers and documents does not require consular legalization in compliance with Vietnamese law"</p> <p>Accordingly, foreign investors are not required to provide consularly legalized documents when</p>

<i>No</i>	<i>Issues</i>	<i>Difficulties</i>	<i>Proposal</i>
		documents and procedures for foreign investors. Due to geographical distance and the cost of finalizing the documents, foreign investors must currently delay their entire securities account opening process for about 3 months (or even longer) until the legalization of documents for the money account opening is completed and sent back to Vietnam.	registering for a securities trading code at VSDC in compliance with the provisions of Decree 155/2020/ND-CP of the Government. Therefore, it is recommended that SBV study and propose the application in line with the provisions on securities.
5.	<p>Using SWIFT messages in banking operations between credit institutions and foreign investors</p> <p><i>(SBV relevant Departments: Payment Department, Monetary Policy Department, IT Department, and others (if any))</i></p>	<p>In market practices, most foreign institutional investors use SWIFT messages to send instructions or confirm their transactions in indirect investment activities, including foreign exchange transactions with credit institutions, and have developed uniform systems and processes for their global operations to automate their transactions.</p> <p>The fact that the law on electronic transactions does not yet recognize SWIFT confirmation will hinder foreign investors' participation in the foreign exchange market as well as investment in Vietnamese securities market.</p>	The Law on Electronic Transactions No. 20/2023/QH15 has currently included many changes but it is still unclear about SWIFT confirmation. Therefore, VBF Capital Market Working Group propose further discussion with SBV about the interpretation of the Law on Electronic Transactions 2023 and SBV's orientation in amending the relevant provisions on this issue.

APPENDIX

POSITION PAPER OF AUSTRALIAN CHAMBER OF COMMERCE IN VIETNAM

The Year 2023 was another difficult year for Foreign investors in Vietnam, including Australian businesses, and as expected, in 2023 changing market requirements forced the business sector to be more innovative, adaptable and to identify opportunities to build sustainable industry with emphasis on environmental responsibility and management.

High inflation in export markets, including in USA and Europe, reduced the demand for product from Vietnam in 2023. However, depending on the management of ongoing world conflict, it is expected that the global economy will recover, increasing demand, which will again create opportunities for companies based in Vietnam.

In 2023, there was a focus on sustainability, and environment & social responsibility through ESG and Green development programs.

Businesses in 2023 were recovering from the effects of the pandemic, disrupted supply chains and increased logistics costs, which all added to the cost of production.

One of Vietnam's development orientations for 2021-2030 is to develop digital transformation in all business sectors.

Notably, 2023 witnessed an unprecedented acceleration in digital transformation across all business sectors. This shift was not just about adopting new technologies; it was about fundamentally rethinking how businesses operate in a digital-first world. Companies that once viewed digital tools as a supplement to their operations now recognize them as essential to survival and growth.

Digital transformation quickly became a core component of business strategy, driving innovation, efficiency, and competitive advantage. As we look ahead through 2024 and beyond, it's clear that this trend will continue to evolve and shape the business landscape into the future.

Vietnam has been promoting digital transformation in many fields, and companies, including those from Australia, have continued applying technology and digital transformation through programs with the expectation of creating a turning point in manufacturing, production and service provision.

The Australian Government has invested \$95 million in Vietnam for Green initiatives and digital transformations demonstrating the continuing partnership development between the two countries.

Austrade has established an investment hub into Vietnam which again shows the importance of the Vietnam market to Australia. And In a partnership between AusCham and the Australian Department of Foreign Affairs and Trade (DFAT), the Australian Industry Hub Vietnam (AusHub) was formed to create new bilateral trade and investment opportunities in line with the Australia-Vietnam Enhanced Economic Engagement Strategy (EEES). Initially supporting 3 Australian industries (Sumer Fruits, Wine Australia and Wool Producers Australia) with market development for the first two years, AusHub will transition into a Services Hub for any Australian or Vietnamese business seeking market entry, development, or diversification bilaterally.

The two countries agreed on, and released a plan to implement the EEES with specific measures until 2025. The Strategy sets out a vision for how Australia and Vietnam can work together with

the aim of becoming top ten trading partners and doubling two-way investment. Notably, the goal of the EEES for Australia and Vietnam to be to top 10 trading partners was reached last year and is continuing to grow.

In 2023, the international business world witnessed a monumental shift towards personalization and an enhanced focus on customer experience with customers demanding bespoke products and services.

This trend signifies a departure from the one-size-fits-all approach, moving towards a more tailored and interactive engagement with consumers. This trend is supported by data analytics, AI, and machine learning, enabling businesses to understand and predict customer preferences with greater accuracy.

The trend of personalization and customer experience in 2023 is a clear indicator that businesses that listen to and understand their customers are the ones that will thrive. Looking forward, this trend is expected to evolve further, with technology playing an even greater role in delivering personalized experiences at scale.

It is certain that, from 2024, businesses in Vietnam will need to research and harness these technologies to help business increase competitiveness in the future.

The gig economy is a recent trend, with a number of factors contributing to its rise.

The two most important factors are the following:

1. The workforce has become more mobile.
2. Work is increasingly done remotely via digital platforms.

The gig economy transformed the workforce landscape in 2023. For businesses, the gig economy provides access to a diverse talent pool and the ability to scale up or down quickly based on demand. The impact of the gig economy on businesses in 2023 was profound and will become more important as we move through 2024. Companies are embracing this model to reduce fixed labor costs and increase agility.

The gig economy in 2023 not just changed how people work; it reshaped the entire business landscape. As we look to the future, this trend is likely to continue evolving, with implications for workforce management, business models, and economic policies.

Consequently, it is evident that 2023 was a landmark period in the evolution of business. The trends of - digital transformation, sustainability, ESG, personalization, and the gig economy - are not just passing phenomena; they are indicative of deeper shifts in the business world.

In 2024, foreign businesses supported by government, must consider how prepared we are to handle change and growth.

Auscham is very pleased to see improvements in streamlining administrative procedures and more flexibility in language requirements for documents leading to more efficiency in satisfying government requirements for investment. This includes simplification and streamlining of the procedures for obtaining and renewing business licenses, permits and certificates, especially for foreign investors and small and medium enterprises.

We look forward to enhancement of transparency and predictability of the legal and regulatory framework, by providing clear and consistent guidelines, conducting public consultations and impact assessments, and reducing administrative discretion – this is a positive development.

Promotion of fair and open competition in the domestic market, by removing barriers to entry, enforcing anti-monopoly and anti-dumping laws, and ensuring a level playing field for all businesses goes a long way to encouraging foreign players and is welcomed.

Strengthening the protection and enforcement of intellectual property rights and protection of personal data, by ratifying and implementing the relevant international conventions, improving the capacity and coordination of authorities, and raising public awareness and education adds to ease of doing business and provides a level of comfort for international business.

Facilitation of the development of the digital economy by investing in broadband infrastructure, fostering innovation and entrepreneurship, supporting e-commerce and e-government initiatives, and enhancing cyber security and data privacy is welcomed and encouraged by all foreign investors.

Improvement in the quality and efficiency of public services, by reducing bureaucracy and corruption, increasing accountability and oversight, enhancing public-private dialogue and cooperation, and adopting international best practices and standards is seen to be necessary and welcomed by investors leading to investor business confidence.

As we look back on 2023, it's clear that it has been a kaleidoscope of change and innovation in the business world. In an era where the only constant is change, 2023 stood out as a year that not only embraced this reality but also thrived on it.

The business trends of 2023 were shaped by a combination of factors: the lingering effects of the pandemic, the digital evolution, escalating global conflict, and a renewed emphasis on sustainability and environmental and social responsibility. These trends offer a revealing glimpse into the future of business and set the stage for what we can expect in the years ahead.

In conclusion, 2023 has been a year of challenges and opportunities. One thing is certain: the business landscape in Vietnam is evolving in exciting ways, and the future is full of possibilities for those foreign investors working with the Vietnamese government, who are willing to embrace it.

POSITION PAPER OF THE BANKING WORKING GROUP
SUMMARY OF TECHNICAL ISSUES

GROUP A	Issues under the authority of the State Bank of Vietnam (SBV): Monitored/handled in 2022, continued to coordinate in addressing in 2023 and new issues in 2023	(16 issues)
A.1.	Issues the SBV had addressed in 2022 and continued to be monitored/handled in 2023	(04 old issues)
A.2.	New issues in 2023	(11 new issues)
A.3.	Issues requiring cooperation between two parties: Issues acknowledged by the SBV, to be further studied upon amendments to SBV's Circulars and Decrees	(01 issue)
GROUP B	Issues requiring coordination from the SBV, and relating to the authority and responsibilities of other ministries and agencies	(12 issues)
B.1.	Issues addressed in 2022 and continued to be monitored/handled in 2023	(07 old issues)
B.2.	New issues in 2023	(05 new issues)
GROUP C	Issues completely resolved in 2023	(15 issues)
C.1.	Issues addressed in 2022 and continued to be monitored/handled in 2023	(09 old issues)
C.2.	New issues in 2023	(06 new issues)

NO	ISSUE	PROGRESS & CONTENT	CONCLUSION
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GROUP A: ISSUES UNDER THE AUTHORITY OF THE SBV: MONITORED/HANDLED IN 2022, CONTINUED TO COORDINATE IN ADDRESSING IN 2023 AND NEW ISSUES IN 2023 (16 ISSUES)

A.1. ISSUES THE SBV HAD ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (04 OLD ISSUES)			
1.	Document retention requirements for accounting documents in the banking sector, as stipulated in Decision	Based on a review of the regulations on the storage of records and accounting documents in the banking sector, we found that in addition to Decision 1913/2005/QD-NHNN stipulating the storage period for accounting vouchers in accordance with the Accounting Law 2015, Decree 174/2016/ND-CP guiding the Accounting Law, the provisions in Decision 376/2003/QD-NHNN dated April 22, 2003 on the preservation and storage of electronic vouchers used for accounting and capital payment of payment service providers and Article 13.1.b of <i>Decision No. 1789/2005/QD-NHNN dated December 12, 2005, on the issuance of the regime on banking accounting vouchers</i> are no longer in line with the current regulations on voucher storage and the actual operation of credit institutions. Specifically, as follows:	BWG continues to coordinate and work with the SBV (Financial Accounting Department) and the Ministry of Finance on this issue.

A.1. ISSUES THE SBV HAD ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (04 OLD ISSUES)			
	<p>1913/2002/QD-NHNN, Decision 376/2003/QD-NHNN Clause 13. 1(b) of Decision 1789/2005/QD-NHNN.</p>	<p>1. Decision 376/2003/QD-NHNN:</p> <ul style="list-style-type: none"> Article 1: There is currently no specific guidance on determining the activities of accounting and capital payment as well as electronic vouchers used for accounting and capital payment. Article 9: The storage period (20 years) is not consistent with the regulations in Decree 174/2016/ND-CP (Articles 10, 12 to 15) <p>Recommendations:</p> <ul style="list-style-type: none"> We respectfully request that the SBV consider amending Decision 376 because this decision was issued a long time ago (in 2003) and is no longer suitable for the current operating practices of credit institutions, especially in the field of electronic vouchers, or issue specific instructions on the storage period for electronic vouchers in accordance with the current Accounting Law. In the absence of guidance, banks would like to implement the following: "electronic vouchers used for accounting and capital payment" are understood to be electronic vouchers used for accounting and payment of money transfers; the applicable storage period is 10 years to ensure consistency in the storage of paper and electronic vouchers in payment activities, as well as to avoid differences in storage time between electronic vouchers (20 years) and paper vouchers (10 years) of the same money transfer transaction. <p>2. Clause 1(b) of Article 13 of Decision 1789/2005/QD-NHNN</p> <p>The regulations on the storage and package of accounting vouchers stipulated in Article 13.1.b of Decision 1789 are no longer relevant.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> We respectfully request that the SBV consider repealing Article 13.1.b of Decision 1789 or allow commercial banks to be autonomous in managing, packaging, and storing vouchers in accordance with the scale and operating model of each bank, on condition that the banks ensure that vouchers can be fully and completely retrieved within the minimum storage period prescribed by law. 	
<p>2.</p>	<p>UPAS L/C Official OL 6090/NHNN-TD</p>	<p>A - Regarding Official letter (“OL”) 6090/NHNN-TD</p>	<p>BWG continues to coordinate and work with SBV's Department of</p>

A.1. ISSUES THE SBV HAD ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (04 OLD ISSUES)		
<p>Circular 08/2023/TT-NHNN and Circular 12/2022/TT-NHNN</p>	<p>In response to the SBV's request in OL 6090/NHNN-TD ("OL 6090"), BWG has sent OL No. 260922BWGVBF to the SBV, proposing the nature and accounting treatment of UPAS L/C transactions.</p> <p>Based on the analysis above and in accordance with International Practices, we propose not to consider the relationship between the Issuing Bank and the customer as a lending relationship. Instead, BWG proposes the following:</p> <p>At the time the Advising Bank pays the beneficiary:</p> <p>Proposal 1:</p> <ul style="list-style-type: none"> The nature of the relationship between the Issuing Bank and the customer (applicant for the UPAS L/C) is considered to be another form of credit relationship (Account 275 - Other Credit Granted) and the nature of the relationship between the Issuing Bank and the Reimbursing Bank is also considered to be another form of credit relationship (Account 4199 - Other Credit Received). <p>Proposal 2:</p> <ul style="list-style-type: none"> The nature of the relationship between the Issuing Bank and the customer (applicant for the UPAS L/C) is a payment intermediary service (Account 3591 - Receivables classified as credit risk assets), and the nature of the relationship between the Issuing Bank and the Reimbursing Bank will also be considered a payment intermediary relationship (Account 4599 - Other Payables). <p>At the L/C maturity date:</p> <p>If the Customer is unable to make payment, the Issuing Bank will, on the one hand, fulfil its obligation to pay the Advising Bank as promised, and on the other hand, have the right to require the customer to accept a mandatory receivable for the amount that the Issuing Bank has paid to the Advising Bank for the purpose of managing, monitoring, and recovering debt. The Customer is obligated to fully repay the amount that the Issuing Bank has paid to the Advising Bank and the amount of interest and fees according to the agreement between the Issuing Bank and the Customer.</p> <p>2. Issuing full and clear guidance on UPAS L/C transactions</p> <p>BWG will comply with all SBV's guidance on whichever option is chosen. However, when the SBV issues guidance on UPAS L/C transactions, we strongly encourage the SBV to address all</p>	<p>Foreign Exchange Management and Department of Credit to Economic Sectors in the drafting process of the Circular guiding credit activities, including specific guidance on UPAS L/C transactions, and related instructions.</p>

A.1. ISSUES THE SBV HAD ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (04 OLD ISSUES)			
		<p>the following aspects of UPAS L/C transactions to enable banks to implement them comprehensively, accurately, and clearly:</p> <ul style="list-style-type: none"> Clearly define the nature of UPAS L/C transactions, including UPAS for import L/C and domestic L/C. Review the complications related to foreign currency borrowing and amend relevant regulations if necessary. Regulations on credit growth and specific calculation methods if UPAS L/C is included. Regulations on mandatory lending when the Customer fails to repay the L/C at maturity. Define loan classification and bad debt provisioning when a UPAS L/C becomes overdue. <p>Provide detailed accounting recording/ treatment regulations for each stage:</p> <ul style="list-style-type: none"> When making payment to the beneficiary under UPAS L/C: accounting between the Issuing Bank and the customer; the Issuing Bank and the Reimbursing Bank; the Reimbursing Bank and the Issuing Bank. At the L/C maturity date: accounting for when the Customer settles the L/C and when the Customer fails to settle the L/C payment. Recording of related income and expenses. Accounting entry when the Customer completes the UPAS L/C obligation. <p>B - Regarding Circular No. 08/2023/TT-NHNN and No. 12/2022/TT-NHNN</p> <p>Recommendation:</p> <p>BWG recommends that the SBV consider the difficulties in applying Circular No. 08 and the foreign loan registration procedures under Circular No. 12/2022 for UPAS L/C issuance, and promptly issue separate guidance regulations specifically for UPAS L/C transactions.</p>	
3.	Draft Decree on Fintech Regulatory Sandbox in Banking Sector	<p>BWG has contributed comments/feedback and organized technical meetings to exchange views on the Draft Decree. Recently, the National Assembly passed the Law on Credit Institutions (amended); in which: regulations on controlled experimentation/sandbox mechanisms in the banking sector are stipulated in Article 106.</p>	<p>BWG continues to coordinate with the SBV on this issue.</p>

A.2. NEW ISSUES IN 2023 (11 NEW ISSUES)			
4.	Circular 06/2023/TT-NHNN, amending and supplementing a number of Articles of Circular No. 39/2016/TT-NHNN regulating the lending operations of the credit institutions and the foreign bank branches	<p>In the period of 2021 - 2022, BWG provided feedback for Circular 39 and Draft Circular 06. After Circular 06 was issued, BWG participated in a training session on Circular 06 organized by the SBV and presented and essentially discussed some key issues.</p> <p>BWG respectfully requests further guidance from the SBV regarding Article 1.2 of Circular 06 amending and supplementing Article 8.6 of Circular 39:</p> <p>According to the provision in Article 8.6, the condition for lending to repay debts ahead of schedule is "loans not yet restructured in terms of repayment period". In practice, the restructuring of loans according to Circular 01/2020/TT-NHNN (and subsequent amendments and supplements) and Circular 02/2023/TT-NHNN is not reflected in the Credit Information Center (CIC). Therefore, credit institutions (CIs) are unable to assess loans against this criterion. CIs can only request customers to provide confirmation from the credit institution with which the customer has the existing loan or rely on self-declaration and customer responsibility. Requesting customers to obtain confirmation from the CI with which they have an existing loan may not be feasible if the other credit institution does not provide it. Therefore, we requested that SBV consider whether CIs can rely on customer confirmation for acceptance or not?</p> <p>Are loans not yet restructured in terms of repayment period excluding loans that have been previously restructured according to Circular 01/2020 and amendments and supplements Circular 03/2021 and Circular 14/2021; and Circular 02/2023 or not?</p>	<p>BWG continues to coordinate with the Department of Monetary Policy in the process of drafting the Circular amending and supplementing Circular 06 and guiding documents.</p>
5.	Payment transactions via e-commerce platforms	<p>BWG is currently researching proposals regarding the Legal Framework and the role of the banking sector concerning electronic commerce payment transactions and will soon finalize them for further discussion and collaboration with the SBV. Regarding the legal framework, Decision 1813/QĐ-TTg dated October 28, 2021, approving the project "Development of non-cash payments in Vietnam for the period 2021-2025," has set out specific objectives, tasks, and solutions to promote electronic commerce payments.</p>	<p>BWG continues to coordinate with the SBV on this issue.</p>
6.	Risk participation product	<p>BWG is currently working on our proposal regarding Risk Participation and will soon finalize them for further discussion and coordination with the SBV.</p>	<p>BWG continues to coordinate with the SBV on this issue.</p>
7.	Proposal on consumer lending processes and procedures	<p>In response to the recent directives from the Government (Official Dispatch 1177/CĐ-TTg dated November 23, 2023) and the SBV (Official Letter 9668/NHNN-CSTT dated December 19, 2023) on promoting lending for living expenses and consumption as a driver of growth for the</p>	<p>BWG continues to coordinate with the SBV on this issue.</p>

A.2. NEW ISSUES IN 2023 (11 NEW ISSUES)		
	(Articles 3, 7, 17 Circular 39/2016/TT-NHNN)	<p>Vietnamese economy, through this letter, BWG would like to contribute opinions and consult with the SBV on the procedures and processes for consumer lending as follows:</p> <p>The application of procedures for assessing the financial status and financial obligations of individual borrowers as the basis for lending decisions will contribute to simplifying procedures for customers – which is allowed by the current framework & regulations, while still ensuring the bank's control over associated risks. Therefore, based on the legal provisions allowing credit institutions the autonomy in lending activities and taking responsibility for their lending decisions, BWG wishes to continue applying consumer lending procedures as currently implemented in banks to further promote consumer lending activities in Vietnam towards simplifying procedures while still ensuring credit risk control.</p>
8.	Anti-money laundering issues: Electronic money transfer reports	<p>Based on international best practices, relevant international regulations such as FATF Recommendation 16, and provisions of the A Bank Secrecy Act (BSA) rule [31 CFR 103.33(g)] - commonly referred to as the "Travel rule," we understand that regulatory authorities may issue requirements to suit the situation and risk factors of each country. However, we also want to share some opinions for your consideration regarding the risks of money laundering, terrorist financing, as well as societal resources in anti-money laundering/counter-terrorism financing (AML/CTF) work.</p> <p>We propose to consider excluding some types of transactions that do not require reporting in the electronic funds transfer report because they do not pose AML risks for these 9 types of transactions as follows:</p> <ol style="list-style-type: none"> 1. <i>Cancelled transactions on credit cards.</i> 2. <i>Customer transactions paying service fees/late payment fees/penalties to the Bank or the Bank rewarding customers when achieving spending goals and transactions paying interest/late payment penalties/tax payments to the regulatory authority.</i> 3. <i>Term deposit transactions.</i> 4. <i>Loan transactions.</i> 5. <i>Commercial lending products/payment guarantees for customers.</i> 6. <i>Automatic money transfers within centralized account management products.</i> 7. <i>Bank fee payment transactions.</i>
		<p>BWG received response from the SBV through technical meetings and will continue to coordinate and handle appropriate implementation.</p>

