

# VBF VIETNAM BUSINESS FORUM

## MIDTERM VIETNAM BUSINESS FORUM 2019

### Roles of business community in rapid and sustainable development



Hanoi, June 26, 2019

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This publication was created for the Midterm Vietnam Business Forum on June 26, 2019 in Hanoi.

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## MIDTERM VIETNAM BUSINESS FORUM 2019

*Date & Time: 7:30 AM – 1:30 PM, Wednesday, June 26, 2019*

*Venue: Lotte Hotel Hanoi, 54 Lieu Giai, Ba Dinh, Hanoi*

### ROLES OF BUSINESS COMMUNITY IN RAPID & SUSTAINABLE DEVELOPMENT

#### TENTATIVE FORUM AGENDA

7:00 – 8:00	<b>Registration</b>
8:00 – 8:50	<p><b>Opening Remarks</b></p> <ul style="list-style-type: none"> <li>Ministry of Planning and Investment - <i>Mr. Nguyen Chi Dung, Minister</i></li> <li>International Finance Corporation - <i>Mr. Kyle F. Kelhofer, Senior Country Manager, Vietnam, Lao PDR, Cambodia</i></li> <li>Vietnam Business Forum Consortium - <i>Mrs. Virginia B. Foote, Co-Chair - Building a sustainable economy &amp; enhancing growth</i></li> </ul> <p><b>Presentations by 7 Chambers (35')</b></p> <ul style="list-style-type: none"> <li>Vietnam Chamber of Commerce and Industry – <i>Dr. Vu Tien Loc, VCCI's President</i></li> <li>American Chamber of Commerce – <i>Mrs. Amanda Rasmussen, Chairman</i></li> <li>Korea Chamber of Business in Vietnam – <i>Mr. Kim Han Yong, Chairman</i></li> <li>Japanese Chamber of Commerce and Industry in Vietnam – <i>Mr. Nobufumi Miura, Chairman</i></li> <li>British Business Group in Vietnam – <i>Mr. Peter Rimmer, Representative</i></li> <li>European Chamber of Commerce in Vietnam – <i>Mr. Tomaso Andreatta, Vice Chairman</i></li> <li>Singapore Business Group – <i>Mr. Seck Yee Chung, Vice President</i></li> </ul>
<b>SESSION 1</b>	
8:50 – 9:30	<p><b>4 Working Groups (20')</b></p> <ul style="list-style-type: none"> <li>Infrastructure &amp; Energy WG: <i>Criteria for sustainable infrastructure development &amp; rapid growth including energy, PPP, waste treatment, public transportation</i></li> <li>Capital Markets &amp; Banking WG: <i>Enhancing Vietnam's capital market accessibility in a sustainable way, developing e-government and digital economy</i></li> </ul>

	<p><b>4 Speakers</b>  Mr. Tony Foster (Head of Infrastructure WG)  Mr. John Rockhold (Head of Power &amp; Energy WG)  Mr. Kien Nguyen (Representative of Capital Markets WG)  Mr. Aymar De Liedekerke Beaufort (Co-Head of Banking WG)</p> <p><b>Responses from the Government (20')</b></p>
9:40 – 9:55	<b>TEA BREAK</b>
<b>SESSION 2</b>	
10:00 – 10:40	<p><b>3 Working Groups (15')</b></p> <ul style="list-style-type: none"> <li>Education &amp; Training WG: <i>Supporting the business community to achieve a sustainable economy and business innovation</i></li> <li>Human Resources WG: <i>Opportunities for the revised labour code to support rapid and sustainable development</i></li> <li>AgriBusiness WG: <i>Producing long term crops – livestock - fisheries with minimal effect on the environment, quality value add for growth</i></li> </ul> <p><b>3 Speakers</b>  Professor Raymond Gordon (Representative of Education &amp; Training WG)  Mr. Colin Blackwell (Head of Human Resources WG)  Mr. David John Whitehead (Head of AgriBusiness WG)</p> <p><b>Responses from the Government (15')</b></p>
<b>SESSION 3</b>	
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11:25 – 11:45	<b>KEYNOTE ADDRESS: DEPUTY PRIME MINISTER H. E. Mr. TRINH DINH DUNG (20')</b>

CLOSING	
11:45 – 12:00	<ul style="list-style-type: none"> <li>▪ World Bank - <i>Mr. Ousmane Dione, Country Director</i></li> <li>▪ Vietnam Business Forum Consortium – <i>Dr. Vu Tien Loc, VBF's Co-Chair</i></li> <li>▪ Ministry of Planning and Investment – <i>Mr. Nguyen Chi Dung, Minister</i></li> </ul>
12:00 – 13:30	<b><i>LUNCHEON</i></b>

# **I. OPENING SESSION**



## **POSITION PAPER OF AMERICAN CHAMBER OF COMMERCE AT MIDTERM VIETNAM BUSINESS FORUM 2019**

*Prepared by  
American Chamber of Commerce*

Good morning and thank you for the opportunity to speak about AmCham's view of promoting a more sustainable and growing business environment in Vietnam. This year marks our 25<sup>th</sup> anniversary serving as the "Voice of American Business" in Vietnam and our members remain committed to helping improve business conditions in order to strengthen the private sector and promote economic and social development here.

This year also marks 25 years of since the renewal of trade relations between Vietnam and the United States. On behalf of the Boards of Governors of the HCMC and Hanoi Chapters, we thank the governments of Vietnam and the US for their support to expand trade and investment and to improve the business climate here.

Our bilateral commercial relationship has seen dramatic growth. What started out 25 years ago with \$220 million in annual trade has grown to over \$60 billion today. In 1994, Vietnam was America's 95<sup>th</sup> largest source of imports. Today, it ranks 12<sup>th</sup>. The United States remains Vietnam's largest export market, and Vietnam is one of America's fastest growing markets worldwide.

Since our founding, AmCham has said that high-quality foreign investors not only help grow Vietnam's economy, but also help grow the entire ecosystem of local companies and entrepreneurs here. This investment has integrated Vietnam into the global supply chain, created quality jobs, and helped the country become more productive, efficient, safe and cleaner. It is important to note that while Vietnam's official investment statistics rank the US quite low, the truth is that the United States is one of the top investors in Vietnam. The misunderstanding comes from complicated US tax laws, and corporate structures that utilize global supply chains and systems.

We fully support the Government's commitment to the development of Vietnamese SME's and their increased participation in global supply chains. AmCham is now working in close coordination with USAID's LinkSME program that aims to improve and expand the supplier-buyer relationships between Vietnamese and foreign firms. This project will raise productivity and increase Vietnam's capacity to supply products to larger companies both inside and outside Vietnam.

The size and rapid growth of economic ties and the tremendous economic interests both sides have in maintaining and expanding the relationship make it incumbent upon Washington and Hanoi to develop a vision for the future of the commercial relationship. The business communities in both countries want to be partners in developing this vision for deepening trade and investment ties.

Export growth and foreign investment have been key drivers in Vietnam's economic success, but they would not have been possible without leadership that recognized those opportunities and the bold policy initiatives to make the most of them.

Today, we see tremendous opportunities for both the domestic and foreign business sectors. Ongoing global trade tensions have highlighted concern on concentrating production in a single country and Vietnam is in a position to gain some of that opportunity. Careful implementation of Vietnam's trade agreement commitments could further enhance this opportunity. We should analyze where, or if, the private sector and the state sector's interest conflict and where they could co-exist better.

For the past two decades, Vietnam's competitive position was based on low labor costs and attractive demographics that offset the many regulatory burdens investors faced. Recently, labor costs have outpaced productivity gains which hurts the country's competitive position. There are always ways to improve the business climate and AmCham members continue to support policy approaches that improve productivity across a variety of sectors.

## **1. Ease tax compliance burden**

Recent advances in e-tax and customs demonstrate the commitment of the Ministry of Finance and General Department of Taxation (GDT) to reduce burdens at the filing stage and these programs are saving time for companies. However, in the government's quest for increased revenue, our members face tax audits, examinations, and inspections that are excessive and sometimes not in accordance with provisions of Vietnamese tax law. We recognize the need for tax authorities to meet revenue targets and we hope the GDT will hold local tax authorities accountable for keeping audit times to the period stipulated by the law, and that officers make specific and detailed reference to applicable law for tax re-assessments. We also urge the GDT and the General Department of Customs begin to approve Advanced Pricing Agreements (APA) for those eligible, which will reduce the time and uncertainty that characterize many tax and customs audits. Fair tax policy and implementation is important not only to attract new investment, but also to maintain and grow the investment that is already here.

## **2. Continued regulatory reform and stability for existing investors**

Regulatory reform is the most cost efficient means for stimulating and sustaining economic growth, and it is entirely within Vietnam's control, independent of external market forces. The Prime Minister's Council on Administrative Procedural Reform is a significant step toward broad reduction of the regulatory burden on businesses that will save time and reduce avenues for corruption. We encourage the Office of the Government to place increased emphasis on this excellent initiative.

At the same time, frequent regulatory and policy changes often affect current business activities here. In some cases, due to a new regulation, investors have been requested to stop business activities that they have been licensed for. AmCham recommends that the revised Investment Law include provisions that protect business activities already covered in existing licenses. Specifically, that business activities, terms, and conditions provided in investment licenses or business registration certificates need to be protected against regulatory changes.

### **3. Infrastructure investment to drive productivity gains**

Last year, 76 percent of all FDI into Vietnam went into three sectors: manufacturing, real estate, and retail trade. While those are certainly important growth areas, we want to also see foreign investment going into building key infrastructure here. According to the Global Infrastructure Outlook, Vietnam will need over \$600 billion to reach its infrastructure goals by 2040. The government does not have that amount of money and there are trillions of dollars of global capital looking for stable long-term investments. Connecting that capital to investments in Vietnam's infrastructure will speed the flow of goods and people, adding to productivity and reliability and will result directly in jobs, and revenue for the state.

Mobilizing the capital needed for infrastructure requires private sector participation which in turn requires market-based risk adjusted returns for investors. While these terms might not be as attractive as that provided by development banks, the source is more abundant and sustainable over the long term. Our member companies need the government to establish a PPP that enables private investment in infrastructure projects.

In addition, in order to be sustainable, Vietnam's port infrastructure must make port and airport facilities convenient to population areas but not so close that they contribute to the growing traffic challenges caused by strong urbanization trends.

### **4. Increasing capacity and quality of life through sustainable energy**

The quality of Vietnam's operating environment and indeed the quality of life of its citizens rely on environmentally friendly and dependable energy. With respect to power needs, there is a clear and urgent need to address the growing shortfall in the supply vs. the demand for electrical power. This requires a price structure that accurately reflects the true costs of production and encourages efficiencies and a means of tapping into private power generation like rooftop solar through improved direct power purchase agreements. And sustainable power requires renewable sources and further development and upgrading of the transmission and distribution system. Our member companies are global leaders in this sector and want to help ensure that Vietnam's energy development meets the environmental, health, economic and geopolitical security goals of the country.

### **5. Making healthy, safe and clean choices to sustain strong growth**

Infrastructure and energy are vital to securing Vietnam's growth. At the same time, we reiterate the urgent need to address the poor air quality in large cities, and the environmental degradation caused by poor waste management. Sustaining economic growth means preventing the so-called "lifestyle" diseases that tend to accompany growing incomes. The most effective means of prevention is not taxing a narrow category of foods, but rather coordination between education and labeling like Singapore's "Healthy Choice" initiative that informs consumers on the key nutritional information they should look for accompanied by simple labeling requirements that prominently provide it.

### **6. Progressive policy approach to unlock full potential of digital economy**

We are also encouraged by the Prime Minister's enthusiasm to work with AmCham to help build Vietnam's digital economy because, in today's world, you cannot separate the digital economy

from the real economy. The digital economy significantly reduces costs, provides products and services to a broader range of consumers, and increases access to newer and bigger markets.

We look forward to working with Vietnam's leadership as it pursues its digital economy goals and our companies stand ready to provide expertise as Vietnam develops rules on emerging technologies like e-payments, digital content services, artificial intelligence, and smart cities. Setting good policies that enable the use of mobile wallets and other electronic payment systems can help discourage the use of cash, facilitate more productive e-commerce, and reduce opportunities for corruption and fraud.

In Vietnam, businesses in every sector and of every size are increasingly dependent on a secure, stable and trusted Internet to carry out their daily operations. This is why AmCham strongly supports the government's objective of promoting the development of the Internet and digital economy in Vietnam while ensuring data security and the protection of Vietnamese Internet users.

Our member companies have closely followed the new Cybersecurity Law and we want the opportunity to comment on the next draft implementing decrees. Together, we can achieve an open, innovative, and secure online environment that fosters commerce. Ensuring the free flow of data is very important and we look forward to working with Vietnam's leadership on policy approaches that advance the government's objectives while minimizing disruption to businesses, the economy, and Vietnam's development.

## **7. Enable financial services and fintech advances**

Growth in the financial services and fintech sectors will depend on implementation of a legal, regulatory and policy framework that facilitates investment and enables these sectors to continue contributing to Vietnam's financial inclusion and prosperity. Today, the Vietnamese banking sector has one of the lowest foreign ownership limits relative to its regional peers. Increasing the foreign ownership limit for banks would allow them to raise international capital in the context of potential mid-to-long term capital constraints that they face as they execute growth plans to support the country's economy. In addition, this would enable Vietnam to meaningfully deepen its capital markets and attract foreign institutional investors who can provide liquidity into the market.

Additionally, while we are optimistic about the government's efforts to create favorable conditions to promote a cashless economy and develop the digital sector, we are also closely watching recent regulatory developments on the payments and fintech sector. The potential introduction of foreign ownership limits to the fast-growing payments and fintech sector would significantly restrict the ability of Vietnamese fintech startups to raise institutional capital from foreign investors, which in turn would limit their ability to attract talent and render them less competitive versus their peers in the region. Overall, such limits would make it very challenging for the sector to grow and we hope that the government will maintain policies that enable fintech services to contribute to technology innovation and financial inclusion in Vietnam.

AmCham also applauds the decision to update Vietnam's insurance law, which will bring the sector on par with global best practices. We encourage the Ministry of Finance and the Insurance Supervisory Agency to continue engaging insurance companies for their global expertise and experience, as well as encourage the government to hold regular and ongoing public consultations during the drafting process.



## **8. Enhancing future growth through science and technology**

Creating an environment that encourages innovation is vitally important for Vietnam's future. Science and technology are areas of great opportunity that require forward-thinking policy approaches. Unfortunately, we continue to see regulatory requirements from the Ministry of Science and Technology (MOST) that create unnecessary complexity and additional work - including on the import of used equipment and registration of technology that results in duplicative processing and presents IP security risks to those involved in the technology transfer. These burdens on business do not significantly impact the objectives MOST wishes to achieve and as such, we stand with our colleagues in the Investment and Trade Working Group, as well as other groups, who advocate for critical improvements necessary to allow the flow of technology and science to continue Vietnam's opportunities for sustainable growth.

## **9. Ensuring opportunities and fairness for all**

Vietnam has one of the highest female labor-force participation rates in the world. Almost 80 percent of women aged 15 to 64 are in the labor force. That figure is higher than in all the members of the OECD except Iceland, Sweden and Switzerland - and ten percentage points above China. AmCham and our member companies have been at the forefront in supporting the contribution of women to Vietnam's economic future and we remain committed to increased opportunities for women here through a number of our signature programs, including the AmCham Scholars Program, our Women in Business Committee, and our Women in Leadership Initiative. AmCham continues to support and encourage regulations and private business policies that ensure fair, equitable treatment and harassment-free work places for all employees.

## **10. Sustainable development in rapidly changing markets**

AmCham members prioritize sustainability through their business practices as well as their corporate social responsibility activities. Continued effort from both the public and private sectors will help ensure a sustainable Vietnam in business, health of its citizens and the environment for years to come.

Our members believe that substantive progress on the issues raised above will address many longstanding market access concerns and will support Vietnam's aspirations to propel itself to the next sphere of economic competitiveness.

As major investors here, American companies have an interest in Vietnam's continued success. AmCham will continue to work on lowering barriers to trade, to help the Vietnamese government make it easier to do business, and to create a high-standard, transparent, and stable business environment to ensure that our investors and all the people in this room have fair access to that opportunity.

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

## **POSITION PAPER OF KOREA CHAMBER OF COMMERCE IN VIETNAM MIDTERM VIETNAM BUSINESS FORUM 2019**

*Prepared by  
Kocham*

### **I. Tax, Finance, Banking**

#### **Capital Market Promotion Plan**

- At present, the size of the loans in the financial sector has exceeded 150% of Vietnam's GDP and the application of Basel II in 2020 is expected to make it difficult to acquire necessary funds for loans for new investments as well as basic business activities
- Therefore, it is necessary to promote the capital market to replace or supplement the existing loan market, and to help existing banks attract more overseas funds as well.

#### **1. To encourage the participation of trustworthy overseas CRA (Credit rating agencies) and foster the Vietnam's corporate bond market**

- The government has announced plans to develop the corporate bond market to reach 7% of GDP by 2020 and 30% of GDP by 2030 under the recent directive by the Prime Minister.
- However, precise evaluation and information about the businesses should be considered as preconditions to foster the corporate bond market
- Currently, PTR (Phat Thinh Rating) is the first company to obtain a license for a Credit Rating Agency in Vietnam. However, if the purpose is to foster the corporate bond market and attract foreign capital to the Vietnam's corporate bond market, a policy to encourage participation of trustworthy overseas CRAs is required.
- For example, if a Korean CRA obtains Credit Rating Agency license to work in itself or under a joint venture and then evaluates Vietnamese businesses, the evaluation may be very helpful in attracting Korean investors.
- In addition to the corporate bond market, participation in social SOC of the private sector is expected to become more active given that the PPP law has been introduced recently in Vietnam, and it is expected that overseas CRAs will play a major role in attracting investors.

#### **2. Extensive application scope of Transfer pricing Taxation regulation**

- As the current Vietnamese regulation, it clarifies the range of the companies which should submit the Transfer price report is the one with the annual sales turnover of about \$ 2.24 million (VND 50 billion) or more, and the one with the specially related party transactions of about \$ 1.35 million (VND 30 billion) or more.
- Almost of SMEs, which is most of FDI in Vietnam, should be included into this category. So, it would be a significant burden for these FDI companies to prepare the report.
- In addition, for the professional and consistent investigation, I would like to recommend that government make the law so that the transfer price taxation shall be investigated by a certain investigation department only with the professionalism and consistence.

### **3. Prepare legal procedures and guidelines for FDI companies to list on the stock market**

- There aren't the specific legal guidelines yet to list a FDI company on the Vietnamese stock market until now.
- The Vietnamese government needs to privatize the state-owned enterprises and to attract the foreign capitals to ensure the rapid and sustainable economic development. Therefore, it is essential to vitalize the stock market and to list the FDI companies
- Accordingly, I would like to recommend that the government should make the specific legal guidelines or regulations for the stock market listing of FDI companies as soon as possible.

### **4. The license approval delay for development projects of FDI companies**

- Many FDI companies are participating in Thu Thiem area development projects in Ho Chi Minh City, but they are still undergoing many difficulties due to the delay of government approval.
- We hope that there will be the prompt solutions to lead to the improvement of infrastructure environment and the further investment in related areas.

### **5. Incentive policy issue on Supporting Industries ("SI")**

- Although there clearly exists the legal regulation which describes the policy ("23-NQ / TW on March 22, 2018 and No. 35 / NQ-CP on May 16, 2016"), Korean companies received the opinion from the Ministry of Finance (MOF) and the General Department of Taxation (GDT) that "the SI sector incentive can not be applied to SI projects which were implemented before January 1, 2015".
- I would like to ask Vietnamese government to make a proper judgment once again considering that the SI industry is the industry that can lead to the rapid economic development of Vietnam and to generate higher added value continuously.

### **6. Exemption from tariffs on imported raw materials for production of export products**

- Due to the interpretation and guidance of the decree, it is forecast that the large amount of retroactive taxation and penalties be burdened to many FDI companies.
- Considering that most export manufacturing companies in Vietnam produce intermediate products for export or produce some goods for export through the processing of outsourcing goods [materials], this problem is also the matter of Vietnamese exporters in Vietnam.
- This will be the big obstacles to develop the parts industry in Vietnam, and also cause the serious issue that may deteriorate Vietnam's national competitiveness. Therefore, we request that the Vietnamese government make prompt and appropriate amendments of the decree and adequate action.

### **7. Review of Retroactive Application of Tax Laws including Corporate Tax Law**

- The Vietnamese government is attracting investment by foreign enterprises through corporate tax incentives.
- Many FDI enterprises have invested upon the Vietnamese government's commitments. However, the sudden amendments in tax laws and their retroactive application caused difficulties for many enterprises in business due to profitability deterioration.
- Corporate tax and other taxation policies can be adjusted and amended on the basis of the corporate environment and government policy. The amended law should not be applied retroactively, but from the time of its entry into effect.

- The amended law should reflect the current trend and be applicable from the amendment date onwards.

## **II. Labor, labor law**

### **1. Overtime hours**

#### **a. Expansion of overtime Hours basis**

- Enterprises face many difficulties due to the Vietnamese government's strict limitation on overtime hours at 4 hours per week, 30 hours per month, 200 hours per year (300 hours for labor-intensive industries such as textiles, sewing and footwear). The Vietnam economy is highly dependent on foreign investors; therefore, this limitation should be relaxed to boost investment.
  - \* In the case of South Korea, approx. 600 hours per year (12 hours per week) is permitted.
  - \* In the amendment process of the Labor Code of Vietnam in 2013, the Ministry of Labor, War Invalids and Social Affairs had proposed an extension of the overtime hours to 360 per year; however, this amendment did not materialize due to opposition from Labor Unions.

#### **b. Amendment of the calculation method for overtime Hours allowance**

- On public holidays, Tet holidays and paid holidays, overtime pay allowances of at least 300% are to be paid. In accordance with the provision of this clause, wages for public holidays, Tet holidays and paid holidays are not included, therefore in fact, 400% of wages are paid on public holidays, causing a heavy burden to enterprises. Therefore, this clause should be removed so that the holiday wage shall include weekday and weekly holiday overtime pay.

### **2. Expansion of the scope of sectors for dispatch**

- Recently, there has been an explosion in the number of investors entering Vietnam due to the trade disputes between the US and China, and it is difficult to find Vietnamese labor force. Especially, it is difficult to expand manpower in order to cope with temporary labor demand. Therefore, it is necessary to expand the scope of sectors allowing dispatch in Vietnamese labor law.
  - \* According to Vietnam Labor Law (Article 53 Clause 2 of Vietnam Labor Law, Article 25 Clause 1 and Appendix 5 of the Enforcement Decree of the Worker Dispatching Act), only 17 jobs including translation, interpreting, cleaning, security, driver etc., are permitted, manpower for factory etc., is not allowed.

### **3. Salary table supplement**

- The salary table (more than 5% between the profession levels) in the Vietnamese labor code is restricting the workforce management of the enterprises. The salary gap between the upper level and the lower level is wide. To guarantee the autonomy of enterprises in their business operations, it is necessary to remove the salary table or allow autonomous application of the salary table.

### **4. Regarding minimum salary**

- Recently, the minimum salary has been continuously increased, causing the increased burden of labor costs on enterprises. The minimum salary increase should be fixed within 3%.

- In addition, it is necessary to widen the standard of minimum salary from base salary to 'base salary + allowance + other benefits'.
  - \* Korea has also recently amended the Minimum Salary Act to include allowances, monthly incentives into the minimum salary.

### III. Construction, Infrastructure

#### Laws on PPP (Public Private Partnership)

##### 1. Planning to eliminate uncertainties for investors

- The government guarantees continuously requested by Korean investors should be appreciated because they have been specified clearly in the form of Minimum Revenue Guarantee (MRG) and subject to guarantees by third parties such as credit institutions for enhancing reliability.
- However, additional measures to reduce uncertainty for investors should be granted in the law and enforcement process.
- It is necessary to increase the guarantee period which is now up to 10 years and the guarantee ratio (75% in the first 5 years, 65% in the next 5 years) (eg: 90% for the first 5 years ⇒ 80% for the next 5 years ⇒ 70% for the next 5 years)
- In addition, the North-South Expressway project is expected to be opened for bidding within this year, but this law is expected to be passed early next year. Therefore, in order to apply the government guarantee for the North-South Expressway project, it is necessary to define it as a project requiring Implementation Treaty after the enactment of this law.

##### 2. Rebalancing the required private equity ratio

- As compared with the previous Decree, the increase in the required private equity ratio is expected to have a negative impact on the investment efficiency, so it is necessary to return to the previous decree.
  - \* The minimum equity ratio according to previous Decree: 10% for projects from 1.5 trillion dong, 20% for projects of less than 1.5 trillion dong → The new Decree: at least 15% for projects from 2 trillion, at least 20% for projects of below 2 trillion.

##### 3. Arbitration for settlement of disputes

- It is necessary to stipulate a foreign court for dispute settlement of PPP projects by international bidding (the Draft Law is optional as to the choice of Vietnam courts or foreign courts).
- In the case of international projects, participation by local investors is mandatory, but this requirement in the law may create an impression of unopenness, therefore, it would be more appropriate to specify it in the Invitation for Bids.

<i>Reference</i>	<i>Comments</i>	<i>Recommendations</i>
Article 80	Considering that it is the period of adopting PPP method and the investor should take risks in relation to demand and revenue expectation, it seems to be needed to increase the rate and period of minimum revenue guarantee in order to allow active participation of the investors and vitalize PPP projects.	Please increase the rate (100%) and period (20 years) of minimum revenue guarantee to allow active participation of the investors and vitalize PPP projects.

<i>Reference</i>	<i>Comments</i>	<i>Recommendations</i>
Article 80	It does not define the beginning point of the first 5 years for minimum revenue guarantee.	Please define the beginning point of the first 5 years for minimum revenue guarantee as the time when the project generates its revenue after the construction of project is finished.
Article 79	It seems to be needed to be more clear about the definition of ‘the original expected value’ when we calculate the exchange rate fluctuation and also needed to put how and when the Government and the investors determine the differences value due to exchange rate fluctuation, and how the government deals with these changes.	Please put more clear the definition of ‘the original expected value’ when we calculate the exchange rate fluctuation. Please stipulate how and when the Government and the investors determine the differences value due to exchange rate fluctuation, and how the government deals with these changes?
Article 4	It is not clear whether a FDI company established in Vietnam under Vietnamese Laws is a ‘Domestic investor’ or a ‘Foreign investor.’	Please put the definition of ‘Foreign investor’ and ‘Domestic investor’ more clearly.
-	Please consider and prepare the transitional provision so that the ongoing projects can be protected by the content of this Law and enjoy the contents of this Law.	Please consider the transitional provision considering that the time is needed to prepare this Law and put this Law into effect.

#### **IV. Investment, FDI Support Act and Others**

##### **Easing of qualifications for Export Processing Enterprise (EPE)**

###### **1. The existing qualifications for EPE application**

- According to the Article 2 Clause 10 of Decree No. 82/2018/ND-CP (Article 2 Clause 6 of Decree No. 29/2008/ND-CP previously), EPE “means (1) a company which is established and operated within an export processing zone, or (2) an enterprise specializing in manufacturing exported products within an industrial park or economic zone”.
- In addition, according to Article 1 Clause 2 of Decree No. 114/2015/ND-CP, Export processing zones or EPEs "are separated from other areas with fence and wall systems which have entry and exit gates and doors to ensure conditions for the inspection, supervision and control by customs and relevant functional agencies".

###### **2. The necessity of easing qualifications for EPE application**

- As of May 2019, there are 326 Industrial Parks(or Industiral Zones/Khu công nghiệp = KCN) and 625 Industrial Clusters Cụm công nghiệp = CCN) in Vietnam. However, since many FDI companies are not located in the Industrial Parks (or Industrial Zone/KCN), they are not eligible for the EPE. This is a major obstacle to the expansion of their business and further investment.
- EPE designation is essential for FDI companies to enjoy benefits, especially those related to customs clearance procedures among EPEs.

- In this context, KOCHAM proposes that the qualifications for EPE application be eased. For example, if an FDI company meets the conditions set out in the Article 1 Clause 2 of Decree No. 114/2015/ND-CP, it should be allowed to apply for EPE license after completing on-site inspection by the relevant authorities, even if it is not located in the Industrial Park (or Industrial Zone/KCN). For this purpose, KOCHAM would like to request the amendment of the current Article 2 Clause 10 of Decree No. 82/2018/ND-CP, among other things.

\* Six Korean FDI companies as below agreed on above suggestions. We continue to receive similar concerns and complaints from other companies:

- ESTec Phu Tho, TPS, FABCHEM Vina, and KST: Phu Tho Province;
- Myeong Sung Vina: Ha Nam Province, and;
- Sanico: Ninh Vinh Province.

### **Strengthening central government's guidance and supervision of provincial government's investment promotion activities**

- There are some cases in which FDI companies made investment purely on the basis of the Industrial Park (or Industrial Zone/ Khu công nghiệp = KCN) development plan of the provincial governments and then faced serious difficulties due to a sudden change of such development plan. To prevent this problem, the central government is called upon to intervene and strengthen guidance and supervision of the provincial government's activities in attracting foreign investment.
- One outstanding case is Estec Phu Tho, located in Phu Tho Province. In June 2016, Estec Phu Tho decided to make investment of USD 8 million and build a new factory, believing that the area concerned will be Industrial Park (KCN) based on the promotional materials for foreign investment issued by the authority of Phu Tho Province in late 2015. However, the Phu Tho Province suddenly changed the Industrial Park (KCN) development plan and the area where the Estec Phu Tho constructed a new factory remained as an Industrial Cluster (Cụm công nghiệp = CCN) rather than an Industrial Park (KCN). Consequently, the Estec Phu Tho is facing serious difficulties in business operations because it is not allowed to apply for an EPE under the existing Decree No. 82/2018/ND-CP.
- This is a typical case where credibility of the provincial government's foreign investment promotion policies and promotional materials is conspicuously undermined. As competition for attracting foreign investment between provincial governments is increasing, we are afraid to see more similar cases coming up in the future.
- In particular, under the current legislation, the first procedure for the designation of Industrial Parks (KCN) is that the provincial government authorities prepare and submit development plans to the central government. Therefore, foreign investors have no choice but to heavily depend on the information and promotional materials provided by provincial governments at the outset of their investment.

### **Recommendation**

In this context, KOCHAM has two proposals as follows:

- In order to increase credibility of and confidence in the foreign investment policy of Vietnam, it is necessary to strengthen the central government-level guidance and supervision of the provincial government's foreign investment promotion activities.
- Meanwhile, appropriate remedies must be done to foreign investors who are affected by such misleading information and materials as above. In the case of Estec Phu Tho, we propose that (1) an EPE license be granted as an exceptional case even if the company is not located in an

Industrial Park (KCN), or that (2) the Pho Tho Province begin procedures to designate the area concerned as Industrial Park (KCN).

## **V. Outstanding amount for the construction of infrastructure projects**

- There is an increase in the number of the cases of Korean as well as other foreign contractors, who implemented the construction of the infrastructure project in Vietnam, not being able to receive the payment for the construction works as in time
  - Due to Vietnamese side's circumstances, the long-term outstanding amount for the construction cost only has reached \$125,000,000 million.
  - The above-mentioned issue is attributable to the Vietnamese government's policy of managing the national debt ratio (65% of GDP per year).
- \* Through the vote of the National Assembly of Vietnam in 2016, the amount of loan for the period of 2016 ~ 2020 will be limited within 300 trillion dong (60 trillion dong per year), which leads to the delay in the payments for the construction works.
- From perspective of Vietnamese government, there would be also a negative side effect due to the interest of the unpaid amount and overhead costs to be paid to the contractors.
- In order to maintain the trusting relationship between our two countries and to avoid the extra government expenditure on the overhead costs, it is critical to promptly make the payment of the outstanding amount.

## **VI. Rapid approval of investment projects and enhancement of credibility**

- In the case of Korean companies who are implementing the investment projects in Vietnam, the delay the approval of the project and the non-execution of the contract between Korean companies and Vietnamese government has led to the increase in financial burden and business uncertainty
  - In particular, in the case of Ho Chi Minh, the licenses issued for major investment projects have been temporarily suspended from 2018 to 2019, which leads to the concern about the possibility of the withdrawal of the increasing investment cost and the large-sized capital which was invested to Vietnam as well as the investment from Korean companies.
- If the delay of the approval of investment projects continues, there could be a negative impact on Vietnamese economy due to the decrease in the investment by Korean companies to Vietnam.
  - If the Vietnamese government could support by the rapid approval of the investment projects, it will be expected to contribute greatly to Vietnamese FDI through employment extension, urban development, and stimulation of domestic economy.





**SPEECH OF THE JAPANESE CHAMBER OF COMMERCE & INDUSTRY (JCCI)  
MIDTERM VIETNAM BUSINESS FORUM 2019**

*Presented by  
Mr. Nobufumi Miura  
Chairman*

Your Excellency, the Prime Minister Mr. Nguyen Xuan Phuc,  
Your Excellency, Mr. Nguyen Chi Dung, Minister of Planning and Investment,  
Ladies and Gentlemen.

I am Nobufumi Miura, chairman of The Japanese Chamber of Commerce and Industry in Vietnam.

Today, I would like to talk about the importance of the improvement of business environment for “rapid & sustainable development” with the private sector, and the expectation on the investment from the private enterprises and how their role is growing in Vietnam. The improvement of business environment will promote the investment by the private parties, which will contribute to the further development of Vietnam. On behalf of JCCI, I would like to highlight three proposals – “PPP”, “Supporting industries” and “Predictability in amendments of laws.”

**The first area is “PPP”**

Since the public debt is reaching its limitation, Vietnam needs to promote the private parties’ investment on infrastructure projects. However, the investors are exposed to significantly high risk in the current PPP scheme. In order to encourage the foreign enterprises’ participation in PPP projects, it is instrumental that the Government clarifies the risk allocation between the Government and the private party and provides comprehensive support for private party to ensure a reasonable return from the investment.

We would like to request for adopting "Foreign currency exchange guarantee system" and applying "Foreign Law" as a governing law.

We believe the acceleration of PPP will boost the economic development in Vietnam.

**Secondly, the Government is also expected to commit to develop “Supporting industries”**

Last year, FDI into Vietnam reached an all-time high, owing to the sincere efforts by Vietnamese Government. Warmest congratulations on your achievement.

While FDI has mainly developed the manufacturing and assembling of finished products sectors, supporting industries have not been developed enough yet. It is extremely important to establish the core industry with international competitiveness for the rapid and sustainable development in Vietnam. The establishment of core industry also requires to strengthen the supporting industries in the value chain.

However, the supporting industries face the global cost-competition, and those supporting industries need further support from the Government to improve the productivity in Vietnam.

Specifically, your support is highly appreciated in providing incentives to the enterprises in supporting industries and for talent development.

**Lastly, we would like to mention about “Predictability of the legal amendments”**

In order to drive new industries including supporting industries, it is very important for the Government to align various laws & regulations with each other and apply them consistently and to ensure the predictability in the changes of law. The change in the laws or regulations in a short period of time and the unreasonable interpretation or application of regulations will disturb the stable business operations. It will increase the back office cost, which will lead to difficulties in establishing and running the industries.

For example, Vietnam is facing serious environmental concerns and various measures have been applied. We respect this movement in Vietnam, but some of the measures neither seem practical for companies to follow nor give companies enough time to prepare for the new laws.

We would like to request the Government to take appropriate measures on enacting and amending the laws and regulations and set the reasonable timeframe for the change.

We, JCCI, highly appreciate it if Vietnamese government would consider our proposal today so that Vietnam will become more attractive country for foreign investors.



## **JAPANESE CHAMBER OF COMMERCE & INDUSTRY IN VIETNAM POSITION PAPER AT THE VIETNAM BUSINESS FORUM MIDTERM 2019**

*Prepared by  
JCCI*

The Japanese Chamber of Commerce & Industry in Vietnam (JCCI) would like to bring your attention to seven issues which we consider to be challenges for Vietnam to further improve the investment environment.

### **1. PPP (Public-Private-Partnership)**

We sincerely thank the government for the effort to proposed a new draft of PPP.

Vietnam sets a centrally-mandated target that limits its public debt to 65 percent of GDP and the Government consistently reduces the dependency on loans. Under the situation, "active adoption of PPP scheme" will be effective in order to utilise private sector funds instead of public funds to upgrade Vietnam's infrastructure.

PPP is a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility. It is instrumental that the Government clarifies the risk allocation between the Government and the private party and to provide comprehensive support for private party to ensure the reasonable return from the investment.

In addition, for foreign enterprises to participate in PPP projects in Vietnam and from the perspective of global standards, we would highly like to request the Vietnamese Government to recognize the necessity of adopting "Foreign currency exchange guarantee system" and applying "Foreign Law" as a governing law. Here we would like to reiterate four areas for improvement, we stated during the last VBF Annual Meeting at the end of last November:

- Stating clearly that Vietnam applies “Foreign Law” as a governing law;
- Allowing arbitration agreement outside Vietnam for all infrastructure projects, including "real estate" as a condition of dispute settlement;
- Allowing investors and project operators to mortgage over land use rights and property on land, rights of operating project equipment;
- Bearing risks through various guarantees, the typical of which is Foreign currency exchange guarantee in order to clarify the risk allocation between the Government and the private party.

We strongly expect that the PPP project will further boost Vietnam's economic growth through these improvements above.

### **2. Development of supporting industries**

It is essential to establish the core industry with international competitiveness in order to keep the rapid economic growth and make this growth sustainable in Vietnam. The establishment of core industry requires to strengthen the manufacture and supply of the materials and semi-

finished products and to develop the domestic industrial value chain in Vietnam as well as to manufacture and assemble finished products.

In 2018, the foreign direct investment (FDI) in Vietnam increased by 9.1% compared to 2017, reaching the record highest, USD 19.1 billion. In particular, FDI in setting up production bases of textile & garment and electronic products increased significantly. FDI is expected to increase further in 2019. However, in the entire industrial value chain, "supporting industries" such as manufacturing and supply of materials and semi-finished products has not been developed enough yet while FDI has mainly developed the manufacturing and assembling of finished products. The development of supporting industries will contribute to strengthen the cost-competitiveness by promoting the local procurement of enterprises manufacturing and/or assembling of finished products. Hence, the development of supporting industries is one of important areas that can contribute to the establishment of core industry in Vietnam.

Japan Trade Promotion Agency (JETRO) is promoting the networking between Japanese companies and Vietnamese companies by the development of Vietnamese supporting industries and promoting the sales channel in Vietnam. This August, JETRO will hold “Vietnam-Japan Supporting Industries Exhibition” in Hanoi in collaboration with Vietnam Trade Promotion Agency. We, Japanese companies, see the development of supporting industries as the urgent agenda.

We would like to present our four proposals for the further development of the supporting industries:

**a. Providing incentives to develop enterprises**

We welcome that the Government has issued Decree 82/2018 / ND-CP, which provides more incentives to the supporting industries sector than to the enterprises located in ordinary industrial zones on land lease fees or land lease duration. Furthermore, in order to develop enterprises whose products meet the global standard quality, we expect the Government to discuss the policies on the incentive program for manufacturing of high quality products. Implementation of 5S or ISO is also highly recommended for the management foundation for the future.

**b. Launching initiatives for foreign enterprises to promote alliances with Vietnamese enterprises and technology & knowledge transfer to Vietnamese enterprises**

Particularly for industrial sectors with small domestic demand and small productive capability, we would like to recommend the Government to implement new incentives to invite foreign enterprises with high technical capability. These foreign enterprises should be incentivized to make alliances with local Vietnamese enterprises and to ensure technology & knowledge transfer to Vietnamese companies. This should encourage Japanese supporting industries enterprises with high technical capability to invest in on-site production. We believe that the above mentioned is effective as an interim measure until the industry gets scaled.

We would also like to request the social system architecture such as networking platform between companies for providing the detail of Vietnamese companies and connecting Vietnamese supporting industries and Japanese finished products manufacturers.

**c. Upgrading talents development policy**

The shortage of technical talents and resources including general workers becomes a critical issue due to increasing number of foreign enterprises entrants and expanding existing

manufacturing companies. It would be efficient to develop the existing vocational-training institutions which Vietnamese and Japanese Government have focused on and to spend more resources on the local talents development.

In addition to training program for the local human resources, we would like to suggest to install the assist mechanism for promoting the Japanese SMEs adopting the Vietnamese technical intern to expand into Vietnam. This effort will enhance the effectiveness of technical training. These companies can also hire the Vietnamese technical intern in Vietnam after their internship, which can contribute to the development of high skilled engineers.

#### **d. Promoting expanding domestic market**

The market size in Vietnam is still small and companies cannot acquire the economies of scale to gain enough return on their capital investment. There exist some industries that don't fully maximize the local procurement due to lack of cost competitiveness against the imported assemblies and parts.

We believe that the support on the investment into those sectors such as jigs and molds should have the equivalent impact as the scaled market and it should accelerate the expansion of domestic market growth strongly.

### **3. Better predictability of changes of laws and regulations**

In order to drive new industries including supporting industries, it is very important for the Government to organize the laws and apply the law stably and to ensure the predictability of the change of laws. The change in the laws or regulations in a short time and the unreasonable interpretation or application of regulations will disturb the stable business operations, hence it will increase the back office cost, leading to the difficulty in establishment of the industry.

The legal certainty has not been secured recently by sudden changes of laws which deprive or negatively affect the lawful interests enjoyed by the investors. The transitional provision will not protect those investors. we would like to recommend the Government to pay full attention to take appropriate measures not causing such deprivation or negative impact on the investors' lawful interests by enacting and amending laws and regulations and set the reasonable timeframe when changing the laws and regulations.

#### **a. Eliminating the 50% reduction of personal income tax in Special Economic Zones**

Decree 82/2018/ND-CP was issued on 22 May 2018 but was taken into effect in a short time, from July 2018. The sudden withdrawal of tax incentives made a huge negative impact on the profitability and financial planning of companies located in the Special Economic Zones, causing a critical confusion among the companies, and the predictability of the laws has not been secured. Appropriate length of transitional periods should have been established, and a relief program needs to be provided to the enterprises which can be negatively affected by changes in laws/regulations.

#### **b. Application of supporting industrial tax incentives to business expansion before 2015**

According to Decree 111/2015/ND-CP and Circular 55/2015/TT-BTC on corporate tax laws and industrial tax incentives, if business expansion before 2015 meets the conditions of the current regulations, it is reasonable for the enterprises to enjoy the corporate tax incentives for the supporting industries, as Ministry of Justice and the Ministry of Industry and Trade agreed. It is

also understood that Article 13, paragraph 1 of the Investment Law can support the interpretation, but there have been cases where the Ministry of Finance refused to apply tax incentives.

The interpretation by Vietnamese authorities should be consistent so that enterprises can expect the correct application of the law. The predictability of the laws should be secured.

This situation disturbs the investment in supporting industries. The Government is supposed to urgently express its consistent opinion and should provide clear and detailed evidence and ensure predictability of the laws so that enterprises can rely on the laws.

### **c. Circular 18 on VAT refund (VAT)**

Circular 18/2019/TT-BTC on VAT refund was issued on 3 April 2019 and taken effective on 20 May 2019. The Circular regulates the refund of VAT and has a huge impact on the cashflow of enterprises. The establishment of value-adding supporting industries mostly requires sufficient capital and equipment but this legal amendment led a negative impact on this sector. The regulation enforced only after 1 month from the issuance, especially with the negative impact, cannot secure the predictability of laws.

Please make sure that there is no impact for VAT refund of investment stage which is regulated in article 1-3 of VAT Law 106/2016/QH13 since this is totally different regulation

We would like to recommend the Government to comprehend the negative impacts on businesses such as cash shortage or bankruptcy, set the appropriate transition period such as a year.

## **4. The tight electricity supply and demand**

The electricity supply and demand is getting tight in Vietnam due to the rapid increase in electricity demand. Particularly for the manufacturing industries, electricity is the basis of business. The outage of electricity or unreliable supply will reduce the interests in expanding businesses for the existing enterprises and will be a bottle neck for the prospective investors.

We recognize that in order to avoid huge power blackout, Vietnam Electricity is promoting the large accounts to save electricity in the occurrence of emergency. However, we would like the Government to note that the companies are forced to face to the critical risk that they cannot predict how often they will face to this emergency.

In the context of further economic development, industrialization and new investment projects increase, the increase of electricity demand is reasonably expected. Hence, we expect the Government to take initiative to construct large-scale power plants and the application of renewable energy to ensure the stable electricity supply.

## **5. Environmental Protection Measures**

Vietnam is facing to serious environmental concerns such as air pollution, water pollution, and soil pollution led by rapid economic development, industrialization and climate change. There are many causes of environmental pollution, such as measures of untreated drainage at the abnormal occurrence in industrial zones or untreated solid waste owing to the unorganized waste treatment facilities.

Various measures including Law on Environmental Protection (Law No.55/2014/QH13) revised

in 2015 have been applied to promote the environmental protection. Decree 40/2019/ND-CP which published on 13<sup>th</sup> May 2019 requires to install wastewater tank, equipment or pond to store wastewater up to 3 days in order to prevent wastewater accident. However, to install waste pond needs a large space and it is a heavy burden for enterprises. We would like to request the Government to consider the practicality of the regulations when issuing the additional ones to promote the further the environment protection including this Decree 40/2019/ND-CP. It is also highly appreciated if the Government clearly shows the rationale behind the regulations.

The environmental pollution should be prioritised since it is an issue that can damage the Vietnam's national interests and its reputations. Japanese companies have experience of overcoming the problems of pollution that happened in Japan and we fully understand the importance of caring for the environment. We have successfully implemented appropriate environmental protection measures to coexist with the environment in our business operation in Vietnam and we will continue to implement additional valuable measures to contribute to the environmental protection.

