**MID-TERM VIETNAM BUSINESS FORUM 2017**
Hanoi, June 16, 2017

## OPENING REMARKS

**Government of Vietnam - Mr. Dang Huy Dong, Vice Minister of Planning and Investment**

Along with the local private sector, foreign investment has been a key driver of economic development in Vietnam - with 23,000 FDI projects from 116 countries totaling USD300 billion. The FDI sector contributes 70% of the nation’s export value and close to 22% of its GDP, creating millions of jobs. However, the uneven development between FDI and local private sectors, limited transfer of technology and management expertise to local businesses are emerging as concerns.

In this context, the 2017 Mid-term Vietnam Business Forum (VBF) theme *“Strengthening the linkage between FDI and domestic businesses in the new global context”* is timely to examine strategies to retain and attract finance for the private sector, strengthen the bond between domestic and cross-border investment, explore implications of recent global policies on the Vietnamese economy and review specific investment-related laws to bolster enforcement. Key issues for discussion include the global trend towards an “information society” and “intellectual economy” which have diminished manual labor/unskilled workers and heightened the need for a more highly-skilled workforce. A second issue is the increasing need for high-quality FDI to help Vietnam beat a looming middle-income trap and help the domestic sector participate in global technology and supply chains. Moreover, local firms must capitalize on growing opportunities through application of advanced science, research and development, governance and greater professionalism in operations. Finally, despite a greatly improved regulatory environment and legal framework in recent years, there remains a large gap between law-making and enforcement that must be bridged.

**International Finance Corporation – Mr. Kyle Kelhofer, Country Manager for Vietnam, Laos and Cambodia**

There are continued encouraging signs in increased forum discussions and dialogues between the Government and business community, underlining the former’s strong commitment to stand shoulder-to-shoulder with the latter. This includes the recent introduction of a resolution by the Party’s Central Committee to better facilitate private sector growth, in particular the request for effective measures to level the playing field for resources between state-owned enterprises (SOEs) and private sector. The 4$^{th}$ Industrial Revolution is illuminating around the world and continues to reshape global value chains. As a result, there are tremendous opportunities to improve business competitiveness and move-up global value chains, harnessing the knowledge and benefits derived from FDI spillovers to FDI linkages here in Vietnam.

To achieve this, Vietnam must address the absence of a robust supporting industry, a key bottleneck to such linkages. The Government can continue to encourage local innovation and private risk-taking to strengthen these linkages between FDI and local businesses. Vietnam’s private sector must continue to innovate to survive and thrive and increase its competitiveness in a fast-changing environment. This includes a better way forward for markets, such as strengthening the domestic capital market for longer-term investments for key domestic enterprises.

In closing, it is vital for the Government and businesses, domestic and foreign, to work hand-in-hand to respond to rapidly evolving external conditions to further improve Vietnam's competitiveness.

**Vietnam Business Forum Consortium - Mr. Sagara Hirohide and Mr. Tetsu Funayama, Co-chairs**

This Forum has three sessions. In the first session, each Chamber of Commerce will address the Forum through a representative. The second session will discuss recent international trade policies, in parallel with the noteworthy current industrial revolution and what Vietnam needs to do as part of that picture. In the third session, the Forum focuses on discussing "How to improve the effectiveness in enforcing laws". This question has been plaguing Vietnam in its quest of drawing FDI investment and stay competitive alongside neighboring countries. However, with its rich experiences having been through similar situations many decades back, Japan is confident that it can assist Vietnam in various ways.

This midterm forum is a valued opportunity for Vietnamese businesses and government. We believe that Vietnam can achieve new progress with the valued discussions exchanges at this Forum, given its main theme and purpose is to strengthen and increase the bond between the FDI sector and local businesses.

## SESSION 1: REMARKS BY 6 CHAMBERS

**The Japan Business Association in Vietnam (JBAV) – Mr. Hiroshi Karashima, Chairman**

Over the past several years, annual increases in the minimum wage in Vietnam have exceeded that of the consumer price index (CPI). As a result, Vietnam's current minimum wage is higher than major industrial areas in many regional competitors. With such rapid increases, Vietnam will lose its relative competitiveness against neighboring countries. Instead, it must be strategic in determining appropriate annual minimum wage increases based on CPI increases.

To enhance Vietnam's attractiveness as a manufacturing country, it must enrich its industrial environment to create greater added value in addition to its labor cost competitiveness. Moreover, it is essential to form supporting industries by developing the small- and medium-sized enterprises (SMEs). In developing supporting industries, Japanese enterprises have superior know-how and should be encouraged to engage in technological transfers in Vietnam by collaborating with local SMEs. At present, several Japanese manufacturing companies plan to transfer their manufacturing facilities to Vietnam from Japan and third countries, which will solidify supporting industries and development of Vietnam's SMEs.

In closing, it is important to highlight a continuing for barrier for Japanese enterprises - import regulations for used machines and devices. Circular No.23 promulgated in 2015 permits the import of machines and devices used for less than 10 years, but there should be room for those that exceed a decade. Overall, it would be advantageous for firms which import used machines and devices as their own fixed assets, are allowed to bring the used machines regardless of number of used years.

**Response by Ministry of Science and Technology – Mr. Pham Cong Tac, Vice Minister**

Circular 23 leaves the door open for equipment and plants older than 10 years, applied to business expansion, substantial investment projects and selected special equipment. In these events, importers and investors must lodge applications with the Ministry of Science &

Technology (MoST) that will be reviewed and licensed jointly with the Ministry of Industry & Trade (MoIT) and other relevant ministries.

In general, it is acknowledged the roll-out of Circular 23 has met various drawbacks. In response, the Government released Resolution No.19 in 2017 for supplement of Circular 23 to better meet the needs of businesses for different equipment. The MoST in April 2017 disseminated requests for consultations with a wide variety of recipients and it is expected that within July 2017, a revised version of Circular 23 will be completed and the new final circular will emerge by the end of 2017, with rules for the break-down of different equipment categories, such as manufacturing equipment, electronic devices and building equipment.

**Response by Ministry of Transport - Mr. Nguyen Ngoc Dong, Vice Minister**

*In response for the issue mentioned in JBAV's position paper, the Euro-four emission standard* was recognized through Decision No.49 in 2011 and the application of level-four exhaust gas standards from January 1, 2017. In March 2017, the Government ruled to retain the pathway for emission standards application for locally-made and assembled, and imported new automobiles, motorcycles and two-wheelers in line with Decision 49. For diesel-fueled automobiles, the Government permitted application by December 31, 2017.

**Vietnam Chamber of Commerce and Industry (VCCI) – Mr. Vu Tien Loc, Chairman**

Vietnam has yet to fully benefit from FDI inflows, with limited synergies between domestic investors, non-national counterparts and few transfers of technology. FDI projects have produced limited joint venture businesses and only a small percentage of domestic private businesses supply goods and services to FDI companies. Three key obstacles are human resources quality, limited technological advancement levels of local private businesses, and geographical distances between FDI firms and domestic suppliers.

To tighten links between FDI businesses and the local private sector, policy solutions include strengthening training and local human resources to embrace new technologies and governance processes. This requires Government leadership in investment to improve vocational training institutions, connect workers' skills training with technological developments and encourage domestic & foreign investment in vocational training. Ground-breaking strategies are needed to narrow the gap in technological advancement levels between local and FDI businesses. Also, greater geographical connectivity between FDI and domestic firms is essential, with industrial parks and export processing zones specifically designated for FDI to improve operations. Accordingly, as national and municipal governments design these FDI-specific industrial parks, they must take into account the connectivity with other industrial parks and domestic SMEs.

**European Chamber of Commerce (EuroCham) - Mr. Tomaso Andreatta, Vice Chairman**

EuroCham's five issues to substantially enhance Vietnam's competitiveness in global trade and benefit the European business community are:

Firstly, as Vietnam moves into more capital-intensive industries to increase local content, the Government can focus its industrial policy to complete the supply chain with processes that are environmentally friendly and have adequate recycling facilities. EuroCham can support the Government to tap into European experience and technology in energy conservation and efficiency, renewable energy and clean production.

Secondly, with a limited State budget unable to meet all infrastructure needs and amid declining ODA, the balance must come from private investment through better Public-Private Partnerships (PPPs) that balance risks and are bankable for international companies with transparent public bids and through full privatization of the market. Local solutions to mobilize funds for growth can be enhanced by transparency in capital markets and extending to investment of insurance companies and pension and insurance funds into infrastructure bonds.

