DECLARATION OF JBAV'S VIEWPOINTS
MIDTERM VIETNAM BUSINESS FORUM, 2017

In order to improve the investment environment, we would like to highlight four key measures and six key requirements of JBAV wishing the government of Vietnam to take efforts on implementation.

1. Review the differences between the ordinance and its enforcement – application

The first key measure is to review the gap between the ordinance and its implementation and operation.

We would like to evaluate that since last year the Government of Vietnam has taken much efforts in [improvement of business environment], which is actively simplifying or speedily implementing the administrative procedures, in particular, areas such as customs clearance, taxation, investment.

However, the dissatisfaction about the implementation and operation that JBAV's members and many other Japanese enterprises are facing is still a big issue. Typically the followings, in which there are many issues that cannot be resolved if only considered on the simplification or accelerated procedure.

A) There are cases where they are not strictly followed by the stipulation of the decree (such as requesting procedures or papers not prescribed by the decree, or demands for proceedings).

B) Since the legislation is not clearly mentioned and described its operation criteria, then there are cases that private enterprises hard to deem their activities meet the rule in advance.

C) When the procedure is relevant to several ministries' agencies, there are cases which the collaboration and communication between ministries and committees is inadequacy, consequently each ministry and committee have different interpretation and stop the procedures. In addition, it is also the cases when asked to deal with such things, they are passed among the ministries and departments.

D) While we require to have a clear transparency in the interpretation or procedures regarding the provisions of the decrees and their application through the "Japan-Viet Nam Association Initiative", the issues mentioned in points A – C are still seems to be. Although the resolution of each issue one by one is very time-consuming, each issuance of a new decree shall raise other new problems, we find that there is no clue to solve such problem if it is not changed.

Based on this point, to look at the gap between the decree and its implementation - operation of the decree, only old-type approaches such as pointing out and requiring to solve each problem is not enough, we think there needs to be new approach such as creating a new framework to accelerate the problem resolution, creating mechanisms to prevent in advance individual problem. We would like to propose two specific new approaches as follows.

1. To establish a new organization across ministries which has an authorized power to strongly proceed to solve any problem caused by this uncertainty.

2. To enhance the current "official letter" scheme, in order to let foreign corporations to easily

access relevant ministries and government organizations to check the legality of certain business action.

This is the approach applied by the counties around the world, including Japan, specifically as follows.

1. To establish a new organization across ministries which has an authorized power to strongly proceed to solve any problem caused by this uncertainty

- This is a necessary measure to speed up the resolution of current problems.

- In order to resolve many problems that are caused by inadequacy of the provisions of decree, lack of transparency and interpretation of the law, lack of consistency in the implementation of decree, we think that it is necessary to have an organization to focus on difficult resolution to resolve directly and quickly with complaints from domestic and foreign enterprises that are directly dealing with these issues.

- In Japan from 1980 until the 1990s, "the closeness of the Japanese market" has been raised at talks with foreign governments, and the review of regulations or procedures to accelerate the FDI into the Japanese market has been conducted. As a part, based on the decision of the Cabinet (Decision on the Cabinet meeting), government has established [OTO: Office of Trade and Investment Ombudsman] which has a mission to accelerate FDI at 1982 by receiving specific complaints related to rules and regulations of import procedures or direct investment with Japan from domestic and foreign enterprises.

- A simple explanation of how to handle complaint by OTO of Japan is as follows. (Please refer to References 1).

A) Complaint may be filed to one of the OTO's receiving locations located (places receiving complaints on the market clearance) is located in the OTO office of the government (the cabinet), inter-ministerial agencies, Japanese embassy and consulate abroad, the office of JETRO. In addition, in cases where the person concerned does not want to write his/her full name, may also file his/her complaint in his/her capacity at the trade and industry conference or foreign embassy in Japan.

B) Complaints and grievances gathered at the OTO office will be contacted by such office with the relevant ministries and departments, and then such ministries or departments receiving such complaints and grievance shall contact the complainant. The answer includes an explanation of the current regime, proposed improvements.

C) If the complainant is not satisfied with the response of the ministries or departments concerned, the handling of such complaint in the [complaint resolution meeting] formed by a person with learning experience including foreigners will be considered, the result of such consideration will be reported and approved by the headquarters of the complaint resolution process in which the Prime Minister will be the leader of the head office, ministers are the constituent members, and create the necessary improvement measures in the ministries' agencies.

D) To date, the number of complained submissions applying this regime has exceeded 1000 cumulative cases.

- The characteristic of this resolution method is that the resolution of individual complaints is determined as a final governmental motto when undergoing a professional and objective consideration of a third party (experienced, knowledgeable persons including foreigners) (hence there is no problem on the awareness among the ministries' departments).

- We do hope that in Vietnam, you also refer to the above-mentioned example to build an organization to seriously resolve the complaints managed by the Prime minister, quickly resolving the dissatisfaction of the private business involving the interpretation or manipulation of ordinances.

- In addition, in order to build and operate this organization in such a drastic way in Vietnam, I think

A) Along with the arrangement of the Government Office, operating the committees, strengthening the capacity of government office on issue resolution.

B) Regarding the consideration of the treatment, creating the mechanism in which not only the internal government but also collection of third party's opinions (people with wide knowledge).

C) It may be filed in the name of the trade and industry convention of the countries or in the name of the embassies of the countries.

Which are important points, wishing all of you to quickly start looking specifically at this point.

2. Enhance the current "official letter" scheme, in order to let foreign corporations to easily access relevant ministries and government organizations to check the legality of certain business action.

- This is necessary to prevent the problem arising in advance.

- In Japan, based on the decision of the Cabinet (decision of the cabinet meeting) on 2001, "Japanese no action letter system" which the specific decree related to the business activities of the private economic entity, will be confirmed in advance with the Governmental agencies regarding the relevant decree and then the relevant agency will reply within a certain time limit (in principle within 30 days) in paper, in addition, after replying in a certain time (the principle is within 30 days), and these question and answer is declared. (For details refer to Reference 2).