It is our pleasure to cooperate with you in the field of environmental protection with their technological capabilities and experience for the sustainable economic development of Vietnam.

## **6. Importation of used machinery and equipment**

JCCI highly welcome that the Government has issued Decision 18/2019/QD-TTg on 19 April 2019. We appreciate that the requirement of the date after manufacture of production line was waived, and the used machinery and equipment in some specific cases up to 20 years from the date of manufacture are allowed to be imported into Vietnam with certain criteria fulfilled.

We would be grateful for the Government's clarification of assessment criteria, assessment duration, and the details of certifications to be attached to the machinery/equipment besides the relaxation of regulation for the period of service.

For the further industrialization of Vietnam, we expect the Vietnamese Government to approve the importation of used machinery and equipment that fulfills the criteria such as power efficiency and energy consumption rate.

## **7. Forced participation of foreigners in social insurance**

It has been reported that recently some of the local authorities (especially in the southern part of Vietnam) tend to unreasonably limit the scope of the term "worker internally transferred within an enterprise" when foreign expats apply for the renewal of their work permits. We believe this may relate to the exemption from the compulsory social insurance granted to the foreign expats categorized as such "worker internally transferred within an enterprise".

We request that the local authorities appropriately interpret and apply this term based on legitimate and sufficient legal grounds.



## **POSITION PAPER OF THE BRITISH BUSINESS GROUP VIETNAM AT MIDTERM VIETNAM BUSINESS FORUM 2019**

*Prepared by  
BBGV*

Honourable Prime Minister Nguyen Xuan Phuc, Ministers and Government Officials, Ambassadors, colleagues of the Chambers of Commerce, Ladies and Gentlemen,

BBGV congratulates the Government on their continued progression to a more open and transparent business environment.

We would like to bring to the attention of the Government the following issues which have been raised by our members:

### **1. Education**

BBGV is pleased to note that Education remains a high national priority. Opportunities for business engagement are available in a variety of areas including English language training, teacher training, quality assessment, digital learning, educational materials, and transnational education. With more than 23 million students, 1.2 million teachers and instructors, Vietnam offers a very active market for both student mobility and educational partnership activities, of which the UK has a market share of 9%.

The strong commitment to educational overhaul by reforming legislative regulations and encouraging foreign investment, such as the amended decree 86 which lifted the ratio of students enrolled in international schools is to be commended.

Current international and transnational education programmes between Vietnam and UK are strong with 475 approved and 310 remaining active. Approximately 12,000 Vietnamese students are based in the UK for their studies. Regarding professional training, the UK establishments and businesses are very willing to offer their expertise whilst also building and extending partnerships with local companies, schools, colleges and government departments across several sectors including Tourism & Hospitality, IT, Logistics, Automotive, Mechanics, Finance & Accounting, Marketing and Communication, English language and other soft skills.

At the 16<sup>th</sup> Education World Forum in London earlier this year a delegation of around 100 Vietnamese universities and business representatives travelled to the UK and 29 MOUs were signed between various stakeholders in education which demonstrate strengthening educational ties between the two countries. Agreement was reached to strengthen UK/Vietnamese co-operation to deliver high quality, inclusive education to Vietnamese students under its current education reform programme.

BBGV believes that jobs in Vietnam are at risk from the 4th Industrial Revolution, strengthened technical and vocational training is required to address social and economic needs. There is a demand for on-the-job learning services, especially in business, management and other sectors



such as logistics and IT. This in turn requires more teachers/trainers who can deliver international training programs to enhance skills and be certified internationally.

## **2. Agricultural Products**

Trade in agricultural products remains a point of concern for many UK companies.

In the export of agricultural product from Vietnam TO EU countries including the UK, the EU country accepts the Vietnamese issued Phytosanitary certificate. However, in the export of agricultural product FROM EU countries to Vietnam, the EU country is required to issue a Phytosanitary Certificate. The product may then remain in customs incurring storage charges until a VIETNAMESE phytosanitary certificate is issued with the associated waiting time and cost.

To import a food product from an EU country into Vietnam it is necessary to apply for a licence. This process can take several weeks and require expensive laboratory testing of a sample of the product. This licence covers only one form of the product, so each different form of packaging needs a separate licence for the same product and is specific to a named producer.

This process is not required in EU countries in the issuing of an import licence for a Vietnamese food product.

This process presents a barrier to trade and makes importation to Vietnam slow, costly and bureaucratic whilst Vietnamese exporters do not face the similar barriers

## **3. Energy**

BBGV is pleased to acknowledge the continued strong growth of the Vietnamese economy, however a weak grid infrastructure coupled with the demand for electricity growing at 12%, businesses potentially face a major energy challenge. The current Power Development Plan foresees the proportion of energy from coal growing from 49% in 2020 to 53.2% in 2030. This will add to the pollution issue faced in the major cities. Vietnam offers a good potential for renewables energy alternatives but must consider incentives for energy efficiency and private sector investment.

Investors are concerned about Vietnam's low Feed-in-Tariffs and the bankability of the Power Purchase Agreements. Developers can only sell to the state-owned monopoly power provider EVN (Vietnam Electricity) which receives no sovereign guarantees from the Vietnam Government.

To unlock renewable energy projects Vietnam needs power pricing reform, good market regulation and more access for the private sector for blended finance products. BBGV supports a move to electricity pricing model that is based on a market pricing system. This would also encourage more private investors to enter the renewables market. A refresh of the pipeline of solar projects awaiting government approval and more ambitious revisions to the Power Development Plan would also. As well as considering pricing, encouragement and focus also needs to be given to simulate energy efficiency.

UK companies are keen to work with Vietnamese partners and to invest in Vietnam at the recent Low Carbon Energy Conference in Hanoi over 30 UK renewable energy companies met with Vietnamese public and private energy sector representatives.

We thank you for allowing us to present our views and issues and wish you all good health and prosperity.



## **SPEECH OF EUROPEAN CHAMBER OF COMMERCE IN VIETNAM AT MIDTERM VIETNAM BUSINESS FORUM 2019**

*Presented by  
Mr. Tomaso Andreatta  
Vice Chairman*

Honourable Prime Minister Nguyen Xuan Phuc, Ministers and Government Officials, Ambassadors, colleagues of the Chambers of Commerce, Ladies and Gentlemen,

We observe and applaud the fact that the Government of Vietnam has been active in engaging European counterparts to complete the approval process of the EVFTA, a key treaty that will boost trade and investment with the friendly common market of Europe. With the EU Parliament elections over, we expect discussion and approval to be on the agenda before the end of the year.

The more than one thousand members of our Chamber have recently re-confirmed their positive expectation for the continued growth of trade and of the economy in Vietnam in our quarterly Business Climate Index.

However, international companies, and those from Europe in particular, are still worried about some regulatory issues. These include **lot-by-lot homologation** in the automotive industry, **parts certification and import duties**, **respect of IPR for motorcycles**, **compulsory Social Insurance** for foreign workers - especially without a corresponding policy to allow them to become long-term residents of Vietnam - the **inconsistencies of regulations** and their application for innovative pharmaceutical and medical products and devices, for example, on **the permissible legal entity for pharmaceutical companies and product registration or medical devices VAT**, **customs valuation**, **clearance processes**, **HS Codes** and **On-the-Spot Manufacturing**, **tax inspections**, and **VAT refunds**. If addressed, these issues would further **improve the trade and investment environment** in Vietnam, **increase foreign direct investment** and make the country an even more **attractive place in which to do business**.

EuroCham's Logistics companies recommend realising **intramodality of transport**, rather than a preponderant reliance on roads. Meanwhile, tourism companies are very concerned with the **preservation of the cultural and natural heritage** and valorization of the interaction between tourists and local population. They suggest extending the extremely successful visa exemption scheme to all countries of the EU. Finally, our Wine and Spirits importers, who face many challenges, believe that fighting smuggling and forgery more effectively will improve the health of the population and tax income.

Many people in Vietnam welcome current trade tensions across the Pacific as an opportunity to attract more FDI and boost exports. The fact that so much of Vietnam's economic strength is already derived from FDI and exports makes the country vulnerable to world trade cycles. So, a cold taken by larger economies becomes a serious flu for our own. Furthermore, if global trade becomes further affected by bilateral balances and negotiations, it would be forward-looking to keep Vietnam clear of any doubt of being a country prone to protectionism.

In this context, EuroCham agrees with the World Bank that further reforms to enhance productivity are necessary for Vietnam to make its domestic market fly and continue to attract FDI. Firstly, financial markets and banks' equity need to be strengthened. Secondly, thanks to the welcome reception of Basel II rules and new laws on M&A, competition and bankruptcy have to be approved to support corporate growth especially for SMEs, which need to become more sustainable, larger, companies.

This year, EuroCham singles out the environment and sustainability as pressing themes for the long-term success of Vietnam. Vietnam has finally been successful in the first phase of allowing private investors to provide solar and eolic energy. However, the regulations - which are now much improved compared to last year - still miss the final touch of allowing experienced international operators to bring their expertise and resources to Vietnam. MOIT and the regulators have to work out strategies to deal fairly with the potential oversupply to the existing grid, working out rules for not harming suppliers when temporarily curtailing buying while speeding up a boost to capacity.

After the first pilot period, during which the Prime Minister announced the roadmap for electricity prices, a new interval needs to be defined. Everyone would welcome a longer period to be covered, so that the necessary adjustments to expected consumption can be made.

We understand concerns about inflation deriving from the price of public services. But the type of inflation that hurts the economy is one which is unexpected, not one which is planned.

The first electric vehicles have made their appearance in Vietnam. Developing the market requires a network effect of many players populating the space, so that the indispensable investments in recharging infrastructure can be made. To achieve this, not only should vehicles produced and assembled locally be welcome, but also those which are fully imported, for which a complete regulation needs to be promulgated and taxes and tariffs waived, in the interest of a cleaner, less noisy and more advanced Vietnam.

On 9 June, the Prime Minister launched a campaign to deal with plastic waste. This was a very timely event in the year in which most companies, both local and international who are producing plastics or selling it as packaging, are starting to commit money and resources towards the circular economy of zero waste. This includes an ever-increasing percentage of recycled, high-grade products and the reduction of single-use objects, coupled with real compostable plastics that rapidly dissolve into their components and not into microplastics.

We only mention here water and solid waste management and energy efficiency in both buildings and factories as other pillars of for sustainable action.

The Law on PPP was just circulated for comments, and EuroCham has submitted 109 improvements. What is important is not only to get this crucial law right this time, but to build a permanent relationship of trust and clear rules between the Government of Vietnam and the companies and markets. Infrastructure is a long-term business and one which not only need good, transparent and rapid decision-making mechanisms for a project to start, but also one where unexpected behavior changes in either the State or the corporate partner can have dire consequences.

Two strong legacies of the past need to be surpassed if PPP is ever to work at scale in Vietnam: It has to be clear that PPP projects are hybrid and not Government projects, so they are mostly

subject to normal legislation, and the concept that what is not regulated cannot exist does reduce the scope for the imagination of companies to resolve problems, so it needs to be mitigated. As Vietnam grows, the State's role has to be increasingly one which shows the direction and facilitates and monitors the good behaviors of all agents rather than doing most of the work directly.

Vietnam needs to keep ahead of changes in competition, and to adapt its competitive advantage to the new world of more technology, mobility and knowledge. For example, it should fully embrace that fact that, as a middle-income country with fast-growing salaries, families can now pay for services that just a few years ago had to be provided by the State at little or no cost.

EuroCham's member companies have already chosen Vietnam as their home and intend to expand their business here as much as possible. We are living proof of the attractiveness of Vietnam today. The Government can do a lot to make the country even more attractive in a wise balance of clear direction, simple rules and openness to the markets.

I wish you all health, happiness and success.



## **POSITION PAPER OF EUROPEAN CHAMBER OF COMMERCE IN VIETNAM AT MIDTERM VIETNAM BUSINESS FORUM 2019**

*Prepared by  
Eurocham*

Honourable H. E. Prime Minister Nguyen Xuan Phuc, Ministers and Government Officials, Country Directors of the World Bank and IFC, Ambassadors, colleagues of the Chambers of Commerce, Ladies and Gentlemen.

EuroCham appreciates the strong support and positive initiatives that the Vietnamese Government has made to improve the business environment and to increase Vietnamese companies' competitiveness, listening to chambers and businesses. We are happy to know that the Vietnamese Government in general and the MPI in particular is creating more favourable conditions to promote business and investment activities. We are eager to see that some unnecessary, unclear business conditions will be further removed, simplified by Quarter III, 2019 as under Resolution 02/NQ-CP. We are committed to work Government and all Ministries to support in building up the National Strategy for attracting FDIs in the upcoming time.

As trade remains our key interest, EuroCham continues to support the upcoming ratification, final approval and implementation of the EU-Vietnam Free Trade Agreement (EVFTA) to advance Vietnam's position to the globalised level. The EVFTA will open markets, increase trade and make Vietnam a more attractive investment destination for European companies in South East Asia. Vietnam has positive signs to become a trade and investment hub in the region, well-placed to attract EU FDIs. Looking long-term, EVFTA increases of trade and investments on win-win basis and also improves environmental and social standards. It will benefit not just businesses and consumers, but also Vietnamese citizens in terms of the welfare, wages and standards, thus, making Vietnam's investments more sustainable. The following constructive recommendations aim to substantially enhance Vietnam's profile, making it one of the most attractive, competitive, efficient, and sustainable investment destinations for European businesses in ASEAN.

### **I. The importance of Green Growth, environment protection, standards and sustainability**

#### **1. Wastewater management**

The Ministry of Construction (MOC)'s target of over US\$10 billion of investments for water supply and drainage by 2020 is very ambitious but also challenging to reach in such a short time without accelerating investment from the private sector. However, clean water and wastewater treatment prices are too low for private investors to build financially viable businesses. Besides, confusion exists on the local level with regard to implementing apparently conflicting regulations on whether wastewater treatment fees and/or environmental protection fees are to be collected. In addition, Chapter 19 of Vietnam's new Criminal Code 12/2017/QH14 does have sanctions for environmental violations, however, they cannot be an effective deterrent if are not enforced in practice or if the fines are too low compared to the cost of implementing effective wastewater treatment measures.

The potential gains from investment of the private sector are not just environmental. Given the right policy incentives and the coordinated implementation of reasonable regulations, Vietnam could build a **sustainable water industry**. Donors and multilaterals have been willing to support Vietnam in terms of financing, technical support and capacity building. These measures will not continue forever, and Vietnam is at a crossroads: the country now needs to decide whether it is willing to adopt these recommendations or face continue to face environmental degradation.

**Recommendation:** We recommend creating a task force for effectively enforcing current wastewater treatment standards; coordinating the implementation of wastewater treatment and environmental protection fee regulations to remove uncertainties; focusing on industrial parks that dump untreated wastewater into the environment and implementing measures to seriously sanction offenders to deter others; moving towards a demand-driven pricing model for wastewater treatment; and providing sustainable conditions for investments in water SOEs.

## 2. Waste management

In Vietnam, most waste is still dumped into landfills without classification nor further processing. The lack of coordinated supervision of waste treatment can cause massive environmental and socio-economic disasters affecting the livelihood of millions of people. Unsanitary landfills not only cause environmental hazards and infuriate local residents, but also waste valuable materials that could be recycled and used for power generation. Multinational corporations are setting their own recycling and renewable energy goals and require a supportive regulatory framework to do so.

Vietnam has had a regulatory framework for power generation from solid waste, known as Waste-to-Energy (WTE) since 2014. **A clear, enforceable guidelines and timelines should be provided** for the approval of WTE projects and their implementation should be accelerated.

Vietnam does have a tax on plastic bags, but it is not very efficiently implemented. The Prime Minister's Decisions and guidelines on reducing plastic bags could be expanded to single-use plastic straws, cups, packaging, utensils, bottles, and other non-biodegradable plastic products. Prime Minister's Decisions should be implemented as promulgated. True reasons for non-compliance with current environmental regulations concerning waste treatment should be clarified.

**Recommendation:** We also recommend that classification of domestic wastes at household level should be implemented thoroughly in both national and local level and to separate disposal of different materials avoids contamination and reduces the manual sorting out to a minimum. It is also important to provide a conducive business environment for compliant waste management businesses. Conducting business in the waste treatment sector in compliance with the relevant laws must be properly rewarded and incentivized, while strict enforcement of punishments should be applied on cases infringing waste and water treatment regulations.

We suggest an integrated vision for all companies involved in business to move towards a more streamlined, trained and professional industry that generated enough reusable materials for new entrepreneurs to open recycling factories that today do not exist in Vietnam.

The most immediate has to do with is the way the waste is disposed of. Raising awareness about responsibilities and best course of action need to be prioritised. Households, organizations that use resources, and the companies serving them, have to fundamentally change the way they look at disposing of things they do not need any more, be it packaging removed from something to be

used or the object itself. The aim should be that all we discard is not thrown back into the environment as is but it is reused as much as possible, transformed into something else including eventually energy, treated to have the least impact on the sustainable environment.

### **3. Sustainable and green buildings**

Buildings are, and will remain, among the largest consumers of electricity. Proper building design can reduce this impact for the next 25 years of a building's lifetime. However, the development even of passive green buildings. However, the development of green buildings is still in its infancy in Vietnam; just around 40 buildings have certification, the majority of these being in the industrial sector.

**Recommendation:** We recommend that, for the greater transparency on the timing of the introduction of market-based pricing for electricity and the removal of subsidies, the Ministry of Industry and Trade should publish a **Roadmap to Retail**

**Electricity Tariffs for Commercial and Industrial** power consumers, indicating the likely inflation in electricity tariffs for building owners to 2020 and 2025.

The Government and local authorities should provide effective encouragement for building owners to certify their buildings. In addition to international green building certifications already being used in Vietnam, the Vietnam Green Building Council has developed the LOTUS certificate. We support a move to recognise multiple systems for use in Vietnam, letting the market determine which are practical and useful.

The use of non-fired bricks should also be enforced and promoted through the Vietnamese Association of Building Materials. Buildings should be made more energy efficient. Making buildings more energy efficient does not necessarily imply higher investment costs. Integrating energy-efficient devices, ideally already from during construction, but also as retrofit, will complete the transition and have a durable impact on the sustainability. We encourage all buildings to achieve the minimum standards of the Vietnam Energy Efficiency Building Code (VEEBC), published in 2013 by the Ministry of Construction (or a simplified version) in order to receive the Building License at Basic Design Stage.

## **II. Sustainable Food chain, Agriculture and farming**

### **1. Nutritional Food Group's recommendations on goods labelling**

Recently the Directorate of Standard, Measurement and Quality, Ministry of Science & Technique released Draft 3 of the Circular providing details of a number of articles in Decree 43/2017/ND-CP dated 14 July 2017. We appreciate detailed instructions in the Draft which facilitate trading activities; such as the instruction that containers contained bulk goods in non-assembly or liquid form are not commercial packages; hence they are not required labelling.

However, we are very concerning about Article 8.1 of this Draft Circular that it proposes a new requirement "*The absence or non-addition or one or several ingredients must not be displayed on the label...*" which contains following issues as this new requirement is not contained in Decree 43/2017/ND-CP. It is incompatible with the Law on Promulgation of Legal Documents when the guiding circular proposes new requirements which are not set in the Decree.

Moreover, it is inconsistent with international Codex standard on nutrition labelling CAC/GL 23-1997. As such, Codex only has guidelines for "Non-addition of sugars" and "non-addition of salt",

with different criteria when compared to Article 8, whereas Article 8 has different requirements to Codex and expands them to all ingredients of the product.

This new proposed requirement is a commercial barrier for production and trading, and pushing Vietnam away from international harmonization, example products which complied with Codex standards and have labelled "Non-addition of sugars" may not be imported into Vietnam due to Article 8; and similarly, "no sugar added" fresh milk products of many dairy companies (including Vietnamese companies) will have to change the label to be continued for sale. If this is applied, many products which the labels had changed in 2017 to comply with Decree 43, but need to change the label again in 2019 to comply with the Circular, which will create big and unnecessary cost.

**Recommendation:** We recommend The Directorate of Standard, Measurement and Quality - Ministry of Science & Technique remove this new requirement in Article 8.1 of the Draft Circular, or follow exactly Codex requirements in CAC/GL 23-1997.

## **2. Food and Agri-Aqua Sector Committee**

The outbreak of African swine fever (ASF)

Since the Ministry of Agriculture and Rural Development (MARD) confirmed the ASF outbreaks on 19 February 2019, it has become national and more than 2 million pigs were culled. The disease's complexity and the virus resistance made it hard to take control. So far, this disease has no vaccine and no treatment, so the only way to stop it is to cull affected or exposed animals.

EuroCham and FAABS are very concerned about the continuous spreading of the ASF virus across Vietnam. Even though this virus could not be transmitted to human body and harmless to us, it's fatal to pigs and has a significant impact on Vietnam's meat consumption and supply. At macro level, this outbreak will have huge consequences on the meat market and the livelihood of Vietnamese farmers.

**Recommendation:** We encourage the Government, the MARD, local authorities and all stakeholders to work together with our business community to raise and enhance awareness, put strict biosecurity measures in place and take all possible measures to solve the situation including a fallowing period.

## **3. Croplife Vietnam**

**Agriculture - Plant Science:** In order to ensure the competitiveness of Vietnamese farmers and the future investment in Agricultural innovation, we recommend to export support in partnership with trading partners, provide information and knowledge on crop protection to local authorities and farmers to ensure high value crops have the highest quality standards, and meet maximum residue limits (MRL) requirements for export abroad.

**Recommendation:** Crop protection tools are properly assessed through a consistent, scientifically rigorous process in line with internationally accepted methods and standards. Such assessments need to be conducted by scientific experts and a suitable timeline should apply to allow for a thorough review.

Vietnamese farmers should be encouraged to have access to safe crop protection products supported by high quality training and education. This will ensure that farmers continue to produce safe, affordable and nutritious food for the community and export.



Vietnam should also strengthen collaboration to develop appropriate solutions for a science-based, predictable regulatory framework on genetically modified technology which will help Vietnam achieve its development goals and improve farmer incomes.

### **III. Development of Sustainable Tourism in Vietnam**

#### **Visa policy**

In order to maximize Vietnam's tourism potential, we would like to recommend the Government to review visa policies, including: Expand the list of visa-exempt countries to include all those with whom Vietnam has FTAs, including all EU countries, significant trading or investment partners and targeted inbound tourism markets; Extend the period of recently announced visa exemptions and new exemptions from a 1-year period to a 5-year period; Extend the visa exemption period from 15 to 30 days; as well as allow transit visas to be issued on arrival for up to 72 hours for passengers with connecting flights.. This will enhance the competitiveness of Vietnam's tourism sector by enabling travelers to visit for long enough to discover Vietnam's culture and natural beauty.

### **IV. Healthcare and promoting quality and innovation**

#### **1. Pharma Group**

Pharma Group (PG) represents the voice of the innovative pharmaceutical industry in Vietnam. PG and our 23 members all share the same mission: To ensure Vietnamese patients have fast and sustainable access to safe, high quality and innovative medicines. PG strongly appreciates the ongoing dialogue with the Ministry of Health (MOH), in particular during the recent development of key legislation in the pharmaceutical sector. We applaud MOH's efforts in drafting regulations that enhance patient access.

We believe in Vietnam's potential to become ASEAN hub for innovative pharmaceutical sector (including manufacturing, export and quality healthcare provision). Vietnam is attractive in many ways (local market appealing to absorb investment, political stability, educated workforce, geographical strategic location, gateway to the ASEAN market). It is clear that Vietnam aspire to move focus from manufacturing to innovation, Research & Development, Services and Digital healthcare.

Healthcare is one of the most important field driving research and innovation. Research and development (R&D) pharmaceutical companies (innovative pharmaceutical sector) will be a key driver because we invest at least 10% of our global revenue on R&D activities. Such transformation is both challenging yet can provide great opportunities for the public and private sector to work together. Vietnam is well positioned to climb the value chain in life-sciences ahead of several other ASEAN countries, and the time to consider the value this can bring to Vietnam is now.

#### **a. Legal entity: Enabler for companies' long-term operations in Vietnam**

Innovative pharmaceutical companies remain interested in the opportunity to establish Foreign Invested Enterprises ("FIE") legal entities, to further invest and become long-term partners in Vietnam. We sincerely thank the Government, MOH and relevant Ministries for your attention and support to companies, as they continue the discussions with authorities on their specific operating models and transition.

Noting that companies are having specific discussion on company specific plans with the government, PG is committed to further support the innovative industry based on the principle of legal clarity, predictability as well enabling the fulfillment of obligations on safety, quality and pharmacovigilance.

**Recommendations:** In order to facilitate the smooth establishment of FIEs while ensuring continued safety and quality of medicines, the attention and support from Government, MOH and relevant Ministries is needed.

#### **b. Registration Circular (CPP)**

We applaud the recent issuance of the Circular guiding registration of pharmaceuticals in Vietnam (Circular 32/2018), which is expected to accelerate patient access to high quality medicines. The Registration Circular is expected also to strengthen control to combat issues on counterfeit and sub-standard medicines, as well as fake registration dossiers. PG shares and fully support the MOH's objective to ensure quality and traceability of medicines.

In order to fully enable this, we believe that further dialogue is needed on the new requirements for Certificate of Pharmaceutical Product (CPP) which could bring significant impact to patient access and add administrative burden.

#### **Recommendations:**

- As a first step, a regulator-to-regulator dialogue between stringent regulatory authorities and Vietnam MOH is strongly sought after, in order to obtain official feedback on the feasibility of Vietnam's new CPP requirements.
- Technical discussions between MOH and the industry (innovative and generics) to find the best solution to achieve Quality and Traceability objectives.

#### **c. Value of Innovation report**

The innovative pharmaceutical industry believes in Vietnam's potential to develop its life science sector, and become a leading quality and innovative healthcare hub in ASEAN.

In order to support this vision, we invite all interested stakeholders to join Pharma Group in developing a Report that aims to clarify the societal, and economical value that the innovative pharmaceutical industry can bring to Vietnam. We believe this is a key starting point to support Government-Industry dialogues on strategies towards sustainable healthcare financing and innovative life science sector development, for a healthy and prosperous Vietnam.

## **2. Medical Devices and Diagnostics**

### **a. Medical device socialisation and machine installation model in hospitals**

The socialisation of medical devices is a major national policy in Vietnam. It aims to create more resources to share with the State budget and help hospitals with modern machines to improve the examination and treatment that patients receive. According to Vietnam Social Security (VSS)<sup>1</sup>, more than 3,420 machines have been installed in 59 provinces and cities in the country in various forms of medical device socialisation. The introduction of machines in operations has helped hospitals to improve the efficiency of diagnosis, treatment. Meanwhile, some new medical techniques have helped Vietnam to reach the same level as other countries in the region.

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<sup>1</sup> "Many model of socialisation for Medical devices", *VTV news*, 17 June 2018, available at <<https://vtv.vn/trong-nuoc/nhieu-hinh-thuc-xa-hoi-hoa-trang-thiet-bi-y-te-20180617113652741.htm>> last accessed on 17 February 2019

We welcome the Vietnamese Government raising the issue of medical socialisation and machine installation model in hospitals in the meeting with representatives of the Ministries and agencies of Health (MOH), Finance (MOF), Planning and Investment (MPI), Government Office (OOG), Vietnam Social Security (VSS), Justice (MOJ) and Home Affairs (MOHA) on the 19<sup>th</sup> of April 2018 and proposing that policies should be developed to ensure medical socialisation has a legal basis for implementation. This will ensure transparency, publicity and harmony of interests between medical examination and treatment establishments, patients and health insurance funds.

EuroCham Medical and Diagnostic Device companies have received a lot of feedback from their domestic partners about the incoherence of policies for the machine installation model in public hospitals among management agencies including the MOH, MOF and VSS. We are very concerned by the potential risk of delayed diagnostic tests and treatment, especially those which are urgent and vital to patients, i.e. hemodialysis, sample collection, and surgery. Along with the risk, health establishments would lose the opportunities for technology transfer from developed countries. Moreover, both the Government and health establishments would face increased capital expenditure and financial burden when investing in and purchasing medical devices. From a business perspective, this issue causes difficulties in the management and maintenance of medical devices which have been and will be installed in health establishments.

**Recommendation:** We respectfully suggest the Government and competent authorities to examine the public-private model for the healthcare sector and provide diverse and feasible socialisation models; to issue as soon as possible official documents of consistent policy from relevant Ministries (MOH, MOF, and VSS) regarding the model of placing equipment in public health establishments, to create an open and transparent legal framework and to provide more trainings for other relevant Ministries to enhance the policy and compliance with the regulations.

## **b. Regulations on value-added tax for imported medical devices**

Imported medical devices play an important role in Vietnam's health sector. In 2016, investments in medical devices in Vietnam totalled US\$ 950 million. In 2017, this figure increased to US\$ 1.1 billion. The growth of investment in medical devices has averaged 18% a year for the last 5 years.<sup>2</sup> In particular, 90% of medical devices have been imported from foreign countries to meet medical examination and treatment needs of hospitals, of which public hospitals account for 70% of the market share.<sup>3</sup>

However, recently, the import of medical devices has encountered a number of policy barriers, which has had a considerable impact on the operation of the sector, including the issue of applying Value Added Tax (VAT) to imported medical devices. According to Article 1.8 of Circular 26<sup>4</sup> medical devices are entitled to a VAT rate of 5%. Accordingly, medical equipment and devices and specialised medical supplies under MOH's certification are entitled to this tax rate.

Decree 36<sup>5</sup> provides that goods or products which meet the requirements as specified in Article 2 and are classified into one of the four types (A, B, C or D) by medical device classification organisations are considered medical equipment. After being granted circulation registration

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<sup>2</sup> "Foreign enterprises dominate the medical devices market", *VnExpress*, 26 July 2018, available at <<https://vnexpress.net/kinh-doanh/doanh-nghiep-ngoai-chiem-linh-thi-truong-thiet-bi-y-te-3782917.html>> last accessed on 17 February 2019.

<sup>3</sup> 'The medical devices market is over 1.1 billion USD with 90% from imports', *Saigon Times*, 27 July 2018, available at <<https://www.thesaigontimes.vn/275877/thi-truong-thiet-bi-y-te-hon-11-ti-do-la-nhung-nhap-khau-tren-90.html>> last accessed on 17 February 2019.

<sup>4</sup> Circular 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance providing guidance on value added tax

<sup>5</sup> Decree 36/2016/ND-CP dated 15 May 2016 of the Government on management of medical devices

numbers, medical equipment traders have the right to import medical equipment without restriction on the number of times of import and quantity of imported items and do not have to request MOH to grant import licenses or certify that such products or goods are medical equipment.

However, at present, the Customs authorities take the basis of Circular 26 to require imported medical equipment to be certified by the Ministry of Health so that enterprises can enjoy the VAT rate of 5%. The reason is that the Customs authorities have no basis for applying Decree 36 and guiding documents to apply VAT rate of 5% to specialised medical devices and equipment. The inconsistency in the implementation of legal regulations related to the import of medical equipment, especially the issue of VAT rate for these items, has caused great difficulties for importers as well as public hospitals over the last few months. Currently, importers are paying a VAT rate of 10% on imported items which, are defined as medical equipment under Decree 36 and should enjoy 5% VAT rate.

**Recommendation:** We respectfully recommend the Government to ensure consistency in the management of imported medical devices among related Ministries and sectors; the consistency in the application of the VAT rate of 5% to imported medical equipment, and to promulgate documents guiding the application of VAT rates to imported medical equipment in the shortest time.

## **V. Information and Communication**

### **1. Development of Industry 4.0 and 5G networks**

The decision of the Government to embrace the Fourth Industrial Revolution (Industry 4.0) is a true ‘win-win’ for both Vietnam and European enterprises. EuroCham and ICT Sector Committee are dedicated to working with and supporting the Government to achieve its ambitious and progressive modernisation agenda. In order to become even more productive and competitive within the region, the Government should accelerate the digitalisation of Vietnam’s economy, and further adopt ICT applications in production as well as in other industries. To start with 4.0 adaptation, Government can work together with Industries to start implementation with Scalable solutions like, operations management, predictive maintenance, Inventory optimization, energy efficiency, traceability.

Moreover, 4G and 5G IoT (Internet of Things) network infrastructure will ensure that smart cities are sustainable innovative, secure cities and safe cities. According to Mr. Nguyen Duc Trung, Director of the Telecommunications Department under Minister of Information and Communications, Vietnam’s 5G plan is divided into three phases: testing in 2019, frequency band planning in 2019-2020 and commercial licensing in 2020.<sup>6</sup> We welcomed the pilot of the first call using 5G technology which took place in mid-May 2019,<sup>7</sup> and would like to continue focusing on strategically partnering with mobile operators in Vietnam to continue building the 4G networks as well as 5G rollouts in 2020 onwards and improving the benefits of Industry 4.0.

Finally, the Government should also continue to roll out positive initiatives such as E-Government, digital economy and digital society, streamlining and modernising administrative processes for businesses and citizens.

### **2. ICT development in education and training**

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<sup>6</sup> <http://vneconomy.vn/mo-hinh-nao-cho-phat-trien-5g-tai-viet-nam-20190329091705061.htm>

<sup>7</sup> <http://vneconomicstimes.com:8081/article/society/first-5g-call-made>

While there is a huge demand for IT workers, and while companies often offer high salaries for IT positions, many universities and colleges struggle to enroll enough students in their IT courses.<sup>8</sup> On top of this, Vietnam does not have a standardised IT education skills set or curriculum, based on international criteria to meet the requirements of local and foreign technology companies in compliance with Prime Minister's Decision 1755 on objectives set out to develop the ICT industry.

**Recommendation:** We recommend the Government to cooperate with high-performing foreign universities and industry associations, to create an international, relevant IT curriculum, develop a national standard technical skills exam for the IT industry, and design a minimum IT qualification course. It will enhance soft skills, strengthen English communication and build a results-oriented mind-set for the labour resource to bring practical value and technical knowledge to enterprises.

The Ministries of Information and Communication (MIC), Education and Training (MOET) and Labour, Invalids and Social Affairs (MOLISA), should require students from IT universities and specialised IT vocational training institutions to complete a practical internship. This should be carried out at any IT company of their choice for a period of between 6 and 12 months, as part of their curriculum. A longer mandatory internship at IT companies would allow students to acquire sufficient first-hand, practical experience and apply their technical and soft skills in an international environment. Simultaneously, IT companies would have the chance to identify and recruit talent for future vacancies and therefore potentially reduce overhead costs that would stem from training new employees. Universities should collaborate closely with the ICT sector to understand technological trends and the practical demands of jobs in the industry for students after graduation. IT training should reflect the reality of the industry, and should reflect the fact that there are 23 specialised IT occupations in the sector rather than only software engineers and IT helpdesk technicians.

## **VI. Enhancing the human resource management policies and increasing trainings**

### **1. Inconsistencies between tax and labour laws: Foreigners' Participation in Social Insurance**

According to Decree 11/2016/ND-CP, intra-corporate transfer is an acceptable form for the foreigners working in Vietnam. However, many tax authorities do not accept assignment letters and insist that the local entities must sign labour contracts with the foreigners in order for the relevant employment costs to be deductible for CIT purpose. As a consequence of the labour contracts, the foreigners might be subject to compulsory health and social insurances in Vietnam which is costly for both employees and employers.

The current regulations only recognize the transfer from the parent company (i.e. the investor in the registration certificate) to its subsidiary in Vietnam as internal transfer. However, as an international practice, the employees are usually mobilized globally to the affiliate companies all over the world to utilize the group's human resources, depending on the needs of business operation.

As the transfer of an employee from the affiliate company (other than the parent company) is being not considered as internal transfer, thus, the labour contract is required to be signed between that employee and the Vietnam-based entity. Following to the labour contract, the company is exposed to the risk of not only compulsory insurance expenses but also foreign

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<sup>8</sup> <https://english.thesaigontimes.vn/55538/Vietnam-faces-severe-shortage-of-IT-manpower.html>

contract tax if a portion of the employee's salary is paid directly by the affiliate company then charged back to the Vietnam-based entity.

**Recommendation:** We highly recommend the amendment of the definition of “internal transfer” to remove the restriction of mobilization from the parent company to reflect its real nature and keep pace with the development of international labour markets and the amendment of the CIT regulations to recognized assignment letters, dispatch orders, etc. as a legitimate document to support for employment costs.

## **2. Education and Training**

Industry Revolution 4.0 is transforming the world of work and the skills required of Vietnamese workers. In order to empower workers with the necessary skills needed to support Vietnam's continued economic growth, local teachers must be developed and trained with modern and international teaching methods.

We highly recommend the government to collaborate with international private institutions offering international standard teacher training and professional development to enhance abilities of local teachers. Also we encourage dialogue between local educators and business to align education with employment needs.

## **VII. Rapid economic growth and mobility, infrastructure**

### **1. Mobility- Automotive industry**

#### **a. Import Duty (ID) scheme for CKD components**

Decree 125/2017/NĐ-CP provides a 5-year period from 2018 to 2022 zero-duty incentive scheme for auto components yet to be produced domestically with knockdown-level satisfaction only for manufacturers who meet specific requirements. To be eligible for the scheme, the total production volumes of the product group and the specific committed model must be at least as high as the regulated targets. However, most automakers in Vietnam are not eligible for this scheme.

**Recommendation:** We recommend that the ID should be designed in a fair and non-discriminatory way to all automakers investing in Vietnam, i.e. ID for CKD components which are not produced in Vietnam should be eliminated without condition regardless of their source. This would enhance the diversification of suppliers in the market, resulting in a sustainable development of the automotive manufacturing industry.

#### **b. Homologation requirements for business**

##### **Homologation for imported CBU**

Vietnam **Ministry of Transport** did not answer the numerous automotive technical barriers to trade issues raised at the last Vietnam Business Forum. To the contrary the latest draft Circular on quality inspection over technical safety and environmental protection in the production and assembly of automobiles subject to regulations under Decree No. 116/2017/ND-CP that Vietnam notified to WTO demonstrates the continued implementation of technical restrictions to trade. Because international trade in the context of FTA is bilateral worldwide, we ask the Ministry of Transport (MOT) to have the courtesy to reply officially onto VBF automotive issues raised this time. The homologation process for CBU creates costly, lengthy and unnecessary safety-wise

obstacles to trade. This point was re-emphasized to Vietnam authorities at the 1<sup>st</sup> meeting of the EU-VN Joint Committee on May 10, 2019.

**Recommendation:** to resolve the above inadequacy, we expect the **Ministry of Transport** to amend Decree No. 116/2017/ND-CP by consider the automotive industry's request to rationalize CBU inspection procedures by following the direction of PM's decision No. 1254/QD-TTg dated 26 September, 2018 in which the inspection procedures have to ensure that their management is based on the measurement of the levels of risks to goods and the levels of compliance with laws at enterprises. As a result, only vehicles typical for each vehicle type in all shipments instead of each one must be inspected the first time only.

### **c. Certification of automotive safety parts**

Because the automotive industry appreciates all the positive adjustments of the Government to facilitate the trade activities, duplicate homologation is clearly not necessary for all those spare parts already built-in all CBU models homologated by Vietnam Register. Thus we repeat our request to either void Circular 41 or restrict it to spare parts not in CBU model homologated by Vietnam Register. We also recommend VR to accept ECE certificate for service parts and OEM confirmation for those service parts for vehicles no longer in production. Circular 41/2018/TT-BGTVT of Ministry of Transport effective since 15 September, 2018 enforcing Decree No. 74/2018/ND-CP stipulates that vehicles and safety parts (for production and service purposes) are to be certified and/or their technical regulation compatibility announced after customs clearance, but before being sold to the market. The procedure is applicable for both locally-produced and imported products. Circular 41 testing process is still unclear yet CBU importers must fulfill their legal obligation under Decree 116 to service repair and provide warranty to customers in Vietnam. Indeed, the whole shipment of imported spare parts when including Circular 41 related parts is on hold for no reason, generating further delay and costs for Vietnamese customers. In the meantime, repairs customers cannot wait for testing and homologation of each part to recover their vehicle. The temporary solution of allowing the importation of parts providing they commit to bind with future homologation and testing requirement is not a long term solution. Despite requesting official clarification from the Ministry of Transport, CBU importers run the increasing risk of being not compliant when testing and homologation get clarified retroactively.

Because we believe that duplicate homologation for the same parts brings no additional safety to the vehicles in Vietnam, it is not necessary for all spare parts already built-in all CBU models homologated by Vietnam Register, we strongly suggest to void or restrict Circular 41 to spare parts not in CBU model homologated by Vietnam Register.

**Recommendation:** to resolve the above inadequacy, we expect the Ministry of Transport to consider the amendment of Circular 41/2018/TT-BGTVT enforcing Decree 74/2018/ND-CP with detailed implementation guidance restricting Circular 41 to those spare parts not in the CBU model homologated by Vietnam Register.

### **d. Homologation for CKD components**

In implementation of Decree 116, the Ministry of Transport has published a draft regulation on homologation for CKD products and CKD components, in which tests are to be done in Vietnam and ECE test reports/certificate will no longer be accepted for test exemption. We concern that the homologation cost and lead time for parts provided with ECE certificates, which is a mandatory process for the whole vehicle certification, may increase.

Furthermore, the special testing samples required for glass (requiring a hole in the sample which part suppliers do not often provide) and high-technology headlamp (requiring a control module for switching on/off) are challenges for part testing.

Interruption of production is a potential risk if the published draft regulation is approved. It is a fact that the supply of parts can change during the production of a car model, and it takes around 6 months for part-certification from the point part samples are ordered for testing.

Decree 116 has come into effect for CKD manufacturing/assembling from 17 April, 2019. However, circular giving detailed implementation guidance has not yet been issued. In fact, some manufacturers have already actively applied for certification in compliance with requirement of Decree 116. According to the above mentioned Article 21 of the draft circular, those certificates even qualified with Decree 116 will be expired in 6 months upon issuance date of the circular despite the regulated validity of 3 years stated in Decree 116.

**Recommendation:** The Ministry of Transport needs to make a revision of Decree 116 that ECE certificates should be accepted for CKD parts. This is to avoid unnecessary cost and workload due to double tests/COP audits. Also, we would appreciate MOT to consider about the draft circular for CKD to accept 3-year validity for those certificates having qualified with requirement of the D116 and new circular.

#### **e. Electric vehicles in Vietnam**

Vietnam's middle-class is rising, urbanisation is increasing and people are switching from motorbikes to cars. With over 50 million motorbikes in the country already, electric vehicles have become a strategic solution to develop mobility in environmentally-friendly cities. Electric vehicles involve a complete chain of suppliers and associated services from power supply and distribution; charging stations and interfaces; and batteries including charging, recycling and disposal. By nature, electric vehicles are much more expensive to produce than petrol or Diesel-powered vehicles. Thus, tax incentives determine the viability and development of such businesses.

By 2025, petrol and Diesel vehicles are prohibited in Norway. France has drafted a similar law effective in 2040. The future of mobility in Vietnam will be electric too. The investment cost in infrastructure will be sizable but visibility today on upcoming electric standards and tax incentives, including the definition and the import tax rates for electric vehicles, are still unclear. Defining processes and standards for Electric Vehicles (EV) and Plug-in Hybrid Electric Vehicles (PHEV) will pave the way for future electric mobility in full confidence for Vietnamese customers and create a level playing field to ensure fair treatment of all technologies within the automotive market.

On a global level, the world is now currently split between a few competing charging plug standards differentiated by region. It is essential to align the charging plug standard with Singapore, Malaysia and even ASEAN wide to avoid different standards in different countries. In addition, an alignment of standards could increase export business from VN to other ASEAN countries (Intra-ASEAN FTA) and would additionally have a positive impact on FDI as well as employment. Advance preparation and planning are crucial in building an effective public charging infrastructure in Vietnam to bring access to mobility on a par with that enjoyed by conventional technologies.

**Recommendations:** The Ministry of Finance needs to clarify the fiscal definition and HS Codes for each car definition - Battery Electric Vehicles (BEV), Plug-in-Hybrid Electric Vehicle



(PHEV), Extended-Range Electric Vehicle (EREV) and Fuel Cell Vehicle (FCV) - which applies precisely to which. To reduce air and noise pollution by facilitating the EV transition in Vietnam megacities, the **Ministry of Finance** must reduce sizably the Import Tax and Special Consumption Tax rates for fully electric imported CBU and locally assembled CKD vehicles.

For a consistent national charging plug standard to benefit standardization and improve EV acceptance in Vietnam, the **Ministry of Transport** needs to designate one of the two major IEC32 implementations as the mandatory standard for Vietnam (IEC type 1 or IEC type 2) and involves automotive manufacturers and importers interested in contributing to further open and fair discussions regarding, define standard designs and guidelines for EV charging signs and parking lots are necessary to create an effective environment for EV adoption, define appropriate power infrastructure and charging stations to be installed in car parks, identify and incentivise EV-charging-ready eco-friendly buildings.

## **2. Mobility – Motorcycles**

### **a. Ban on motorcycle circulation in big cities by 2030**

There have been proposals to limit and ban motorcycles in big cities in Vietnam in the upcoming period, which is not an optimal approach to improve traffic congestion and pollution and reduce traffic accidents in big cities, and could create **significant difficulties and inconvenience for people in large urban areas**. The proposed ban may also cause significant **challenges to the motorcycle manufacturing industry** which has established long-term investment in Vietnam for both domestic and international markets and made a great contribution to the economic and social development of the country.