Thirdly, though Vietnam has improved its legal framework and enforcement of intellectual property rights (IPR), enforcement of laws remains a concern for European and Vietnamese businesses. EuroCham calls on the Vietnamese Government to ensure trademark and copyright infringers face dissuasive legal sanctions and encourage the courts to enforce international and local arbitration awards.

Fourthly, Vietnam must make clear choices to openly engage in the industries of the future in spearheading new industries, with the private sector given space to lead the way.

Lastly, administrative challenges at provincial level remain problematic for investors due to different applications of laws and policies, especially regarding taxes, Customs and land use.

**Response by Ministry of Science and Technology – Mr. Pham Cong Tac, Vice Minister**

Normative regulations in Vietnam remain aligned with international treaties on intellectual property and the MoST realizes intellectual property is an issue of critical importance. In recent attempts to enhance transparency related to intellectual property, JICA and five Vietnamese regulatory authorities, including the MoST inspection department, Intellectual Property Authority, the Economics Police, Contraband Investigation Office of the General Department of Customs, Ministry of Finance, and the Market Watchdog of the MoIT, have worked on disclosure schemes on intellectual property issues. At present, the Government is looking into barriers in relation to the Intellectual Property Law to revise legislation in future potential amendments to the law.

**Response by Ministry of Health, Drug Administration of Vietnam – Mr. Do Van Dong, Deputy Director**

In recent years, Vietnam has released new and revised multiple important regulatory documents for the pharmaceutical sector, for alignment with local laws and to meet international commitments. The Ministry of Health (MoH) is looking at ways to balance revenue and expenses for healthcare with funding from the State budget and insurance contributions, while taking into account affordability for out-of-pocket drug buyers. The MoH will continue encouraging foreign investment in pharmaceutical product manufacturing, preferring manufacturing of drugs on hi-tech production lines. MoH fully support and want to provide the greatest opportunities for projects seeking to build centers developing drugs conceived in Vietnam to meet the demand of both Vietnam and the region. Nevertheless, we want to see stronger efforts from international firms finding their ways into these projects.

By the end of 2018, development of level-four online pharmacy sector administrative procedures will be completed, while level-four public services for cosmetics, drug registration, drug price listing and drug information/advertisement authentication have already been completed.

**American Chamber of Commerce in Vietnam (AmCham) - Mr. Jonathan Moreno, Chairman**

To maintain and extend bilateral trade and investment relationships, commerce must recognize the benefits of all parties involved. Imported products in Vietnam remain highly priced and to address the USD24 billion trade deficit the United States sustains with Vietnam, the latter must seriously address barriers to free trade. Common technical barriers to AmCham members include check requirements applying only to imported products and not locally-made ones, Circular 23 that caps the age of used equipment and Decree 38 on food safety with its far-reaching, yet inconsistent scope.

In addition to these technical barriers to trade, a multitude of behind-the-border barriers is blocking free trade and preventing companies from conducting business activities. Examples include economic needs tests (ENT) impeding foreign retailing investors, the need to scale back barriers against imported pharmaceutical products and provide better environmental support for health care, requirements for foreign distributors to list HS codes on licenses, Circular 19 on bank card business and the State Bank of Vietnam's (SBV) new banking rules challenging foreign users setting up accounts in Vietnam.

Removing trade barriers and enhancing market accessibility will entice new investors to Vietnam. FDI has increasingly been dependent on expansion of existing investors, which means future FDI will be dependent on operating environment improvements. Further to foreign-invested businesses, many have great concerns about a proposed Ministry of Labor, Invalids and Social Affairs (MoLISA) draft with its recommended 18% social insurance contribution on salaries of non-national workers.

The quality of operating environment for business in Vietnam and people's quality of living depends on environment-friendliness and reliability of infrastructure. AmCham believes the "Made-in-Vietnam" energy plan will pave the way to sustainably address the nation's energy supply question with efficiency, renewable energy and gases at its core.

Finally, AmCham fully supports the Government's commitment to spur growth of SMEs in Vietnam and to further penetrate global supply chains.

**Response by Ministry of Industry and Trade – Mr. Tran Quoc Khanh, Vice Minister**

*Non-tariff and on-the-border barriers to trade:* Vietnam has consistently been in strict compliance with World Trade Organization (WTO) rules and despite remaining in a trade deficit for many years, it has worked to improve the competitiveness of its exports to address its trade balance. In acknowledging some border rules frustrate importers, the MoIT is open to feedback to improve the situation. The measures adopted at the border for imports into Vietnam are not responsible for the country's trade surplus with certain nations.

*Retail points-of-sale and economic needs test (ENT):* The reason may be two-fold as Vietnam's WTO commitments allow for ENTs and many WTO member states use ENTs, while no WTO member nations have introduced clear criteria for their use. While Vietnam has encountered problems using ENTs, it has not prevented major foreign retailers doing business here and means ENTs do not impede foreign retailers in Vietnam. In Decree replacing Decree 23, the MoIT integrated more guiding criteria on ENT procedures and in the free trade agreement (FTA) with the European Union (EU), Vietnam has pledged not to use ENTs on EU retailers.

**Response by Ministry of Finance - Mrs. Vu Thi Mai, Vice Minister**

*HS code listing requirements*: The Ministry of Finance (MoF) has formed an inclusive taskforce to develop an HS code system during 2017 for application from January 1, 2018. All concerns raised have been reviewed and considered. The MoF plans to release a circular on tariff codes for exports and imports in Vietnam coming into effect from 2018 by early July 2017.

**Response by the State Bank of Vietnam – Mr. Nguyen Kim Anh, Vice Governor**

*Regarding online payments and transactions through banks*

According to the regulation on card switching at Article 24 of Circular 19 in order to accommodate the management target of Government, in particular (1) managing information about in-and-outflow card transactions to Vietnam, (2) better implementation in managing foreign exchange in card transactions, together with the framework of managing foreign exchange, (3) contributing to anti-money laundering purpose, (4) assuring national sovereignty and security in transactions. This regulation is also in line with the TPP commitment as well as other international commitments that Vietnam has participated. Besides, it does not impose limitations on competitiveness of foreign payment companies. Regarding the technical concerns, in reality, these can be solved with the close collaboration of parties. In the past time, NAPAS had obtained the SBV's permission and had dialogues with international card organizations about the linkage model. In the future time, the SBV requires online payment companies to directly communicate and work more actively with card switching corporations that have the SBV's permissions to increase cohesion in technical issues and operation, implementation approaches as regulated at Article 24.2 of Circular 19.

**Response by Ministry of Health, Drug Administration of Vietnam - Mr. Do Van Dong, Deputy Director**

Foreign businesses permitted to import pharmaceutical products into Vietnam in line with its WTO accession commitments may import registered drugs without limits on quantity and number of shipments for each importation or the need for additional licenses. The Drug Administration welcomes dialogue with businesses and interested parties to address outstanding issues.

**Korean Chamber of Commerce (KoCham) - Mr. Ryu Hang Ha, Chairman**

KoCham highlighted a range of legal issues problematic for Korean investors:

Firstly, regarding exemption of export duties on aluminum products, the Export and Import Tax Act and enforcement decree stipulate that "export duties shall not be imposed on the manufactured products, of which raw materials were imported for the purpose of export". Therefore, export duties were not imposed in the past. However, the Export & Import Tax Act (seventh clause of Article 16) was revised on April 6, 2017 and the enforcement decree (Article 12, Decree No.134) became effective on September 1, 2016, with the phrase "the export tax shall not be imposed" deleted. Therefore, Government agencies are interpreting this as an imposition of export duties. For example, 7-10% export duties are imposed on aluminum products. KoCham urges the Vietnamese Government to exempt export duties on aluminum products.

Secondly, in relation to foreign companies opening bank accounts, Article 11 of Circular No.32 stipulates that an organization, entitled as a 'juridical person', shall be allowed to open a bank account. Therefore branch, representative and project management offices, which do not hold any independent rights, cannot open a bank account in their own name and must open accounts in that of their head office, which is problematic in practice. It is also inconsistent with other laws that stipulate branch offices and representative offices shall make labor and office leasing contracts in their own name.

KoCham requests an amendment to relevant regulations so organizations can open bank accounts in their own name.

Thirdly, regarding clarification of the fire-fighting act, Article 37, Clause 3, Point (a), Decree No.167, effective on November 12, 2013, stipulates that a “fine from VND5,000,000 to VND10,000,000 for one of the following acts: ceiling, floor, bulk head, roof or collection of flammable materials in unauthorized places” can be imposed. However, companies sometimes experience difficulties applying this act due to a lack of details from Government agencies that arbitrarily interpret this act. KoCham requests supplementing more details to the act, so public officials do not arbitrarily interpret it.