A.2. NEW ISSUES IN 2023 (11 NEW ISSUES)			
		<p>8. Transactions where customers deposit money with the bank as collateral.</p> <p>9. International money transfer transactions from abroad to Vietnam but the sending bank may be domestic banks acting as intermediary banks.</p>	
9.	Decision 2345/QD-NHNN amending and supplementing Decision 630/QD-NHNN 2017 on Plan to apply security and safety solutions in online payments and bank card payments	<p>BWG has submitted contributions related to the Draft Amendment to Decision 630/QD-NHNN dated 2017 and proposed to continue working through technical meetings with the SBV (IT Department) and the Ministry of Public Security to implement Decision 2345/QD-NHNN regarding the Plan for Applying Security Solutions in Online Payments and Bank Card Payments.</p> <p>The recommendations are related to:</p> <ol style="list-style-type: none"> 1. Minimum authentication measures for individual customers: Implementing biometric authentication from the population database. 2. Implementing biometric authentication from the population database for transaction types C and D for individual customers. 3. Regulation on "Biometric database about customers collected and verified by the unit." 4. Transaction classification. 5. Online authentication solutions. 6. Risk reduction solutions. 7. Effective date. 	<p>BWG continues to work through technical meetings with the SBV (IT Department, Payment Department & respective departments) and the Ministry of Public Security in implementing Decision 2345/QD-NHNN</p>
10.	Circular 17/2022/TT-NHNN implementing environmental risk management in credit granting activities of credit institutions and foreign bank branches	<p>BWG sent Official letter 30052023BWGVBF dated May 30, 2023, providing feedback on Circular 17/2022/TT-NHNN on environmental risk management in lending activities of credit institutions and foreign bank branches.</p> <p>BWG's proposals and concerns relate to:</p> <ol style="list-style-type: none"> 1. Environmental risk assessment. 2. Confirmation of investment projects listed in Appendices III, IV, V issued with Decree No. 08/2022/NĐ-CP; and determination of "investment projects" according to Circular 17 and Decree 08. 3. Contract for environmental risk assessment services with banks that have conducted assessments. 	<p>BWG continues to coordinate with SBV for appropriate implementation.</p>

A.2. NEW ISSUES IN 2023 (11 NEW ISSUES)			
		4. Non-recourse principle.	
11.	Rounding rules for maximum exchange rate limits	<p>During the process of determining the maximum exchange rate limit allowed for spot transactions between VND and USD, some credit institutions are applying different rounding principles regarding cases where additional decimal places arise after adding the trading band according to the SBV Governor's regulations to the official exchange rate published by the SBV as follows:</p> <ol style="list-style-type: none"> 1. Decimal places generated when calculating the maximum exchange rate limit applied for rounding are rounded to only two decimal places. For example, if after adding the trading band, the maximum exchange rate limit is 13,902.3456 VND/USD, only 13,902.34 VND/USD is rounded. 2. If the decimal place, rounded to two decimal places, is equal to or greater than 50, an additional unit may be added to the unit's digit. For example, if the maximum exchange rate limit after adding the trading band allows for 13,900.51 VND/USD, it may be rounded to 13,901 VND/USD. 3. If the decimal place, rounded to two decimal places, is less than 50, an additional unit may not be added to the units digit, and the integer part (excluding the decimal part) is taken as the maximum exchange rate limit. For example, if the maximum exchange rate limit after adding the trading band allows for 13,900.49 VND/USD, then the maximum exchange rate limit is 13,900 VND/USD. <p>We request the SBV to confirm that the principles currently being applied by credit institutions are appropriate and provide further implementation guidance.</p>	BWG continues to collaborate and work with the SBV (at technical level) to ensure appropriate implementation.
12.	Supporting document matrix for international payment by individual clients	<p>BWG has been actively participating in providing comments on draft of the supporting document matrix for international payment by individual clients. This project is coordinated by the VNBA, in collaboration with BWG, the Foreign Exchange Management Department, and some member banks to research and develop.</p> <p>Additionally, BWG has shared some international practices of foreign banks in Vietnam permitted to and engaging in international money transfers for individual customers, including some of the following points:</p> <ul style="list-style-type: none"> • Parties involved in the money transfer, beneficiaries, sources of foreign funds... • Requirements for documents and paperwork requested from customers for various purposes of money transfer. 	BWG continues to coordinate with VNBA and the Department of Foreign Exchange Management in developing the Supporting document matrix.

A.2. NEW ISSUES IN 2023 (11 NEW ISSUES)			
		<ul style="list-style-type: none"> Regulations regarding electronic money transfers... 	
13.	<p>Draft Circular amending and supplementing Circular 21/2013/TT-NHNN on operational networks of commercial banks</p>	<p>Regarding feedback for the draft Circular replacing Circular No. 21/2023/TT-NHNN regarding the operational network of commercial banks, BWG has comments regarding the provisions in Article 14.1.d of the draft Circular as follows:</p> <p>We understand that the new provision regarding non-concurrent roles aims to limit the situation of concurrent titles at branches and transaction offices, which can affect the branch and transaction office management efficiency. However, we believe that banks may have other measures to ensure effective management, such as not delegating credit approval authority to branch and transaction office management titles and centralizing credit approval at the head office. Therefore, we respectfully propose not to prohibit concurrent roles as stipulated in Point d, Article 14.1 of the draft, and banks will implement appropriate measures to manage branches and transaction offices effectively.</p> <p>Recommendations: To revise Article 14.1.d of the draft as follows:</p> <p>“Branches and transaction offices must have a full staff of non-concurrent executives including Branch Director, Deputy Director, Transaction Office Director, or equivalent titles, and operational staff. Commercial banks must take measures to ensure effective branch and transaction office management;”</p> <p>In case the Drafting Committee continues to regulate as planned, the bank proposes to amend this content as follows: "d) Branches and transaction offices must have a full staff of non-concurrent executives including Branch Director, Deputy Director, Transaction Office Director, or equivalent titles, and operational staff, <u>except in cases where the Deputy Branch Director concurrently serves as the Transaction Office Director.</u>"</p> <p>Reasons: In practice, branches have enough leadership staff (Director, Deputy Director) to direct and manage business activities as required. However, to improve effective coordination between the transaction office and functional departments within the branch to enhance operational quality and reduce customer service time, banks may appoint additional Deputy Branch Directors and assign them the concurrent role of Transaction Office Director. These Deputy Branch Directors will be responsible for managing the transaction office, ensuring no overlap or conflict of interest.</p>	<p>BWG continues to coordinate with the BSA (SBV) in the process of developing the Draft Circular amending and supplementing Circular 21/2013/TT-NHNN</p>

A.3. ISSUES REQUIRING COOPERATION BETWEEN TWO SIDES: ISSUES ACKNOWLEDGED BY THE SBV, TO BE FURTHER STUDIED UPON AMENDMENTS TO SBV'S CIRCULARS AND DECREES (01 ISSUE)

14.	Developing legal framework for cash pooling product	<p>BWG proposed the development of a legal framework and allowing the form of converting tangible assets into Vietnamese currency, both internally and for domestic transactions.</p> <p>Since BWG made this proposal (in October 2017), BWG and the SBV have organized numerous meetings, workshops from 2018 to 2020, and continued to work through correspondence, meetings from 2021 to 2023 to exchange views and listen to BWG's proposals. The SBV also acknowledges that the current legal framework does not prohibit this product, however, in line with development trends, banks propose and greatly need support from the SBV and the Government to develop legal regulations related to supporting enterprises specifically as well as the overall economy.</p> <p>In 2023:</p> <p>When participating in the drafting session of the Draft Law on Credit Institutions with the Economic Committee - National Assembly and the SBV, at the meeting on October 19, 2023, BWG proposed that the Drafting Committee reconsider the definition of "banking activities" in Article 4 and Article 8.2 of the Draft Law on Credit Institutions to address difficulties and obstacles in implementing Cash Pooling and Entrusted Loan. The Deputy Governor in charge expressed the view that banks are providing payment services to customers and do not see any obstacles, so there is no need to amend Article 8.2.</p> <p>Following the Deputy Governor's opinion, BWG will continue to work with the SBV (Payment Department and other relevant units - if necessary) on this issue.</p>	BWG continues to coordinate and work with the SBV on this issue.
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GROUP B: ISSUES REQUIRING COORDINATION FROM SBV, AND RELATING TO THE AUTHORITY AND RESPONSIBILITIES OF OTHER MINISTRIES AND AGENCIES (12 ISSUES)

B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)

15.	Retrospective collection of VAT on Letter of Credit (L/C) fees <i>SBV (Department of Credit for</i>	<p>During the period from 2020 to 2023, BWG collaborated with the VNBA to propose not to apply the value-added tax (VAT) retrospective collection for credit-related Letter of Credit (L/C) fees.</p> <p><u>In 2020</u></p> <ul style="list-style-type: none"> - BWG sent a letter to the Prime Minister, and the Prime Minister's Office responded with Official Letter No. 755/VPCP-KTTH and assigned the SBV to work with the Ministry of Finance (MoF). The SBV then sent Letter No. 5496/NHNN-TD dated July 30, 2020, to the MoF. - BWG has been and is cooperating with the SBV, VNBA on this issue. 	BWG continues to collaborate with SBV (Department of Credit for Economic Sectors) and maintains ongoing discussions with the Ministry of Finance,
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B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)		
<p><i>Economic Sectors);</i> <i>Ministry of Finance (General Department of Taxation);</i> <i>Ministry of Justice;</i> <i>State Audit;</i> <i>Government Office</i></p>	<p><u>In 2021:</u> BWG had several exchanges with the SBV through:</p> <ul style="list-style-type: none"> - Informal exchanges with the SBV, providing documents, international practices and experiences, etc. - Each BWG member bank formally responded to the SBV's Official Letter No. 1116 requesting banks to report on L/C activities. - The SBV issued Official Letter No. 2032/NHNN-TD sent to the MoF stating the SBV's viewpoint that "L/C is a both payment and credit activity" citing international practices and continuing to affirm the proposal not to apply VAT recovery. - BWG participated in sharing opinions at the workshop jointly organized by the VNBA, VCCI with the participation of the SBV, MoF on May 11, 2021, regarding practical difficulties in applying VAT retrospective collection for credit-natured L/C fees. - The SBV sent Dispatch No. 7390/NHNN-TD dated October 18, 2021, to the MoF clarifying the classification of fees collected from L/C services, the legal basis for such classification; providing data on L/C fees collected from customers by credit institutions during the period from 2011 to 2020 and affirming the viewpoint that VAT retrospective collection over the past 10 years is not appropriate. <p><u>In 2022:</u> On October 12, 2022, BWG sent Official Letter No. 12102022BWGVBF to the Prime Minister & the Government Office and the SBV:</p> <p>"Until now, the Ministry of Finance has not yet issued a document guiding the application of VAT fee collection to the letter of credit product.</p> <p>In addition, in many tax audits/inspections at many domestic and foreign-invested banks and credit institutions, the inspection teams of the General Department of Taxation and the Tax Departments of provinces and cities are still applying tax treatment/collection in the spirit of Official Letter 1606/TCT-DNL.</p> <p>Accordingly, VAT fee for the letter of credit service is retrospectively collected, and subject to administrative violations and charged deferred payment fees from 2018 to present or recorded in the inspection minutes to wait for specific instructions from the Ministry of Finance and the General Department of Taxation. This causes many difficulties and impacts on the business activities of banks and credit institutions.</p>	<p>General Department of Taxation, Ministry of Justice, State Audit, and the Government Office regarding this issue.</p>

B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)			
		<p>BWG hoped to receive the support and thorough consideration of the Prime Minister and the relevant Ministries in issuing detailed guidelines as soon as possible for the application of VAT on letter of credit services on the basis of no retroactive, no tax retroactive, no re-adjustment, VAT calculation is applied only from the date the Ministry of Finance (General Department of Taxation) has official documents guiding so that banks can be assured of doing better business to contribute to the development of an increasingly prosperous and sustainable Vietnamese economy.”</p> <p><u>In 2023 & 2024:</u></p> <p>Regarding OL No. 324/TB-VPCP of the Government Office announcing the conclusion of Deputy Prime Minister Le Minh Khai at the meeting on VAT for LC activities, which tasks the Ministry of Finance with enforcing the provisions of the VAT Law, the Law on CIs 2010, and related laws in implementing VAT on LC activities; reviewing and handling administrative violations of VAT and penalties for late VAT payment related to LC activities... Based on this, on January 12, 2024, the Ministry of Finance (MoF) issued Dispatch No. 553/BTC-TCT to the Prime Minister and Deputy Prime Minister Le Minh Khai, proposing: “<i>Taxpayers who declare and pay VAT on LC transactions not in accordance with the provisions of the VAT Law, Law on CIs 2010, shall be responsible for paying the full amount of tax payable, late payment penalties, and shall be subject to administrative penalties for tax violations as prescribed by tax management laws</i>”;</p>	
16.	<p>Transaction control issues related to unlicensed online games</p> <p><i>Ministry of Information and Communications, SBV (Payment Department)</i></p>	<p>1. BWG sent Official Letter No. 210719BWGVBF to the Ministry of Information and Communications and the SBV to outline the difficulties in implementation and seek general guidance on unlicensed online games as follows:</p> <p>1.1. Regarding the request in Official Letter No. 585/NHNN-TT dated August 10, 2020, requiring banks to refuse to process transactions related to unlicensed online games: SBV issued Official Letter No. 998/TT4/NHNN-TT on September 4, 2020, instructing BWG on payment connections.</p> <p>1.2. The inclusion of short keyword games such as K8, M88, G88, GDW (Official Letter 830/TTGSNH11); R88, Long ho, B24 (Official Letter 551/TTGSNH5), and strings of characters written in Chinese, along with games lacking identification information (Official Letter 585/TTGSNH5) in the review list could lead to a large number of inaccurate alerts, making it</p>	<p>BWG proposes to continue to coordinate with the MIC and update the SBV on this issue soon.</p>

B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)

difficult to determine whether these alerts are truly related to online games. Therefore, BWG requests SBV to clarify and provide additional guidance.

1.3. In controlling transactions related to customers in the hotel, bar, club, tourist area sectors, MCC codes 5813, 7011... BWG faces difficulties in identifying licensed establishments to determine whether transactions with these establishments are legal or not. We hope to receive SBV's guidance on the list of licensed gambling service businesses in Vietnam. To ensure effective, consistent, and comprehensive measures to block transactions to entities accepting cards with MCC codes related, we hope to receive SBV's guidance on understanding the list of MCCs related to prohibited transactions as stipulated by law.

1.4. Legal provisions: Decree No. 03/2017/ND-CP, Circular No. 102/2017/TT-BTC on casino business stipulates a 3-year pilot period allowing Vietnamese individuals aged 21 and older with civil act capacity to gamble at authorized casino establishments.

Currently, BWG has no way to determine which businesses are on the list of allowed pilot, nor if the businesses have completed the pilot and are officially licensed to allow Vietnamese people to enter. We look forward to receiving further guidance from the SBV to make our transaction reporting more accurate and complete.

2. BWG sent Official Letter No. 01-141021BWGVBF dated October 14, 2021, outlining the following issues:

2.1. BWG requested to SBV give further comments with the Vietnam Banks Association (VNBA) and credit institutions to support, facilitate, and accelerate the connection and sharing of information as mentioned above. Additionally, BWG seeks further guidance on coordinating industry-wide efforts in preventing violations in card operations.

2.2. Regarding reporting standards: Due to the current lack of clear determination regarding communication channels, rules, or response times agreed upon between the Payment Card Issuers (PCI) and CIs, BWG has/will proceed with reporting suspicious transactions with the highest effort and providing the most information as requested.

BWG proposes to report suspicious transactions on a group basis based on common points in terms of information collected on customers' card transactions during the investigation process – a detailed reference sheet for each This method of card payment organization is attached with a suspicious transaction report template that will help report the information in a concise, consistent and concise manner.

B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)			
17.	Draft Decree replacing Decree 101/2012/ND-CP on non-cash payment <i>SBV (Payment Department); Ministry of Justice</i>	2021: BWG contributed opinions, participated in the Appraisal Council, and collaborated with SBV and the Ministry of Justice in the drafting and development process of the Decree. BWG looks forward to receiving updates on this issue.	BWG continues to coordinate with the SBV (Payment Department), the Ministry of Justice and relevant ministries and agencies in this issue.
18.	Decree No. 13/2023/ND-CP on personal data protection <i>Ministry of Public Security (A05); SBV (Legal Department, IT Department)</i>	After Decree 13/2023/NĐ-CP on Personal Data Protection (Decree 13) was issued, BWG participated in discussions related to the implementation of Decree 13 as follows: (i) Workshop by the Ministry of Public Security on June 7, 2023; (ii) Workshop by the Vietnam Banking Association (VNBA) at SBV. BWG representatives presented international data protection regulations (including EU/UK - GDPR, China - PIPA, Singapore - PDPA, Japan - APPI), focusing on the following aspects: 1. Scope of cross-border application 2. Definitions (Controller/Processor) 3. Data subject access rights 4. Effective date 5. Data subject consent 6. Assessment of the impact of personal data processing/transfer 7. Breach notification (iii) Technical meeting with the Ministry of Public Security, Ministry of Planning and Investment, and VBF on Decree 13 on August 1, 2023. Many questions of BWG members were answered by the A05/MPS as follows: (i) Scope and regulated entities; (ii) Definition on personal data; (iii) joint controllership of personal data; (iv) Third party; (v) PIA – Impact assessment report; (vi) data subjects’ rights; consents; (vii) purpose of collecting and processing personal data; (viii) effective date of Decree 13.	BWG coordinates with the Ministry of Public Security on proposals regarding the interpretation and application of certain provisions related to the banking industry and updates SBV for coordination if necessary.
19.	Decree 53/2022/ND-CP	In 2022 , in September, BWG, together with VBF, sent a letter to the Ministry of Public Security, SBV, and the Ministry of Planning and Investment regarding guidelines for implementing Decree	BWG collaborates with the Ministry of

B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)		
<p>guiding the Law on Cyber Security</p> <p><i>Ministry of Public Security (A05); SBV (IT Department)</i></p>	<p>53. On December 22, 2022, the Ministry of Public Security, in collaboration with the VBF and the Vietnam Chamber of Commerce and Industry (VCCI), organized a Conference to disseminate and guide the implementation of Decree 53 in Ho Chi Minh City.</p> <p>In 2023, concerning the remaining challenges, BWG has consolidated the recommendations from its members and submitted them to the Ministry of Public Security via (i) Letter No. 14112022BWGVBF dated November 14, 2022; (ii) Letter No. 16052023BWGVBF dated May 16, 2023; (iii) Letter No. 28092023BWGVBF dated September 28, 2023.</p> <p>The contents mentioned in these three letters are some of the most important and impactful points regarding compliance with Decree 53, especially regarding (i) Data on the relationships of service users in Vietnam: friends, groups that users connect or interact with (Point c, Clause 1, Article 26 of Decree 53); (ii) Data on foreign network addresses (IP) (Point b, Clause 1, Article 26 of Decree 53).</p> <p>After the direct meeting with representatives of BWG, the Department of Cybersecurity (A05) - MPS, Ministry of Public Security, issued Dispatch No. 5352/A05-P1 dated October 10, 2023, to address some of the concerns raised by BWG during the meeting as well as in the previous correspondence.</p> <ol style="list-style-type: none"> 1. Regarding the storage of IP addresses generated by Vietnamese citizens when traveling abroad: It is suggested to comply with the laws of the host country (destination), followed by the laws of Vietnam. 2. Concerning the operation of accounts in Vietnam by foreign parent companies: Due to the legal independence between the parent company and the subsidiary, the following is proposed: (1) Determine whether the subsidiary in Vietnam is a domestic or foreign company according to Decree No. 53/2022/NĐ-CP; (2) If it is a domestic company, implement the obligations for domestic companies according to Decree No. 13/2023/NĐ-CP; (3) Clarify the responsibilities of the parent company when owning personal data of Vietnamese citizens and the legal responsibilities of the subsidiary when transferring data of Vietnamese citizens abroad; (4) Data storage is conducted according to the provisions of Decree No. 53/2022/NĐ-CP, and the company needs to establish a technical system to comply with this. 3. Logging out behavior is counted based on the user's account. 	<p>Public Security regarding proposals on interpreting and implementing certain provisions related to the banking industry and updates SBV for coordination (if necessary).</p>

B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)			
		<p>4. Data on the relationships of service users in Vietnam, including friends, groups that users connect or interact with, on different platforms. We do not understand the form of relationships in investment funds, so we cannot advise on this content.</p> <p>5. Since foreign bank branches do not have legal entity, the responsibility for implementing Decree No. 53/2022/NĐ-CP belongs to their foreign parent companies.</p> <p>6. The storage period starts from the effective date of the Decree.</p> <p>7. Stored data are the existing data of the enterprise to serve production and business activities.</p> <p>8. The minimum storage period is 24 months. In case there are different regulations, additional time is added according to the regulations of the specialized law.</p> <p>Some fields specified in Article 26.3.a do not have definitions according to Vietnamese laws but are business sectors. Therefore, the understanding is similar to when the enterprise registers its business sector, business field.</p>	
20.	<p>Close-out netting in derivative transactions <i>Ministry of Justice,</i> <i>Supreme People's Court,</i> <i>SBV</i></p>	<p>BWG proposes allowing close-out netting in derivative transactions.</p> <p><u>In 2021:</u> BWG and SBV discussed and closely coordinated during the process of drafting amendments to Circular 01/2015/TT-NHNN, through providing feedback for the draft and organizing 2 technical meetings to discuss issues and propose amendments in Circular 01.</p> <p>Circular 25/2021/TT-NHNN amending and supplementing Circular 01 stipulated that credit institutions, SBV branches are allowed to make net settlement (clearing) in interest rate derivatives transactions.</p> <p><u>In 2023:</u></p> <p>As the issue of close-out netting in derivative transactions is related to the Bankruptcy Law, BWG proposes to continue to coordinate and work with SBV, the Ministry of Justice, and the Supreme People's Court in the process of amending the Bankruptcy Law and related regulations.</p>	<p>BWG proposes to continue to coordinate and work with the SBV, the Ministry of Justice, and the Supreme People's Court in the process of amending the Bankruptcy Law and related regulations.</p>
21.	<p>Regarding the requirement to have the chief accountant's signature on the operation and use of bank accounts</p>	<p>Regarding this issue, there have been several working sessions between BWG and the Payment Department of the SBV and the Ministry of Finance. The origin of this issue arises from the Law on Electronic Transactions, Decree No. 35/2007/ND-CP dated March 6, 2007, on electronic transactions in banking activities, the Accounting Law, and Decision No. 1789 of the SBV in 2005. Previously, banks did not encounter many difficulties in implementing the decision because transactions were conducted on paper-based. However, with the significant development of online transaction systems, two signature groups have emerged: those of legal representatives</p>	<p>BWG will continue to collaborate and work with SBV (Department of Finance - Accounting), the Ministry of Finance,</p>