Local authorities need to consider more effective solutions to address the issues of traffic congestion, pollution and traffic accidents in big cities while taking into consideration peoples' needs in order to minimise disturbances to people's daily life and work and avoid negative economic consequences. One of the immediate actions which could improve the status is to focus on managing and banning out-of-date motorcycles which are the main cause of air pollution. Also, campaigns for educating and raising awareness of citizens about compliance with traffic regulation and safety should be deployed.

In the long-term, we recommend the authority to undertake research, refer to and adopt best practice from other motorized countries where advanced public transport and traffic infrastructure are used in harmony with motorcycles by implementing limited traffic zones.

### **b. Management of imported materials for export production**

The administrative procedure for raw materials import is complicated due to the requirement to distinguish the purposes for material, i.e, for production of exported goods (code E31) or for commercial purpose (code A12), for tax collection and tax refund purpose. As the production plans always have changes in actual deployment, it would lead to frequent changes in the usage purpose of raw materials.

It is difficult for enterprises in materials management at all stages to track by import sources. It is also difficult to meet the requirement to manage for the purposes of accounting each type of import and to declare in a timely manner the change in usage purpose and pay the required taxes for E31, which lead to a lot of risks. If the enterprise wants to avoid this risk, they must import all taxable A12 then request a tax refund, which leads to significant cash flow/workload/financial cost burdens.

**Recommendation:** We propose the Government considers revising the current customs rules in order to enable the simplification of the management process required for enterprises who import both E31 and A12. A custom declaration and reconciliation mechanism, feasible for implementation in complex production contexts, is needed. This is important to encourage exports and to align with recent Government policy on administration and tax procedure reform.

### **c. Intellectual property rights (IPR) protection**

There is a big concern that high-profile motorcycles manufactured by motorcycle companies are copied. There are companies are plainly trying to trade on the goodwill associated with the similar appearance of original products. In many cases, the manufacturer of copied products does not completely copy but make some minor decorative changes. This creates difficulties for IPR owners to protect their IPR rights as, currently in Vietnam, there is only one evaluation center, namely the Vietnam Intellectual Property Research Institution (VIPRI), to do the evaluation and define whether the copied products significantly differ from the original. This evaluation result is very important since it will be considered as evidence for bringing the claim to court. However, evaluation results of VIPRI are sometimes found unreasonable and it is hard for IPR owners to appeal. Without a positive result from the evaluation center, IPR owners seem not be able to protect and/or enforce their IPRs in Vietnam and, as such, the registration of IPRs seems to be meaningless.

**Recommendation:** We highly recommend that different and independent centers of evaluation of IP-infringing cases should be created, and other IP-relevant authorities should be authorized to have a stronger voice on IP issues. Also, a mechanism for IPR owners to appeal VIPRI's evaluation should be implemented, specialized tribunals on IP matters should be established, and cooperation should be enhanced between enforcement bodies and relevant agencies.

## **3. Transport and Logistics**

### **a. Infrastructure in Vietnam**

Vietnam has great potential and an ideal location to capitalise on further investments and improvements in logistics infrastructure to drive the country into a stronger competitive position as the new ASEAN transportation hub compliments.

With the issuance of the Directive 21/CT-TTg dated 18 July 2018 of the Prime Minister promoting the implementation of solutions to reduce logistics costs and effectively connect transport infrastructure and the Decision 708/QD-BCT of the Ministry of Industry and Trade on approving plans for improvement of Vietnam's Logistics Performance Index, the Government has shown the determination to improve Vietnam's logistics infrastructure. We would like to point out some key issues (as below) that need to be addressed urgently with further and focused investment:

- The operation and management of the express ways are still under-utilised, and not alleviating the issue of congestion on subsidiary/alternative routes. The supervision role of the Government is emphasised to ensure not only the effective allocation of resources, but also the safety and the sustainability of these constructions.
- The diversification of modes of transportation – such as inland waterways, railway and aviation – and their interconnectivity level are important to release the pressure on road transport. The correlation between transportation infrastructure planning and industrial

zones/distribution areas planning should be taken into consideration at the inter-ministerial level to ensure optimising the usage in the future.

- The implementation of high-tech solutions in transport infrastructure, such as blockchain, e-DO (electronic delivery order) for LCL shipments, e-Ports, e-tolls etc., should be considered in the long-term planning. In the short and mid-term, ideally until the end of 2019, the synchronisation process into the National Single Window and the ASEAN Single Window should be completed across all involved Ministries.

## **b. Creating and implementing consistent customs policies and procedures**

### **Customs valuation**

The shifting of the verification process from post-clearance to border Customs requires declarants to evidence their qualification for the Transaction-Value method with reference to accounting records at the border clearance point, which is unrealistic in general practice. Also, in many cases, the rejection of the border Customs to the declared customs value still lacks of clear explanation and/or evidence. This leads to the failure to have an open, and formally documented price negotiation process.

We recommend that the authority needs to stipulate types of documents to be presented in the price consultation process to support the use of transaction value. Furthermore, customs officials can only reject the declared value with supporting evidence which must be formally documented and shared with declarants.

### **HS Code classification**

Importers of finished goods into Vietnam are particularly impacted by changes to the HS codes that result in an increase in duty liabilities, especially when the retrospectively-applied charges (covering duties, late payment interest, and penalties) are often backdated 5 years. The differences in the classification opinions of Vietnam Customs compared to the HS codes stated on the Certificate of Origin (C/O) issued and accepted in the exporting country also has severe impact in the import process.

We recommend that Customs authority to publish on their official website all the legal reference sources of classification (issued within the last 5 years) and a search tool should be incorporated in the Classification Ruling database. If the Customs authority changes opinions on the HS code to be applied, such decision must be provided in writing with clear rationale and must not have retrospective effects.

Regarding the verification of C/O, we strongly recommend that HS code differences, regardless digit level, must not be the basis for C/O rejection, unless there is clear evidence that different goods are presented at import.

On a separate point, most shipping lines have difficulties in complying with Vietnam Customs' requirement for 8-digit HS Codes to be declared for scrap material import, as generally only 4-digit or 6-digit HS Code is used for such material. General trade practices / international standards, generally require only 4-digit or 6-digit HS Codes to be declared for such material. We recommend that Customs follows the industry standard (on which Eurocham on behalf of the members of the shipping line community shall be pleased to provide guidance) and only require a maximum of 6-digit HS codes to be declared

### **On-the-spot export manufacturing/processing**

It is recognised by both the Ministry of Finance (MOF) and General Department of Customs (GDC) that Decree 134 did not provide clear guidance on the customs duty treatment of goods when traded under the on-the-spot export-import model. We welcomed that MOF has included in

the revision of Decree 134 a proposal to the Government that import duty relief (or import duty refund) is permitted on materials/components imported under the on-the-spot export-import model. We request that when the new Decree is published, it is accompanied by a clear statement from the authority that such interpretation will apply to all exports made under the on-the-spot export-import model since September 2016.

## **VIII. Wines and Spirits**

### **1. Special Consumption Tax (SCT) Reform**

A transparent and predictable tax policy is crucial for business planning and sustainable development for every industry, including the Wine and Spirits (W&S) industry. The international W&S industry has been significantly impacted by the last reforms in 2016, which imposed high ad valorem tax rate on the importer's selling price. For example, the increase SCT from 50% based on CIF to 55% based on importers' selling price on spirits starting from 1 January 2016 could mean doubling the tax burden for some instance.

The W&S Sector Committee has noted the potential amendment to the SCT Law in the future, and also HCMC's consideration to exercise its autonomy to increase SCT. Without any clear proposal at the time, we would like to highlight the fact that the total tax on imported W&S in Vietnam is already very high in the region, and it is much higher than in the neighboring markets Cambodia and China. The further increase of the rate as a percentage of importer's selling price could increase risk of illicit activities and hence further tax revenue loss. The high price of tax paid products and the prevalence of sub-graded products in the marketplace could have negative impact to the hospitality and tourism industry as well as public health.

We recognize government's commitment to balance between the development needs, the impact on the business community and objective to support a sustainable economy. We appreciate this could be taken into account and we would recommend the government to take the opportunity to support formalization of the unrecorded alcohol market (roughly 75% of the total alcohol market in Vietnam). We would request for a reasonable public consultation period for the public and the relevant business sector to share concerns and make recommendations to any reform proposals. The W&S Sector Committee is prepared to engage with the Government, MOF and other relevant Ministries for an evidence-based dialogue to examine different options for an alcohol tax regime that address the fiscal and public health objectives.

### **2. EU-Vietnam Free Trade Agreement**

The European wine and spirits industry had been supportive of an ambitious FTA with Vietnam from the very beginning, as it expected to benefit from a mutual opening of markets once it is ratified and enforced. EU wine and spirits products will benefit from the phased elimination of tariff over a period of 7-year. This concession applied similarly for goods directly shipped from the EU or goods that stored and transshipped through third-party hub country as far as it satisfies the "Non-alteration" rules. The W&S Sector Committee would like to engage with relevant authorities earlier in the process of the drafting of legal documents for implementation, to share our concern and experience, to clarify the procedural and documentary requirements of the self-certification mechanism, and to ensure smooth enforcement from the date that EVFTA enter into force.

### **3. Draft Law on Prevention and Fighting against Harmful Effect of Liquor and Beer**

The W&S Sector Committee supports for the National Assembly to pass a progressive legislation drafted based on a thorough consultations process at both public and then National Assembly level. We believe that a fair, balanced and non-discriminatory regulatory regime will support effective enforcement, awareness building and help reducing harmful alcohol use across Vietnam, while protecting Government revenue, commercial freedoms, and economic activity. The W&S industry took note of the removal of e-commerce ban and replacement with conditions on e-commerce in latest version shared in the National Assembly Social Affairs Committee Consultative Workshops in HCMC on 24 April 2019. This is also echo with the international e-commerce trend and the government's policies promoting innovation and technology. The W&S Committee would continue to follow up on implementation. We believe the enforcement of a regulated W&S e-commerce environment would support better management of the W&S trading activities from various aspect, e.g. licensing, tax compliance, no sales to underage, etc.

## **IX. Tax policies and legal framework**

### **1. Personal Income Tax ("PIT") reduction for individuals working in Economic Zones**

Decree 82/2018/ND-CP dated 22 May 2018 of the Government<sup>9</sup> removes regulations on 50% PIT reduction for individuals working in economic zones. The removal of regulations on PIT reduction may lead to negative impacts on the individuals' net income and/or the enterprises' employment costs and net profits; difficulties for the enterprises located in economic zones to attract top talents; anxiety for current investors on the Government's investment protection and policy consistency as well as transparency; and confusion for potential investors on the Government's development policy on prioritized locations for investment attraction.

We strongly recommend amending and supplementing Decree 82 with regulations regarding PIT reduction for individuals working in economic zones to guarantee the benefits of the employees as well as the enterprises who have worked/invested in economic zones.

### **2. Value-Added Tax ("VAT") Refund**

For the specific nature of the enterprise's manufacturing activities, of which most of purchased input materials used for manufacturing such products of the enterprise are subject to tax rate of 10%, yet almost relevant output products sold are subject to tax rate of either 0% or 5%, the enterprise is always in the position of having input VAT not fully credited throughout months in the year due to differences between input tax rate and output ones as above.

Therefore, with such regulations as stipulated in the above Circular 130/2016/TT-BTC<sup>10</sup> ("Circular 130") and Circular 25/2018/TT-BTC<sup>11</sup> ("Circular 25"), if the Company is not entitled to refund of creditable input VAT corresponding to domestic sales of goods, it will tremendously impact to the Company's cash flow, leading to low efficiency of capital utilization, and causing great damage to the Company's manufacturing and business activities.

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<sup>9</sup> Decree 82/2018/ND-CP dated 22 May 2018 of the Government on Management of Industrial Parks and Economic Zones

<sup>10</sup> Circular 130/2016/TT-BTC of Ministry of Finance, dated 12 August 2016, on guidance on Decree No. 100/2016/NĐ-CP dated July 1, 2016 of the Government providing detailed guidance on the Law amending and supplementing some articles of the Law on Value Added Tax, Law on Excise Tax and Law on Tax Administration.

<sup>11</sup> Circular 25/2018/TT-BTC of Ministry of Finance, dated 16 March 2018, on Guidelines for the Government's Decree No. 146/2017/ND-CP and amendments to some Articles of the Circular No. 78/2014/TT-BTC of the Ministry of Finance and Circular No. 111/2013/TT-BTC of the Ministry of Finance.

Circular 130 and Circular 25 are issued for the purpose of specifying policies of the National Assembly and the Government regarding the management on VAT refund. However, we believe that, upon issuing Decree 100 as well as Circular 130 and Circular 25, the Government and the Ministry of Finance have not considered the affects and impacts caused by these new tax regulations to enterprises having specific business activities with the applicable input VAT tax rate is of higher than those of output ones, (such as the enterprise manufacturing of pesticides).

We recommend MOF and GDT to consider the impacts and effects of the application of the new policy on VAT refund under Circular 130 and Circular 25 to enterprises having specific business activities (i.e. enterprises incurring differences between the higher input VAT rate applicable to materials and the output ones applicable to finished goods/products). Accordingly, we strongly recommend GDT to consider approving for the enterprises to continue to be entitled for tax refund under the twelve-months (12) accumulative basis starting from the first month having input VAT not fully credited, from 1 July 2016 onwards, applicable for exporting activities and for sale of goods whose revenues are subject to output VAT rate of 5%, meaning that the Company will only not be eligible for refunds on input VAT relating to sale of goods whose revenues are subject to output VAT rate of 10%.

## **POSITION PAPER OF VBF ASSOCIATE MEMBERS**

*Prepared by  
Associate Members  
Vietnam Business Forum*

The Associate Members of the Vietnam Business Forum (“VBF”) consist of the Singapore Business Group, the Australian Chamber of Commerce, Swiss Business Association, the Council of Taiwanese Chambers of Commerce in Vietnam, the Thai Business (Vietnam) Association, the Hanoi Business Association, the Indian Business Chamber in Vietnam, and the Hong Kong Business Association of Vietnam. Thank you for this opportunity to present our views at the VBF Midterm. We have put together a list of issues that we believe are critical to establishing a good quality business environment in Vietnam, and we look forward to working together on these issues.

### **1. Preparation for the Development of Industry 4.0 and Smart Cities**

The Government understands the important role of technology, as seen from governmental efforts in Industry 4.0 and Smart Cities. However, to stay abreast of technological change and prepare itself for Industry 4.0 and Smart Cities, Vietnam must have in place critical infrastructure and conducive legislation and policies to promote the sustainable advancement of technology. Specifically:

- **Infrastructure / Technology Development:** Infrastructure development, including IT and transportation, is critical for the development of Smart Cities and Industry 4.0. Currently, Vietnam’s roads and public transportation system struggle to keep up with demand, and without substantial changes, demand will continue to outpace supply as Vietnam’s economy grows. Development of a robust transportation system is also necessary to support economic/population growth.
- **Technology Transfer:** The Technology Transfer Law and Decree No. 76/2018/ND-CP require inbound and outbound technology transfer agreements to be registered. This registration requirement poses an administrative and financial burden on business. It is a potential risk to the security and protection of trade secret and/or any other confidential information regarding the transferred technology. Finally, it might discourage the transfer of and investment in high tech.
- **New and Innovative Technology:** New and innovative technology is critical to continued economic growth. For example, fintech is a sector that is growing rapidly and expected to sizably add to global GDP growth. However, investors (domestic and foreign) seeking to establish a fintech business in Vietnam continue to face a number of hurdles as there is little legislative guidance and licenses are granted based on the discretion of the authorities. We heard that the government is considering a foreign ownership cap on fintech companies such as intermediary payment services. We strongly discourage this as such policy would handicap fintech growth in Vietnam. Many fintech services rely heavily on the use of AI and big data – technologies that foreign companies have a lead in the development of. Similarly, lack of clarity around the data localization and local entity requirements under the Cybersecurity Law creates more uncertainty and volatility for foreign investors and businesses in the digital/technology space.
- **Cybersecurity Law:** The Cybersecurity Law includes requirements on data localization and establishing a local presence in Vietnam. We are concerned that these requirements would cause severe economic harm to Vietnam’s economy by restricting the free flow of data, which

the global digital economy is built upon. Such requirements not only make connectivity less affordable; they also undermine the viability and dependability of cloud-based services in a number of industries. Ultimately, such requirements may impede Vietnam's transformation into a leading digital economy and implementation of initiatives such as Smart Cities and Industry 4.0.

- **Tax Preference for Startups:** Many new and innovative technologies emerge from startups and young enterprises. While Vietnam has preferential tax rate (i.e. CIT incentives) for high-tech enterprises, companies are only able to obtain preferential tax if they meet certain statutory requirements and are granted a Certificate of High Technology Enterprise. The process to obtain a Certificate of High Technology Enterprise is quite complicated and is subject to the further assessment of competent authorities. Hence, many startups may not have the resources to complete the procedures to obtain a Certificate of High Technology Enterprise to be entitled to preferential tax rate.

**The above mentioned items present a unique window of opportunity for collaboration between key stakeholders both from the public and private sector, in working towards the following (among other solutions/ plans for improvement):**

- **Infrastructure building:** Expedite infrastructure projects to ensure that proper infrastructure is in place to prepare Vietnam for Industry 4.0 and Smart Cities. This includes transportation systems, data centers, real estate development, etc.
- **IT education:** Promote IT training and understanding of new technology from both a technical and social/policy standpoint in the education sector.
- **Regulatory sandbox:** Develop a sandbox for new technology companies, and such sandbox must not discriminate between foreign and domestic companies. Exposure to international best practices and technical know-how will help domestic businesses attain sustainable growth and develop innovative technologies.
- **Incentivize high tech projects:** The government should seek to reduce regulatory red tape for high tech companies to take advantage of preferential CIT. This will incentivize investment into and the establishment of high tech companies.

## **2. Hurdles from Foreign Investment / Licensing Procedures**

The Vietnamese Government aims to improve the investment environment in Vietnam through revision the Investment Law and the Enterprise Law. We understand that one of the objectives of revision is to simplify the procedures for establishing a company in Vietnam, and we enthusiastically support this. In this regard, we have the following comments:

- **Market Access:** Market access continues to be a problem for foreign investors. This includes, as we mentioned above, the proposed foreign ownership restriction on fintech businesses. Similarly, the Vietnamese government in recent years enacted legislation such as the Cybersecurity Law which creates higher burden for market access for certain cyberspace service providers (i.e. requirement to store data onshore or to establish a local presence) and Decree No. 54/2017/ND-CP providing guidelines for implementation of Law on Pharmacy which effectively prohibited FIEs from providing drug storage or transport services onshore. Another example is the Law on Cyber Information Security which provides that foreign-invested enterprises are not eligible to apply for a business license to provide certain cyber information security services, including information security testing and evaluation services.
- **Delay in licensing:** In recent years, there has been a surge in foreign investment in the retail space in Vietnam. However, the licensing process takes much longer than the statutorily



provided timeframe, creating unnecessary challenges for foreign investors in this space. Under Decree No. 09, the Ministry of Industry and Trade (“**MOIT**”) is required to issue an opinion within seven (07) working days of receiving an application dossier from the local Department of Industry and Trade, however, in practice, the MOIT takes one to two months.

- **Draft Law Revising Investment Law and Enterprise Law:** The Draft Law Revising the Investment Law and the Enterprise Law should provide further clarity with respect to investment conditions required of foreign investors and ensure that administrative reforms will not create any undue administrative burdens for foreign investors. Furthermore, it should elaborate coordination between the Ministry of Planning and Investment and the State Bank of Vietnam (“**SBV**”) in case of the transfer of outbound investment activities to the oversight of the SBV.
- **Electronic registration:** There should be more flexibility in the licensing process. Currently, Vietnam does not have a complete online registration process for licensing and certain steps must be done in person. Under the Enterprise Law, enterprises may choose to carry out procedures for enterprise registration electronically or in person. However, many departments only allow businesses to submit online applications for processing, and enterprises find this burdensome due to technical problems of the online system. We suggest that the amendments to the Enterprise Law should emphasize flexibility and allow businesses to decide on whether they will register their business online or in person. This is especially important to SMEs in rural regions that may not have resources (i.e. computers, etc.) to register online. We also suggest investing in the improvement of the online licensing system.
- **Regulatory red tapes:** According to the World Bank Database, the average actual time to start a business in Vietnam is 17 days. We understand from practice that this average time is even longer for foreign-invested enterprises, which may take up to three months or longer, especially for conditional businesses. This is significantly higher than jurisdictions such as Hong Kong, Singapore and Thailand.<sup>1</sup> We encourage the government to continue working on decreasing the amount of time required to establish a new business, especially for foreign enterprises so that Vietnam becomes more attractive to foreign investment.

**The above mentioned items present a unique window of opportunity for collaboration between key stakeholders both from the public and private sector, in working towards the following (among other solutions/ plans for improvement):**

- **Clear legal framework.** Send a signal to investors about the stability and predictability of Vietnam’s investment environment in order to attract investments by creating a predictable and a stable legal regime. To this, the Vietnam government must ensure that new legislation are clearly drafted and are not more burdensome than necessary to achieve their goals.
- **Reduce regulatory red tapes.** We encourage reducing regulatory barrier to market entry. This includes removing onerous requirements and reducing the time required to establish a company by simplifying procedures. For example, we understand the government intends to remove the chop notification requirement under the current Enterprise Law, and we believe this is a helpful step forward. However, more will need to be done in order for Vietnam to be competitive in attracting long-term investment. For example, we recommend relaxing the 90-day timeline to inject capital.
- **Streamline licensing.** The government must work on removing bottlenecks in the licensing process to ensure that licensing for businesses is not delayed and follows the timeframe

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<sup>1</sup> <https://data.worldbank.org/indicator/ic.reg.durs>

provided by law. This will allow businesses to move at a quicker speed which will in effect propel Vietnam's economic growth.

- **Improve market access for FIEs.** The government should improve market access for FIEs and ensure that new legislation does not create more restrictions with respect to market access for FIEs.

### 3. Business Impact on the Environment

Vietnam is currently going through a period of high growth, with energy consumption rising rapidly. Alongside economic growth, environmental sustainability is of parallel importance to the wellbeing of the Vietnamese people. Currently, Vietnam is facing challenges in waste management and recycling, and in the years to come, Vietnam will continue to face challenges in creating sufficient energy to power its cities, households, and businesses. It is important to create incentives for investment in clean energy and to establish a cultural and societal norm of prioritizing sustainability.

**The above mentioned items present a unique window of opportunity for collaboration between key stakeholders both from the public and private sector, in working towards the following (among other solutions/ plans for improvement):**

- **Prioritize sustainability.** Vietnam must consider long term goals and objectives of sustainability in parallel with economic growth.
- **Environmental education.** Environmental education should be required as a course to educate students on the importance of environmental protection. Likewise, the government should create campaigns to educate individuals and enterprises on the importance of sustainability, for example, such as on the true costs of plastic.
- **Waste reduction.** Implement policies to promote recycling and composting in both urban and rural regions. In a similar vein, start campaigns to incentivize individuals and businesses to reduce waste and plastic consumption.
- **Strict enforcement of environmental sanctions.** Regulations on environmental protection must be fairly applied to both domestic and foreign invested companies. The Vietnamese Government must strictly enforce environmental sanctions to reduce pollution and maintain a sustainable environment.

### 4. Employment Issues

With respect to employment, we have seen the following challenges in practice:

- **Lack of flexibility:** The labor authorities take very conservative views over the contents of Internal Labor Regulations (“**ILRs**”), which is detriment to both employers and employees. Though many contents are not prohibited under the law or common in practice, especially with foreign invested enterprises, they must compromise and remove such content per the labor authorities' requests in all cases, which results in enterprises facing significant losses from employees' misconducts since there is no settlement basis. For example, except from the misconducts subject to immediate dismissal, the labor authorities' officers always take the view that companies must regulate employees' misconducts to be within the "employment relationship", particularly an employee must have performed his/ her misconduct during working hours, at workplace and/ or another designated place by the employer, to be subject to disciplinary actions. However, the aforesaid view is very limited and almost impossible to apply on multiple cases, such as when the employee discloses confidential information to third parties.

- **Upper-level trade unions:** If a business has no corporate trade union (which is often the case for SMEs), it must consult with the immediate upper-level trade union (i.e., the trade union of the district where the headquarter of company is located) for matters related to employees and employee benefits. These upper-level trade unions only comprise of a small number of staff. As a result, it takes a long time for a business to secure a meeting with the upper-level trade unions, and even when enterprises are able to secure a meeting, the upper-level trade unions often cannot or will resist providing assistance. Furthermore, the law is flexible on the conduct and procedures of upper-level trade unions, which results in there being no clear process with respect to required documents and timing, making it very difficult for businesses to comply.

**The above mentioned items present a unique window of opportunity for collaboration between key stakeholders both from the public and private sector, in working towards the following (among other solutions/ plans for improvement):**

- **Flexibility and consistency.** Higher consistency among officers' judgments and higher level of flexibility to create favorable conditions for both employers and employees.
- **Allocation of resources.** Improve allocation of resources, and more cooperation and support for businesses which do not have their own corporate trade unions. District-level Labor Federations should cooperate with the businesses in the consultation process in accordance with the laws.

On behalf of the Associate Members of the VBF Board, we would like to thank the Government and Vietnam Business Forum for the opportunity to raise the issues that important to us. It is key for us to ensure sustainable growth and a reliable business environment so that foreign companies can be confident in investing and partnering in developing key sectors in Vietnam. We look forward to working together on issues that are important to Vietnam's continued growth and emergence into the global economy.



## POSITION PAPER OF INDIAN BUSINESS CHAMBER IN VIETNAM AT MID-TERM VIETNAM BUSINESS FORUM 2019

*Prepared by  
InCham*

The Indian Business Chamber in Vietnam (INCHAM Hanoi) would like to express our sincere appreciation on the recent efforts made by the Government of Vietnam to further improve the trade environment and increase Vietnam's competitiveness in the Southeast Asia. We take this opportunity to bring your kind attention some policy issues which we consider as hindering the industry growth for Vietnam to meet the international standards in Pharmaceutical and Solar and Wind Energy sector. We strongly believe that by addressing these issues and considering the proposed measures, the Vietnam FDI market will benefit with significant improvement in the business conditions that promote economic development.

### KEY POLICY MEASURES AND ISSUES

#### I. Solar Power and Energy Sector

At the end of 2015, the Vietnam published the Vietnam Renewable Energy Development Strategy and actively committed to United Nations 2030 Agenda for Sustainable Development Goals. Renewable energy, especially solar power generation, could play a major role in the implementation of the Sustainable Development Goal 7: “*Ensure access to reliable, affordable, sustainable and modern energy for all*” in the poorest communities and households in remote areas of Vietnam which have not yet enjoyed regular electricity use. In other words, supporting the development of solar energy generation will help in improving the education system, increasing the productivity and eventually reduce poverty.

In April 2017, Decision No. 11 was issued by the Prime Minister which specifically lays down a mechanism for encouragement and development of solar power in Vietnam. Decision 11 came into effect on 1 June 2017, and is due to expire on 30 June 2019. Following the Decision 11, the Ministry of Industry and Trade (“**MoIT**”) released Circular No. 16 dated 12 September 2017, on project development and power purchase agreement (“**Model PPA**”) applicable to solar projects. Recently, in June 2019, the MoIT prepared the fourth draft of the decision of the Prime Minister on mechanisms to encourage the development of solar power projects in Vietnam (the “**Draft Decision**”). Draft Decision is intended to take effect from 1 July 2019 replacing the current Decision 11 of the Prime Minister as above stated. The Draft Decision provides for the following zonal based FiT regime:

No	Solar power technology	Tariff for Zone I		Tariff for Zone II		Tariff for Zone III		Tariff for Zone IV	
		VND/ kWh	UScents/ kWh	VND/ kWh	UScents/ kWh	VND/ kWh	UScents/ kWh	VND/ kWh	UScents/ kWh
1	Floating solar power project	2,281	9.98	1,963	8.59	1,758	7.69	1,655	7.24
2	Ground mounted solar power project	2,102	9.20	1,809	7.91	1,620	7.09	1,525	6.67
3	Rooftop solar power project (excluding direct sale and purchase of electricity)	2,156	9.35	2,156	9.35	2,156	9.35	2,156	9.35

*With the following zones:*

**Zone 1:** consisting of twenty eight (28) provinces from the north of Vietnam, namely: *Ha Giang, Bac Kan, Cao Bang, Tuyen Quang, Thai Nguyen, Lao Cai, Yen Bai, Lang Son, Quang Ninh, Phu Tho, Vinh Phuc, Bac Giang, Hai Duong, Hoa Binh, Hanoi, Ha Nam, Bac Ninh, Hung Yen, Hai Phong, Ninh Binh, Thai Binh, Ha Tinh, Nam Dinh, Quang Binh, Thanh Hoa, Lai Chau, Nghe An, and Son La.*

**Zone 2:** consisting of six (06) provinces of Vietnam, namely: *Quang Tri, Dien Bien, Thua Thien Hue, Quang Nam, Da Nang, and Quang Ngai.*

**Zone 3:** consists of twenty nine (23) provinces from the south of Vietnam, namely: *Kon Tum, Ca Mau, Hau Giang, Binh Dinh, Bac Lieu, Kien Giang, Soc Trang, Can Tho, Vinh Long, Tra Vinh, Lam Dong, Ben Tre, Tien Giang, An Giang, Dak Nong, Ho Chi Minh City, Dong Nai, Dong Thap, Ba Ria – Vung Tau, Long An, Binh Duong, Binh Phuoc and Tay Ninh.*

**Zone 4:** consists of six (06) provinces of Vietnam, namely: *Phu Yen, Gia Lai, Dak Lak, Khanh Hoa, Ninh Thuan and Binh Thuan.*

However, there remain a number of challenges to be addressed from a policy aspect in the regulations governing the solar power sector, please see our analysis as follows:

***With respect to the Circular No. 16 dated September 12, 2017***

- Scope of the national/provincial master plans for solar power development has not been specifically indicated.
- There is no specific timeline provided for issuance of the national/provincial master plans for solar power development.

***With respect to the Circular No. 05/2019/TT-BTC dated 11 March 2019 providing a Power Purchase Agreement (PPA) specifically for Rooftop project (Rooftop Model PPA)***

- Circular 05 and the Model PPA have not defined as to what the “fundamental contents of the Rooftop Model PPA” are for the purpose of any amendments sought by the parties.
- This Rooftop Model PPA still lacks provisions to thoroughly cover all necessary perspectives of the transaction (e.g. clear termination and/or force majeure events; international dispute settlement; governing laws etc.). Furthermore, since the Rooftop Model PPA is applied

compulsorily without changing the fundamental contents, it would be an arduous task for the investors to negotiate on the supplementation of the additional terms in the PPA to resolve pending issues of the Rooftop Model PPA.

### ***Model PPA***

- The Model PPA does not specify any price escalation index and is mute on adjustment of the feed-in-tariff (“FiT”) following the VND/USD exchange rate fluctuation for grid connected projects.
- No recourse or remedy to the Seller for securing FiT at 9.35 US cents/KWh for projects ready to achieve commercial operation date (“COD”) before 30 June 2019 but fail to do so due to non-availability of the grid for connection by the Purchaser i.e. Vietnam Electricity (“EVN”) or its authorized subsidiary.
- The burden of grid risk allocation is imposed onto the Seller without taking into account crucial factors (distance from transmission line, higher costs of installation, location and etc.).
- Political force majeure event and change in law is excluded.
- No clear provision on consequences of the breach and lacks distinction among type of breach.
- Foreign governing law is excluded and vague provision on international arbitration.
- Absence of provisions such as Deemed Commissioning/Commercial Operation Date; Unforced Outage; Liquidated Damages.
- Silent on government guarantee to enhance the credit of EVN as the sole off-taker/purchaser.
- There is no provision on the lender’s step-in-rights as well as separated PPA direct agreements between the Power Purchaser and the lenders.

## **II. Wind Power Sector**

The wind power sector is regulated and span across several different laws e.g. Electricity Law, Land Law, Construction Law, Law on Environmental Protection, etc. Generally, wind power projects qualify for investment incentives under Law on Investment in 2014 and more specifically investment credits under Decree 32/2017/ND-CP dated 31/03/2017.

Decision No. 39/2018/QĐ-TTg dated 10 September 2018 amending, supplementing a number of Articles of Decision No. 37/2011/QĐ-TTg dated 29 June 2011 of the Prime Minister on mechanism supporting the development of wind power project in Vietnam (“**Decision 39**”), with effect from 1 November 2018.

### ***Decision 39***

- a. Wind power projects are divided into two forms including onshore and offshore projects. The main factor to determine the project forms is the area in which a wind power project is located, specifically:
  - Onshore wind power projects are the projects built and operated on land and coastal area having the outer boundary is the average lowest mean-high water for 18.6 years;
  - On the contrary, offshore wind power projects are the projects built and operated outside the average lowest mean-high water for 18.6 years.
- b. COD is defined as when the Seller is ready to sell power to the EVN being the Buyer and shall be counted upon the satisfaction of the requirements as follows:
  - Initial tests on a part of or the whole plant and its equipment have been done;
  - Electricity generation permit has been issued;
  - The Seller and the EVN has agreed on metering number for the payment commencement.

- c. The investor shall only be permitted to carry out the construction of wind power plants if it has fulfilled conditions to construct as ascribed in regulations of construction; signed a Power Purchase Agreement (“MPPA”) with the Buyer; had an agreement on power connection with a Power Distributing Unit or a Power Transmit Unit and had the data report of wind measure in the continuous period of at least 12 months.

### ***FiT***

EVN shall be responsible to buy the whole electric output from wind power projects with new FiT rates.

The FiT rate for wind power projects has been raised significantly:

- Wind power onshore projects shall be entitled to US cents 8.5/kWh;
- Wind power offshore projects shall be entitled to US cents 9.8/kWh.

The new FiT rate shall be applicable for part or whole of wind power projects reaching the COD before 1<sup>st</sup> November 2021 and for 20 years from the COD.

Wind power projects that have been put into operation before the effectiveness of Decision 39 shall also enjoy the new FiT rate for their remaining MPPA terms.

MoIT issued Circular 02, which entered into effect from 28 February 2019. Circular 02 has repealed the Circular 32/2012/TT-BCT dated 12 November 2012 of the MoIT regulating the implementation of wind power project development and power purchase and sale contract form for wind power projects; and, Circular 06/2013/TT-BCT dated 8 March 2013 of the MoIT regulating the content, order, procedures for formulation, appraising and approving wind power development planning.

### ***Sole off-taker***

EVN being the sole off-taker mandates monopoly in power transmission and distribution, rendering other concerns for investors e.g. the necessary negotiation time with EVN on the PPA, as concluding several contracts with a single state-owned enterprise purchaser is likely to be time-consuming.

### ***MPPA***

The MPPA lacks clarity and comprehensiveness particularly regarding the following points:

- Lack of a proper price index or any price escalation clause to cover inflation risks.
- The Seller completely bears the burden of grid connection set-up i.e. investment, construction, operation and maintenance of the connection equipment to connect the plant with the transmission grid, distribution grid, etc. several important factors are left unaccounted for (e.g. distance from transmission line, higher costs of installation, location, etc.)
- Although Force Majeure (FM) is listed, neither specific classification nor political FM events are mentioned. To invoke FM, the invoking party must prove the FM event and inform its impact on the ability to perform obligations. The MPPA stipulates that the Seller may be exempted from liability in the case of a FM event but does not elaborate further on remedies (recovery of additional costs, deemed energy payment, etc.)
- The MPPA does not differentiate consequences of breaches based on discrepancies in breach timing as per the project schedule, considering that an early breach differs in nature from a late one.
- There is neither provision for choice of foreign governing law nor explicit provision for international arbitration. The only two dispute settlement methods recognized in the MPPA

are mediation and negotiation, otherwise the use of arbitration is permitted in accordance with Circular 40/2010/TT-BCT (Circular 40) dated 13/12/2010 on Order and procedures for settlement of disputes in the power market.

- The MPPA excludes important mechanisms on remedies e.g. Deemed Commissioning; Unforced Outage; and Liquidated Damages. It merely provides definition of COD enumerating various scenarios where COD will be deemed as achieved.
- The fact that EVN is the sole off-taker/purchaser necessitates financing or additional assistance; however, the MPPA does not provide any guarantee to ensure/enhance the creditworthiness of EVN.
- The MPPA excludes clause concerning the lender's step-in-rights as well as separate PPA between EVN and the lenders.
- The MPPA lacks condition for negotiation/hardship regardless of fundamental changes, such as radical changes in law or tax.
- As a result, Sellers (contractors and investors) are generally skeptical about the investment's bankability, as the contract standard form is generally non-negotiable due to its fixed structure despite ambiguous contents on vital security clauses which alarms the lenders.

### **III. Pharmaceutical Sector**

Vietnam is regarded as the second largest medicine market among South East Asia countries, for the estimated revenue of the pharmaceutical marketing reaching USD5.9 billion in 2018, marking an increase of 11,7% in comparison with the previous year. In fact, an average of about 60,000 tons of pharmaceutical materials is consumed in Vietnam every year, of which 80-90 percent is imported mainly from India and Europe. Furthermore, Vietnam accounts for a fifth of India's pharmaceutical products exports, making the potential of significant growth in trade in pharmaceutical and healthcare products increasing between two countries.

The Indian pharmaceutical industry, which has emerged as a world-class, cost-effective generic drug manufacturer could contribute significantly to Vietnam's healthcare and pharmaceutical market as followings:

- Bring in high end, first generics with world class quality products in Vietnam at affordable prices due to strong product development and intellectual property capability;
- Bring in FDI from Indian pharmaceutical companies in putting EU Good Manufacturing Practices (GMP) manufacturing units especially in area of Onco, Biosimilars, BE center;
- Provide technical assistance in producing vaccine in Vietnam;
- Supporting Vietnam pharmaceutical companies to upgrade manufacturing;
- Putting up manufacturing unit for Active Pharmaceutical Ingredients (API) to reduce dependence on API imports.

The drug procurement has always been of high importance for the Vietnam Ministry of Health (**MoH**) that ensures the selection of qualified drugs with reasonable prices. MoH has released the draft Circular on Bidding, which fully covers contents regarding the bidding process of drug procurement at medical facilities. However, we acknowledge that not only Indian but many foreign pharmaceutical companies are experiencing difficulties at some points in this draft Circular. With the purpose of assisting MoH in amending the Circular regulating the bidding process of drugs in public health facilities and also to support companies to overcome the mentioned difficulties, please see suggestions as follows:



## **1. With respect to draft Circular on Bidding**

Indian companies have always respected changing regulations and readily adopted to the new, but proposed draft Circular on bidding process will prohibit them from providing benefits of good quality advance products at affordable prices to Vietnam and its people since the draft Circular regulation divides generic based on geographical location which contradicts regulations of reference pharmaceutical management agencies. Thus, regarding the draft policy, we would like to propose few suggestions for the consideration of MoH as follows:

**Group 1:** Criterion should base upon product quality, specification and not country of manufacturing and thus any manufacturing unit meeting the criterion should be in group 1A. Therefore, group 1A and 1C should be combined.

We would like to put forward that the criterion to be based upon Marketing Authorization (**MA**) in reference country only (request to explain method for listing these products), for this will help Vietnam to get technology from any manufacturer with MA in reference country.

**Group 2:** EU-GMP certification/ PICS certification should be acceptable till the time of Drug Administration of Vietnam (**DAV**) audit, and technology transfer from EU-GMP plant from any country to local manufacturer to be in same group

**Group 3:** BE studies from approved centers like (UKMHRA, FDA etc.) should be acceptable to have more quality BE products.

**Group 5:** There are number of products which are available in all other groups but Group 5 can play a very important role in reducing prices. Hence, this group should be kept as an independent group.

## **2. With respect to draft Circular on registrations**

### ***Regulations of Certificate of Pharmaceutical Product (CPP)***

- a. Effective period stated in the CPP: CPP shall not be accepted for a period of less than one year.
  - It should be considered up to expiration of CPP since DAV takes more than 1 year (in-practice as per industry people experience) for assessment of the dossier.
- b. Remaining validity of the CPP at the time of application:
  - For CPP with one year validity: CPP is valid for at least 6 months;
  - For CPP with validity of more than one year: Only CPP valid for at least twelve (12) months;
  - In case CPP does not record the validity period: Only CPP will be accepted within twelve (12) months from the issuing date;
  - As per the previous comment, it should be considered up to expiration of CPP.
- c. CPP must have the signature, name and title of the signatory, date of issue and seal of the CPP issuer;
  - We agree with this point.
- d. CPP must be issued by the National Pharmaceutical Regulatory Authority unless there is a mechanism to control or verify the authenticity of the CPP administered by the national pharmaceutical authorities of the two countries.

There is a federal structure in India for the National Pharmaceutical Authority (CDSCO) has given authority and controls State FDA to issue CPP. It should be acceptable if it is legalized by Vietnam Government.

- Packing insert approval by CPP issuer in India and other countries: Drug controller authorities do not certify packing insert and other packaging material. CPP issuer provides sufficient information as per World Health Organization format so we request to accept the above.
- Requirement of providing additional CPP from reference countries for biological products: We request the DAV not to implement this requirement, as it will lead to delay in entry of new advance. The extended patents and longer registration timelines in reference countries will surely lead to low access to these medicines and high health expenses for government.
- Requirement of providing additional CPP from reference countries for BE products: We request the DAV to accept BE from any accredited BE center and no need for reference countries as BE from Accredited source is accepted even in reference countries.
- Companies in India use barcode printing so it will not be possible to provide QR code on the quantities exported to Vietnam. Therefore, we would like to request the DAV to accept the barcode as well.

InCham would like to take this opportunity to thank the Government of Vietnam for hearing on our concerns and VBF to ensure at a platform to share our issues and recommendations in the interest of our members and Vietnam market. We hope to play a more active role in supporting the investment and trade between Vietnam and India by utilizing India's past experience and expertise in various sectors, namely Pharmaceutical and Renewable Energy sector in this Position Paper. We look forward that our perspective would be taken into consideration by the Government of Vietnam and strive towards a better tomorrow for Vietnam and the industries doing business in Vietnam.

## **II. SESSION 1**

## **CRITERIA FOR SUSTAINABLE INFRASTRUCTURE DEVELOPMENT AND RAPID GROWTH - PATHWAY FOR A NEW PPP LAW**

*Prepared by  
Infrastructure Working Group*

### **Sustainable Infrastructure Development – Proposition**

Vietnam is growing and urbanising swiftly. In order to continue along this trajectory, it needs massive amounts of new infrastructure. Vietnam's public finances are not in a position to supply the capital for such massive new infrastructure development. In order for such infrastructure to be developed on a sustainable basis over the next years and decades, private capital will be needed. Private capital will only be provided if the conditions are appropriate. In this paper, the VBF Infrastructure Working Group would like to propose a number of actions that could be taken to develop a more sustainable infrastructure investment scheme for Vietnam in the years to come.

### **Vietnam infrastructure development and financing to date**

Most infrastructure projects in Vietnam have, to date, been built, owned and operated by the Government or bodies that it owns. Projects have mostly been financed through taxes or by borrowing from commercial banks and international financial institutions:

- Public funding: the Vietnamese Government has used State budget funds, official development aid (**ODA**) and foreign concessional loans. This source of funding is counted into the public debt, which is approaching the statutory ceiling of 65% of GDP, so further growth is constrained.
- Investment by State-owned enterprises (SOEs): Vietnamese SOEs have invested and developed infrastructure projects in all key economic sectors. Vietnamese SOEs borrowed foreign commercial loans with debt guarantees from the MOF. These are also counted into the public debt and due to the statutory ceiling further funding is constrained.

Meanwhile, the role of the private sector has been relatively limited. Although it has benefitted from construction subcontracts granted by State project sponsors, projects actually developed by the private sector have been limited to the following. The best estimates are that only 12% of Vietnam's infrastructure investment over the period 2011 – 2015 came from private investors.

- Domestic investment in BOT transport projects: domestic investors have received concessions and toll-fee policies from the Government and borrowed commercial loans (mainly from local banks) to develop and operate roads and highways on a BOT or BT basis. Government support policies, procurement process and toll-fee calculations are not transparent, causing public dissatisfaction. At the same time, local banks' commercial lending is limited for long-term development and operation of infrastructure projects.
- Foreign investment in BOT power projects: foreign investors have received concessions and government support to borrow internationally to develop and operate power projects on a BOT basis. Government support has been in the form of government guarantees and undertakings (**GGU**), which cover (i) non-performance of SOE fuel suppliers and electricity off-takers, (ii) termination payments, and (iii) convertibility and availability of foreign currency. GGUs are contingent liabilities and not counted directly into the public debt ceiling. Foreign investment has been at its most successful in the power sector. However, since 2001 only 7 BOT power projects have achieved financial close. As from 2011, the Government has narrowed the scope of GGUs and reduced the FX availability guarantee to 30% of VND revenues (minus expenses) due to concerns and limits relating

to the national foreign currency reserves. The State Bank of Vietnam wishes to abolish the FX availability guarantee.

### **Vietnam infrastructure – current position**

According to the World Economic Forum's 2018 Global Competitiveness Report, Vietnam's infrastructure ranking (of 140 economies studied) has improved a bit from 93rd position in 2008 to 75th in 2018. Vietnam's road infrastructure scored poorly. Water and electricity ranked well relative to more developed countries such as Thailand.

Vietnam spends a lot on infrastructure relative to GDP (around 5% in 2015), the second highest in ASEAN after Indonesia. However, infrastructure spending per capita is only around USD107, which was only just higher than Cambodia and the Philippines. Rapid industrialization in recent years and increasing urbanization (about 36% as of 2018) requires more.

### **Vietnam infrastructure – demand**

Demand for infrastructure investment has increased dramatically in response to Vietnam's rapid industrialization and urbanization.

