

## ANNUAL VIETNAM BUSINESS FORUM 2015

Hanoi, December 1, 2015

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### OPENING REMARKS

#### **Government of Vietnam - H.E. Mr. Bui Quang Vinh, Minister of Planning and Investment**

This Forum takes place at an important juncture, with Vietnam in the final phase of its five-year Socio-Economic Development Plan 2011-2015 with preparations underway for the 2016-2020 plan. At the same time, institutional reforms and economic restructuring are gaining traction towards improved competitiveness. However, numerous difficulties remain, especially low economic productivity, quality, effectiveness and competitiveness, while administrative reform anti-corruption and preparation for further economic integration shortcomings remain.

Amid these economic limitations, Vietnam must meet higher requirements, especially as a result of its further integration into the global economy. In the context of the ASEAN Economic Community and membership to numerous free trade agreements with key partners (Trans-Pacific Partnership (TPP), FTAs with EU, South Korea, Eurasia Economic Union), it is essential to enhance enterprises' competitiveness, create a favorable business climate and improve laws, mechanisms and policies. With the theme *"Enhancing Enterprise Competitiveness for Global Integration"*, this year's forum will focus on discussing 10 issues relating to Investment and Trade; Banking; Capital Markets; Agriculture; Education & Training; Human Resources; Automotive; Mining; Infrastructure and Governance & Integrity vital to the Government of Vietnam, businesses and associations. The Forum's importance continues to be enhanced with increased participants year-by-year, underpinned by great appreciation from the Government of Vietnam and attention from the Prime Minister and Deputy Prime Minister as well as relevant state agencies

#### **International Finance Corporation - Mr. Kyle Kelhofer, Regional Manager**

Despite global headwinds and slowing global trade, Vietnam's export growth remains steady unlike many of its competitors and economic growth sat at 6% in the first half of 2015. Nonetheless, it is also a year of opportunities five years remain to transform Vietnam into an industrialized nation. The country's competitiveness will be increasingly determined by effectively utilizing scarce finance and leveraging non-State and private financial sources, foreign and domestic. Further development of an innovative business sector to capture an increased share of sector-wide economic value chains and enhance the investment climate will be vital.

This is a unique time for the banking sector. Resolution on non performing loan remains a challenge to declare a duty on legal and policy framework. This is an opportunity to promote healthy and stable and increasingly supportive banking sector – vital to the success of any economy. Infrastructure has also been advantage for Vietnam, especially in the sustainable and renewable power sector, there is a unique opportunity to increasingly leverage business sources of expertise and finance both foreign and domestic to further strengthen the competitiveness. With agriculture sector, past sources of agricultural growth such as low labor cost and natural resources can only go so far. Vietnam is widely seeking a more competitive agriculture sector to increase value addition to agri-processing, improve standards and quality and leverage business participation.

Competitiveness is a dynamic challenge and Vietnam must improve to remain competitive and unlock its uniquely rich potential to achieve Vietnam's goals for all.

### **Vietnam Business Forum Consortium - Mrs. Virginia B. Foote, Co-Chair**

Since the last Forum in June, significant progress has been made on issues important to businesses in Vietnam, with TPP negotiations concluded in October, Vietnam-EU FTA negotiations expected to be soon completed and the passing and implementation of significant laws and regulations this year.

Raised issues include decreasing corruption and administrative burdens through reductions in cash, paper and face-to-face transactions for business-to-business and business-to-government payments and a financial literacy campaign to support SMEs to modernize and tap into opportunities provided by the new FTAs. Vietnam has moved maybe 70-80% of the way towards global standards for accounting - that last 20% will be key to unlocking the success of companies operating in Vietnam. The Government has taken the important steps this year to bring Vietnam's accounting system closer to global standards.

In hard infrastructure, energy production is a key area of concern and the Power Master Plan VII must be further discussed. A stronger "Made-in-Vietnam" energy plan that places greater emphasis on Vietnam's natural gas, wind, biomass, solar, hydro and other clean sources of power should be considered to tackle the issue. There have been a concern about imports of coal that bring additional health, transportation, foreign currency and other costs.

In general, Vietnam is positioned to greatly benefit from the tremendous opportunities that trade agreements offer.

## **SESSION 1: REVIEW OF BUSINESS ENVIRONMENT**

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

In 2015, the Government stabilized the macro-economy and restored growth, with numerous important breakthroughs. However, inconsistencies among governmental departments, agencies and various administrative levels still create bottlenecks. Moreover, institutional reforms have yet to meet enterprises' expectations. A recent VCCI survey on administrative procedure reforms, revealed a worrying trend that the larger the private enterprise, the higher the compliance costs for administrative procedures. This hinders business growth and explains the gradual decrease in size of Vietnamese enterprises. Weaknesses in legal institutions to protect rights and legitimate interests of enterprises are also of concern to the business community and send negative signals towards achieving a healthy business environment.

*Proposal: In parallel with administrative reforms, judicial reforms must be enhanced to improve the business environment.*

Though Vietnam's economy is integrating, the country's private sector receives inadequate support. FDI enterprises are not deeply rooted in the local economy and domestic SMEs stand outside the global value chain and are reliant on low-skilled and cheap labor. One reason for this is weak vocational education and low-quality human resources.

*Proposal: The Government must promote socialization, public-private partnerships and international cooperation to build vocational training schools and centers meeting international standards.*

The timely provision of information and appropriate implementation guidance for enterprises with regard to FTAs is needed in 2016. Execution must be specific to each industry and business sector in close collaboration with VCCI, business associations and government agencies.

Proposal: *Government leadership and cooperation from ministries and agencies is requested.*

To promote integration, corporate alliances are needed to foster participation from domestic private enterprises in value chains of transnational corporations and FDI.

Proposal: *The Government must push forward policies to encourage and support product chains and sectors.*

The 12.4% increase in the minimum wage for 2016 is higher than the inflation index and labor productivity improvements, exceeding businesses' thresholds.

Proposal: *The Government must extend the implementation roadmap of the Social Insurance Law, noting that social insurance premiums and union dues in Vietnam are very high from global and regional perspectives.*

Vietnamese businesses rely too heavily on short-term bank funding and lending rates are too high, limiting enterprises' competitiveness.

Proposal: *Restructuring capital structures and reducing corporate lending rates are a legitimate demand from enterprises that require monetary policy and banking system solutions.*

Overtime cap under Labor Law provisions does not match production and business operation requirements

Proposal: *The Government is requested to amend these regulations.*

Importation of used equipment

Proposal: *This issue must be specifically considered for each type of equipment, instead of the current one-fits-all regulations.*

The Government is encouraged to initiate a *National Program on Entrepreneurship*, with the State to create favorable conditions and risk-sharing mechanisms for businesses and projects established on the basis of innovation. Incubator, venture capital and angel investor models should be developed to support entrepreneurship.

### **American Chamber of Commerce (AmCham) - Ms. Sherry Boger, Chairwoman**

Vietnam has succeeded at attracting FDI and increasing trade. US-Vietnam trade in 2015 will likely hit more than \$45 billion, an annual increase of more than 20%. TPP is a promise, not yet a reality. TPP covers many issues and offers a framework and focus for efforts in 2016. Regulatory coherence is an essential first step to implement Vietnam's commitments for public comments on proposed administrative regulations from citizens and businesses. Education is a key development driver and work-ready graduates, science and technology, research and innovation are needed. AmCham companies are involved in a number of education projects. It was recommended that the government to lead a large-scale transformation to scale HEEAP 3.0 nation-wide, supported by both Vietnamese and FDI business associations and companies. Few Vietnam enterprises are part of global supply chains and AmCham companies, together with VCCI and other business associations, are cooperating in supplier development to address this. Efficient Customs Administration and Trade Facilitation is essential for Vietnam enterprises to join global supply chains. "Vietnam Trade Facilitation Alliance," (VTFA) was established in cooperation with VCCI and leading export industry associations, to provide technical assistance to build capacity for

Vietnam Customs to implement TFA commitments.