**Response by Ministry of Finance - Mrs. Vu Thi Mai, Vice Minister**

*Petitions related to aluminum export tariff:* Under Law 107 on export/import tariff, the export tariff rate for aluminum is 0-30%. Export aluminum products with an HS code of 7611-7616 are subject to a 0% rate. KoCham’s comment did not specify the exact product items and tariff codes. KoCham is requested to provide specifics on product categories and applicable tariff rates for further examination and potential amendment.

**Response by the State Bank of Vietnam - Mr. Nguyen Kim Anh, Deputy Governor**

*Regarding opening banking accounts for branches, representative offices and project management offices of foreign companies:*

Circular 32/2016/TT-NHNN was constructed to be in line with the Civil Code 2015’s provisions about subjects in civil transactions, including individuals and legal entities. Accordingly, organizations who do not have the legal status will not have the legal capacity (i.e. being an independent subject of civil relations) to participate in opening & using bank account. This regulation is necessary to reduce the risk for both parties and to be in compliance with the Civil code’s provision on legal entity. As it is related to the Civil Code, in the coming time, the SBV will continue to consider, collaborate with related ministries to inform the Government on this issue.

**Australian Chamber of Commerce in Vietnam (AusCham) - Mr. Giles Cooper, Director**

There is tremendous potential for Australian investors in sectors such as agriculture, energy, financial services, education, tourism and health. With labor force productivity in Vietnam requiring significant enhancement, education and training of Vietnamese people to provide “work ready” graduates will help close skills gaps and provide necessary resources to address skills shortages. In the short term, foreign expertise can help in this regard. This requires involvement of major stakeholders under Government leadership.

To achieve international-standard education, Vietnam must improve the standard of its education institutions that could benefit from an infusion of foreign capital and expertise with flexibility and adaptability, especially in the vocational training sector.

Mining and mining services remain a key area of interest and expertise for Australian companies who stand ready to assist Vietnam in developing appropriate polices to attract FDI in exploration and use of international best practices.

AusCham continues to note that tourists from five European countries are entitled to enter Vietnam without a visa and that another 40 countries' citizens may apply for e-visas – but not Australians. Given that Vietnam Airlines and Jetstar Australia have recently added direct flights between Vietnam and Australia, AusCham believes this presents the Government with a great opportunity to support the local tourism industry by reviewing the visa status of Australian tourists.

AusCham is working directly with the Ministry of Foreign Affairs and people's committees of several provinces to enhance the relationship between Australian and Vietnamese businesses, with AusCham's new memorandum with Vietnam's Department of Foreign Affairs allowing it to reach a greater number of provinces.

**Response by Ministry of Labor, Invalids and Social Affairs – Mr. Nguyen Trong Dam, Vice Minister**

MoLISA is working to implement the Vocational Education Law, National Human Resource Strategy by 2020 and reform vocational education in Vietnam to expand and upgrade its quality. The Government has favored funneling investment into public vocational education institutions and values support from a variety of countries towards elevating the quality of human resources in Vietnam. However, gaps still exist between training and market demands. To address this issue, businesses are encouraged to share information and their needs for workers. Thus far, information sharing by FDI firms has been greatly appreciated, in contrast to domestic companies that have remained virtually silent.

Going forward, vocational training providers need to weigh-in more on field practice for students than theory training. For that to be successful, companies are urged to cooperate with vocational training providers to take students for practice and internships and even develop their own vocational training facilities.

## SESSION 2. IMPACT OF GLOBAL POLICIES ON PRIVATE SECTOR INVESTMENT IN VIETNAM

**Session 2: Facilitator – Mr. Sagara Hirohide, Co-Chair, VBF Consortitum**

In general, two main international trading policy trends have emerged. While free trade seeks international trade integration, free trade areas and pursuit of maximum economic outcomes among allied countries, protectionism prioritizes national economies and even cultures and identities. Although these two movements conflict, it seems free trade policies remain mainstream, particularly in South East Asia where Vietnam is said to reap the most benefits from such international integration. However, such policies also result in tough competition and the Vietnamese Government should accelerate improvement in its business environment to further attract FDIs and entrepreneurs.

The other remarkable movements in today's business are rapid improvements of industrial technologies, particularly application of Internet of Things (IoT) or "Industry 4.0". Industry 4.0 is the innovative connection between humans, machines and various other things through internet on every manufacturing level on a global scale. This might change the entire business world, including traditional labor-intensive businesses such as agriculture and textiles. Timely application of such innovations will be another key to further development of the Vietnamese economy.

**Investment and Trade Working Group - Mr. Fred Burke, Head**

Two important questions, what to do following the US' withdrawal from the Trans-Pacific Partnership (TPP) and how to meet the challenge of the 4th industrial revolution, require nimble decision-making to adjust to a rapidly evolving external environment.

Regarding the TPP, Vietnam has wisely not put all its eggs in one TPP basket and has plans B, C, D, E and F to fall back on. Vietnam has pursued its integration development strategy in a multilateral fashion to become one of the world's top exporters. How to continue this success story in a way that encourages domestic linkages is its next challenge.

Plan B is the Trade Facilitation Agreement, an effective WTO agreement, that can significantly reduce supply chain transport costs. However, Vietnam has much work to implement it. Plan C involves continued implementation of its 2007 WTO Accession Agreements or existing FTAs, with the Korea-Vietnam FTA an excellent example. Plan D is continuing to implement objectives reflected in the ASEAN Economic Community Agreements with nine other ASEAN nations, further harmonization of regulatory procedures, visa-free movement and increased flows of capital, goods and services within ASEAN. Plan E involves pursuing other bilateral and multilateral deals, including the EU FTA and RCEP (Regional Comprehensive Economic Partnership). This process will see Vietnam benefit from TPP11, TPP potentially without the US. Vietnam should continue its wise multilateral strategy of capturing as many of these opportunities as possible. Plan F is continuing domestic reform, which means maintaining competitiveness and reducing poverty, with administrative reforms making the State more supportive in nurturing industries to form linkages and compete.

On the 4th industrial revolution, nearly all jobs that employ millions of people today will be gone in a decade or two because of new technologies. This trend could reshape decades of supply chain realignment. Vietnam must also ensure the reliable supply of power at competitive prices. Natural gas and renewable energies could help maintain energy security by eliminating a reliance on foreign coal imports.

**EU-Vietnam Free Trade Agreement (EVFTA) - Mr. Nicholas Audier, Vice Chairman, EuroCham**

The EVFTA is an historic opportunity for Vietnam and Europe. This agreement foresees something close to a free trade corridor, where 99% of Vietnamese exports to the EU will be tariff-free after seven years and EU exports to Vietnam will be tariff-free after 10 years.

The EVFTA will have industry-specific impacts on sectors crucial for Vietnam's economy:

1. Pharmaceuticals/healthcare: create an opportunity for Vietnam to become an ASEAN hub for innovative pharmaceutical manufacturing.
2. Food, agri and aqua-business: potential to attract more processing companies to establish production units in Vietnam.
3. Green growth and clean energy: attract private sector investment and innovation, especially in the use of domestic natural gas, in renewables, technology and service providers.
4. Transport and logistics: transform the way Vietnam processes its trade. If these principles are reflected in legal texts in a timely manner, it could be a crucial factor to change the face of Vietnam as a trading partner.

EuroCham strongly believes the EVFTA will generate a "new strong wave" of European investment into Vietnam and potentially double trade in coming years. EuroCham will meet European leaders in Brussels next September 2017(EU Parliament and Commission) and at various think-tanks to promote Vietnam and the EVFTA. Together with partners, EuroCham will promote awareness of the EVFTA and its potential to the Vietnamese business community. The Government of Vietnam is urged to continue its dialogue with EuroCham to make the EVFTA a reality to shape a better future for Vietnamese and Europeans.

**Response by Ministry of Transport - Mr. Nguyen Ngoc Dong, Vice Minister**

*Logistics and port operations:* The Ministry of Transport (MoT) is working to deliver Vietnam's WTO schedule of commitments for trade and services. In marine transport, wholly foreign-owned businesses may engage in this line of business. Shipping companies flying Vietnamese flags, however, must be part of a joint venture with a Vietnamese firm to operate and not hold more than 49% of shares in it. As for services, Decree 160 requires a foreign-invested enterprise not hold more than 49% of total shares to operate in the shipping agent and marine piloting services sectors.