- The Ministry of Transport (**MoT**) has estimated that the total funding needs for Vietnam's transportation infrastructure equalled roughly USD48bne between 2016 – 2020. But this includes projects such as the North - South Expressway, Long Thanh International Airport and the North - South High-Speed Railway that have been long delayed and will not occur during this period.
- According to the National Power Development Plan VII, total investment in the energy sector for the period 2016 - 2030 was estimated to reach approximately (USD148bn). The number is likely to increase in National Power Development Plan VIII.
- The Asian Development Bank (**ADB**) estimated that Vietnam would need at least USD16.7bn per year on average for the 2015 - 2025 period to finance its infrastructure development needs. The World Bank forecast up to USD25bn a year, much higher than the average level in 2011-2015.

But the public debt has been approaching the self-imposed ceiling. This means that for infrastructure to develop sustainably, more private investment will be required to finance projects.

### **Sustainable infrastructure development – key challenges**

- Price - driven practice in selecting investors: The award of projects to private parties is still based primarily on the competition for the lowest price instead of taking into account genuine technical and financial capacity of investors. In all key sectors of transport, waste treatment and power generation, the investors which offered the best price were mandated by the government, while investors focusing on technical and financial capacity to deliver projects failed. This practice has resulted in selected “cheap” investors asking for significant increases of investment costs at later stages of projects. The government often finds it difficult to reject such request because the projects are already under construction at that point.
- Low quality and environmental standards: Cheap prices often correlate to lower quality technology and lack of environmental protection standards.
- Lack of transparency in granting projects: The lack of transparency in granting projects and selection of investors has also deterred credible investors. Examples include BT road projects where investors are allocated unrelated commercial projects to cover their BT road development costs. When there is little control over the (inflated) costs of a BT road

project, it seems that investors can sometimes receive high-value commercial projects to compensate them.

- No clear mechanism for government support: Vietnam does not have a dedicated public fund to support infrastructure projects. Public funding for infrastructure projects (both capex and budgets to pay for the offtake obligations (e.g. waste treatment, water supply, etc.)) continues to be treated as public investment under the public investment law, which is allocated on a semi-annual and annual basis. As a consequence, there is often significant uncertainty relating to specific budgets for infrastructure development.

### **Sustainable infrastructure development – some proposed actions**

- Deviation from price-driven practice: Given Vietnam's impressive economic performance, cost should no longer be the priority in selecting investors for infrastructure projects. The government can instead welcome credible investors that commit to deliver high quality infrastructure facilities with a minimal impact on the environment. Indeed, the costs in the longer term of such an approach may be lower as there will be less need for repairs to the infrastructure or the environment.
- Providing appropriate conditions to attract credible investors: Transparency in selecting investors can be improved to provide investors with predictability and certainty in competing for projects.
- The mechanism for providing government support to infrastructure projects can be developed and clarified with funding sources being prepared to support critical projects with complex risk profiles.
- Better legal framework: Last but not least, the legal framework for infrastructure development should be upgraded to encourage investors in infrastructure development.

### **Efforts to introduce and implement the PPP legal framework**

Vietnam endeavoured three times to introduce, revise and improve the PPP legal framework in less than 10 years:

- On 9 November 2010, the Prime Minister of Vietnam signed Decision 71/2010 launching the pilot PPP program in Vietnam, in parallel with the BOT regime under Decree 108/2009.
- On 10 April 2015, Decree 15/2015 was issued replacing both Decision 71/2010 and Decree 108/2009. BOT became a form of PPP.
- On 4 May 2018, Decree 63/2018 was issued replacing the former Decree 15/2015.

The PPP regulations combine and regulate all forms of concession projects, but do not make any distinction between different project structures or financing sources needed for different sectors. There is no room or guideline for project sponsors to negotiate risk allocation mechanisms appropriate to each sector in order to match available government support with bankable financing structures.

New forms of government support are sought for viability gap funding, but they have not worked out due to strict control and prescriptive procedures applicable to use of State budget funds under the Public Investment Law. There is also no guideline on funding support for costs of preparing PPP project proposals, which make such preparation unattractive.

Only thermal power projects have been able to use the tested BOT regime in accordance with Circular 23 dated 13 July 2015 of the Ministry of Industry and Trade. Under Circular 23, direct appointment of investors was permitted both for BOT projects that were in the Power Development Plan and for ones not covered in the Power Development Plan but approved by the

Prime Minister. Predictability on risk allocation and a solid BOT project structure therefore exist in the power sector.

### **The new PPP Law – further considerations**

In addition to the detailed comments of the Infrastructure Working Group on the draft PPP Law as presented in the VBF Annual Meeting of 2018, the following are some key considerations to make PPP projects bankable and financeable under the new PPP Law.

#### *Private sector sponsors vs. public funding*

The new PPP Law should not be subordinated to the Public Investment Law. PPP projects are projects promoted and financed by the private sector. Public funding for any viability gap in a PPP project should come as a grant for the benefit of the PPP projects and sponsors. The new PPP Law should have a chapter or section to address principles of grant and usage of public funding, but it does not mean that the Public Investment Law procedures have to be applied to private sector sponsors.

Any state participation in equity capital of a PPP project should be made through SOEs. That will avoid any overlapping of rules and regulations on state budget and public funding.

The latest draft of PPP Law proposes a “PPP Development Fund” which pools public funding and other concessional financing to support the development, financing and operation of PPP projects.

#### *Differentiating forms of government support*

As discussed above, government support can be made available to PPP projects in the form of investment incentives, GGU or public viability gap funding, which should match with the requirements for particular sectors. For instance, a minimum revenue guarantee is important to make a transport project viable while a guarantee on an offtake obligation, termination payment and FX availability is important to make a power project bankable.

The new PPP Law should provide principles or guidelines in differentiating and matching forms of government support in each sector.

#### *Guarantee of non-performance of SOE supplier or off-taker*

The current PPP regulations only provide for a guarantee of non-performance of SOEs. However, big SOEs like PVGas, EVN/EPTC, and Vinacomin have been or will be equitized soon while retaining both majority state control and monopoly/dominant market position. Thus, the new PPP Law should cover non-performance guarantee for not only SOEs but also State-controlled enterprises which hold a monopoly/dominant market position in the material supply or product offtake market.

#### *Avoiding delay in bidding process vs. negotiation of PPP projects*

Two routes have been designated for preparation of projects and selection of sponsors:

- Bidding process: the authorised State authorities (ASAs) proceed with two steps: (i) to prepare a project pre-feasibility report for in-principle investment approval; and (ii) to formulate a project feasibility report for bidding and selection of sponsors. In the transport sector, one highway project was prepared and proposed for a bidding process, but was suspended. In the power sector, the last bidding project took 2 years to prepare

and issue an RFP (a halfway project feasibility report), 5 years for bidding and selection of sponsors and 5 years for finalisation of project documents and achieving financial close.

The reasons for the delay are (a) ASAs cannot anticipate and address all elements of basic design, environment assessment, technology and risk allocation at the time of preparing the RFP, and (b) Vietnamese laws and taxes keep changing, which results in increases in pass-through costs and bid prices. The new PPP Law should set out a project preparation and RFP process to accommodate commercial and market elements of a PPP project (rather than one that is simply based on traditional public procurement requirements) and allow bidders to have the flexibility to structure the PPP project and achieve the desired outcome.

- Sponsors' project proposal: sponsors are also allowed to proceed with a similar two-step process: (i) to prepare a project pre-feasibility report for in-principle investment approval; and (ii) to formulate a project feasibility report. This is then open for bidding by others. Evidently, this process does not encourage and incentivize sponsors to work out and propose complex infrastructure projects. As this is coupled with long delays in the bidding process, we have not seen many new PPP projects being proposed by potential sponsors.

The new PPP Law should provide principles for ASAs (or the new PPP evaluation committee) to set out parameters for review, assessment and selection of the sponsors which have prepared and made a project proposal.

### *Change in law protection*

Private sector sponsors work based on concession rights from the Government and submit best bid price package for a PPP project. They should stay neutral economically from any cost increase or decrease caused by acts of the Government, including change in law events. As such, cost increase due to an unfavourable change in law should be passed through to the tariff or price of the PPP project's product or service; and the sponsors will share with the ASAs any benefit or gain from cost decrease due to a favourable change in law.

An adequate change in law protection regime is important to address commercial and market elements and assure cost effectiveness and predictability of products or services of PPP projects.

### *Choice of governing law*

Governing law is subject to the choice of the parties of the project agreements in accordance with the laws of Vietnam and international treaties. Application of foreign law is allowed by the laws of Vietnam, subject to some reservations.

As discussed above, the success of PPP projects are dependent on possible sources of financing. ECAs and international loan financing are crucial for some infrastructure sectors, as domestic bank loans or bonds are limited or constrained at present. Thus, the choice of governing law should be open for negotiation and selection by the parties in the relevant project agreements in compliance with the laws of Vietnam. Any mandatory Vietnamese law requirement would at a stroke render foreign project financing largely unobtainable, as Vietnamese-law governed project documents are not considered financeable on a non-recourse basis by most large international lenders.



*Creation and enforcement of project security package*

Land use rights are important assets, which a PPP project needs to use to secure financing from international and local lenders. By law, land use rights are allowed to be mortgaged to credit institutions licensed to operate in Vietnam. The old BOT regime recognised this for BOT projects in operation in Vietnam. Since 2015, Decree 15 has limited security over land use rights to those permitted under the Land Law. This has resulted in different interpretations and unnecessary changes of security structures.

Specifically, if a project is exempt from the obligation to pay land rental, this should not mean that the project company loses the right to grant security over land use rights. Yet this is exactly how the authorities have interpreted the law to apply because the law allows security over land use rights if the rent has been paid upfront. This is not the intention in the context of a zero rent. An exemption of land rental is a form of investment incentive in favour of the project company, which does not reduce the value of land use rights of the project company. To avoid this unnecessary interpretation, sponsors in some projects have elected to apply for reduction of land rental (instead of exemption). Sponsors in other projects have negotiated with ASAs to use a security equivalent method and obtain a government undertaking to assign the land use rights to any permitted assignee of the project. This has wasted a lot of time and confused a lot of lenders, thereby reducing benefits to Vietnam.

Most recently, security interests over sea water areas that are part of a project site have been subject to different interpretations by different government authorities. The same solution as prevail in respect of security interests over land should be offered to security interests over sea water areas, so as to ensure the integrity of the project site and unnecessary splits of security interest packages for the financing of the project. Sovereign rights over sea water areas can and should be preserved, of course, but this can be regulated separately.

*Restrictions on transfer*

Decree 63/2018 and the latest draft PPP Law do not allow sponsors to transfer part or all of their rights and obligations under the executed project agreements to any lender or other sponsor until the completion of construction or the commercial operation date (**COD**).

The key milestone of a PPP project is not the completion of construction or COD, but the date of financial close (to procure financing for construction commencement). To achieve financial close, the sponsors will be obliged to agree under the financing agreements to transfer their rights and obligations under the project to lenders at any time if there is a breach of or non-compliance with the financing agreements.

After financial close, sponsors may consider by themselves or be requested by lenders to transfer partial equity interests in the project company to a third-party sponsor to bring in a strategic investor or to restructure equity capital and development costs. As such transfer will be subject to the consent of the ASA, the ASA will in any event be able to review and control the transfer process in accordance with law. Under current regulations, such transfer is allowed subject to various conditions, such as that there are no changes in the objectives, scale, technical specifications, total investment capital and implementation schedule of the project.

June 2019

## **POSITION PAPER OF POWER & ENERGY WORKING GROUP**

*Prepared by  
Power & Energy Working Group*

The Vietnam Business Forum, Power and Energy Working Group will be distributing the Made in Vietnam Energy Plan 2.0 for consultations talks and comments from key authorities in July 2019.

### **I. MVEP 2.0 recommends a diversified energy system that prioritizes use of Vietnam's domestic energy resources**

Based on consultations with business leaders and a careful review of national and international trends, MVEP 2.0 proposes these six business-oriented recommendations that would improve the reliability and affordability of Vietnam's energy system:

#### **1. Prioritize renewable energy in national power planning**

There are alternative scenarios where renewables (excluding hydropower) could account for up to 30% of capacity by 2030<sup>1</sup>. These alternative scenarios, which are aligned with Vietnam's Nationally Determined Contribution (NDC) commitments, require regulatory support and incentives to leverage private sector investment now seeking opportunities to invest in Vietnam. Engaging the private sector, with their experience in market analysis, finance, and the power consumers' needs, in developing Power Development Plan VIII would increase the effectiveness of the planning process.

#### **2. Increase use of natural gas as the current best-fit baseload for renewable energy**

MVEP recommends tax levelization for the development of certified on local offshore gas and the importation of LNG as the current best fit baseload for renewable energy. Gas-fired electricity can easily scale to the size necessary to meet the significant demands of Vietnam, and can respond to intermittent load fluctuations and outages more rapidly than coal. Furthermore, while battery storage can potentially provide Vietnam with future intermittent load options, offshore gas and LNG projects have the developers, investors and financing to make them bankable now. Incorporating imported LNG supply into the energy-mix adds to Vietnam's energy security while long-term supply contracts for domestic offshore gas are developed. LNG is much cleaner than coal as it only produces roughly half of the CO<sub>2</sub> emissions compared to coal. When disease, death and coal-ash cleanup are also counted, gas becomes even more affordable than coal.

Under the current tax regime, the development of offshore gas fields in Vietnam can either provide significant revenues to the government through taxes and royalties – or if taxes and royalties are reduced the projects become more affordable for the consumers. The share of gas-to-power in the 2030 energy mix should be increased in PDP VIII.

#### **3. Construct a regulatory and permitting environment that attracts private sector investment in clean energy generation and energy efficiency**

**PPA:** MVEP 2.0 recommends that the standard Power Purchase Agreement (PPA) for wind and solar energy projects be made internationally bankable by establishing Feed-in Tariffs (FITs) well in advance and reducing regulatory hurdles. We strongly urge transparency regarding any changes

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<sup>1</sup> Green ID 2018 and McKinsey 2019.

to FITs and encourage discussion on how to navigate the permitting process of master plan approval. Ultimately, these efforts should lead to a decline in investor risk and the ability to decrease FITs as renewable energy projects become simpler and more profitable. Additionally, definitive regulatory frameworks for floating solar, battery energy storage systems, offshore wind, and access to clean energy by direct power purchase agreements will unlock a much greater potential for renewable energy projects.

**DPPA:** MVEP 2.0 recommends Direct Power Purchase Agreement regulations that promote access to clean energy for end users by local power generation and storage. DPPAs can accelerate renewable energy development between buyer and seller and relieve pressure on EVN. This report encourages the government to seize the benefits of facilitating easy investment in *behind-the-meter* solar, battery, biomass, and waste-to-energy plants by developed by power consumers and specialist suppliers. This regulation will develop a new dynamic market model while preserving a safe and reliable power supply.

**Tariffs:** The result of Vietnam's current low energy tariffs can be seen in the country's high level of energy inefficiency and too high growth rate in demand. MVEP 2.0 recommends the publication of a Roadmap to Retail Electricity Tariffs to 2025 for Vietnam with particular focus on the commercial and industrial sectors. The Roadmap must describe the move towards market-based pricing and should specifically address the occurrence of peak load on the transmission system during business working hours (9.30am to 12.30pm and 1.30pm to 3.30pm) and incorporate a differential retail price for power across the regions. To compliment the Roadmap, it is also important to have a promotional campaign aimed to educate stakeholders on the need for, and benefits of, energy efficiency. Raising awareness for more efficient use of electricity, the available incentives, and the rationale for low-carbon power development will help the public engage with and understand the energy industry as tariff rates rise.

#### **4. Construct a regulatory and permitting environment that attracts smaller scale off-grid investment and increase efficiencies that will encourage clean energy generation and energy efficiency**

**Rooftop:** VBF Recommended in its submission to the solar energy rooftop draft regulations in 2017 that the exemption from the requirement to obtain Power Operation License should be increased from 1MW to 3MW. VBF continues to recommend that MOIT considers increasing the exemption to 3MW to fully capture the benefits of investment in solar rooftop energy systems.

**Behind-the-meter:** VBF recommends that behind the meter clean energy power generation, that export no power to the EVN Grid are:

- a. Exempted from the need to obtain an Operating License up to 30MW capacity
- b. Not required to seek approval in the National Energy Development Masterplan
- c. Required to give EVN reasonable notice of when the power plant is to be commissioned

**Efficiencies:** Vietnam's energy intensity per capita is among the highest in the region - for the period between 2009-2013 it was well above every country in the region, especially higher than those countries with a similar level of GDP per capita. In addition to a public education campaign, the report recommends the development and enforcement of regulation on building code, appliances, and heavy machinery that reduces energy intensity at manufacturing, commercial and residential.

## **5. Invest in grid infrastructure to improve stability and capacity**

As renewable and natural gas energy sources grow in contribution to the grid, there are challenges associated with incorporating more decentralized power plants that provide intermittent power supply. Given the surging increase in solar and wind generation, especially in the southern region, there is an urgent need for investment to strengthen and expand the transmission and distribution network. Further, there are likely opportunities to include and leverage private sector and international donor expertise in the area of renewable energy grid integration, battery storage, and flexibility.

## **6. Halt any new approvals for coal**

Given the numerous concerns related to expanding coal capacity in the direction of the PDP VII, we recommend halting the approval of any new coal thermal power plants and conducting a strategic review of those that are already approved but which do not have financing or power purchase agreements.

## **Six key policy and regulatory actions are needed to move toward a more financially, socially, and environmentally sustainable energy future.**

The recommendations of MVEP 2.0 outlined above, which can help Vietnam move boldly toward a more financially, socially, and environmentally sustainable energy future, can be executed through the following six key actions:

- a. Continue to engage energy specialists from the private sector to assist in producing a PDP VIII with a strong prioritization on investment in domestic renewable energy, natural gas, battery storage and energy efficiency. With the exception of battery storage, which has only recently become an affordable option, this mirrors the objectives set forth in MVEP 1.0.
- b. Implement regulatory frameworks and incentives that encourage investment in behind-the-meter renewable energies, such as rooftop solar, battery storage, floating solar, and offshore wind projects, with simplified approval processes, while still maintaining safe power systems.
- c. Standardize the renewable energy PPA as an internationally bankable agreement and begin a pilot scheme of the Sleeved Direct Power Purchase Agreement (DPPA) in 2019.
- d. Publish a Roadmap to Retail Electricity Tariffs to 2025 that depicts the move toward market-based pricing, revising the number of Peak Tariff hours, and consider a differential Retail Tariff in different power regions and for disadvantaged households.
- e. Assess the urgent demands on the grid transmission system and the least-cost means of developing grid infrastructure with potential private sector support to unlock renewable energy production and distribution.
- f. Assess the cause and solutions for Vietnam's extremely high and growing energy intensity as compared to regional neighbors with similar and higher GDP per capita and prepare a public education campaign on reducing electricity waste.

## **These proposed actions will provide affordable, reliable, energy security outcomes:**

- a. Enhanced energy security from natural gas, energy efficiency and renewable generation.

- b. Reduced power system costs relative to a coal-focused energy plan through the avoidance of imported coal and environment degradation costs.
- c. Increased private investment in renewable energy projects that removes the generation burden from EVN and shares it with many power consumers and power producers in a distributed generation model.
- d. “Socialized” electricity market that protects disadvantaged households with the least capacity to pay, but which is also financially sustainable for EVN and reflects a move to market-based pricing within the term of PDP VIII.
- e. Reduced greenhouse gas emissions and air pollution and the other costs relative to a coal-focused energy plan and alignment with Vietnam’s NDC commitments.
- f. Support SME and other private industry developing that reduces energy intensity, enables rooftop and increase energy efficiencies through public education and regulatory procedures.

## **II. Launch an “Attitudes to Electricity Survey”**

Survey questions highlight what affected the decision to come to Vietnam, price sensitivity, desire for renewable energy, threats barriers and solutions to meeting their electricity needs, effect on investment decisions in Vietnam.

An online survey would be easiest and quickest, with well-managed, high volume communications through all the Chambers’ digital channels.

### **Goals:**

- Produce a punchy and very short digital presentation of the survey result;
- Provide MPI, MOIT and Office of the Government with a large sample of consumers priorities, especially data on price sensitivity;
- Look for 1000 plus sample for maximum impact;
- Produce contents for meetings with City People’s Committee and local EVN power supply companies, especially in HCMC, Da Nang, and EVN Southern.

## **III. Some Working Group’s issues in details: *(Please see the Annex).***

## ANNEX

## SUMMARY OF ISSUES

Prepared by  
VBF Power & Energy Working Group

## I. NEW ISSUES

No.	Issues	Notes	Recommendation
1.	Offshore Wind Power	<i>Global Off-shore wind power is growing rapidly as it is one of the lowest cost renewable energy solutions. Investors see great potential to develop offshore wind power in Vietnam as part of a sustainable energy market. With a long coast line, Off-Shore Wind can help Vietnam build Power Plants closer to high demand locations, and avoid having too many plants at low demand provinces like Ninh Thuan and Binh Thuan.</i>	VBF recommends that MOIT consider developing for large scale offshore wind: <ul style="list-style-type: none"> <li>• Internationally Bankable PPA</li> <li>• Synchronised Permitting, Licensing and Master-planning process in a single one-stop shop</li> <li>• Including EVN NPTC and all stakeholders in a developing a Strategic Grid Transmission Plan. and consider allowing developers to build their own 220kv and 500kv transmission lines</li> <li>• Define the FIT that will be available until 2025.</li> </ul>
2.	“Behind the Meter” Power Plants up to 50MW capacity	<i>Producing electricity close to the consumer, behind the meter, for own consumption, using solar or biomass technology is a cost-effective solution to meet local power demand. It removes pressure on the local power distribution grid and benefits EVN by reducing the need for further capital investment in the transmission and distribution network. As no electricity is exported to the grid there is no safety concerns for EVN.</i>	VBF recommends that behind the meter clean energy power plants, that export no power to the EVN Grid are: <ul style="list-style-type: none"> <li>• Exempted from the need to obtain an Operating License up to 30MW capacity</li> <li>• Not required to seek approval in the National Energy Development Masterplan</li> </ul>

No.	Issues	Notes	Recommendation
			<ul style="list-style-type: none"> <li>Required to give EVN reasonable notice of when the power plant is to be commissioned.</li> </ul>
3.	Solar and Battery combinations	<p><i>The provisions for solar/battery were removed from the latest draft of the Solar Decision</i></p> <p>Solar and Battery Storage in combination are an extremely effective way to generate and supply electricity and to avoid high variation in the amount of electricity exported to the grid.</p>	VBF recommends that solar and battery storage combinations are included in the final draft of the Solar Power Decision in 2019.
4.	Draft Solar Power Decisions 2019	VBF PEWG anticipates and welcomes the Draft Solar Power Decision to be finalised and issued in June 2019. However, the new FIT tariff was cut by up to 30% and may be too low to attract investors to invest in solar. The net profit to investors is lower than a one-year deposit account in a Vietnamese bank. There is a risk that due to the low profit offered, high cost of development, uncertainty of grid connection, and the internationally unbankable PPA, that most of the remaining solar power projects (c363 projects) may never be commissioned.	<p>VBF recommends that in Annex 2:</p> <ul style="list-style-type: none"> <li>The proposed price should be increased, or a new draft PPA should be issued which is bankable for international financing. <b>See below item “Create a Fairer Risk Allocation” in issues from 2018</b></li> <li>Khanh Hoa, Dak Lak, Gia Lai and Phu Yen have a similar yield comparable to most provinces in Region 3, according to the solar yield map of Vietnam. These provinces should in Region 3 not Region 4.</li> </ul>
5.	Floating Solar should be prioritised and promoted extensively	Floating solar has none of the problems of overloaded grid capacity (they are located close to existing hydro power plants with grid) and no or very limited negative land use impacts.	<p>VBF recommends that the floating solar:</p> <ol style="list-style-type: none"> <li>FIT be increased to US 9 cents/kWh until 2022, to incentivise investment in floating solar and to compensate investors for higher cost of the equipment</li> <li>Be given priority in the National Masterplan over other power projects.</li> </ol>

<i>No.</i>	<i>Issues</i>	<i>Notes</i>	<i>Recommendation</i>
6.	Market Transformation and Liberalisation	Vietnam has committed to improve market access for private sector power developers and allow competitive energy markets to be established: <i>There has been little progress on equitization of the EVN GENCO companies</i> <i>The Vietnam Wholesale Energy Market is the next key step in the liberalisation of energy markets, implementation has been postponed from the original implementation date in 2016.</i>	VBF Recommends that MOIT <ul style="list-style-type: none"> <li>• Proceed with the GENCO equitizations in 2019</li> <li>• Implement the Wholesale Energy Market in 2020.</li> </ul>
7.	Planning Law 2018	The impact of the Planning Law is causing power investors great concern.	VBF requests clarification of the process for approval of new grid-connected electricity generating plants in Vietnam, which VBF hopes will be designed to minimise and simplify the permitting, approval and licensing processes.

## II. ISSUES RAISED AT VBF DECEMBER 2018

<i>No.</i>	<i>Issues</i>	<i>Current status (Solved or Unsolved)</i>	<i>Updated recommendations at June 2019</i>
8.	Create a fairer allocation of risk between private sector investors and the state counter-parties/partners by:  Bring the Standard Power Purchase Agreement for solar and	<i>Unsolved</i>  Key recommendations in the VBF Mid-term 2017's consultation paper on the draft solar PPA were not implemented in the final PPA version that was issued under Circular No. 16/2017/TT-BCT in September 2017.	VBF recommends that: If the PPA is improved to meet the standard acceptable to international banks, the financing costs of solar power plants can immediately reduce and a Feed in Tariff of US7.5cents would continue to attract foreign direct investment in solar energy to 2021.



No.	Issues	Current status (Solved or Unsolved)	Updated recommendations at June 2019
	<p>wind energy up to international standard</p> <p>(1) Note that risk allocation issue is also directly applicable to PPP projects.</p>	<p>In March 2018, the Standard Wind PPA was amended to improve the right to compensation for the private sector investor if EVN terminates the PPA contract by Circular 02/2019/TT-BCT</p> <p><i>Solar projects in the first phase of the market (2018 – 2019) have been financed with investors equity and corporate finance leveraged on the existing assets of the investors. Leverage of corporate assets is insufficient to finance Phase II solar and wind markets.</i></p>	<p>If the Feed in Tariff is reduced as per the Draft Decision #4 (Du thao #4/2019/QD-TTg) without any improvement in the allocation of risk in the PPA however, many foreign investors have signalled their decision to suspend new investments in the Vietnam solar market:</p> <ul style="list-style-type: none"> <li>• MOIT makes the three most important improvements and amendments to the model solar PPA from 1<sup>st</sup> July 2019 (including: (i) Termination payments, (ii) Curtailment and Failure to take and pay by EVN, (iii) Dispute Resolution / Arbitration Clauses)</li> <li>• It would be logical to also make these improvements and amendments to the standard PPAs for wind power, biomass and waste to energy.</li> <li>• The Government allows foreign financial institutions to have free market access in the clean energy market and ensures that the Phase II markets for solar and wind have adequate project finance to reach the Governments goals of 12,000MW for solar and 6,000MW for wind.</li> </ul>

No.	Issues	Current status (Solved or Unsolved)	Updated recommendations at June 2019
9.	Direct Power Purchase Agreement	<p><i>Unsolved – In progress</i></p> <p><i>The US AID VLEEP Programme working in conjunction with ERAV has now entered its fourth year of a five-year programme and there is no defined plan for a Pilot Programme. The Public Consultation Workshop has not been scheduled.</i></p> <p>VBF PEWG, Eurocham GGSC and AMCHAM P&amp;E have each met ERAV in 2018 and sought guidance from ERAV on how a Pilot Scheme will be implemented and when it will commence. VBF wrote to ERAV on 18<sup>th</sup> April 2019 stating its concern that a Sleeved DPPA is their preferred model.</p> <p>Electricity producers see the DPPA as a simple way to increase open market access. Electricity consumers want greater access to clean energy via DPPAs. Consumers are unwilling to pay more for clean energy and fear that a Synthetic Model may cost more than the current electricity tariff.</p>	<p>VBF recommends that ERAV:</p> <ol style="list-style-type: none"> <li>1. Considers and replies to the letter from VBF PEWG dated 18<sup>th</sup> April 2019</li> <li>2. Set a date for the beginning of a Pilot Scheme using Sleeved DPPAs preferably in 2019</li> </ol> <p>VBF thanks MOIT for the detailed description of the process followed so far in their letter dated 31<sup>st</sup> January 2019.</p> <p>VBF desires further collaboration with ERAV and thanks ERAV for its attention and interest in VBF members' opinions.</p>
10.	<p>Stimulate Energy Efficiency Investment and Distributed (1) Electricity Generation by Power Consumers</p> <p>(1) "Distributed" Electricity Generation includes Rooftop</p>	<p><i>Unsolved</i></p> <p>The Made in Vietnam Energy Plan 2016, noted that 11% of the total new power generation planned to be built by 2030 would not be needed if energy efficiency investment was stimulated.</p> <p>Decision No. 34/2017/QD-TTg issued on 25 July 2017 on the framework on average retail electricity pricing in the period of 2016 - 2010 and the "Pricing Framework"</p>	<p>VBF recommends that the Government publish a Roadmap/Pricing Framework for 2021 to 2025 which describes a gradual and steady transition to market-based electricity pricing and which:</p> <ol style="list-style-type: none"> <li>a. Provides electricity consumers with transparency on future price inflation</li> <li>b. Continues the socialised pricing system, supports low income citizens</li> </ol>

No.	Issues	Current status (Solved or Unsolved)	Updated recommendations at June 2019
	<i>Solar Energy, Biomass and Waste to Energy produced by consumers close to the point of consumption</i>	<p>that was published in December 2017, is not clearly linked to a market-based pricing system for electricity and suggests that electricity prices will increase at a rate less than current CPI. This price signal will deter investment in energy efficiency, not stimulate it.</p> <p>Decision 280/2019/QD-TTg on Energy Efficiency set out goals for the scale of efficiency and mechanisms to encourage investment from 2019 – 2030.</p> <p>However, the current tariff structures do not recover the cost of making and delivering electricity to consumers and may require an increasing amount of public subsidy due to the unavoidable increase in the cost of making and delivering new electricity from 2020 to 2025.</p> <p>(Reference US AID Power Pricing Study 2017, World Bank Report EVN A Financial Recovery Plan 2016).</p>	<p>c. Discourages electricity wastefulness</p> <p>d. Stimulates all electricity consumers to invest in Distributed Clean Energy Generation and Energy Efficiency</p> <p>e. Introduces fair and transparent tariffs for those consumers who can afford to pay the full cost of electricity and removes the cross subsidy given to industrial electricity consumers</p> <p>f. Protects key industries with national importance, such as fertilizer, steel and cement production</p> <p>g. Tariff Reform - two key actions:</p> <ul style="list-style-type: none"> <li>✓ Revise the daytime hourly tariff for Commercial and Industrial (C and I) consumers to help reduce the peak demand and the peak load on the transmission system and to reduce transmission losses.</li> <li>✓ Create regional variation in retail tariffs to reflect the different regional prices in the wholesale electricity market and the variation in the cost of making and delivering electricity in each region.</li> </ul>
11.	The Government role and the Private Sector role in cooperation for power transmission	<p><i>Ongoing</i></p> <p><i>The recent rapid growth of clean energy and future expansion of gas power has set new challenges for grid transmission development and safety.</i></p>	<p>VBF supports:</p> <p>a. EVN's and MOIT's urgent attention on the upgrade of the transmission grid and distribution lines to support clean energy</p>

No.	Issues	Current status (Solved or Unsolved)	Updated recommendations at June 2019
			<p>and gas power development. A stable grid that minimises curtailment and operates safely and efficiently with renewable energy is of great importance to developers and consumers of electricity.</p> <p>VBF recommends MOIT:</p> <ul style="list-style-type: none"> <li>b. allow distributed or “behind the meter” electricity generation from the bio-mass, solar, wind and other renewables by private developers at residential, commercial and manufacturing buildings This will reduce the pressure on the power transmission and distribution system, help offset the Peak Load Demand and reduce the risk of unscheduled power outages.</li> <li>c. speed up decision making and setting regulation to encourage development of gas-fired and LNG facilities.</li> </ul>
12.	<p>Remove any remaining regulatory barriers to rooftop solar installations in homes and businesses</p> <p>a. Clarification of the regulations for solar rooftop energy to define the legality of third-party utility power supply agreements.</p>	<p><i>Partially solved (Subject to Draft Decision #4 Du thao #4/2019/QD-TTg being finalised and issued)</i></p> <p><i>a. Solved</i></p> <p>Under Official Letter No. 1210/BCT-DTDL dated 7 February 2018 of the MOIT to the VBF, it was clarified that pursuant to Article 3.2, Circular No. 12/2017/TT-BCT, a <u>Power Operation License</u> requirement is exempt if the installed capacity is less than 1MWp in cases where electricity generated is sold to other entities, and</p>	<p>Re: c. VBF Recommended in its submission to the solar energy rooftop draft regulations in 2017 that the exemption from the requirement to obtain Power Operation Licence should be increased from 1MW to 3MW. VBF recommends that MOIT considers increasing the exemption to 3MW to fully capture the benefits of investment in solar rooftop energy systems.</p>

No.	Issues	Current status (Solved or Unsolved)	Updated recommendations at June 2019
	<p>b. Net Metering credits for power delivered to EVN</p> <p>Increase the exemption allowed from the Operating License from 1MW to 3MW</p>	<p>accordingly, rooftop solar projects with installed capacity of less than 1MWp are exempt from Power Operation License requirement.</p> <p><i>b. Solved</i> Circular 5/2019/TT-BCT clarified the payment process for EVN to use when paying for solar rooftop electricity exported to the grid.</p> <p><i>c. Unsolved</i></p>	<p>VBF suggests that EVN considers:</p> <p>a. Requiring that a solar rooftop system owner gives EVN reasonable notice of the commissioning of any rooftop solar system that exceeds 1MW,</p> <p>b. EVN can set reasonable limits on the amount of electricity that can be exported from the grid from rooftop solar projects that exceed 1MW,</p> <p>c. to specify times and dates when electricity may not be exported to the grid from rooftop solar systems that exceed 3MW.</p>
13.	<p>Improve the Quality and Efficiency of Power Projects included in the National Energy Development Masterplan</p> <p>VBF recommended a Selection Criteria to determine which grid-connected solar and wind energy projects would to be included in the National Energy Development Masterplan in the submission to the December 2017 Mid-Term Meeting</p>	<p><i>Unsolved</i></p> <p><i>The criteria that are particularly relevant are:</i></p> <p><i>1. Land Clearance and Compensation. There are no critical issues such as, impacts on Protected National Forests, Endangered Wildlife, Ethnic People, or on large numbers of effected households and livelihoods.</i></p> <p><i>2. The Grid Connection must be ensured and can be maintained even if all planned new power projects in that immediate area are also executed</i></p> <p><i>3. The Project Sponsor must be able to provide tangible evidence of their ability to invest equity and raise finance to execute the whole project including guarantees for level of power generation</i></p> <p><i>4. The Project Sponsors have a track record of success in developing infrastructure investments, including energy generation projects in Vietnam, or in SE Asia markets.</i></p>	<p>VBF welcomes the MOIT feedback and advice on the usefulness of the selection criteria.</p> <p>VBF also proposes a public (EVN, MOIT) and private sector (VBF PEWG) cooperation to analyse the clean energy projects:</p> <p>a. included in the National Energy Development Masterplan and</p> <p>b. seeking inclusion in the national Energy Masterplan</p> <p>against these criteria to assess the costs and benefits of implementing these projects.</p>

No.	Issues	Current status (Solved or Unsolved)	Updated recommendations at June 2019
14.	Partnership with VBF in Energy Policy Development and Financing Strategies for the energy sector	<p><i>Unsolved</i></p> <p><i>There is no clearly defined role for the private sector representative organisations in developing PDP #8</i></p> <p>As 70% of energy power generation investment is to come from the private sector, probably now also including investment in the transmission grid, the need for closer direct communication and cooperation is very clear.</p> <p><i>VBF PEWG has produced a draft updated <b>Made in Vietnam Energy Plan 2 - 2019</b>, describing how Vietnam's domestic resources can meet Vietnam's future energy demand, without the need to import fuel or electricity. MVEP 2 recommends full utilisation of and prioritisation of:</i></p> <ul style="list-style-type: none"> <li><i>Renewable Energy</i></li> <li><i>Energy Efficiency Investment by consumers</i></li> <li><i>Gas as a flexible baseload, displacing imported coal</i></li> </ul>	<p>VBF welcomed the MOIT offer (MOIT Letter of 31<sup>st</sup> January 2019) to work in cooperation directly with the private sector on PDP #8. VBF would like to meet MOIT and define the manner of that cooperation.</p> <p>VBF PEWG offers its assistance from its <b>Clean Energy Programme</b> resources to support PDP#8 to include content developed in cooperation with VBF PEWG on the following areas:</p> <ul style="list-style-type: none"> <li>Market Analysis: what is the current status of investors, financiers, technology and service providers.</li> <li>Finance sources and conditions: what can be relied upon to finance the market development in PDP #8 and what needs to be changed to implement the financing at the lowest possible cost</li> <li>Consumers attitudes to electricity: What do consumers want from their electricity supply and how price sensitive is the market?</li> </ul>
15.	<p>Issue for MPI, (subsidiary role for MOIT, and MONRE and MOF)</p> <p>What is the state of Vietnam's Readiness for Climate Finance Support Mechanisms for the private sector?</p>	<p><i>Unsolved</i></p> <p>There have been no new significant climate finance mechanisms implemented that effectively support private sector clean energy in Vietnam.</p>	<p>VBF recommends that MPI notify climate finance funds that support for clean energy or energy efficiency programmes using Climate Funds is deemed to be "country supported" and the Government of Vietnam has no objection to the proposed programme if the outcome of the activity is, either:</p>

<i>No.</i>	<i>Issues</i>	<i>Current status (Solved or Unsolved)</i>	<i>Updated recommendations at June 2019</i>
		<p>Climate Finance Support Mechanisms such as GCF, ICF wish to enable low carbon private sector businesses in Vietnam to grow and help meet the National Determined Commitment on Green House Gas emissions reductions</p> <p>The mechanism of obtaining evidence of “Country Support” for clean energy and the Non-Objection Letter process, seems to be complex, slow and difficult to conclude successfully.</p>	<p>a. A goal of the PDP currently in effect or</p> <p>b. A goal of the INDC Action Plan</p> <p>VBF PEWG offers its assistance to MPI to develop proposals to the global and bilateral climate finance funds that help to open markets for private sector investment and facilitates increasing investment in Vietnam’s adaptation and mitigation of climate change.</p>

**MEETING BETWEEN MINISTRY OF INDUSTRY & TRADE, MINISTRY OF  
PLANNING AND INVESTMENT AND VBF ON THE DRAFT OF  
PRIME MINISTER'S DECISION ON ENCOURAGEMENT MECHANISM FOR  
SOLAR POWER DEVELOPMENT IN VIETNAM**

*Time & Date: 14:00, Tuesday, April 16, 2019*

*Venue: MPI's Office, 6B Hoang Dieu, Hanoi*

**SUMMARY OF DISCUSSION**

**Participants**

**Ministry of Planning and Investment**

- Mr. Nguyen Noi - Deputy Director, Foreign Investment Agency
- Mr. Son, Department of Industrial Economy
- Mr. Vu Xuan Huong, Policy Division, Foreign Investment Agency

**Ministry of Industry and Trade**

- Mr. Nguyen Ninh Hai - Director of New & Renewable Energy Department, Electricity and Renewable Energy Authority ("EREA")
- Mr. Le Anh Duc - Director of Electricity Market Development & Human Resource Training Center, Electricity Regulatory Authority of Vietnam ("ERAV")

**VBF**

- Mr. John Rockhold – Head of VBF Power & Energy WG
- Mr. Tetsu Funayama – VBF Board Member
- Mr. Luong Ba Hung – Project Director of Sustainable Energy Project/ VBF Power and Energy WG
- Mr. Nguyen Thanh Hai – Steering Committee Member, VBF Power & Energy WG

*And more than 25 business representatives*

**RESPONSE ON SOME KEY ISSUES OF THE DRAFT DECISION**

***Response by Mr. Nguyen Ninh Hai – Director of New & Renewable Energy Department, EREA***

- Ministry of Industry and Trade ("MOIT") has just issued a new Draft, which reflected some of the comments from VBF, specifically:
  - Definition of rooftop solar power has been written in more simple language for easier understanding.
  - Direct power sale and purchase agreement model (DPPA) for rooftop solar power systems: the power generators and the buyers shall agree on commercial terms according to current regulations. MOIT does not regulate this matter.
  - The capacity limit for rooftop solar power system must be less than or equal to 1 MWp. Such regulations are set due to the following reasons:
    - ✓ Rooftop solar power system usually has a wide range of capacity, up to 20MW. The threshold of 1MWp is to encourage small-scale projects (1 - 5kW capacity) because of their large installation costs. Electricity pricing in the Draft is also to encourage small-scale projects.



- ✓ For large-scale projects, the production and installation costs will be smaller. Therefore, the Draft does not propose the application of a separate pricing mechanism for large-scale rooftop solar power projects.
- ✓ From a technical perspective:
  - The solar power projects with a capacity of more than 1 MWp can greatly affect the power grid system both in voltage fluctuation and frequency fluctuation.
  - Some countries around the world provide for a much stricter regulations on capacity limit. For example: France sets a range of 16kV - 50kV.
  - The threshold of 1MWp is a very “flexible” regulation introduced by MOIT.
- ✓ From a legal perspective: According to the Law on Master Planning, all of the projects must be submitted to the Prime Minister for approval. MOIT is not sure whether the 1MWp limit proposal will be approved.
- Regarding the proposal to raise the threshold of exemption of Power Generation Licence requirement from 1 MWp to 3 MWp, MOIT well noted and will consider in the process of preparing draft implementing Circular and draft Model Power Purchase Agreement.
- The latest draft Decision does not yet specify the planning categories which solar power projects belong to (provincial or regional, or power development plans). In the future, the regulations shall be more specific.

#### **Summary of key contents of the latest Draft:**

- The buyers have been expanded to cover 2 main entities:
  - Vietnam Electricity (EVN) → this requires compliance with the Model PPA and other regulations.
  - Other entities → it will based on commercial agreements between sellers and buyers.
- In terms of rooftop solar power, 4 separate models have been developed:
  - ***Power consumption model:*** is a model wherein organizations and individuals that invest in and install rooftop solar power system will use a portion of output of the electricity produced from the solar power system and sell surplus/excess electricity to the national grid.
  - ***Business model for surplus/excess electricity:*** is a model wherein organizations and individuals that invest in and install rooftop solar power system will sell a portion of output of electricity to other organizations and individuals and sell surplus/excess electricity to the national grid.
  - ⇒ A Circular in the future will further provide clearer regulations in a way that the power purchase agreements will be separated and not an annex of the power consumption agreements.
  - ***Business model for entire electricity output:*** is a model wherein organizations and individuals that invest in and install rooftop solar power system will sell entire output of the electricity produced from their rooftop solar power system to the national grid.
  - ***Direct power purchase model:*** is a model wherein organizations and individuals that invest in and install the rooftop solar power system will sell electricity output generated by the system to other organizations and individuals, and will not use the national grid directly.
- Clause 3, Article 12: Indicating clearly that, *if the power buyer is not EVN or one of its authorized affiliates, the power purchase price and the power purchase agreement are performed in accordance with current regulations.*

- The draft has removed the regulations on the preferential electricity pricing for grid-connected solar power projects with battery storage as the proper timing has not come.

## **OTHER QUESTIONS BY VBF**

### **Mr. Tran Minh Thanh - Senior Associate, Duane Morris Vietnam**

- Enforcement of this Decision requires a model power purchase agreement. Thus, does MOIT have a plan to draft and issue a draft Model Power Purchase Agreement? Are there any differences between the model PPA for different models, such as the purchase of floating solar power projects or ground-mounted solar power projects, and if there will be any changes to the current model agreements?
- The new draft defines that the power buyers include EVN and other power buyers and sellers. However, the clauses related to connection contracts, transmission system, etc. have not been thoroughly adjusted in model/normal PPA; instead, they are still targeted for EVN and its affiliates. This leads to misunderstandings.
- What are the criteria to determine "other electricity buyers and sellers"? If this is not stated in the Draft, will it be specified in the Circular? Currently, only industrial buyers of electricity are entitled to purchase electricity directly from the developers. Will the future definition have a wider coverage?
- According to MOIT, the new electricity pricing applicable to other electricity buyers will be valid specifically to the rooftop solar power projects. So, in case the power purchase agreement between other electricity buyers and sellers is not about rooftop solar power, is it possible for the two parties to agree on their own pricing or are they required to follow FiT as well as the model power purchase agreements?
- For Ninh Thuan province, it is only applicable to grid-connected solar power projects with a total maximum capacity of 2,000 MW. So, by the time the Decision enters into effect, is it possible to issue a list of eligible projects? Is there any possibility for investors to participate in new projects in Ninh Thuan?
- The auction plan for new solar power sources will be implemented in 2020. Has the MOIT developed a Draft on this issue?

### ***Response by Mr. Nguyen Ninh Hai – Director of New & Renewable Energy Department, EREA***

- Regarding the model PPA, EREA is given the leading role in drafting process. When the Prime Minister approves this Decision, EREA will draft a Circular, including a draft model PPA.
- Regarding other electricity buyers and sellers: Chapter III on rooftop solar power provides for separate clauses on power purchase applicable to other EVN entities; however, Chapter II on grid-connected solar power does not specify this issue. The ground-mounted solar power projects must fully comply with regulations on power sale to EVN and adopt the model PPA. For the clauses under Chapter I - *General provisions* that do not clearly distinguish between buyers who are EVN and those who are different from EVN, the MOIT will have a review and provide for clarification to avoid confusion between these two. Regarding connection

techniques in case the electricity buyer is not EVN, the projects are still required to comply with the technical standards for direct and indirect grid connection.