B.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (07 OLD ISSUES)			
	<p>as stipulated in Decision 1789/2005/QD-NHNN promulgating the regime of accounting vouchers</p> <p><i>Ministry of Finance, Ministry of Justice, SBV (Department of Finance - Accounting)</i></p>	<p>and chief accountants, and those of authorized individuals. The requirements of this Decision are not practical for the payment activities of banks. However, due to the constraints of the Accounting Law and Decision 1789, banks face compliance risks because when customers use the bank's payment system, neither they nor the bank can prove the two signature groups as required by the regulations.</p> <p>According to the exchanges between BWG and the Ministry of Finance, the Ministry of Finance also agreed that these regulations are built on the premise of paper transactions and are no longer suitable for electronic transactions today.</p> <p>Recommendation: With experience in establishing e-banking systems at parent banks in developed countries, BWG proposes to work further with relevant authorities of SBV and seeks support from SBV in the process of drafting, amending relevant laws, and establishing legal systems to deploy e-transactions in Vietnam - such as amending Decision 1789 to align with the development of e-banking. BWG continues to coordinate and work with SBV (Department of Finance - Accounting), the Ministry of Finance, and other ministries (Ministry of Justice, Ministry of Information and Communications) in researching and proposing amendments to related regulations such as the Accounting Law, Decision 1789, and Decision 367.</p>	<p>and other relevant ministries (such as the Ministry of Justice) in the process of researching and proposing amendments to related regulations such as the Accounting Law, Decision 1789, and Decision 367.</p>
B.2. NEW ISSUES IN 2023 (5 NEW ISSUES)			
22.	<p>Law on Electronic Transactions (LOET)</p> <p><i>Ministry of Information and Communications; SBV (Legal Dept., IT Dept., Payment Dept.)</i></p>	<p>Before the amended Law on E-Transactions was passed by the National Assembly (NA) in June 2023, BWG had actively supported and participated in providing feedback on the draft versions, as well as closely cooperating with the Vietnam Banks Association (VNBA) and the SBV in meetings with the MIC & the Committee on Science, Technology and Environment of the NA.</p> <p>After its issuance, the main lingering issues for BWG in this Law relate to electronic signatures (Articles 22 to 26), specifically:</p> <ol style="list-style-type: none"> Article 25 on Specialized Electronic Signatures (Refer to <i>Section B.2.23</i> for more details) Electronic accounting documents (Refer to <i>Section B.2.24</i> for more details) Article 26 - Issues related to the use of DocuSign 	<p>BWG together with the SBV, VNBA, MIC, Committee for Science, Technology and Environment – National Assembly will continue to coordinate in the process of implementing the Law and developing Decree and guiding documents.</p>

B.2. NEW ISSUES IN 2023 (5 NEW ISSUES)		
<p>23. Electronic Signature Ministry of Information and Communications; SBV (Department of Information Technology is the focal point in coordination with the Payment Department and Legal Department)</p>	<p>2023</p> <p>The Law on E-Transactions only stipulates conditions for specialized electronic signatures, digital signatures, but it has not regulated the conditions for obtaining a <i>Certificate of Safe Specialized Electronic Signature</i> as well as the subject, procedure for registration. Until now, the government has also not issued any guiding documents for these regulations. This makes it impossible for credit institutions (CIs) to proceed with the application/ dossier for certification. Meanwhile, to complete the application for the Certificate, CIs also need time to re-establish their systems, technical measures, and amend internal regulations to meet the conditions for licensing.</p> <p>From a banking perspective, some safety concerns regarding electronic signatures are as follows:</p> <ol style="list-style-type: none"> 1. Requiring organizations to use specialized electronic signatures "for transactions with other organizations, individuals, or the need for recognition of safe specialized electronic signatures, then register with the Ministry of Information and Communications to be issued a certificate of safe specialized electronic signature" will generate significant administrative procedures for organizations and businesses. 2. The lack of clear regulations also makes it difficult for CIs to determine whether they are organizations required to register safe specialized electronic signatures in certain cases. <p>BWG continues to coordinate, work with the MIC and SBV (IT Dept.) in the implementation of the Law on Electronic Transactions and the development or amendment of legal normative documents related to electronic signatures & the use of other electronic means of confirmation to express the consent of the signatory to the data message without being an electronic signature (implemented according to other relevant legal regulations); to ensure that the regulations are appropriate to the operations of the banking industry.</p>	<p>IN PROGRESS</p>
<p>24. Electronic accounting vouchers Ministry of Finance; SBV (Department of Finance - Accounting and</p>	<p>1. Issue of electronic signatures on electronic accounting vouchers</p> <p>Referring to the current provisions in Article 19 of the Accounting Law 2015 and Article 8 of Decision 1789/2005/QĐ-NHNN on the regime of bank accounting vouchers, accounting vouchers must be signed with a handwritten signature or an electronic signature. Thus, only 3 types (i) Specialized electronic signatures, (ii) Public key digital signatures, and (iii) Specialized digital signatures for official use meet this requirement. However, the amended Law on E-Transactions has added a fourth type of signature in Article 22.4: <i>"the use of other authentication</i></p>	<p>BWG proposes to continue coordinating and working with the MIC and the SBV (Department of Finance - Accounting) in the process of</p>

B.2. NEW ISSUES IN 2023 (5 NEW ISSUES)		
<p>related departments and bureaus)</p>	<p>forms excluding e-signatures by electronic means to show signatories' approval for data messages shall comply with other regulations of relevant laws."</p> <p><u>Recommendation:</u> The Accounting Law 2015 and Decision 1789 should be amended to align with the provisions of the amended Law on Electronic Transactions by regulating electronic accounting vouchers in accordance with the new Law on Electronic Transactions.</p> <p>2. Issue of seals/stamps on electronic accounting vouchers</p> <p>According to the provisions in Clause 3, Article 23: <i>"Where any law requires a document to be authenticated by a specific agency or organization, it will be considered that a data message has fulfilled such requirement if it is signed by a special-use qualified e-signature or a digital signature of such agency or organization."</i></p> <p>This provision is currently regulating the issue of seals by organizations. A data message is considered to have been sealed by the organization when the message is signed by the 3 types of signatures mentioned in Clause 1 of Article 22 of the amended Law on Electronic Transactions. Referring to relevant regulations:</p> <ul style="list-style-type: none"> • Article 24.2 of the Accounting Law 2015 and Clause 8.2.c of Decision 1789 still require organizations to affix seals on accounting books/accounting vouchers. • According to Article 43.2 of the Law on Enterprise 2020 on seals, enterprises have the right to decide on the type, quantity, design, and content of seals. Therefore, under this provision, enterprises may decide not to have a seal. However, according to Article 43.3 of the Law on Enterprise 2020, enterprises use seals in transactions as prescribed by law. • Therefore, if the Accounting Law and guiding documents regulate which types of documents/accounting vouchers require seals, then enterprises need to affix seals to those documents/accounting vouchers. <p><u>Recommendation:</u> Review the provisions classifying which types of documents/accounting vouchers truly require seal requirements to be in line with the Law on Enterprise and the new Law on Electronic Transactions.</p> <p>3. Definition of "accounting vouchers"</p> <p>The definition of "accounting vouchers" stipulated in Article 3.3 is principle-based, leading to different interpretations and applications in different enterprises, legal circles for law interpretation, and even among professional auditing companies.</p>	<p>implementing the Law on E-Transactions and developing/amending legal documents related to electronic accounting vouchers to ensure that the regulations are suitable for the banking industry's activities.</p>

B.2. NEW ISSUES IN 2023 (5 NEW ISSUES)			
		<p><u>Recommendation:</u> The Ministry of Finance should delegate the SBV to provide specific guidance on which bank documents are accounting vouchers and which are not accounting vouchers for a unified understanding and implementation.</p>	
25.	<p>Decree No. 123/2020/ND-CP dated October 19, 2020 on prescribing invoices and records</p> <p><i>General Department of Taxation, Ministry of Finance</i></p>	<p>BWG has submitted comments on the draft Decree 123 to the General Department of Taxation/Ministry of Finance, including the following key points:</p> <p>1. Article 1, Clause 5: Amendment and addition to Article 9</p> <ul style="list-style-type: none"> • Propose to remove the provision "In case the customer requests to have invoices issued for each transaction, the service provider must issue invoices to the customer." Due to data and invoice systems being based on aggregated data, it is very difficult to select data for issuing invoices according to different methods or to issue invoices for each day as required. • Propose to retain the application of "the time of invoice issuance" as stipulated in Clause 3 of Article 6 of Circular 78 allowing banks to issue invoices no later than the 10th day of the following month of occurrence. • Propose to amend to: "For foreign exchange agency activities, supply of foreign exchange receipt and payment services by economic organizations of credit institutions, credit institutions and branches of foreign banks, invoices are issued based on the actual amount of foreign exchange received." • Propose to consider allowing banks and customers to choose whether to issue invoices or not. • Is the provision regarding issuing invoices for foreign exchange agency activities, supply of foreign exchange receipt and payment services inclusive of the bank's foreign exchange trading activities? If the bank's foreign exchange trading activities require issuing invoices, will it only issue invoices for the foreign exchange purchase transactions? • Clarification is needed regarding whether it applies to credit granting activities (including lending, discounting, guarantees, LC, financial leasing, etc.) (under Clause 8, Article 4 of Circular 219 on VAT) or only applies to credit activities (lending). <p>2. Article 1, Clause 6: Amendment and addition to Article 10</p> <ul style="list-style-type: none"> • Due to the concept of "Identification Code" still being new and lacking specific regulatory guidance, it is necessary to allow a separate implementation timeline for this criterion; or transition from a non-mandatory criterion to a mandatory one on invoices after the banking industry updates it on the bank's core system and CIs. 	<p>BWG continues to work with the General Department of Taxation / Ministry of Finance for official feedback and will update SBV for coordination (if necessary).</p>

B.2. NEW ISSUES IN 2023 (5 NEW ISSUES)			
		<ul style="list-style-type: none"> • Propose clarification of the concept of the Identification Code of the buyer, especially in the case of individual buyers, foreign organizations. • Consider stipulating the requirement for storing the statement to be ensured to be able to be exported and reconciled with invoices, instead of attaching the statement with the invoice for the banking system due to the large volume of transaction data needing to be stored. • For the convenience and to ensure invoice data (including exchange rates) is directly connected from the core system to the electronic invoice system, propose that the General Department of Taxation allows banks to use the exchange rates on invoices as the rates in the bank's system instead of the rates of Vietcombank. <p>3. Regarding banking products such as foreign exchange trading, derivatives trading (such as interest rate swaps, currency swaps, interest rate options trading with ceiling/floor/combo) - these products have quite complex and specialized operations but are all subject to strict transaction documentation requirements by the SBV to ensure transaction determinants and have a unique reference number from the system.</p> <p>Furthermore, these products are all exempt from VAT according to current VAT regulations. Therefore, we earnestly request the Ministry of Finance to allow CIs not to issue electronic invoices for these products. Instead, they will use the transaction documentation system stipulated by the SBV along with specific transaction documents of each bank such as "Contracts/Transaction Confirmation," "Interest Rate Fixing Notice," etc.</p> <p>In cases where the regulations on electronic invoices include these specific transactions mentioned above, we respectfully propose the Ministry of Finance to issue additional specific guidance on issuing electronic invoices for the specialized products of banks to apply uniformity across CIs.</p> <p>4. Article 2. Effectiveness and implementation responsibility:</p> <p>We propose that the effectiveness of the amended Decree be 90 days from the date of issuance to provide units with sufficient time and resources for system modifications.</p>	
26.	<p>Work permit for expats</p> <p><i>Ministry of Labor, Invalids and Social Affairs</i></p>	<p>Challenges:</p> <p>Since the implementation of Decree 152/2020/ND-CP, foreign-invested financial companies (including foreign credit institutions) have undergone procedures related to (i) Applying for approval to use foreign labor, (ii) Applying for work permit exemption certificate; (iii) Issuing, re-issuing, extending work permits for foreign workers in Vietnam (commonly referred to as</p>	<p>BWG continues to work with the Ministry of Labor, Invalids and Social Affairs (MOLISA)</p>

B.2. NEW ISSUES IN 2023 (5 NEW ISSUES)			
		<p>"Work Permit Procedures"), at the Department of Labor, Invalids and Social Affairs ("DOLISA") in the provinces/cities where the organization was headquartered.</p> <p>However, recently, since Decree 70/2023/ND-CP took effect, these companies must carry out the work permit procedures at the Ministry of Labor, Invalids and Social Affairs (MOLISA) (instead of at the DOLISA as current practice). Accordingly, the enterprises are required to re-submit the work permits issued by the DOLISA and re-submit the application for permits to the MOLISA.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> • The existing Work Permits issued by DOLISA should remain valid until their expiration date, as they constitute valid administrative decisions issued by a state labor regulatory management agency at the time of issuance. • In cases where a business starts the process of applying for a new Work Permit or Work Permit Exemption Certificate at MOLISA, while the existing one issued by DOLISA is still valid, we respectfully propose that MOLISA acknowledges the continued validity of the previously issued work permit from DOLISA. Requiring the cancellation of the DOLISA-issued work permit prior to the application for a new work permit at MOLISA introduces timing gaps during which foreigners are working without a valid work permit, leading to potential issues related to the disruption of labor relationships, as well as tax and immigration implications that may also impact their family members. • Simplify procedures and shorten processing time in the licensing process. 	<p>and provide updates to SBV for coordination (if necessary).</p>

GROUP C: ISSUES COMPLETELY RESOLVED IN 2023 (15 ISSUES)

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)			
27.	<p>Information of founders of corporate customers</p>	<p>Issue related to information of the founders of corporate customers.</p> <p><i>Quoted from BWG’s Official Letter No. 09062023BWGVBF dated June 9, 2023 on Request for guidance on some points related to the Law on Anti-Money Laundering 2022</i></p> <p><u>Legal basis:</u></p> <p>According to the provisions at Article 10.1.e of the Law on Anti-Money Laundering 2022, regarding customer identification data, we understand that the request to collect “<i>information about the founder, legal representative, Director or General Director, Chief Accountant or staff member in charge of accounting tasks (if any), including the corresponding information specified</i>”</p>	<p>RESOLVED</p> <p>BWG received guidance from BSA (SBV) for appropriate implementation.</p>

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)		
		<p><i>in point a, b, c, d and dd of this clause” applies only to corporate customers. In case of where the founder is a corporate, the information to be collected includes “full and abbreviated transaction name; main office; reference number of the incorporation permit, business reference number or tax identification number; contact phone number; facsimile number, website (if any); scope of activities or lines of business.”</i></p> <p>Recommendation: We respectfully request the SBV to confirm our understanding.</p>
28.	Law on Credit Institutions	<p>BWG has submitted many documents contributing opinions, as well as provided support and expertise by contributing comments and international practices/ current legal frameworks directly during the drafting sessions with the Economic Committee of the National Assembly (NA), the SBV, and relevant ministries and agencies to directly.</p> <p>Some main recommendations as noted in BWG’s Official Letter No. 16112023BWGVBF dated November 16, 2023, to the SBV and the Economic Committee - NA regarding the Draft Law on October 29, 2023, related to:</p> <ol style="list-style-type: none"> 1. Defining the nature of L/C 2. Bank guarantees 3. Regulations on "banking activities" 4. Definition of Factoring 5. Processing and providing customer information 6. Business registration certificate 7. Requirement stipulating that the Chairman of the Board of Directors, Chairman of the Board of Members must reside in Vietnam during their tenure 8. Regulations on consolidated financial statements and safety assurance ratios for foreign bank branches (FBBs) 9. "Financial advisory for enterprises, advisory for M&A and investment" activities 10. Collateral management agent for lenders 11. Securities custody and other permitted services based on securities custody operations as regulated by securities laws. 12. Allowing 100% foreign-owned banks to receive counter-guarantees from parent banks

RESOLVED

The Law on Credit Institutions was passed by the 15th National Assembly at the 3rd Extraordinary Session (January 2024).

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)			
		13. Credit limit 14. Transitional provision	
29.	Dispatch No. 2937/NHNN-TT dated May 4, 2022 regarding the management of cross-border television services: <i>Ministry of Information and Communications (Department of Radio, Television, and Electronic Information); SBV (Payment Department)</i>	OL No. 2937 as well as the attached document to OL No. 2937 (OL 948/BTTTT- PTTH&TTĐT dated March 16, 2022) mention over-the-top television services ("OTT TV") provided by foreign enterprises across borders without compliance with Vietnam's content and service management regulations, and mainly collect fees through the banking payment system. However, commercial banks are unclear about their responsibilities in coordinating with the Ministry of Information and Communications (MIC) regarding content and television service management, as well as specific requirements for payment activities related to this service, and the responsibility of commercial banks in verifying the legality and compliance with foreign exchange management regulations of payments to OTT TV providers in terms of their compliance with content and service management regulations. Therefore, we hope to receive specific guidance from the SBV to implement OL 2937 and comply with relevant legal regulations.	RESOLVED BWG received response from SBV and continues to collaborate with the MIC and provide updates to SBV (if necessary).
30.	Outward remittances for current transactions (Circular 20/2022/TT-NHNN)	<i>Feedback related to the implementation of outward remittance transactions concerning Circular 20/2022/TT-NHNN.</i> In conjunction with the implementation of Circular 20, we have conducted a review of the legal provisions regarding foreign exchange management related to current transactions (Article 4, Ordinance No. 28/2005/PL-UBTVQH11 on foreign exchange control). After the review, we have identified some issues below and seek guidance from the SBV: 1. Issue 01: Transactions considered as "payments and transfers related to exports, imports of goods, services" as stipulated in Article 4.6.a of the Ordinance No. 28/2005/PL-UBTVQH11 on foreign exchange control (amended, supplemented). We understand that all payment transactions arising from export contracts of goods/services will be considered as current transactions and conducted in accordance with the provisions of point a, Clause 6, Article 4 of the Ordinance No.	RESOLVED The issues have been discussed and partially resolved during the meeting between VNBA, BWG, and the Foreign Exchange Management Department (SBV) in August 2023.

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)			
		<p>28/2005/PL-UBTVQH11 on foreign exchange control (amended, supplemented) based on the legal basis outlined in the letter.</p> <p>2. Issue 02: Some other transactions: We understand that these transactions may be considered as other activities related to international trade activities as regulated in Article 14.1(a) of Circular 20.</p> <p>BWG proposes to engage in discussions and has been granted approval by the SBV's PCRT to organize a meeting in the near future to work towards effectively reviewing domestic transactions.</p>	
31.	Domestic transactions screening	BWG proposed to initiate discussions and has been granted approval by the AML Department to organize a meeting in the near future aimed at achieving effective implementation in domestic transactions screening.	RESOLVED
32.	Deadline for submitting internal control system audit reports as prescribed in Circular 24/2021/TT-NHNN	Regarding this issue, BWG has sent three letters to the SBV: (i) Letter No. 17012023BWGVBF dated January 17, 2023, (ii) Letter No. 290323BWGVBF dated March 29, 2023, and (iii) Letter No. 10052023BWGVBF dated May 10, 2023. Due to difficulties related to the bank's specific internal control system & audit scope, etc., member banks of BWG and auditing companies needed more time to determine the scope and specific criteria for conducting independent audit activities on the bank's KSNB system for the financial year 2022 as stipulated in Article 8.a of Circular 24/2021/TT-NHNN. Based on this, BWG proposed SBV to consider allowing an extension of the deadline for submitting the internal audit report for the financial year 2022 until December 31, 2023 , instead of the deadline stipulated at the end of March.	RESOLVED BWG received response from the SBV for appropriate implementation.
33.	Circular No. 11/2022/TT-NHNN on bank guarantees, replacing Circular 07/2015/TT-NHNN and Circular 13/2017/TT-NHNN	Before Circular 11 was issued, BWG had cooperated with SBV's Department of Credit for Economic Sectors during the drafting process. During this collaboration, BWG contributed some opinions on the draft Circular replacing Circular 07/2015/TT-NHNN and 13/2017/TT-NHNN regarding bank guarantees.	RESOLVED BWG received response from the SBV for appropriate implementation.