*Logistics sector petitions*: The logistic regulatory system in Vietnam is undergoing improvements, with inconsistencies in implementation addressed over time. As for increased logistics competitiveness, with 1,300 logistics providers in Vietnam mostly with limited financial resources and capacity, the MoT will consider allowing foreign firms to enter this line of business through viable shareholding schemes to enhance the sector.

**Banking Working Group - Mr. Pham Hong Hai, Representative**

The Banking Working Group (BWG) is delighted to hear about the success from tremendous efforts by the Government and all ministries after one year of implementing Resolution 35 to improve the environment to foster businesses. New FDI registered grows by 10% by April 2017, and BWG are proud that the foreign banks contribute into this growth by providing FDI clients the same level of services they receive in all other countries they operate in, facilitating new FDI flows into Vietnam by guiding them to access the market, servicing their needs in capital injections, FX and cash management and repatriation, providing SMEs segment with advanced financing solutions to assist them join the global supply chains.

BWG values its relationship with the SBV and will further intensify cooperation with quarterly high-level meetings to examine the market situation, macro issues and relevant policies. BWG appreciates SBV's banking restructuring efforts and achievements with the long-awaited resolution on handling bad debt and revision of the Law on Credit Institutions. To further reduce costs for businesses, the BWG has further recommendations on areas Government and foreign banks can work together to achieve Government objectives.

*Digitalization and Fintech*: The BWG is excited by the Government non-cash payment plan by 2020 and decision to set up the Fintech Steering Committee by the SBV Governor. Digitization is a global trend that leads to greater efficiency, extended reach and lower costs and presents opportunities to develop technology and financial sectors by creating Fintech ecosystems. To advance this digital agenda the Government, SBV and ministries are urged to consider regulatory, legal and policy issues stemming from technology, platforms and providers to address issues of privacy, security, intellectual property, customer protection and a level playing field.

Accelerating development of banking sector digitization and Fintech requires a new mindset to create a legal corridor for customers to transact with banks anytime and anywhere. Moreover, banks should be allowed to directly connect to the Government's national ID system and credit information centers for online customer identification and credit history analysis. At the same time, the judicial system and authorities must recognize electronic documents, electronic data and electronic signatures to minimize paperwork between banks and clients.

*Simplification of Documentation:* In the spirit of digitization and reducing costs by expanding e-Customs and e-Tax payments, the BWG calls for a comprehensive review of existing foreign exchange and payment regulations to align with Decision No.33/2016 on electronic Customs documentation to remove unnecessary documentation requirements by allowing payment automation with connection with e-Customs and e-Tax systems among banks, Customs, tax authorities and enterprises.

*Civil Code and interest rate calculation*: The BWG appreciates the SBV’s call for comments on the interest calculation method in banking operations, in which interest is calculated from the next consecutive day (based on the opening balance) (Article 147 of the Civil Code on time-limit does not count the first day, the time-limit is established only from the next consecutive day). However, according to international practices as well as the core banking system, interest is calculated from the disbursement date and based on the closing balance. If the regulation on interest rates on bank loans is applied, banks must radically upgrade the core banking system, as this calculation method not only affects the formula for calculating interest, liquidity and safety ratios but also daily, monthly, annually reports submitted to regulatory authorities. Besides, such core banking system upgrades would require significant costs and resources for the banking industry, but not create benefits for banks or customers. The SBV is urged to work with BWG and relevant stakeholders to find alternative solutions.

As the main banks for foreign investors of all nationalities, BWG is fully dedicated to work with SBV and other Government ministries to take immediate actions that help the Government to meet its GDP growth target, to increase productivity and reduce the costs and risks of doing business in Vietnam, to best service foreign investors, assisting Vietnamese Government to implement its Financial Inclusion Program giving financial service access to individuals, MSMEs, corporates and government in the economy.

**Response by the State Bank of Vietnam - Mr. Nguyen Kim Anh, Deputy Governor**

The State Bank of Vietnam (“SBV”) and the Banking Working Group (“BWG”) have worked closely and effectively in solving problems related to monetary policy and banking activities in the past time through consultative dialogues, technical and high-level meetings between leaders of the SBV and BWG. As a result, 7 out of 13 recommendations have been fully solved, 6 issues left related to legal issues and other stakeholders will be studied and solved by the SBV in the process of improving the legal framework in the future time.

As for some recommendations mentioned in the Forum related to:

First, to “Digitalization and Fintech” – this issue is being concerned and expedited by the Government and the SBV. The Prime Minister issued Decision 844/QD-TTg on May 18$^{th}$ 2016 certifying National Program to Support Innovative Startup Ecosystem to 2025. The SBV Governor also issued Decision 238 on March 16$^{th}$ ,2017 about setting up the Fintech Steering Committee to have appropriate solutions for improving legal framework to allow development opportunities for Vietnam Fintech enterprises.

The SBV has also actively approached and worked with Fintech enterprises to determine the challenges to Fintech enterprises, based on which to make suitable solutions to improve the Fintech Ecosystem in Vietnam, as well as to research, amend & revise related legal regulations facilitating implementation.

Second, to "Simplification of supporting documents for foreign exchange transactions", the SBV recognized and instructed the respective departments to work together and with BWG to develop a list of supporting document and review current regulations & international experiences to construct banks' internal regulations about supporting documents for foreign exchange transactions. This needs to be aligned with the policy to encourage digitalization, e-customs, as well as assure the management target. Besides, in the future time, the SBV will continue to work with General Department of Customs as an entity of Ministry of Finance & BWG to study, examine and make suitable recommendations.

Third, to "Interest Calculation Method", currently the SBV is still in the process of collecting comments, studying and improving Draft Circular providing guidance on interest calculation method in deposit taking and credit extension activities between the credit institutions & customers, to comply with the Civil Code 2015's provisions. Therefore, the SBV will continue to work with BWG and related parties for further exchange information as per the Working Group's recommendation.

**Automotive Working Group - Mr. Sumito Ishii, Head**

Vietnam's automotive industry remains small for auto manufactures and part suppliers, with insufficient entry of global auto part companies nor can global suppliers invest without clear business plans and an understanding of production volumes in Vietnam. The disadvantages of small production and insufficient economic scales result in CKD part imports and associated costs. That makes domestic vehicle production costs higher than in Indonesia or Thailand. This cost gap is predicted to hit 10-20% after the 2018 ASEAN tariff exemption. In response, the Government's auto taskforce is recommended to involve vehicle assemblers and part suppliers with monthly meetings to discuss automotive policy and report progress to the Prime Minister.

Policy-makers are encouraged to develop tailored programs to support business matching, regularly update supplier databases and apply performance-based incentive programs for enterprises.

A second key point is linkages between FDI and domestic enterprises, as currently there are no useful databases available regarding local automotive part suppliers' profiles. Moreover, most automotive parts require copyright permits, technology transfers or licensing agreements from the original parts suppliers to localized ones in Vietnam, except for those local enterprises develop themselves. It is recommended that domestic part suppliers focus on meeting production requirements and cooperate with foreign suppliers. FDI companies are urged to provide relevant guidance to suppliers regarding selection processes and automotive parts needing localization. The Vietnam Automobile Manufacturers Association recently formed a new supplier working group, including key Tier 1 suppliers. The Government is recommended to utilize this channel for structured dialogue.

**Vietnam Association of Supporting Industries (VASI) - Mr. Pham Van Tai, Representative**

The Government must introduce policies to protect the local automotive market, with consistent policies of minimum 10-year spans to build confidence for businesses in investment and operations. The recent proposed draft of the MoIT, if approved, will provide momentum for local automotive and supporting industries on the threshold of ASEAN integration. In particular, with the import duty for completely built units (CBUs) to drop to 0% from January 1, 2018, the Government should take the CKD import duty to 0% soon for parts and components not locally made and apply ceiling duty rates for those locally made to support domestic manufacturing. Excise tax should be removed for portions of localized parts and components to reduce prices of automobiles off production lines in Vietnam. The Government should apply anti-fraud measures and closely oversee Certificate of Origin (C/O) certification related to the 40% minimum localization rate for CBUs imported from ASEAN countries to create a level playing field.