- Circular No. 05 only provides for the rooftop solar power purchase agreement, but it does not cover model power purchase agreements for ground-mounted solar power.
- Regarding the capacity adjustment plan for Ninh Thuan province, in line with the Government's direction in Resolution 115 on pricing mechanism for solar power projects in Ninh Thuan province, the pricing mechanism at Decision 11 shall be further applicable to the end of 2020. Currently, the Draft is following closely the Resolution 115. According to MOIT's internal review, as of December 31, 2018, the total approved capacity for Ninh Thuan is about 1,930 MW. However, supplementary planning at this time is not possible due to requirements under the Law on Master Planning.
- Regarding the auction plan for solar power, MOIT has studied this matter and generated initial reports and recommendations, however, it remains difficult in the implementation process. MOIT plans to work with the World Bank to develop a procurement mechanism after 2021.
- MOIT expects to apply FiT 2 mechanism for 2.5 years, from July 1, 2019 to the end of December 2021 should it be timely approved.

**Mr. Nguyen Thanh Hai – Steering Committee Member, VBF Power and Energy WG, Associate/Baker & McKenzie Vietnam**

- In terms of the feasibility of the Behind the Meter on-site solar projects applicable to both ground-mounted and rooftop solar power projects with installed capacity of over 1MWp, it has not been clearly stated in the Draft Decision? If this model is legally regulated for implementation, the Draft Decision is also not clear in terms of any requirements that must be met (power planning, legal, technical, licensing requirements, etc.). These points have not yet been clear in the wordings of the Draft Decision?
- For Ninh Thuan province, in relation to grid-connected solar power projects to be eligible within a total maximum capacity of 2,000MW, the Draft Decision's drafting refers to two criteria: (1) Such a project is included in the power development plans at all levels, and (2) The commercial operation date of the project is before January 1, 2021. In particular, in terms of criteria (1), the Draft Decision is not yet clear on the date on which the criteria (1) will apply to determine eligible projects that have been included in the development plans (whether it is determined based on a date before the issuance date of Resolution 115 of August 31, 2018, or the expected effective date of this Decision, i.e. July 1, 2019, or a future date before January 1, 2021). The unclear drafting of this provision in the Draft Decision on the applicable date of the criterion (1) should be clarified and if it remains unclear, it may lead to different interpretations as to determine which projects are eligible for the 2,000MW package. MOIT may consider to clarify such provisions in the Draft Decision for consistent understanding and interpretation when implementing.
- Recently, some projects in Ninh Thuan have been revoked due to delayed progress. So how does this development affect the evaluation and determination of a list of projects eligible for the 2,000MW package? This is not entirely clear at this moment.

***Response by Mr. Nguyen Ninh Hai – Director of New & Renewable Energy Department, EREA***

- The regulations already approved by the Prime Minister will continue to be effective. The regulations that are issued later must avoid overlaps with the previously issued ones.
- The capacity of a rooftop solar power system is required to be less than or equal to 1 MWp. In case of power purchase in the industrial parks and given that they do not use EVN's power grid, a direct power purchase agreement, not the model power purchase agreement, shall be applied.
- In the case of Ninh Thuan province, based on current reports, MOIT will only focus on two conditions: (1) the total capacity does not exceed 2,000 MW, and (2) the date of commercial operation is before January 1, 2021.
- In case a project is revoked by the Province, the Law on Investment regulates that it is still a planned project. Should the Province selects another investor in accordance with current regulations, it remains as a planned project and this mechanism may still be applicable.

***Mr. Vu Toan Thang – Power Market Manager, AES Vietnam***

- Will the MOIT continue to collect feedback on the new Draft or will it be submitted to the Prime Minister for approval?
- Decision 11 will soon expire, leading to certain disruptions in supplementary planning for power projects. If an investor currently wishes to submit an application for supplementation for construction in the master plan for its solar power projects to MOIT for approval, is it necessary to wait for official issuance of new Decision as a replacement of Decision 11 or a Decree guiding the implementation of Law on Master Planning, or such a submission can be undertaken at this moment?
- Currently, it is stated that Vietnam's conditions are not suitable to issue a price support mechanism for grid-connected solar power projects with battery storage. Is it possible for MOIT to consider pilot introduction of this mechanism because the energy storage system has many advantages in grid congestion relief, voltage regulation and many other supports?

***Response by Mr. Nguyen Ninh Hai – Director of New & Renewable Energy Department, EREA***

- According to the Law on promulgation of legislative documents, MOIT will not collect further comments. For the feedback which have not been reflected, MOIT will list them in the explanatory section of its report to the Prime Minister.
- Under the Law on Master Planning, the investors can now submit new proposed projects to MOIT without a need to wait for official issuance of the Decision as a replacement of Decision 11. However, the Law on Master Planning currently presents many issues, leading to suspension of many projects.
- As advised by a consultant, the construction of the storage system in parallel with each solar power project does not generate social benefits and should not be implemented. However, building storage systems in the power system is quite an obvious requirement, especially

when many renewable energy sources are more integrated to the power grid. Currently, MOIT is targeting to build a centralized storage system that can be managed by EVN or other investors in a suitable location for dispatch of ENV power system. MOIT will undertake further study on this issue.

**DPPA progress*****Response by Mr. Le Anh Duc – Director of Electricity Market Development & Human Resource Training Center, ERAV***

Under ERAV's study, DPPA aims to cover renewable energy projects that are directly connected to the national grid and sell electricity to non-EVN third parties (i.e., off-grid DPPA). At present, a DPPA model proposed for Vietnam has been agreed. The ERAV will further discuss to develop the basic principles for the pilot scheme, which are tentatively completed by the end of April for consultation in late May/early June 2019. Tentatively, by the end of 2019/early 2020, official announcement will be made on whether the DPPA pilot scheme will be implemented.

**CLOSING****Mr. Nguyen Noi - Deputy Director, Foreign Investment Agency, MPI**

Should VBF have further comments on the new Draft Decision, it is advised to consolidate and submit to MOIT for its further consideration.

## POSITION PAPER OF CAPITAL MARKETS WORKING GROUP

Prepared by  
Capital Markets Working Group

### I. KEY ISSUES

#### 1. Foreign Ownership Limit/Non-voting Depository Receipt (NVDR)

##### Foreign ownership limit

We understand that the Government is amending the Law on Securities and Law on Investment. In order to completely resolve the overlapping provisions on foreign ownership limit in these two laws, we propose to amend Article 23 of the current Law on Investment as follows:

*A company, which meets **all 3 (three) conditions** below, will be subject to investment procedures and requirements applicable to foreign investors:*

- a. shareholder/member, who is a foreign investor, and related persons of this shareholder/member together directly or indirectly own at least 35% of the total issued ordinary shares or charter capital of the company; and*
- b. foreign shareholders/members altogether own at least 51% of the total issued ordinary shares or charter capital of the company (hereinafter referred to as "**Total Foreign Ownership**"); and*
- c. the Total Foreign Ownership in the company is continuously maintained for 1 year.*

##### Non-voting Depository Receipt (NVDR)

After considering various models of different countries, we find that the optimal solution for foreign ownership in a listed company in Vietnam is a Non-Voting Depository Receipt/NVDR. NVDR allows:

- a. The Vietnamese Government to (i) maintain the current foreign ownership ratio, and (ii) control the company through the voting mechanism of the NVDR issuer; and
- b. Foreign investors may, through NVDR, invest in the listed companies subject to foreign ownership limit.

#### 2. Domestic institutional investors

The establishment of a voluntary supplementary pension fund is an important factor in the formation and development of institutional investors in Vietnam's stock market.

In May 2019, the Ministry of Finance issued a license to allow operation of voluntary pension fund management services. However, the public offering of voluntary supplementary pension packages has not been implemented due to the lack of detailed tax guidelines for these products.

In particular, there are no guidelines on tax exemption or preferential tax rates applicable to the fund's investment outcomes, for payments from the funds to investors in different cases (early

withdrawal before retirement, lump sum or multiple withdrawals until reaching retirement age, termination of the program, change employer, etc.). In addition, the tax incentives for contributions to the funds, which is considered the most important factor to ensure the development of voluntary supplementary pension funds, is considered not appropriate to encourage the participants.

We hope the Ministry of Finance will issue tax policy guidelines for voluntary supplementary pension funds.

### 3. Regulations on transactions

#### Requirement of availability of funds and securities before transactions (pre-funding)

Under existing rules on order matching transactions: Investors must have sufficient funds and securities readily available before placing orders for stock trading.

Problems:

- a. **Over-regulation:** The purpose of this regulation is to manage and prevent trading risks. However, current rules apply to both investors and securities firms.
- b. **This is inconsistent with international best practices:** In international and regional practice, this requirement only applies to securities firms/depository members. Imposing this rule on investors is a strong and micro interference with commercial agreements between securities firm and investors.
- c. **Reducing market liquidity and roles of securities firms:** The existing rule reduces market liquidity, and limits functions and flexibility of securities firms.
- d. **Higher transaction costs:** investors, especially foreign investors, will bear sizable costs of currency exchange for trading.

We suggest that the Government consider solutions and a roadmap for removal of this requirement, while maintaining safety for stock trading.

#### Forming a settlement bank for securities and derivatives trading

Under the current payment arrangements:

- a. Settlement bank for stocks trading: BIDV.
- b. Settlement bank for derivatives: Vietinbank.
- c. Settlement bank for government bonds: The State Bank of Vietnam.

The above arrangements are not secured, and the government does not receive any fiscal revenue from these activities.

We propose that the Government develop a roadmap to establish a central settlement bank for securities and derivatives transactions under the Government to:

- a. mitigate risks for stock markets;
- b. get revenue for the government (by taking trading fees); and
- c. enhance transparency and fairness in the market.

#### 4. Debt market

##### Information disclosure before issuance

- a. Decree 163/2018/ND-CP requires detailed disclosure of the bonds' terms & conditions at least 10 working days before the issuance are unreasonable and impractical.
- b. Issuers and investors often finalize bond conditions & terms shortly before issuing. This is especially the case for secured bonds, due to complicated legal documents, the parties usually only finish detailed negotiations on security contracts 1 or 2 days before the issuance date.
- c. Detailed disclosure requirement hinders the issuance of corporate bonds, and at the same time poses a "non-compliance" risk to the companies because they cannot fulfill this requirement.
- d. We propose that the Decree be amended to allow issuers to publish only **basic** terms and conditions of the bonds (maturity, par value, interest rate, principal and interest payment) on the web site for corporate bonds (currently not available, so it is still published on HNX or HOSE). Other terms and conditions of the bonds will be subject to separate agreements between issuers and the investors which should not be subject to disclosure to the Stock Exchange before issuing bonds.

##### Result disclosure after issuance

A requirement under Decree 163 on compulsory disclosure of bondholders' information in the event of *private placement* is inconsistent with the nature of private place of bonds, and negatively and directly affect privacy of bond investors and their portfolios.

We propose that this provision be removed from Decree 163.

##### Trading of privately issued bonds

- a. According to Decree 163, bonds *privately issued* are allowed to be transferred to less than 100 investors (excluding professional securities investors), and this restriction is only for 1 year from the completion of the issuance.
- b. As a result, many entities are taking advantage of this regulation to resell bonds to individual investors without having to meet the conditions for public offering of bonds (which is much stricter than the conditions of private placement). In addition, 1 year after from the date of issuance, the financial health of the issuer may change and individual investors will not have enough time and knowledge to anticipate potential risks. Therefore, we propose:
  - Bonds privately issued should not be allowed to be transferred during the term of bonds; and
  - Privately issued bonds may only be transferred among professional securities investors.



## II. SPECIFIC RECOMMENDATIONS ON LAWS AND GUIDING DOCUMENTS

No.	Issue	Recommendation
<b>RECOMMENDATION FOR INTER-MINISTERIAL COORDINATION</b>		
1	<p><b>Scope of service under the securities depository license of custodian banks</b></p> <p>According to the law on securities, custodian banks, apart from being allowed to provide securities depository services, are allowed to provide supervisory bank, transfer agent and fund administration services without having to obtain additional license from the State Securities Commission. According to banking laws, banks are not allowed to provide services not stated in the bank's Incorporation and Operation License. However, Circular 40/2011/TT-NHNN, Circular 17/2017/TT-NHNN and Circular 28/2018/TT-NHNN of the State Bank of Vietnam on licensing, organization and operation of commercial banks, foreign bank branches, representative offices of foreign credit institutions and other foreign organizations with banking operations in Vietnam in do not contain the guidelines related to the above fund services.</p>	<p>It is proposed that the SSC discusses and works with the SBV to provide consistent guidance between the securities and banking laws whereby commercial banks and foreign bank branches in Vietnam licensed by the SBV licensed to provide securities depository services will be allowed to provide supervisory bank,, transfer agency and fund administration services in accordance with the securities legal framework.</p>
2	<p><b>Foreign investors' deposit in foreign currencies to participate in the auction of equitization and state capital divestment</b></p> <p>Recently, the SBV also issued Circular 03/2019/TT-NHNN effective as of May 13, 2019, allowing foreign investors to pay deposits <u>in foreign currency</u> in these auctions. However, if the foreign investor purchase shares of equitized SOEs through the book building method, the payment of deposits in foreign currency will not be applied.</p> <p>In addition, Decree 126/2017/ND-CP and regulations issued by the SSC require investors (including foreign investors) to pay deposits and sales proceeds of all shares and capital contribution in <u>Vietnam dong</u> to the auction agent's account within the stipulated time limit.</p>	<p>It is proposed that the SSC work with the SBV on cases where foreign investors are allowed to pay deposits in foreign currency in accordance with Circular 03/2019/TT-NHNN of the SBV and detailed guidance on the deposit payment process in the foreign currency mentioned above. In case foreign investors make a deposit in foreign currency and then win the auction, according to the regulations on foreign exchange management, foreign investors must make full payment for all shares from their indirect investment account. Then, such deposit in foreign currency will have to be transferred to the foreign investor's indirect investment account before being converted into Vietnam dong and used for paying the full amount to buy shares. According to the current regulations of the Ministry of Finance</p>

		and the SSC on equitization, auction winners are not allowed to withdraw deposits and pay the full amount to buy shares afterwards.
<b>CORPORATE BONDS</b>		
3	<p><b>Issues related to listing and valuation of corporate bonds</b></p> <p>According to the accounting principles for the Fund, bonds must be posted in the clean price (excluding coupon interest) and bond interest recognized in the profit and loss statement.</p> <p>In Vietnam's market, current regulation on trading of bonds listed on the Hanoi Stock Exchange ("HNX") only stipulates that bond's put-through price on the trading system shall be entered manually by securities companies according to actual sales contracts without requiring uniform use of clean prices or price excluding coupon interest. Decision 66/QD-SGDHCM on promulgating the Regulation on securities trading on HOSE only stipulates that bond's put-through price on the trading system shall be entered manually by the buyers and the sellers into HOSE's trading system and such put-through price are inclusive of coupon interest, there are no specific regulations for calculating the clean price or accumulated coupon interest.</p> <p>On the other hand, according to the bond trading practices in the market, during the ex-rights transaction period (from the last subscription date to the closing date to pay bond interests according to the notice of the issuer), the buyer will not be entitled to receive coupon interest. However, the regulations of the two Stock Exchanges currently do not have specific guidance on the formula for calculating the cumulative coupon interest and the clean price of the corporate bonds in the ex-rights period.</p>	<p>It is recommended that the SSC providing guidance to the Stock Exchanges to consider and supplement regulations requiring their trading members to use only clean prices when entering put-through transactions for corporate bonds into the system and apply this price list consistently to all corporate bond transactions listed on both exchanges.</p> <p>We would like to request the SSC to provide specific guidance on the formula for calculating cumulative coupon interest and clean price (excluding cumulative interest) for corporate bonds listed on the Stock Exchanges, including ex-rights trading period.</p>

## **III. SESSION 2**

## **POSITION PAPER OF EDUCATION & TRAINING WORKING GROUP**

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

The business community has a vital role in society to help achieve rapid and sustainable development. This relies on educational institutions supporting the business community to achieve a circular economy through the development of innovative business ideas to develop sustainable products to protect the environment and human health. Innovation is essential to develop products that are more energy and resource efficient, and empower consumers to choose better products.

Quality education, at all levels, is fundamental to the development of a circular economy and to support and nurture business innovation. The Education and Training Working Group (E&TWG) continues to support both MoET and MoLISA in improving the standard of education. Progress is being made on a number of fronts and we continue to identify areas for possible improvement. This paper focuses on the following areas:

- **The Proposed New Labour Code:** We concur with the recommendations postulated by the HR Sub Working Group and agree that the new Labour Code is a great improvement. We would also encourage its implementation as soon as possible and definitely before 2021.
- **The Higher Education Law:** The Ministry of Education and Training (MOET) has released a draft decree guiding the implementation of the amended Higher Education Law, under which the revenue from science and technology activities of universities must not be lower than 25 percent of total revenue. This requirement, once approved, will put pressure on universities and force them to accelerate scientific research and technology transfer activities.
- **Decree 86:** We would like to request that MoET expedites the drafting of the Circular guiding Decree No. 86. This will provide clear understanding of what is expected from educational institutions and what they need to do with regards to implementation. Many schools are stuck in a bind working with authorities to amend their licenses because of the lack of a guiding circular.
- **Decree 143:** The Law on Social Insurance that has an impact on organisations employing foreign staff in Vietnam. Recommendation, with regards to issues with Decree 143, have been provided through other chambers and working groups and we recommend that these issues are examined and addressed in a satisfactory fashion for all stakeholders.
- **Technical and Vocational Education and Training:** We would like to request that MOLISA and the Government approve the revised Decree to replace the Decree No. 48 relating to the operation of foreign invested colleges without delay.

In conclusion, the Vietnamese economy needs to continue to grow but this growth needs to be undertaken in an environment of sustainability. The Education and Training Working Group, through the VBF, will continue with its commitment to assist Vietnam in achieving its economic potential.

## **OPPORTUNITIES FOR THE REVISED LABOUR CODE TO SUPPORT RAPID AND SUSTAINABLE DEVELOPMENT**

*Presented by  
Mr. Colin Blackwell  
Working Group Head*

Firstly, I would as always like to thank the Ministry of Labour, Invalids and Social Affairs for the excellent corporation with the HR sub working group and the business community. The coordination on foreign worker social security bilateral tax totalization agreements is particularly appreciated.

We are impressed by the new draft Labor Code which is overall very well thought out, international best practice and thinking towards the future. The provisions are generally well balanced between facilitating the economy towards rapid growth, whilst protecting all parties in a sustainable fair way. It makes business easier whilst also making large improvements in social equality and public private responsibility.

We would like to highlight a few articles for praise, clarification and in a couple of cases improvement. All of our points are intended to enhance rapid and sustainable economic growth while ensuring social equity.

We encourage the very positive sustainable improvements on gender, collective bargaining, regulating employment agencies and the minimum wage process.

The future of work will require more agile and flexible arrangements for “knowledge workers”. The new draft labour code positively addresses these and we are keen for the implementation provisions to be similarly forward looking.

Agile modern companies will increasingly have more flexible arrangements between each other, to handle the more complex tasks required. The new provisions on subcontracting are a good start to flexibly deploy specialists in the workforce. We recommend fast implementation of this and to make the whole process as administratively simple as possible, so that small companies who need subcontractors most can confidently use them.

Similarly, the jobs of the future will increasingly be on a freelance and project basis. The new provisions on contracts with more than one employer address this, but again sustainable practical use of this will be best achieved with simple administration, attractive to smaller start-up companies and large corporations alike.

The transforming economy and new technologies provide both opportunities and risks for employees. The new labour code addresses this with provisions on assigning workers to perform new tasks, plus a framework for companies to reskill employees. The challenge is to proactively reskill before employees’ skills become obsolete, which individual companies may not recognise before it is too late. A sustainable solution could be closer public private partnership to identify trends at a macro level and provide proactive guidance to especially smaller companies, which the VBF would be happy to advise on.

Ever greater numbers of people work from home, such as computer programmers. At the moment, the proposed labour code does not yet include them in many of the provisions. We propose to carefully include them in more of the worker protections so that their livelihoods

become more stable. This encourages more home working which in turn facilitates flexible, modern, sustainable economic growth.

Overall this new Labour Code is a great improvement, which is in our view excellent for employees, businesses and Vietnam. With a few minor adjustments, we would encourage its implementation earlier than 2021. The VBF would be honoured to assist in every way we can with recommendations and support on reviewing the implementation provisions. We suggest further meetings with the Ministry of Labour soon to discuss this in more detail.

## **OVERVIEW REPORT ON HUMAN RESOURCES WORKING GROUP'S WORK PROGRESS**

### **OPPORTUNITIES FOR THE REVISED LABOUR CODE TO SUPPORT RAPID AND SUSTAINABLE DEVELOPMENT**

*Prepared by  
Colin Blackwell  
Human Resources WG*

- We sincerely thank the government for entrusting the VBF with taking an important role in starting totalization agreements with other countries on social security.
- Overall the new proposed labor code is very positive and we look forward to its implementation.
- The code is a good balance that will support rapid economic growth, but in a sustainable fair way to employees.
- The new focus on gender and the detailed industrial dispute resolution processes are particularly good.
- We recommend the retirement age for men and women is made equal.
- We recommend a safe and protective workplace for minors.
- The restriction of work permits to four years is concerning.
- The section on deciding on strike action needs to be reviewed to avoid unintended labor disruption.
- We would welcome the new code's early implementation and hope to be able to contribute constructively by sharing ideas between the VBF and Ministry of Labor

Firstly, we would as usual like to thank the Ministry of Labor, Invalids and Social Affairs for the excellent corporation with the HR sub working group and the business community. The coordination on foreign worker social security bilateral tax totalization agreements is particularly appreciated.

We are impressed by the new draft Labor Code which is overall very well thought out, international best practice and thinking towards the future. The provisions are generally well balanced between facilitating the economy towards rapid growth, whilst protecting all parties in a sustainable fair way. It makes business easier whilst also making large improvements in social equality and public private responsibility.

We would like to highlight a few articles for praise, clarification and in a couple of cases improvement. All of our points are intended to enhance rapid and sustainable economic growth while ensuring social equity.

**Article 8: Prohibited acts**

- Add to the list of non discrimination “sexual orientation”
- It is great that preventing sexual harassment is given such priority

**Article 11: Right to recruitment of employers**

- Very positive that employment agencies cannot charge candidates. We look forward to this being clearly implemented and enforced.

**Article 17: Prohibited acts of employers when signing and implementing employment contracts**

- Similar to the above, very positive workers are protected by not having to pay employers for jobs; this should be vigorously implemented that officers of a company face legal proceedings for doing this against the company’s instructions

**Article 19: Entering into employment contracts with more than one employer**

- Implementation provisions should carefully include the more complex nature of work arrangements in the future economy with more consulting, freelance and temporary jobs

**Article 29: Assigning employees to perform a work which is not prescribed in the employment contracts**

- In a transformational economy, many jobs change rapidly as new technologies or modern work practices are implemented. Implementation provisions should be careful not to be too restrictive in their wording so that the modernization of jobs, companies and Vietnam is encouraged.

**Article 36: The employer’s unilateral termination the employment contract**

- Gross misconduct should be added to the list of reasons consistent with Article 126

**Article 42: Obligations of employers in cases of changes in structure, technology or due to economic reasons**

- This will become increasingly important as technology change affects increasing numbers of jobs; it is good that this worker protection is built in to the labor code

**Article 52: Labor dispatch**

- It is good that subcontracting has now been more formally recognized as it will be increasingly common



**Article 55:** Rights and obligations of the labour dispatch enterprise

- The labour dispatch enterprise should be under some obligation to protect the employee from bad work practices at the hiring company, such as unsafe working conditions or harassment. Whilst they cannot monitor the conditions every day, they should not send further employees to a hiring company that has demonstrated a persistent pattern of bad practice, especially if overseas and the employee cannot be protected by this labour code. The implementation provisions should make them responsible if they knowingly put an employee into a high risk situation for example human trafficking.

**Article 59:** Responsibilities of employers with respect to training, occupational qualification and skill improvement

- This is again very forward looking and recognises the need to reskill employees in a transforming economy. The implementation guidelines should include practical guidelines as to how employers can best achieve this.

**Articles 65-89:** Collective bargaining

- We welcome the clarity this new level of detail this brings.

**Article 92:** Grounds for fixing and adjusting minimum wage

- We recommend to add two more criteria;
  - comparison to minimum wage increases in other countries and how Vietnam's international competitiveness can be best enhanced
  - consideration of other increases in employment cost such as mandatory benefits or taxation

**Article 93:** National Wage Council

- We welcome the Prime Minister's increased involvement in this vital process which we recall has been very useful in reaching agreement in previous years.

**Article 94:** Wage scale, wage table and labour norms

- We understand the intent for transparency and fairness here, but recommend that in the implementation provisions that recognition is given to modern flexible work practices, such as technology workers being given productivity pay.

**Article 102:** Wage advances

- The automatic right of employees to get advances before holidays would be impractical for companies to administer so we recommend to remove point 3.

**Article 103:** Wage deductions

- Should be revised as: "employee through not following company policies damages tools and equipment, discloses confidential information, or intentionally cause economic harm to the employer". Also the cross reference to article 106 seems incorrect.

**Article 105:** Bonuses

- There will be occasions where some management bonuses may be confidential, so the provision that all bonus plans are made public is unreasonable.

**Article 108:** Overtime work

- We welcome the increase in the overtime cap, but remind that this is still below regional levels. We recommend the implementation provisions do not prohibit employees working additional hours over this cap if they wish to to so to earn additional income.

**Article 123:** Rules for labor disciplines and forms of dismissal

- Should be revised and add a condition that “in case employer has sent invitation to employee to be present at company’s disciplinary meeting 3 times and employee does not turn up, employer has the right to terminate his/her contract”.

**Article 126:** Application of dismissal as a disciplinary measure

- We welcome the expanded scope and definition of gross misconduct.

**Article 135:** Ensuring occupational safety and health at the workplace

- We recommend the implementation provisions of section 1c (developing and implementing internal rules, procedures and measures to ensure occupational safety and health) include psychological wellbeing – that employers should not subject employees to overly stressful practices that are detrimental to their mental health.
- We recommend additional provision under b (provide necessary occupational safety equipment to labourers).
- Occupational safety trainings should be mandatory for minors.

**Article 136:** State policies on female employees

- We applaud the new detail and priority being given to gender equality.

**Article 137:** Responsibilities of employers

- The implementation provisions on section 2 (Employers shall consult with female employees or their representatives when taking decisions which affect the rights and interests of women) should place responsibility also on unions, employee labour boards and collective bargaining organisations to ensure that the number of females in their structures also is reflective of the proportion of females in the company’s workforce.
- Section 4 (Employers shall assist and support in building day care facilities and kindergartens, or in covering a part of the childcare expenses incurred by employees) is great, but the implementation provisions should make this meaningful.
- Lactation rooms be established at all workplaces with female employees and that the 60 minutes nursing breaks be extended to include mothers with infants aged 12 to 24 months, and that mothers returning to work before the end of 6 months maternity leave as stipulated under Article 140 needs to be especially encouraged and supported to continue breastfeeding for 6 months.

**Article 138:** Maternity protection

- Whilst section 4 on additional breaks for menstruation is well intentioned and the need to tell the employer in advance is understandable, it should be carefully structured into the implementation provisions in such a way as not to embarrass or breach the privacy or dignity of the employee.

**Article 146:** Employment of workers under the age of 15

- There is no definition of child labour. The revised *Labour Code* should include a definition of ‘child labour’, explicitly prohibit the worst forms of child labour and include stronger civil sanctions against perpetrators of the worst forms of child labour, to protect all children under-18 from exploitation and abuse in line with international children’s rights norms and standards
- Whilst the entertainment industry does sometimes have requirements for employees under the age of 13, we would encourage the implementation provisions to very specifically protect those children.
- Many children do not have written employment contracts. The Labour Code should cover and provide protection to minors without formal contracts guaranteeing minimum wage,

health and social insurance.

**Article 153:** Conditions for recruitment and use of foreign laborers working in Vietnam.

- Clearer definition by provincial labor department about how the company should justify that Vietnamese employee could not be found or is not suitable for jobs that the company needs to hire a foreign national.
- Job position approval should not apply to intra-company transferees.

**Article 154:** Foreign workers must present a work permit at the request of a competent authority.

- Clarify who is required to keep the original work permit.
- Clarify whether competent authorities includes immigration officer at the airport? Foreigners normally do not have their work permit with them as it is often kept by the HR or kept safely at home.

**Article 156:** Validity period of work permit

- This four year cap would deprive companies and Vietnam of many valuable mission critical workers. We suggest to reword it as below:  
“The validity of a work permit is maximum for 02 years; only 1 extension shall be allowed for a maximum period of 2 years. After the 2 + 2 years term is completed, and if the Work permit holder shall pursue his mission in Vietnam, a fresh new work permit application will be required.”

**Article 159:** State policies for workers with disabilities

- Preferential tax rates are already available and should be mentioned here as well.
- Restriction on health should be removed in all relevant provisions as this would prevent persons with disability from employment opportunities that are thought irrelevant to them.

**Articles 162-166:** Domestic workers

- We applaud the expanded protection of these workers.

**Article 168:** Employees performing work at home

- We would recommend clear definitions and protections for home working arrangements. Modern economies have increasing amounts of these flexible arrangements and in many cases it would be in everyone's interests if the labour code applied to them.

**Article 170:** Age of retirement

- We recommend parity of retirement ages between men and women to promote gender equality. This allows women to have equal opportunity to reach management levels and to achieve equal lifetime earnings.

**Articles 179-197:** resolution of labour disputes

- This is good that there are so many new detailed provisions for resolution, arbitration and structured negotiation.

**Article 202:** Decision of strike and notice of the starting time of a strike

- This needs to be revised with high priority to avoid negative unintended consequences. In all other sections on similar labour organisations, there must be a vote of over 50% of the affected workforce. In this exception it is only over 50% of “persons whose opinions have been solicited”, which can mean only a minority of employees or only the elected leadership of the representative organisation. This could allow a very small number of people to call a strike against the wishes of the majority of affected workers. This is not a minor point – some countries have had decades of severe national level industrial

disruption caused by small numbers of extremist leaders of labour organisations. The fairer solution is that a majority of all affected workers should be in agreement with a strike.

**Article 204:** Cases where strikes are illegal

- We recommend the implementation provisions on this are clear so that there is a clear process of taking legal action against illegal strikes, fully supported by provincial authorities. Concerns raised by members in the past are that there has been no clear legal steps, leading to unnecessary illegal “wildcat strikes”. This will also be the mechanism for ensuring the excellent dialogue and arbitration articles in this code are properly followed.

**Article 219:** Enforcement of the Labour Code

- Overall this new Labour Code is a great improvement which is in our view excellent for employees, businesses and Vietnam. With a few minor adjustments, we would encourage its implementation earlier than 2021. The VBF would be honoured to assist in every way we can with recommendations and support on reviewing the implementation provisions. We suggest further meetings with the Ministry of Labour soon to discuss this in more detail.

**HUMAN RESOURCES WORKING GROUP  
MEETING WITH MOLISA DISCUSSING ISSUES ON DECREE 143**

*9:00 – 11:00, Tuesday, 3<sup>rd</sup> April, 2019  
MOLISA, 12 Ngo Quyen, Hoan Kiem, Hanoi*

**MEETING MINUTES**

*General Comments*

**Mr. Tran Hai Nam, Deputy Director, Social Insurance Department, MOLISA**

The baseline that this policy relies on is the increasing trend international labor mobility into Vietnam, as Vietnamese workers in other countries are also rising in numbers, resulting in the need for Vietnam to remain compliant with relevant international conventions and treaties.

In the current Social Insurance Law, at Article 2.2, the National Assembly provides generic and broad regulations that non-nationals coming to Vietnam to work who have a work permit or practice certificate granted by a competent Vietnamese authority must enroll in compulsory social insurance according to the Government's rules. The law is however silent on employment contracts as well as other exceptions as mentioned in Decree 113/2018/NĐ-CP, including internal transfer and employees of working age according to the Vietnamese law. To that end, we have taken this into consideration and proposed narrowing the scope and adding a requirement that a labor contract must be in place.

*Responses to comments from the Vietnam Business Forum - VBF*

**Mr. Tran Hai Nam, Deputy Director, Social Insurance Department, MOLISA**

**1. Article 2.1**

VBF suggested that workers should be granted the right to choose to enroll in social insurance, instead of doing it as an obligation. Before Decree 143, the government has communicated in writing with the National Assembly on this issue, and the National Assembly Standing Committee (NASC), in its return correspondence, pointed out that this is a matter of compulsory nature. This enrollment obligation is comprised of the rights and obligations of both parties – the worker and insurance fund. This rule is also anchored in the regulatory framework applied to Vietnamese workers establishing that when a contractual employment relation emerges, it is an obligation of the employer as well as the employee to enroll in social insurance.

Accordingly, to guarantee consistency between Vietnamese and non-national workers, we suggest enrollment on a mandatory basis to safeguard the worker's interests.

**2. Article 2.2a**

VBF's suggestion, we believe, is quite reasonable for the worker and employer, as it may facilitate the application of this policy and help avoid a situation where references must be made to many varying regulatory documents. Our reply is that there will not be an implementing Circular because Decree 143 does not authorize MOLISA to release such a Circular.

However, over the past months, we have also had in place an implementing document to further articulate on applicability. We will share this document with VBF. This document has been

disseminated to VSS Managing Director, provinces and cities to further clarify the policy applicability, while also citing relevant guidelines.

**Mr. Colin Blackwell, Head of the Human Resources Working Group, VBF**

For internal transfer: With a company based in many different countries, the internal transfer might not be from the head office but from a subsidiary. We'd like to note that the same definition is being used for social security education. Please be careful to recognize people who move from one subsidiary to another in a multinational company as an internal transferee.

**Mr. Tran Hai Nam, Deputy Director, Social Insurance Department, MOLISA**

In this regard, while Decree 143 does address the issue of internal transfer for covered entities specified in Article 3.1, Decree 11, the actual scope is narrower than the general definition of internal transfer or in the example raised by Mr. Colin.

We have also received extensive inputs from foreign companies and chambers of commerce on this issue. Going forward, we expect VBF to cooperate with MOLISA combing the affected parties in this group to what percentage they are among the current general internal transfer population, in order to take an evaluation and recommend amendments of Decree 11 to the government.

**3. Article 13**

Applying social insurance policies does not incur costs for businesses in terms of contributory obligations. In case the employees are not subject to compulsory social insurance enrollment, the employer must include the contribution in the workers' pay for the latter to take the matter into their own hands.

There are opinions that when a labor contract is signed with a Vietnamese or non-national worker, the salary indicated in the contract is a gross amount that also includes the social insurance contribution obligation that the employer sets aside to pay on behalf of the employee. Requiring the employer to pay the 3.5% social insurance fee will take a toll to how much the employee gets paid as stated in the contract. Our answer is that the current labor law does not say that the gross salary includes insurance. Given what VBF had to say, in the near future, we do feel the need to revisit employment contracts whenever a business signs a labor contract with non-national workers to see if they comply with this regulation. On the part of Vietnamese workers, our audit and inspection findings indicate that everyone has been compliant in this matter.

Recommendation on cost reduction: When this policy came out, we relied on the principle of non-discrimination between Vietnamese workers and non-national workers. It is therefore impossible to apply a lesser social insurance contribution scheme for non-national workers, as Vietnamese workers pay the same amount. The Vietnam Insurance Fund is a financially independent entity. When the fund is in surplus, the government will consider cutting the fees. It is a fact that available insurance benefits are relatively generous in Vietnam, and various international organizations have suggested more restrictions. In acknowledgement of the input, we will continue studying issues relating to high contributions and the cost to employers. Upcoming adjustments, if any, will apply to both Vietnamese and non-national workers.

**Article 18.1**

Bilateral deals on exemption and reduction: To remove double insurance payment for non-nationals working in Vietnam as well as Vietnamese workers taking jobs in other countries, MOLISA has been negotiating with various nations, including Germany, Japan, the Philippines,

Taiwan, China and others. We are looking toward 2022 as the target timeline for bilateral deals to be signed and adopted. Apart from the goal of removing double insurance payment, we also seek to achieve other objectives, such as accumulating the payment time. We hope that VBF can share its experience in relation to entering into bilateral/multilateral agreements, as well as application of insurance policies in other countries, especially for non-national workers. In this regard, we hope more agreements will come into effect going forward.

We hope VBF can take on the role as an interface between Vietnam and other nations by starting the conversation via chambers of commerce. After expressions of interest, then bilateral totalization agreements would continue through standard government to government channels. VBF should ask countries with inbound nationals to express if they are;

- Interested in principle in a bilateral or multilateral totalisation agreement
- Indicate which other countries they have similar agreements in place with or in the process of setting up
- Indicate their expectation as to the scope of the agreement they would prefer with Vietnam

Certification by a competent entity: In the current insurance rules, we have health insurance and social insurance. Decree 143 is only discussing social insurance. The sickness payments from social insurance referred to in Decree 143 come from the fund to offset the lost or reduced worker's pay, whereas health insurance covers the expenses at health care facilities.

We acknowledge your comments, but also want to share information on the existing health insurance policy of the Ministry of Health. Existing local health care facilities may not be prepared or capable to provide medical care to non-national workers. We do not make it obligatory that the certificate must come from a particular entity, providing that it is a competent one (licensed by the Ministry of Health). The certificate may be entirely in Vietnamese, and not necessarily a foreign language, unless someone needs medical care in another country.

**Ms. Nguyen Kim Dung, Legal-Compliance-Public Relations Manager, Apollo**

Applicability of Decree 143: Narrowing down the applicability for social insurance and addition of exceptions is suggested. VBF will provide detailed explanatory notes if there is a need to explain why social insurance applicability and expansion of the exception cases are needed.

Social Insurance contribution: The current levels equal those for Vietnamese workers, and VBF has recommended that MOLISA make adjustments toward a more balanced scheme. In practice, for foreign firms, in addition to social insurance, there are also independent health insurance plans for employees. In the event a foreign company retains health insurance for its employees, it is often to offer the staff the best benefits possible, since social insurance or health insurance only provides a certain level of coverage in accordance with local laws. We suggest that MOLISA look into the case of employees having voluntary insurance offered by the employer and being entitled to 100% coverage as to what exemption or reduction they should be allowed to avoid wasteful use of resources.

Article 15 & 16 on Administrative procedures: To receive benefits under current social insurance plans, both employees and employers must prepare a complete application dossier that includes multiple types of documents, such as certification of leaving a job by a competent entity. In this case, a worker walking into a competent health care facility asking for medical services in English will have to pay higher costs, whereas social insurance only covers part of

the cost. In respect of medical documentation, a public hospital will only provide certification in Vietnamese. If a worker comes to a facility that provides such certification in English, translation into Vietnamese will cost more money, since local insurance authorities do not accept papers in English.

Furthermore, to receive death benefits, one must obtain an authorization letter from the family of the person who dies in Vietnam. In the meantime, notarization, consularization and sending the authorization letter of the deceased's family to Vietnam takes time and costs much money. We recommend that MOLISA consider whether this scheme is ideal.

VBF suggests that MOLISA consider releasing an implementing Circular for Decree 143, which has a Chapter on applicable administrative procedures for non-national workers, based on what is going on in the field.

**Mr. Tran Hai Nam, Deputy Director, Social Insurance Department, MOLISA**

It is MOLISA's general standpoint that there is no discrimination between non-national and Vietnamese workers. Decree 143 has specific parts customized to fit the profile of non-national workers. An example is the regulation suggesting that procedures must be more simple and quicker than for Vietnamese workers to make sure that non-national workers can return home as soon as possible when their contracts expire. This rule was introduced after the government has made thorough review to ensure the rights, interests and opportunities of access for non-national workers.

Where needed, the ministry may have such a Circular, but the current rules on enactment of normative regulations do not allow a circular to provide guidance on administrative procedures. However, instead of a Circular, MOLISA may propose that the government have in place a decree amendment. We will look into the comments raised by VBF and consider modifications in the future should challenges and concerns arise during application.

**Ms. Nguyen Kim Dung, Legal-Compliance-Public Relations Manager, Apollo**

VBF suggests that considerations of who should be part of the social insurance plan and how much they should pay should take into account the perspectives that VBF members have discussed. This means that for non-national workers who benefit from their firm's stand-alone insurance coverage should be considered by the Ministry to be subject to a more reasonable scheme, to avoid overlap.

Moreover, we would like to notice the Ministry that non-national workers' use of health coverage is in practice almost non-existent, but employers still have to pay this insurance for their employees. This does not seem to serve the purpose intended in the first place of having health insurance on non-national workers. A reason is that as much as 70% of the local hospitals and care facilities authorized to provide primary care are unable to provide medical care using the English language.

**Mr. Tran Hai Nam, Deputy Director, Social Insurance Department, MOLISA**

We duly acknowledge the concerns raised by VBF. As discussed above, we very much welcome VBF's involvement to support and promote the process of closing bilateral/multilateral deals.

**Mr. Kenji Hachiya – Director, IMTC**



We'd like to raise one issue of individual investor investing in Vietnam. The investor will hire him/herself as an employee, whether or not this employee eligible to pay social insurance should be clarified.

**Mr. Brian O'Reilly, Head of the Education & Training Working Group, VBF**

Firms that have independent health insurance plans for employees should have a reduction or exemption. This could be applied to employees both local and foreign. The onus should be on the firms to provide proof that they have provided this insurance to their employees.

**Mr. Tran Hai Nam, Deputy Director, Social Insurance Department, MOLISA**

This concern is duly noted. For now, social insurance is paid based on industrial relations. That means until now, we have been more focused on the employee rather than the employer. We will take this concern into consideration while we further improve the policies in the future to ensure equality of access to public policy, not just for non-nationals, but also Vietnamese home-based business owners.

The government has assigned MOLISA to be proactive in promoting the negotiation of the deals. If any other country wants to take a first step or wishes to negotiate with Vietnam in order to agree on an insurance deal, the Ministry has had in place a task force acting as a communication focal point. The negotiation process may be involving other ministries, including the Ministry of Foreign Affairs, Ministry of Justice and others.

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**LIST OF PARTICIPANTS**

<b>No.</b>	<b>Full name</b>	<b>Title</b>	<b>Organization</b>
<b>MOLISA</b>			
1.	Tran Hai Nam	Deputy Director General	Department of Social Insurance
2.	Nguyen Thi Ha	Officer	Department of Social Insurance
3.	Nguyen Thi Thanh Binh	Officer	Department of International Cooperation
<b>VBF</b>			
4.	Colin Blackwell	Head of VBF HR Sub-group	CEO of Enablecode
5.	Brian O'Reilly	Head of VBF Education and Training Working Group	Vietnamese-German University
6.	Pham Tri Trung	Special Counsel	Baker & McKenzie
7.	Kenji Hachiya	Director	International Management Training and Consulting
8.	Nguyen Thi Thanh Huyen	Director of Tax, People Advisory Service (HN)	Ernst & Young
9.	William P. Badger, Jr.	Director of Community Outreach	Concordia International School Hanoi
10.	Nguyen Kim Dung	Head of Legal, Compliance and Government Relations	Apollo
11.	An Thuy Duong	Hanoi Manager	AusCham
12.	Dang Vu Hoang Giang	Junior Associate	Lexcomm Vietnam
13.	Le Thi Hoang Anh	Coordinator	VBF Secretariat
14.	Nguyen Ngoc Anh	Officer	VBF Secretariat

## **PRODUCING LONG TERM CROPS - LIVESTOCK - FISHERIES WITH MINIMAL EFFECT ON THE ENVIRONMENT, QUALITY VALUE ADD FOR GROWTH**

*Prepared by  
Agribusiness Working Group*

I am David Whitehead, a Director on Auscham, and Head of the Agribusiness Working Group of the VBF.

Sustainability rests on the principle that we must meet the needs of the present, without compromising the ability of future generations to meet their own needs. Starving people in poor nations, obesity in rich nations, increasing food prices, on-going climate change, increasing fuel and transportation costs, flaws of the global market, worldwide pesticide pollution, pest adaptation and resistance, livestock disease management, loss of soil fertility and organic carbon, soil erosion, decreasing biodiversity, desertification, and so on.

Despite unprecedented advances in science, serious issues about food show clearly that conventional agriculture is no longer suited to feeding humans and preserving ecosystems.

Sustainable agriculture is an alternative for solving fundamental and applied issues related to food production in an ecological way. While conventional agriculture is driven almost solely by productivity and profit, sustainable agriculture integrates biological, chemical, physical, ecological, economic and social sciences comprehensively to develop new farming practices that are safe, and do not degrade the environment.

Sustainable agriculture and aquaculture can be defined in many ways; it is a system that can indefinitely sustain itself without degrading the land, the environment, or the people. But ultimately it seeks to sustain farmers, resources and communities by promoting farming practices and methods that are profitable, environmentally sound and good for communities.

Sustainable agriculture fits into and complements modern agriculture. It rewards the true values of producers and their products. It draws and learns from organic farming. It works on farms large and small, harnessing new technologies and renewing the best practices of the past.

In short, Sustainable Agriculture is:

- Economically Viable: If it is not profitable, it is not sustainable.
- Socially Supportive: The quality of life of farmers, farm families and farm communities is important; and
- Ecologically Sound. We must preserve the resource base that sustains us all.