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)		
<p>34.</p>	<p>Directive No. 02/CT-NHNN dated April 13, 2018 (“Directive 02”) on measures to strengthen the transactions monitoring and activities related to crypto currency; Official Letter No. 06/Cuc V.3 dated January 6, 2021 and Official Letter No. 1092/Cuc V.3 dated December 16, 2021 on notification of domestic and international wanted list</p>	<p>In Official Letter No. 03-2110222 BWGVBF dated October 21, 2022, BWG presented some problems and looked forward to receiving more comments and guidance from the SBV for the following issues re. Measures to strengthen transactions monitoring and activities related to crypto currency as required in Directive No. 02/CT-NHNN and Notice on domestic and international wanted list.</p> <p>1. Regarding Directive No. 02/CT-NHNN dated April 13, 2018 (“Directive 02”) on measures to strengthen the transactions monitoring and activities related to crypto currency:</p> <p>BWG presents some of the control measures being implemented at the banks:</p> <ul style="list-style-type: none"> - Preventive controls: (i) <i>For the establishment of customer relationships:</i> the profession, business area, ... of the customer is also considered to help identify potential customers related to crypto currency; (ii) <i>Debit and credit card entries at merchants accepting crypto currencies will be rejected</i> according to the logic established by the International Card Association such as Visa/Master. - Monitoring, detection controls: <ul style="list-style-type: none"> (i) Some banks have developed an internal review list related to crypto currencies (“crypto currency list”) and integrated this list into transaction execution systems to enable timely detection of transactions. This list is likely to involve crypto currencies. This list includes names of crypto currencies, crypto currency acceptors - exchanges, crypto currency-related purposes... (ii) In addition, the Bank's Investigation department will further review/scan the transactions performed by customers, and in case of need the banks will implement/propose appropriate handling measures such as suspicious transaction reports, increased client Anti-Money Laundering risk ratings, ... (iii) In addition, for trade transactions, loans, securities transactions, etc., the records and documents supporting the related transactions are also considered to ensure payment or loan purposes and not related to crypto currency purposes. <p><u>Recommendation:</u></p> <p>BWG look forward to receiving further guidance regarding the data sources for the review to ensure consistent implementation, and we would like to sincerely request the SBV to share more about the upcoming directions related to the control of crypto currency transactions.</p>
		RESOLVED

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)		
		<p>2. Regarding Official Letter No. 06/Cuc V.3 dated January 6, 2021, and Official Letter No. 1092/Cuc V.3 dated December 16, 2021, on notification of domestic and international wanted list:</p> <p>BWG presented some difficulties in the information quality of the national and international wanted list during the implementation process:</p> <ul style="list-style-type: none"> - The new wanted list is updated periodically without specifying the subjects to be added or removed from the list, the Bank must manually compare information between the old list and the new list. With a large number of newly added/removed names, errors were encountered, as well as the excessive workload in comparing and contrasting the information of each duplicate object. <p>To ensure the accuracy of updated information on the Banks's system as well as reduce manual work for the Bank, we sincerely hope that the SBV will work with relevant agencies to improve the quality of the Wanted List so that the review system update can be done in a timely manner.</p>
35.	Controlling card transactions based on MCC and the responsibility of the issuing bank in controlling POS	<p><u>2021:</u></p> <p>BWG sent Official Letter No. 210615BWGVBF dated June 15, 2021, in which we presented difficulties and false warnings/hits of card issuers when applying control measures, includes blocking fictitious payments/cash withdrawals based on some common MCC codes (such as 4900, 5411, 5499, 5541, 5542, 5172, 6300), combined with allowable transaction value thresholds.</p> <p>SBV provided a number of guiding documents the BWG, which included responses to the recommendations at OL No. 210615BWGVBF (Document No. 5913/NHNN-TT dated August 17th, 2021, on a number of issues related to the supervision and reporting of credit card transactions as advised by the Department of Payment, Document No. 980/Cuc V.1 dated October 4th, 2021, as advised by the Department of Anti-Money Laundering).</p> <p>In terms of issues related to anti-money laundering, SBV recognized the difficulties and barriers in the provisions of the law on anti-money laundering related to the reporting entities and reporting information in the “cardholder - card issuer – merchant - card acquirer mentioned by BWG in Official Letter No. 210615BWGVBF, and which will be studied and considered during the amendment of the Law on Anti-money laundering, relevant guiding documents and other regulations.</p>
		RESOLVED

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)	
	<p>BWG continued to expand the issue related to the control of online game transactions and has actively discussed with the SBV and the Ministry of Information and Communications in 2021.</p> <p><u>2022:</u></p> <p>1. In Official Letter No. 06062022BWGVBF dated 06/06/2022 sent to the SBV (Department of Payment, AML Dept. - Banking Supervision Agency) and VNBA, BWG has: (i) reported on the progress of implementation, coordination - active exchange with VNBA, however, results have not been achieved yet due to the principles of foreign banks members of BWG on information confidentiality for third parties who are not the SBV or Competent Authorities, so (ii) BWG is still actively collecting the reporting information based on available internal data sources to promptly report suspicious transactions.</p> <p>2. BWG sent Official Letter No: 081122BWGVBF dated November 8, 2022 - Proposing exemption from reporting of suspicious transactions for fictitious payment/transactions at merchants (not associated with sales of goods and provision of services) as prescribed in Article 8, Circular 19/2016/TT-NHNN – specifically the case where the customer only conducts a fictitious transaction at the merchant without any signs of suspicious transactions related to money laundering, typically as follows:</p> <ul style="list-style-type: none"> a) Payment transactions - spending on credit cards with a total or approximate value/ amount match made in a short time (same day, or within a few days), going on for months (typical sign). b) The amount of payments – spending on credit cards for the month at merchants can be close to the card's credit limit, take place in consecutive months and often repeat. c) The value of each transaction or the total value of the transactions at the above POS/merchants are mostly made with full or approximate value/amount (infrequent sign, not necessarily for fictitious payment/transactions). d) These transactions involve only a few single individuals and there is no sign of a 3rd party/group depositing cash or transferring money payments to multiple credit card holders for unclear purpose of transactions and relationships. <p>In this case, the Bank does not have reasonable grounds to identify whether these transactions' information is for the purpose of concealing the origin of the proceeds of crime or constitutes the crime of money laundering as prescribed in the Civil Code 2015.</p>

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)			
		<p>BWG proposed to be exempted from reporting suspicious transactions under Article 22 of the Law on Anti-Money Laundering for fictitious transactions at merchants with the above signs. Instead, the bank will update the records of income information and payment sources for the above customers. At the same time, in addition to requiring the issuer to report suspicious POS/merchants, the SBV may consider asking the card issuer to make statistical reports on Card operations performing prohibited transactions according to the provisions of Article 8 of Circular 19. Cases in which the card users conduct fictitious transactions with suspicious transaction signs related to the source of money or suspected money laundering, banks continue to report suspicious transactions as required.</p> <p>Legal basis:</p> <ul style="list-style-type: none"> - Circular No. 19/2016/TT-NHNN: Article 2, 6 - Article 8, Clause 1.e of Article 18, Clause 1.a of Article 27 - Draft Law on AML 2022: Article 4, Article 22 - Penal Code 2015: Article 8, Article 22, Article 324. 	
36.	Official Dispatch No. 2685/TTGSNH5 dated August 6, 2021 on Electronic Funds Transfer Transaction Report Form	<p>In Official Letter No. 02-2110222BWGVBF dated October 21, 2022, BWG consulted with the SBV’s AML Department for guidance on the common difficulties impacting to credit institutions in implementing the provisions of Circular 20/2019/TT-NHNN and Electronic Remittance Transaction Report Form as follows:</p> <p>1. Currently, there are some international money transfer transactions from abroad to Vietnam, but the sending bank (sender) can be domestic banks acting as an intermediary bank. According to the current reporting process of the Bank as the Beneficiary, if it is found that the information is fully displayed in the payment content field (F70/72) including: /INS/ followed by is the Foreign Bank's SWIFT Code, then we will identify this as a remittance from abroad to be recorded in the EFT Report instead of the DWT.</p> <p>Recommendation:</p> <p>We respectfully request the SBV to consider issuing standardized guidelines on how to fill information to distinguish international money transfers from abroad when the transaction goes through the channel of domestic banks being Sender bank, on the surface of the remittance order to the final beneficiary's bank, enabling reporting entities to automate the method of identification and extract the right type of international money transfer. For example:</p>	RESOLVED
			<p>The Anti-Money Laundering Law 2022, Decree No. 19/2023/ND-CP, and Circular No. 09/2023/TT-NHNN have provided guidelines on the content of electronic money transfer transactions.</p>

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)			
		<p>In field 50, it is necessary to specify the person/entity issuing the overseas remittance order and their address.</p> <p>In field 70/72, specify the issuer of the overseas remittance order and /INS/ followed by the SWIFT Code of the Bank serving overseas remitter.</p> <p>2. Remittance/Beneficiary Bank Code (field number 28) – DWT report form issued with Official Letter 2685/TTGSNH5 dated August 6, 2021.</p> <p>Currently, we find that during transaction processing, on some money transfer samples in inter-bank money transfer channels outside of Citad (for example, wire transfer from VCB money), the information about the Bank Code issuing the remittance order is not shown on the remittance order but only the name of the sending bank, which leads to difficulties in reporting the information about the Bank Code.</p> <p>Recommendation: We respectfully request the SBV to request payment service banks to upgrade the data system to ensure that the content of the bank code issuing the money transfer/receiving order must be fully displayed on the money transfer order to ensure the reporting is accurate and complete.</p>	
37.	<p>Official letter no. 830/TTGSNH11 May 27, 2019;</p> <p>Official letter No. 1080/NHNN-TT dated February 21, 2020;</p> <p>Official letter No. 233/NHNN-QLNH dated March 26, 2020;</p> <p>Official letter No. 551/TTGSNH5</p>	<p><u>Quotation from BWG’s Official Letter No. 200824BWGVBF dated August 24, 2020:</u></p> <p>The above-mentioned documents have provided a list of about 330 pages of websites that have been warned to provide illegal gambling/online betting services with signs of legal violations and unlicensed electronic games. These websites may be active and/or inactive and/or only operational at certain times. Banks are required to:</p> <ol style="list-style-type: none"> 1. Enhance scrutiny, monitoring, and prevention of illegal transactions. 2. Regularly monitor and update lists of websites, applications with signs of violations as stated in Article 11 Clause 1 of Circular No. 24/2014/TT-BTTTT dated December 29, 2014 on the Ministry of Information and Communications website at https://www.mic.gov.vn/; and 3. Report to competent state agencies (such as the Anti-Money Laundering (AML) Department; District/Provincial Public Security Agencies, Cities, Provinces). <p>Difficulties in implementing requests according to the documents:</p> <ol style="list-style-type: none"> 1. Lack of information about the beneficiary, the accepting card organization (ACO) 2. Unable to control transactions based on payment content. 3. No specific guidance on the website of the Ministry of Information and Communications. 	<p>RESOLVED</p> <p>BWG received feedback from SBV, and will continue to collaborate with the Ministry of Information and Communications and provide updates to SBV if necessary.</p>

C.1. ISSUES ADDRESSED IN 2022 AND CONTINUED TO BE MONITORED/HANDLED IN 2023 (09 OLD ISSUES)		
	<p>dated May 14, 2020; Official letter No. 585/NHNN-TT dated August 10, 2020;</p>	<p><u>Recommendations:</u></p> <p>For banks that do not provide online card payment acceptance services or provide card acceptance machines (POS machines), the bank only performs one check to ensure that no accounts are opened for individuals, organizations listed in the documents. For websites that do not have full identification information of the beneficiary or operator, we cannot verify due to lack of information.</p> <p>For banks that provide online card payment acceptance services or provide card acceptance machines (POS machines), we will request customers to commit not to provide services to legal violators. However, due to some documents being classified as Secret, we cannot provide detailed information.</p> <p>Further guidance is needed on preventing other illegal transactions: BWG wishes to be advised and supported by SBV in detecting and preventing not only gambling activities but also other illegal transactions in the card payment sector (cryptocurrency business, pyramid schemes, gambling, and forex trading, etc.). We want to emphasize the important role of SBV as well as the Payment Network system in the fight against this criminal activity.</p>
C.2. NEW ISSUES IN 2023 (06 NEW ISSUES)		
38.	<p>Circular No. 08/2023/TT-NHNN prescribing eligibility requirements for foreign loans without Government's guarantee</p>	<p>Previously, in 2022, BWG submitted feedback on the Draft Circular replacing Circular No. 12/2014/TT-NHNN on the conditions for foreign borrowing by enterprises not guaranteed by the Government to SBV on July 7, 2022, through Official Letter No. 07072022BWGVBF.</p> <p>After Circular 08 was issued, BWG participated in the Training Session on Circular 08 organized by SBV and presented some key issues related to the following points:</p> <ol style="list-style-type: none"> 1. Banks' responsibility in verifying documents (Articles 7 and 17) 2. Principles of using offshore loans (Clause 2, Article 6) 3. Definition of offshore loans in VND (Clause 8, Article 3) 4. Loan purpose (Article 17) <ol style="list-style-type: none"> a. To restructure offshore loans: b. To implement other projects. 5. Forwarding provisions (Article 22)
		<p>RESOLVED</p> <p>The main issues faced by BWG were partially addressed during the training session on Circular 08 by SBV on August 14, 2023.</p>

C.2. NEW ISSUES IN 2023 (06 NEW ISSUES)			
		<p>a. For Foreign Loan Agreements signed before August 15 with specific disbursement/repayment plans after August 15.</p> <p>b. For Foreign Loan Agreements signed in the form of a Framework Agreement before August 15 but requiring specific disbursement signed after August 15.</p> <p>c. Plans for using borrowed capital and debt restructuring plans.</p> <p>6. UPAS LC Issuance Operations (Point 2, Article 14)</p> <p>b. Plans for using borrowed capital, debt restructuring plans (Circular 08), and regulations on opening foreign loan repayment accounts, registering foreign loans (Circular 12)</p> <p>c. Signing Foreign Loan Agreements</p> <p><i>(Refer to Section A.1.2. UPAS L/C for more details on UPAS LC transactions)</i></p>	
39.	Proposal to extend the time for submitting reports on internal control systems according to Circular 13/2018/TT-NHNN regulating internal control systems of commercial banks and foreign bank branches	<p><i>Quotation from Official Letter 21112023BWGVBF dated November 21, 2023:</i></p> <p>Recommendation: We respectfully propose the SBV to extend the deadline for submitting certain reports on internal control systems for the year 2023 to February 29, 2024, instead of February 14, 2024 (45 days from the end of the fiscal year as stipulated in Article 7.3.a) to allow banks enough time to prepare and complete them according to SBV's requirements. The reports mentioned above include:</p> <ul style="list-style-type: none"> - Annual report on the results of self-assessment and internal control evaluation - Annual report on risk management - Annual report on internal assessment of capital adequacy ICAAP <p>Reason: The Lunar New Year holiday in 2024 will last from February 8 to February 14. However, data from the previous December is usually finalized around January 15. Therefore, in reality, banks will only have about 3 weeks to complete the data calculation and report preparation, as well as obtain approval from the relevant authorities within the bank before submitting to SBV before the holiday period, meaning by February 7, 2024.</p>	RESOLVED BWG received OL no. 5595/TTGSNH4 responding to this issue.
40.	Decree No. 19/2023/ND-CP of the Government: Detailing a	Regarding the basis for suspicion or detection of parties related to transactions listed in the Blacklist for transaction delay as stipulated in Article 12.1.b, Decree 19, BWG understands that the Name; field is different from the Full name; field and is only applied in cases where the customer's name has only one component (usually a foreign name) and banks will delay transactions only if the name and address or name and passport number or name and ID card	RESOLVED BWG received response from AML Dept. in the meeting

C.2. NEW ISSUES IN 2023 (06 NEW ISSUES)			
	number of articles of the Law on Prevention and Combat of Money Laundering	<p>number, citizen identification card number or personal identification number match the information of individuals on the Blacklist.</p> <p>In the case where the customer has a Full name but only the (given/first) name matches the Blacklist; the name screening system will not alert to reduce false alarms.</p> <p>In the case where the information of an individual on the Blacklist only includes the name, without other information fields such as personal identification number, the system will consider it as unidentifiable and reject the transaction; or for some transactions where the bank does not have enough information about the parties in the transaction to cross-reference with the Blacklist, banks will not apply measures to postpone the transaction and will not report to the relevant state agencies, instead, banks may refuse to carry out the transaction due to lack of information and insufficient basis to determine a match.</p> <p>We respectfully request AML Department to confirm that our understanding and implementation as above is appropriate and to provide additional implementation guidance to ensure that banks correctly comply with Vietnamese law.</p>	on September 29, 2023
41.	Circular 09/2023/TT-NHNN providing guidance for the implementation of a number of Articles of the Law on Anti-Money Laundering	BWG has submitted Official Letter No. 30082023BWGVBF-2 dated August 30, 2023 providing comments on Circular 09/2023/TT-NHNN guiding the implementation of Anti-Money Laundering Law.	RESOLVED BWG received response from AML Dept. in the meeting on September 29, 2023
42.	Scope of application of regulations related to anti-money laundering in case of	Pursuant to Article 20 of the Anti-Money Laundering Law, reporting entities (including banks) must monitor a number of special transactions including transactions with natural or legal persons in the countries or territories appearing on the Financial Action Task Force (FATF)'s list (Grey list) to combat money laundering. To monitor these special transactions, the reporting entities must apply the increased measures specified at Article 16.2.c of this Law as for customers with high risk of money laundering, including intensified collection, updating and verification of customer identification data and strict monitoring of that customer's transactions.	RESOLVED

C.2. NEW ISSUES IN 2023 (06 NEW ISSUES)			
	transactions to/from other jurisdictions than Vietnam which are in the increased monitoring list of FATF	<p>BWG understands that this requirement only applies to other jurisdictions than Vietnam, hence, banks will apply increased measures for individual and institutional customers and transactions to/from other jurisdictions than Vietnam which are in the increased monitoring list.</p> <p>We requested SBV to confirm our understanding above as appropriate and further guidance on implementation.</p>	
43.	Financial market issues	<p>The main issues are as follows:</p> <ol style="list-style-type: none"> 1. Related to Circular 25/2021/TT-NHNN amending Circular 01/2015/TT-NHNN regulating the business activities, supply of interest rate derivative products of commercial banks, and foreign bank branches: <ul style="list-style-type: none"> - Proposal to eliminate the requirement for original transactions in the interbank market - Interest rate derivative products 2. Related to Circular 02/2021/TT-NHNN dated March 31, 2021, on guidelines for foreign currency transactions on foreign currency market by credit institution authorized to make foreign currency transactions: <ul style="list-style-type: none"> - Confirming transactions with customers via SWIFT - Using FX swaps to alter the term of forward transactions/swap with customers - Foreign exchange settlements - SOFR/LIBOR interest rates 3. Repo market in Vietnam 4. Trading in currency-denominated securities with terms (Circular 21/2012/TT-NHNN) 5. Structured deposit products 6. Borrowing in local currency from foreign sources 	<p>RESOLVED</p> <p>BWG received response from Monetary Policy Dept. in the meeting regarding financial market issues on July 13, 2023.</p>

POSITION PAPER OF EDUCATION & TRAINING WORKING GROUP

Introduction:

With regard to the theme of this year's VBF Annual Forum, this working group believes that education and training will play an important role in achieving sustainability, innovative practices, and digitization transformation in addition to helping improve the practices in relation to Environmental, Social, and Governance (ESG).

In this paper we have reviewed the current situation, in the education and training environment in Vietnam, and addresses a number of specific sectors and issues. These include:

- 1. Decree 70**
- 2. Decree 86**
- 3. K - 12 education**
- 4. TVET**
- 5. Higher Education**
- 6. English as a Second Language (ESL)**
- 7. The Digitization of Learning (Education 4.0)**
- 8. The Skills Gap**
- 9. Environmental Concerns**

All sectors of the education system need to review their strategies to deliver effective education in light of the current and future environment. This is critical to the development of the Vietnamese economy both now and in the future. We would like to reiterate that Government agencies (both local and foreign), educational institutions, and industry need to collaborate to take advantage of current opportunities and mitigate or remove risks.

1. Decree 70/2023/ND-CP

The Vietnam Government issued Decree No. 70/2023/ND-CP amending some articles of Decree 152/2020/ND-CP in regard to foreign workers working in Vietnam. In relation to the clarification of work permits the HR Working Group has included some recommendations based on their practical observations of the implementation of the work permit application process. This will help reduce the administrative burden for companies and foreign workers, which are causing delays in document issuance approvals, and continues to be a concern.

The E&T Working Group agrees with the recommendation from the HR Working Group that by exercising greater discretion and also to refrain from requesting unnecessary additional procedures that are not mandated by law. Decree 70 also regulated the exemption of work permits for lecturers who are allowed by MOET but MOET has no instructions to apply this exemption.

The Education and Training Working Group will send an official letter to ask for clarification of the exemption procedures to the international cooperation department of MOET who have responsibility for these procedures.

2. Decree 86/2018/ND-CP

Government offices have planned to hold a meeting with the participants from MOET and some investors to finalise the new draft decree 86. A letter will be drafted to draw MOET's attention to the key points that need to be amended. Many investors in the field of education are now confused with what is needed to acquire land to build their campuses. They are having difficulty in finding

what land is allocated for education purposes at any people's committees of the provinces and cities.

3. K - 12 education

The E&T WG stated that in order to ensure the quality and sustainability of education in Vietnam, it is imperative that we recruit and retain foreigners with internationally recognised qualifications. The work permit challenges need to be addressed so that recruiting the best talent can continue.

The E&T WG believes that encouraging diversity in technical fields within K-12 education can correct gender imbalances in important fields. The E&T WG suggests promoting gender-inclusive policies to ensure learning environments are free from bias. Additionally, it advocates for extracurricular technology programs to ignite girls' interest in tech. Improving access to resources through learning opportunities and scholarships is crucial for motivating girls to pursue technical studies. Lastly, partnering with tech corporations can provide mentorship and real-world tech experiences, essential for fostering a diverse future workforce in technology.

4. TVET

Vocational skills training and boosting employment is at the heart of the Vietnamese Government development goals and we believe that the following are the main areas that need to be addressed:

- Meeting industry needs through dynamic curriculum development;
- Improving recruitment processes through better program offerings and marketing;
- Building the capacity of teachers, managers, and leaders;
- TVET institutional practices; and
- Effectively implementing the National Qualifications Framework (NQF).

It is important that we continue to work on these areas and find solutions to help improve the TVET system. Therefore, we look forward to continued progress in this matter and would like to take this opportunity to thank MoLISA in advance for their cooperation.

5. Higher Education

Many graduates from higher education institutions cannot find appropriate jobs and industry cannot find enough work ready graduates. This is caused by the fact that work ready skills such as technical skills, soft skills, and cognitive skills are not emphasised enough in the curriculum nor the pedagogical approaches used.

The emphasis in higher education in Vietnam is on research which means that most faculty focus on research but lack “real world” experience. Many courses are taught by faculty who have never worked in this area of expertise. Therefore, there needs to be an improved blend, involving both the theoretical and practical, to provide the students with the practical knowledge and skills that they need to successfully enter the workforce and add value to the economy.

The E&T WG recognizes that it is important to work with local universities on workforce development and to help them connect with companies. As mentioned in the previous position paper, the E&T WG would like to work in partnership with MoET potentially through an Advisory Board.

6. English as a Second Language (ESL)

English language skills development of Vietnam's youth is critical. The demand for qualified English teachers in Vietnam is very high and the contributions made by foreign teachers in language centres, Vietnamese schools, bilingual and international schools is significant. Native English teachers from around the world provide students from all backgrounds with access to the language and cultural understanding.

A combination of qualified English teachers working in professionally run language centres is needed. This will allow Vietnamese students to benefit from sufficient numbers of qualified teachers to help prepare them for a global economy through language learning and cultural exposure.

7. The Digitisation of Learning (Education 4.0)

The upskilling of its future labour force is highly recommended and this can be done through partnership between public education institutions and private international education institutions. Online or blended educational programs for training of Vietnamese teachers in the public school sector would further develop local teachers with international-standard skills. In the longer term as the workforce is becoming more transient and people move from company to company, the implementation of digitization of education offers potential for the development of skills across the workforce. However, regulations must allow online components to learning and qualifications to be further recognised.