**Response by Ministry of Industry and Trade - Mr. Tran Quoc Khanh, Vice Minister**

The Government released Decree No.111 on developing supporting industries and Decision 68, approving the Supporting Industry Development Action Plan for 2016-2025. The MoIT welcomes the proposed strengthened automotive and supporting industries dialogue initiative to help Vietnam's automotive industry grow sustainably amid international economic integration and import duties reducing to 0% among ASEAN countries. Special attention must be paid to anti-fraud efforts at points of entry to guarantee an equitable competitive market for locally-made and imported autos.

**Response by Ministry of Finance - Mrs. Vu Thi Mai, Vice Minister**

The Prime Minister has requested the MoF work with the MoIT to conduct a detailed review of the automotive industry and supporting industries and develop supportive policy proposals. The MoF will lead on tax policies to spur development of the automotive industry and supporting industries. The Government has agreed to integrate this agenda in the development and amendment plan for five laws, including the VAT Law, Corporate Income Tax Law and Excise Tax Law, to be submitted to the National Assembly in May 2018.

**Response by Ministry of Transport - Mr. Nguyen Ngoc Dong, Vice Minister**

From January 1, 2018 the MoT will cease granting technical safety certificates, environment protection certificates and manufacturing quality control passes for automobiles that meet level-four emission standards under Decision No.49. With the availability of diesel fuel, the Prime Minister has asked the MoIT, within 2017's fourth quarter, to have in place infrastructure and commercial conditions to allow for level-four and five diesel fuel. For further details on locations and availability, please contact the MoIT. As for comments related to vehicles manufactured prior and after December 31, the MoT shares similar views and will work to facilitate automotive manufacturing and assembly operations.

**Power and Energy Sub-Working Group - Mr. Gavin Smith, Representative**

The Power and Energy Working Group (PEWG) has three key points on the "Made-in-Vietnam" energy plan:

Firstly, the nature of power supplier contracting is to sell power to an end user with EVN the grid manager between the producer and consumer. This is also a well-established process for attracting investment to make new clean energy resources. This allows contract terms to be agreed between buyers and sellers, avoiding obstacles in power purchasing agreements that exist in many sub-energy markets today in Vietnam.

Secondly, the Government is urged to consider more clarity on future energy costs in Vietnam, specifically on producing a coherent roadmap for energy prices over the next planning cycle to

2020 and beyond. From members' feedback, confusion surrounds higher energy tariff receipts. Through the World Bank and from Dragon Capital research, energy costs are increasing for production. Such costs are not reflected in underlying tariffs. The most effective way the PEWG believes to stimulate investment in energy efficiency is to give information to power consumers on inflation trends to allow for planning.

Thirdly, more coherency is needed in creation of new energy policies within a partnership framework, particularly in relation to the solar decision and underlying solar power purchase agreement and rooftop regulations. This is a major step forward for the most cost-efficient renewable energy resource in Vietnam. However, a PEWG assessment of the solar power purchase agreement that regulates sellers and buyers is unbankable for foreign financial institutions. This will severely inhibit solar energy's growth in Vietnam, which will have 12,000MW of power capacity by 2030. Rectifying three clauses within that power purchase agreement would open the door to financing needed to deliver 12,000MW and come with less costs and risk.

**Response by Ministry of Industry and Trade – Mr. Tran Quoc Khanh, Vice Minister**

*Electricity pricing roadmap:* The MoIT, in cooperation with MoF, has put together the average retail power tariff schedule for 2016-2020 and submitted it to the Government for approval. Power tariffs are, however, a sensitive issue in Vietnam. Trying to set a long-term retail power tariff is impractical.

*Direct contract and solar power purchase agreements:* The MoIT duly takes note of the recommendations. It has put in place a taskforce to discuss with the PEWG and other relevant parties on sample solar power purchase contracts. Regarding signing direct contracts between power generators and purchasers, the MoIT has taken initial steps toward enacting applicable regulatory rules. In the meantime, the MoIT welcomes recommendations from the PEWG.

## SESSION 3. ENHANCING EFFICIENCY IN IMPLEMENTATION/ENFORCEMENT OF THE CURRENT LAWS

**Session 3: Facilitator - Mr. Tetsu Funayama, Co-Chair, VBF Consortium**

This session's theme was "how to enhance efficiency in implementation and enforcement of current law", a structural problem across the board for many FDI foreign enterprises in Vietnam.

Such ambiguity results in different translations and interpretations among ministries or administrative organizations,that complicates decision-making processes and negatively impact on the Vietnam's attractiveness as an FDI destination. It's important to establish definite "scheme" to address the gap between the law and its actual implementation.

There are two proposals to realize such a "scheme" including:

The first is establish an independent organization within the Vietnamese Government with authority to address ambiguity in certain laws and regulations. When domestic and foreign enterprises face difficulties in making immediate business decisions due to delays in authorized action from the Government due to gaps between the law and its implementation, this organization will positively act to make concrete solutions. In other words, this organization will stand between enterprises and administration offices to take both views onboard and take action. Currently, the Government Office is designated to "assume the prime responsibility for carrying out administrative procedure reform and implementing single-window and inter-agency mechanisms in carrying out administrative procedures at State administrative agencies”. The Government Office is an appropriate organization to play this new role, possibly enforcing the current status on its authorized function.

The second proposal is to enforce the "Official Letter" scheme, so domestic and foreign enterprises can easily get official interpretation of certain laws, with unified rules and administrative back-ups from Government. At present, each ministry has an authorized function to issue an "Official Letter" to private enterprises and announce its own interpretation on whether a certain enterprise's business transactions are in accordance with specific clauses in a law. The issue is that such Official Letters are not regarded as legislative documentation. If there is a clear unified rule for this Official Letter scheme, many enterprises would like to utilize this scheme.

**Investment and Trade Working Group – Mr. Tran Anh Duc, Co-Head**

Overall, the Investment and Trade Working Group (ITWG) believes the Investment Law and Enterprise Law have enhanced the investment climate in Vietnam, with freedom to do business respected by State agencies and Planning and Investment departments strictly observing turnaround times for investment and business registration certificates. Public service quality has also significantly improved.

Despite these achievements, inefficiencies still exist and must be addressed:

- To create a distribution business with a foreign party, applicants must go through three steps and lodge three application dossiers followed by a lengthy waiting period to start operations. This process must be shortened to one application dossier, with a letter of acceptance, required.

- Regarding merger and acquisition deals, a business offering new shares to foreign holders must fulfill procedures where acceptance of share trading is required.

- The requirement for full charter capital pay-in within 90 days is impractical for many businesses to meet, yet regulatory authorities may impose administrative sanctions that add more months to the process. This is a big problem for projects with large amounts of charter capital.

- Some procedures are linked to investment registration certification for headquarters and branches. At present, the capital of branch offices or projects is registered in different provinces, while this branch or project capital is not integrated in the master investment registration certificate. As a result, businesses applying for foreign loans may face a SBV requirement to revise the certificate. In the meantime, Planning and Investment departments hold the position that each municipality has its own rules.

- The SBV is clear about direct and indirect investment capital, yet the latest Investment Law does not provide definitions of direct and indirect investment. In many instances, the exact account to transfer investment funds cannot be identified, while banks have different sets of procedural guidance that confuse businesses.

- Despite clear Securities Law rules, the Enterprise Law does not provide regulations on stock swaps. This makes it difficult for businesses wanting to expand operations or take-over business through stock swaps under the current Enterprise Law.

**Response by Ministry of Planning and Investment, Legal Affairs Department - Mr. Quach Ngoc Tuan, Deputy Director**

- *Multiple procedural steps for investment and business registration:* The Ministry of Planning and Investment (MPI), through Circular No.2, provides rules on granting investment and business registration certificates. The MPI brought this legislation into effect from June 15, 2017. As for conjoining procedures, investors can already lodge one application dossier at one location to complete a conjoint procedure for investment and business registration.

- *Merger and acquisition acceptance:* Relevant events have been laid out in Article 46, Decree No.118. From the ITWG's recommendations, the MPI views this as a matter of enforcement. In the future, the MPI will take steps to assure enforcement efforts strictly adhere to applicable laws.

- *Stock swaps:* The Enterprise Law details the rights of shareholders and partners in a company as well as on transfers of stocks and shareholdings in businesses. It, however, does not detail how shares should be sold, whereas the Civil Code has rules on this issue. The MPI believes there is no need to add any further regulations as the Civil Code rules that "in a property swap, a party becomes the seller to the other party".

Regarding other recommendations, the MPI will engage the ITWG while revising decrees related to investment, construction, land, environment, bidding and regulations on conjoining investment procedures for projects involving use of land. During the drafting and reviewing process, the MPI will take into account recommendations on law amendments, including ITWG comments on the 90-day rule for charter capital pay-in.