For sustainable agriculture to be economically viable, socially responsible and ecologically sound, the economic, social and ecological issues must be interrelated, and all are essential to sustainability.

An agricultural system that uses up or degrades its natural resource base, or pollutes the natural environment, eventually will lose its ability to produce. It's not sustainable.

An agricultural system that isn't profitable, at least over time, will not allow its farmers to stay in business. It's not sustainable.

An agricultural system that fails to meet the needs of society, as producers and citizens as well as consumers, will not be sustained by society. It's not sustainable.

A sustainable agricultural system must be all three - ecologically sound, economically viable and socially responsible. And all three must be in harmony."

So, three broad areas of concern underlie the concept of sustainable agriculture:

- economic concerns over economic justice, the survival of owner-operated farms, and the long-term profitability of agriculture;
- environmental concerns over adverse impacts of agriculture on land, water, and wildlife resources; and
- public welfare concerns over food quality and human exposure to toxic chemicals.

So, an agricultural program or policy, contributes to agricultural sustainability if it:

- Enhances, or maintains, the number, quality, and long-term economic viability of farming and other agricultural business opportunities in a community or region.
- Enhances, rather than diminishes, the integrity, diversity, and long-term productivity of both the managed agricultural ecosystem and the surrounding natural environmental ecosystems; and
- Enhances, rather than threatens, the health, safety, and lifestyle of agricultural producers and consumers alike.

With one of the biggest rice industries in the world, Vietnam's economy has displayed continuous improvement. However, lying in the shadows of this great success are issues that threaten sustainable agriculture in Vietnam.

A few of these issues include pests, disease, overfishing and, like many coastal nations, the threat of natural disasters.

Vietnam's agriculture industry employs about 50 percent of the population and accounts for about 20 percent of the country's GDP. With such a high demand for exporting rice, farmers rarely diversify their crops, which would decrease the chance of receiving a higher profit. In turn, rice accounts for almost half of the industry, followed by other exported crops like coffee, cashews, soybeans, tea and rubber.

A huge influence on Vietnam's economic success can be attributed to the Doi Moi policies adopted in 1986. These policies allocated plots of land to farmers and encouraged agricultural growth by relaxing trade regulations.

With rice accounting for so much of Vietnam's exports and farmers' main source of income, it is essential to create sustainable agriculture in Vietnam. Currently, one dilemma rice farmers face is pests. Without educated pest control methods, farmers suffer about a 37% crop loss.

The livestock industry is often adversely affected by disease, sometimes introduced by animals illegally brought across borders. Rampant diseases such as Blue Ear Disease, Foot and Mouth Disease and recently African Swine Fever have devastated the livestock industry, particularly the pork meat sector which accounts for the majority of meat protein produced for Vietnamese people.

Another issue that roadblocks sustainable agriculture in Vietnam is overfishing. Vietnam once had abundant fishing opportunities. However, due to overfishing, the industry is slowly collapsing,

Populations of fish in the Mekong River for example have started to disappear because of overfishing and using illegal methods such as electro-shocking and poisoning.

This severe lack of fish has led to Vietnamese fishermen sailing foreign seas, and the use of illegal methods to maintain a profit. Vietnamese fishing vessels have been detained by nearby countries such as Australia and Cambodia for illegal fishing. And there have been no fishing restrictions during the fish breeding season, contributing to decreasing populations.

Sustainable Commercial fish farming is on the rise, and will address the protein needs of Vietnamese people into the future, particular with pressure on the pork industry due to repeated disease outbreaks.

Despite its economic success stories, implementing plans for sustainable agriculture in Vietnam is a must for the country to have a healthy, long-term economy.

## **IV. SESSION 3**

## **SPEECH AT MIDTERM VIETNAM BUSINESS FORUM 2019**

*Presented by  
Mr. Frederick Burke  
Working Group Head*

### **Loosen the reigns...**

#### **Legal impediments to investment**

Vietnam has made efforts to loosen the reigns for certain regulations on investment. However, some recently proposed and implemented legal changes pose troubling outcomes for the business and investment environment, and some regulations have the potential to handicap sustainable growth.

#### **Technology Transfer Law and Decree 76/2018/ND-CP**

We have received the MOST's attempt to respond before this Forum on the Technology Transfer Law from the government's perspective, including our concerns such as the need for the registration of technology transfer and confidentiality of information in the registration dossiers and the definition of "technology".

However, in reality, the 2017 Law on Technology Transfer and Decree 76/2018/ND-CP have a heavy-handed approach to technology transfer regulation. Specifically, the overly broad registration requirement hinders investments by delaying technology transfer processes and hampering the execution of technology transfer agreements. Some investors will be sufficiently deterred by the confidentiality risks posed by registration, that they may forego their entire investment in Vietnam. The expansive definition of 'technology' for the registration requirement purpose included in the 2017 Law on Technology Transfer exacerbates these issues, since the definition seems to apply to "solutions, processes and know-how" not only in the manufacturing sector, but in the services sector as well.

To address these issues, the Ministry of Science and Technology can narrow the scope of technology subject to the registration requirement to apply only in those cases where it is reasonably necessary. Likewise, the definition of 'technology' for the registration purpose should be clarified to provide certainty on what activities and processes do and do not qualify.

#### **Draft Law on Amendments to the Enterprise Law and Investment Law**

We have sent two parts / matrix / tables of comments to the draft Law on amendments to the Enterprise Law and Investment Law during the first half of 2019. We look forward to seeing how our comments will be addressed in the new draft of this important Law.

#### **Draft decree amending Decree No. 06/2016/ND-CP on the Management, Provision and Use of Radio and Television Services**

Investors have expressed concern at provisions regulating internet-based Video-on-Demand (VOD) the same as traditional broadcasting. Imposing broadcasting regulations would require both domestic and foreign VOD providers to obtain a license, comply with local content quotas, translate content to Vietnamese, and restrict advertising. Licensing requirements would force international cross-border service suppliers and investors to establish a local Vietnamese entity, and maybe yet be subject to foreign ownership caps.

In line with global best practices, the Government does not need to apply local rules for broadcast television to offshore VOD services; instead consider opportunities for de-regulation of the existing broadcasting sector, which is supported by global consumers and policymakers.

#### Law on Tendering

Article 1.1(c) of Law on Tendering (LOT) requires investment development projects using State capital or capital of State-owned enterprises (*SOEs*) of 30% or more or less than 30% but more than VND 500 billion of the total investment capital of the project to be subject to the LOT, ie. procurements in such project will have to comply with the procedures set out in the LOT.

In practice, in many circumstances, it is very difficult to determine the amount of capital of SOEs in an investment development project and therefore it is unclear whether the LOT has to be complied with in such cases. A decree of the Government or a circular of the MPI should clarify application of the LOT in such cases.

#### **At the same time, investors continue to feel frustrated in relation to:**

- Unclear Restrictions on foreign individual ownership of housing in Vietnam, since foreign buyers cannot tell which developments are closed to foreign ownership for national security and defence reasons. This may be addressed by publishing the lists of projects where foreigners are not allowed to own houses.

We understand from the recent response of the Ministry of Construction that in the coming time, the Ministry of Construction will formally urge provinces/cities to publicly provide data related to current housing ownership of foreign organizations and individuals in Vietnam, including reminders on responsibilities of provincial Departments of Construction to implement the provisions in Clause 1, Article 76 and Clause 1, Article 79 of Decree No. 99/2015/ND-CP. However, these issues should be resolved more proactively and more quickly and require effective collaboration between central and local authorities. This will help the housing market of Vietnam develop more transparently and healthily.

- Investors depend upon the predictable and timely recognition and enforcement of foreign arbitral awards in Vietnam.

We understand from the recent response from the Supreme People's Court that the Supreme People's Court is drafting a Resolution of the Court's Council of Justice to provide guidelines for a number of provisions of the Code of Civil Procedure on processing requests for recognition and enforcement of foreign arbitral awards in Vietnam.

We look forward to receiving the Supreme People's Court's draft Resolution on this matter for further comment. As mentioned previously, the private sector expects that the 1958 New York Convention is strictly applied by Vietnamese courts, in accordance with the 1958 New York Convention and the 2015 Civil Procedure Code, and that the Vietnamese court should not re-open the merits of the case that has been resolved by foreign arbitration. The proposed draft Resolution should ensure this principle for more effective application in practice.

#### **Increase the pace...**

##### **Prioritization of Trade Agreements**

We commend Vietnam on its enthusiastic embrace of global economic integration over the past years. Not only is Vietnam a party to world leading trade agreements, but it has negotiated preferential access to some of the world's biggest economies. Vietnam has profiled itself as a free trade aficionado; through its widespread participation in trade agreements and early ratification of agreements post signing.



Now comes the hard work of domestic implementation of the various trade agreement provisions. We encourage Vietnam to prioritize timely implementation of trade agreement benefits open to businesses, especially preferential import and export tariff rates.

Finally, we continue to encourage the Vietnamese government to push forward with the EU – Vietnam FTA and the Regional Comprehensive Economic Partnership and other important agreements. Now is the time to capitalize on the economic benefits of global free trade.

**Focusing on sustainable development...**

The business community is eager to cooperate with the government of Vietnam on sustainable development. The specific topics of importing used machinery and encouraging renewable energy use are particularly relevant at this time.

- We appreciate Vietnamese Government's efforts in adjusting regulations on importation of used machines, equipment, technology chain by promulgating Decision No. 18/2019/QĐ-TTg. Decision 18, at a certain extent, introduces a small amount of flexibility in importation of these products. However, Decision 18 still includes impractical conditions, particularly the regulations on remaining capacity and actual vs design energy consumption.

The ultimate purpose of the regulation on importation of used machines/equipment is to secure the safety, energy saving, environmental protection, and avoid outdated technology. The conditions of remaining capacity and actual vs design energy consumption do not play any role in safety, energy saving, and environmental protection issues as other conditions on national technical regulations or G7/Korean standards already serve these purposes.

In terms of outdated technology, with the development trend of the current world, new technology is developed rapidly. Therefore, the conditions of remaining capacity and actual vs design energy consumption not only fail to secure the elimination of outdated technologies, but also create unequal barriers as there are possibilities that a technology chain with lower remaining capacity is of more advanced technology as compared to others with higher remaining capacity. Besides, the certification of these conditions is complicated and costly.

To that end, the establishment of conditions that do not secure the ultimate purpose, while causing burden and expenses to enterprises is completely an impractical approach.

The Government can consider to eliminate the conditions of remaining capacity and actual vs design energy consumption.

We commend the Government of Vietnam's commitment to address environmental risks posed by out-of-date or obsolete machinery, and we request the opportunity to work together to find effective solutions for implementations of this Decision.

- The Infrastructure Working Group and the Power & Energy Working Group have discussed sustainable infrastructure and energy project developments. In addition to creating transparent and effective energy and infrastructure markets, prioritization of renewable energy and energy efficiency, Vietnam can also do better and more progressively on sustainable supply chain and support the manufacturing industry for environmental-friendly products, among other areas for sustainable developments, achieving social, economic and environmental objectives.
- "Economic Needs Test" (ENT): We have expressed our concerns over the application of the "Economic Needs Test" to foreign invested retail, and we note that the Vietnam Government has agreed to phase out this roadblock to its retail market over the next five years under the

EV-FTA and the CPTPP. But in light of particular trade imbalances, it may be prudent to expand and accelerate that market access concession to maintain access to key export markets in return.

**POSITION PAPER OF INVESTMENT & TRADE WORKING GROUP**

*Prepared by  
Investment & Trade Working Group*

**1. The EV FTA, Comprehensive and Progressive Trans-Pacific Partnership, and other important Trade Agreements**

As mentioned in the previous forum, the Investment and Trade Working Group takes note of the fact that the EU–Vietnam Free Trade Agreement will soon be ratified by the current term of the EU Parliament, and look forward to a specific schedule of ratification by the National Assembly.

In addition to the EU-Vietnam FTA, the Investment and Trade Working Group appreciate Vietnam's ratification of the Comprehensive and Progressive Trans-Pacific Partnership ("CPTPP") on 12 November 2018. We believe that this landmark agreement between 11 of the 12 "TPP" countries will create growth, jobs and sustainable economic and social development right through the region. Last year, we encouraged the Vietnamese government to push forward with a number of other important trade pacts, including Regional Comprehensive Economic Partnership and other important agreements. Our position on these agreements has not changed. Each offers opportunity, and together they offer even greater opportunities.

**2. Specific Issues and Solutions****2.1 Draft Law on Amendments to the Enterprise Law and Investment Law**

We have prepared and sent two parts / matrix / tables of comments to the draft Law on amendments to the Enterprise Law and Investment Law during the first half of 2019. We look forward to seeing how our comments will be addressed in the new draft of this important Law.

**2.2 Technology Transfer Law and Decree 76/2018/ND-CP**

We have received a copy of Official Letter No. 954 dated 5 April 2019 detailing the MOST's responses to the MPI.

Having considered the MOST's opinions, we would like to offer further comments as follows:

**a. The need for the Registration of Technology Transfer**MOST's response

- Registration of technology transfer is considered one of the measures for regulatory authorities to capture information on flows of transferred technologies, creating basis for formulation of policies to develop technologies in each period. In addition, registration of technology transfer is also one of the measures contributing to restriction of transfer pricing and tax evasion via technology transfer activities.
- Based on the actual situation and regulatory requirements as mentioned above, the 2017 Law on technology transfer and Decree No. 76/2018/ND-CP dated May 15, 2018 of the Government guiding the implementation of some articles of the Law on technology transfer specifically stipulate *subjects, process, procedure of technology transfer registration*. Besides contributing to the achievement of regulatory objectives, the Law and the Decree's provisions on registration of technology transfer were also developed with the spirit of creating conditions for entities, individuals to easily register for technology transfer, minimize registration time

and administrative procedure (compared to previous period, currently handling time of technology transfer registration has been reduced to be only 1/3).

#### VBF's further comment

We uphold our opinion that the broad scale registration of technology transfer from abroad to Vietnam and vice versa is unreasonable and unencouraged of technology transfer.

- The 2017 Technology Transfer Law and its implementation guiding documents, including Decree No. 76/2018/ND-CP dated 15 May 2018 of the Government, already provide the lists of technologies which are restricted and/or forbidden to be transferred, together with the licensing process and the procedures to inspect, examine and handles violations in technology transfer. This additional registration requirement thus poses a redundant administrative and financial burden on the parties involved.
- Further, it does not help to eliminate potential risks of transfer pricing and tax evasion via technology transfer activities. There are already certain regulations on anti-transfer pricing, such as the Law on Tax Administration and Decree No. 20/2017/ND-CP on tax administration for enterprises having controlled transactions. We believe that the science and technology management authorities, who are in charge of the registration of technology transfer, do not have sufficient knowledge and experience in dealing with transfer pricing. It should be also noted that Vietnam's regulations on anti-transfer pricing, i.e., Decree No. 20/2017/ND-CP, are not applicable to the technology transfers between unrelated entities.

The registration requirement will slow down the transferring process and the execution of the technology transfer agreements.

- Under the current legal provisions, a technology transfer agreement, which is subject to the registration requirement, shall only be effective as from the issuance date of the Certificate of Registration of technology transfer. Even though the registration time and the administrative procedure have been minimized in theory, it may still greatly affect the execution of the technology transfer agreements. The involved parties cannot implement the technology transfer contract until it is registered by a competent science and technology management authority. We believe that this registration requirement shall cause unnecessary delay to the transfers of technology and relevant business operations and may as a result increase business cost significantly.
- We uphold our opinions that such registration requirement is against all the efforts to reform and simplify administrative procedures, as well as to improve the investment environment in Vietnam, which the Government has been trying to do over the past few years. Instead of imposing unnecessarily tight control of technology transfer, the Government should create more favourable conditions for the legal absorption of technology. Monitoring and control over technology transfer should apply only to sensitive technologies subject to international agreements such as Wassenaar Arrangement on nuclear technology.

#### **b. Confidentiality of information in the registration dossiers**

##### MOST's response

Regarding confidentiality of information, technology transfer agreements only comprise of general information such as rights for technology transfer, transfer subjects, rights and obligations of parties, technology transfer durations, warranties etc. Registration dossiers provided do not include

processes, secrets and detailed information on technologies, thus registration of technology transfer does not affect confidential requirements of parties in technology transfer contracts. In addition, management of technology transfer contracts in regulatory authorities is stipulated in Article 34 on responsibilities of maintaining confidentiality in licensing technology transfer, providing technology transfer registration certificates.

#### VBF's further comment

Even though the registration dossiers only include general information such as rights for technology transfer, transfer subjects, rights and obligations of parties, technology transfer durations, warranties etc., this information is quite commercially sensitive and may affect the negotiation of the parties, as well as the value of the contract. In addition, the involved parties will have to submit to the competent science and technology management authority a copy of the technology transfer contract, which may contain confidential information. Thus, both the transferor and the transferee are afraid of the security and protection of the confidential information regarding the transferred technology and the transactions if it has to be disclosed during the registration process.

In short, the registration requirement might negatively impact on the investment environment, attract less potential foreign investors/technology owners to come and do business with local companies to improve and develop new technology in Vietnam, as they might be afraid of disclosing their trade secrets and/or other commercial information. As a result, it may discourage the transfer of and investment on high technologies, which have been so successful in Vietnam in recent years.

### **c. Definition of "Technology"**

#### MOST's response

The definition of "Technology" in the 2017 Law on technology transfer was developed based on the definition of this term in the 2006 Law on technology transfer and in line with the definition of "Technology" in the current Law on Science and Technology. In addition, in the drafting process of the 2017 Law on technology transfer, the MOST had studied definitions on "technology" of international organizations such as UNIDO, ESCAPE and the fact that during more than 10 years implementing the 2006 Law on technology transfer, there was no recommendation regarding bottlenecks arising because of the definition.

On the other hand, Article 4, 5, and 6 of the 2017 Law on technology transfer stipulate in details subjects, methods and forms etc. of technology transfer. Therefore, it is likely that the definition on "Technology" in the 2017 Law on technology transfer is clear and in line with international practices and in alignment with regulatory context.

#### VBF's further comment

We uphold our opinion that the definition of "Technology" is far too broad, which may include all kinds of solutions, processes and/or know-hows, as long as they convert resources into products. Accordingly, all transfers of technologies, if subject to the requirements under Article 31.1 of the 2017 Technology Transfer Law, must be registered. In other words, this registration requirement may apply to various technology transfer-related activities, including but not limited to sales/importation of machines, devices and equipment, engineering, procurement and construction (EPC), license of technical processes and know-how, foreign investments in manufacturing sectors, etc.

This will create great and unnecessary burden on both the transferor and the transferee, and as a result, may slow down and discourage the transfer of technologies from and to Vietnam.

Furthermore, under this current definition, "technology" may include not only solutions, processes and/or know-hows in manufacturing area, but also in service area. This is due to the reason that solutions in the service field may also convert resources into products (i.e., the service). If that is the case, it seems the transfer of any solution or process would have to be registered with the State management agencies of science and technology.

### **2.3 Decision No. 18/2019/QĐ-TTg on the Import of Used Machinery, Equipment and Technological Lines - New regulations restrict imports of used machines, equipment, and technological lines from 15 June 2019**

#### Issue

We highly appreciate Vietnamese Government's efforts in adjusting regulations on importation of used machines, equipment, technology chain by promulgating Decision No. 18/2019/QĐ-TTg ("**Decision 18**"). Decision 18, at a certain extent, establishes the flexibility in importation of these products. However, Decision 18 still includes impractical conditions, particularly the regulations on remaining capacity and actual vs design energy consumption.

The ultimate purpose of the regulation on importation of used machines/equipment is to secure the safety, energy saving, environmental protection, and outdated technology avoidance. The conditions of remaining capacity and actual vs design energy consumption do not play any role in safety, energy saving, and environmental protection issues as other conditions on national technical regulations or G7/Korean standards already serve these purposes.

In term of outdated technology, with the development trend of the current world, new technology is developed rapidly. Therefore, the conditions of remaining capacity and actual vs design energy consumption not only fail to secure the elimination of outdated technologies, but also create unequal barriers as there are possibilities that a technology chain with lower remaining capacity is of more advanced technology as compared to others with higher remaining capacity. Besides, the certification of these conditions is complicated and costly.

To that end, the establishment of conditions that do not secure the ultimate purpose, while causing burden and expenses to enterprises is completely an impractical approach.

#### Recommendation

Eliminate the conditions of remaining capacity and actual vs design energy consumption.

### **2.4 Draft decree amending Decree No. 06/2016/ND-CP on the Management, Provision and Use of Radio and Television Services**

#### Issue

Previous draft revisions propose making internet-based Video-on-Demand (VOD) subject to existing regulations for broadcast television providers. These revisions would force both domestic and foreign VOD providers to obtain a license, comply with local content quotas, translate content to Vietnamese, and restrict advertising.

In particular, the percentage of domestic programs shown on an on-demand service on the Internet will not make up less than 30% of the total programs shown. Advertisements (if any) must be installed in Vietnam, edited by press agencies that possesses a proper radio/television license, and comply with Vietnamese laws.

In addition, offshore VOD providers will need to establish a local entity in Vietnam to obtain a License to Provide Paid Radio and Television Service. However, the draft decree does not clarify the maximum ownership that a foreign investor can hold in an on-demand TV service company. The revisions may have serious unintended consequences, making VOD services subject to the rules and regulations that are meant for linear distribution (e.g. Free-To-Air Broadcast TV Channels). The regulations that currently apply to local broadcast television may be untenable for nearly all foreign VOD services, thus establishing a barrier to trade for these overseas services.

### Suggestion

In line with global best practices, we recommend not applying local rules for broadcast television to offshore VOD services; consider opportunities for de-regulation of the existing broadcasting sector, which is supported by global policymakers.

## **2.5 Law on Master Planning**

Our members are concerned about the implementation of the Law on Master Planning and its impacts of delaying the approval process for power, energy and infrastructure projects.

For example, for newly proposed projects for inclusion in the energy and power development master plans for project developments, the licensing process for applications of newly proposed power and energy projects for inclusions in the energy and power development master plans are still complex and very time-consuming.

The development of renewable energy projects requires a more simplified licensing process given the limited timeline to develop and come in to operation to be eligible for Feed-in-Tariff for those projects (e.g., deadline for commercial operation date of before 1 November 2021 for wind power projects).

## **2.6 Duplicative Registration Requirements for Life Insurance**

"Life Insurance" should be removed from the list of essential goods and services for which contract forms and general transaction terms are required to be registered with the MOIT under Decision No. 35/2015. The life insurers should only be required to conduct the procedure for approval of life insurance products with the Ministry of Finance under the Law on Insurance Business.

We understand that the MOIT has recently been drafting a draft Decision on this matter. This draft Decision should be issued by the Prime Minister as soon as possible to reduce the overlapping procedures for life insurance products and reduce compliance costs to the life insurers.

## **2.7 Law on Tendering**

### Issues

- Article 1.1(c) of Law on Tendering (**LOT**) requires investment development projects using State capital or capital of State-owned enterprises (**SOEs**) of 30% or more or less than 30% but more than VND 500 billion of the total investment capital of the project to be subject to the LOT, ie. procurements in such project will have to comply with the procedures set out in the LOT.
- For ease of understanding, in the examples below, we would like to focus on capital of SOEs. In practice, in many circumstances, it is very difficult to determine the amount of capital of SOEs in an investment development project (**Project**) and therefore it is unclear whether the LOT has to be complied with in such cases.

- In the scenarios set out below, Company A is a company in which an SOE holds 50% interest. In each scenario it is assumed that in each of the Projects mentioned below, the capital from the SOE is less than VND 500 million.

**Scenario 1:** 30% of the total investment capital of a Project is funded by equity of Company A. 70% of the total investment capital of the Project is funded by a loan from a non-State owned commercial bank. Would the total capital from the SOE in the Project be 15% of total investment capital of the Project (50% x 30%) in which case the LOT does not apply? If that is not the total capital from the SOE, what would be the amount of capital from the SOE?

**Scenario 2:** In Scenario 1, if the loan is funded by a State owned bank such as Vietcombank or BIDV, would the loan be counted as capital from an SOE? If yes and if the bank is owned 50% by the State and 50% by a private sector company, would 50% of the loan amount be capital from an SOE?

**Scenario 3:** If Company A holds 30% interest in an affiliate and that affiliate in turn wholly funds a Project from its charter capital. Would the total investment capital of the Project contain 15% (ie. 30% x 50%) capital from the SOE?

**Scenario 4:** Company A uses its retained profits to fund the total investment capital of a Project. Would 50% of the total investment capital of the Project be considered capital from an SOE or would the retained profits of Company A not be captured?

**Scenario 5:** Separately from all of the above scenarios, Company B used to be an SOE. A Project was implemented before the SOE is equitized and the LOT applied. After being equitized, the State holds 25% interest in Company B. If further procurement with the value of more than VND 500 million of the Project needs to be carried out after equitization, we assume the LOT would no longer apply.

- We note that currently an SOE is an enterprise wholly owned by the State. The current Law on Enterprises is being amended so that an SOE will be defined to be an enterprise wholly owned by the State or in which the State holds a controlling interest. Whether the LOT applies or not in the above scenarios would become more difficult to determine in case the SOE is an enterprise in which the State holds a controlling interest. There needs to be a clear formula to calculate capital amount from the SOE so that in each case it would be clear if the LOT applies or not.

### Recommendation

Given the lack of clarity, we recommend that the LOT be amended to clarify:

- How to determine the proportion of State capital or capital from SOEs in the total investment capital of a project. Alternatively, a Decree implementing the LOT could be issued to clarify these issues or the definition of 'State capital at enterprises' in the Law on Management and Use of State Capital Invested in Production and Business at Enterprises could be further clarified so that it is clear when the LOT applies.

For example, the LOT can specifically provide that the calculation of State Capital is only based on the State Capital directly contributed to the Project, and not indirectly through State investment into enterprises.

- How to determine "investment and development capital of SOE" as a type of State Capital under the definition in Article 4.44. Firstly, there should be a clear definition for this concept.



Secondly, in fact, when an investor makes an investment, it can be difficult to identify the source of fund they mobilized and it is not possible for third parties to know. Therefore, please consider clearly requesting investors to announce whether the source of fund they use would come from the "investment and development capital of SOE" in their investment decision, and how much the capital is (in case they mobilize different kind of capitals including financial loans).

- The concept of "land use right value" in the definition of State Capital under Article 4.44 should be limited to land use right of SOEs only. For private enterprises that have secured land use right under the land law, they should be free to contribute their land use right to projects according to the land law and no need to impose bidding law on them.

## **2.8 Issues related to Fintech industry: Peer to peer (P2P) lending**

### Issue

While fintech is growing rapidly in Southeast Asia, the lack of regulatory guidance has made it more difficult for businesses to navigate this industry in Vietnam:

- No specific business line for P2P lending services exists and businesses are not clear on which business line they should register P2P lending services under in Vietnam. We have seen businesses register other business lines to provide P2P lending services, and risk being non-compliant with their business license (e.g., Investment Registration Certificate, Enterprise Registration Certificate) by operating a service that may not be covered by their business license.
- We understand that the government is considering restricting foreign ownership in fintech companies. Notably, in the draft amendment of Decree 101/2012/ND-CP dated November 22, 2012 (Decree 101), the SBV proposes a 30% cap on foreign shareholding in an intermediary payment service company. However, we note that this may handicap the growth of fintech in Vietnam. Many fintech services rely heavily on the use of artificial intelligence and big data analytics, and foreign companies have a lead in the development of these technologies.

### Recommendation

- Provide further regulatory guidance for new fintech businesses, especially for fintech businesses such as P2P lending services which has already been operating in Vietnam.
- Ensure that there is no foreign ownership restriction on fintech companies so as to no hinder the industry growth in Vietnam.

## **2.9 Issues related to consumer lending: Tightening of consumer lending disbursement methods**

### Issue

The tightening of consumer lending disbursement methods under the Draft Circular amending Circular No. 43/2016/TT-NHNN:

- The draft Circular amending Circular No. 43 proscribing consumer lending by financial companies was issued on 25 March 2019. The main concern under this draft Circular is the tightening of the method of disbursement. Under the draft, finance companies can disburse loans to its borrowers/customers under two methods: to the beneficiary (i.e. the goods/services supplier) or directly to the customers. However, finance companies may only disburse the loans directly to customers if it is to their existing customers having good history of repayment and no outstanding non-performing loan. Further, the total

- outstanding consumer loan disbursed directly to customers of a finance company may not exceed 30% the total outstanding consumer loan it has extended.
- This tightening of disbursement directly to the customers may pose as a problem to new financial companies from entering the Vietnam market since they will not have existing customers. Such requirement to disburse directly to beneficiaries may not be what the customers prefer and may lead to them seeking other traditional, unregulated channels (i.e. through loan sharks).

### Recommendation

We suggest to limiting the restriction on finance companies ability to disburse the loans directly to apply only to already existing finance companies at the time the Circular comes into effect. This way, it would not create a barrier to entry for new finance companies wanting to enter the market.

### **2.10 Draft Circular guiding implementation of Decree 119/2018/ND-CP on electronic invoices**

We appreciate the MOF and GDT's cooperation in the drafting process of the e-invoice regulations. As e-invoice is a new issue, the MOF and GDT should take prudent steps in the implementation of this regulation so that it will not become a burden for enterprises or introduce practices that are inconsistent with standard international banking practices. So far, through working sessions between VBF and the MOF/GDT, a number of technical concerns arise, and we hope that the MOF/GDT will address those issues for adjustments and finalization of the draft Circular.

### **2.11 Restrictions on foreign individual ownership of housing in Vietnam**

We have received a copy of response from the Ministry of Construction (under Official Letter No. 876 dated 23 April 2019 sent to the MPI).

Accordingly, we understand that in the coming time, the Ministry of Construction will formally urge provinces/cities to publicly provide data related to current housing ownership of foreign organizations and individuals in Vietnam, including reminders on responsibilities of provincial Departments of Construction to implement the provisions in Clause 1, Article 76 and Clause 1, Article 79 of Decree No. 99/2015/ND-CP.

For the time being, this issue has not yet been solved.

### Issues

Everyone here is aware that Vietnam has made great progress in creating a hospitable investment environment, in which local and foreign businesspeople and their families can work in an atmosphere that is secure and comfortable. Schools and hospital services have improved dramatically, there are more entertainment, cultural and recreational options. One element that has proven elusive is in the area of home ownership. Although rules have already been issued that allow limited sales of certain types of condominiums and villas to foreign buyers, implementing rules have not been followed in a timely manner and as a result there is much confusion and risk in the market.

The biggest outstanding issue right now is the implementation of the restrictions on foreign ownership of housing in Vietnam, which affect foreign buyers' right to own houses in Vietnam for more than two years. The 2014 Housing Law, which allows foreign buyers to own houses in Vietnam, became effective on 1 July 2015; and Decree No. 99/2015/ND-CP ("**Decree 99**"), which specifies the mechanisms for implementing foreign buyers' right to own houses in Vietnam, became effective on 10 December 2015.

Decree 99 requires the Ministry of Public Security ("**MOPS**") and the Ministry of National Defence ("**MOND**") to identify the areas that are subject to national security and defence and inform the provincial people's committees. According to the MOPS's official dispatch No. 786/BCA-TCAN dated 19 April 2017 and the MOND's official dispatch No. 10328/BQP-TM dated 19 October 2016, we understand that these have been done.

The provincial people's committees must then base on those guidelines of the MOPS and MOND to instruct the provincial departments of construction to identify the commercial housing projects where foreign individuals and organizations are not allowed to own houses. In the particular case of Ho Chi Minh City, based on the public information, we understand that this has been done in July 2017.

Those are good signs that the government is keen to move things forward. The final work of identifying commercial housing projects where foreign individuals and organizations are not allowed to own houses, and publishing that information online is now to be done by the provincial departments of construction.

However, it appears that no progress has been made from the provincial departments of construction's side. Thus, this long delay really concerns foreign individuals and organizations who are interested in buying houses in Vietnam. We hope that the provincial departments of construction will work more actively and closely with other relevant authorities to resolve these issues in accordance with the instruction of the provincial people's committees. This is the final step to finally effect foreigners' right to buy houses in Vietnam, which was supposed to be effective more than two years ago.

Another notable problem is the technical limitations in ownership registration. Foreign ownership of condominiums in a residential tower is limited to 30%, but the Ministry of Construction and its local departments have not yet implemented the necessary system for registering and tracking the number of foreign owned apartments in a given project, so the secondary market has frozen up completely. In most provinces, there seems to be no system for changing the ownership category from local to foreign once a property has been sold to a local buyer. This kind of risk only increases the cost of capital that is needed for building up Vietnam's housing stock. We hope that these issues can be sorted out soon so the market can start to operate normally.

### Suggestion

We suggest that the provincial departments of construction should work more proactively with their upper people's committees to resolve the issues soon by publishing the lists of projects where foreigners are not allowed to own houses. This will help the housing market of Vietnam develop more transparently and healthily.

## **2.12 Recognition and enforcement of foreign arbitral awards in Vietnam**

We have received a copy of response from the Supreme People's Court (under Official Letter No. 101 dated 4 May 2019 sent to the MPI).

From the response, we understand that the Supreme People's Court is drafting a Resolution of the Court's Council of Justice to provide guidelines for a number of provisions of the Code of Civil Procedure on processing requests for recognition and enforcement of foreign arbitral awards in Vietnam.

We look forward to receiving the Supreme People's Court's draft Resolution on this matter for further comment.

*This issue was raised in 2018 Annual VBF Report*

In practice, the Vietnamese courts have often issued decisions to reject the applications for the recognition and enforcement of foreign arbitral awards in Vietnam for reasons not consistent with the New York Convention.

We would like to recommend ensuring that the 1958 New York Convention is strictly applied by Vietnamese courts, in accordance with the 1958 New York Convention and the 2015 Civil Procedure Code, and that the Vietnamese court should not re-open the merits of the case that has been resolved by foreign arbitration.

### **2.13 Cybersecurity Law and Implementing Decree**

VBF wishes to thank the Ministry of Public Security for the response dated 24 March and for considering the recommendations from its meeting with VBF members in January 2019. We appreciate that MPS has been listening to comments and recommendations from the international business community and has made efforts to narrow the scope of the data localization requirement in the Cybersecurity Law.

We are grateful for your official response and are grateful for the clarification that MPS will not require data localization if companies take steps to cooperate with law enforcement requests to deal with violations. However, further clarifications in the wording are required to make this requirement practical. As MPS is aware, not all business models in the digital economy are the same. Some technology companies with no control or visibility into data - simply do not have the technical ability to resolve violations. For example, if a company (a 'data controller') encrypts its data and manages the keys, only that that company will be able to decrypt and read the data. If law enforcement wanted to access that data in a readable, meaningful format, it would need to work with the company that holds the encryption keys.

The primary concern for MPS is to obtain information for investigations, we recommend MPS seriously consider more specific wording that states law enforcement requests be sent to organisations or individuals that have the possession or have control over the data being used in violation of Vietnamese law. Subjected companies should provide a response within 96 hours following receipt of a valid removal notification. Further, to facilitate timely action, the implementing decree should specify that any removal notification must include accurate and detailed information regarding the specific content in question.

We also recommend that any law enforcement requests to multinational companies should follow applicable international legal or diplomatic channels including any mutual legal assistance treaty (if applicably), to ensure requests conform with the due process that works for the affected multinational company and the Vietnamese government, avoiding disruptions to operations of the multinational company.

## **POSITION PAPER OF TAX & CUSTOMS WORKING GROUP**

*Prepared by  
Tax and Customs Working Group*

In the context of rapid economic integration, Vietnamese Government and many business organizations are facing enormous challenges of business operational effectiveness and be competitively comparable to those in the region. Recently, Vietnamese Government and relevant ministries have passed, amended and supplemented many applicable regulations aiming to resolve the obstacles, support for effectiveness of operating businesses and improve the investment environment, the competitive index of Vietnam for the purpose of foreign investors attraction.

Nonetheless, the practical application of regulations and policies, particularly at provincial levels, remains problematic and, to a certain extent, fails to provide best facilitation for the investment of both foreign and domestic investors. We would like to point out a number of issues regarding this matter in today discussion.

### **1. Enterprise restructuring**

#### *Issue*

Vietnam has been a destination for many multi-national corporations. In doing their business in Vietnam, due to some objective reasons such as in order to comply with laws in some countries where members' group located or to improve the business performance and management, many corporations have undergone restructuring process. This restructuring, by nature, is an internal organization-restructuring process helping corporations to enhance their business operations, do not aim at generating profits. As such, there is no change in the ultimate ownership or the business value of the transferor or transferee. In addition, the transfer price is normally at the book value recorded in the Company's accounting books, and no payment flow incurs. However, currently, many local tax authorities are adopting the arm's length principle in all capital transfer transactions, including those designed entirely for internal reorganization with the purpose to impose relevant taxes on such restructuring activity.

Taxation authorities' application of the arm's length principle in the case of company's internal restructuring is unreasonable and neither encourage nor support businesses' reorganization to become more efficient or to be in line with relevant regulations in overseas, therefore such treatment interferes the enterprise's business operation and results in the unreasonable increment of operating expenses. The internal reorganization is taking place in not only multi-national corporations but also domestic enterprises which are experiencing rapid growth and endeavor to increase their competitive capabilities in the market. Therefore, adequate policies and mechanisms in Vietnam to encourage these activities are of need in order to promote the development of the national economy.

#### *Recommendation*

We expect that the Ministry of Finance / General Department of Taxation considers introducing appropriate regulations and policies applicable to the internal reorganization if such practice is not meant to gain any profits. In the foresaid reorganization activity, since there is no income derived, the market price and relevant taxes should not be imposed on these activities.

Currently, according to Circular No. 36/2016/ TT-BTC dated 26 February 2016 regarding taxation on oil and gas sectors, the transfer of rights to participate in petroleum contracts due to restructuring and internal financial arrangement of the transferor or the consolidation of the parent

company of the transferor is not subject to tax. In order to ensure consistency, the transfer of capital due to restructuring in other sectors should not be taxable.

## **2. Limitation of loan interest cost for taxation purpose**

### *Issue*

Decree 20/2017/ND-CP dated 24 February 2017 (“Decree 20”) and Circular 41/2017/TT-BTC dated 28 April 2017 having effectiveness since 1 May 2017 regulate the tax management of enterprises having related party transactions, in which, the applicable subjects are enterprises engaging in manufacturing, trading goods, services that pay corporate income tax under declaration method and perform related party transactions. According to Article 8.3 of Decree 20, *“Taxpayer’s total loan interest cost arising within a specified tax period qualified as a deduction for determination of taxable income for corporate income tax purpose shall not exceed 20% of total net profit generated from business activities plus loan interest costs and amortization costs arising within that period (“EBITDA”)”*.

Many local tax authorities apply this regulation to all enterprises having related party transactions, including foreign invested enterprises, domestic enterprises, corporations, parent – subsidiary companies, regardless whether their corporate income tax rates are the same or not, and whether they are in the first stage or in stable operation of the investment project implementation.

The application of this regulation to new investment projects being in the initial stage of operation is unreasonable as they may incur small revenue, resulting in low/negative EBITDA. If the foresaid restriction on loan interest cost is applied in the initial stage of the operation, the businesses may disqualify a large part/or most of their arising loan interest costs as deductible costs, resulting in the inappropriate increase of tax liability of enterprises.

The parent – subsidiary companies model having the same corporate income tax rate should not be subject to this regulation as the related loan transactions do not aim at tax evasion purpose; whereas they should be encouraged to increase the effectiveness of this model.

In addition, many local tax authorities do not accept the loan interest income and income from deposit to be offset against the loan interest cost in calculation of deductible loan interest cost in accordance with the above regulation. Such treatment is deemed unreasonable in its possibility of double taxation. Particularly in Vietnam, many enterprises operating under the parent – subsidiary companies model engages in the re-loan transactions where the parent company takes out a loan and re-loans the amount to its subsidiaries. These enterprises, particularly large corporations, are greatly affected by this tax treatment.

### *Recommendation*

To resolve the above inadequacy, we expect the Ministry of Finance / General Department of Taxation to consider the amendment of Clause 3 Article 8 of Decree 20 as follows:

- Taxpayer’s total loan interest cost which is capped at 20% EBITDA within a specified tax period is the loan interest cost after offsetting the loan interest income and income from deposit of the tax payer;
- This regulation is not applicable to new investment projects and investment projects expansion during 3 to 5 years since the revenue is generated;

- Regarding the taxpayers being corporations, parent – subsidiary companies established and operating in Vietnam, who enjoy the same corporate income tax rates, the regulation will be applied on the basis of the consolidated financial statements of those taxpayers.
- 3. Violation of non-tax laws (if any) by tax payers should not be deemed a criterion to assess deductibility of expenses for Corporate Income Tax (CIT) purpose**

*Issue*

There is a tendency that some tax authorities rely on the violation of a specialized law by an enterprise to treat their related expenses as non-deductible without taking into account whether the expenses are actually incurred with sufficient and legitimate supporting documents, and directly related to the taxable revenue.

In the opinion of investors, violation of laws other than tax law (if any) by tax payers should not be deemed a criterion to assess deductibility of expenses for Corporate Income Tax (CIT) purpose. It is completely unreasonable to disqualify an expense as non-deductible expense without considering whether the expense is actually incurred with adequate supporting documents or directly related to the taxable revenue. This practice distorts the nature of the related economic transactions.

- An enterprise, which operates in the business environment, is required to comply with various regulations, not only those in the tax sector but also other sectors such as investment, commerce, health, environment, among others. From the perspective of management by specialized sector, the legal documents all provide sanctions against administrative violation and civil violation. The sanction mechanism aims at warning and punishing violators, thereby deterring violation. In a complex and diversified business environment, some enterprises may not comply with legal regulations and thus be imposed with sanctions accordingly. In these cases, according to tax laws, such fines paid by the violating enterprises are not qualified as deductible expenses.
- While the Law on CIT and its guiding documents have specified the criteria of deductible expenses and the specific cases where expenses are considered non-deductible, it is utterly unreasonable where the tax authorities disqualify the expenses on the ground that the enterprise violates other specialized management laws other than tax laws.

According to tax philosophy and regulations, deductible expenses are those which are actually incurred, serving the enterprise's business and manufacturing operation, matchable to the generated revenue, and accompanied with adequate and sufficient documents. Accordingly, CIT is calculated on the taxable income which is basically the revenue minus deductible expenses.

When an enterprise engages in violation in doing its business, that is, the enterprise does not comply with a specialized law and therefore has to pay fines, all the fines are already treated as non-deductible expenses according to the prevailing regulations. However, the fact that the tax authorities make a further step by disqualifying all the actually incurred expenses which directly relate to the revenue-generating activities, notwithstanding that the expenses are actually incurred with adequate and sufficient supporting vouchers is entirely irrational. When the sanction mechanism is already in place for warning and punishing purpose and the related fines are deemed non-deductible for taxing purpose, further disqualifying the related expenses that are actually incurred and relate directly to generating the revenues while taxing all those revenues will obviously create a cost burden to enterprises. This distorts the nature of economic transactions, not in line with the CIT philosophy and causes inequalities to enterprises.

- Per observation, we realized that in certain cases, the tax authorities may accept the deductibility of expenses for CIT purpose in respect of administrative violation of non-tax laws. In the official letter No. 4705/TCT-CS dated 28 December 2012 of the General Department of Taxation, the promotion expense is treated as deductible expenses for determination of taxable income in case the enterprise violates procedure for notification of promotion program as regulated by the commercial laws (no notification is made).

#### *Recommendation*

The tax authorities should not consider violation of non-tax laws, if any, by tax payers as a criterion to assess the deductibility of the expenses for CIT purpose.

### **4. VAT refund**

#### *Issue*

According to the prevailing regulations on VAT refund for investment projects of active businesses in Circular 130/2016/TT-BTC dated 12 August 2016 of the Ministry of Finance and Decree 100/2016/ND-CP dated 01 July 2016 of the Government, investment projects which is in the investment process is subject to VAT refund, regardless of whether it is a new investment projects or an investment project expansion, provided that these projects satisfy regulated specific requirements. This is reasonable as the tax refund for goods and services purchased during the pre-operational stage is necessary to support enterprises with funds to put the investment projects into effective operations, regardless of new projects or expanded projects. However, recently, many enterprises requesting for VAT refund for investment project expansion were rejected by the local tax authorities.

As far as businesses are concerned, both new investment projects and expanded investment projects need to be financed for project implementation, in some cases, an expansion of an investment project may even have larger funding requirement than other new investment projects. Consequently, not being able to receive VAT refund for investments in investment project expansion will put businesses in a situation of shortage of the capital needed for other ongoing commercial activities, which is not in line with spirit of regulations and resulting in difficulty, inequality among tax payers.

#### *Recommendation*

For a consistent application of laws, we expect the Ministry of Finance/General Department of Taxation to clarify the legal grounds and provide specific instructions to the local tax authorities/enterprises about VAT refund for investment projects as discussed above, in the way that investment projects, notwithstanding new investment projects or investment project expansion, are subject to VAT refund as long as the applicable requirements are satisfied.

### **5. Import-export procedures**

#### *Issues*

According to Clause 1d, Article 11 of Decree 134/2016/ND-CP dated 1 September 2016 regulating in details a number of articles and implementation of Law of import and export duties, when products being processed overseas that are imported into Vietnam, import duties on the value of raw materials, supplies provided for processing purpose which are incorporated into the processed products shall be exempted, while the remaining value of the products shall be dutiable at the import duty rates applied to processed products. However, prevailing regulations are unclear on the procedures for import tax refund in case such processed goods are to be exported or used as



semi-finished goods for the purpose of processing/manufacturing exported goods. thus causing difficulties and obstacles to businesses.