The E&T WG continues to organise workshops on effective pedagogical approaches to teaching online, implementation of effective online assessment, and blended learning.

8. The Skills Gap

There are labour shortages in many companies with a serious mismatch between the education, skills, and experience needed to find and keep a job, and the content of formal educational and training qualifications. The E&T WG encourages the upskilling of Vietnam's future labour force by partnership between public education institutions and private international education institutions.

Educational institutions have the responsibility to enable individuals to be future ready and reduce their rate of obsolescence. Some proposed recommendations detailed in the 2023 position paper include encouraging non-traditional thinking, more modern recruitment practices, and providing the required employability skills and integrating with industry.

9. Environmental Concerns

Poor air quality is still a deterrent to attracting and retaining expert foreign employees with families. It is recommended that actions to improve the air quality is important, not only from an education perspective but also for Vietnamese society in general. Cooperation across Chambers of Commerce with relevant Vietnamese Government agencies is needed to help mitigate this problem.

Conclusion

In conclusion, the Vietnamese economy needs to be prepared for the challenges and opportunities that will arise in regard to sustainability and innovation. This working group believes that

education and training will play an important role in achieving sustainability, innovative practices, and digitization transformation in addition to helping improve the practices in relation to Environmental, Social, and Governance (ESG).

This means that all major stakeholders, in the education industry, need to move with more urgency to create the environment that will take advantage of the available technology to ensure education at all levels in Vietnam is effective and competitive. Vietnam has always attached great importance to investing in the education sector which is regarded as a key factor in ensuring sustainability in socio-economic development. This development needs an education system that will supply the “work ready” graduates with the skills needed to drive the new economy.

The Education and Training Working Group, through the VBF and in collaboration with MoET, MoLISA, and the Chambers of Commerce, will continue with our commitment to assist Vietnam in taking advantage of the opportunities and overcoming the problems to help Vietnam achieve its economic potential.

POSITION PAPER OF MINING WORKING GROUP

1. SUMMARY

Vietnam is rich in mineral resources, and particularly in critical metals such as rare earths, nickel, copper, cobalt and tungsten needed by (a) the country's renewable power and energy industry to help meet Vietnam's COP26-28 pledges on reduction of carbon dioxide emissions, and (b) the fast-growing semiconductor chip and digitization industries which Vietnam aims to be a leader in.

Unfortunately, only a fraction of Vietnam's valuable metal assets have been discovered to date, due to the country never having been systematically explored using modern technologies and methods, such as airborne geophysics and deep penetration technologies to locate more deeply buried deposits.

Furthermore, Vietnam's existing near-surface mines that are operated by state-owned enterprises have not yet attracted any significant foreign direct investment (FDI), and with it world best practices to mine and process the minerals with the environmentally sustainable green technologies needed. This expertise and FDI are therefore needed to significantly improve efficiencies, safety and environmental sustainability, etc.

Apparent lack of coordination and communication among the various Vietnamese ministries and departments involved in exploration and mining - essentially the ministries MPI, MONRE, MOIT, MOF and MOARD (Forestry) - both at central and provincial level, is currently frustrating Mining Working Group participants. Hopefully, bodies like the proposed National Council for Science, Technology and Innovation and its stated coordination role may help in this regard.

Shortcomings in the Vietnam Mineral Law itself, which still needs to be improved, and excessively high royalties, taxes and fees compared to other countries, are also significant deterrents in developing an efficient mining industry in Vietnam.

As a result, unlike many of Vietnam's ASEAN neighbours, none of the world's largest mining companies are presently operating in Vietnam. The Mining Working Group participants are relatively junior companies but, using world best technologies, are determined to persist and achieve good results in Vietnam.

2. MINING AND PROCESSING CRITICAL METALS WITHIN VIETNAM

The metals currently being sought or mined by the Mining Working Group participants are all essential in the production of electric vehicles and their batteries, wind turbines, solar panels and digital transformation. Having these metals sourced and available within Vietnam, instead of importing them, provides the country with the opportunity to develop downstream high-tech manufacturing industries and establish Vietnam as a dominant regional or even world hub for the manufacture of these products, now highly sought after for a carbon neutral future. This clearly is in line with the MPI Foreign Investment Agency's emphasis on capacity building of manufacturing and supporting industries in Vietnam and partnership with Vietnamese enterprises where possible. It is also consistent with plans and ambitions recognized in the recent Power Development Master Plan 8 and Just Energy Transition Partnership (JETP) which foresee development of renewable energy hubs including manufacturing capacity to support Vietnam's energy transition goals and 2050 net zero target.

To emphasize this point, the Vietnam General Statistics Office reported that eight Vietnamese-produced commodities exceeded US\$10 billion in export value in 2022. Four of these eight commodities are dominantly metallic, being a) mobile phones and spare parts; b) electronics, computers and components; c) machinery, equipment and spare parts; and d) vehicles and spare parts. We do not have the 2023 statistics yet.

The world minerals industry is having to mine more metals than it has ever done before to meet the demand for critical metals for a carbon neutral future. For example, in the case of copper, new discoveries have fallen by 80% since 2010, and the world's supply of copper is apparently dangerously low at present. It has been called the "metal of electrification", as green growth will require more copper transmission wires to distribute power generated by renewable energy sources than ever before. For example, Australia is planning to spend AUD 20 billion on renewable power grid upgrades, and the UK National Grid has laid out plans for a GBP 54 billion upgrade to its energy network. Also, a number of countries have already banned export of copper concentrates and require all copper to be refined in-country. Similar demands exist for other critical metals, and it is essential that Vietnam discovers, mines, recycles and processes all its critical metals inside the country and not import them.

In so doing, and to meet the requirements of green growth, the mining, processing, refining and recycling of metals and minerals will require the conversion from using fossil fuels to introducing new state-of-the-art technologies to significantly reduce and ultimately eliminate carbon dioxide emissions - technologies such as green hydrogen, pressure oxidation, electrification of all mine vehicles and machinery, and use of renewable hydro-power and hydrometallurgy where available in mine operations and down-stream processing.

These state-of-the-art technologies are also designed to achieve the important objectives of using responsible and sustainable development practices to protect the landscape, environment and ecosystems, including forests where applicable, where mining is conducted.

3. INFRASTRUCTURE BENEFITS

Mining has long been recognized to be one of the most effective drivers of physical infrastructure improvement around the world. The areas where mineral deposits are found tend to be in the more mountainous, and therefore usually the poorest socio-economic and ethnic minority parts of a country, and this certainly applies to Vietnam. The other obvious benefit of responsible mining is the contribution it can make to help alleviate poverty in the remote areas in which it operates by creating strong employment opportunities and orders for local goods and services.

Modern sustainable mining in Vietnam would therefore clearly help meet the challenges of the Government's strategy for its Socio-Economic Development Goals (SDGs), and also two of the World Bank's stated key objectives of its Country Partnership Framework in Vietnam which are to (a) deliver infrastructure and (b) broaden the economic participation of ethnic minorities.

4. MINING INDUSTRY LONG TERM INVESTMENT AND RISK

The mining industry is atypical of traditional manufacturing and services industries, because it requires long-lead time and significant investment upfront on exploration and development before any project can become successful. Discovery of some types of major mineral resources in the Asia-Pacific region have taken an average of 18 years from commencement of exploration to discovery of an ore grade deposit. Therefore, in order to attract quality Direct Foreign Investment into mining, the Mining Working Group requests the Government to:

- a) Benchmark Vietnam's fiscal regime against peer countries and provide a fiscal regime competitive with those offered by other jurisdictions;
- b) Simplify the current fiscal regime for ease of explanation to investors;
- c) Provide fiscal stability and reduce frequency of policy changes due to the long lead-time of mining projects; and
- d) Continue improving internal standards and consider recognizing and adopting international mineral resource standards (e.g. JORC).

Exploration investment faces many risks and often changing objectives as exploration proceeds, especially in conditions of mineral resources at depth in the ground and in areas with complicated geological conditions. The Government must ensure that exploration and mine planning, the formulation of investment projects, and the development of mechanisms and policies will encourage exploitation rationally and with best efficacy. Companies that have a proven history of conducting technically advanced and environmentally responsible exploration programs must have subsequent applications fast-tracked. Ongoing exploration is the key to sustainability in mining projects.

5. REVISING THE VIETNAM MINERAL LAW AND REDUCTION OF MINERAL TAXES

Discussions on reviewing and revising Vietnam's Mineral Law must be open and consultative, allowing the opportunity for input from Vietnamese and FDI mining companies and international mining experts through regular submissions and meetings. The Mining Working Group looks forward to participating and contributing to these discussions and meetings, so that clean, environmentally sustainable mining can be a significant part of Vietnam's impressive economic growth.

POSITION PAPER OF POWER & ENERGY WORKING GROUP

FDI ENTERPRISES PIONEER IN IMPLEMENTING GREEN GROWTH STRATEGIES

On behalf of the VBF Power and Energy Working Group (PEWG), we extend our congratulations to the Government for its effective management during the challenging and complex global political and economic climate of 2023. Throughout this last year, the Ministry of Industry and Trade has made significant progress in achieving the strategic objectives set by the Government. Their efforts have been crucial in building a strong foundation for systematic and robust industry growth. Key achievements include releasing the national Power Development Plan, planning for oil and gas reserves and supply infrastructure, formulating a comprehensive national energy masterplan, and securing approval for the mineral exploration, extraction, and processing plan. These frameworks are essential for guiding Vietnam towards an increasingly modern and sustainable industrial sector that not only promotes national development but also aligns with the global trend towards a green economy and industry. Another notable success is the collaboration between the Ministry of Industry and Trade, the Ministry of Planning and Investment, and various local governments to implement strategies that connect FDI corporations with domestic companies. Moreover, the Ministry of Industry and Trade has prioritized support for small and micro enterprises, facilitating their growth and adaptation to the trends of the Industrial Revolution 4.0.

We also appreciate the Government's recognition of the VBF Power and Energy Working Group as a key collaborator in the Resource Mobilization Plan for implementing the Just Energy Transition Partnership (JETP) declaration, highlighting the importance of our joint efforts towards achieving sustainable development goals.

Ladies and gentlemen, today, we stand at a pivotal juncture in Vietnam's journey towards becoming a beacon of high-tech manufacturing and digitalization. As we navigate this transformative era, one element remains crucial – electricity. Not just any electricity, but power that is consistent, affordable, reliable, and sustainable.

Vietnam has made commendable progress in ensuring a steady power supply to its businesses and residents, a testament to the Government's dedication and foresight. However, the unfortunate shadows of last year's power shortages still linger, reminding us of the vulnerabilities in our energy infrastructure and the potential risks they pose to our economic ambitions. Despite these challenges, we have witnessed significant strides towards addressing these issues, notably through the establishment of the National Steering Committee for key energy projects. This initiative represents a critical step forward, but the journey is far from complete.

To sustain our growth and leadership in high-tech manufacturing and digitalization, Vietnam must accelerate its power generation sector transformation. This involves not only enhancing our energy infrastructure but also developing a robust legal framework that enables the adoption of cleaner and renewable energies and promotes energy efficiency. The implementation of strategic plans such as the national Power Development Plan, the development of the Decree on rooftop solar development, and the guidance on the Direct Power Purchase Agreement mechanism are pivotal. We support the 3 key goals of the January 13 meeting set by PM's for EVN and we look forward to cooperating with EVN in running the electricity sector based on market principles. We especially need a financially strong EVN for bankable PPA's. The march towards high-tech manufacturing and digitalization is not just inevitable; it is already underway. This transformation requires an uninterrupted supply of electricity – the lifeblood of data centers, semiconductor

factories, and the myriad of digital enterprises forming the backbone of our modern economy. Many of these high-tech industries have their own GHG / CO2 emission targets and look to countries that can provide such power resources, through consistently delivered green energy generation and transmission infrastructure.

Last year's power shortages served as a stark reminder of the fragility of our progress. Businesses suffered, innovation stalled, and our competitive edge was dulled. This cannot be our narrative in 2024. We must ensure that our energy infrastructure is robust, reliable, and ready to support the voracious demands of a digital economy. A significant volume of FDI is ready and awaiting to support this, once more clarity and certainty can be provided from the market.

The achievements we celebrate today, including the establishment of the National Steering Committee for key energy projects and the inclusion of the Power & Energy Working Group in the JETP process, underscore the importance of collaboration. However, coordination among Ministries and decisive action from Government leaders are imperative to navigate the complexities of energy transformation. The business community, too, plays a crucial role. As we revise key regulations and strive to make Power Purchase Agreements bankable, with opportunities for Direct Power Purchase Agreements which can reduce the burden on EVN's grid and instigate further FDI, it is essential that the voices of businesses are heard, their concerns addressed, and their contributions recognized.

Today, we call upon the Government of Vietnam, the key Ministries, and our partners in the business community to unite in this endeavor. We must work together to refine our policies, strengthen our infrastructure, and ensure that our energy sector is not just capable of meeting today's demands but is future-proofed for the innovations of tomorrow.

Let us harness the collective expertise, passion, and vision of all stakeholders to power Vietnam's journey towards a prosperous, tech-driven future. Let our actions today light up the path for generations to come.

In conclusion, the uninterrupted supply of electricity is not merely an operational necessity; it is the cornerstone of Vietnam's economic and technological aspirations. As we stand on the brink of a digital age, powered by high-tech manufacturing and innovation, let us reaffirm our commitment to ensuring that every watt of power is a step towards a brighter, more sustainable future for Vietnam. Together, we can and will ensure that "Electricity as the Enabler" becomes not just a theme of discussion but a lived reality, driving Vietnam's tech-driven future towards unprecedented heights.

SPEECH OF TAX & CUSTOMS WORKING GROUP

Dear Prime Minister Mr. Pham Minh Chinh, Minister of Planning and Investment Mr. Nguyen Chi Dung, Leaders of Ministries, local governments, representatives of companies who are members of the Vietnam Business Forum and the delegates attending the forum today, my name is Seck Yee Chung, Representative of VBF's Tax and Customs Working Group.

Green growth is a strategic priority of the Vietnamese Government, marking Vietnam's commitment to economic development without harming the environment and society. The Government has taken many measures such as encouraging the utilization of renewable energy sources, promoting green technology, and investing in clean, high-performance industries. These efforts have brought great results and enhanced the country's position and reputation in the international arena. However, to focus resources on those goals, economic growth through enhancing the competitiveness of the national investment environment to attract and retain investors is extremely important.

In that context, the global-tax reform policies pose many challenges to the objectives of maintaining the competitive capabilities of the investment environment. Vietnamese Government has taken many measures such as promulgating new regulations or amending the current legal documents, regulating investment supports to gradually remove difficulties, encouraging enterprises to have confidence and resources to cope with the new situation. However, there exists some difficulties in the application of regulations and policies, which has not yet created favorable conditions for investors. Some regulations in the legal documents are still contradictory, causing difficulties when applying in practice, hindering the smooth investment process of enterprises. Among them, I would like to present 4 urgently important issues as follows:

Firstly, the implementation of the Advance Pricing Agreement mechanism on method of determining taxable prices (“APA”) is necessary because this is a general trend that is effectively applied by tax authorities in all countries to manage revenue from cross-border transactions, while bringing benefits to taxpayers in Vietnam. However, after 11 years of implementation, the number of APA dossiers submitted by taxpayers to the General Department of Taxation is about 30 dossiers but none of them have been approved. This affects the business plan, as well as consumes the taxpayers’ follow-up time and efforts in Vietnam, especially in the context of established legal framework and many good precedent cases around the world.

From the perspective of neighboring countries, specifically South Korea has approved 240 APA applications within 5 years from 2019 to 2022, China has signed 260 APA applications as of 2022. In Southeast Asia, Singapore and Indonesia respectively signed 69 and 29 APA applications by the end of 2022.

In order for the policy to come into practice, we respectfully request the Government to arrange to solve the limitations above and establish a Special Working Group to facilitate the settlement, negotiation and signing of APA dossiers to realize the commitments of building and completing legal documents in accordance with international practices to meet the needs of international economic integration and create favorable conditions to the fullest extent for foreign investors to positively contribute to the Vietnamese economy.

Secondly, regarding the Draft Decree on the establishment, management, and use of the Investment Support Fund, we observe that the subjects being entitled to support in the Draft are too narrow. With the requirements on very high scale of capital or turnover, only few of enterprises in the High-Tech sector can be satisfied. The subjects of the policy do not fully cover groups of investors in the high-tech sector, or strategic investors as required by Resolution No. 110/2023/QH15. Therefore,

VBF proposes to supplement the following subjects to the Decree to ensure the more comprehensive and complete policy:

- (i) Adding subjects being enterprises operating in Hi-tech parks;
- (ii) In the field of high-technology, it is necessary to consider investors being large Groups which are groups with investment scale in Vietnam of at least VND 20,000 billion or USD 1 billion and above (rather than considering on the basis of single entity or single project);
- (iii) The enterprises/projects in other manufacturing fields with total investment capital of at least VND 20,000 billion or USD 1 billion and above.

Currently, several countries are making efforts in researching and promulgating the diverse investment support policies. For example, the United States launched many support packages of hundreds of billions dollars for prioritized areas. Singapore also offered the Refundable Investment Credit (RIC) policy to provide support up to 50% for the expenses meeting the required conditions. Vietnam can study and make reference to these policies in the process of developing its supporting policies.

Thirdly, General Department of Customs recently continues to propose to allow only foreign traders without presence in Vietnam to carry out customs procedures related to purchase, sale and distribution of goods in Vietnam. This policy will negatively affect the business activities of foreign-invested enterprises in Vietnam and limit revenue sources for the budget. Foreign traders who have the commercial presences in Vietnam with their prestige and global economic and trade relations, play an important role in connecting and promoting business activities in Vietnam. The current commercial law also does not prohibit foreign traders with presence in Vietnam from conducting transactions of purchase, sale and distribution of goods in Vietnam. Therefore, we recommend that there should not exist any discriminations against this subject, but rather consistently apply and manage through regulations on business conditions, reporting regime, tax administration to encourage foreign traders to increase investment and commercial presence in Vietnam, helping the country become the the economic and financial center of ASEAN and Asia.

Fourthly, according to Decree 90/2007/ND-CP dated May 31, 2007 of the Government, foreign traders must obtain Certificate on import and export rights in order to carry out exportation of goods from domestic area to bonded warehouses/ importation of goods from bonded warehouses to domestic area or import/ export on-the-spot. Meanwhile, there are many cases where enterprises submitted the application dossier to the Ministry of Industry and Trade to apply for the Certificates but the applications have not yet been processed after 2 years. In order to facilitate the favorable conditions for enterprises, it is necessary to clarify which cases foreign traders is required to apply for Certificate on import and export rights and to supplement clear instructions on the procedure, timeline to speed up the processing of granting the certificate for enterprises.

Above are some comments of the Tax and Customs Working Group. We hope that the Government, the Ministry of Planning and Investment and relevant Government Agencies will thoroughly and comprehensively consider to soon resolve the problems that we have summarized and included in the report of the working group, including the afore-mentioned issues, thereby contributing to completing the legal framework, improving the investment environment, fostering the confidence, enhancing the integration, and strengthening Vietnam's competitive capabilities in the international market.

I sincerely thank you!

POSITION PAPER OF TAX AND CUSTOMS WORKING GROUP

TAX POLICY ISSUES

2023 is an extremely challenging year for the Government of Vietnam as well as all businesses in the face of volatile world economic and political developments. Conflicts in Europe and the Middle East have placed much pressure on raw material costs and commodity prices, resulted into supply chain and production chain disruptions as well as consequences on investment cash flow, the labor market and product consumption market, etc. Furthermore, global tax reform policies have posed challenges to the goal of maintaining a competitive business environment in Vietnam. In this backdrop, the Government has taken steps such as issuance or revision of legal documents, and adoption of investment and credit support packages to gradually remove difficulties and improve the business environment, thus building business confidence and resources to cope with the new situation. These policies have partly eased financial burdens of businesses, removed bottlenecks to stable production and business activities and increased resilience against pressures and challenges.

However, in reality, the adoption of regulations and policies present certain shortcomings, not truly creating favorable conditions for investors. Some regulations are contradictory, making it difficult for the implementation or causing inconsistent practices and other issues, thus impeding business investments. We would like to point out some existing issues below, for which early actions are required.

1. The application of the advance pricing agreement (APA) mechanism in tax administration for enterprises having related-party transactions has presented limitations for years.

Issue:

The application of the APA mechanism is necessary as this is a popular trend that tax authorities in all countries are effectively applying to manage revenue from cross-border transactions. In principle, this mechanism will bring benefits to taxpayers and enable Vietnam to adopt latest international practices in tax management. As this is a new tax management mechanism, Vietnam's practical experience is quite limited. Yet, since the first guidance on APA, i.e. Circular 201/2013/TT-BTC (December 2013) was issued, and most recent updates in Article 41 of Decree 126/2020/ND-CP and Circular 45/2021/TT-BTC, it has been 8 years but no bilateral APA dossiers have been approved or circulated, leading to a large backlog of taxpayers' APA dossiers over the years without being properly processed, despite a fact that a legal basis is already in place. Taxpayers' challenges include:

- (i) Vietnam has not published the commercial database that is used in processing related-party transaction records and APA dossiers, failing to provide a legal basis for verification and processing when negotiating with tax authorities of other countries. Regional tax authorities in Japan, South Korea, Singapore, Malaysia and Indonesia are all using commercial databases as reliable databases in processing APA dossiers.
- (ii) Current regulations are unclear in calculating and applying the standard market price range in bilateral APA dossiers for which 1-year data or 3-year averages as of the date of APA application submission should be used.
- (iii) Circular 41/2021/TT-BTC, according to international practices, no longer requires processing of APA dossiers in stages, but, in fact, no dossiers have been completely processed since 2014, leading to a huge backlog. Taxpayers are also not regularly updated on the processing progress of their applications. Meanwhile, countries in the region have implemented practices that can effectively handle taxpayers' requests, including:

Year	2018	2019	2020	2021	2022
China	156	177	206	226	260
Japan	146	145	No data available	No data available	No data available
South Korea	204	218	225	No data available	240
Singapore	No data available		Data as of the end of 2020: 46	Data as of the end of 2021: 58	Data as of the end of 2022: 69
Indonesia			153	No data available	No data available
Malaysia			421	No data available	No data available

The local tax departments are being involved by the General Department of Taxation in APA appraisal, discussions and negotiation, while also tasked to examine taxpayers' tax payments. However, according to Circular 41/2021/TT-BTC, when an APA dossier is closed for negotiation, withdrawn, canceled or revoked, the information and data provided by the taxpayer in the request for official APA application, explanatory notes as required, annual APA reports and ad hoc reports will not be used by tax authorities as evidence or documents for the purposes of inspection, auditing, or tax imposition on taxpayers. This means that the local tax departments do not use this information and data in subsequent tax inspections.