Two concrete targets from a variety of issues highlighted are:

**Technical barriers to trade, such as Vietnam's restrictions on imports of used machinery and equipment:** Circular 23/2015, issued on Nov 13, 2015, with entry into effect on July 1, 2016 (to replace Circular 20/2014) is universally opposed by FDI and domestic business associations. Restrictions on imports of machinery and equipment based on arbitrary time standards should be removed, administrative procedures to ensure compliance with international standards of safety, energy savings and environmental requirements be incorporated into the National Single Window project and quality standards be based on international standards.

**Visas: Temporary entry for business persons:** Vietnam's revised Immigration Law became effective on January 1, 2015 and accordingly U.S. citizens will receive single entry, three-month Vietnam visas and Vietnamese citizens will receive multiple-entry, one-year U.S. visas. It was expected that U.S. citizens would receive one-year validity, multiple-entry visas and Vietnam will soon join reciprocal agreement between US and other countries for visa like China.

#### **Response by Ministry of Public Security - Mr. Tran Van Du, Deputy Head of the Vietnam Immigration Department**

**Visas for U.S. citizens:** Eligible U.S. businesspeople in Vietnam will be granted up to five-year visas. For those with work permits, the visa period will follow the work permit period (usually 2 years). In normal cases, one-year visas will be issued at the request of local authorities. Regarding the U.S. proposal for one-year visas for U.S. tourists and citizens who attend conferences in Vietnam, the Ministry of Foreign Affairs will take responsibility for this issue. The Ministry of Foreign Affairs has consulted with the relevant ministries and got their consensus.

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

This has been an important year for Vietnam's relationship with Europe. In addition to the EU-Vietnam FTA, Vietnam has signed the TPP and Eurasian Economic Union FTA, and is part of the forthcoming ASEAN EC, making it one of best-positioned countries to benefit from international trade. If properly implemented, these agreements will facilitate trade through the removal of tariffs but they could also help Vietnam to align its safety and quality standards with those in Europe and other OECD countries. EuroCham believes key issues must be addressed to enhance Vietnam's global trade competitiveness to also benefit the European business community in Vietnam. In particular, the energy plan must be rebalanced with more emphasis on clean sources and mobilization of infrastructure investment to reassure investors on business protection, improve the quality of products to Vietnamese consumers and bring provincial governments in line with the national one.

To address climate change and where pollution is directly proportional to economic growth, the Government could focus its industrial policy of completing the supply chain and increasing local content with processes that are environmentally friendly or have adequate recycling facilities. EuroCham would like to participate in Power Master Plan 7, with European experience and technology in energy conservation and efficiency, renewable energy and clean production to benefit the country. Moreover, the "Made-in-Vietnam" energy plan should have a greater emphasis on clean energy sources. Some of them might have smaller scale than traditional alternatives but they have faster implementation time with no-objection from local population, and they do not constrain the country to a long term commitment to the same source of energy.

Rapid economic growth and urbanization is driving demand for public infrastructure. However, the State budget is only able to meet part of the need. ODA is currently declining. Mobilization of such funds could result from enhanced transparency in capital markets and extended investment in pension and insurance funds.

Even though Vietnam has improved its legal framework, the enforcement of IPR laws remain a concern for European and Vietnamese businesses. EuroCham calls for the Vietnamese Government to ensure that trademark and copyright infringers face dissuasive legal sanctions. Law enforcement efforts against infringing websites/internet shall be strengthened, in particular that Cease and Desist Decisions be immediately enforceable.

It was proposed that Government needs positively encourage the jurisdiction system to accept and enforce foreign arbitration award following 1958 New York Convention, of which Vietnam is a member.

In respect to food safety measures, Vietnam needs to accept international quality standards and certification and even more encompassing in ensuring that all local products are safe and clean and produced without dangerous processes or substances. It is time to introduce a level playing field for international companies in public tenders. It was recommended to have transfer of innovative pharmaceutical technology and innovation in order to tackle the complex problems. Regarding food safety, Eurocham advocates for a higher level of coordination within the Government through inter-ministerial working groups open to Vietnamese and international companies.

EuroCham is concerned about Special Consumption Tax changes that would deny tariff cut benefits negotiated under the EVFTA.

Many investors in Vietnam have problems opening facilities due to administrative challenges at provincial level due to non-uniformity in application of laws and policies. Consistent treatment of investors present in more than one province is needed.

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

KoCham has four key issues concerning Korean investors and enterprises. Firstly, loan terms applicable to foreign individuals from credit institutions shall not exceed permitted periods of residence. By limiting such loan terms, this regulation is out of step with other laws of Vietnam, such as the Law on Residential Housing 2014. KoCham recommends loan terms should match residential house ownership timelines. Secondly, an employee's probation period depends on several factors and varies from six to 60 days. KoCham recommends the probation period be extended to at least three months. Thirdly, according to law the number of overtime hours should not exceed 50% of normal working hours in one day and 30 hours in one month. This limit does not take into consideration factors such as peak- and off-seasons of enterprises. KoCham recommends that the overtime restriction of 30 hours per month would be flexibly defined . During peak-season, the overtime of the employees may be extended in order to meet production requirements and vice versa. Finally, according to the Labor Code 2012, "wages" is defined as money the employer pays to the employee and includes wages for work plus wage allowances and other items. Now, employers must pay extra amounts relating to social insurance and overtime wages, which will increase labor costs and result in the manufacturing industry losing its

attractiveness. KoCham recommends the Government re-consider not to include “additional items” to wages based on calculations for social insurance payments.

**Response from Ministry of Labor, Invalids and Social Affairs - Mr. Doan Mau Diep, Deputy Minister**

High ratio of social insurance payments: Unlike other countries, labor costs in Vietnam are divided into various items including wages, allowances, presence and transportation allowances. Despite the high ratio of social insurance payments, pension allowances for retired employees are low. In addition, based on research conducted by organizations such as the World Bank, there remains concern about pension fund bankruptcies. Although payment ratios for social insurance are high, Vietnam's labor costs are much lower than other countries and this issue must be carefully reviewed.

**Japan Business Association in Vietnam (JBAV) - Mr. Shimon Tokuyama, Chairman**

JBAV positively welcomed the aggressive policies towards various free trade agreements. Economy stability including currency is a condition for further investment. Security, competitiveness over the domestic industry and maintaining trade balance are important, members of JBAV strive to contribute to Vietnamese industrialization. The JBAV has five key points to raise. Firstly, the Government is still considering a reduction on special consumption tax (SCT) imposed on automobiles and the JBAV suggests the Government implement an effective subsidiary scheme for domestic manufacturers. Secondly, after November 1, 2014 Japanese enterprises are allowed to set up 100% foreign-owned companies to provide services coded CPC 742 and 748 in goods logistics or transportation. However, rejections due to the incompleteness of related laws are being encountered. JBAV requests Government bodies make decisions that respect World Trade Organization commitments. Thirdly, after VNACCS was put into use in April 2014 and related to some local customs officers' requests for unofficial customs expenses, JBAV proposed Government bodies effectively tackle the issue. Fourthly, JBAV has raised concerns about regulations in Circular 23 on restrictions of imported used machinery and equipment issued in November. Fifthly, on the relaxation of conditions for re-entry under a visa exemptions, it was proposed Japanese immigration conditions would be changed in the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam to allow for visa-exemptions, regardless of time restrictions of their last departure from Vietnam.

**Response by Ministry of Public Security - Mr. Tran Van Du, Deputy Head of the Vietnam Immigration Department**

According to the statistics of the Immigration Department, eleven months from the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam, the number of foreigners in Vietnam increased by 7.1%, in which visitors entered under unilateral visa waiver increased by 10.4% over the same period in 2014. Japanese citizens entering under the unilateral visa waiver increased by 7.4%.

Removing 30-day conditions for foreigners in Vietnam under a unilateral visa waiver: Many countries under the unilateral visa waiver welcomed this policy. However, in reality some specific situations have been addressed. For example, Southeast Asian tourists on a tour would get a visa at the border for a fee of \$5 if they could present return tickets or tickets to other countries. In case they are guaranteed by enterprises, they also get visas at the border. The Ministry of Public Security will take responsibility and coordinate with relevant ministries to study electronic visas.

### **Australian Chamber of Commerce (AusCham) - Mr. David W. Carter, National Board Member**

This year several important new laws or law changes come into effect, notably the Investment and Enterprise laws. While it is encouraging investment community comments were incorporated, such laws are ineffective without implementing legislation and have resulted in differing practices among provincial authorities. Clear guidelines are required for the new laws' full impacts to be realized.