**Response by the State Bank of Vietnam - Mr. Nguyen Kim Anh, Deputy Governor**

*Regarding the FDI and banking accounts:*

The SBV has issued foreign direct investment activities regulation in Vietnam. Circulars 19/2014/TT-NHNN provided specific guidance on the subject to open & use FDI account including FDI and foreign enterprises involved in joint venture contract, and on the trading revenues and expenditures related to direct investment activities that needs to be made through this account. In case of opening FDI & FII account when making direct investment in Vietnam in the form of capital contribution or share purchase. Also, for foreign indirect investment activities in Vietnam, Circular 05/2014/TT-NHNN specified the purpose, subjects to open FII account (i.e. foreign investors being non-resident, and the trading revenues and expenditures related to indirect investment activities that needs to be made through this account. Although under the provisions of Article 36.3 of the Enterprise Law 2014, all transactions related to capital transfer must be made through the capital account, however, Article 3 of the Enterprise Laws 2014 specified the terms applied to the Enterprises Laws and Specialized Laws. Therefore, Foreign Direct Investment (FDI) and Foreign Indirect Investment (FII) activities in Vietnam of the foreign investors and FDI enterprises must comply with the provisions of specialized law about foreign exchange management as aforementioned. There is no implementation issue, as the interpretation & customer guidance of the circular 19 & circular 05 are consistent.

Finally, the SBV is committed to continue the cooperation with the VBF in the upcoming time to solve the difficulties and obstacles and create a favorable & fair business environment.

**Land Sub-Working Group - Mr. David Lim, Head**

The implementation of new legislation is impacting on the real estate industry's competitiveness, in particular:

- Delays in implementation have affected issuance of land use rights certificates (LURCs) for foreign nationals, as provincial Departments of Construction have not issued the Foreign Ownership Prohibited Projects List. The system to track real estate sales to foreign nationals has also raised concern.

  *Recommendation:* The list should be issued promptly to allow foreign nationals to buy properties and obtain LURCs in their name(s).

- Secondly, uncertainty surrounds the understanding of "foreign-invested enterprise" between the Investment Law 2014, Law on Real Estate Business (LREB) and Land Law.

  *Recommendation:* There should be a decree or circular to clarify the 51% principle under the Investment Law to apply to all relevant laws, as property firms with foreign ownership of less than 51% should be treated as domestic enterprises.

- Thirdly, restriction of capital sources for residential housing projects under the Law on Residential Housing (LRH).

  *Recommendation:* Immediate action is needed to rectify this issue. For the LRH amendment, a decree or circular must clarify that residential housing developers have the right to raise capital from offshore credit and non-credit institutions and capital from other sources not prohibited by law.

- Fourthly, there are uncertainties relating to required approvals for residential developments.

  In general, the main approval for residential developments is an investment in-principle decision (IID) or investment in-principle approval (IIA). Furthermore, a foreign investor establishing an enterprise in Vietnam is required to obtain an investment registration certificate (IRC). There are uncertainties relating to the IID and IIA, such as: i) circumstances requiring an IID, ii) investment approval for capital contributions by way of land use and iii) overlapping investment approvals.

  *Recommendations:*
  - Clarification if a land transfer is covered by allocation and leases by the State.
  - Amending Article 32.1(a) of the Investment Law
  - An IRC is not required for real estate projects required to obtain an IID or IIA.

**Response by Ministry of Construction, Business Administration Department – Mr. Nguyen Phuc Huong, Deputy Director**

*Delays in LURCs release:* Vietnamese law is not stalling on granting house ownership certificates for non-nationals. Decree 99 authorizes the Ministries of Public Security (MoPS) and Defense (MoD) to determine areas and projects where non-nationals cannot own property. In October 2016 the MoD, in correspondence to provincial-level People's Committees, provided rules and guidance for defining such areas.

In April 2017, the MoPS sent correspondence to provincial-level People's Committees with guidelines on areas and projects where foreign organizations and individuals cannot own property. In May 2017 the Ministry of Construction (MoC), in correspondence sent to provincial-level People's Committees, requested reference to these directives from the two ministries and asked local authorities, including Construction Departments and provincial-level Military Commands, to work with the provincial police to locate areas and projects where foreign organizations and individuals cannot own property. The MoC hopes municipalities will concentrate on implementation of relevant ministries' guidance.

*Implementing documents of Real Estate Trading Law on foreign-invested enterprises in property trading:* MoC Minister's correspondence sent to the VBF has addressed this question. In summary, the Investment Law and Enterprise Law are clear on domestic and foreign businesses. As such, the Real Estate Trading Law does not define foreign-invested enterprises, but instead sets forth applicable requirements for real property trading. The definition of foreign-invested enterprises or foreign-owned organizations must comply with the Investment Law and Land Law to avoid overlaps.

*Financing commercial housing developments:* MoC Minister's response was: "The MoC is reviewing laws and regulations associated with investment and trading. The MoC is aware of the law's deficiencies and will work with the MPI to review, modify and update the law in the near future."

**Capital Market Working Group - Mr. Dominic Scriven, Head**

Capital markets, including the stock and bond markets, have a current capitalized value of USD70 trillion, trading approximately USD400 million daily. There are more than 700 stock issuers, including partially privatized SOEs and privately-owned companies. Despite being small in size, the market faces numerous problems that must be resolved. The Capital Market Working Group's (CMWD) recommendations focus on near-term work streams, before advent of the new Securities Law.

The SBV is urged to consider commercial banks as distributors of investment products, while before-tax contributions of VND1-3 million for voluntary pension funds must be weighed-up. In regard to Vietnamese issuers raising funds from foreign investors, interpretation of Decree No.60 must be revisited as foreign ownership can go higher or lower than 49% on the market. To drive the corporate bond market forward, it would be useful to release soon a standard practice for issuing and symbolic announcement for businesses issuing bonds.

Regarding Government divestment from partially-privatized SOEs, those that refuse to be listed must face harsher penalties. Regarding post-corporatization divestment, a recommendation is made for review and activating as soon as possible divestment through "book building", given recent success stories of Nova Land, Vietjet and VPBank. For long-term solutions, the Government and National Assembly should review the Securities Law to factor in empowerment of market watchdogs monitoring auditing and tackling stock misconduct.

**Response by State Securities Commission - Mr. Pham Hong Son, Vice Chair**

*Legal issues:* The State Securities Commission (SSC) has submitted draft revised Securities Law to the MoF, before submission to the Government within July 2017. It draws from the existing Securities Law and takes into account market challenges and inefficiencies. Suggestions on foreign ownership, issuing criteria, clear definitions of stock and those related to SSC's authority in seeking access to bank accounts, will be embedded in the new Securities Law. The SSC hopes the Government will submit the draft to the National Assembly to be added to the legislation review agenda towards the end of 2018.

*Company governance:* On June 6, 2017, the Prime Minister released Decree No.71 on company governance for publicly-traded companies - a step forward in public company governance. In the decree, the SSC shed light on common international practices, especially those associated with OECD guidelines, including obligatory rules. In tandem with Decree No.71, the SSC put out Decree No.145 related to penalties. While the CMWD reported current penalty levels as low, they cannot exceed thresholds set by the Civil Offense Law. Statistics indicate that companies in Vietnam have enhanced governance awareness. The SSC will address relevant issues in its Governance handbook. In the near future, the SSC will work with IFC on rolling-out implementing guidelines to ensure businesses become more governance-savvy.

*Book building for partially-privatized firms:* The MoF is ready to consider revising Decree No.59, which refers to book building to help improve transparency in converting SOEs to shareholding companies.

*Decree No.60:* This decree is a big jump for the Government in loosening the foreign ownership rate. Experiences indicate that Decree No.60 did accept many companies to raise foreign shareholding rates to 100%. Problems remain with the Investment Law (more than 51% for foreign firms and under 51% for local businesses) and the SSC will consider a rework.

**Human Resources Sub-Working Group - Mr. Colin Blackwell, Head**

In terms of moderate minimum wage increases, foreign investors benefit from forecasts of future rises. Formation of a National Human Resources Institute will help drive forward national productivity, especially for SMEs.

Regarding work permits, further clarity is needed - particularly around inter-corporate transfers. Requirements for formal university education degrees remain problematical in some sectors, like education. The definitions of ‘director’, ‘manager’ and ‘expert’ must be clearer for foreign investors. The overall processing time for work permits still takes several months, so a fast-track process is needed. Regarding social security, the increases are high by regional standards.