Recommendation:

- (iv) The Government of Vietnam should drastically direct the General Department of Taxation to completely process APA dossiers so as to create favorable conditions for taxpayers by retaining the dossier processing time frame (according to international practice) to avoid backlogs at all levels, and ensuring timely notification of the processing process to taxpayers who have submitted APA dossiers.
- (v) Vietnam tax authorities need to officially announce the commercial database used in processing APA dossiers and increase the legality of this commercial database to ease taxpayers' application.
- (vi) It is recommended that there be clear regulations on calculating and applying the standard market price range in APA dossiers, which should be based on:
 - the most recent 3-year weighted average data of selected comparable independent companies as of the date of APA submission.
 - The standard arm's length range proposed in bilateral/multilateral APA dossiers is a set of values from the 25th percentile to the 75th percentile according to international practice.
- (vii) The Ministry of Finance and the General Department of Taxation should amend the regulations so that local tax departments do not participate in APA appraisal, discussions and negotiation. Local tax departments should only provide information to the General Department of Taxation when necessary.

Besides, we also have a number of other recommendations to the Government and Ministry of Finance for consideration:

- (viii) Provide guidance to the General Department of Taxation on referencing bilateral APAs signed by companies in the same corporation of the taxpayer with other foreign tax

- authorities having the same functions as the taxpayer in Vietnam in order to facilitate approval and appraisal of APA dossiers in line with international precedent.
- (ix) Issue regulations on the time frame for processing APA dossiers to help taxpayers feel secure in implementing business plans according to submitted APA dossiers.

2. Target recipients of investment support according to the draft Decree on the establishment, management and use of the Investment Support Fund

Issue:

According to Resolution No. 110/2023/QH15 adopted on December 29, 2024 at the 6th session of the 15th National Assembly, the National Assembly "*basically agreed with the proposal and assigned the Government in 2024 to draft a Decree on the establishment, management and use of the Investment Support Fund using revenue from the global minimum tax and other legal sources to build a stable business environment, encourage and attract strategic investors and multinational companies, and support domestic businesses in some areas in which stronger investment is highly encouraged.*" Implementing its assigned tasks, the Ministry of Planning and Investment (MPI) has been actively developing this Draft Decree.

According to the current Draft, we can see that the scope of target support recipients is quite narrow. The draft targets enterprises with investments in high technology (those implementing investment projects in high-tech product manufacturing, high-tech enterprises, enterprises with high-tech application projects) whose investment is over VND 12,000 billion or whose revenue is over VND 20,000 billion/year. Given this requirement in terms of the project scale, only a very small number of businesses can be eligible, thus narrowing the scope of target support recipients, which fails to cover a representative portfolio of investors in the high-tech sector, while also failing to attract strategic investors as set out in the National Assembly's Resolution No. 110/2023/QH15 as above.

Recommendation:

In order for the investment support policy to contribute to a stable business environment, and retain and attract large corporations, we have some recommendations to the Prime Minister, MPI and relevant agencies for further consideration and finalization of the Draft Decree on investment support as follows:

- (i) *First*, in the high-tech sector, the current Draft Decree only targets companies with investment projects in the field of high-tech product manufacturing, high-tech enterprises and enterprises with high-tech application projects but does not include those operating in high-tech parks. According to regulations, companies in high-tech parks must meet very strict conditions, one of which is that their project's areas of operation must fit one of the high-tech fields in which investment is encouraged and the project's products produced in the high-tech parks must be listed as high-tech products whose production is encouraged. Thus, these businesses should also be targeted for support in the high-tech sector.
- (ii) *Second*, regarding scale of investment, the current Draft looks at the enterprise-level or project-level scale. In fact, in the high-tech sector, research and development is highly technical, with high technology content, and R&D outputs are often applied to manufacturing of small but critical spare parts and components in terms of new technology or materials. Due to in-depth applications of each technology, tech companies often carry out investment activities under individual projects or subsidiaries, for each type of product with specific technologies. Therefore, in fact, high-tech companies and projects are often small in scale. If we only look at the scale of each project or subsidiary, which is actually supervised by a larger corporation/investor, we will miss important strategic investors in

technology. Currently, there are big names in technology implementing investment activities and long-term commitments in Vietnam, with many subsidiaries and investment projects. The scale of investment of an entire corporation might reach over VND 12 trillion in total, which would be hard to realize for a single project. It is suggested that support policies for investors in the field of high technology should target large corporations in terms of their total scale of investment in Vietnam as a single entity. For example, if a corporation's investment capital in Vietnam is from VND 20,000 billion or USD 1 billion or higher, its high-tech projects will be eligible for investment support policies. This is important to attract large and reputable corporations and encourages corporations to choose Vietnam as a destination of their direct investment projects in the high-tech sector.

(iii) *Third*, it is recommended to include large-scale enterprises operating in other manufacturing sectors with total investment capital of at least VND 20,000 billion or USD 1 billion. Their projects might not be in the high-tech sector; yet, with an investment scale of VND 20,000 billion or USD 1 billion or higher, these projects should be encouraged and supported as they involve an entire ecosystem of satellite businesses, including suppliers of components and materials, logistics companies, etc. which are all indispensable. Appropriate investment supports available to these additional beneficiaries are also seen as a driving force to help develop a comprehensive and closed ecosystem, improve production capacity in Vietnam, and strengthen national capabilities and reduce dependence on external supply and production capabilities. The number of investment projects with investment amount of USD 1 billion or higher in Vietnam is small, with only a few big names. Projects of such a scale are also targeted by regional countries, so Vietnam should actively come up with truly compelling investment attraction policies to compete with other countries in the region.

(iv) *Fourth*, additional corporate income tax collection under global anti-base erosion regulations poses a significant challenge to maintaining the competitiveness of Vietnam's business environment. Therefore, when developing investment attraction policies, we believe that the Vietnamese Government also needs to learn from the experiences of other countries to come up with appropriate and competitive policies.

On February 16, 2024, in order to encourage companies to make sizable investments that bring substantive economic activities to Singapore, the Singapore Finance Minister proposed a new Refundable Investment Credit (RIC) aimed to provide support to applicable entities, including all businesses with investment projects in key economic sectors and new growth areas, including: Investing in new productive capacity (e.g. new manufacturing plant, low-carbon energy production); expanding or establishing the scope of activities in digital services, professional services, and supply chain management; expanding or establishing headquarter activities, or Centers of Excellence; setting up or expansion of activities by commodity trading firms; carrying out R&D and innovation activities; and implementing solutions with decarbonisation objectives. The U.S. government also recently allocated hundreds of billions of dollars for sustainability programs and climate financing, in addition to semiconductor manufacturing through the enactment of three new laws.

It can be seen that these programs have provided investment support policies for quite diverse subjects. We believe that in order to compete with other countries, regionally and globally, Vietnam needs to improve its investment support policies so that they are comprehensive and more effective in retaining and attracting strategic investors.

3. Foreign traders, with or without presence in Vietnam, should be allowed to conduct on-the-spot export and import activities

Issue:

We are aware that MOF and GDVC are taking the lead to collect comments from relevant agencies and businesses on amending regulations related to on-the-spot import and export activities stipulated in Article 35 of Decree 08/2015/ND-CP of the Government.

However, GDVC's proposal still limits to allowing foreign traders without presence in Vietnam to carry out customs procedures related to goods trading and distribution in Vietnam, accordingly, goods will be traded between a Vietnamese enterprise and a foreign trader and the foreign trader will designate another enterprise in Vietnam to deliver/receipt the goods (hereinafter collectively referred to as “*goods trading and distribution transactions in Vietnam*”).

We believe that not allowing foreign traders with presence in Vietnam to carry out customs procedures related to goods trading and distribution transactions in Viet Nam will have a major adverse impact on business operations of many foreign-invested enterprises (FIEs) in Vietnam as well as limiting revenue sources for the state budget. Specifically:

- (i) Foreign traders engaged in goods trading and distribution transactions in Viet Nam are often parent companies of FIEs operating in Vietnam and are also reputable and established companies with global economic and trade network. Therefore, these foreign traders play a very important role in connecting their subsidiaries (FIEs in Vietnam) with other global partners (including the partners' subsidiaries in Vietnam), thereby promoting trading, production and business activities of Vietnamese enterprises, creating more jobs, contributing more to Vietnam's state budget.
- (ii) Foreign traders, when participating in goods trading and distribution transactions in Viet Nam, are obliged to pay all Foreign Contractor Tax (FCT) in Vietnam.
- (iii) Foreign traders are subject to tax management and responsible for paying FCT in accordance with Vietnamese law (specifically Decree 126/2020/ND-CP and Circular 103/2014/TT-BTC of MOF). Furthermore, the management of transactions between related parties is also detailed in legal documents on tax management for enterprises having related-party transactions (specifically Decree 132/2020/ND-CP).
- (iv) Furthermore, Clause 1 Article 22 of Law on Commerce 2005 stipulates that “*The Government shall unify management over the licensing of commercial activities by foreign traders in Vietnam*”. However, until now, there is only Decree 90/2007/ND-CP dated May 31, 2007 of the Government regulating the import-export rights and distribution rights of foreign traders without commercial presence in Vietnam, meanwhile, there are no regulations and guidelines related to foreign traders with presence in Vietnam. Therefore, it can be understood that current law does not prohibit foreign traders with presence in Vietnam from conducting goods trading and distribution transactions in Viet Nam. International experience also shows that countries such as Japan, South Korea, and Singapore do not discriminate and treat foreign traders differently based on their presence in the country.

Recommendation:

We recommend that there should be no distinction between foreign traders with and without presence in Vietnam in state management of goods trading and distribution transactions in Viet Nam. Instead, uniform regulations should be applied for both types of foreign traders and specific conditions for business, periodic reporting, and tax management should be introduced to encourage foreign traders to increase investment and commercial presence in Vietnam,

gradually turning Vietnam into an economic and financial hub of the ASEAN and Asia, creating more jobs and increasing revenue for the state budget, especially in difficult contexts of the world economy.

4. Licenses for import and export rights of foreign traders without presence in Vietnam

Issue:

According to the Government's Decree 90/2007/ND-CP dated May 31, 2007, many local customs authorities require foreign traders to have a license for import and export rights to be eligible to export goods from the domestic market to bonded warehouses/import goods from bonded warehouses to the domestic market or implement on-the-spot import and export activities. We believe that GDVC should, together with MOIT, clarify:

(i) **In what cases foreign traders are required to apply for a license for import and export rights?**

In case of on-the-spot import and export (goods moving between two businesses in Vietnam), is a foreign trader's license for import and export rights required? According to Official Letter 8739/BCT-XNK dated December 7, 2023, import rights are for imports from other countries and sale in Vietnam, and export rights are for purchase of goods in Vietnam for export. In case of on-the-spot import and export, does the Official Letter 8739/BCT-XNK apply?

(ii) **Businesses have encountered difficulties in submitting applications to MOIT**

Specifically, their application includes documents issued by the agencies in the foreign trader's home country. MOIT needs time to verify those agencies and evaluate whether they have authority to issue such documents. This process is not clearly indicated in the regulations, leading to a lengthy and time-consuming process to evaluate foreign traders' applications for licenses for import and export rights.

We are aware that there have been cases where an application for such a license has not been processed two years after submission to MOIT.

Recommendation:

We do hope that GDVC, in coordination with MOIT, addresses issues related to licenses for import and export rights for foreign traders not present in Vietnam, specifically:

(i) **In what cases foreign traders are required to apply for a license for import and export rights?**

In case of on-the-spot import and export (goods moving between two businesses in Vietnam), is a foreign trader's license for import and export rights required?

(ii) **Update regulations on granting licenses for export and import rights to foreign traders not present in Vietnam with clearly defined procedures and timeline to facilitate the licensing process.**

5. Limitations in regulations on cross-border transshipment trading

Issue:

Article 30 of the Commercial Law 2005 regulates cross-border transshipment trading:

“Article 30. Cross-border transshipment trading

1. Cross-border transshipment trading is the purchase of goods from one country or territory for sale to a country or territory outside the territory of Vietnam without carrying out the procedures for importing such goods into Vietnam and the procedures for exporting such goods out of Vietnam.

2. Cross-border transshipment trading is carried out in the following forms:

...

c) Goods are transported from the exporting country to the importing country through Vietnamese border-gates and brought into bonded warehouses or areas for transshipment of goods at Vietnamese ports without carrying out the procedures for importing them into Vietnam and the procedures for exporting them out of Vietnam."

According to Article 18 of Decree No. 69/2018/ND-CP:

"Article 18. Transshipment trading

.....

2. Foreign invested enterprises (FIEs) are not allowed to perform business activities on cross-border transshipment trading."

These regulations have limited foreign-invested economic entities in Vietnam from diversifying business models in Vietnam. There are many business models that bring great benefits to Vietnam. The current regulations and interpretations are placing Vietnam in a more disadvantageous position compared to other countries. Current regulations may hinder the comprehensive development of Vietnam's business environment and take away the country's existing advantages.

In practice, we have seen cases where large investors wish to be present in Vietnam to establish a trading hub in Vietnam. Specifically, under this business model, they expect Vietnamese goods to be exported and stored in bonded warehouses in Vietnam. At the same time, foreign goods are also purchased by foreign businesses and transferred into bonded warehouses to serve customers without carrying out the procedures for importing them into Vietnam and the procedures for exporting them out of Vietnam. Goods will be distributed to customers worldwide from these warehouses. Foreign goods are stored in bonded warehouses in Vietnam for the purpose of being bundled with Vietnamese goods for complete packages before delivery to foreign customers. As Vietnamese goods account for a large proportion and play an important role in this business model, the above-said companies have chosen to set up a trading hub in Vietnam to facilitate packaging, consolidation and bundling of Vietnamese and foreign goods ready for delivery to customers.

It can be seen that such a practice brings multiple benefits to the entire economy as well as helps increase the national budget, specifically:

- (i) It increases profits for warehouse owners and increases budget revenue as more businesses are investing in warehouses. In fact, some hubs which are thousands of square meters operating abroad have transported tens to hundreds of thousands of cubic meters of goods for export around the globe. Their plans to expand trading hubs in the future can optimize the occupancy of bonded warehouses, increase revenue for investors, encourage construction of warehouses, and increase state budget revenue.
- (ii) In launching trading hubs in Vietnam, foreign companies will inevitably hire Vietnamese companies to provide logistics services to support their trading activities. The operations of foreign enterprises will result in a significant transportation volume of export products, as goods are to be transported from the hubs to customers globally. Annual logistics service fees are estimated to amount to millions of USD, creating more local jobs.
- (iii) As mentioned above, foreign enterprises will buy a significant portion of goods from domestic manufacturers for distribution abroad. That will help promote the business expansion of Vietnamese manufacturers as well as create more jobs locally. In addition, thanks to the opportunity to become partners of large businesses, Vietnamese manufacturers will also contribute more taxes to the State Budget.
- (iv) Given the nature of this business model, trading hubs must be located in the country of the main manufacturers. Therefore, if this model cannot be deployed in Vietnam, foreign enterprises might locate their hubs in another country and outsource production to the main manufacturers in that country.

- (v) In case where goods purchased from foreign suppliers must be imported into Vietnam before being sold to foreign customers, businesses have to pay import duties and VAT at the point of importation. However, since the goods will then be exported again, according to current regulations, enterprises can request a full refund of such import duties and VAT. In other words, in the end, import duties and VAT on goods purchased from foreign suppliers are not paid to the State Budget. Therefore, storage of goods purchased domestically or abroad in bonded warehouses in the above business model will not affect State Budget revenue from VAT and import duties.

Although this business model brings multiple benefits to Vietnam as above, foreign-invested enterprises have faced challenges in the implementation due to issues related to transfer of foreign goods into bonded warehouses which is considered as cross-border transshipment trading, for which enterprises may not implement the above regulations. This has in turn limited business opportunities available to these enterprises and also related satellite businesses in Vietnam, causing Vietnam to lose significant and potential revenue under this model.

Recommendation:

Given the analysis provided, we believe that the business model as noted above will bring significant benefits to the Government, local people and Vietnam's manufacturing industry. Therefore, we have a number of recommendations to the Government and MOIT for consideration and revision of current regulations to open up opportunities for companies that wish to deploy the similar business model in Vietnam.

As the main purpose of this business model is for goods produced outside of Vietnam to be bundled with goods produced by domestic manufacturers for export to foreign customers, leveraging relationships between foreign enterprises and final consumers, we believe that this business activity should not be considered cross-border transshipment trading. The nature of the business activity should be considered in terms of an overall business model instead of looking at individual shipments.

For goods purchased from overseas suppliers, we recommend that goods owners not be required to apply for an import license and carry out specialized inspection for those goods when brought into a bonded warehouse.

6. Challenges in confirmation of incentives for projects producing supporting industry products on the Government's list of supporting industry products prioritized for development

Issue:

Currently, according to Decree 111/2015/ND-CP on development of supporting industries, projects producing supporting industry products on the Government's list of supporting industry products prioritized for development specified in the Decree can submit an application to MOIT or a DOIT for confirmation of incentives for supporting industry products. However, the application of this Decree in practice has presented some problems as follows:

- (i) *First*, many enterprises producing products that are spare parts or components of products listed as supporting industry products prioritized for development specified in the Decree have submitted application but failed to receive approvals. In fact, these manufacturers of spare parts and components are the primary suppliers of factories that are manufacturing and outsourcing supporting industry products prioritized for development specified in the Decree. Therefore, the production of these spare parts and components is extremely important and indispensable to a complete production chain of supporting industry products. Furthermore, many of these spare parts and

components play a key role and account for a large proportion of the total value of finished products. At the same time, certain spare parts and components require production technologies that are even more advanced than the primary products. Supporting industry development policies need to be reviewed comprehensively, taking into account all relevant stages. Therefore, projects producing spare parts and components also need to be encouraged and be entitled to incentives available to projects producing supporting industry products. The fact that the list of supporting industry products excludes certain groups of projects can lower the effectiveness of the goals of the Decree.

- (ii) *Second*, while submitting applications for confirmation of incentives, applicants have still encountered many difficulties. Specifically, this process is much time-consuming, and applicants have to submit additional documents multiple times at the request of the licensing agency. Many compliance issues in the past have been addressed by businesses by following applicable procedures, but the licensing agency still rejects their application on the grounds of previous issues. These have led to financial and time burden on businesses while lowering effectiveness of incentive policies and making the business environment in Vietnam less attractive.

Recommendation:

We believe that supports to those producing supporting industry products is critical and there should be clear and favorable policies that would enable businesses to perform efficiently, thereby developing Vietnam's industry sector. Based on the analysis above, we would like to provide the following recommendations to ensure that support policies become more relevant and practical:

- We suggest adding spare parts and components of products listed as supporting industry products prioritized for development currently stipulated in Decree 111/2015/ND-CP to the List of supporting industry products prioritized for development; and
- MOIT and its Vietnam Industry Agency should be tasked to implement confirmation procedures and facilitate the appraisal and approval of requests so as to address specific problems in the implementation of administrative procedures, ensuring compliance with prescribed deadlines for the sake of investors.

7. Other tax-related issues

7.1 "Using technology appraised according to the provisions of the Law on High Technology and the Law on Science and Technology" needs to be implemented in accordance with its nature so as not to affect the interests of Businesses participating in large-scale investment projects.

Issue

According to the provisions of Decree No. 218/2013/ND-CP amended in Decree No. 12/2015/ND-CP, one of the conditions for a large-scale investment project of VND 12,000 billion to be eligible for corporate income tax incentives is **“Using technology appraised according to the provisions of Law on High Technology and the Law on Science and Technology.”**

However, current regulations **do not provide detailed instructions on the implementation of technology appraisal for the purpose of determining CIT incentives for large-scale investment projects.**

The Law on High Technology and Law on Science and Technology currently have only regulations related to technology appraisal for the following cases:

- (i) Technology appraisal process for Investment Projects before granting Investment Certificates as prescribed in Article 44, Decree No. 08/2014/ND-CP guiding the Law on Science and Technology, Articles 31 to 34 of the Law on Investment 2014; Clause 2, Article 13, Law on Technology Transfer 2017. Accordingly, technology appraisal or a competent authority's opinion on technology is required in cases where investment projects use technology restricted from transfer or construction investment projects have potential negative impact on the environment according to the provisions of law on environmental protection using technology.
- (ii) Technology appraisal process for the purpose of granting a Certificate of Projects on Application of High Technology according to Decision No. 55/2010/QD-TTg, Circular No. 32/2011/TT-BKHCHN guiding the Law on High Technology
- (iii) Technology appraisal process for the purpose of granting a Certificate of High-tech Businesses of Application of High Technology according to Decision No. 55/2010/QD-TTg, Circular No. 32/2011/TT-BKHCHN guiding the Law on High Technology

All three of the above processes are not related to technology appraisal for large-scale investment projects that is eligible for CIT incentives for active investment projects.

Because there is no specific technology appraisal process for projects eligible for investment incentives based on large-scale criteria, in reality, some businesses have been encountering problems in the applying tax incentives based on the criteria for large-scale investment projects according to the regulations mentioned above.

Recommendation

We recommend that the Government, the Ministry of Finance, and the Ministry of Science and Technology research and issue guidance to clarify technology appraisal criteria for businesses applying incentive regulations based on large-scale investment in this case. The regulations need to clarify:

- Whether there is a separate technology appraisal process for large-scale investment projects, and whether there are specific instructions on the process; or
- Clarifying that the project must have technology appraisal according to the provisions of the Law on Investment **if** the technology needs to be appraised or consulted by a competent authority before being approved for investment or granted an investment registration certificate according to the provisions of laws on investment.