- In addition, on this procedure, the investigation closely follows the status of implementing that procedure is taking place periodically and constantly efforts to improve. Through such efforts, we have improved the predictability, publicity - administrative transparency with the private economic entity. In addition, "No action letter system" is not limited in Japan but has been widely applied in other countries such as the United States.

- In Vietnam, the improvement of predictability of private enterprises using such pre-confirmation procedures is considered to be increasingly important in the future to prevent problem occurrence. We understand that there have been cases where the government agency's legislation has issued "official letter" on inquiries of private

businesses related to whether applying such legislations or not, but we also understand that there has never been a unified law of the government on the resolution “official letter”, the efforts of each agencies are different.

- We think the Government of Vietnam should actively use “official letter” to make efforts to improve the predictability of the private enterprises, to rapidly introduce uniform rules regarding “directives”, fix such rules.

2. Promote the structural reform

The second one is to promote the structural reforms, ie reform of state-owned enterprises, reform of the banking sector, reform of the three major structures of public investment reform.

In order to improve the attractiveness to help Vietnam to become a destination for foreign investment, in addition to political security, macroeconomic operability, by strongly promoting public investment reform, to improve the economic structure into an efficient liberation economy that is very important. In particular, the reform of this difficult structure, it is now that the macro economy is changing in a good direction is the opportunity to do so widely. Today, in the reform of three structures, we want to raise some requirements on the reform of state-owned enterprises.

Approval of transforming the state-owned enterprises into an inefficient enterprise into a private enterprise will be effective, in order to promote difficult reforms with political intervention, to have commitment of the Government of Vietnam is the most important. From that point of view, we first expect the Government of Vietnam to continue consistent in the principle of prohibiting preferential treatment to state-owned enterprises (“guarantee the treatment is not different from other enterprises”, “limited non-commercial support”) agreed in the TPP negotiation. (In relation to this point, in a dialogue between the prime minister and those in the economic circles held on 17 May, the Prime Minister Phuc said, "Ensure the fair treatment between the state and private sectors”, “No preference for state-owned enterprises”, has received appreciation).

At the same time, we also expect the Government of Vietnam to be more active in promoting the state-owned enterprise reform, namely: a) accelerating the sales of state-owned enterprise’s shares, b) improving the management or disclosure of state-owned enterprises, c) Improving the financial content of state-owned enterprises (improving the handling of overdue debt and profitability). Last year, we also saw some important progresses such as the issuance of the Prime Minister's Decision No. 58 or the sale of partial shares of Vinamilk, we understand that this year, you are also intended to implement 1) announce the five-year plan until 2020, 2) announce the new decree relating to equalization of state-owned enterprise, 3) concretize "Single Ownership Entity", 4) Sales of state-owned enterprise’s shares such as Vinamilk, Sabeco, Habeco, etc. We look forward to the leadership of the prime minister is continued to promote so that the reform will not slow down.

In addition, the large state-owned enterprises in the fields of banking, aviation, petroleum, garment, Japanese enterprises are investing as holders of few non-voting shares under the Enterprise law (= voting rights in excess of 35%), in order to further promote the capital participation in State owned enterprises of Japan, continuous review of the Government of Vietnam on ensuring the right of holders of such few shares, or acceptance of more than half of capital investment for the state owned enterprises is very important. In addition, when selling shares, the addition of DD opportunities to the intended subscribers, or an international review of stock valuation methods to improve the suitable methodology is essential.

Moreover, when selling shares of state-owned enterprises, it is necessary to simultaneously prepare the stock market for the sale. At present, we think that the Government of Vietnam is following the motto along with the equalization of state-owned enterprises, selling to the private equity part (= [equalization]), soon list such shares to the stock market, based on the price that is established in the market (by the method of auction) to sell the remaining shares held by the State.

The promotion of listing on the stock market is the desired policy, but on the contrary, there are many cases where the liquidity of state-owned enterprise's shares has been listed but with low price significantly due to the influence of the special exchange standard, if it is considered from the viewpoint of forming the suitable share price, there are many problems. In relation to the stock market, by improving liquidity by strict regulations on standards on the stock exchange (such as increasing mobile stock standards), strengthening the authority of the State Securities Commission (SSC), enhancing the detection and treatment of illicit behavior, to create a fair and effective market, should be implemented immediately, in the coming year, when revising the intended securities method. the relevant thesis is extremely important.

3. Development of small and medium-sized enterprises - supporting industries

The third key measure is the development of domestic private enterprises, including small and medium-sized enterprises or supporting industries.

We fully support the policy of the Government of Vietnam which the domestic private sector must have a great position as the engine for growth of Vietnam's economy besides the state-owned sector and the FDI sector. In addition, development of the small and medium-sized enterprises or supporting industries with the competitiveness will contribute to attract the foreign enterprises, especially manufacturing enterprises, towards. From that point of view, the formation of small and medium-sized enterprises - supporting industries is an extremely important policy issue. Today, we understand that Vietnamese government has intention to improve this issue by discussing "Supporting SMEs Law" at this congress, we would like to appreciate such dynamism. In addition, we know the formation of the entire supporting industry has been discussed thorough "Japan Vietnam Association Initiative program".

In order to form small and medium-sized enterprises - supporting industries, it is required that leaders continuously implement policies on people, technology, finance, information etc. In addition, the measures to establish SMEs as a key industry which has responsible for the new age, and the pilot project-based approaches are considered very important.

As Japan has taken measures to support small and medium-sized enterprises such as "Small and Medium Enterprise Agency", "Organization for Small and Medium Enterprises and Regional Innovation" and "Japan Finance Corporation", we want the government of Vietnam to refer to such efforts of Japan, continue to weigh the effective support policy that has applied the model to the actual situation in Vietnam.

To form the supporting industries - small and medium-sized enterprises, promotion of typical technical transformation such as metal production that Japan is applying to small and medium-sized enterprises of Vietnam, training engineers of Vietnam by small and medium-sized enterprises, or cooperating with small and medium-sized enterprises in Vietnam that is very important. To promote our SMEs transformation to Vietnam, we ask you to reconsider the rules of secondhand machinery and harmonization of rules to obtain the labor permit to experts of foreign enterprises related to the training of supporting industries.