### *Recommendation*

As outsourcing is now becoming a very common trend to help enterprises focusing on their most specialized business sector and improve their competing capability, the General Department of Customs should issue a detailed guidance on tax refund mechanism as a way to encourage the business and improve the attraction of the investment environment in Vietnam.

## **6. Right of Foreign-Invested Enterprises in conducting On-The-Spot Export/Import for trading purpose**

### *Issues*

In the VBF meeting 2018, the issue of On-the-Spot Export/Import (OTS Export/Import) was raised to address the fact the OTS export is not recognized as export activity in aspect of tax treatment. The MOIT acknowledged the issue.

We raised again this issue as a follow-up, and address another aspect of this issue. Particularly, the MOIT currently restricts the legitimate right of foreign-invested companies in trading activity. Accordingly, a foreign-invested company with registered trading right and distribution right is not allowed to conduct OTS export for trading purpose. The underlying reasons as stated in Official Letter No. 130/XNK-CN dated 31 January 2018 of the MOIT include:

- Export right as regulated under Decree 09/2018/ND-CP only consists of export activities;
- OTS export is not export activities; and
- There has been no regulation on OTS export right of foreign-invested enterprises.

With similar arguments as presented in last VBF meeting, we take the view that it is not legally valid to disqualify OTS export as export as follows:

### **i. If OTS export is not recognized as export activities, OTS import should not also be recognized as import activities or vice versa**

As regulated under current regulations, OTS export is mandatory accompanied by OTS import to establish the OTS export/import structure. If there is no OTS export, OTS import would not exist.

Here exists the paradox when companies conduct the OTS import in parallel with the OTS export in discussion. Particularly, on the one hand, customs authority reject to treat the OTS export as export activities to revoke the exemption of import duty for imported materials. On the other hand, customs authority still imposes import duty on the OTS import, which should only be applicable if OTS import is recognized as import activities.

In other words, adopting the same reasoning of GDC, once customs authority rejects to recognize OTS export as export activities, customs authority should also stop imposing import duty on OTS import.

Otherwise, if customs authority recognizes OTS import as import activities to impose import duties, there is no reason or legal basis for customs authority to deny the export status of OTS export.

**ii. Inconsistency between legislations**

Article 8 Law on Value Added Tax only allows application of 0% VAT rate to exported goods and Decree 209/2013/ND-CP (Article 6.1) and Circular 219/2013/TT-BTC (Article 9.1) clearly recognize OTS export is a form of export.

Further, pursuant to Circular 38/2015/TT-BTC and Circular 39/2018/TT-BTC, OTS export is still subject to the same export procedure as that imposed to other export activities.

*Recommendation*

The MOIT should revoke Official Letter No. 130/XNK-CN dated 31 January 2018 and any Official Letters of similar content, and recognize OTS export as other export activities, and allow foreign-invested companies with proper trading right to conduct OTS export/import.

**7. The retroactivity of administrative decisions***Issues*

During the export/import activities, enterprises have encountered the situation in which the enterprises conducted the customs declaration on the basis of local customs authority's guidance. However, after a period of time, when auditing local customs authority, superior customs authority concludes that the local customs authority's guidance is not legally correct.

In such circumstances, to fix these mistakes, the local customs authority will impose tax collection, and in certain cases, penalties with the reason that the enterprises conducted wrong declaration.

This is an extremely negative legal practice, seriously affecting the enterprise's business operation. The enterprises themselves when conducting customs declaration followed customs authority's guidance. However, when such guidance is wrong, it is the enterprises to take full responsibility.

*Recommendation*

In the case customs authority makes wrong guidance, leading to tax shortfalls, customs authority is not allowed to collect the tax shortfalls, and impose penalties as this is not the enterprise's faults.

**8. Advanced Pricing Agreements***Issue*

We understand and support Vietnam's right to receive tax revenue from cross border transactions involving related parties by determining revenue based on the "real" price. The challenge is determining and agreeing on the real price and establishing comparables. The most widely applied model for doing so is from the OECD whose fundamental principle is the concept of "arms-length". OECD has addressed this ambiguity by providing guidelines on Advanced Pricing Agreements whereby enterprises can provide the basis for related party pricing to the tax authorities for approval prior to executing the transactions. These agreements provide certainty for the enterprise and are also highly efficient for the government. Vietnam has adopted the principle of the OECD but has not yet concluded any Advanced Pricing Agreements. The absence of such agreements has been increasingly difficult for enterprises and the audit system in general. Audits have become more time consuming, more uncertain and subjective, and more subject to dispute.

*Recommendation*

The application of APAs would very much help. With the guidelines in Circular 201/2013/TT-BTC and related regulations, we urge the government to make this a top priority to process and begin to award APA applications.

## 9. The Excise tax on sugary drinks

There are clear concerns on the fact that tax revenue and health promotion objective could not be met while negative impacts to the economy is clearly *quantified* and accordingly *derail* the government's goal of favorable business environment.

Any new proposal for taxation, without proper research, regulatory impact assessment, and wide public consultation, would negatively impact Vietnam's macroeconomic position and its ability to attract FDI.

**Socio-economic impact Study** of Draft Law conducted by Central Institute for Economic Management (CIEM) shows the forecasted effects from this draft law would be negative at macro (i.e.: reduced revenue, profit, employment, other State taxes) and at micro scale (i.e.: negative impacts on thousands of MSMEs and household business units in value chain). Those negative impacts are much more significant than the Government tax earned.

AmCham also provides the **International Practices Study** regarding the sugary drink tax and the findings in this study do not support the MOF's proposal: No country in the world has been experienced the steady reduction of obesity after imposing excise tax on the sugary beverage. Meanwhile, the overweight and obesity rate in Vietnam, in fact, is still low compared to ASEAN region, weakens the proposal. Practically, the application of this tax has *not been provided effective* in preventing obesity and diabetes in any countries.

National Institute of Nutrition is conducting a **Study on the nutritional status, consumption frequency and physical habits of school students in 5 cities/provinces of Vietnam**. The initial results show that the sugary drink consumption of those pupils is at a very low rate and this kind of drink is not the main cause leading to the obesity. Noticeably, there is double burden situation when both obesity and malnutrition (underweight, stunted, scrawny) exists at the same time for pupils at all levels.

**Consumer Polling Study on the consumers' behaviors in the context of price changes due to the sugary drink excise tax** shows that the sugar consumption would not reduce. Instead, consumers will switch the industrial packed sugary drinks to other sugary drinks sold on streets or made at home. Moreover, the consumer respondents also expect a full nutrition data of products for their choices.

***Education, rather than taxation, is a more effective solution, which has been proven in many countries.*** Awareness and behavioral change to consumers and reformulation/labelling will work better and more sustainably. It encourages F&B businesses to provide healthier food and drink options and to innovate and develop a wider variety of healthier ingredients, including low- and no-calorie food and drink. Educational tools such as awareness-raising campaigns and educational behavioral change techniques will drive a healthier diet and lifestyle.

### *Recommendation*

Vietnamese Government to consider on repealing the proposal, encourage the food and beverage companies to lower sugar intake, and educate the consumers on healthy diet and lifestyle.

Further, food & beverage businesses are willing to work closely with the Government for the innovation and the development of healthier products, including low-sugar foods and drinks as well as any other solutions suitable and feasible for Vietnam market.

## 10. Arbitrarily Deemed Revenue

Local tax authorities have tried to assess deemed revenue for enterprises based on simply on contract value even when no product or service corresponding to the deemed amount was ever provided, no right to receive any corresponding proceeds ever arose, no invoice was ever issued and no proceeds ever received.

### *Recommendation*

In keeping with the spirit of Vietnam's law and with standard global practice, local tax authorities should be instructed that revenue should only be recognized when a number of specific conditions are met including the actual provision of a product or service, a clearly determinable value for such provision, and the right to receive proceeds corresponding to such value.

## 11. Disallowance of Deductions for Bad Debt

In order for bad debt to be deductible, the party owing the debt must provide written admission that the debt is due. This requirement is highly unreasonable as any party admitting to the debt has greater legal exposure for paying it and because it is highly common for debtors avoid communication with their creditors or abscond altogether. Placing this requirement is nearly equivalent to disallowing deductions for bad debt and is completely unnecessary as enterprises are easily able to link the revenue to which the debt is associated.

### *Recommendation*

Vietnam should remove this requirement and allow deduction of bad debt according to widely practiced international norms. Specifically:

The debt must have been previously included as revenue

The creditor must demonstrate that it has taken reasonable steps to collect the debt and demonstrate that the debt is uncollectable in whole or in part. VAT from the uncollected revenue should also be recovered.

## 12. Conduct of Audits - The conduct of tax audits remains on of the largest sources of complaints among business

### *Recommendation*

We recommend changes to Law on Tax Administration to ensure a more impartial and efficient audit process for taxpayers and inspection authorities as follows.

- During the course of the audit and in the written audit minutes, tax inspectors must reference the most specific legal basis for a proposed change in the tax assessment of an enterprise so that the taxpayer can determine for themselves the reasonableness of such assessment prior to engaging costly lawyers or consultants. Statements by inspectors like “read the law” do not meet the standard of explanation and transparency that tax inspectors should be required to provide. If a tax inspector knows enough about the law to make a reassessment, she should know enough to reference that law. If not, she should not apply such reassessment.
- Increased accountability of tax inspectors with respect to:
  - False or misleading information conveyed to taxpayers with respect to the law
  - Illogical assessments which stretch, ignore or misapply the law costing taxpayers time and money
  - Requesting information and documentation that is not needed to determine tax liability

but imposes significant compliance burden on the company. Inspectors should not request information that is not clearly needed and/or required by law - extra documentary requests has become a source of harassment in some cases.

- Exceeding audit periods a proscribed in the law.
- better “sampling” during audits
- Independent taxpayer assistance during audit for intervention or assistance when tax inspector’s behavior is not consistent with law and policy of tax dept as per above.
- As new KPI’s are developed with respect to audits they should be monitored

### **13. Severity and Sequencing of Enforcement and Independent Appeals Process**

Payment of tax on even highly unreasonable assessments is due before the final conclusion of appeal. The size of certain assessments is sometimes excessively high and beyond the ability of the enterprise to pay. Overly destructive enforcement measures are applied at the first stage. These include freezing of bank accounts, imports and invoicing. The only relief from such measures is through the court system, but court adjudication is lengthy and costly, and for practical purposes is not a relief option at all for many companies.

We recommend staged enforcement measures whereby initial enforcement measures are less drastic than current practice and where enterprises have means of interim relief from enforcement through an efficient, independent and impartial body prior other than the court systems. This is common global practice and allows the taxpayer with a fair chance of appeal before significantly disrupting their business or reputation.

### **14. Informing and Educating**

We recommend a greater shift in the resources and efforts in providing more information and assistance in advance of or at the time of the filing in order to increase the chances of full compliance at filing and reducing exposure to unwanted penalties and interest via audits. This may include:

- A list of the most common causes of post-filing assessments in order of value and incidence; including the industries or business types most likely impacted.
- Notification of common errors and instructions can be sent to e-filers and the time of filing. Increased connectivity through e-filing is a two-way communication channel.
- The list of common errors and how to avoid them should also be part of a prominently displayed dashboard on GDT website.
- Filing forms should be set up to filter out and prevent filing errors and violations. These can be accompanying by check lists or even separate forms for transactions which are more complicated and/or require supporting documentation - rather than waiting for this to be collected during the audit process.
- Tax payer hotlines must be improved so that tax staff can easily relate issues to relevant laws or procedures. Too often the answer is “read the law” without any actionable assistance to the taxpayer.

- At risk companies should be advised of their at-risk status along with reminders of common causes of violations that might be leading to risk status. They should have the opportunity for voluntary compliance and the right to receive an audit within a specified time of such notification to avoid unexpected penalty and interest.

## 15. Taxation of e-commerce activities of foreign suppliers

### *Issue*

According to the new Law on Tax Administration which was adopted by the National Assembly on 13 June and will take effect from 1 July 2020, banks, Vietnamese parties, and foreign suppliers having no permanent establishment in Vietnam are required to file and pay tax in Vietnam. In particular:

- Article 27.3 Commercial banks' obligations, rights and liabilities in relation to tax administration  
*"3. Withholding and paying tax on behalf of offshore organizations, individuals doing e-commerce business and deriving income from Vietnam."*
- Article 42 regarding principle of tax declaration and calculation  
*"4. Regarding e-commerce business activities, business conducted on digital platform and other services provided by offshore suppliers having no permanent establishment in Vietnam, offshore suppliers shall directly or authorize [a third party] to conduct tax registration, tax declaration and payment in Vietnam as guided by the Ministry of Finance."*
- Article 35 regarding use of tax code  
*"6. When making payment to an organization or individual that has no presence in Vietnam and conducts cross-border business activities on digital platform, a Vietnamese contracting party shall use a tax code issued to that organization or individual for the purpose of withholding and paying tax on behalf of that organization or individual."*

This means that from 1 July 2020, there would seem to be 3 entities held liable for tax declaration and payment with respect to typical e-commerce transactions or transactions on a digital platform. However, the law does not specify which circumstance a particular entity (bank, foreign service provider without permanent establishment or customer) is responsible for tax declaration and payment.

The law is also silent as to whether the tax registration, filing and payment is also applicable to foreign service providers having a permanent establishment.

Also, it is not clear as to which entity would conduct the procedure of claiming tax treaty protection if there are 3 entities (including banks, local customers and foreign service providers having no PE) exposed to the obligation of tax declaration and payment.

### *Recommendation*

The Government and Ministry of Finance need to provide specific guidance to avoid difficulties, overlapping or double taxation in implementing the Law on Tax Administration with respect to taxation of e-commerce activities. Particularly, the implementing decree and circular should specify in which circumstance which entity is responsible for tax declaration and payment and how the tax treaty protection can be claimed.

## MINUTES OF MEETING BETWEEN GENERAL DEPARTMENT OF TAXATION &amp; CUSTOMS &amp; TAX WORKING GROUP (Part 1)

## Discussion on draft Law on Tax Administration

Hanoi, 13<sup>th</sup> May 2019

*Prepared by*  
*Tax & Customs Working Group*

No.	Reference	Comments	Recommendations	Feedback from GDT
1.	<p><b>Article 3. Terms and definitions</b></p> <p>17. An advanced agreement on how to determine the tax base is a written agreement between tax authorities and taxpayers, or <b>between tax authorities, taxpayers and revenue services of jurisdictions which Vietnam has entered into a treaty with for double taxation avoidance and prevention tax evasion and fraud relating to income tax</b> for a specific period of time, where the tax base, methods to define the tax base or market-determined tax base are laid down in details. An advanced agreement on how to determine the tax base is one entered into before the taxpayer lodges their tax return.”</p> <p><b>Article 19. Authority of taxation authorities</b></p> <p>9. Taxation authorities shall adopt an advance pricing mechanism with taxpayers and <b>revenue services of other jurisdictions which Vietnam has entered into an agreement with to avoid double</b></p>	<p>This paragraph is unclear on whether the advanced agreement is for the determination of the tax base for the purposes of price review in an affiliated transaction, or for tax calculation with foreign-invested businesses in general.</p>	<p>If the provisions of this paragraph cover also customs valuation, we suggest removing the phrase “which Vietnam has entered into a treaty with for double taxation avoidance and prevention of tax evasion and fraud relating to income tax”, since an advanced agreement for determination of the tax base for cross-border transactions between a seller and buyer does not necessarily need to be restricted within jurisdictions that maintain a double taxation agreement.</p>	<p>The provisions on advanced agreement in Clause 17 are different from those on advance rulings on customs value as stipulated in Article 28 of the Customs Law. Accordingly, we would like to keep this part of the draft as it is.</p>

No.	Reference	Comments	Recommendations	Feedback from GDT
	<b>taxation and deter tax evasion and fraud for income taxes.”</b>			
2.	<b>Article 5. Principles in tax administration</b> 4. The principle of substance over form shall apply in determining the taxpayer's tax obligations.	This Article is about application of substance over form principle in determination of taxpayers' tax obligations	Suggest to be more specific in definition/mechanism for application, to avoid different interpretations and disputes between taxpayers and tax authorities	The General Department of Taxation agreed with this point and made revision for further clarity as below: <i>The principle in determination of taxpayers' tax obligations is the principle in tax administration to analyze taxpayers' business and production transactions and determine their tax obligations corresponding to the value generated from the nature of the transaction or such forms of business.</i>
3.	<b>Article 7. Tax filing and paying currency</b> 2. In the event a taxpayer use a foreign currency for accounting treatment in accordance with the Accounting Law, conversion to the Vietnamese dong at the current exchange rate at the time of tax filing and paying shall be required.	Article 2.4, MOF Circular No. 26/2015/TT-BTC, Feb. 27, 2015, provides guidance on the currency used for tax payment as well as the exchange rate applied to determined the tax base, to be more specific: <i>“4. Article 27 shall be revised as follows: “Article 27. The currency used in paying taxes and determining revenue, expenses, tax base and amounts payable to the state coffers: 3. In case revenue, expenses and tax base are recorded</i>	We recommend that the provisions of the Tax Administration Law should be consistent and align with existing laws and regulations on exchange rates as per current tax and accounting rules, i.e. Circular 26/2015/TT-BTC and Circular 200/2014/TT-BTC. Furthermore, existing laws and regulations are not yet specific on the exchange rate used to determine the foreign contractor tax (FCT) in case of paying taxes through a Vietnamese party – guidelines of local tax authorities and even the GDT are also inconsistent and uncertain about the applied exchange rates, causing challenges for the Vietnamese party in crediting, filing and paying taxes on behalf of a foreign contractor. We suggest having in place specific guidance	We have reviewed this recommendation and the draft Law has been revised in a way that the Minister for Finance will, in case of tax declaration and payment in a foreign currency, allows freedom in currency conversion according to the real exchange rates.  Regarding the foreign exchange rates used for calculation of foreign contractor tax, specific guidance will be provided at a Circular of the Ministry of Finance.



No.	Reference	Comments	Recommendations	Feedback from GDT
		<p>in a foreign currency, conversion to the Vietnamese dong is required, at the real exchange rate applied as per the Ministry of Finance's guidance in Circular No. 200/2014/TT-BTC, Dec. 22, 2014, guiding on the applied corporate accounting regime, as follows:</p> <ul style="list-style-type: none"> <li>- The real exchange rate applied used for accounting treatment of revenue shall be the bid rate of the commercial bank with which the taxpayer maintains their account.</li> <li>- The real exchange rate applied for accounting treatment of expenses shall be the ask rate of the commercial bank with which the taxpayer maintains their account at the time the FX payment transaction takes place.</li> <li>- Other specific events shall be subject to the Ministry of Finance's current guidance in Circular No. 200/2014/TT-BTC, Dec. 22, 2014.</li> </ul>	<p>on the exchange rate used to calculate FCT in this Law – on the perspective that this is revenue of the foreign contractor and the Vietnamese party is only involved in a capacity that it declares and pay the taxes on behalf of the former, and as such, the applied exchange rate should be understood to be consistent with the exchange rate applied when converting the business's taxable revenue in a foreign currency (which, according to current rules, is the real bid rate of the bank where the business maintains its bank account, when the transaction takes place), and since the foreign contractor does not have an account set up at a Vietnam-based commercial bank, the bid rate of the commercial bank with which the Vietnamese party maintains its account should apply.</p>	

No.	Reference	Comments	Recommendations	Feedback from GDT
4.	<b>Article 8. Tax-related electronic transactions</b> 5. Electronic vouchers in an electronic transaction shall be signed electronically in accordance with existing laws and regulations regarding electronic transactions.	As a matter of fact, Vietnamese companies have been doing business a lot with foreign business partners, mostly through electronic communication means, e.g. emails, telex, fax, supplier-connected/linked electronic systems, automated order placement systems and so on. This regulations may only apply to domestic firms, since not all foreign parties use digital signatures as they comply with the law of the country where such foreign parties do business.	We suggest adding actionable regulations for transactions with offshore parties (e.g. transactions through email, telex, fax, supplier-connected/linked electronic systems, automated order placement systems and so on).	The General Department of Taxation has worked on providing relevant guidance in line with the provisions of the Law on E-transaction, specifically in Article 10 and Article 21.
5.	<b>Article 15.3:</b> The Ministry of Industry and Trade is responsible for coordinating with the Ministry of Finance in tax administration to organizations and individuals engaged in e-commerce activities.	Chapter II, Article 15.3 provides only general rules that are not specific enough. The law is not specific how the Ministry of Industry and Trade will work with the Ministry of Finance in providing tax administration for electronic commerce activities, and how Vietnam plans on providing tax administration for these activities.	We suggest clarifying the scope of electronic commerce activities. Such clarity will be critical to launch Vietnam as an investment destination for electronic commerce.	Regarding the coordination, only general provisions and the most fundamental principles are specified in the law as the legal basis for implementation. The recommendations from VBF will be included in the by-laws documents.
6.	<b>Article 15. 4:</b> 4. The Ministry of Information and Communication is responsible for	Chapter II, Article 15, Paragraph 4 is unspecific and broad in nature. The	It is highly appreciated if Vietnam will provide greater clarity on how Vietnam intends to manage tax on e-commerce	

No.	Reference	Comments	Recommendations	Feedback from GDT
	coordinating with the Ministry of Finance in tax administration as follows: a) Manage tax on the provision and use of Internet services and online information and video games; b) Connect and provide relevant information for tax administration to organizations and individuals directly involved in or involved in the management, provision and use of Internet services, online information and video games.	lack of clarity makes it difficult for companies engaged in these businesses to make business decisions. To the detriment of Vietnamese consumers, this could potentially hamper companies' desires to provide and expand their services and products offerings to customers in Vietnam.	relating to the provision and use of internet services and online information and video games	
7.	<b>Article 15. 5</b> 5. The State Bank of Vietnam is responsible for coordinating with the Ministry of Finance in tax administration as follows: a) Establish and develop a national e-commerce payment system, e-payment integration facilities to use widely in e-commerce models; b) Set up a mechanism for managing and supervising payment transactions for the purpose of state management over the provision of cross-border e-commerce services.	Chapter II, Article 15, Paragraph 4 is unspecific and broad in nature. It is unclear how the national e-commerce payment system and integration facilities will be established and how these will be managed. Companies engaged in e-commerce activities need visibility on how this may potentially impact their businesses in order to have business viability certainty and confidence in investing in Vietnam.		Regarding the recommendation related to the State Bank of Vietnam (SBV), we agree with the comments from VBF and will revise Article 15 as follows: 1. The SBV shall instruct credit institutions to coordinate with tax administration agencies to implement enforcement measures in accordance with this law; 2. Establish and develop the national e-commerce payment system ("E-commerce"), e-payment integration facilities to use widely in e-commerce models; 3. Set up a mechanism for managing and supervising payment transactions for the purpose of tax administration over the provision of cross-border e-commerce services.

No.	Reference	Comments	Recommendations	Feedback from GDT
8.	<p><b>Article 16. Rights of the taxpayer</b></p> <p>10. Being immune from penalization of tax-related misconducts and delayed payment due in the event the taxpayer acts upon guidelines and ruling of taxation authorities or other competent regulatory agencies relating to the determination of the taxpayer's tax obligations;</p>	<p>The Article sets forth the regulation in which taxpayers will not be subject to administrative sanctions and late payment interest if they follow the guidance issued by the tax authorities or other competent authorities.</p> <p>It means that in such cases, taxpayers are still subject to the payment of the tax shortfalls, if any. This is not reasonable and fair. Once taxpayers follow the official guidance issued by the tax authorities or other competent authorities, they have comply with all requirements, and should not be liable for any mistakes made by the authority.</p> <p>If taxpayers still have to pay the tax shortfalls due to re-assessment in spite of the fact that they have complied with guidelines of the authorities, then such guidelines of the authorities serve no purpose of certainty that taxpayers</p>	<p>Amend the Article to include the exemption from paying any tax shortfalls, if any, resulting from such guidance.</p>	<p>This comment is unreasonable. However, we understand that the responsibility of tax declaration and payment in accordance with the laws is an independent obligation of taxpayers and the law on tax administration shall stipulate that the taxpayers shall undertake tax declaration and payment on their own, and take responsibility for their declarations.</p> <p>There are always limitations in realizing this obligation as compliance with the regulations of tax administration must be in place.</p> <p>In case of any mistakes made by a tax authority in providing guidance and explanations that are not in line with tax legislation and result in tax shortfalls, the tax authority is regulated under many other laws (e.g. Law on Audit, Law in Inspection, Law on public employees and civil servants, etc.), depending on the mistakes. In this case, as such mistakes are made by a law enforcement agency, the deferred tax liability is removed while the tax obligations must still be delivered</p>

No.	Reference	Comments	Recommendations	Feedback from GDT
		expect to have when they seek and follow the guidelines. In such cases, laws and regulations will be applied retroactively, which is illegal and not allowed by law.		to ensure fairness and transparency, independent of the responsibility of law enforcement agencies in provision of public services.
9.	<b>Article 18. Mandates of taxation authorities</b>	As per Article 35 of the draft law, when a Vietnam party makes payment to entities and individuals involved in cross-border business activities based on a digital intermediary platform that is not physically present in Vietnam, it must use the taxpayer identification numbers issued to such entities and individuals for tax offset and proxy payment purposes.	As the bank will have to offset, file and pay taxes on behalf of the customer, we recommend making it the responsibility of the tax authority to provide a list of names and taxpayer identification numbers for entities and individuals involved in cross-border business activities based on a digital intermediary platform that is not physically present in Vietnam, since the Vietnamese party may file and offset taxes on behalf of these entities and individuals.	<p>This draft law on tax administration has added provisions that allow foreign organizations and individuals with cross-border business activities on a digital platform that are not physically present in Vietnam to be granted tax codes and undertake tax declaration and payment.</p> <p>Specifically: for e-commerce activities and other services performed by foreign providers which are not permanently based in Vietnam, the foreign providers are obliged to undertake tax code registration as well as tax declaration and payment in Vietnam, or may authorize an entity to perform such obligations under the guidance of the Ministry of Finance,</p> <p>According to this draft Law, the priority will be first given to these organizations that undertake tax</p>

No.	Reference	Comments	Recommendations	Feedback from GDT
				<p>code registration as well as tax declaration and payment on their own before adoption of the Tax Deducted at Source system, in case of tax payment by a Vietnamese entity, or tax deductions by commercial banks.</p> <p>Regarding proposed listing names and taxpayer identification numbers for entities and individuals that will file and offset taxes: The tax authorities will review and request the competent authorities for specific guidance on a case-by-case basis and will provide guidance in by-laws documents.</p>
10.	<p><b>Article 18.3.</b> Taxation authorities are responsible to provide explanations and information pertaining to the determination of tax obligations to taxpayers. Taxation authorities are responsible to make public how much tax money must be paid by home-based businesses and commercially active individuals within the catchment areas of communes, wards and townships.</p>	<p>The obligations of tax authorities to explain and provide information relating to the determination of tax obligations of taxpayers.</p>	<p>In practice, the following scenarios normally happen:</p> <ul style="list-style-type: none"> <li>- The tax authorities do not provide straightforward responses to taxpayers. Instead, they just provide and quote tax regulations in general only.</li> <li>- The tax authorities delay in responding to taxpayers – in some cases it can be 1 to 2 years or more.</li> <li>- The tax authorities provide guidance in one way, then they themselves come to audit in another way.</li> </ul> <p>In the above cases, the wrong tax declaration and late tax payment are not entirely the mistake made by taxpayers.</p>	

No.	Reference	Comments	Recommendations	Feedback from GDT
			We recommend not to apply retroactive tax assessment, penalty and late payment interest in these cases.	
11.	<p><b>Article 27. Mandates, authority and responsibilities of commercial banks in relation to tax administration</b></p> <p>3. Offsetting and settling payable tax obligations as a authorized third party in accordance with existing tax laws for offshore entities and individuals engaging in revenue-generating electronic commerce activities out of Vietnam in accordance with guidelines of the Ministry of Finance and State Bank of Vietnam;</p>	<p>The Article does not specify which e-commerce business activity is subject to the provisions of Article 27.3 which may cause conflicts between the Draft Law and Circular No. 103/2014/TT-BTC of the Ministry of Finance on foreign contractor tax.</p> <p>E-commerce business activity is a broad and vague definition that may cover all business that are related to or use the digital platform. In particular, under Decree No. 52/2013/ND-CP dated 16 May 2013 of the Government, e-commerce activities are defined as conducting part or entire process of a commercial activity by electronic means connected to the Internet, mobile telecommunication network or other open network.</p>	<p>We suggest that the drafting team of this draft law take into consideration and consider resolving the effects related to the new tax deduction mechanism implemented by commercial banks.</p>	<p>In the article that regulates the right to pay taxes, we have introduced provisions on registration of self-declaration and self-payment of taxes.</p> <p>In the short term, the draft law gives priority to those organizations that register for self-declaration and self-payment of taxes.</p> <p>This would be followed by adoption of the Tax Deducted at Source system or requests to commercial banks to undertake tax deduction.</p> <p>Therefore, Article 27 of the draft law has been updated in a way that the Government specifies the duties and powers of commercial banks in tax administration.</p> <p>Regarding recommendations related to commercial banks, we will provide detailed guidance in the by-law documents. This issue will not conflict with Circular 103 as the Law, after being</p>

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		<p>According to the Draft Law, there will be detailed guidelines from the MOF and the SBV. We expect that these guidelines would specify the tax basis for withholding purpose. If commercial banks just simply withhold tax on the basis of the amount paid by Vietnamese customers, it may lead to incorrect tax base or double taxation.</p> <p>Withholding tax rates generally differ depending on the nature of payments. Since commercial banks are not parties to the transactions between Vietnamese customers and foreign e-commerce businesses, it would be problematic for commercial banks to ensure proper tax withholding. If commercial banks fail to withhold proper tax amounts, who will be liable for tax liability?</p> <p>Lastly, how will foreign e-commerce businesses claim tax treaty relief if commercial banks have the</p>		<p>adopted, will be the supreme legal document. In case of any conflicts, Circular 103 has to be revised in accordance with the Law.</p>



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		right to withhold tax? At present, Vietnamese parties/customers who are responsible for withholding, declaring and paying tax for foreign contractors will file the notification dossier for tax treaty protection for foreign contractors. If the tax withholding, declaration and payment obligations are passed to commercial banks, the question is who will file the tax treaty protection notification, Vietnamese buyers/customers or commercial banks?		
12.		The draft is silent on how e-commerce businesses supplied by offshore entities and individuals will be subject to tax in Vietnam. The OECD's Task Force on the Digital Economy ("TFDE") is working towards developing an international consensus based solution to the tax challenges of the digitalized economy by 2020.	We strongly recommend that Vietnam follows the development and implementation of the policy recommendations of TFDE and not rush into a premature unilateral decision. This could have the effect of depressing growth in the Vietnamese digital sector.	
13.		We strongly urge the Vietnam Government to	<b>Indirect Tax</b>	

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		<p>follow international norms and best practices when it is deciding how to impose and collect taxes on e-business activities. Abiding by OECD standards and global best practices is the most effective way to ensure the continued growth of Vietnam's vibrant services economy. Furthermore, adherence to international consensus prevents double taxation of the same transaction and increases the adoption and compliance rate amongst global companies since they would have complied with similar-type taxes in other countries and have gone through the process of adjusting their systems to collect taxes.</p>	<p>In the OECD / G20's BEPS Project 2015 Final Report Action 1, it is recommended that countries incorporate the principles of neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility when considering which collection mechanism to introduce to collect VAT / GST on cross-border transactions. To this end, many countries have chosen the non-resident vendor collection model (ie. Non-resident vendors register for VAT in local countries). Furthermore, as noted in the OECD report of October 24, 2017<sup>1</sup> that builds on research, analysis and experience of jurisdictions that have implemented simplified regimes, <i>"a coherent implementation of simplified registration and collection regimes across jurisdictions based on common best practice approaches, is likely to enhance the levels of compliance by foreign suppliers and to support tax authorities enforcement capacity by facilitating international administrative co-operation."</i></p> <p>In light of that and the significant challenges in implementing a financial intermediary model, we would recommend that Vietnam also implements a collect and remit model requiring non-resident</p>	

<sup>1</sup> OECD Report October 24, 2017 "Mechanisms for the effective collection of VAT / GST when the supplier is not located in the jurisdiction of taxation"

<http://www.oecd.org/tax/consumption/mechanisms-for-the-effective-collection-of-vat-gst.htm>

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			<p>vendors to collect and remit the tax. The requirement for financial intermediaries can be introduced as a back up measure to ensure that where non-resident vendors are non-compliant, the financial intermediaries can withhold and remit the taxes to ensure that there is a level playing field for all vendors.</p> <p>Please refer to Appendix for recommendations on the international best practices in respect of collecting taxes on cross-border digital services via the non-resident vendor collection model. We urge the Vietnam Government to seriously reconsider the merits of the financial intermediary collection model, and choose the non-resident vendor collection model which has a international track record of being efficient and effective.</p>	
14.	<b>Article 33.2a</b>	The activity or Enterprise Certificates are not always received on the date to issue in the Certificated. It takes long time to receive the business license, hence it is difficult to register tax obligation to the Tax office within 10 working days.	The deadline should be 10 working days since the date to actually receive the Activity registration Certificate instead of issued date of such dossiers.	<p>For this recommendation, we cannot tell when would be that date; the deadline of 10 days is long enough for deceleration and submission of the dossier to the tax authorities.</p> <p>If an enterprise does not receive the certificate on time as scheduled, it must report to the agency in charge of issuance of activity registration certificates.</p> <p>The deadline of 10 working days should be kept as in the draft law.</p>

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15.	<b>Article 35. Use of taxpayer identification numbers</b> 6. A Vietnamese party that makes payment to entities and individuals involved in cross-border business activities based on a digital intermediary platform that is not physically present in Vietnam shall use the taxpayer identification number issued to such entities and individuals for tax crediting and payment purposes on behalf of the entities/individuals.	This has been provided for in Article 27.3, where the responsibility of crediting and paying tax obligations on behalf of another party in accordance with tax laws for offshore entities and individuals involved in electronic commerce activities and having income generated in Vietnam belongs to the commercial bank.	Removal of this paragraph is recommended, and instead, adding the event to Article 27.3.	However, we find that Clause 3, Article 27 stipulates the responsibilities of commercial banks on crediting and paying tax obligations. In addition, Clause 6, Article 35 provides for responsibilities of commercial banks in using the tax codes issued to individuals and entities that have pending tax obligations to record on the certificates of tax withheld at source. These are two different tax obligations, We would like to keep this content in the draft as it is.
16.	<b>Point 2 of Article 41</b>	Typo mistake “Cơ quan thuế thực hiện xử hồ sơ đăng ký thuế” (Tax authorities to [typo] tax registration applications)	To be corrected “Cơ quan thuế thực hiện xử <u>lý</u> hồ sơ đăng ký thuế” (tax authorities to <u>process</u> tax registration applications)	
17.	<b>Article 42.4. Applicable principles for tax declaration and calculation</b> 4. Principles in tax declaration and tax base determination for affiliated transactions: a) Declaring and determining affiliated transaction prices through the principles of independent transaction and substance over form to determine the payable tax obligations as with the terms and conditions for transactions between independent parties;		To maintain consistency between different laws, as well as to have clearly defined criteria in place for these parties, and to avoid any later disputes when it comes to determining exceptions, we suggest replacing determining “taxpayers of small sizes” with determining “small and medium-sized enterprises” in reference to Law No. 04/2017/QH14 – Supporting small- and medium-sized enterprises, dated June 12, 2017, which provides the following rules:	Our review of international practices shows that, to reduce the compliance burden for taxpayers of small sizes and low risk of transfer pricing and tax avoidance, most tax authorities in other countries regulate transfer prices and develop a mechanism to simplify the obligation of tax declaration and determine the prices of affiliated transactions for this group of taxpayers.

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	<p>b) Affiliated transaction prices shall be adjusted to independent transactions for the declaration and determination of the tax liabilities in the principle of non-reduction of the taxable income;</p> <p>c) <b>Taxpayers of small sizes and low risks</b> may be exempted from applying the requirements of a) and b) of this paragraph, and may adopt a simplified method in declaring and determining affiliated transaction prices.”</p>		<p><i>“Article 4. Defining criteria for small- and medium-sized enterprises</i></p> <p><i>1. Small- and medium-sized enterprises comprise of micro businesses, small businesses and medium-sized businesses, having an average annual staff with social security of no more than 200 people and meeting the following two conditions:</i></p> <p><i>a) Total liabilities and owners' equity of no more than VND 100 billion;</i></p> <p><i>b) Total revenue of the immediately previous year of no more than VND 300 billion.</i></p> <p><i>2. Micro businesses, small businesses and medium-sized businesses are indentified by their respective lines of business, in agriculture, forestry, fishery, industry and contruction, commerce and services.</i></p> <p><i>3. The government provides detailed regulations for this Article.”</i></p> <p>The government also has Decree No. 39/2018/NĐ-CP, dated March 11, 2018, providing details on this Article 4.</p> <p>We suggest adding regulations defining the identification criteria for “low-risk taxpayers”, who are those that have not been imposed a fine for tax evasion within the past two years.</p>	<p>Criteria need to be developed in accordance with taxpayers’ business practices and managerial capacity of tax authorities; thus, the criteria for taxpayers of small sizes and low risk will be regulated under by-laws documents to ensure flexibility with practical needs. The law shall only provide general principles that will be specified in by-law documents.</p>
18.	<p><b>Article 42.5 Applicable principles for tax declaration and calculation</b></p> <p>5. Tax declaration principles for advance pricing agreement mechanisms</p> <p>a) Application of the advance pricing agreement mechanism shall be done upon</p>	<p>In accordance with Circular No. 201/2013/TT-BTC, Dec. 20, 2013, defining that the Ministry of Finance has the jurisdiction in</p>	<p>Adopting this rule will impose restrictions on what businesses can do because in any case, approval by the Prime Minister is still required, resulting in backlog and delay, especially given that no APA has been</p>	<p>We agreed with the comments from VBF and Clause 6, Article 42 of the draft has been updated accordingly.</p>

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	<p>request of the taxpayer and agreement between the revenue services and taxpayer through unilateral, bilateral and multilateral agreements between the revenue services, taxpayer and tax authorities of related jurisdictions.</p> <p><b>b) The application of advance pricing agreement shall be approved by the Prime Minister prior to adoption.</b></p>	<p>approving the plans for negotiating, signing, revising, extending, withdrawing and annulling APAs, but to date, due to varying outside forces, no APA has been approved and announced.</p> <p>In international best practices, the authority to approve, execute, revise, extend or repealing APAs is vested in competent authorities. These agencies are often general taxation departments and/or local tax authorities that directly regulate taxpayers. Common examples from countries in the region and around the world include:</p> <ul style="list-style-type: none"> <li>Indonesia This power is assigned to the Director General of Taxation.</li> <li>China This authority is vested in the State Administrations of Taxation ('SATs') and local tax authorities</li> </ul>	<p>approved and announced so far. We therefore suggest that the drafters consider and take an impact assessment on whether this regulation can push up the pace for approval of the APAs submitted by taxpayers, and what implications these changes may have in real life and the processing of taxpayers' APAs.</p>	<p>According to the tax declaration principles for advance pricing agreement mechanisms, Application of the advance pricing agreement mechanism shall be done upon request of the taxpayers and agreement between the tax authorities and taxpayers through bilateral and multilateral agreements between the tax authorities and taxpayers of related counties and jurisdictions.</p>

No.	Reference	Comments	Recommendations	Feedback from GDT
		<p>(collectively referred to as revenue services).</p> <ul style="list-style-type: none"> <li>• Japan The authority is assigned to the National Tax Agency ('NTA') and subnational tax offices.</li> <li>• India The attribution is vested in the Central Board of Direct Taxes.</li> <li>• Hong Kong The authority is vested in the Inland revenue Department.</li> <li>• Australia The authority is assigned to the Ministry of Finance and the taxpayer's local tax offices (collectively referred to as revenue services).</li> </ul>		
19.		<p>The Article requires that advance pricing agreements (APA) must be approved by the Prime Minister before implementation.</p> <p>APA is purely a tax matter which should be under the authority of the General Department of Taxation and</p>	<p>This provision should be removed from the draft law. Instead, APA approval should be under the authority of the Ministry of Finance and General Department of Taxation as currently applied.</p>	<p>Revision of point c) as follows: "The application of the advance pricing agreement mechanisms is approved by the Minister for Finance before implementation. Bilateral and multilateral agreements with the participation of foreign tax authorities shall be delivered in line with legal</p>

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		the Ministry of Finance. It is infeasible and against international practice if the Prime Minister have to approve APAs of hundreds or thousands of taxpayers in Vietnam. It will create more unnecessary bureaucracy in tax administration.		regulations on international treaties and agreements.“
20.	<b>Article 42.4.b</b>	<p>The Article requires adjustment of related-party transaction prices in harmony with that of independent transactions in the manner not to decrease taxable income.</p> <p>There are cases where taxpayers need to make downward adjustment to decrease the profit which is still in the arm's length range because the estimates at the beginning of the year result in over-profit for the taxpayer beyond the arm's length benchmark. The downward adjustment of the profit margin (through debit note/credit note) for the company in Vietnam is to ensure proper transfer</p>	Amend the Article by removing the condition that the adjustment must not decrease the taxable income. Instead the Article should provide that related-party transaction prices shall be adjusted in harmony with that of independent transactions according to the principle of arm's length market price.	