"Using technology appraised according to the provisions of the High Technology Law and the Law on Science and Technology " needs to be implemented in its true nature so as not to affect the interests of the Businesses.

7.2. Problems with procedures for declaring Corporate Income Tax ("CIT") incentives for Expanded Investment Projects with phased investment

Issue

Currently, the instructions on procedures for declaring tax incentives for Phased Investment Projects are only specified in the guiding documents of the Decree and Law (Circular No. 151/2014/TT-BTC) only applies to new Investment Projects without regulations for Expansion, while the nature of phased investment for new investment projects and expanded investment projects is similar.

In fact, many businesses implementing Expansion also implement phased investment and clearly state the investment periods and corresponding investment progress. However, because there are no specific regulations, it is difficult for both tax authorities and businesses to carry out procedures for declaring corporate income tax incentives in this case. Specifically:

- The eligibility determination of the criteria for increasing the cost of fixed assets/proportion of the cost of fixed assets will be based on the added value of fixed assets of the first investment phase or after completing the investment according to the entire registered investment capital.
- Preferential treatment of tax incentives for income arising from each investment period.

Accordingly, specific regulations on the principles of applying tax incentives to expansion in the Law on Corporate Income Tax is important to remove the above problems, ensure consistency in implementation and also ensure benefits of investors, encouraging them to continue investing in Vietnam.

Recommendation

It is recommended to amend and supplement Clause 4, Article 14 and Article 18 of the Law on Corporate Income Tax in a consistent manner with new investment projects with phased investment. The application of incentives must ensure that investors are fully entitled to preferential treatment if the project is granted an investment certificate that meets the conditions for investment incentives. Specifically:

Clause 4, Article 14 of the Law on Corporate Income Tax shall be amended and supplemented as follows:

“4. An enterprise, which has projects of investment in the fields or localities eligible for enterprise income tax incentives according to this Law, expands the production scale, increases the productivity, upgrades production technologies (expansion), it may choose between tax incentives for operating projects for the remaining time (if any) or tax exemption or reduction for the additional incomes from expansion if one of the three criteria in this Clause is satisfied. The period of tax exemption and tax reduction for the additional incomes from expansion in this Clause is equal to the period of tax exemption and tax reduction for new projects of investment in the same field or locality that is eligible for enterprise income tax incentives.

The expansion must satisfy one of the criteria below to be given incentives:

- a) The cost of additional fixed assets reaches at least 20 billion VND for the project of investment **reached the registered investment capital is completed and commenced**, and is applicable to expanding investments in the fields eligible for enterprise income tax according to this Law, or at least 10 billion VND, applicable to expanding investments in localities facing socio-economic difficulties or localities facing extreme socio-economic difficulties;
- b) The proportion of cost of additional fixed assets **for the project of investment completes the registered investment capital** reaches at least 20% of the total cost of fixed assets before investment;
- c) Design capacity increases **when the investment project completes the registered investment capital** reaches at least 20% of the design capacity before investment.”

Clauses 5 is added to Article 18 of the Law on Corporate Income Tax as follows:

“Article 18. Condition for application of tax incentives:

....

5. For investment projects (including new investment projects and expansion) licensed for investment, in the Investment Registration Application sent to the investment licensing agency with registered investment capital, phased investment with investment implementation progress, in case the next phases are actually considered component projects of the licensed investment project if being implemented according to schedule (except for cases of force majeure or difficulties due to objective reasons in site clearance, handling of administrative procedures by state agencies, natural disasters, fires or other difficulties or force majeure), the

component projects of an investment project are entitled to tax incentives for the remaining period of the investment project from the time the component project earns preferential income.”

During the implementation of phased component projects above, if the investor is allowed by the State management of investment to extend the project implementation period and the enterprise implements it according to the extended term, they will be entitled to tax incentives according to the above regulations.

[Option 1]:

In the case of an expansion, when being entitled to tax incentives according to the above regulations, the investor must have a written commitment to meet the conditions and criteria for tax incentives specified in Clause 4, Article 14 of this Law. During the actual implementation of an expansion investment project, if the investor does not meet the conditions and criteria as prescribed, the investor must return the amount declared and entitled to tax incentives together with fines and late payment, if any, to the state budget.

[Option 2]:

In the case of an expansion, when being entitled to tax incentives according to the above regulations, the time the project starts to be entitled to incentives is defined from the tax period when the project meets the conditions and criteria for tax incentives specified in Clause 4, Article 14 of this Law and the projects are subjected to preferential treatment of tax incentive according to regulations.

7.3. Loan interest expenses of contracts using interest rate derivatives

Issue

Clause 3, Article 16 of the Decree No. 132/2020/ND-CP stipulates that:

“3. Total loan interest expense is deducted in case of determining CIT taxable income of the enterprise engaged in related-party transactions:

- a) “Total loan interest expense arising after deducting deposit interests and lending interests within a specific taxable period which is deducted during the process of determination of taxable income shall not exceed 30% of the net total operating income within the tax period plus interest expenses after deducting deposit interests and lending interests arising within the tax period plus depreciation/amortization expenses arising within that period of a taxpayer.*

The actual situation shows that many businesses are applied floating interest rates (LIBOR) under their loan contract when applying for loans for business purposes in Bank A.

Furthermore, businesses have signed with Bank B an “Interest Rate Swap” contract to change their floating interest rates (LIBOR) into fixed interest rates for minimizing interest rate risk due to market fluctuations. This contract also specifically states their loan and its floating interest rate with Bank A as the original product.

- (i) In case the LIBOR interest rate is higher than the fixed interest rate, Bank B will pay the interest rate difference to the business, who then will pay the fixed interest rate + interest rate difference to Bank A.
- (ii) In case the LIBOR interest rate is lower than the fixed interest rate, the business shall pay the LIBOR interest rate to bank A and the different amount to Bank B.

However, according to the tax authorities, when calculating loan interest expense to be capped at 30% of EBITDA, in the latter case, the difference between fixed interest rate and LIBOR interest rate shall not be offset to reduce lending interest expense of the main activity entitled to incentives. Instead, it must be separately determined as financial income from other business activities to calculate the standard CIT rate of 20%.

We believe that such treatment does not reflect the nature of the transaction because businesses do not conduct derivatives business like commercial banks rather than hedging the interest rate risk.

Basically, the businesses change loan interest rates from floating to fixed one, by which they are subject to fixed interest expenses only after transferring interest rate risk to Bank B.

Thus, we understand that in case (i) the loan interest difference is recorded as a reduction in borrowing costs and in case (ii) it is recorded as an increase in borrowing costs.

According to Article 4 of the Law on Credit Institutions, “derivative product” means “*a financial instrument valued by predicted changes in the value of a principal asset such as exchange rate, interest rate, foreign exchange, currency or other principal assets.*”

Because an interest rate swap contract is a derivative product, it is always attached to the original product (or original “loan”). Accordingly, any difference in interest rate (increase/decrease) arising from this contract should be considered the increase/decrease in interest rate of the original loan. In other words, loan interest expense is the offset value of two contracts (original loan contract and interest rate swap derivative contract attached to the original contract).

According to Article 6.2.a of the Circular 01/2015/TT-NHNN: “*a) Interest rate swap: Commercial banks, branches of foreign banks shall conclude interest rate derivative contracts with customers, in which the parties agree the terms of payments of the interest in the same currency ... depending on the received and payable interest rate agreed (fixed or floating rate) on the same value of the nominal capital.*”

Thus, the interest that the business receives or pays to Bank B under the interest rate swap contract needs to be considered part of the interest expense.

Recommendation

We propose the MOF/the General Department of Taxation consider the amendment based on the nature of the transaction to address this issue.

a. For determination of interest expenses according to Decree 132, we recommend the following amendment:

“a) Total interest expense arising (including the increase or decrease in interest rate by using interest rate derivatives for the original loan) after deducting deposit interests and lending interests within a specific taxable period which is deducted during the process of determination of taxable income shall not exceed 30% of the net total operating income within the tax period plus interest expenses after deducting deposit interests and lending interests arising within the tax period plus depreciation/amortization expenses arising within that period of a taxpayer.” While Decree 132 is pending for amendment, we propose that it be implemented according to the nature as explained.

b. For determination of income eligible for incentives:

In this case, the sole purpose of interest rate swap is to hedge interest rate risk, which directly relates to the main business activities entitled to incentives rather than a separate business activity of the enterprise. Thus, we recommend that the MOF/the General Department of Taxation provide guidance to allow the deduction of interest expenses of main business activities rather than being considered other income which is ineligible for incentives.

7.4. Upfront supports for exclusive bancassurance

Issue

In practice and according to market practice, insurers pay upfront supports for exclusive bancassurance between the insurer and its agent, which is the partner bank in this case under the “insurance distribution cooperation agreement between insurers and banks” (“**Upfront Supports**”).

However, **bottlenecks have been encountered** due to inconsistencies related to the application of (i) specialized laws on insurance business to determine whether the insurers are allowed to pay **the Upfront Support** and book it as an expense and (ii) whether these expenses are considered reasonable and valid expenses that insurers are allowed to deduct from their CIT taxable income according to laws on corporate income tax.

This is not a new issue at all since it has been discussed and agreed upon between the Tax Working Group and the General Department of Taxation regarding the recognition of Upfront Support as the enterprise’s reasonable and valid expenses, which shall be deducted from the CIT taxable income of the insurer at the meeting dated November 25, 2020.

Amidst various challenges faced by of insurers, in order to minimize legal compliance risks and increase costs for insurer which offer bancassurance through exclusion distribution partnerships, we would like to restate this content as follows:

c. Nature of the Upfront Supports:

The Upfront Support is an upfront amount when establishing “*bancassurance distribution partnership*”. Accordingly, insurers will pay upfront support to banks **to act as their Exclusive Partner for insurance distribution**.

As an international widespread practice, Upfront Supports began to enter Vietnam’s market around the 2010s and currently are applied in most exclusive distribution partnerships between insurers and banks.

In general, the amount of Upfront Support will depend on the calculation and negotiation of related parties; However, basically, it is determined based on the following two principles:

- **Opportunity Costs:**

In an exclusive partnership between an insurer and a bank, the banks, as the distribution partner, **is only allowed to have one (01) exclusive partner** at a time, that is one (01) insurer throughout the term of the distribution agreement and therefore the bank will lose income and business opportunities that could have been obtained if it distributes insurance products of many other insurers at the same time. Therefore, Upfront Support is intended to offset the lost opportunity costs of distribution partners over a long period of time, which can last from 15 to 19 years. This explains the nature of Upfront Support

as previously mentioned and why Upfront Support will not usually be conditional to any business performance or targets for the distribution partner as the case may be with other bonuses and remunerations.

- **Leveraging the distribution partner's network:**

When an insurer establishes exclusive partnership with a distribution partner/institutional agent, they will have exclusive access to the systems, facilities/transaction networks, human resources and customers of these entities and the assets which have been heavily invested a lot over a long period of time. Therefore, based on the insurer's assessment, the Upfront Support shall **not be higher than the costs that the insurer must invest** to build and operate and leverage with the same size and benefits as those established by their distribution partners.

d. Legal regulations governing Upfront Support and interpretation by insurers:

There are currently no legal provisions directly governing Upfront Supports. Instead, relevant parties will refer to the general principles of relevant regulations to determine the nature and regulations governing Upfront Supports.

Following this approach, since 2001, legal evolution to determine the Upfront Supports is divided into 2 stages:

- **From April 1, 2001 to December 31, 2022:** Governed by the Law on Insurance Business 2000 (*as amended and supplemented in 2010 and 2019*) effective until December 31, 2022, Decree No. 73/2016/ND-CP dated July 1, 2016 detailing the implementation of the Law on Insurance Business and Circular No. 50/2017/TT-BTC dated May 15, 2017.
- **January 1, 2023 to present:** Governed by the Law on Insurance Business 2023 and Decree No. 46/2023/ND-CP guiding the Law on Insurance Business 2023. Currently, the Ministry of Finance is drafting a Circular guiding the implementation of the Law and Decree.

During both periods, on the insurer side, we find that the Upfront Support is considered a reasonable and valid expense associated with their business activities and is a reasonable income of their partner bank which receives the Upfront Support provided the specialized tax regulations are adhered to with relevant invoices and documents. Reasons:

- **There are no regulations restricting or prohibiting the insurers from paying Upfront Supports.** In addition, the Upfront Support **does not violate the law and is not contrary to social ethics;**
- We also understand that the Upfront Support **is in the list of expenses specified in "other expenses and provisions according to legal regulations"** provided for in Article 69 on expenses of insurers and foreign branches in Decree No. 73/2016/ND-CP dated July 1, 2016 detailing the implementation of the Law on Insurance Business and the Law amending and supplementing a number of articles of the Law on Insurance Business.

This law is further guided in Article 22 on principles for determining costs of insurers and foreign branches in Circular No. 50/2017/TT-BTC dated May 15, 2017.

Decree No. 46/2023/ND-CP dated July 1, 2023 detailing the implementation of a number of articles of the Law on Insurance Business 2022 also applies a similar approach when there are regulations on “*other expenses and provisions in accordance with the laws*” at Point o, Clause 3, Article 50.

- Based on that understanding, this Upfront Support has been recorded by the payer (insurer) and the payee (bank) in each party’s audited financial statements and fully tax declared in the corresponding fiscal years, in line with the principles of accounting and recording revenue and expenses.
- In fact, as far as we know, the financial statements of the partner bank which receives the Upfront Support have never had an independent auditor’s qualified opinion when the Upfront Support is recorded as income. Financial reports of banks as the distribution partners are publicly announced on their website in accordance with laws, including regulations applicable to credit institutions and listed companies.

As stated above, the insurers’ understanding and application of Upfront Supports has been approved by the General Department of Taxation. Specifically, as shown in the Summary of the meeting between the Ministry of Finance and Vietnam Business Forum on November 25, 2020, **Issue 21 - “Upfront Support paid by insures to banks are not considered deductible expenses”** was included in the discussion and the relevant parties “*agreed with the recommendation that the corresponding expenses should be included in deductible expenses for corporate income tax purposes*” (“**Meeting Summary**”). This document is currently included in the Vietnam Business Forum Annual Report 2020 at VBF’s annual meeting dated December 22, 2020 (“**Report**”). The full text of the Report and Meeting Summary are publicly available and can be accessed via the link on VBF’s website. Please find the link on page 233 for easy reference: <https://vbf.org.vn/wp-content/uploads/2020/12/VBF-2020-Report-VI.pdf>.

Issue 21 will not be further discussed or proposed at the Annual Business Forums in subsequent years. According to regulations on operation and exchange between VBF and the Government of Vietnam, **the contents agreed upon** at meetings and recorded in VBF’s Public Report **will be considered resolved and no longer an outstanding issue regarding the application of tax regulations and not mentioned again in subsequent annual reports of VBF. Therefore, the unclear issue of the accounting of Upfront Supports for corporate income tax purposes has been clearly solved for the payment practice of Upfront Supports** for insurers and their partner banks to refer to in establishing exclusive partnerships and payment and accounting of Upfront Supports.

Recommendation

By this recommendation, we respectfully hope that the General Department of Taxation will confirm in writing for insurers and banks to agree **to determine the Upfront Support as a reasonable and valid expense, which is deductible for corporate income tax purpose.**

7.5. Pain points in applying customs policies and implementing Decree No. 18/2021/ND-CP Issue

Decree 18 issued by the Government has resolved many pain points of export processing enterprises (EPEs, allowing EPEs to apply EPE regulations right from being granted an investment registration certificate (“IRC”). At the same time, it allows EPEs to be refunded with overpaid tax at the import stage for goods that were imported and had to pay tax during the period when Decree 18 has not yet taken effect.

Decree 18 is critical and enables EPEs to apply EPE regulations right from the time they are granted IRC. Accordingly, enterprises believe that there should be no discrimination in the application of EPE regulations on imported goods and goods purchased from domestic suppliers. In fact, when EPEs purchase equipment and goods from domestic suppliers to serve factory construction during the period when Decree 18 has not yet taken effect, even though EPE regulations have been applied, they have not been able to make customs declaration because at the time of domestic purchase, Decree 18 has not yet taken effect.

Therefore, enterprises wish to complete customs declarations to comply with current tax and customs regulations for domestic goods/equipment purchases of EPEs. However, because Decree 18 does not have any specific wording mentioning the supplement of customs declarations or equivalent documents for domestic goods during the period when Decree 18 has not been promulgated, EPEs are still facing bottleneck in completing customs declarations.

Recommendation

To enable consistent application of EPE regulations to both imported goods and domestic goods, we recommend that the Government Office and the Ministry of Finance consider resolving this pain points for EPEs in the following directions:

- (i) Current regulations do not stipulate cases for enterprises to supplement customs declarations, EPEs respectfully request the Ministry of Finance to help solve this pain points by allowing Customs Authorities to confirm the list of domestic goods and equipment purchased by EPEs in the basic construction phase before Decree 18 was promulgated, of which customs declarations have not been completed - the list of machinery and equipment being currently booked and monitored as fixed assets by EPEs. This confirmed list will replace the customs declaration to help EPEs complete customs documents for tax purposes; or
- (ii) Considering specific situations (Decree 18 allows EPE goods to apply EPE regulations from the time they are granted IRC, but EPEs have not yet completed a customs declaration for the purchased goods at a time when Decree 18 has not been issued), allowing EPEs to apply 0% VAT on purchase invoices without having to carry out customs clearance or procedure (i) mentioned above.

7.6. Regarding one-off extraprovincial VAT

Issue

Currently, Article 13 of Circular 80/2021/TT-BTC specifies that current VAT for one-off extraprovincial construction activities is equal to 1% of VAT-free revenue for construction activities in each province. At the same time, VAT paid in the province where the construction project takes place is offset against the VAT payable at the head office. Current regulations have removed item [39] on Form No. 01/GTGT, so the offset will be done by the tax authorities themselves.

However, in case there is VAT remaining after deduction at the head office, but enterprise still incurs 1% VAT payable in the provinces (usually incurring when the enterprise has construction activities for EPEs so there is no payable amount), then there are some bottleneck on how to deal with this one-off extraprovincial VAT. Although Articles 41 and 42 of Circular 80 specify that the directly managing tax authority is responsible for receiving refund request for the overpaid VAT of enterprises related to one-off extraprovincial construction activities that have been paid. However, in reality, when taxpayers submit refund requests to

tax authorities, some Tax Departments request enterprises to apply for refunds in each province where they have paid VAT.

Recommendation

To simplify administrative procedures for enterprises, in cases where one-off extraprovincial construction activities do not generate amounts payable at the head office, regulations should be formulated towards not requiring allocation. For example: **Total VAT payable to provinces where one-off extraprovincial construction activities take place must not exceed the VAT payable by taxpayers at their head office** (similar to regulations for VAT allocation of manufacturing premises): Allocation is not required when the total VAT payable to the provinces where the manufacturing premises are located does not exceed the VAT payable by the taxpayer at the head office).

Declaration can be made towards requiring enterprises which carry out one-off extraprovincial construction activities to declare Form No. 05/GTGT for one-off extraprovincial activities at the same time with Form No. 01/GTGT at the head office (monthly tax declaration and payment) and only Form No. 05/GTGT is declared if there are tax payable on Form No. 01/GTGT.

7.7. VAT on machinery and equipment used for construction projects for export processing enterprises (EPDs) under lump-sum contracts

Issue

Domestic FDI enterprises are construction contractors specializing in implementing lump-sum construction and installation projects in the form of turnkey contracts covering raw materials, goods, and equipment such as "*Factory renovation and construction, gas station construction, construction of floors, parking lot roofs, installation of fire protection equipment, installation of electrical systems*". In particular, the contractor will assign a domestic enterprise as a subcontractor to perform the mechanical and electrical items, including the value of electrical equipment used, which is an indispensable part to put the work into use and operate according to basic conditions.

These are equipment that are attached to the wall or part of the building to contribute to the function of the building upon handover, such as a ceiling air conditioning system used to cool the factory, an electric light system for lighting, wall-mounted ventilation fan systems, water pumps installed to operate water tanks and toilets, etc. Upon handover, the construction contractor will hand over the completed and usable factory and construction project.

However, during the inspection process, there are cases where the tax authority has the opinion that construction, installation of machinery and equipment for EPEs still have to carry out customs procedures and require the construction contractors to have customs declaration to apply the 0% output VAT rate and receive a tax refund. They are only exempt from declaration for the value of construction labor.

We find that this view is not reasonable, because:

- If construction and installation activities in this regulation only include labor services, there is no need for this exception because customs declaration is not required for services according to Clause 2b, Article 9 of Circular 219/2013. Construction and installation activities here need to be understood as including the value of labor, design, materials and equipment to create a complete work; the final product that the construction contractor hands over to the EPE is a complete construction work, not providing separate components

of labor, materials and equipment services. If there is no electrical equipment, the work cannot be put into use according to its functions.

- This exception is also specified in Clause 2 - referring to the conditions on customs declarations for exported goods that must comply with the Ministry of Finance's instructions on customs procedures, so there must be an exception for goods, not for services.
- Furthermore, based on the wording of the regulations here, in terms of tax, even if customs procedures are required, construction and installation activities for EPEs are also an exception and the declaration condition is not needed to be eligible for 0% VAT applicable export activities.

Recommendation

We also observe that the Ministry of Finance and the General Department of Taxation have many instructions for different businesses but are consistent in content. Specifically:

- In Official Letter No. 14899/BTC-CST dated October 31, 2013, the Ministry of Finance guides that the **turnkey installation of mechanical and electrical systems** for EPEs, including raw materials, machinery, and equipment, is **eligible for tax refunds and no customs declaration is required**.
- Official Letter No. 6689/BTC-CST dated May 27, 2013 of the Ministry of Finance has the content **that "turnkey construction including supply of materials, equipment and complete installation of mechanical and electrical systems** for factories of EPEs... **is entitled to a tax refund and customs declaration is not required.**"
- Official Letter No. 3469/BTC-CST dated March 19, 2014, the Ministry of Finance refers to regulations in Article 16, Circular 219, guiding those domestic enterprises signing **construction contracts in the form of design and construction as general contractors**, are eligible for 0% VAT rate, **no customs declaration conditions are required**.
- Official Letter No. 2716/TCT-CS dated July 28, 2022 instructs Vinh Phuc Tax Department to comply with Official Letter No. 3469/BTC-CST mentioned above.