Regarding visa waivers, Vietnam has visa waiver or exemptions for citizens of 21 countries, far lower than neighboring competitors such as Malaysia (164) and the Philippines (157). AusCham strongly recommends promptly extending the list of visa waiver countries to include Australia and New Zealand to further facilitate trade, investment and tourism. Exemptions should be for 30 days, not the current 15 days, with returns allowed within 30 days as a means of encouraging people to use Vietnam as a hub.

To strengthen market institutions, as Vietnam integrates deeper into the global economy, it must take bold steps to improve market institutions and economic freedom. Moreover, a level playing field is needed between SOEs and the private sector.

Restrictions continue to affect foreign real estate developers, as the new Law on Real Estate Business highlights unnecessary differences between foreign and domestic real estate developers. Foreign developers are not permitted to transfer land use rights in the division of land into plots for sale, whereas domestic developers enjoy such rights. Furthermore, enterprises with foreign-owned capital are permitted to collect up to only 50% of the value of the contract for sale and purchase or hire-purchase of real estate formed in the future, whereas it is 70% for local developers. Differences in treatment between foreign-invested and Vietnamese developers should be removed to ensure a level playing field.

### **Response by Ministry of Public Security - Mr. Tran Van Du, Deputy Head of the Vietnam Immigration Department**

Regarding the visa waiver for Australia and New Zealand: As directed by the Prime Minister, the Ministry of Public Security is reviewing unilateral visa waivers.

## **SESSION 2 - INVESTMENT & TRADE, BANKING AND CAPITAL MARKETS**

### **1. Investment and Trade**

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

The Investment and Trading Group recognizes Government and Ministry of Planning and Investment (MPI) efforts in drafting the Enterprise and Investment Laws, as well as the Decrees guiding the implementation of these Laws. These Laws and Decrees have made important breakthroughs, contributing to improve investment and business environment in Vietnam. To realize these important reforms, the group proposes the following recommendations:

#### ***Investment Law***

- Propose the establishment of one-door mechanism to handle business registration and investment registration procedures so businesses only submit one set of documents to one agency.

- Eliminate duplication of paperwork in applying for investment and business registration: Propose the Government review, reduce and unify paperwork requested from investors, firstly in guiding circulars to be soon issued by the MPI.
- Urgently announce investment conditions for foreign investors.

### **Enterprise Law**

- Continue simplification of procedures for amending business registrations, minimize paperwork and allow businesses to submit only change notification without attached documents specified in Decree 78.
- Publish the list of business lines: Propose relevant agencies to agree and publish all business lines on the business registration body website for ease of information access.
- Charter capital contributions: The previous law stipulated a three-year period for charter capital contributions, in contrast to three months now. The new regulation creates difficulties for investors and the group proposes businesses make charter capital contributions according to project progress.

### **Proposal on enforcement of new Enterprise and Investment laws:**

- Promulgate regulations to limit consultations/consensus for uncalled-for business lines.
- Develop mechanisms to control investment and business registration processes, limit requests for additional documents.

### **Response from the Ministry of Planning and Investment – HE. Mr. Bui Quang Vinh, Minister**

The 2014 Enterprise and Investment Laws were drafted by the MPI, consistent with the 2013 Constitution of Vietnam. This is a modern and progressive approach, moving from the "positive list approach" to "negative list approach" for prohibited investments where only legal provisions can limit the freedom of conducting business of people and enterprises, engagements in activities not stipulated by laws are allowed. This approach though is transparent, yet difficult to implement. However, international, bilateral and multilateral agreements follow the negative list approach. Therefore, it is difficult for ministries to issue a list of business lines. Currently, all six decrees and three guiding circulars for the Enterprise and Investment laws have been completed and promulgated.

- *Proposed mechanisms for investment registration and business registration procedures to eliminate record duplication:* Addressed in Article 24, Decree 118. Article 24 requires departments of Planning and Investment to use a one-stop shop mechanism to handle investment and business registration procedures. Duplications of documents are also reviewed and eliminated.
- *Investment conditions applicable to foreign investors:* Many ministries have not finalized the investment conditions as some bilateral-multilateral agreements have not issued sanctions on business lines. As of December 27 when Decree 118 becomes effective, the MPI will have reviewed and potentially published the list and conditions for foreign investments on the new national portal. Local licensing authorities can review and decide on lines without consulting ministries.
- *Develop mechanisms to control investment and business registration processes for assessment of investor applications and limit additional required documents:* Paragraphs 2, 3 and 4, Article 6 of Decree 118 confirm principles related to receiving and handling investors' applications. Additionally, Paragraph 2, Article 25, Decree 118 voids a State agency from reviewing contents previously appraised/approved by other State agencies.

- *Charter capital contributions within 90 days:* Paragraph 3, Article 44 of Decree 118 specifies charter capital of economic entities established by foreign investors to carry out investment projects does not necessarily equal the projects' capital investments, allowing contributions from other capital sources.
- *Business line codes:* This is a legitimate and simple request. During business registration, enterprises shall provide business line codes for administrative agencies to systematize a national classification for policy and mechanism management. For business lines with no/an unknown code, the registration office records the businesses into national databases and notifies the MPI.
- *Procedures for amending business registration:* Requested documents are within filing systems, conforming to 2014 Law on Enterprises. Under the new rules, contents has been allocated to State agencies' responsibilities. Hence, it is essential that enterprises provide sufficient information for state agencies.

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

Of six further issues raised, *the first* was Circular 23 on the import of used equipment which has serious issues as already explained by AmCham, VCCI and JBAV. More predictable systems are needed for capital investment decisions before buying equipment that might be rejected once it is imported to Vietnam.

*Secondly*, the recognition of arbitration awards is better than past years, but more work is needed, especially technical areas and fundamental principles on which arbitration awards could be set aside and the creation of a new mediation law to implement FIDIC contracts for construction more easily.

*Thirdly*, with respect to investment protection, some local authorities have disregarded incentives provided for in investment certificates issued by central authorities and disregarded expenses local companies incur when paying international management fees.

*Fourthly*, in the context of TPP and 21st century trade agreements, intellectual property rights (IPR) have become ever more important. Typical issues such as online copyright infringement, protection for non-traditional trademarks, patterns and data exclusivity for biologics are all really important for Vietnam future knowledge economy. They need urgent attention from the government and national assembly to enable Vietnam and its international businesses to lead Vietnam into the future.

*Fifthly*, duplication in registration requirements for life insurance contracts have been observed, with Decision 35 resulting in duplication of registration and approval requirements for life insurance contracts approved by the Ministry of Finance (MoF) and Ministry of Industry and Trade (MoIT). A more efficient one-stop shop could be reintroduced.

*Lastly*, companies with expatriate personnel in remote areas have experienced a lack of international schools for their families, partly due to a 20% limit of Vietnamese students. A sliding scale could be introduced in remote areas to address this.

### **Response from the Ministry of Science and Technology - Mr. Tran Quoc Khanh, Deputy Minister**

Circular No.23/2015/TT-BKHCHN on used equipment imports: In preparing the circular, the Ministry of Science and Technology (MoST) consulted other ministries, departments, localities and business communities. The circular states two conditions for importation of used equipment - its age shall

not exceed 10 years and is manufactured in accordance with National Technical Regulations or National Standards of Vietnam or standards of G7 countries safety, energy savings and environmental protection. Concerning alleged discrimination, under circular provisions used equipment standards are consistent with international and Vietnamese ones. In addition, inspection bodies for equipment imported into Vietnam also include international organizations licensed to operate in the host country. Concerning import procedures, quality inspection requirements have been eliminated to not cause inconvenience for enterprises. Import documents and records only require certification of 3rd party assessment or documents certified by manufacturer on origin and year of manufacturing , a minimal requirement. Regarding customs inspection, focus only lies on post clearance. Through Circular 23, the MoST has tried to simplify import procedures for equipment and prevent imports of those obsolete into Vietnam.

Protection of IPR: Vietnam has completed TPP negotiations and the MoST is reviewing provisions of IPR laws in 2009 to propose amendments and supplements for conformity with the TPP. The MoST is expected to present the new Draft of Intellectual Property Law with amendments and supplements to the Government and National Assembly in 2017.