Promote the environmental preparation of infrastructural investments (provide framework related to "Viability Gap Funds")

The fourth key measure is to promote environmental preparation for infrastructural investment, especially the improvement of infrastructural investment environment by the private sector.

We believe that Vietnam can achieve sustainable and inclusive growth thorough investment promotion especially into the private sector, including support for Vietnam's enormous infrastructure needs. Although private sector needs support from the Government of Vietnam, firstly decree must be based on international law. While the Japanese government confirms the diversified support with the export of high quality infrastructure of Japanese enterprises in order to support the investment environment, it should give the priority for the effectively applied framework of public funds to fill gaps in the viability of careers.

5. Important requirements of member businesses

5.1. The minimum salary

Overview

- According to the announcement of the General Statistics Office (GSO), the occupational rate of labors in 2016 (estimated figure), "agriculture - forestry – fisheries" makes up 41.9%, "industry – construction" is 24.7%, "service sector" is 33.4%. On the other hand, Vietnam's GDP ratio in 2016 (estimated figure) is that "agriculture - forestry – fisheries" makes up 16.3%, "industry – construction" is 32.7%, "service sector" is 40.9%, and "tax amounts (deduction of allowance)" is 10.1%.

  As the production of "industry – construction" occupy about a third of GDP with only 20% labor input, the level of devotion in the Vietnamese economy has changed a lot, is the source of economic growth. On the other hand, in ASEAN, for example Thailand is on the industrialization route, "industry – construction" accounts for more than 20% of human resources similar to Vietnam, in fact has brought more than 50% for the overall GDP, that is the proof of indispensable dedication for sustainable economic development.

- The Government of Vietnam has in recent years implemented an active trade policy such as signing the "Vietnam - EU Free Trade Agreement (VEFTA)" or implementing the [ASEAN Economic Community (AEC)]. The condition of export to the large consuming regions such as Europe, America or Japan also becomes profitable thorough these agreements, in addition, Vietnam is considered as an ideal investment destination for the export processing industry with abundant working capacity and the macroeconomic stability. Especially the industry which Vietnam has big advantages such as garment and leather footwear industry will be the big opportunity to create a unique breakthrough.

  On the other hand, with import tax is reduced - abolished by the FTA, Vietnam will have to seriously compete with neighboring countries in the ASEAN region. In the current situation, which the industrial infrastructure is still underdeveloped, developing the local enterprise and improving the formation for corresponding to FDI by the Government of Vietnam in order to overcome this competition. In particular, since January 2018, when the import tariffs under the ASEAN Trade in Goods Agreement (ATIGA) have been eliminated completely, the most important thing for the Government of Vietnam is to prepare and maintain promptly the

internationally competitive business environment for the manufacturing industry which the main foreign investment industry. Due to the lack of an international competitive business environment, the establishment of Vietnam's industry is difficult, unable to create jobs for the futural generations, unable to improve the life for the people.

- Last year, in Vietnam, the minimum salary increased by 7.3% on average which is much higher than that of CPI (2.6%). Of course we understand that increasing wage contribute to Vietnamese people's life and essential factor to enhance domestic demands, however, the industry which lead Vietnamese economy such as garment, leather footwear industry and export manufacturing industry has been affected negative impact by this fact.

  In a survey towards the Japanese companies investing in the Asia-Pacific region, 75.5% of companies in Vietnam said that "the increase in wages is affecting the business" next to Indonesia and China, the wage increasing is the biggest business problem. In order to cut down costs, the percentage of enterprises attempting to automate the plant in Vietnam is also higher than other countries.

  When revising the annual minimum wage, taking into account the current state of the domestic and international economy is naturally, it should sufficiently consider to be the appropriate standard so that Vietnam keep the international competitiveness.

  - We also understand that the government also has a guideline for raising basic wages, which considers other ASEAN countries as indicators such as Malaysia, Indonesia, Thailand and the Philippines. But in Region 1 of Vietnam currently exceeds the minimum wage in the industrial region, especially the Philippines, in recent years, Malaysia, Thailand has limited the minimum wage increases so difference compared to Vietnam is being shortened. In addition, the labor costs, including social insurance premiums and trade union fees included in minimum salary catches up the minimum wage.

  - If taking into account of economic indicators, Vietnam's CPI from 2013 onwards is limited the slight increase due to the economic policy of the government. In contrast, GDP per capita of Vietnam is also low previously, now also increased slightly. I think the supporting industry has not developed yet, the industrial foundation to create weak value added is a cause.

  - In fact, compared to other countries in the ASEAN region, the preference for labor costs is decreasing.

  - I think the government needs to focus on preparing the industry foundation by limiting minimum wage increases, maintaining export competitiveness and inviting aggressive foreign investment towards [industrialization 2020] set out by the government.

Minimum wage requirements in 2018 and comments on the consideration of the national salary assessment conference

- **Minimum wage requirements in the year of 2018**

  - Although the Government has set a minimum wage schedule and a mid-term goal value, domestic and foreign economic changes are forecast to be extremely difficult,

based on economic indicators and annual economic trend to decide on minimum wage. It is inappropriate to define a mid-term goal.

- The minimum wage increase rate [CPI + alpha] is appropriate. Since 2012, as the CPI + alpa is increasing at an unacceptable rate, 2018 so further increase is not required.

- In the drafting of the labor law [the minimum living standard required by workers and their families] is one of the factors for calculating the minimum wage. That is, in the definition of minimum wage, in addition to basic salary, it is required to include [salary based on position and work, position allowances, and other allowances] paid monthly by the fixed amount. Therefore, we would like you to explain the definition in the revised labor law and the minimum wage policy every year.

- In order to avoid meaningless chaos such as strikes, we would like the policy of minimum wage to regulate the standard is absolute value, so please widely and thoroughly popularize the minimal salary regime to the enterprises because the enterprises shall decide on salary increases based on their business situation

- **Comments on the consideration of the National Wage Assessment Conference**

  Based on the actual capacity of both the recruiter and the employee, we ask for a precise grasp of the situation and improving the the research process.