**Response by Ministry of Labor, Invalids and Social Affairs - Mr. Nguyen Trong Dam, Vice Minister**

MoLISA is looking to revise the Labor Code and the suggestions are noted for integration into the new Law. Overtime hours will be more flexible and may extended to more than 400 hours. Specific business lines and jobs eligible for pre-determined overtime hours will also be covered by the law.

*Obligatory social insurance for non-national workers:* The Social Security Law allows non-national workers in Vietnam to enroll in statutory insurance and MoLISA is putting together a draft decree on this. The stumbling block remains enforcing mandatory insurance for non-national workers in Vietnam to assure worker benefits and fairness between Vietnamese and non-national workers. The draft decree is available on MoLISA's website and constructive feedback is welcomed.

*Strike action:* Under current law, strikes should be led by a labor union, must take place within the scope of the subject business and may include disputes related to workers' interests. Evidence, however, shows that strikes often fail to comply with laws and are not led by a labor union. MoLISA will work on law amendments to provide a common regulatory framework to ensure lawful strike action.

*Work permits for non-nationals:* The Government has released Decree No.11 on work permits, a more simplified version of previous legislation. Accordingly, employees need to satisfy only either of two requirements to obtain a permit: (1) holding a certification letter proving professionalism with the subject entity or organization or (2) having a Bachelor's degree or equivalent and at least three years' work experience. The criminal record procedure has also been simplified, as only either of these two papers is required: (1) a criminal record, or (2) a letter of certification proving that the applicant is not a fugitive of the law or under criminal charges provided by a foreign authority. In the case of non-nationals entering Vietnam to work for a short period of time by order of internal transfer by a parent company, they must only sign a one-year or longer work contract with the subject business. MoLISA is working with municipalities to increase application of information technology and online licensing for user convenience.

**Tax Sub - Working Group - Mr. Takahisa Onose, Representative**

The Tax Working Group (TWG) highlighted key issues pertaining to implementation of regulations. Inconsistencies remain in local tax authorities' ability to accurately reflect policy-makers' intentions regarding tax incentives. For example, a company applied HS codes from 2012-2016 in accordance with local Customs office guidance and relied on a classification of goods notification. This firm submitted an application for advance confirmation from the General Department of Customs (GDC), which issued a new notification. However, the Customs Authority conducted a post-clearance audit of the last five years and retroactively applied the new HS code for all goods the company had imported since 2012. Consequently, a higher tax was imposed with penalties.

The decree on penalties for administrative violations in Customs procedures stipulate situations where administrative violations are not applied, including: "Correct to declare the name of imported, exported goods but incorrectly declare HS codes, tax rates, tax payable amounts for the first time". The decree also defines tax evasion as: "Incorrectly declare HS code, tax rates, tax payable amount once guided by Customs authority".

With regulations, Customs and taxpayers understand any penalty will be levied after Customs provides guidance. However, recently Customs has a new interpretation that penalties are waived only for the first declaration. In the tax collection stage, Customs intentionally interpret it unfavorably, assuming an incorrect declaration of HS from the second declaration. Normally, there is a clear distinction in penalties between administrative violations and intentional incorrect declarations to evade tax. Therefore, the tax authority should not impose administrative violations and overstate it as tax evasion. Finally, Customs and tax authorities should organize training sessions on updated tax and Customs policies to better inform officials.

**Response by Ministry of Finance - Mrs. Vu Thi Mai, Vice Minister**

Last year, the MoF worked to reform tax policies and procedures as well as doubling down on modernizing systems and applying information technology. For example, in taxation 99.8% of businesses now use online tax filing and 98.3% have registered for online filing. Customs procedures have been automated on the Vietnam Automated Cargo & Port Consolidated System nationwide, with bank-based and online tax payments applied in the tax and Customs sectors. These initiatives have been welcomed by the business community and enhanced the ease of doing business

*Taxpayer ID declarations, penalties, tax rates and clawbacks:* The MoF has taken note of TWG's recommendations and will request GDC to investigate. To improve tax code application and handling, the TWG proposed regular training and clear definitions of responsibilities between tax and Customs authorities. The MoF will increase efforts to help businesses understand current tax policies and procedures. Policy-wise, the MoF will review and iron-out any business concerns.

*Circular on export goods code classification:* The MoF has examined concerns and added explanatory notes in the circular on classification codes. In September 2017, the MoF will refer rate schedules using 2017 HS codes to the Government to come into effect from January 1, 2018 to provide clarity for businesses.

**Infrastructure Working Group - Mr. Tony Foster, Head**

While many foreign strategic investors are interested in buying into SOEs such as PV Oil, PV Power and Airline Corporation of Vietnam, the Government wants to sell at market price - but implementation is problematic. According to the Equitization Law, the price of shares sold to a strategic investor must not be lower than the valuation by a valuation company. There is no mention of market price. If there is an IPO, the price to the strategic investor cannot be lower than the lowest successful price in the IPO. Other conflicting regulations also come into play, with the requirement that shares be listed within 12 months and the price on an exchange or the UPCOM. This is now interpreted as the floor price for a strategic investment. This has derailed potential strategic investors. If shares issued in the IPO are limited, which is common, then there is limited supply and high demand.

*Recommendations:* Solutions to unblock the sale of SOE shares to foreign strategic investors are IPOs be postponed until after a strategic sale has been effected, Government can define what is meant by “market price” and implement provisions of the Equitization Law as written, as they do not refer to the listed price.

One successful area of infrastructure PPPs, power BOTs, is under threat as they are too slow. The Nghi Son 2 project has just been awarded an investment certificate, almost 10 years since the project first came out. The burden of this problem, which is at least 50% caused by delays on the Government side, has now been placed 100% on the developer. Under a recent circular, the MoIT decides whether a delay is permissible or not. The Government can revoke the right to develop the project if there is prolonged delay, while there is no clear objective test for who causes a delay.

*Recommendation:* The Working Group recommends the Government review such obstructive implementing circulars.

**Response by Ministry of Transport - Mr. Nguyen Ngoc Dong, Vice Minister**
*PPP:* The MoT agrees with the business community’s view that existing laws and regulatory framework in Vietnam lack consistency and traction, especially rules related to State-investor risk sharing. In this regard, MoT has suggested a PPP law to serve as a legal framework on risk sharing between Government and the private sector.

**Governance and Integrity Working Group - Mr. Giles Cooper, Co- Head**

The Governance and Integrity Working Group **(**GIWG) calls on the Government to speed-up finalization of the amended Penal Code with inclusion of previous terms criminalizing bribery involving non-State entities and persons. Together with appropriate oversight and enforcement, it will send an important message and bring Vietnam into line with most regional neighbors and OECD countries.

Central to leveling the playing field is strong corporate governance that is beneficial for companies, stakeholders and the economy. The GIWG will participate in the new National Advisory Council on Corporate Governance, part of the Vietnam Corporate Governance Initiative. Additionally, limiting cash in transactions contributes to tackling corruption. While laws limit State agencies and State-invested companies using cash in transactions, there are no corresponding restrictions on receiving cash. The GIWG recommends changing this.

Finally, the GIWG calls on Government to speed-up aligning the Vietnam Accounting System (VAS) with international financial reporting standards as well as widen the scope of companies subject to VAS reporting and compulsory audits. At present only listed, State-owned and foreign-invested companies are subject to compulsory external audit obligations, and such audits are often used as another avenue to collect illegal payments. The GIWG proposes rules for compulsory external audits of private companies be revamped along international standards to focus not on the nationality of ownership, but total asset size or turnover of the entity. Such a change would help redress the current imbalance between competing entities, enhance market efficiency and boost State coffers without burdening small entities.

**Response by Ministry of Finance - Mrs. Vu Thi Mai, Vice Minister**

*Adoption of international financial statements:* The MoF is examining proposed plans to adopt international accounting systems in Vietnam, which include considerations on applicability and pathways for application to the equity market. Specifics will be made public once the proposed outline is completed.

*Recommendations on mandatory external audits:* Decree No.17 widened the applicability of obligatory audits for financial statements to include foreign-invested enterprises and other businesses/entities related to public interests based on the subject entity's nature and scope of operations. This means under existing external audit rules, statutory audits of financial statements will not discriminate on nationality of owners and take into account the scale and influential reach of entities related to public interests. The recommendation to require external audits for all public companies is noted by the MoF.