**Response from the Ministry of Justice - Mr. Nguyen Khanh Ngoc, Deputy Minister**

The Ministry of Justice (MoJ) is committed to the judicial reform strategy to 2020 and appreciates international sharing and experiences.

Petitions on recognition and enforcement of foreign arbitral awards: The right to request rejections of arbitration awards and the right for court authorities to request explanations from arbitration institutions were removed in the most updated draft submitted to the National Assembly. The Government has also ensured its commitment to the New York Convention on recognition and enforcement of foreign arbitral awards as well as improved the domestic legal framework to create favorable conditions for investment and business environment. The Government cooperated closely with the Supreme People's Court and National Assembly agencies to approve the Civil Procedure Code project.

Trade mediation issues: The MoJ appreciates business community concerns for Vietnam to build a legal framework for commercial mediation and the Government has requested development of a decree.

**Response from the Supreme People's Court - Ms. Nguyen Thi Hoang Anh, member of the Council of Judges.**

The Supreme People's Court appreciates the support of IFC in developing numerous legal system documents, such as the Bankruptcy Law, to improve business regulatory environment and for international integration. SPC continues to partner with IFC to consider hosting the 10th Asian bankruptcy reform forum in late 2016.

The recently passed Civil Procedure Code incorporated foreign business community inputs. Besides content mentioned by Deputy Minister Nguyen Khanh Ngoc, other relevant content creating favorable conditions for foreign business is as follows:

- To encourage dispute resolution through mediation and negotiations, the Supreme People's Court provides support through decisions to recognize mediation results. The Civil Procedure Code was added in Chapter 23, Article 417 to accredit out of court mediation results, clearly defining conditions for recognition of mediation results.

- The draft Civil Procedure Code has reduced civil proceedings procedures, with one eligible judge to handle civil cases under the code in a simplified procedure compared with regular civil case proceedings.
- The Civil Procedure Code has added clear rules and strict deadlines for handling court procedural documents to overseas litigants, requiring authorized foreign agencies to collect evidence to ensure quick processing of civil cases involving foreign factors.
- The Supreme People's Judicial Court Association passed Resolution No.03/2015/NQ-Judicial dated October 28 on date selection, publication and enforcement of case law.

#### **Response from the Ministry of Finance - Ms. Vu Thi Mai, Deputy Minister**

In the two years of implementing Resolutions No.19 and No.63, the MoF has carried out strong tax administration reforms and proposed laws and decrees to attract investment, reform administrative procedures and create a favorable business environment for enterprises. Simultaneously, the MoF also conducted modernization and application of information technology in management, so as to reduce tax declaration and payment hours from 537 to 117 hours by the end of 2015. Time for clearance of goods decreased from 21 days to 14 days for imports and 13 days for exports. More than 98% of enterprises have implemented electronic tax declarations and 90% of businesses registered for electronic tax payment. Recent assessment surveys reveal 70% of enterprises found tax administrative reforms to be satisfactory.

Regarding recommendations to limit current specialized inspections of imported goods, the MoF proposed the Prime Minister issue Decision No.2026 dated November 17, 2015 to require the MoF and other ministries to adjust the list subjected to specialized inspections following principles of risk, specifying procedure durations to reduce clearance times. The MoF believes this decision will overcome limitations posed by specialized inspections.

Recommendation on protection of investments: The Government has instructed the MoF to ensure investors' interest, evident in tax laws, especially corporate income tax law. When new laws and policies provide better preferential rights and incentives compared to investors' current entitlements in previous licenses/legislation, investors are entitled to treatment under new laws. When new laws and policies provide less preferential rights, benefits and incentives, investors are entitled to grandfather treatment in investment licenses for the remaining time. Businesses failing to meet license requirements shall not enjoy preferential treatment under licenses as defined in the Investment and Tax laws. When licenses are incorrectly issued as prescribed by law, adjustments shall be made to ensure transparency. Where incentives are unclear, the MoF will coordinate with relevant ministries to report to authorities and Prime Minister for clarification.

Recommendation on implementation of Decision No.35/2015/QD-TTg dated August 20, 2015 issuing the list of necessary goods and services registered according to general contract forms and trading terms: Business associations proposed the suspended application of Decision No.35 in life insurance. The Prime Minister assigned the Ministry of Trade and Industry to coordinate with relevant ministries to reconsider this content towards eliminating registration for general contract forms and assigned the MoF to provide guidance on underwriting of life insurance products.

#### **Response from Ministry of Education and Training - Mr. Bui Van Ga, Deputy Minister**

Vietnamese students in international schools: The ministry will review Working Group recommendations and report to the Government to consider expanding scales and attract more Vietnamese students to foreign-invested schools. However, this policy does not fall under the jurisdiction of the Ministry of Education and Training.

## 2. Banking

### Banking Working Group – Mr. Nirukt Sapru, Head

In the context of volatile global markets, the State Bank of Vietnam (SBV) took prudent and prompt actions in response to the market volatility. The Banking Working Group (BWG) believes Vietnam's combination of improved domestic fundamentals, strong commitment to world trade through international agreements and ongoing reforms is continuing to attract foreign investors.

Four key macro issues are:

- **Developing Cash management products:** BWG recommends the SBV consider adopting a legal framework so banks can utilize cash management services and provide necessary support to clients.
- **Risk management framework for enterprises:** SBV is suggested to further develop regulatory framework to create more favorable conditions for corporates to hedge business risks at low cost.
- **Digitization:** BWG appreciates the SBV's recent steps to promote a non-cash payment framework and encourages SBV to continue to put digitization on its agenda.
- **Regulatory enforcement:** BWG suggests the SBV consider a minimum 45-day timeline for regulations to take effect and offer banks more opportunities to provide comments and feedback on existing and new regulations.

BWG's recommendations on three technical issues are:

- **Firstly, Offshore Counter Guarantees:** BWG recommends the SBV allow the exclusion of guarantees issued on the basis of a counter guarantee issued by foreign banks overseas out of the single credit limit calculation.
- **Secondly, (i) in the new draft lending regulation:** the SBV is asked to allow banks to provide rollover loans and loans to refinance client's existing loans with onshore and offshore banks as long as this lending is not intended to hide bad debts to support enterprises, (ii) BWG hopes the SBV will issue guidance on agency activities and (iii) the SBV is requested to consider allowing non-recourse discounting and factoring.
- **Thirdly, Documents on opening accounts:** BWG recommends the SBV simplify administrative requirements for foreign investors to facilitate participation in investment in Vietnam.

The BWG highly appreciates close dialogue with the SBV and is committed to support it as well as work with relevant associations such as Vietnam Banking Association and National Financial Supervision Commission to develop Vietnam's banking sector.

### Response from State Bank of Vietnam, Mrs. Nguyen Thi Hong, Deputy Governor

**Firstly,** regarding BWG recommendations on new product development such as cash management products, digitization, risk management framework, bank's agency activities, the SBV believes in developing a financial market with more high-quality products, providing utilities and improving operational efficiency for customers and businesses. However, this also requires an appropriate and synchronous management framework to ensure the stated benefits and objectives. Currently, SBV is coordinating with other stakeholders to establish legal regulations for such products and looks forward to the BWG's positive cooperation.

**Secondly,** legal document timelines depend on the Law on the promulgation of legal documents in 2008. However, some documents take effect shortly after issuance to achieve market stability and management. This also requires that both parties' joint efforts to achieve common goals. In recent years, SBV has actively responded to BWG inquiries through dialogues at forums and numerous

problems have been resolved. For the pending issues with regards to the policy implementation, SBV will always be open to comments, recommendations and further discussions with BWG.

**Thirdly**, SBV and BWG had various correspondences regarding the technical issues (offshore counter guarantees non-recourse discounting and factoring, account opening procedure..etc.). SBV will continue to study BWG's recommendations for the issuance of relevant legal documents.