  - To supplement the public representative as members. In the National Wage Assessment Conference, we expect that in addition to the representative of the recruiter - the employee, add public representatives who raise their neutral opinions as the economists, university lecturers, lawyers, enhancing their opinions on macroeconomics - fair consideration and fair conferences.

  - To publicize the method and contents of the survey on necessary living standards. The generalized contents of the full investigation have not been disclosed until previous year and we have not clearly understood yet. We hope you will announce clearly the method, the content of the specific investigation to conduct constructive discussions in the future.

5.2. Regarding time-related provisions in the drafting of labor law

There are a number of uncompleted issues related to working time in the current labor law, which we have requested to amend in this industry and trade association. In the drafting of the amended labor law published this time, a number of measures have been raised and we thank you deeply for your consideration.

On the other hand, in the case of the law, from the point of view of Vietnam's competitiveness and the needs and strength of workers, there are several issues in each manufacturing site. In addition, the simultaneous regulation of the law of working time or rest periods of the entire industry, the type of work is not appropriate. There should be a mechanism in which cooperation is discussed with enterprises about the use of labor and flexible decision making in line with the actual situation. If the decisive item is the item to be written into the working rule, then not only the labor union but also the administrative control function should be administered.

We look forward to reviewing the proposed amendment and and the National Assembly should consider the followings.

5.2.1. Maximum extra-working hours (Article 82 of the Labor Code)

- **To apply the mechanism regulating the maximum time allowed for each type of work of enterprises.**

In the latest draft law, the total number of normal working hours is specified as the maximum number of working hours is 1 maximum day of 12 hours and 1 year of 400 hours. In addition, if there are more than 400 hours, there are exceptions.

However, with this mechanism, the handling of all necessary cases in business activities is difficult and administrative agencies fail to grasp the reality of enterprises to allow for exceptions or not. I think the Government should adopt a mechanism whereby the maximum working time in a year is maximized, within the maximum working hours, so that the users and labor unions of companies make decisions about the overtime limit for each type of work.

During the economic development period, it is unreasonable to set the maximum working time in the year by 400 hours. For flexibly handling the jobs such as engineers, new projects or new products, service planning work, it should be settled about 600 hours per year as already provided in the previous law scheme.

- **To set the maximum time limit by month**

On the contrary, I think it is necessary to regulate the said limit on a monthly basis in order to pay attention to the health of the workers. In order to avoid harm to thje health of the workers, the Japanese Government strictly regulates the said limit of overtime working.

According to research by the health care agency, if overtime work in a month exceeds 100 hours or an average of 2 ~ 6 months is 80 hours in a month in excess, which is alleged to result in injury to health. Based on that study, by amending the law of Japan, it is considering the one month limit principle to be extended to a maximum of 60 hours and the limit for the extremely busy period of two months is 80 hours in average and the maximum limit is 100 hours in only a month. This is a project based on the research results of experts, which is a point we are looking forward to consideration of the Government of Vietnam. Then, in terms of the difference on working time of 40 hours in Japan and 44 hours in Vietnam, the regulation which set a limit about 60 hours in 2 months in average, and the maximum limit about 80 hours is quite suitable.

5.2.2. Rest time (Article 108 of the Draft Law)

- **Eliminating the maternity leave, small-child bearing leave**

In article 155 of the current Labor Code, there is an additional obligation to add 1 hour 30 minutes in the rest time during the physiology period of the women, and 60 off minutes / day during the time of childbearing. The time spent with a child exceeds 20 hours a month, but for the same job, paying the same amount to others without leave is unfair. Compared with other countries' laws, this is unusual. Also, at the place of production, it is extremely difficult to arrange for a replacement during the break, with the current capacity in many cases where the employee does not stay with us for overtime pay. For that time off, the use is wrong compared to

the purpose of the law. There is also the problem of avoiding hiring childbearing women. In the draft law, this regulation is deleted, we want you to continue to maintain this law.

- **Considering the contents of the meal break**

There is an obligation [to have a minimum of 1 day and 60 minutes of rest time] as prescribed in the new law, but in some cases it is not suitable for the needs of the laborers, which prevents the business so it should consider the content of the regulation.

The meal break is varied by offices. Where there is a cafeteria at the workplace or a restaurant next door, 60 minutes is too long. In the workplace there is a canteen, in fact there are many cases are arranged with lunch time in 40 ~ 45 minutes. If extending the meal break time to 60 minutes, some enterprises shall regulate the working time late to secure their outputs. This is not the desire of the employee. In addition, in China, Thailand or Thailand, they do not apply the law governing the duration of the meal, which is 60 minutes or more but 40 ~ 45 minutes in factories and short breaks are arranged in the morning and in the afternoon. The same leave time is currently applied in Japanese businesses in Vietnam. (refer to the attachments). If the working duration is not changed but the meal time increases, the working time is insufficient so the output and competition are weaker than those in the neighboring countries.

The provision "The employer arranges lunch time in accordance with the actual situation depending on whether or not there is a canteen, in accordance with labor regulations" is appropriate.

- **Reviewing the content of short breaks with payments**

In the draft law, there is an obligation [to allocate short-term paid leave in addition to a meal break], but in Japan, China, Thailand, Malaysia, and Philippines there is no obligation under the law to add them. Like in Japan or Thailand, Malaysia states in the law the total amount of time required for a day, which must be in accordance with the breakdown of that leave in accordance with the business status quo. Specifically, I think the regulation "in case the working time is more than 6 hours, the time of eating and the short break of 45 minutes or more, if the working time is 8 hours, arrange a rest from 60 minutes or more, specify that in the work rules.", which is appropriate.

5.3. Regarding the Circular No. 23 relating to the importation of second-hand machinery

5.3.1. Eliminating the application of the number of years

When Japanese enterprises move their production sites abroad, the production of used machinery and equipment is familiar as a normal example. If the new equipment is used, it is not just the assembly of the equipment, but also the production - adjustment - of the program which is difficult for the initial installation.