The above-mentioned Official Letters all have very clear and consistent instructions. The regulations on which tax and customs references are based remain unchanged, so we understand that this guidance is still valid. However, because the instructions were only for one specific business, the explanation was not accepted by the local tax authority.

To create a stable and favorable policy environment for business operations, we recommend that the Ministry of Finance and the General Department of Taxation have similar guidance based on current regulations to help FDI enterprises feel secure to conduct business activities in Vietnam.

7.8. Difficulties in adjustment of incorrectly declared input invoices due to unclear regulations

Issue

Previously, the VAT declaration of input invoices was guided consistently by the tax authorities, based on the provisions of Clause 8, Article 14, Circular 219/2013/TT-BTC, meaning that if the taxpayer finds that the input VAT is incorrectly declared, an adjustment may be made before the tax authority or a competent authority announces the decision on tax inspection at the taxpayer's premises. Such declaration is also specifically guided by the General Department of Taxation in Official Letter No. 4943/TCT-KK dated November 23, 2015, Official Letter No. 414/TCT-KK dated January 30, 2018.

However, since Decree 126/2020/ND-CP was issued, some tax authorities have relied on the guidance on additional declaration in Clause 4b, Article 7 of the Decree to instruct that incorrectly declared input invoice must be adjusted in the period during which it is incurred (i.e. the taxpayer must complete the additional declaration form KHBS for the undeclared period and declare items 37 and 38 in the current period) even though the tax authority or a competent authority has not announced the decision on tax inspection at the taxpayer's premises.

In reality, businesses receive invoices late due to many reasons (due to slow delivery by staff of the business departments, due to suppliers forgetting to send invoices, due to invoices requiring content/amount verification, etc.) while the deadline for submitting monthly VAT declaration is quite urgent. Accountants need to perform many steps of data entry, reconciliation, review and obtain approval before submitting the declaration and paying taxes to the state budget. Therefore, if the taxpayer has to return to the period during which the invoice is incurred to make additional declarations, it will waste time and create unnecessary administrative procedures. Declaring a missed invoice in the period during which it is found also does not affect the state budget because this is input VAT which does not incur additional tax payable or late payment if not declared in the period during which it is incurred.

We also understand that Circular 219/2013 is still valid and some local Tax Departments still guide businesses to declare input invoices according to the provisions of Circular 219/2013. However, currently there is no official document from the General Department of Taxation to align the understanding and handling of incorrectly declared input invoices, causing a lot of controversy and difficulties for businesses when implementing.

Recommendation

To align the handling and minimize unnecessary administrative procedures, the General Department of Taxation is recommended to issue specific instructions on how to declare VAT, especially in cases where input invoices are incorrectly declared, similar to Official Letter No. 4943/TCT-KK.

7.9. Difficulties in recording costs for input VAT which is not declared for input tax deduction or refund

Issue

In fact, there are many cases where businesses are not allowed to deduct input VAT incurred for production and business activities due to many reasons such as local tax authorities questioning the declaration of input invoices incurred in the period during which the inspection decision has been announced; or because input tax related to temporary imports, re-exports, according to regulations, businesses must follow tax refund procedures required by the customs authority. In the latter case, because the tax refund procedure takes a lot of time/effort/cost, and in many cases where the tax value is not high, many businesses accept not to carry out the tax refund procedure and bear this cost. In the above cases, when businesses record input VAT costs for the purpose of calculating corporate income tax, many local tax authorities, upon inspection, have requested to exclude these costs from taxable expenses.

We believe that it is unethical and unfair to the business. Instead of deducting or refunding input VAT, businesses record expenses, which does not reduce the amount payable to the budget, but overall increases the amount payable to the state. In terms of regulations, expenses incurred related to production and business activities have full evidence of transactions/payments such as contracts, payment documents, import declarations, etc., therefore, input VAT that is not deducted or refunded needs to be recognized for CIT purposes.

Recommendation

We recommend that the Ministry of Finance/General Department of Taxation review this issue and soon have reasonable, clear, and consistent instructions for local tax departments, thereby allowing businesses to record valid expenses for actual input VAT arising in the cases mentioned above.

7.10. Difficulties in VAT refund in cases of bankruptcy, closure, or dissolution**Issue**

According to current regulations, businesses are entitled to the refund of undeducted input VAT in cases of bankruptcy, closure, or dissolution.

However, in reality, tax refunds for businesses during the closure period often take place very slowly. In many cases, despite continuous contact for 7 to 8 years, there has still been no action from the tax authority.

Specifically, the case of Sofrecom Vietnam Company Limited - tax code: 0103682989 has filed for closure and dissolution since 2018; Hitachi Plant Technologies, Ltd Company – Singapore branch office – tax code: 0104142954 has filed for closure, dissolution since 2019, etc. but up to now they all have not received a response from the Tax Authority.

Recommendation

It's recommended that the application of regulations in practice must be consistent with current regulations to avoid causing difficulties for businesses.

7.11. Tax treatment of invoices of businesses that leave their business addresses registered with competent state authority (hereinafter referred to as "disappeared business")**Issue**

According to the provisions of Clause 9, Article 3 of Decree 123/2020/ND-CP dated October 19, 2020 regulations on invoices and documents, in the case of disappeared businesses, the use of invoices issued by these businesses is only considered illegal in the following two cases:

- Goods and service purchase invoice issued from the date when it's verified by the tax authority that the seller is not operating at the business address registered with the competent state agency; and
- Invoice for purchasing goods or service with a date on the invoice or document before the date when it's verified that the party issuing the invoice or document does not operate at the business address registered with a competent state agency or there is no notice from the tax authority that the party issuing invoice or document does not operate at the business address registered with the competent authority but the tax authority or police or other competent authorities have the conclusion is that the invoice and document are not valid.

In fact, when conducting inspections at businesses, even when there was no conclusion from the authorities nor the police about the illegality of invoices, many local tax departments did not entitle businesses to have input VAT deduction and deduction of CIT expenses for all invoices dated before the date the tax authority determines that the seller is not operating at the registered business address even though the businesses have all the necessary evidence of real transaction such as invoices, contracts, payment documents, delivery notes and receipt notes, liquidation records and expenses to serve the business activities.

It is extremely unreasonable for the tax authority to reject these invoices because this is an actual expense and the enterprises have fully complied with the requirements in terms of documents and records according to regulations. Businesses also cannot control when information about the disappeared businesses has not been officially published on the tax authority's information pages. This has caused considerable damage to businesses, causing loss of trust and affecting the business environment, making businesses face more difficulties.

Recommendation

With the above analysis, we recommend that the Ministry of Finance/General Department of Taxation does research and consider this issue and stipulate more clearly in the Decree amending Decree 123, and at the same time issue an official letter providing consistent guidance for local tax authorities to have reasonable treatment, ensuring the legal rights and interests of investors.

7.12. Difficulties in applying for tax exemption or reduction under international treaties for loans from international financial institutions

Issue

- According to internalized tax regulations (Clause 1, Article 1 and Clause 3, Article 17 of Circular 103/2014/TT-BTC dated August 6, 2014 of the Ministry of Finance), income from loan interest that IFC receives from the loan contract is subject to contractor tax in Vietnam.
- However, according to the Charter of IFC and the Joint Ministerial Circular dated May 6, 1994 signed by the Deputy Governor of the State Bank of Vietnam, IFC is exempt from taxes and import duties with respect to the Company's assets and income as well as activities and transactions permitted under the Charter in Vietnam. The Joint Ministerial Circular dated May 6, 1994 signed by the Deputy Governor of the State Bank of Vietnam also affirms IFC's immunities and privileges in Vietnam according to the provisions of its Charter.
- Many businesses, on behalf of the lender, have submitted a written request for confirmation for tax exemption to the State Bank, using form No. 01/DUQT according to the provisions of Circular 80/2021/TT-BTC. However, so far, the tax exemption has not been confirmed by the State Bank.
- Regarding this issue, we know that the State Bank and the Ministry of Finance have had many documents discussing and reporting to the Government Office. But up to now, there has been no official guidance for businesses to follow.

Recommendation

We recommend that the Government consider and come up with a radical solution to help solve the current problems of many businesses related to procedures for applying for tax exemption and reduction for IFC's income from loan contracts. Specifically, it is recommended that the State Bank sign the confirmation section of the agency proposing to sign the international treaty so that businesses can complete their tax exemption applications.

7.13. Regarding the adoption of the Double Taxation Avoidance Agreement to overseas suppliers conducting e-commerce and digital-based business

Issue

Although this benefit has been clearly stipulated in Clause 7, Article 77 of Circular 80, in fact many foreign suppliers have considered not having a permanent establishment in Vietnam and submitted applications for tax exemption under the double taxation avoidance agreement, but

no supplier has enjoyed this benefit while the General Department of Taxation has not given an official and clear answer on this issue.

Recommendation

We recommend that the Ministry of Finance and the General Department of Taxation consider and issue official guidance on this issue to avoid causing frustration for foreign suppliers.

7.14. Regarding the adoption of the Double Taxation Avoidance Agreement to overseas suppliers conducting e-commerce and digital-based business

Issue

Pursuant to the provisions of Clause 1, Article 62 of Circular 80/2021/TT-BTC, we understand that tax exemption applications from overseas suppliers need to provide a Contract with the customer with confirmation from the taxpayer.

Regarding transaction practices, the services of overseas suppliers are based on digital platforms for many customers including individuals and organizations with a large number of transactions. Customers also access services on digital platforms. Accordingly, overseas suppliers will provide general terms or electronic contracts that customers must accept when using the service, and these terms will also be published on the suppliers' platforms. Customers will have to confirm their understanding and acceptance of these terms before completing the registration procedure to use the suppliers' services.

With such transaction practices, overseas suppliers only have one general form of terms that applies to all customers, and customers only need to check to agree to these terms on public digital platforms. Usually there will not be a printed version of the contract with a signature for each customer.

Recommendation

The Ministry of Finance/General Department of Taxation is proposed to consider and solve problems based on the nature of the transaction so as not to affect the interests of overseas suppliers without permanent establishments in Vietnam. Specifically, it's recommended to accept standard general terms published on digital platforms or electronic contracts with legal value equivalent to "*Contract with customers with taxpayer's confirmation*".

7.15. Problems related to tax exemption and reduction applications as prescribed in Article 64, Circular 80/2021/TT-BTC

Issue

In fact, there are cases where we have submitted an application for adoption of the agreement to the tax authority for more than a year but have not received a response whether it's approved or rejected. According to officials' feedback, the tax department does not have a dedicated team to handle tax exemption and reduction applications as prescribed in Circular 80/2021/TT-BTC. This causes difficulties for businesses when they submit applications but receive no response without a specific deadline for outcome feedback, and do not know the results of the submitted application, specifically in the case of Mr. Kitagawa Ken. - tax code: 8708449710 who submitted an application for personal income tax exemption under the Double Tax Avoidance Agreement between Vietnam and Japan but did not receive a response from the Tax Authority.

Recommendation

We recommend that the Tax Authority set up a specialized team to process the applications according to regulations. In cases where local Tax Authorities do not have enough authority to handle, there should be a centralized handling process at the General Department of Taxation.

7.16. Regarding which party issues invoices for returned goods

Issue

Currently, there are many different guiding documents from local Tax Departments and the General Department of Taxation regarding which party (seller, buyer) is required to issue invoices for returned goods. This has caused difficulties and obstacles for businesses in complying with legal regulations on issuing invoices.

Recommendation

We propose adding more specific guidance for this case to create favorable conditions for businesses to comply with regulations and ensure consistency among legal documents.

7.17. Regarding the time of issuance of electronic invoices for exported goods

Issue

According to current regulations, the time to issue electronic invoices for exported goods and the date to determine export revenue for tax calculation is after completing procedures for exported goods/the confirmation date of completion of customs clearance procedures on customs declaration.

Thus, there are 2 cases:

- The time to determine export revenue/issue of electronic VAT invoice is the date of completion of customs supervision;
- The time to determine export revenue/electronic VAT invoice issuance is the customs clearance date on the customs declaration.

In fact, the customs clearance date on the customs declaration is not the actual completion date of customs procedures and actual export but is only the tax obligation completion date at the import stage. Goods are only actually exported when customs supervision has been completed (customs supervision completion date). However, this information is not updated promptly on the website of the General Department of Customs, causing many difficulties for businesses when implementing.

On the other hand, businesses that are prioritized in state management of customs are given priority for customs clearance first, even when the goods are not eligible for transfer of ownership to the buyer. Therefore, in reality, the customs clearance date on the customs declaration is the same as the customs registration date and the customs inspection completion date. At this time, it is not certain that the goods will be exported, and the seller still has to bear risks related to the goods.

Therefore, it is necessary to clarify whether the date of determining export revenue is based on the customs clearance declaration or the completion date of customs supervision.

Recommendation

In order to suit the reality of businesses and ensure exporting, avoiding the shortcomings as analyzed, we propose to use the customs supervision completion date (the date of passing through the customs supervision area) as the invoice issuance date. At the same time, the customs authority should promptly update data on the customs system so that businesses and tax authorities have a basis for implementation. If the customs system is not updated promptly, the invoice issuance and export revenue recognition are based on the date of loading on the vehicle shown on the bill of lading.

At the same time, we would like to know the roadmap for the issuance of a decree to adjust Decree 123/2020/ND-CP.

7.18. Administrative fine by the Hanoi Tax Department on invoices for returned goods issued by businesses in Hanoi

Issue

As being mentioned in detail in the party issuing invoices for returned goods in this document, there are currently many different guiding documents from local tax departments regarding whether the seller or the buyer is the party that needs to issue the invoice for the returned goods. In the past, for a long time, tax authorities and businesses agreed that the buyer was the one who would issue invoices for returned goods. Only recently, based on an unclear provision of Decree 123, there has been another view that the seller would be the one issuing the invoice. This is so far still not really convincing and there is still a lot of controversy and inconsistent views among localities. In that context, recently, the Hanoi Tax Department reviewed and sanctioned administrative violations against many businesses in the area because they have not complied with the regulations that the seller must issue an invoice when the buyer returns goods. This is extremely unreasonable, causing big disgruntlement among businesses, affecting the reputation of businesses and eroding trust in the transparency of tax laws.

Recommendation

The Ministry of Finance/General Department of Taxation is proposed to promptly consider the above issue and have clear and consistent instructions on methods and implementation roadmap if changes must be made according to new requirements. At the same time, the General Department of Taxation needs to provide guidance and direction to the Hanoi Tax Department on the mentioned issue, to avoid disadvantages for businesses and ensure the fairness of tax laws.

7.19. Penalties for administrative violations of late issuance of invoices

Issue

Specifically, the Company exports goods abroad, initially the Company uses commercial invoices (while registered to use electronic invoices), then the Company re-issues electronic VAT invoices but the time of invoice issuance is late compared to the time the goods are exported.

Viewpoint of local tax authorities, specifically Hanoi Tax Department: The inspection team of the Hanoi Tax Department, when conducting an inspection at the company, fined the administrative violation of issuing invoices at the wrong time, but calculated the behavioral errors of each invoice for a total of **227 invoices** with the fine for administrative violations **of over 1 billion VND** (fine of 5 million/invoice), while according to the provisions of Clauses 1 and 2, Article 24 of Law 15/2012/QH13 on Handling of Administrative Violations, the maximum fine is in the field of state management for organizations is **100 million VND**. As per Clause 1, Article 7, Decree 125/2020 on sanctioning administrative violations in the field of taxes and invoices, a maximum fine is no more than **100 million VND**.

Recommendation

We find that the fine for the issuance of invoices at the wrong time as prescribed in Clause 3, Article 24 of Decree 125/2020/ND-CP is completely consistent with the provisions in Clause 2, Article 23 of Law 15/2012/QH13, accordingly, the highest fine stipulated by the

Government for violations must not exceed "**Maximum fine level specified in the fields of state management**" of 100,000,000 VND for the field of invoices at Point C Clause 1 and Clause 2, Article 24 of Law 15/2012/QH13.

At the same time, we see that Decree 125/2020/ND-CP has ensured the spirit of "**Maximum fine level specified in the fields of state management**" in Article 24 of Law 15/2012/QH13 above based on Clause 1, Article 7 of Decree 125/2020/ND-CP on the maximum fine for organizations that commit administrative violations on invoices, which is "**Maximum fine not exceeding 100,000,000 VND**".

Thus: We understand that the total administrative fine for issuing invoices at the wrong time (regardless of how many invoices) will **not exceed 100 million VND**.

However, according to our understanding, the failure to apply the maximum fine for administrative violations on invoices according to Clause 1 and Clause 2, Article 24 of Decree 125/2020/ND-CP only occurs in the Hanoi Tax Department, while other local tax departments have their own way of understanding and applying the maximum fine for administrative violations of no more than 100 million VND.

Therefore, the Ministry of Finance is respectfully requested to provide guidance to clarify and align the understanding of only applying the ceiling of 100 million VND to invoice violations and similarly to other administrative violations.

7.20 Recommendations on personal income tax declaration for short-term business travelers to Vietnam

Issue

Article 2 of Circular No. 119/2014/TT-BTC provides that: "*For non-resident individuals, taxable income is Vietnam-sourced income, regardless of where the income is paid and received.*" As current regulations do not provide a specific explanation of the concept of "Vietnam-sourced income", it can be understood that foreign individuals must declare personal income tax in Vietnam if they come to Vietnam on business trips even though they are only present in Vietnam for 1 day.

This leads to difficulties in identifying foreign individuals who are in Vietnam on business trips and who are subject to personal income tax declaration, as well as issues in tax declaration for these individuals. Specifically:

- In case a foreign individual enters Vietnam, yet not to perform services under a contract signed between an individual or employer in a foreign country and an organization or individual in Vietnam (i.e. not performing contractor agreements), but to perform other tasks such as: participation in meetings, conferences, seminars, market surveys, product quality control at suppliers, meetings with businesses and state agencies, participation in training courses as trainees, etc., it is unreasonable to see the individual as generating income in Vietnam, because his business trip does not generate income for himself or the employer abroad.
- Tax code registration procedures (processing time: 03 working days), register an e-tax transaction account with the tax authority (many tax authorities require a certified copy of passport in case the applicant is not directly present at the tax office; the applicant should also use a SIM card of a Vietnamese mobile carrier to receive OTP codes); tax declaration and payment remain challenging, especially due to language barriers with foreign individuals, and, in many cases, it takes them much longer to complete all these procedures than their stay in Vietnam.

Some countries around the world have introduced a number of conditions under which foreign individuals are exempt from personal income tax during their business trips, for example:

- Taiwan: A foreign individual traveling to Taiwan on business trips for no more than 90 days is not subject to personal income tax in Taiwan if his income is paid by a foreign company and the company based in Taiwan is not required to reimburse expenses.
- Malaysia: Non-resident individuals working in Malaysia for no more than 60 days in 1 or 2 consecutive calendar years are exempt from personal income tax in Malaysia.
- Singapore: Foreign individuals working in Singapore for no more than 60 days in a calendar year are exempt from personal income tax in Singapore.

Hong Kong: Foreign individuals working in Hong Kong for no more than 60 days in a tax year may be exempt from personal income tax in Hong Kong.

Recommendation

In order to facilitate compliance with PIT regulations among foreign individuals who are **non-residents** in and short-term business travelers to Vietnam, we recommend that the regulations should include certain cases where short-term business travelers to Vietnam are not required to **file PIT declarations**, for example:

- Based on the length of stay in Vietnam, for example: individuals staying in Vietnam for less than 30 days (with reference to previous regulations at Point dd, Clause 2, Article 3, Ordinance on Personal Income Tax for High-Income People 2001) or individuals staying in Vietnam under 30 days and having no more than 03 entries into Vietnam in a year (similar to regulations on work permit exemption for foreign individuals entering Vietnam to work as managers, chief executive officers, experts and technicians in Clause 8, Article 7, Decree 152/2020/ND-CP); and/or
- Based on the purpose of entry, for example: exemption from personal income tax declaration for individuals coming to Vietnam under a visa waiver, DH visa (issued to those entering Vietnam for internships and study), HN visa (issued to those entering Vietnam to attend conferences and meetings), DT1/DT2/DT3/DT4 visa (issued to foreign investors in Vietnam), DL visa (issued to tourists), EV visa for purposes such as attending conferences and meetings (summits and conferences), official visit, investment, etc. if these individuals do not receive income or require expenses covered by a Vietnamese company.

7.21 Recommendations on documents required in applying for a Vietnam entry approval letter for relatives of foreign workers

Issue

According to current regulations, foreigners working in Vietnam are allowed to bring their relatives (parents, spouses, children) to Vietnam to live with them. To apply for an entry visa, foreigners must submit documents proving their relationship with relatives. These documents must be consular-notarized before being transferred to Vietnam for certified translation and submission to the Immigration Department.

However, for online submissions, the Immigration Department requires proofs of relationship to be **electronically authenticated** before submitting to the online system. This is highly unfeasible as all consular-notarized proofs of relationship **are documents that have been copied at an overseas notary office**, then followed by consular legalization procedures. Therefore, these consular-notarized documents cannot be **electronically authenticated** at Vietnamese competent authorities as they are not original documents and copied abroad to complete consular legalization procedures.

Recommendation

It is recommended to drop the requirement on submission of electronically authenticated documents regarding proof of relationship. Instead, applicants can provide color-scanned copies and upload consular-notarized documents and an electronic certified translation to the system for approval.

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Vietnam Business Forum Consortium



For more information, please contact

Vietnam Business Forum Secretariat

3B Floor, Horizon Tower, 40 Cat Linh, Hanoi, Vietnam

Tel: 84-24 3715 2223

Fax: 84-24 3715 2218

Email: info@vbf.org.vn

Website: www.vbf.org.vn

LinkedIn: www.linkedin.com/company/vietnam-business-forum-consortium/