### **3. Capital Markets**

#### **Capital Markets Working Group - Mr. Terry Mahony, Representative**

To successfully privatize, at least 20-30% of a company's equity should be sold through an international syndicate of local and international bankers with an audited prospectus to provide liquidity, transparency and attract foreign investors. The raising of scalable amounts provides funds to offset budget deficits, fund economic development and could be the backbone of a much needed Pension Fund System in Vietnam. The privatization process must be based on international standards by having a book building approach rather than an inefficient auction system, so that a meaningful amount can be sold off in one fell swoop. Furthermore, new shares should be listed on the stock exchange to have immediate liquidity, rather than being relegated to the inefficient UPCOM OTC market. June's Decree 60 elicited a great deal of excitement, as the Government proposes the SCIC (State Capital Investment Corporation) divest itself of 10 holdings to foreigners, yet no approval has been sanctioned by shareholders. This must be addressed and real transparency is needed. Vietnam is still one of the most exciting Emerging Markets with great potential for spectacular investment returns. Currently Vietnam is on the radar screen of many international investors. The country needs foreign capital for development and to deserve it, Vietnam will have to play by international rules of execution and transparency.

#### **Capital Markets Working Group - Mr. Dominic Scriven, Head**

During last two years, the Capital Markets Group focused on three major issues, reducing capital costs for Vietnamese enterprises by increasing the percentage of foreign ownership, enhancing capital market sustainability by establishing voluntary pension funds and promoting a governmental equitization program. The Group appreciates the openness, cooperation and great effort of the State Securities Commission, the Ministry of Finance and the Ministry of Planning & Investment for encouraging results. All three aspirations have been given the green light and incorporated into policies and legislation. The group presented four diagrams comparing the situation in Vietnam to five ASEAN countries to justify the price paid today. The effective interest rate on five-year government bonds issued by Vietnam doubles that of neighboring countries. Enterprise value is calculated using value to profit and value to comparable prices, which implies Vietnam's enterprises are undervalued by 40-50% compared to listed enterprises on neighboring stock markets. Return on investment of Vietnam stock market since 2008 has been clearly shown on the diagram. The rooted cause of the three problems can be attributed to the under-appreciation of the Vietnam Government in the role, scope and needed components of the stock market, which is beyond control of the leading agencies in the securities industry.

#### **Response from the State Securities Commission - Mr. Vu Bang, Chairman**

The State Securities Commission (SSC) appreciates the group's recommendations as well as its collaboration with SSC in developing and implementing policies to remove barriers for better attracting foreign investment inflows into the stock market.

- Regarding the proportion of foreign stock market ownership: Decree No.60 allowed foreigners to own up to 100% of Vietnamese enterprises. However, there are difficulties in determining when a business becomes a foreign-invested enterprise. Decree No.118 clearly defines that a

foreign-invested enterprise listed or traded on a stock market shall follow MoF guidance. The MoF has completed the guidance, sent it to the MPI for inputs to be issued in December. An enterprise is considered foreign-invested if foreign ownership accounts for more than 60% within one year.

- **Equitization:** The Government issued Decision No.51 and other decisions to remove equitization barriers and issued Decree No.60 and MoF Circulars, including mandatory regulations requiring equitized enterprises to be listed and registered for trading on the stock market. SSC is amending circulars to sanction errant enterprises and the Government should study proposals to promote equitization, inducing radical changes in enterprises post equitization.
- **Voluntary Pension Fund:** The MoF has prepared a Draft Decree on Voluntary Pension Funds, which incorporates Ministry of Justice inputs and soon be promulgated to enhance the quality of investment cash flows and bourse sustainability.

### **SESSION 3 - AGRICULTURE, EDUCATION & TRAINING, HUMAN RESOURCES AND GOVERNANCE & INTEGRITY**

#### **1. Agriculture**

##### **Agri-Business Working Group - Mr. David Whitehead, Head**

Key areas of interest with specific recommendations highlighted include:

***Draft decree on policies promoting foreign investment in agriculture:*** Overall, the decree is general and lacks specifics. It refers to a large field model focused on State-led development of and does not link to investment promotion (Article 11). While it mentions investment promotion arrangements, they are vague (Chapter IV). The Ministry of Agriculture and Rural Development (MARD) and/or a task force could define specific services and assistance to investors.

***Modernization and sustainability of agriculture industry in Vietnam:*** As farmer meetings are one of the most effective approaches to transfer advanced technologies to growers, Working Group recommendations are:

- Industries need clear guidance for permission granting procedures at farmer meetings and be synchronized nationwide
- Permission from one level for farmer meetings should be required, not two as some provinces demand
- Shorten foreigner entry permissions for companies with distribution licenses
- No entry permission should be needed for foreigners with valid residency/work permits.
- Training is needed for governmental officials and industries on circulars/new regulations for effective implementation.

***Food safety:*** Unsafe food remains a human health problem. Food safety issues not only cause people to become ill, but they also limit the export possibilities for Vietnam and damage the reputation of Vietnamese products. The Working Group recommends the establishment of a Working Group to bring issues to a centralized Food Safety Agency located within one ministry responsible for inspection certification and control, food testing, labeling and licensing. And it would provide education and training of food safety and food safety awareness.

***Quality agricultural inputs, including pesticides and fertilizers:*** A recent report indicated that 50% of randomly tested fertilizers by authorities were off-spec and the economic loss was estimated at \$US 800 million. The WG proposes:

- Set up technical barriers to eliminate use of high-risk pesticides
- Encourage ethical management and use of pesticides, following good practices in selling products; and proper labeling, in compliance with the provided instructions;
- Establish regulations with specific criteria to encourage introduction of new-class crop protection products advanced techniques and technologies;
- Focus on good quality and safe pesticide products
- Provide qualified education programs for farmers to reiterate the importance and benefits of proper use of pesticides and following instructions on labels
- Improvements in quality and reputation of Vietnamese products.

Corruption at the provincial and district level continues to harm international agribusiness ventures in Vietnam. The Government is encouraged to effectively tackle the issue as it directly affects the viability of international investors in agriculture and the ability for all players in the sector to make a reasonable legitimate profit, from farmers to larger international enterprises.

### **Responses from Ministry of Agriculture and Rural Development - Mr. Ha Cong Tuan, Deputy Minister**

Policies promoting foreign investments in agriculture: In 2013, the Government issued Decree No.210 on incentive policies for all type of enterprises investing in agriculture. This time, the new Decree mainly focuses on where local businesses operate ineffectively, especially post-harvest handling and processing of agricultural products for quality improvement, development of agricultural supporting industries, agricultural inputs including mainly crop protection products and fertilizers, plant and animal varieties. MARD held consultations and seeks public recommendations on its website for the next 45 days. Another workshop will be organized by MARD for interested investors.

Modernization and sustainability of agriculture industry in Vietnam: Restructuring objectives are being implemented and an Interdisciplinary Steering Committee, under the Deputy Prime Minister, has been established. At present, MARD is focusing on value enhancement through restructuring and creating links across production chains as well as through science and technology applications. The Ministry also has planning High-Tech Parks and welcomes all investors.

Quality management of agricultural inputs, food safety and hygiene: MARD determined that from 2015, quality management of agricultural inputs and food safety were the main agriculture sector tasks. Attention is also being paid to capacity building in management and assessment of independent and nongovernmental laboratories to ensure objectiveness. Also, best practice manufacturing along with geographic and origin certificates, especially risk evaluation is being championed.

## **2. Education and Training**

### **Education and Training Working Group - Mr. Brian O'Reilly, Head**

The Working Group's presentation focused on Decree 73 and issues relating to technical and vocational education and training (TVET).

### **Decree 73**

- New legislation appears more complicated than the past. Three licences are now required, after granting of the investment license and many sub licenses. The Ministry of Education and Training (MoET) should separately consider legal regulations for different types of education.
- Decree 73 manages the operations of foreign-invested higher education institutions and circulars to guide implementation of this decree, as well as relevant regulations, should be enacted within a year and not up to five years like before.
- Legal procedures for re-investment projects: Expansion for existing projects should be different to those for newly established projects to create favorable conditions for successful investors. It is unfair when the legal procedures for granting licenses for new investment projects are the same as the legal procedures of the re-investment projects.
- Lack of a legal framework for extension of educational institution operations: If the duration of operations in the new licence is less than 20 years, it should not require construction of its own buildings.
- There is inconsistency between legislation bodies and law enforcement agencies. The decree should clearly state which documents should be submitted and when for issuance of establishment and operation licenses.