We also understand the purpose of the new regulation concerning the restriction of the importation of used machinery and equipment of poor quality but can be manufactured with used machinery and equipment over 10 years without matter. In addition, due to the used environment or the number of years of use in different densities, even with the same machinery and equipment, the limitation of importation by the number of years of machinery - equipment does not match the reality.

Then, we would like to claim that [the number of years is unlimited if the company produces and imports machinery and equipment for its own production activities] as we want, including not being subject to this Circular in Article 2, paragraph 1.

5.3.2. Clarification of procedures and records for imported second-hand machinery – equipment

In the Circular No. 23 when importing used machinery and equipment for more than 10 years, apart from Article 13 (special case), I understand that Clause 2 of Article 6 is also relevant. In addition to the implication when applying two unclear things, it is unclear on procedures or records when importing used machinery and equipment for more than 10 years, the agency's judgment on permitting import of such second-hand machinery and equipment for more than 10 years, we do not understand the specific reason but we have ever met the case of not accepting the import of used machinery and equipment. I also understand the situation will lead to the reduction of new investment or investment expansion into Vietnam.

Although JBAV has proposed that the Ministry of Science and Technology consults on the proposed dossier proposal, it is still unclear what specimen is. Along with the desire to specify the procedures and related patterns when importing machinery - equipment has been used for more than 10 years, for example, please clearly specify the standard of use by specifying in the legal document that if the submitted application complies with the specified format, the import will be approved.

5.4. Regarding the revision scheme related to compulsory social insurance for foreign employees

In the civil decree and the social insurance law, the sovereignty ordinance (the Law No. 58/2014 / QH13), on compulsory social insurance participation for foreign workers] JBAV is submitting a confirmation (No. 10 / 2017JBAV dated 26/4/2017). In addition, in the JBAV - JBAH (No. 16 / 2017JBAV dated 23/5/2017), we confirm this information to the Ministry of Justice and relevant agencies and request a merit investigation for legality of this decree scheme.

In addition to the above issues, there is a problem regarding description of this decree scheme.

In Article 1, Clause 2 of this Decree, there are regulations on subjects participating in compulsory social insurance which are "persons who are: signing labor contracts for a definite term, signing indefinite labor contracts, and the person who has been recruited as a seasonal employment for more than 1 month or for a specific job granted a work permit, a certificate of employment status, employment certificate to the foreigners".

However, there is no specific description that whether a foreign worker who recruited by a foreign enterprises and dispatched to Vietnam is covered as an objective or not. There is a similar problem in the description of Article 12 of the Health Insurance Law (No. 46/2014 / QH13), causing the different judge of each Government office and Government agency.

The purpose of the social security insurance is to prevent the employee from being not covered by the insurance. As persons dispatched from foreign enterprises are insured in their own country, it is not required for them to insure in Vietnam. If the insurance in Vietnam is one of the obligations, they need to pay double insurance cost in their home country and in Vietnam, the cost of labor will be increased.

In addition, employers of foreign-owned enterprises in Vietnam also have to pay the cost of unnecessary insurance. The employment rate is 22%, which is quite high compared to that in other ASEAN countries. The total labor cost is considered with the minimum salary (labor cost plus social insurance cost) which is equivalent to the neighboring country, Thailand.

We are also worried that this will cause great obstacles to dispatch foreign experts who can contribute to the industrial development of Vietnam.

Therefore, I think it is necessary to exclude someone who is dispatched from a foreign enterprises works to Vietnam from the objective of compulsory social insurance under this decree. In addition, in the case of [the person working for another company at his / her company from a foreign business entity / organization], due to a tax problem, there is no contract with the business / organization in Vietnam which is the place of work / place of dispatch. Therefore, we would like you to state that the business person who dispatched from a foreign enterprises or organization is excluded from the objective of social insurance regardless of the presence or absence of recruitment contracts in the decree.
In addition, we recommend that you issue an equivalent decree for the said purpose in the health insurance.

5.5. Dealing with value added tax (VAT) in case the trading company has sold the imported product to the export processing enterprises (EPE)

In Article 3, Clause 1 (Point 4b) of the Circular No. 130 of the Ministry of Finance (the Circular No. 130/2016 / TT-BTC) issued in 2016, there is a regulation which refuse to accept the refund of value added tax for the products which import and re-export. We concern that deal which distributor sell to export processing enterprise (EPE) can be covered by this "re-export".

If no VAT is refunded when selling EPE input equipment, bad cash flow or increase the selling price (converted into VAT equivalent) happens to the sellers, generating bad effect such as making business withdrawal from a business or a reduction in corporate tax revenue. In addition, with EPE, through increased unit prices or higher management costs, the forecast will also be adversely affected by deterioration in business activity or tax revenue. (Currently, some Japanese trading firms have begun to consider withdrawing from Vietnam in preparation for VAT refunds.)

For the above reasons we'd like to ask to mention that the sale of imported equipment to the EPE will not be [re-exported] and subject to VAT refund for this import equipment in the official letter of intent or in the circular specify.

5.6. Regarding EURO4

Regarding the application of EURO4 regulations after January 2018 based on the Prime Minister's Decision dated 1/9/2011 (No. 49/2011/2011/GD-TT), according to official correspondence (No. 126/TB-VPCP) by the Government Office dated 3/10/ 2017 confirmed that since January 2018, on one hand the import - production of diesel vehicles support EURO2, inventory until the end of 2017 may also be sold after January 2018.

On the other hand, after application of these regulations at 2018, EURO2 and EURO4 supported-vehicles exist in Vietnam. To ensure equity for owners of these vehicles, it is necessary to prepare the mechanism for owners of vehicles supporting EURO4 to receive appropriate EURO4 fuel supply all over the territory of Viet Nam.

Therefore, I would like you to let us know about the plan such as specific petrol support directive so that owners of vehicles supporting EURO4 can buy EURO4 fuel throughout Vietnam with equivalent price to EURO2 fuel.