## SPEECH FROM GOVERNMENT OF VIETNAM, H.E. VUONG DINH HUE, DEPUTY PRIME MINISTER

The interim VBF this year took place in the wake of special events. The 5th National Convention of the Communist Party of Vietnam in May 2017 released a resolution on continued enhancement of the socialist-oriented market economy in Vietnam, a resolution on SOE reforms and grooming the private sector to become an engine for economic development, while the National Assembly passed a law on supporting SMEs. High-ranking visits by the Party and State to China, US, Japan and Europe, the planned visit by the State President to Russia and other countries have and will help further consolidate Vietnam's global position and provide opportunities for strengthening economic, trade and investment ties. Vietnam’s Prime Minister Nguyen Xuan Phuc just finished fruitful visits to US and Japan. Importantly, this May the Government sat down for a second meeting with the business community in Vietnam. The Vietnam-Japan investment promotion forum made considerable headway, while multiple investment promotion meetings were held in provinces and municipalities with strong interest from the business community.

At this VBF, participants from various associations and working groups have made their cases and provided deep analyses on how to attract private sector investment in the wake of implications from global policies and how to enhance law enforcement capacity. In response, representatives from ministries and line agencies provided constructive inputs before and during the event. On behalf of the Vietnamese Government, I would like to acknowledge today's fruitful discussions that have covered a number of key issues.

Regarding Vietnam's international integration with economic integration at its core, Vietnam has been negotiating and adopting numerous new generation FTAs, not only in relation to trade and investment but also procurement, intellectual property, labor and SOEs. Vietnam is making strong efforts to fine-tune its domestic economic system, upgrade its competitiveness, businesses and products to integrate into the global economy. Whether or not Vietnam participates in certain FTAs, like TPP, the country will continue on this course.

To provide opportunities for businesses, including SOEs, FDI, private or home-based businesses, I agree with the comments presented at this Forum. The Government intends to develop and mature the investment and business climate in Vietnam to launch it as a laissez-faire and transparent place to invest and do business, including FDI and private ones. The Government is also taking aggressive steps to expedite Resolutions 19 and 35 on business support and development. Going forward, the Government will soon have in place implementing decrees to guide businesses on the SME Law. This law revolves around targeted support based on market rules for SMEs, encouraging home-based businesses to register as companies, channeling efforts to grow the start-up ecosystem, promote business start-ups and innovation in Vietnam.

In trade facilitation, the Government has finalized steps to set-up the National Trade Facilitation Committee, created by a merger between the ASEAN Single Window and Trade Facilitation committees. I take pleasure in my appointment by the Prime Minister as committee chairman. The Government is taking serious steps to upload 80% of administrative procedures on the National Single Window-ASEAN Single Window website by 2018, while closely coordinating relevant ministries and line agencies to streamline, review and update 73 technical Customs inspection procedures to provide trade facilitation for all businesses, including FDI ones. The Government will work with the World Bank regarding trade facilitation and logistics.

The Government has also pooled resources to address challenges and improve various markets, encompassing goods and services, export, domestic and cross-border trade, capital, stock, financial, science-technology, real estate and labor markets. The Government is also speeding-up the on-going economic restructuring plan, backed by growth pattern transition, to improve growth. Historically, Vietnam accentuated three pillars of restructuring with regards to SOEs, finance/banking and public investment. Now, more centerpieces are being underscored by the Government, robust public sector restructuring coupled with intensive mixed public-private provision and restructuring of budget revenue-spending and Government debt security.

When it comes to FDI attraction and FDI-domestic firm bonding policies, the Government highly appreciates the contributions from associations and working groups, as well as feedback from attending ministries and line agencies, on a wide variety of issues from investment and business climate improvements to law, regulatory and policy perfection to crowd-in private sector investment. We welcome recommendations on how to connect the FDI and domestic private sectors. Nevertheless, these recommendations at this Forum were a little in short supply. Experience indicates that gaps still exist between the FDI sector and domestic businesses and Government maintains its position that FDI is an integral part of the Vietnamese economy. The Government will continue taking strong action to attract and provide the best opportunities for FDI companies to invest and successfully do business in Vietnam. Every opportunity will be made to facilitate investment and enhance the business climate to boost growth and connect the two sectors in a unified national economy to participate in regional and global value chains. In the future, the Government will fast-track selection of FDI companies wanting to invest and do business in Vietnam in ways that support the State policy of economic restructuring in Vietnam, with a focus on environment-friendly technologies, good governance practices and a willingness to establish a rapport with Vietnamese counterparts. We appreciate the proposed initiative to hold meetings between VCCI and business associations to discuss how to connect the two economic sectors. The Government hopes business associations will continue to be involved in discussions and development of policies to successfully bond the two economic sectors.

The Government has asked the MPI to compile the comments and recommendations presented at the VBF and report to us. The Government will actively study the comments and inputs provided to improve policy-making, law system enforcement to provide transparency, disclosure and convenience for investors, while minimizing legal costs and risks.

## CLOSING

**World Bank - Mr. Ousmane Dione, Country Director**

There are four "take-aways" from today's Forum. The first is how to further private sector development in step with the FDI and domestic private sectors with continued simplification of procedures and acceleration of critical reforms. For example, human resources were highlighted in today's discussions, particularly in education/vocational training and how to build capacity and human resources for the workforce. This will need to be aligned with innovation and technology towards the '4th industrial resolution'. Another take-away was the enforcement of laws and regulations to create a solid market for the domestic private sector and FDI firms.

A third take-away was the need for responsive mechanisms to follow-up on linkages between FDI and domestic private sectors. There are two elements from today's discussion. One is revision of private sector investment for FDI and domestic private sectors. The cascading infrastructure initiatives currently promoted by the World Bank could be one way forward. The second element relates to a mechanism for responsiveness with regard to recent laws on SMEs adopted in partnership with FDI to design and implement an SME priority program with tailored measures to enhance the domestic private sector.

The fourth take-away is development of a national action plan with priority measures and a timeline of implementation to boost linkages between the FDI and domestic private sectors. Some elements have already been advocated for, such as the trade competitiveness program IFC is currently examining.

**Vietnam Chamber of Commerce and Industry - Mr. Vu Tien Loc, Chairman**

Following this Forum, VCCI will continue working with relevant Government bodies to promote dialogues and problem solving in the spirit of today's discussions on the goals of increased attraction of foreign investment and cementing the ties between foreign-invested and domestic businesses. To achieve these objectives, VCCI has identified four related parties: Government as a "doula" to set up frameworks, environments and conditions, business associations as "match-makers", followed by FDI firms and domestic businesses. If these four parties work in harmony, the bond between domestic-foreign firms will be strengthened.

Vietnam has a "two-in-one economy" or a "double-pace economy". The question is how to get these two groups operating in sync. The Government is pushing measures to bolster SMEs, as start-ups and institutional promotion becomes imperative. In the wake of the liberalization trend, coupled with emerging trade protectionism and implications of the '4$^{th}$ industrial revolution', these factors together are changing the face of global commerce as well as remodeling and restructuring value and supply chains. This is an opportunity for SMEs in Vietnam to enter global value chains, if a healthy setting for co-existence for FDI companies and domestic SMEs can be established.

VCCI has high hopes FDI companies will cooperate in good faith with Vietnamese SMEs to assure sustainable social development for FDI firms in the Vietnamese economy. VCCI will continue working closely with the 16 foreign business associations to discuss detailed strategies and plans of action for FDI companies and local businesses.

**Ministry of Planning and Investment - Mr. Dang Huy Dong, Vice Minister**

The Forum, through its chosen theme, has identified current challenges and roadblocks Vietnam is facing in a changing world economic context, addressed issues that require urgent work-arounds and proposed innovative ways to boost integration and law enforcement.

While globalization remains at the forefront, the Vietnamese Government remains committed to pursuing policies that intensify international integration, remove barriers to a market economy, enlists and harnesses local and external resources for development and moves toward green, sustainable and inclusive growth. The Forum credited the evolvement and contributions from the foreign-invested sector in Vietnam's development over the years and encouraged policies that strengthen ties between foreign businesses and local counterparts. We all agree there is a need for more intense reforms of the investment-business climate in Vietnam, as policies and laws must be updated to assure implementation, equality, consistency, integrity and harmony with the nation's international commitments. The Government has provided many opportunities for the business community to further engage in the local law and policy-making process.

This Forum has been a resounding success. Comments and discussions from today will be documented and shared among relevant ministries, line agencies and business associations as close coordination is expected to recommend effective and achievable solutions to the Prime Minister for reviewing and decision-making.