### **Technical and Vocational Education and Training (TVET)**

Effective TVET institutions lay the foundation for economic growth and to achieve this, required competencies needed by industry must be known and a curriculum developed to produce such graduates.

- Meeting industry needs: To reduce the mismatch of skills demand and supply, TVET institutions must improve training programs by analyzing industry needs. Colleges should be more involved in identifying industry needs to meet local demand and have autonomy to link more closely with industry.
- Building capacity of TVET Institutions: Organization and management, teacher and curriculum development must be raised and numerous initiatives are already underway including the following: The Vietnamese Skills for Employment Project from Canada; Vietnamese - German Programme Reform of TVET in Viet Nam; The Japan International Cooperation Agency initiatives; The Higher Engineering Education Alliance Program from the USA. The Working Group recommends the Government engage in such initiatives to have a coordinated approach to building TVET institutions' capacity. The Vietnam Development Partnership Forum could also help with this coordination work.
- Attracting students to TVET institutions: High school students often want to go directly into university and a single articulation system for Vietnamese education would make TVETs more attractive. The Government should continue work on a National Qualifications Framework to have TVET institution studies officially recognized.

### **Responses from the Ministry of Education and Training (MOET) - Mr. Bui Van Ga, Deputy Minister**

The MoET agrees with the Working Group that personnel training is key to achieving sustainable development breakthroughs in Vietnam.

In recent years, the MoET has launched policies pushing for innovation in education and training to raise training quality. Currently, it is applying the national framework consistent with the ASEAN reference framework, submitted to the Prime Minister for consideration and approval for integration of ASEAN Economic Community next year.

Constrains related to Decree 73:

- Decree 73 requires three steps to establish training institutions with foreign investment compared to two previously. Because investment certificates include other activities outside education and training, monitoring educational and training operating conditions have encountered difficulties. As a result, MoET has adjusted policies to attract investors and protect students' interests. Based on Working Group recommendations, MoET will advise the Government to further consider simplifying the administration process.
- Administrative files to establish foreign education and training institutions: Each step requires different levels of details. MoET views Working Group recommendations requiring investors to sign contracts with teaching and managing staff prior to school operation as leading to cost impacts on investors. MoET will review and report to the Government for a more appropriate provision of timelines for investors to sign labor contracts with teaching and management staff to reduce costs as well as ensure the quality of the human resource.
- Proportion of Vietnamese students allowed to enroll in international programs and schools with foreign investment: MoET will consider Working Group recommendations and report to the Government to consider expanding quotas to attract more Vietnamese students to such schools. However, this does not fall under MoET's jurisdiction.
- Recommendation to continue pilot training programs in foreign languages: Because pilot programs need time and after each stage require specific evaluations, proposals will need to be reviewed and processed based on specific cases.

**Response from Ministry of Labor, Invalids and Social Affairs - Mr. Doan Mau Diep, Deputy Minister**

The Ministry of Labor, Invalids and Social Affairs (MoLISA) highly values recommendations on vocational training and will coordinate among government departments and related agencies such as MoET, MoLISA, businesses and the community of vocational colleges. Relating to quality improvements to vocational institutions, the Government will listen to foreign investor community recommendations to connect and find the best approach. To attract students to vocational institutions, MoLISA has made efforts, such as working with the General Department of Statistics and MPI to publish quarterly newsletters labor market updates and addressing the need for vocational training sectors. To address human resources not meeting hiring needs of businesses, MoLISA needs collaboration from MoET as well as Government interventions and will listen to foreign investor community feedback.

**3. Human Resource**

**Human Resource Sub - working Group - Mr. Colin Blackwell, Head**

The Human Resource Sub - working Group acknowledged MoLISA's progress on the work permit issue and pointed to the finalization of the issue in line with Prime Minister's Decision 67. The Sub - working group provided recommendations on the overtime cap to improve Vietnam's competitiveness, as the limit currently applied in Vietnam is significantly lower than other countries and several times lower than regional competitors, especially in export manufacturing where flexibility is needed. The Sub - working group understood MoLISA's point to protect the Vietnamese workforce, yet statistically it had a healthy population. To make use of Vietnam's advantages to increase productivity, the Sub - working group suggested an alternative based the experiences of the Japanese Government for last 50 years, where the Japanese labor code in Article 36, states that if the employer, employee and union are all happy for overtime, it should occur. The Sub - working group believed the suggestion would improve Vietnam's productivity, competitiveness, investment attractiveness, GDP and employer benefits.

## **Response from the Ministry of Labor, Invalids and Social Affairs - Mr. Doan Mau Diep, Deputy Minister**

Regarding foreign labor licensing, the decree amending Decree 102/2013/NĐ-CP, MoLISA appreciated the business community's suggestions and the decree draft has been submitted to the Government. Administrative procedures will be simplified, following Government guidance so licenses can be registered online and connected to the Government portal, to balance domestic worker jobs protection and favorable conditions creation for Vietnam to remain an attractive destination for foreign investors.

Recommendation to increase overtime: MoLISA understands KoCham's desire for flexibility to meet seasonal demands. Pursuant to Article 117, Labor Code, this policy can apply to some industries, but the total time cannot exceed 200 hours for normal work and 300 hours for special work. In the Sub - working group's report, many arguments related to raising working hours were made relating to good health, improvements in labor productivity, competitiveness and Vietnam's GDP. MoLISA understood these issues when making the proposal to increase overtime during Labor Code of 2012 submission to the National Assembly. However, National Assembly, union and social groups pointed out problems associated with increased working hours. As a result, the National Assembly only approved the current level. Nevertheless, MoLISA welcomed the JBAV's offer of support to the Vietnam Government to study overtime regulations and MoLISA to study management methods for industries which demand overtime work. All points can be addressed after Labor Code amendment to tackle inconsistent points in the context of Vietnam signing up to international agreements, such as the TPP.

## **4. Governance and Integrity**

### **Governance and Integrity Working Group - Mr. Phil Newman, Representative**

In the context of global integration with the conclusion of many new trade agreements, to further bring Vietnamese standards up to global best practices, the VBF increased its efforts to champion transparency, governance and integrity with the Governance and Integrity Working Group's several activities throughout the year. These included workshops and a special seminar supported by the UK department for international development to improve integrity and compliance, as well as to build on existing legislation and government oversight. Participants were broadly in favour of developing an informal "Business Code of Conduct" drawing on the willingness of large and experienced companies to share experiences and best practices. The focus of the Working Group's future activities will be:

Firstly, companies want to benefit from improved integrity standards in supply chains and distribution channels enhancing an increasingly integrated and competitive trading environment in Vietnam. Especially, they want to understand (i) tools, international practices and strategies to manage risks in Vietnam, (ii) key risk points and mitigation strategies adopted internally, (iii) how SMEs can adopt such strategies and conduct due diligence with limited resources, (iv) role of accounting standards and (v) how to limit the use of cash and decrease the areas of abuse within a company.

Secondly, the Provincial Competitive Index reports foreign investor perceptions of corruption getting worse despite Vietnamese authorities efforts to address the problem and investor concerns about the effect of corruption on their operations and relationships with government authorities. The Working Group has engaged the VCCI in how the business community can join Government to fight administrative inefficiencies and corruption, reduce use of cash, paper and

face-to-face financial transactions for business-to-business and business-to-government payments.

Thirdly, it is important to support the Government's legislation and agenda with regards to the criminalization of private bribery and whistle blowing mechanism and the protection of whistle blower. The Working Group proposes the Government establish a working group to directly involve foreign and domestic private sector companies, to examine criminalization private bribery.

In closing, the GI WG seeks to support both government & private sector to identify and pursue practical, results-driven strategies to achieve such ends.

## **SESSION IV – INFRASTRUCTURE, AUTOMOTIVE AND MINING**

### **1. Infrastructure**

#### **Infrastructure Working Group – Mr. Tony Foster, Head**

**Equitization program:** Equitization sales have not generated great quantities of sold shares and not attracted strategic investors nor resulted in gains from foreign know-how as seen in the FDI sector. Foreign strategic investors will only engage if they can invest in a meaningful way and given the country's high budget deficit and need for improved infrastructure, the Working Group urged the Government to pay special attention to strategic investors.