As Japanese manufacturers occupy an important position in the automobile manufacturing and trading business, I would like to confirm the concrete content not to incur any disadvantage for the buyers of EURO4 vehicles.

5.7. Regarding automobile business

Regarding automobile business, JBAV would like to have 4 following proposals to Prime Minister for your kind consideration related to Investment law, Euro4 emission implementation, Oil products import and distribution license and Ownership tax.

5.7.1. Investment law

Firstly, JBAV would like to thank Government for listening to VBF comment at the meeting last year related to MOIT's circular No. 20/2011/TT-BCT (circular 20). And Government already revised investment law to put automobile business in the annex No.4 of the investment law as a list of businesses subject to condition.

Now, we have learnt that MOIT and MOT are working on drafting of a new decree to replace Circular 20 from July 1st, 2017. Taking this opportunity, we would like Government to keep in the new decree the important requirement of Circular 20 of having authorization from OEM (Original Equipped Manufacturer) for vehicle importers in order to ensure vehicles always are in good quality during their long service life.

Automobile is a complicated, high technology product and automobile quality is highly related to traffic safety and environment protection, so that professional service and maintenance is required

With technical support and spare parts supply from OEM, authorized distributor confirms vehicle's usage condition and prepares not only for sales, but also for after-sales service, so that they can provide periodic maintenance, repair service, warranty and recall for official import vehicles.

5.7.2. Oil products import and distribution license

Recently, JBAV has learnt that Government is drafting a new decree to replace a decree No. 23/2007/ND-CP. In the new decree, we would like Government to allow FDI automakers and their FDI dealers to import and distribute oil products which are prohibited according to MOIT circular No. 34/2013/TT-BCT.
As mentioned in VBF proposal last year, automakers consider oils/lubricants (oil) is necessary parts for CKD production at factory and service parts at dealers. Many FDI automakers has been started oil import and distribution since their establishment 1995-1996. JBAV would like to propose Government to allow FDI automakers and FDI dealers to continue their import and distribution business for oil/lubricant products which be used in their production and after-sale service.

5.7.3. Ownership tax

Recently, JBAV have learnt some complaints from automakers and their customers regarding new ownership tax policy mentioned in decree No. 140/2016/ND-CP. According to the decree, MOF will not update the taxable price list, unless car price changes at 20% or more. We are afraid that 20% of car price is a big amount of money, it rarely happens in the market so that the taxable price list will be kept stable for a longtime. However, in reality automakers usually change their products line-up and products specification and products price in line with competition in the market.

Therefore the gap between the taxable price list and actual selling price in the market becomes bigger and bigger that leads more frequent and more serious complaints from customers as they may have to pay higher ownership tax.

Therefore, we would like to propose Government to revise decree 140 in order to let MOF to update the taxable price list in time manner based on price notices from automakers.

5.7.4. EURO4

Actually Bus & Truck makers all over the world will only produce the finished product as cabin with chassis (CWC) for Trucks and engine mounted on chassis(EWC) for Buses. The rear body of Truck or Bus Body could be built by Dealers or Body Makers up to customer's requirement.
Pursuant to Document No. 436/TTg-CN dated Mar 28th 2017 of the Prime Minister, manufacturers are allowed to continue production of EURO2 diesel emission products till Dec 31st 2017.

So CWE for Trucks and EWC for Buses are continuously being manufactured till Dec 31st 2017. However it could not be ensured that vehicles competed rear body (bodybuilding) will be all sold out before Dec 31st 2017 because the purchase depends much on the customer sides.

In the past when we change from Euro1 to Euro2 emission standard (pursuant to Decision 249/QD-TTg dated Oct 10th 2005) the control was based on the date of production line-off for CWC and EWC. The rear bodybuilding had been granted certificate at the time of customer's purchase and order for bodybuilding. Bodybuilding completion timimg depends on customer's decision, production capacity of Body Maker, so car maker could not control the timing. In that sense, last time decision is reasonable.

So we would like ask MOT applying the control date of Dec 31st 2017 as the deadline for production of Cabin with Chassis (Trucks) & Engine mounted on Chassis (Buses) and importing Vehicles. The rear bodybuilding for those vehicles will still be granted with certificate of production line-off and environment protection at the time of customer's purchase and order for rear body building, even bodybuilding will be after Dec 31st. 2017.

In addition to that, we would like to request about Euro4 Diesel Fuel supply issue.

Since it may cause huge trouble and inconvenience to the Vietnamese customers and people, we would like to know:

- When and how much of Euro4 diesel will be procured and supplied to the market? In addition, which fuel supplier(s) will be in charge of such procurement and supplying?

- In case the procurement volume of Euro4 diesel is less than total demand, we understood

Euro2 diesel will be continuously supplied in parallel with Euro4 diesel in the market. Can we know where and how many gas stations could supply EURO4 diesel by area?

- Moreover, we would like to know if the Government considers to implement any policy not to create any unreasonable disadvantage for Euro4 model truck and bus users, the oil refiners, the fuel distributors and other related parties at the beginning to introduce Euro4 diesel in the market.

Reference 1

Regarding the Office of Trade and Investment Ombudsman

In Japan, the OTO (Office of Trade and Investment Ombudsman) is established since 1982, which is a Governmental organization with the task of receiving information. Specific complaints related to market liberalization and the smooth implementation of import procedures, including import procedures from domestic and foreign enterprises, to implement measures to improve and eliminate misunderstandings and enhance their participation in the Japanese market. (Refer to Attachment 1, Attachment 2)

The complaints may be submitted in either of the OTO reception locations (Office of Trade and Investment Ombudsman) placed in locations like OTO (the Reform Office), relevant agencies, the Japanese embassy and consulate abroad, the JETRO office. In addition, in cases where the person concerned does not want to write his / her full name, he / she may also file a complaint on behalf of the business conference or foreign embassy in Japan.

Complaints and grievances received by the OTO will be communicated by the relevant line agencies, and then to the complaining party regarding the response, explanation of the current regime, proposed improvement measures. On the other hand, the person filing the complaint will contact the OTO for an opinion with an answer from the relevant department.