**Public-Private Partnership (PPP):** The good news is that many pieces of the PPP puzzle in the infrastructure context are in place. A Viability Gap Fund and a guarantee management system are needed. Yet, investment in clean energy in Vietnam fell from \$800 million in 2009 to only \$67 million last year. In the Working Group's view, the top priority is a mechanism to backstop EVN's payment obligations, as when a developer tries to invest in a wind or solar project in Vietnam, EVN is the only power buyer and will be so for at least another five years. However, EVN's credit and performance ratings are not optimum and project developers fail to get loan guarantees. The Working Group suggests donors a fund or mechanism to support EVN's liabilities under PPA to renewable power producers, instead of a EVN sovereign guarantee to attract private investment and commercial debt into the renewable power sector. The benefits to Vietnam of such a risk-pooling products would be significant as private capital rather than the state budget will be used for more power development. And the price of power would go down.

**Shipping draft decision:** The draft decision was recently issued and requires international shipping lines to publish costs paid to service providers: the ocean freight rates for all port pairs and freight related surcharges and local surcharges. The draft, if passed, would be harmful for Vietnam for numerous reasons. Most importantly, it would remove the confidentiality of shipping contract rates and would decrease, rather than enhance, competition - translating into increased prices. In addition, the extra costs would be passed on to customers in the form of higher rates which will make Vietnamese exports more expensive and less competitive. The Government is urged to review the draft, delete harmful provisions and the Working Group could work with Government on the draft's details.

#### **Response from Ministry of Finance – Mrs. Vu Thi Mai, Deputy Minister**

**With regards to the slow equitisation process and low quantity of shares being sold:** The Government of Vietnam has instructed relevant ministries and agencies, including MoF, to promote the equitization process and ensure it is executed more efficiently.

### **Response from Ministry of Industry and Trade – Mr. Tran Tuan Anh, Deputy Minister**

The Government's objective is to continue: (i) establishing a competitive retail and wholesale power market and (ii) complete EVN's management system to ensure transparency and market-operation principle. EVN is to be developed into a transparent and public institution, particularly in financial revenues/expenditures and retail price setting, with a requirement to submit audited financial reports annually. MoIT is cooperating with international consultants to complete its proposal on developing a power wholesale market in Vietnam. Regarding the Viability Gap Fund, the MoIT appreciates the Working Group recommendations and will ask the General Directorate of Energy and other relevant agencies to collect and incorporate comments into the proposal for developing a competitive power market and EVN's restructuring.

Regarding renewable energy, MoIT has prioritized development of renewable industries as well as specific measures to encourage and support investors in renewable energy and revision of Power Development Plan No. 7. The MoIT is developing a price tariff for renewable energies for issuance in 2016. In addition, MoIT appreciates the coal power comments and will include them in the revised Power Development Plan No.7.

### **Response from Ministry of Transport – Mr. Le Dinh Tho, Deputy Minister**

***Draft decision on publishing ocean freight rates and freight-related surcharges:*** Vietnamese exporters are subjected to numerous surcharges, which increase production costs. To ensure transparency in these surcharges, the Ministry of Transport (MoT) has reported to the Government and issued the draft decree on publishing ocean freight rates and freight-related surcharges, which requires shipping enterprises to supplement, provide and publish the costs of container shipping services and related surcharges. This will enable enterprises to select shipping agencies that quote reasonable prices. This draft decree was submitted and is expected to come into effect on 1 July 2016 together with Maritimetime Law.

During formulation of this decree, the MoT conducted consultation meetings and collected comments from enterprises, particularly ocean shipping ones. An initial consensus was reached on the decree's content and it is now being finalized for issuance to help removing the obstacles to import-export and ocean shipping enterprises. In addition, MoT is scheduled to dialogue with enterprises to address difficulties each quarter.

## **2. Automotive**

### **Automotive Working Group – Mr. Wail A Farghaly, Head**

Key points presented were:

***Cost gap and weak cost competitiveness of local CKD automobile operations:*** Due to disadvantages in small production and economies of scale, automotive production costs in Vietnam are estimated to be 20% higher than those imported from Thailand.

Recommendations:

- Eliminate import duty for imported vehicles and automotive parts that Vietnam has not locally produced
- Apply stricter controls and enforce transparency on CBU vehicle imports
- Provide adequate production-linked incentives acceptable under WTO for CKD assemblers.

***More incentives, encouragement for development of two-wheeler manufacturer industry:*** To further develop motorcycle manufacturing and boost motorcycles exports, the Government should issue more incentives and reasonable policies under a consistent long-term strategy.

***Deductibility of input VAT***

The decision to invest in software to reduce administrative work has caused problems for companies in deductibility of input VAT in mold purchasing from suppliers. The MoF should consider issuing a specific instruction to resolve the problem.

Besides these points, the Government should pay more attention to end-of-life treatment for products, improve road safety needs, timely disseminate Government policy information and have proper policies on taxes and fees.

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

**Response from Ministry of Industry and Trade – Mr. Tran Tuan Anh, Deputy Minister**

The MoIT appreciates Working Group recommendations to adjust automobile industry VAT tax and support policies to implement the automobile industry development plan, policies on automobile parts and tax applied to CKD parts. The Government has assigned the MoF to lead the development of appropriate tax tariffs as well as mechanisms to identify import and VAT taxes in close cooperation with MoIT and the MoT. The MoIT will further discuss this with the MoF and submit solutions to the Government.

The MoIT acknowledges that the Government, line ministries and agencies will strictly and transparently implement CBU policies and closely control imports of used vehicles, including strict appraisals of declared costs of imported vehicles. The MoIT will develop guidance documents for new policies on imported automobile and parts in accordance with the Vietnam Automobile Development Plan approved by the Prime Minister. The MoIT will introduce suitable incentive policies for CKD production in line with WTO principles. Particular attention will be paid to incentives and support measures for investments and production of prioritized vehicles, such as personal cars, small-sized and energy-efficient vehicles.

Regarding the definition of environment-friendly vehicles, the Government has clearly defined in the revised Law on Special Consumption Tax (2014) that they are electricity, biofuel, hybrid vehicles. Such vehicles will be given good special consumption tax conditions in accordance to prevailing tax regulations and other conditions stipulated in Law of Environment Protection and Law on High Technology.

Whether Vietnam should remove import tax applied to automobile parts and accessories not locally produced and review import taxes applied to other automobile parts and accessories, the MoF and MoIT are developing tax solutions to implement the Vietnam Automobile Industry Development Plan and master plan and will report such solutions to the Government. These tariffs will be in compliance with country commitments when integrating into the global economy.

**Response from Ministry of Finance – Mrs. Vu Thi Mai, Deputy Minister**

The MoF agrees in principle with the recommendation to remove import tax applied to automobile parts and accessories not locally produced. Low tax rates should be applied to these

automobile parts to encourage automobile production. Imported parts already locally produced will be subject to high tax rates, set forth in the Law on Import and Export taxes.

The recommendation to introduce specific incentives equal to 10% of the taxing value for cars produced and assembled locally is not in line with Vietnam's WTO commitments. Tax policies and special consumption tax treat imported and locally-produced products equally.

With regards to removal of special consumption tax applied to 16-24 seat vans and other special consumption tax recommendations on pick-up trucks, environment-friendly vehicles, hybrid vehicles, the revised Law on Specials Consumption Tax has been submitted to the National Assembly and it is expected to be reviewed during March 2016. In this revised law, the special consumption tax applied to 16-24 seat vans could be reduced from 15% to 10%.

For the review and reduction of automobile charges and fees, Decree No.23 dated 25 March 2013 revises some provisions of Decree No.45. It reduces the registration fee to a reasonable rate to encourage automobile consumption. Its positive impacts have been visible with the dramatic increase in number of cars purchased since late 2013.

With regards to the reduction and phasing out of special consumption tax applied to motorbikes of 125cc and above, these types of motorbikes are expensive. The application of special consumption tax to this motorbike section is to limit the number of high-speed personal vehicles and contribute to prevention of traffic congestion and environmental protection. The MoF insists on keeping the prevailing special consumption tax unchanged.