In addition, in the event that the complainant is not satisfied with the response of the concerned department, the handling of the complaint in the [complaint resolution meeting (like the advisory panel) is carried out by a person with learning experience (including foreigners) will be considered, the result of that consideration will be reported - approved by [headquarters of the complaint processing] in which the prime minister is the head of the office and the ministers are the constituent members creating the necessary improvement measures in the ministry.

The cumulative number of complaints has passed 1000 cases.

(Attachment **1**.**Regarding the issue of preparing the organization to deal with the problem of market liberation**

February 1st, 1994
Decision of the cabinet meeting
January 6th, 2001
Partly revision
April 28th, 2006
Partly revision

In preparation for the handling of market liberalization issues, along with the arrangement of the head office to handle the problem of market liberalization in the cabinet, to carry out OTO for market liberalization as follows.

1.1. Head office handling complaints about market liberalization

(1) Mission

The head office dealing with market liberalization issues (hereinafter referred to as the "headquarters'') regulates the liaison between relevant ministries to facilitate prompt and accurate handling of complaints related to the issue of market liberalization and the smooth implementation of the import process including import procedures.

(2) Composition

Members of the headquarters are as follows. However, the head of the office may add relevant ministers if necessary.

The Head	Prime Minister
Members	Minister of Home Affairs
	Minister of Justice
	Minister of Foreign Affairs
	Minister of Finance
	Minister of Education, Culture, Sports, Science and Technology
	Minister of Health Minister of Labor and Social Welfare
	Minister of Agriculture, Forestry and Fisheries
	Minister of Industry and Trade
	Minister of Transport Infrastructure
	Minister of Environment
	Chief Cabinet
	The Secretary of State for the Cabinet (Economic and Financial Policy)
	Chairman of the national security committee

(3) Executive Board

At the headquarters, a executive board of the Government is established to control the Government's human force, of which the members appoint the Head and the Chief of the Cabinet Office as Head of the executive board.

(4) Other contents

The necessary items relating to the operation of the head office shall be specified by the head.

2. OTO conference

2.1. Organizational purpose

In order to support the operation of the headquarters, to improve the ability to enter the market, a conference will be held to address the issue of market liberalization (hereinafter referred to as [the conference]), to listen the opinions of knowledgeable people who are experienced on the issues related to market liberalization and facilitate the importation, including import procedures.

2.2. Compositions

The conference is made up of experienced people with knowledge related to international economics and foreign trade.

2.3. Other contents

2.4. The necessary items related to the operation of the conference shall be specified by the head of the conference.

3 Other contents

Abolition of the head office to address the issue of market liberalization created by the decision of the cabinet meeting on economic measures of January 30th, 1982 and the OTO conference held in accordance with the decision of the conference on January 13th, 1983.

However, the content of the head office's handling of complaints about market liberalization has been decided and the complaints received - processed to date - are transferred to the headquarters in the OTO conference where the items are discussed.

Attachment 2

What is OTO?

Abbreviation of the Office of Trade and Investment Ombudsman.

Mission

・We receive complaints from overseas and domestic enterprises concerning specific government regulations, which are obstacles to export or investment to Japan.

・In response to the complaints, we improve regulations and clear up any misunderstandings.

・In this way, we improve access to the Japanese market.

History

OTO was established in January 1982.
The number of filed complaints is 1065 (as of July 2005).

Components

(1) Network between the secretariat and related ministries/agencies

The secretariat (Cabinet Office) informs related ministries/agencies of filed complaints.
To complainants, related ministries/agencies make replies such as explanations on present regulations and proposals for improvements by using this network. The complainants subsequently make known their opinions on these replies through this network.

(2) Market Access Ombudsman Council (MAOC)

This council is comprised of a distinguished group of scholars and business leaders. Non-Japanese members are also included.

If complainants were not satisfied by the response of the related ministries/agencies, MAOC discusses the issues.

If MAOC decided that related ministries/agencies should improve regulations, it submits its opinions to OMA.

(3) Office of Market Access (OMA)

This office is comprised of the prime minister, as its head, and thirteen ministers who are responsible for the improvement of market access. It decides on improvement measures, reflecting the opinions of MAOC.

(4) Secretariat

Cabinet Office serves as the secretariat.
Most of the complaints have been addressed to the Secretariat.

Reference 2

About Japan's “confirmation procedure before using the ordinance”

(Made since 2001 “mode of no letter which is not sued with the Japanese version”)

1. This procedure is generalized

- This is the regime in which to determine whether a particular behavior related to the operation of a private enterprise is subject to the provisions of any ordinance, confirm it to the national administrative agency, then it will respond and publish the content**.**

- Within the scope of the specific ordinance subject to the procedure, the ministry shall stipulate in detail the time from the receipt of the reference until the reply is made.

- Please refer to the reference (attachment)

2. Following implementation of this procedure

- Regular surveys (from 2002 to 2009, carry out annually from 2010 to 2016 on large scale in 2016), implementation of this procedure by ministries and the report is published and generalized by the Ministry (Ministry of the Home Affairs).

ATTACHMENT

Regarding the Introduction of Prior Confirmation Procedures on the Application of Laws and Regulations by Administrative Agencies

Cabinet Decision, March 27, 2001
Revised on March 19, 2004

It was decided in the action plan for the reformation and creation of the economic structure (Third Follow-up Report (Cabinet Decision of December 1, 2000)) that, with the aim of rapid and fair conduct of business activities by private enterprises with the advent of the information technology revolution, administrative agencies who take administrative measures would endeavor to introduce procedures compatible with the legal system of Japan to speed up and clarify the interpretation of laws and regulations concerning such administrative measures, commence studies of such procedures, and implement them in certain fields starting in FY2001. In view of this, starting in FY2001, with respect to fields experiencing the brisk creation of new industries and new products and services, including information technology and finance, in order to increase a private enterprise's ability to predict whether a certain action would conflict with laws and regulations, administrative agencies will arrange so that a private-sector enterprise can inquire in advance as to the relationship between the action concerned and the provisions of certain laws and regulations. In addition, in order to ensure the fairness of administration and promote the increase of transparency, the contents of the inquiry concerned and the administrative agencies' responses will be made public. Further, this fact is also in accordance with the goal of clarifying the interpretation of existing rules (introduction of the "no action letter") in the "e-Japan Strategy" (the January 22, 2001 Advanced Information and Telecommunications Network Society Promotion Strategic Headquarters decision).