Regarding the deductibility of input VAT for mold purchase from suppliers: Deduction and refunded VAT regulations are available. Enterprises can declare and are eligible for deductions of input VAT if molds are purchased for business activities that are taxable and VAT invoice and bank transaction documents for mold purchases are provided. In case of long contracts, enterprises can submit phased Inspection for Acceptance documents during declaration for input VAT deduction. Enterprises can send written documents to tax authorities, General Department of Taxation or MoF for detailed guidance if necessary.

### **3. Mining**

#### **Mining Working Group – Mr. Bill Howell, Head**

Vietnam has one of the most unfriendly investor mining legislations in the world because Vietnam's royalties, fees and taxes are significantly higher than the world averages. This discourages investors from introducing the international best practice methods and advanced technology needed to modernize Vietnam's mining industry.

The draft resolution proposed by the MoF to the National Assembly Standing Committee to replace Resolution 712/2013/UBTV-QH13 will potentially make any modern mining operations in Vietnam unprofitable, lead to mine closures, result in termination of a valuable sources of tax revenue for Government and condemn Vietnam to ongoing environmental damage and safety issues associated with outdated local mining methods used by most Vietnamese companies.

The Working Group hopes the Ministry of Natural Resources and Environment, MoIT, MoF and MPI cooperates to recommend investment-friendly incentives and competitive policies to attract mining sector funding. If Vietnam can achieve investor-friendly environment policies, it would

enable Vietnam to benefit from global integration within APEC, the TPP and other free trade agreements other free trade agreements and benefit from investment funds.

**Response from Ministry of Finance – Mrs. Vu Thi Mai, Deputy Minister**

Reconsideration of natural resource tax increase: Local tax policies are efficient fiscal instruments to ensure equality in international trade relationships as well as to protect and use natural resources in a reasonable, efficient manner in the context of reduced import-export taxes when Vietnam strongly integrates into the world economy. The Government will submit to the National Assembly Standing Committee the adjustment of natural resource tax in December 2015. This adjustment reflects Vietnam's world economy integration, the tax fits well within tariffs regulated in the Law on Royalties and is based on prevailing regulations and the adjustment roadmap for tax applied on certain mining products.

**ADDRESS OF THE GOVERNMENT OF VIETNAM – HE. MR. VU VAN NINH, DEPUTY PRIME MINISTER**

Vietnam is completing its five-year plan 2011-2015 with significant economic achievements highly evaluated by the international community. Despite a slow recovering international economy, Vietnam has fulfilled its objectives for 2015 and its five-year plan targets for 2011-2015. The nation's macro economy is better managed and more stable, inflation is controlled, the financial and credit system is improved and the import-export sector is growing.

Vietnam's economic growth in the first nine months of 2015 was 6.5% and is expected to surpass 2015's target by the year-end (6.2-6.4%). The 2016 report on business environment published by the World Bank on 28 October 2015 shows that Vietnam improved its status by three levels with significant improvements, such as in electricity (22 places higher), access to credit (eight places higher) and business start-ups (six places higher). These achievements are thanks to active reforms to institutional arrangements and Government administration systems to create an enabling business environment for investors, domestic and foreign enterprises. Vietnam is also promoting innovative solutions to enhance economic restructuring, improve the growth model and accelerate credit institution, enterprise and public investment reforms.

The Government highly appreciates contributions from domestic and foreign enterprise representative associations and their recommendations are constructive. The VBF is an efficient organization to help the Government complete its economic institutional framework and develop effective solutions.

The Government has identified a stable macro economy, higher economic growth, economic restructuring - including an improved growth model, better productivity, quality and efficiency as well as removal of business obstacles and creation of a fair business environment for domestic and foreign investors as 2016 development targets. The Deputy Prime Minister requests all line ministries and agencies promote implementation of solutions, particularly to issued laws such as Enterprise, Investment, Public Investment and Tax laws.

Vietnam is intensively integrating into the global economy with new generations of free trade agreements. In addition, the ASEAN Economic Community is being established. These are the opportunities for Vietnam, investors and foreign enterprises. However, there are still challenges and difficulties relating to competitive-related issues. The Government hopes all enterprises will actively restructure themselves, improve management methods, efficiency and competitiveness

to strengthen positions in Vietnam and explore international markets. The Government commits to stand by enterprises, listen to requests and dialogues to remove obstacles, implement reasonable and legal recommendations as well as ensure their legal rights.

## **CLOSING REMARKS**

### **World Bank in Vietnam – Mrs. Victoria Kwakwa, Country Director**

The end of this year marked a couple of transitions for Vietnam - of two five-year strategies, Government leadership and Vietnam moving to a higher level of deeper integration with the signing of several bilateral agreements. We hope all of such transitions come together to give Vietnam a strong boost towards its ambition of modernization, industrialization and prosperity. The Government has committed to reforms towards integration, which need impetus and a boost to long-standing reform efforts. The result depends on the Government side, on how it steps up to its ambition for reform in terms of quality and credibility as well as the speed of reforms.

The Government has made positive progresses on macro stability and management and it should keep an eye on the fiscal policy which is the major source of vulnerability and fiscal adjustment that can continue going towards the sustainable level. And also ODA changes and becomes less concessional. Vietnam really steps up its engagement with the international capital markets and find ways to release the upcoming bond issuance to increase yield curves. Administrative reforms must be streamlined and good laws put in place. Local level implementation requires strong guidance from central level as well as regular monitoring on consistency with national level guidelines and across provinces.

To take full advantage of global integration, the domestic private sector must develop and integrate into global value chains. Several issues in banking and finance, capital markets, infrastructure, education, legal frameworks, modern market institutions, IPRs, SOE reforms, arbitration, agriculture, energy and further development of PPP with public private sector have come up in the discussion with some specific suggestions. These issues need greater attention and more effective coordination between Government and the business community.

### **Vietnam Business Forum Consortium – Mr. Vu Tien Loc, Co-Chairman**

According to the enterprise community, administrative procedures remain the biggest obstacle to their development and there is considerable room for reforms in administration, justice and institutions. The enterprise community pays special attention and highly appreciates improvements in some ministries and agencies. The Government is encouraged to pay more attention to improved connectivity, interactivity and synchronization of line ministries and agencies in upcoming reforms. The enterprise community hopes the one-stop shop principle will be commonly applied. Government entities should cooperate closely to ensure a single standard, consistent procedure and a competent authority are put in place to address enterprises' procedure-related issues.

The VBF is not only a consortium for policy dialogue with Government, but also one that establishes cooperation between domestic and foreign enterprises. SMEs should be supported under the VBF framework to create value chains connecting local SMEs and FDI enterprise communities.

**Government of Vietnam – HE. Mr. Bui Quang Vinh, Minister of Planning and Investment**

The Prime Minister, Government and all ministries and agencies highly appreciate the VBF's role and the development. The Government appreciates the comments, which were open and constructive and are a result of six months cooperation between different working groups and related ministries and agencies. They have been accommodated in many policies and reflected in the institutional policies and reforms. As stated by Mr. Vu Van Ninh, the Deputy Prime Minister, the Government is open to comments and has assigned relevant ministries to actively discuss and integrate recommendations if they are within their mandates or consolidate and report to the Government for further action if recommendations are beyond their mandates. It should be noted that adjustments to some institutional and legal issues require time and consensus between Government and National Assembly, e.g. overtime issue.

The non-connectivity and inequality in development between Vietnamese SMEs and FDI enterprises are among the chief obstacles to the nation's global integration. This issue should be further studied by the VBF Consortium to facilitate the participation of Vietnam into the global value chains for higher value added to each product.

In the context of stronger integration into the global economy and challenges to be innovative and master advanced methods and technologies, the MPI should be assigned to review the discussion contents and report the inclusion of these recommendations in Government interventions as well as shortfalls in achievements during the next discussion round to improve cooperation efficiency. Mr. Vinh conveys his thanks to Mrs. Virginia Foote – Co-Chair of the Vietnam Business Forum for her critical contribution to the normalization of Vietnam – America relationship years ago as well as to the Vietnam – US trade agreements in general and the Vietnam Business Forum as Co-Chair in particular. He also welcomes the presence and management of the forum of Mr. Kyle Kelhofer – Country Manager, International Finance Corporation (“IFC”).