To this end, with regard to the above fields, guidelines are prescribed as follows for procedures in which a private enterprise, etc. confirms in advance with the administrative agency having jurisdiction to enforce certain laws and regulations whether specific actions in connection with business activities that the enterprise, etc. seeks to realize are subject to the provisions of the regulations concerned, such agency responds and the response is made public.

Further, each governmental department (including extra-ministerial departments thereof; hereinafter the same shall apply) shall prescribe and make public detailed regulations within the scope of these guidelines with regard to specific methods of implementation.

1. Subject

1.1. Fields whose laws are subject

These guidelines have as their subject laws and regulations relating to the activities of the private companies and organizations; however, this shall not preclude the making, at the discretion of each governmental department, of laws and regulations relating to other fields subject to these guidelines.

1.2. Scope of subject laws and regulations (provisions)

Among the provisions of laws and regulations set forth in (1) above, the subjects of these guidelines shall be those to which either of the following items apply and that relate to the

business activities of private enterprises; however, laws and regulations relating to matters disposed of by local municipal entities (matters statutorily delegated and matters of self-governance) shall not be subject hereto.

1.2.1. Cases where the provision concerned determines the basis for disposition of an application (this shall mean an application as defined in Article 2, Item 3 of the Administrative Procedures Law (Law No. 88, promulgated November 12, 1993) and the act of violating the provision concerned is subject to penal provisions; or

1.2.2. Cases where the provision concerned determines the basis for unfavorable disposition (this shall mean an unfavorable disposition as defined in Article 2, Item 4 of the Administrative Procedures Law).

1.3. Determination and publication of subject laws and regulations (provisions)

Each governmental department shall determine and make public the provisions made subject hereto in the governmental department concerned based on these guidelines.

2. Inquiries

Each governmental department shall receive an inquiry from a private enterprise, etc. that fulfills the following requirements (hereinafter referred to as "inquirer") at a contact point to be prescribed in detailed regulations.

2.1. The inquirer indicates in writing (including electronic means) the individual, specific facts relating to actions the enterprise seeks to take in the future;

1.2. The inquirer specifies the provisions of laws and regulations among those the pertinent governmental department determined and made public based on paragraph 1(3) above with respect to which the inquirer wishes to determine applicability to its prospective action; and

1.3. The inquirer agrees to its name, the contents of its inquiry and the response thereto being made public

Further, each governmental department may, within a reasonable and necessary scope, add to its detailed regulations supplemental requirements, including a requirement that the inquirer clearly state its opinion concerning the applicability of the provisions of laws and regulations specified in 2) above and the basis therefor.

3. Responses

5.3. Time of response

As a general rule, each governmental department shall respond to an inquirer within 30 days (each governmental department shall prescribe specific times for response in its detailed regulations) of the arrival of a written inquiry from the inquirer at the contact point; however, each governmental department may prescribe in its detailed regulations a time of response in excess of 30 days in a case where careful judgment is required, or in a case where there is a reasonable ground, such as where a substantial impediment to services arises due to a large number of inquiries that exceeds the capacity of the department or agency in charge.

In the event that a response cannot be made within the established time of response, each governmental department shall notify the inquirer of the reason for the delay and the expected time of response.

5.4. Method of response

Response to an inquiry shall be made in writing (including electronic means); however, the foregoing shall not apply in a case where the inquirer agrees to receive an oral response.

A written response shall contain a clear statement to the effect that the response in question (a) is made from the position of having jurisdiction to enforce the laws and regulations (provisions) subject to the inquiry, (b) is premised only on the facts as presented by the inquirer, (c) is made only with respect to the relationship of the prospective business activities to the laws and regulations (provisions) subject to the inquiry, (d) indicates the governmental department's opinion as of that present time, and (e) as a matter of course, cannot bind the determination of any investigative agency or the finding of any court, including the application of penal provisions.

5.5. Case of no response

Each governmental department may elect not to respond in a case where it is not able to respond to the inquiry submitted or in a case where it would not be appropriate to respond.

Each governmental department shall prescribe in advance in its detailed regulations the conditions of cases to which it will not respond.

In the event that no response will be made to an inquiry, each governmental department shall notify the inquirer of the reason for the decision not to respond.

4. Making the inquirer's name, the contents of its inquiry and the response thereto public

4.1. Contents of publication

As a general rule, the inquirer's name, the contents of its inquiry and the response thereto should be made public as-is; however, in a case where an inquiry or the response thereto contains information that falls under the category of an event of non-disclosure as prescribed in the Law Concerning the Disclosure of Information Retained by Administrative Agencies (Law No. 42, promulgated May 14, 1999) a governmental department may, as necessary, withhold such information from disclosure.

4.2. Time of publication

As a general rule, the inquirer's name, the contents of its inquiry and the response thereto shall be made public within 30 days of the issuing of a response.

5. Time of introduction

Each governmental department shall promptly study the introduction of prior confirmation procedures to fields experiencing the brisk creation of new industries and new products and services, including information technology and finance and shall implement such procedures as early as possible during FY2001.

6. Follow-up and review

The Ministry of Public Management, Home Affairs, Posts and Telecommunications shall conduct follow-up and make public the status of implementation of each governmental department in order to bring about the proper implementation of these procedures.

Further, review shall be conducted as necessary in view of the results of the aforementioned follow-up.

7. Submission of related information

In light of the goals and purposes of these procedures, each governmental department shall affirmatively endeavor to (a) provide various information relating to the application of laws and regulations including means such as enhancing the commentary on the laws and regulations within its jurisdiction, and (b) make public standards for examinations and dispositions.