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		pricing for all associated enterprises within the group.  This article will allow only upward adjustment of profit margin but may not allow downward adjustment of profit margin due to the above-mentioned reason though the downward adjustment still ensures the arm's length transfer pricing for the company in Vietnam.		
21.	<b>Article 43. Tax declaration application</b> 3. The tax declaration application to be used for taxes with an annual tax period consists of: a) The annual tax declaration application, comprising of the annual tax returns and other documents relating to the determination of the tax liabilities; b) The tax clearance application at yearend, consisting of the <b>annual tax clearance declaration form, annual financial statements, affiliated transaction statement, and other documents relating to tax clearance.</b>	Requiring taxpayers to lodge other documents relating to the determination of the tax liabilities for the annual tax declaration file/tax return seems rather broad-based, as it may include enclosed forms required, and even other related supporting documents and accounting books.	We suggest clarifying that the annual tax declaration file/tax return at year-end should consist of the tax return <b>and attachments to the annual tax return as per regulations of the MOF.</b>	In Article 42, the draft Law stipulates that the tax returns shall be prepared in line with the regulations of the Ministry of Finance. Specific information will be clearly regulated under the guidance of the Ministry of Finance.
22.	<b>Article 44. Deadline for submittal of tax declaration dossiers</b> 2. Taxes with an annual tax period:	Application dossier and deadline for corporate income tax filing: Setting the rule where companies must submit	We suggest reconsidering and revising the regulation on the deadline to file the tax return, for example: - The deadline for filing the annual tax return for CIT will be 90 days	The declaration form of affiliated transactions is part of the corporate income tax (CIT) finalization declaration dossier. The declaration of adjusted prices

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	<p>a) No later than the thirtieth day of the first month of the calendar year or fiscal year in case of annual tax declaration dossiers;</p> <p>b) <b>No later than the ninetieth day</b> following the end of the calendar year or fiscal year for annual tax clearance filing.”</p>	<p>their financial statements, corporate income tax return and documents providing information on affiliated transactions, and so on, with a same deadline (no later than the 90<sup>th</sup> day after the end of the fiscal year) is no longer relevant with the changing context as well as international best practices, to be more specific:</p> <ul style="list-style-type: none"> <li>• Having to lodge financial statements and tax return at a same time mounts up huge pressure for companies, because CIT clearance filing must rely on audited financial statements. As a result, the companies in question will have a hard time fulfilling their obligations effectively. And to meet this deadline, many firms often have to file in a temporary tax return made based on unaudited financial statements, before having a revised tax return made and lodged at a later date, which creates a substantially higher</li> </ul>	<p>after the deadline for the company's financial statements.</p> <ul style="list-style-type: none"> <li>- The deadline for disclosure and submittal of documents on affiliated transactions will be 180 days (or a year) after the deadline of the firm's financial statements.</li> </ul>	<p>of affiliated transactions shall be reflected in the declaration form of CIT finalization to calculate the payable tax amount in a fiscal year.</p> <p>Therefore, disclosure of affiliated transactions by a different time point with the declaration of corporate income tax returns results in inaccurate reflection of the CIT obligation of the affiliated enterprises at the time of financial settlement.</p> <p>If affiliated enterprises are required to submit their tax return declaration dossiers by a different time point compared with other enterprises, that would be unfair treatment.</p> <p>If the disclosure of affiliated transactions is filed after declaration of CIT returns, it will cause difficulty for the management and affect inspection plans for the affiliated enterprises.</p> <p>On the other hand, the requirement to lodge the disclosure of affiliated transactions at the same time with the declaration of CIT returns has been delivered smoothly since issuance of Circular 117 in 2015, and most of the enterprises</p>

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		<p>paperwork burdern for the companies as well as the workload to deal with for tax regulators.</p> <ul style="list-style-type: none"> <li>• International best practice: <ul style="list-style-type: none"> <li>✓ Indonesia: The deadline for filing the corporate tax return is the 4<sup>th</sup> month after the end of the fiscal year, which may be extended for another 02 months.</li> <li>✓ France: The deadline to submit information on affiliated transactions is 06 months after the filing of the corporate income tax return.</li> <li>✓ Italy: The deadline for filing the corporate income tax return is the 9<sup>th</sup> month after the end of the fiscal year.</li> <li>✓ Malaysia: The deadline for filing the corporate</li> </ul> </li> </ul>		<p>do not report any difficulties in following the submission deadline for tax calculation. Thus, we still keep such requirement for submission deadline.</p>

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		<p>income tax return is within 07 months after the end of the fiscal year.</p> <p>✓ Canada: The deadline for filing the corporate income tax return is within 06 months after the end of the fiscal year.</p> <p>✓ China: The deadline for filing the corporate income tax return and information on affiliated transactions is within 05 months after the end of the fiscal year.</p> <p>Accordingly, in international best practices, nations often allow firms to have more time for computation, declaration and filing their corporate income tax returns. In addition, a corporate income tax return enclosed with disclosure of affiliated transactions may include a national dossier and corporate file. Gathering</p>		

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		sufficient information to fill in these forms, especially the corporate file is unachievable because in a large number of the cases, a consolidated financial statement is unavailable. Imposing a rule that these documents must be lodged at the same time with the corporate income tax return (90 <sup>th</sup> day after the end of the fiscal year for the subject company) causes a real haste and no longer befits the changing context at real life businesses.		
23.	<b>Article 44. Deadline for submittal of tax declaration dossiers</b> 2. Taxes with an annual tax period: c) <b>No later than the one hundred and twentieth (120<sup>th</sup>)</b> day after the last day of the calendar year in case of personal income tax clearance applications for individuals who personally make tax clearance		The draft law only points to the deadline in a whole calendar year, without mentioning tax filing for overlapping years, or when returning to the home country, the regulations as in the draft law are not yet available. We propose repealing the tax period of 12 consecutive months for non-nationals in case of personal income tax (PIT) to minimize paperwork and the need to monitor double taxes in the lapping years for both tax regulators and taxpayers.	The draft law only stipulates the general provisions on the deadline for tax declaration while the specific guidance for each group of taxpayers and types of taxes shall be provided in the by-law documents.  The General Department of Taxation will review the VBF comments for development of relevant by-law documents.
24.	<b>Article 47. Updates of tax declaration dossiers</b> 1. Taxpayers who find that their tax returns lodged to revenue agencies are at fault may provide update declaration to the tax	These two paragraphs seem somewhat inconsistent as paragraph 1 requires the taxpayer to update tax filing within 10 years but before	The following changes are recommended for consistency: <b>Article 47. Updates of tax declaration dossiers</b>	We have reviewed and revised as follows: - Keep provisions in the Clause 1: "...within ten (10) years following the end of the deadline

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	<p>returns within ten (10) years following the end of the deadline for submittal of tax returns of the faulty tax period, <b>but before the revenue agency or a competent authority releases their inspection and audit ruling.</b></p> <p>2. When a tax authority and competent authority releases its ruling or decision for tax resolution following inspection and audit at the taxpayer's places of business, the <b>taxpayer may still update their tax return.</b></p> <p>.. In this case, the taxpayer shall be waived of penalty for the declaration mistakes, but <b>must pay an extra 10% of the missing tax amount.</b></p>	<p>the tax authority releases tax inspection and audit ruling, whereas paragraph 2 permits the taxpayer to update the filing after the revenue agency releases audit ruling or decisions for tax resolution after completing tax inspection/audit at the taxpayer's place of business.</p>	<p><i>1. Taxpayers who find that their tax returns lodged to revenue agencies are at fault may provide update declaration to the tax returns within ten (10) years following the end of the deadline for submittal of tax returns of the faulty tax period, <del>but before the revenue agency or a competent authority releases their inspection and audit ruling.</del></i></p> <p>In addition, to encourage self-motivation and active review by taxpayers to update missing tax return information (if any), we suggest not demanding additional payment of 10% of the declared tax amount when a revenue agency or competent authority has released ruling or decisions for tax resolution following tax inspection and audit at the taxpayer's place of business.</p>	<p>for submittal of tax returns of the faulty tax period, but before the revenue agency or a competent authority releases their inspection and audit ruling".</p> <p>- Revise Clause 2 as follows: When a tax authority and competent authority releases its ruling or decision for tax resolution at the taxpayer's places of business, the taxpayer may still update their declaration of tax returns and be imposed of administrative penalties for the declaration mistakes according to Article 143 and Article 144 of this Law. After the tax authority and competent authority has released its ruling or decisions for tax resolution at the taxpayer's places of business, the taxpayer may update the tax returns in case of increased payable tax amount, reduced tax deductions or lowered amount of tax exemption or reduction, and be imposed of administrative penalties for the declaration mistakes according to Article 143 and Article 144 of this Law. If taxpayers find that their tax returns lodged to tax authorities are at fault, which results in reduced payable tax amount, increased tax deductions</p>

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				or higher amount of tax exemption or reduction, they shall proceed with the regulations on settlement of tax-related claims.
25.	<b>Article 48</b>	What does “efficient dossiers” mean for Tax officer to receive the Tax return.	The definition “efficient dossiers” should be documented in the Law for the purpose of transparent submission and to avoid the case that the tax payers prepare all necessary document under the requirement regulated in the regulation, but they sometimes still refused because of unreasonable explanation.	Article 43 of the draft law provides for tax returns, including required documents, and most taxpayers can submit their tax returns as required by the law. Reflecting VBF recommendations, we will revise Article 48 in a way that: Tax authorities shall receive tax returns. In case the tax returns are lodged properly as required, the tax authorities shall confirm the receipt of tax returns. If they are deemed invalid by providing insufficient information or prepared using improper templates, within 3 working days at the latest, the tax authorities shall request the taxpayer to complete the tax returns.
26.	<b>Article 50. Imposing tax for taxpayers in breach of tax laws</b>	We suggest adding “except import and export duty” after “Imposing tax” as it is subject to specific regulations in Article 52.	<b>Article 50. Imposing tax (except import and export duty) for taxpayers in breach of tax laws</b>	Reflecting VBF recommendations, we has revised Article 50: Tax imposition (except import and export duty) for taxpayers in breach of tax laws.

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27.	<b>Article 50. 1.</b> Taxpayers shall be subject to tax imposition for the following tax law violation acts: a) Failure to make tax registration, tax returns and file updates of tax returns upon request of the revenue agency, or submitting inaccurate, untruthful and incomplete declaration for the tax base;		We suggest removing this regulation as it can be easily mistaken with the case of incorrect declaration, leading to tax liabilities that are less than they should be, and potentially disputes in application down the road.	We believe that Article 50 regulates tax imposition, which is different from Articles 143 and 144 of the draft law that are on penalties for tax-related administrative violations. Therefore, we would propose to retain this article for implementation of tax imposition.
28.	<b>Article 50. 1. e)</b> Buying and trading goods using illicit invoices, and making illegal use of invoices <b>underlying real commodities</b> as determined by a competent authority and for which taxable earnings have been declared;	Normally, the buyer can hardly know if the seller's issued invoice is illegal or not (unless 100% of taxpayers have been using electronic invoices that can be searched on the tax authority's websites). Furthermore, tax authorities in fact consider illegal invoices to include those declared by revenue agencies as null and void (sometimes because the subject business is carrying tax arrears) or invoices of businesses that have gone missing. However, a large number of companies are engaging in transactions to buy <u>real</u> goods and services, receipt of invoices, and payment through bank transfer, but at the time such	We propose imposing taxes and administrative penalty only for sellers the commit the act of using illegal invoices. On the part of the buyer, if they can prove that their purchase of goods and services is real, supported by legitimate documents and vouchers as required, crediting and deduction should be allowed. Moreover, we suggest that the law should provide the ground rules and detailed guidance in the implementing decree/circular to ensure fair treatment by: not imposing/ruling against the right for VAT credit/CIT cost deduction if purchase and sale of goods, and transfer of payment to the seller can be proved to actually happen before a relevant regulator discloses the case of the seller disappearing from their registered place of business/the seller's invoices being voided. To be more specific, we recommend the following changes: “... e) <i>Buying and trading goods using illicit invoices, and making illegal use of</i>	Currently, the draft law on tax administration stipulates tax imposition in case of buying and trading goods using illicit invoices, and making illegal use of invoices underlying real commodities as determined by a competent authority and for which taxable earnings have been declared. This has met the first point as suggested by VBF.  Regarding the second suggestion, we agreed with this and will advise the Government to provide specific regulations in by-law documents.



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		sales and purchase activities take place, the seller is still in existence and has not disappeared, or there is no announcement from the tax authorities/police that the seller has gone missing; or declaring that the seller's invoices have been null and void is not within the buyer's control (whether the seller has declared/paid their taxes or not) [the tax authority's announcement on GDT's website is often not fast enough at the time the seller issues invoices to the buyer]. In this case, imposing taxes/blocking VAT credit and CIT expenses rebate for the buyer is unreasonable.	<i>invoices according to the Government's guidelines, where the underlying commodities are real as determined by a competent authority and for which taxable earnings have been declared;"</i>	
29.	<b>Article 50. 1.</b> i) Being involved in affiliated transactions that are non-compliant with applicable rules on tax return update and disclosure of information in accordance with existing tax administration regulations applicable to businesses involved in affiliated transactions.	The draft law proposes an event where the taxpayer is subject to tax imposition because: <i>"i) Being involved in affiliated transactions that are non-compliant with applicable rules on tax return update and disclosure of information in accordance with existing tax administration regulations applicable to businesses</i>	Recommended change: "i) Being involved in affiliated transactions that are non-compliant with applicable rules on the tax declaration and disclosure of information obligation in accordance with existing tax administration regulations applicable to businesses involved in affiliated transactions."	Reflecting this recommendation, we revised the draft accordingly.

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		<i>involved in affiliated transactions", but this provision may result in the case of the taxpayer, if making unsatisfactory tax return update, being subject to tax imposition. We therefore suggest being more specific by changing it to non-compliance with the tax declaration obligation.</i>		
30.	<b>Article 52. Imposing taxes for exports and imports</b> 1. Customs authorities shall impose duty and taxes for imports and exports in the following events: a) The declarant relies on illicit documentation to make declaration and calculations, fails to make declaration or make inaccurate or incomplete declaration on elements pertaining to tax obligation determination. b) <b>The declarant, beyond the set timeline, fails to provide, refuses or delays or lengthens</b> the provisions of relevant dossiers, accounting books, documents, vouchers, data and information to determine accurately the tax liabilities as required.		We suggest removing the term “lengthens” as it has the same meaning with “delays”.	In agreement with this recommendation, we have revised the draft accordingly.
31.	<b>Article 52.1.c) Failure to corroborate or explain, or failure, beyond the set timeline, to give an account on information relating to tax obligation determination in accordance with applicable laws;</b>	In many cases, customs authorities, in their inspection and audit, only give generic requirements that the declarant must	Recommended change: “to corroborate or explain, or failure, beyond the set timeline, to give an account on related information <b>as specifically required by the customs authority to accurately determine</b>	In agreement with this recommendation, we have revised the draft accordingly.

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	failure to comply with the customs' audit and inspection ruling;	submit related dossiers and documents, without being specific enough on what dossiers and documents are needed, which is often confusing and hard to comply with, and consequently, the declarant may end up being ruled as deliberately delaying the provision of the needed documents for tax obligation determination purposes.	<del>relating to tax obligation determination in</del> accordance with applicable laws ...”	
32.	<b>Article 52.2.</b> Reference for imposition The customs office shall rely on the actual export and import goods, tax base, method of collection, taxation authorities' databases and commercial databases, customs declaration dossiers, available documentation and other information relating to the imports and exports to impose the tax liabilities.		We suggest changing to: “... available documentation and other information relating to <b>import and export transactions</b> to impose the tax liabilities ...”.	After review, we learned that, according to the customs law, the targets of customs management are imported and exported goods. Therefore, the tax imposition must be based on the documents and other information related to imported and exported goods, including import and export transactions. This is covered in the provisions of the customs law. Therefore, we do not provide additional details.
33.	<b>Article 55. Tax payment deadline</b> 4. For taxable exports and imports as set out under existing tax laws, the deadline for tax payment shall be subject to the provisions of the Import and Export Duty Law. In the event the taxpayers update their tax returns after customs clearance, resulting	In real-life customs declaration practice, ambiguous regulations have resulted in businesses' interpretation and application that may differ from that of the customs office. And when more	The provisions of Article 47.2 seem more viable, so we propose modifying the same way with Article 47.2 to guarantee fair treatment between different tax categories: “2. When a <b>customs tax authority and competent authority</b> releases its ruling or decision for tax resolution following inspection and audit at the taxpayer's	We agreed with the recommendation to revise the article on additional declaration of imported and exported goods.

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	in larger tax liabilities, or where the customs authority imposes taxes after clearance, the deadline for payment of such additional taxes and imposed tax shall be the tax payment deadline of the same customs declaration form. In addition to paying in full the additional tax and imposed tax following tax returns update, the taxpayer shall also pay delayed payment due measured from customs clearance or release of goods to the real tax paying date, and <b>other penalties for wrongdoing as defined by law (where applicable).</b>	specific guidance is given and a better understanding is acquired, declarants can update their declarations, which may lead to higher tax obligations than initially declared. If this is deemed breach of the law, businesses' reputation may be compromised.	places of business, the taxpayer may still update their tax return. In case update declaration results in larger tax liabilities, or smaller amounts of exempted or reduced taxes, the taxpayer shall be responsible to pay in full the missing or delayed taxes. In this case, the taxpayer shall be waived of penalty for the declaration mistakes, but must pay an extra 10% of the missing tax amount.” Furthermore, the regulation on customs declaration update only mentions the case of resulting larger tax liabilities. Is it correct to understand that other events that do not lead to larger tax obligation, but only other factors that may be associated with the goods or transaction (for example, changes to the quantity/prices of export goods, changes to the quantity of tax-exempt imports, changes for import goods price rebate without altering the tax obligation, and so on), there is no need to update the declaration, which can also reduce the paperwork?	
34.	<b>Article 55. Tax payment deadline</b> 4. For taxable exports and imports as set out under existing tax laws, the deadline for tax payment shall be subject to the provisions of the Import and Export Duty Law. ... Deadline for paying additional taxes incurred from: goods subject to validation survey; goods without official prices; goods subject to payment of royalty and	“Royalty, license fee, amount payable by the importer as part of considerations from resales, disposal of or use of import goods” are all parts of adjusted amounts that are added to the transaction value, as per current regulations on customs	We suggest providing a general rule covering all adjusted amounts to be added to the customs value that are unknown at the time of initial declaration: the deadline for tax payment is the date of registering the post-clearance update declaration, and the declarant will not be held accountable for breach of the law.	We agreed with the recommendation to revise the article on additional declaration of imported and exported goods.

No.	Reference	Comments	Recommendations	Feedback from GDT
	<p>license fees; amount payable by the importer as part of considerations from resales, disposal of and use of imported goods that are undeterminable at the time of declaration form registration, as follows:</p> <p>... c) For taxable goods relating to royalty, licensing fee and amounts payable by the importer from consideration following resales, disposal of or use of imported goods that are undeterminable at the time of declaration sheet registration (as it depends on the post-importation sales revenue or other reasons specified in the sales contract or a separate agreement on royalty and licensing fee payment), the tax payment deadline shall be the date of post-clearance update declaration.</p>	<p>value. Setting a separate rule on the timeline to pay the additionally declared taxes for these items will not ensure fair treatment, because in real-life practice, other adjusted amounts to be added, as scarce as they may be, may still emerge after clearance/goods release, and certainty is impossible at the time of declaration.</p>		
35.	<b>Article 59.3</b>	<p>The Article only provides the timeframe for calculation of late payment period for taxes <u>administered by customs authority</u>, without mentioning that applied to taxes administered by authorities other than customs authority.</p> <p>Also, the timeframe is calculated until taxpayers or agencies authorized for tax collection, credit institution pay the tax to the state</p>	<p>The Article should remove the phrase "administered by customs authority".</p> <p>Also, the whole Article 59.3 should be amended as follows to mitigate the conflict in identifying the obligation for late payment:</p> <p><i>"3. The late payment period is calculated from the date after the last date for tax payment, payment extension, or the deadline as stated in the tax imposing decisions and tax sanction instruments issued by authorized agencies until the date, before the date on which the</i></p>	

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		budget. This may trigger controversy with the provisions under Article 59.7 in identifying the obligation for paying the late payment interest, where agencies authorized for tax collection, credit institution are also liable for late payment interest if they delay in transferring the tax to state budget.	<i>taxpayers conduct or authorize to conduct the payment, or the tax is coerced."</i>	
36.	<p><b>Article 60. Dealing with tax money, delayed payment dues and overpayment penalty</b></p> <p>3. The overpaid tax, delayed payment due and penalty shall not be refunded, and instead the taxation authority shall dispose of the overpaid amount from accounting books and electronic data systems in the following events:</p> <p>c) The overpaid amount has been in existence for more than ten (10) years after payment to the government revenue, and the taxpayer fails to offset tax obligations nor initiate tax rebate procedures.</p>	In practice, some businesses may incur huge amounts of unrefunded input VAT while Circular 130 was in effect, and instead are only allowed for netting, which may last more than ten years. Clarification of the rule is therefore needed here.	Our recommendations: c) The overpaid amount has been in existence for more than ten (10) years after payment to the government revenue, and the taxpayer fails to offset tax obligations nor initiate tax rebate procedures ( <b>except VAT</b> ).	We learned that in the existing law on tax administration and draft updated law on tax administration, any violations in existence for more than ten (10) years will not be subject to collection of tax arrears. The same principle is applicable to overpaid amount that has been in existence for more than ten (10) years; thus, in regard to the case raised by VBF, according to Circular 130, this amount will be offset with the tax obligations of the subsequent tax period and shall not be deemed as having existed for more than 10 years without being filed for tax returns.

No.	Reference	Comments	Recommendations	Feedback from GDT
				We would keep this content in the draft as it is.
37.	<b>Article 61. Paying tax during redress for complaints and litigation</b> 2. In case the paid tax, penalty and delayed payment due exceeds the tax, penalty and delayed payment due determined by redress for complaints ruling of a competent regulatory authority or a court's verdict or ruling, the taxpayer shall be refunded the overpaid tax, penalty and delayed payment due, and paid the interest over the overpaid tax, penalty and delayed payment due.	In most cases, taxpayers receiving redress for complaints ruling that results in refund of their overpaid funds are never paid the interest on such overpaid amount willingly by the tax authority.	We suggest clarifying how to compute the interest or interest rate in case the taxpayer is eligible for refund of any overpaid amount, similar to the regulation on how to calculate delay tax payment penalty (0.03%/day on the missing tax amount).	We agreed with the the VBF recommendations and has added such provisions in the draft law on tax administration on the settlement of complaints as follows: A taxpayer is entitled to request the tax authority to pay interest at the rate of 0.03%/day based on the tax amount, penalty, delayed payment due and overpaid tax; the interest shall be paid by using central budget in line with the law of the state budget.
38.	<b>Article 66. Fulfillment of tax obligations upon exit from the country</b> Vietnamese nationals leaving the country for permanent residence in another country, Vietnamese nationals with permanent residence in another country, and non-nationals shall, prior to exiting Vietnam, fulfill their tax obligations. Immigration authorities shall be responsible to suspend exit of the country by individuals or taxpayers' registered agents if they fail to fulfill their tax obligations as informed by taxation authorities.	In practice, non-national individuals cannot declare and pay taxes in Vietnam on their own, given the fact that the entire system of declaration sheet, forms and software used for tax filing – HTKK – is currently in Vietnamese only, and as a result, non-nationals often rely on the company that pays their income or a tax broker to support them in their tax filing. Moreover, at the time an individual repatriates, he/she may not be able to know the full	We suggest having more clearly defined regulations in the law on how an individual, before leaving Vietnam, can assign other entity or individual to clear their PIT obligations in Vietnam on their behalf.	VBF recommendations will be discussed during the development of by-law documents.

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		taxable income. On the other hand, other individuals in Vietnam may have 90 to 120 days to complete PIT clearance for the annual tax period. As such, demanding non-national individuals, at the termination of employment in Vietnam, to stay in Vietnam only to wait for completion of tax audit/clearance procedures is unfair, since it may take 45 – 90 days to finish tax filing/clearance.		
39.	<b>Article 67. Fulfillment of tax obligations in the event of wind-up, bankruptcy and operation termination</b> 3. Where businesses cease operation and leave their places of business without notifying revenue agencies and fulfilling their tax obligations, the business owner shall be held accountable for the unpaid tax.	Pursuant to the provisions of Article 47, Section 1, Chapter III, Enterprise Law No. 68/2014/QH13, dated Nov. 26, 2014, guiding on the liabilities for members of limited liability companies with two members or more: “Article 47. Limited liability companies with two or more members 1. A limited liability company is an enterprise in which: a) Its members may be organizations or individuals, and the number of members shall not exceed 50.	We suggest making no change and keeping the existing regulations intact.	We learned that, where businesses cease operation in line with the Enterprise Law, business owners shall fulfill the financial obligations over the tax debts according to their equity contribution. However, for those that illegally terminate their operations and abscond, it is necessary to hold business owners financially accountable for their tax obligations.  On the other hand, the current law on tax administration makes it clear that, for any enterprises that have terminated their operations but failed to fulfill their tax



No.	Reference	Comments	Recommendations	Feedback from GDT
		<p>b) The members shall be accountable for debts and other asset liabilities of the enterprise within the amount of equity paid into the enterprise, unless otherwise provided in Article 48.4 of this law.”</p> <p>Pursuant to the provisions of Article 73, Section 2, Chapter III, Enterprise Law, guiding on single member limited liability companies: “Article 73. Single member limited liability companies 1. A single member limited liability company is an enterprise owned by an organization or individual (hereinafter referred to as “company owner”). The company owner shall be accountable for the company’s debts and other asset liabilities to the extent that the company’s charter capital can cover.”</p> <p>Pursuant to the provisions of Article 110, Chapter V, Enterprise Law No. 68/2014/QH13, guiding on shareholding companies: “Article 110. Shareholding companies</p>		<p>obligations, the outstanding tax debts are to be paid by the business owners.</p> <p>The provisions in the draft are thus based on reflection of and compliance with other relevant legal provisions. The wording is revised as follows: “<i>In case an enterprise terminates its operation, abscond from its registered place of business and has not fulfilled its tax obligations, the outstanding tax debts shall be paid by the owner of the enterprise.</i>”</p>

No.	Reference	Comments	Recommendations	Feedback from GDT
		<p>1. A shareholding company is an enterprise, where:</p> <p>...</p> <p>b) Shareholders may be organizations or individuals. The number of shareholders shall be 03 people at the minimum, without any limitation on the maximum number.</p> <p>c) Shareholders are only accountable for debts and other asset liabilities of the enterprise to the extent covered by the equity they paid into the enterprise. This law modification may only be suitable for privately held companies where the company/business has only one owner, who is accountable for all the company's debts. As with other types of business, including limited liability companies, shareholding companies and so on, many members/shareholders may have equity contributions and be accountable for the business's debts to the extent of the capital actually contributed to the company.</p>		

No.	Reference	Comments	Recommendations	Feedback from GDT
		Setting the rule as in the draft law goes against the principle of the Enterprise Law, as it requires several individuals to be held accountable for paying the business's tax arrears.		
40.	<b>Article 75. Turnaround time for tax rebate applications</b> 2. For applications subject to pre-refund review, no later than forty (40) days after the taxation authority releases a tax notice regarding application acceptance and turnaround time, the taxation authority shall give ruling on whether to approve the tax rebate applied for, or notify refusal of tax rebate for the applicant if the application is not qualified for tax refund.	The regulation only points to the turnaround time for tax rebate applications from the taxation authority, and is silent on the timeline for actually refunding the overpaid tax money, whereas existing rules on back tax or additional tax collection imposed on taxpayers are more than rigorous.	We suggest adding regulations on how long (in days) a taxation authority must refund overpaid tax to the taxpayer, for example, no later than 05 business days following release of the tax rebate ruling. Furthermore, we also recommend being specific whether it is business days or calendar days.	We see that this has been defined in article 60 of the draft law: regulations on handling tax, delayed payment, overpaid penalty and overpaid tax.
41.	<b>Article 107. Applicable principles for tax audit and inspection</b>		We suggest adding a principle: no inspection and audit overlap and repetition in terms of the number of events, content, scope and number of inspection/audit missions.	We see that clauses 2 and 3 of Article 107 regulate this content.  Therefore, we would like to keep clauses 2 and 3 of Article 107 as drafted.
42.	<b>Article 110.</b> Tax audit at the taxpayer's headquarters 2. The tax audit decision shall be sent to the taxpayer within three (03) business days, and disclosure shall be done within ten (10) business days after the decision is signed. Where prior to disclosure of the audit decision, the taxpayer can substantiate that the declared taxes are	<ul style="list-style-type: none"> <li>There is no deadline regulation of this under current regulation. Many tax officer bring this decision at tax audit start day. Tax payer can't prepare anything.</li> <li>Local tax office often say they disclose this</li> </ul>	<ul style="list-style-type: none"> <li>We strongly recommend to set a deadline regulation tax authority need to send tax audit decision 10 days before tax audit start day at least.</li> <li>We also recommend to regulate disclosure of tax audit candidate list for next year by the end of previous year so that tax payer prepare for tax audit.</li> </ul>	<p>In the draft law, there has been a provision on the deadline for preparation of dossiers, which is 10 days from the issuance date of the tax audit decision.</p> <p>In case a taxpayer requires extra time for preparation of dossiers, the taxpayer needs to submit a</p>

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	correct and pay in full the payable taxes, the taxation authority shall cancel the released tax audit decision	information to tax payer. However tax payer have no idea how to access to this information since there is no regulation.		written request for postponement of tax audit to prepare the prescribed dossiers.  Regarding the proposed introduction of a regulation on disclosure of a list of tax audit candidates for the following year: We would accept this VBF recommendation for future inclusion in by-law documents.
43.	<p><b>Article 126. Applicable enforcement actions for administrative ruling in relation to tax administration</b></p> <p>1. Applicable tax-related administrative ruling enforcement actions include: ... d) Suspending use of invoices; ..3. Tax-related administrative ruling enforcement actions shall be applied as follows:</p> <p>a) In case of the enforcement actions referred to in a), b) and c), paragraph 1 of this Article, depending on the current context, the taxation authority shall choose to apply the appropriate enforcement action.</p> <p>b) In case of the enforcement actions referred to in d), dd), e) and g), paragraph 1 of this Article, the taxation authority shall carry out enforcement actions in this principle: where ex ante enforcement cannot be applied, the taxation authority shall switch to ex post facto enforcement.</p>	Enforcing by suspending use of invoices may be very inconvenient in practice. In this case, a business virtually has no way to continue doing business because its business partners will not pay without an invoice. In the meantime, a huge number of companies may still be in the middle of carrying out a commercial contract with customers. This measure may also affect a company's customers, as starting to look for other contractors/suppliers in the middle of an existing agreement is very challenging and costly, and may affect the scheduled progress. In sum, this	We suggest reconsidering the proposed enforcement measure through suspending use of invoices, as this will not create any positive outcome on businesses' commercial activities and performance. And if this measure is to be enforced, it should apply to events where aggravating circumstances emerge.	Enforcement through suspension of invoice use is taken after the taxpayer has a 90-day period to arrange financial resources to cover outstanding tax debts. After this period has passed, the tax authority has debited the taxpayer's account but failed to recover the full tax debts. Enforcement through suspension of invoice use is usually applicable to businesses that are reluctant to make tax payment on a timely basis. Should the invoice use be not suspended, the businesses will see their payable tax amount to increase while the outstanding tax debts have not been paid to the state budget and no other measures can be taken for debt recovery.  Therefore we would keep enforcement measures, including

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	<b>Article 133. Enforcement through suspension of invoice use</b>	proposed measure may cause the parties involved to fall into a dilemma, and derive businesses of the opportunity to recover, and pay any unpaid taxes and continue to exist.		enforcement through suspension of invoice use.
44.	<b>Article 130</b> - Enforcement by debiting bank accounts of enforced taxpayers.	<p>Point (2) - Commercial banks, credit institutions take responsibilities to debit the amounts quoted in the Decision of tax enforcement... at the same time to send written notification to the Authorities who issue the Decision of tax enforcement.</p> <p>Point (4) - In the effective period of the Enforcement Decision to implement Tax administration Decision, if taxpayer's account balance is sufficient for tax payment but State Treasuries, commercial banks &amp; credit Institutions do not debit the fund &amp; make payment to Government Budget.... then these organizations will be imposed administration penalties under the prevailing regulations.</p>	<p>Point (2) - To reduce administrative work for banks, it's recommended to remove the requirement of written notification sent to the Decision's Issuer if banks fulfil the obligation of debit tax amount &amp; make payment to State budget.</p> <p>Point (4) - In most of the cases, banks receive the Decisions when its effective dates are running over. It's recommended to clearly address in the Decision that the deadline date should be started from the date when banks receive the Decision, not the date of signing or issuing the Decision.</p>	<p>Enforcement by debiting bank accounts shall be valid for 30 days and the enforcement decision clearly states the time duration of enforcement.</p> <p>Taxpayers might open multiple accounts at different banks; in order to ensure full collection of tax payment, the tax authorities must send their enforcement decision to all the banks at which the taxpayers open their accounts. Therefore, in order to avoid over-deduction of enforced tax debts, after a bank debits the bank account of the enforced taxpayer, it must notify the tax authority which, in turn, shall notify other banks to suspend enforcement. We therefore would keep the provisions as in Article 130.</p>

No.	Reference	Comments	Recommendations	Feedback from GDT
45.	<b>Article 132. Enforcement through suspension of customs clearance for import and export goods</b>	<p>The Article sets forth the suspension of export/import clearance procedure as a means to enforce the enforcement of delay in paying any tax.</p> <p>Nonetheless, such suspension is not appropriate as it may only be relevant in the case taxpayer delay in paying import/export duty, import VAT, Special Consumption Tax for export/imports. However, the current wording turns such suspension to a measure that may also be applied to the delay in paying taxes other than those directly relating to imports/exports.</p>	This article should be revised to make it clear that it only applies to delay in paying taxes related to export and import.	In agreement with VBF comments, we would add this to the decree guiding the implementation of revised law on tax administration.
46.	<b>Article 139. Penalty form, penalty level and remedial measures</b> 2. Financial fine level a) A fine of 10% over the under-declared tax money in case of the wrongdoings referred to in Article 143.2.a of this Law; b) A fine of 20% over the under-declared and over-refunded tax money in case of the wrongdoings referred to in Articles 143.1 and 143.2.b of this Law;”	<p>In practice, some companies, in their tax computation and filing, will identify several types of tax for which temporarily calculated taxes will be paid. Due to some ambiguity or uncontrolled factors, taxpayers may pay more to the government revenue</p>	<p>We recommend the following changes:  <b>“Article 139. Penalty form, penalty level and remedial measures</b>            2. <i>Financial fine level</i>            a) <u>A fine of 10% over the <b>missing tax money due to incorrect declaration</b> in case of the wrongdoings referred to in Article 144.2.a of this Law;</u>            b) <u>A fine of 20% over the <b>missing tax money due to incorrect declaration</b>, and over-refunded tax money in case of the</u> </p>	<p>We learned that at Point b, Clause 2, Article 139, the draft law stipulates the fine level for acts of violation specified at Point c, Clause 2, Article 143. Therefore, we would propose to keep points b and c.</p> <p>In addition, in agreement with comments from VBF, we added to Point a, Clause 2, Article 139,</p>

No.	Reference	Comments	Recommendations	Feedback from GDT
		<p>than the tax money they declared.</p> <p>During a tax inspection process, the audit team may find that a company made incorrect or missing tax declarations. However, if netting off the incorrectly declared tax with currently overpaid tax, the result would be non-existence of any missing tax.</p> <p>In this case, each tax audit team may act differently upon the subject taxpayer, but normally, they would just impose the 20% penalty rate over the missing declared tax found through inspection, without really taking into consideration whether the taxpayer is carrying any overpaid taxes that can be netted off with the additionally imposed tax. This is not exactly fair, because in fact, the taxpayer may still paying all the taxes that they should (or even more) to the government revenue.</p>	<p>wrongdoings referred to in Articles 144.1 and 143.2.b of this Law;”</p>	<p>provisions on the maximum fine amount for acts of violation stated in Article 142. Specifically, the maximum fine amount shall be VND 200 million for acts of violation stated in Article 142 of this Law.</p>
47.	<b>Article 143. False declaration resulting in less tax liabilities or more tax rebate, exemption, reduction and waiver</b>	In addition, when it comes to imposing a fine of 10% over the under-declared tax for	We recommend against imposing fines if taxpayers take efforts to find the mistakes and update the declaration to cover the	

No.	Reference	Comments	Recommendations	Feedback from GDT
	<p><b>2. For import and export goods: where the taxpayer gives false declaration resulting in less tax liabilities or more tax exemption, reduction, rebate and waiver</b> that do not fall under the events referred to in paragraphs 6 and 7, Article 144 of this Law, <b>in addition to paying in full the unpaid tax and delayed payment dues as required, the taxpayer shall also be subject to penalty for:</b></p> <p>a) Where the taxpayer detects and make declaration update on their own at the following points in time:</p> <p>Goods in the process of customs clearance: After the customs office gives notice on direct review of the customs file; Goods completing customs clearance: <b>After sixty (60) days following customs clearance and before the customs office gives ruling on post-clearance audit and inspection.</b></p>	<p>the misconducts referred to in Article 143.2.1, for the taxpayers that identify the incident and make update declaration within 60 days after clearance and before the customs office" release of post-clearance audit/inspection ruling, imposing a 10% fine on the under-declared tax amount is unfair, because when the subject taxpayer takes the efforts to screen and find their mistakes and take corrective actions to remain compliant, imposing the fine will not encourage self-discipline among declarants in relation to their incorrect declaration.</p>	<p>missing tax obligations, as a way to encourage taxpayers to consciously screen for mistakes and update any missing tax declarations (if any).</p>	
48.	<b>Article 143.2.c</b>	<p>Article 143.2.c seems to be redundant. Though this article says that it is a violation subject to penalty, Article 139 regarding forms of penalty does not provide any penalty applicable to violation under Article 143.2.c.</p>	<p>Consider removing Point c, Clause 2, Article 143 or adding the sanctioning form at Article 139 for violations in Point c, Clause 2, Article 143</p>	



No.	Reference	Comments	Recommendations	Feedback from GDT
49.	<b>Article 144. Tax evasion acts</b> 1. Non-submittal of tax registration application; non-submittal of tax returns; <b>lodging tax returns after ninety (90) days following the expiry of the statutory timeline for tax returns filing as set out under this Law, or expiry of extension of the timeline for tax returns filing as set out under this Law;</b>	It is not advisable to consider making tax filing after 90 days since the prescribed due date for tax filing as a tax evasion act. This will result in unfair treatment and does not encourage entities and individuals to taken efforts in tax filing and payment. In many cases, entities and individuals may, due to the lack of full understanding of the law, delay their tax filing and payment.	We suggest removing <b><i>“lodging tax returns after ninety (90) days following the expiry of the statutory timeline for tax returns filing as set out under this Law, or expiry of extension of the timeline for tax returns filing as set out under this Law;”</i></b>	The obligations of tax declaration and payment have been specified in tax regulations and the law on tax administration. Therefore, the regulation on heavy sanctions for filing tax returns after a 90-day period is necessary for better compliance of taxpayers.  Under the provisions of the criminal code, this is also a measure to handle the crime of tax evasion; thus, we would keep it as drafted.
50.	<b>Article 145</b> - The offence of commercial banks, tax payment guarantee.	Point (1) - Commercial banks do not transfer tax owing amount from taxpayers' accounts to the State budget....will be penalized with an amount equal to the owing amount that banks did not debit taxpayers' accounts....	Commercial banks' offence mentioned in Point (1), Article 145 was already mentioned in Point (4), Article 130 but with different penalties. It's recommended that Point (1), Article 145 should be removed to avoid duplicate & confusion/conflict in penalties. Moreover, there may be several objective reasons that banks do not make tax payment of the owing amount. Therefore, if banks are imposed with penalties of the tax owing amounts -ie. paying on behalf of banks' customers due to objective reasons, it means the banks' offence is serious, same as the tax evasion & that could damage the banks' operations & reputation.  The imposition of penalties should be followed regulations on administration	We will have a review for proper adjustments.

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			penalties for the cooperation between banks & tax authorities in tax enforcement rather than imposing the penalty to banks same as taxpayers for tax evasion.	
51.	<b>Article 150. Responsibilities and authority of taxation authorities in dealing with tax-related complaints and reports</b> 3. Taxation authorities shall refund tax, delayed payment due and penalty that they wrongly collected to the relevant taxpayers and third parties within fifteen (15) days after receipt of executive ruling from a senior taxation authority or competent authority as set out under applicable laws.	In case a revenue agency collect the wrong, only to have to refund such wrongly collected tax, arrears and penalty, it would be seen as an unfair practice.	We recommend adding a regulation requiring that revenue agencies must also pay interest of 0.03% per day in this case, similarly to how a taxpayer under-declares taxes and has to pay the missing tax money and interest to the government revenue.	

## MINUTES OF MEETING BETWEEN GENERAL DEPARTMENT OF TAXATION AND CUSTOMS &amp; TAX WORKING GROUP (Part 2)

## Discussion on other Tax Policies

Hanoi, 13<sup>th</sup> May 2019Prepared by  
Tax & Customs Working Group

No.	Concerns/Challenges	Status Influence/Impact	Recommendations	Feedback from GDT (updated by Giang)
1.	<p><b>Processing VAT excess credit refund for investment projects:</b></p> <p>a. According to current regulations on tax rebate for investment projects of active businesses in Circular 130/2016, we understand that guidelines on tax rebate for investment projects in general, to be interpreted as including new investment projects and investment project expansion, providing that these projects meet specific sets of rules. Recently, however, many businesses have had their VAT excess credit refund requests for investment project expansion turned down by local tax departments.</p> <p>b. In the event a firm determines that the VAT excess credits incur entirely during the capital construction phase of an investment project as reflected on the VAT returns as required, but only lodge an Application for VAT excess credit refund to a taxation authority at a later date, and the VAT refund application is lodged in the month that the firm's investment project starts operation and has generated revenue, will it be rejected of</p>	As far as businesses are concerned, both new investment projects and investment project expansions need to be financed. Sometimes, an expansion of an investment project may even has larger funding requirement than other new investment projects. Consequently, not being able to receive VAT excess credit refund for investments in investment project expansions will put businesses in a situation of shortage of the capital needed for other ongoing commercial activities, resulting in inequality between taxpayers.	We expect the Ministry of Finance/General Department of Taxation to clearly specify the legal grounds for this, and provide businesses with specific guidance on the issue of refunding VAT excess credits for investment projects as mentioned above, in ways that allow an investment project (whether a new investment project or investment project expansion) to be eligible for VAT excess credit refund, if it meets prevailing requirements for such VAT credit refund.	<p>a. Circular 130 and Circular 219 in 2013 on VAT also stipulated VAT refund for investment projects. Accordingly, the business establishments operating under the tax deduction method and contributing to the investment projects in the same province or city may file separate declarations for the project in the investment phase and transfer input VAT of investment projects to net off VAT of current production and business activities. This means that the projects in the same province are eligible for netting off, after that the remaining tax amount which has not been net off and valued 300 million or higher will be refunded for the investment project.</p> <p>Currently the General Department of Taxation is discussing with state agencies to report to</p>

No.	Concerns/Challenges	Status Influence/Impact	Recommendations	Feedback from GDT (updated by Giang)
	its VAT excess credit refund request for the said tax? If the tax refund request is not accepted, what are the legal grounds for that ruling?			<p>competent authorities on this issue and specific guidelines will be adopted in the coming time.</p> <p>b.</p> <p>Clause 2, Article 19 of Circular 219 prescribed that business establishments that have claimed tax refund on VAT declarations may not transfer the input tax amounts requested to the net off amounts of next month. In the case presented by VBF, businesses can still get tax refund if they meet the conditions of declaration, deduction and tax refund for investment projects as prescribed. At the time of VAT refund if the business incurs payable VAT from operating activities, they shall be entitled to input VAT net-off of the investment project when it comes to tax refund.</p>

No.	Concerns/Challenges	Status Influence/Impact	Recommendations	Feedback from GDT (updated by Giang)
2.	<p><b>Is it reasonable to apply regulations beyond the scope of taxation in dealing with tax-related issues?</b></p> <p>Taxation authorities now tend to blame businesses' non-compliance with regulations beyond the scope of taxation for refusal to allow cost deduction when computing CIT or refusal of VAT excess credit refund, whereas as specified in existing tax laws and regulations, compliance or non-compliance with the regulations of other ministries/line agencies is not a precondition for being allowed such offset/refund. For example, in case of paying overtime wage to employees for after-hour work beyond 300 hours per year, taxation authorities tend to reason that this payment will not be allowed as deducted cost when computing CIT, despite the fact that this is real payment for employees for voluntarily working after-hours.</p>	Revenue agencies' ruling based on regulations outside the scope of taxation practices to preclude real expenses in determining CIT, even when there are sufficient supporting documents as required by law, is unreasonable and confusing for investors.	We suggest that the Ministry of Finance/General Department of Taxation consider clarifying current regulations on this matter, so that taxpaying firms are allowed to offset expenses relating to their business activities, providing that they have sufficient supporting documents in place as required. If a company is in breach of the current rules in other fields of concern, they will be subject to penalization as set out under the regulations applicable in those fields (e.g. the Labor Code), and imposed administrative fines for such wrongdoings or violation of the law will	<p>Under the provisions of legal documents on CIT, businesses are allowed to deduct expenses when determining taxable income provided that they meet the following conditions: a. Expenses related to operating activities of enterprises, b. Amounts justified by full legitimate and valid receipts, c. Payments for service bills from VND 20 million shall not be made in cash.</p> <p>In addition, in the legal documents detailing the Labor Code, it is also stipulated that in special cases, workers may work overtime for not more than 300 hours in the year to protect their legitimate rights.</p> <p>Enterprises with legitimate and valid expenses will be entitled to deduction when determining taxable income.</p>

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			not be accounted for as deductible expenses.	
3.	<p><b>The arm's length principle in the case of internal restructuring</b></p> <p>Currently, taxation authorities are adopting the arm's length principle in all capital transfer transactions, including those designed entirely for the purposes of internal reorganization, where the final ownership remains unchanged. Internal reorganization in many cases helps corporations to rationalize their business operations, enhance performance and create a synergy of strength, and as such, taxation regulations should not become a challenge to, or make such activities more costly. It is also worth noting that internal reorganization is a very common practice among domestic companies, as these firms are fast expanding and trying to become more competitive in the market.</p>	Taxation authorities' application of the arm's length principle in the case of companies' internal restructuring is unreasonable and will discourage businesses' reorganization to become more efficient.	We expect that the Ministry of Finance/General Department of Taxation consider introducing special treatments for internal restructuring if such practice is not meant to gain any tax benefits.	<p>Currently, income from capital transfer has been stipulated in the guidelines on CIT, in cases where the transfer does not specify the price or the tax office has valid grounds for determining that the price is not in line with market price, the tax authority has the right to inspect and fix this transfer price.</p> <p>In case the business transfers a part of their contributed capital in an entity but the transfer price for this contributed capital is not consistent with the market price, the tax authority also has the right to revalue the business at the time of transfer to determine the reasonable transfer price. The rationale for revaluation may be based on documents available to the tax authority or on other equivalent transfer prices which happen at the same time or is benchmarked against similar transfer contracts. In case the tax authority does not have sufficient databases, the appraisal agency may recommend a price in accordance with the regulations. For internal restructuring cases, specific proofs are required.</p>

No.	Concerns/Challenges	Status Influence/Impact	Recommendations	Feedback from GDT (updated by Giang)
4.	<p>According to Circular 96 on CIT, expenditures of welfare nature paid directly to employees, including spending on weddings and funerals for individuals and families, vacations, medical care support, support for employees' families affected by disasters, catastrophes, accidents and illnesses, bonuses for employees' offspring, travel expense support in holidays and Lunar New Year festivals, and other expenses of benefit nature, if not more than 01 month real average salary in the tax year, may be accounted as deductible expenses when computing corporate income tax.</p> <p>However, Circular 92 on CIT-free income, while making reference to Circular 96 for employee benefits likened to 01 month of mean salary in the year, restricts the expenditures only to spending on weddings and funerals for employees and their families. This way, the 01-month salary cap loses its meaning as weddings or funerals may take place once or twice in a lifetime, rather than every year. Furthermore, some of these expenses are more like symbolic benefits and for mental motivation purposes than material interest, e.g. birthday gifts, new-born gifts, March 8, June 1, Mid-Autumn gifts, illness care support, and so on.</p>	The inconsistency between existing regulations on CIT and PIT for expenditures of benefit nature directly affects employees, and also increases the paperwork burden in companies' handling of taxation issues.	We expect that the Ministry of Finance/General Department of Taxation provide consistency between different tax laws, as well as demonstrate leniency in applicable PIT rules.	<p>The law on CIT and the law on PIT govern two different types of subjects. The Law on CIT only applies to the income earned by the business, taking into account the cost of generating that income. On the other hand, PIT is imposed on the income earned by the individual.</p> <p>For personal income received from employers, according to the law on CIT, tax will only be imposed on the income received from the salary or wages paid by employer to employees, regardless of source of payment.</p> <p>For fringe benefits for employees, if no more than 1 month's actual salary in the tax year is paid, it shall be accounted as expenses for the purpose of calculating CIT. Congratulation or condolence token for employees and their family, vacation expenses, illness treatment support, employees' family support, etc., according to Circular 92 will not be included in the taxable income of workers to demonstrating the humanity of the law on PIT.</p>
5.	When it comes to tax inspection and audit, while the returns rate of an entire firm remains within	Handling by tax officials this way may lead to revenue imposition/expense exclusion,	We expect to hear from the Ministry of	The tax authority, when conducting inspections over

No.	Concerns/Challenges	Status Influence/Impact	Recommendations	Feedback from GDT (updated by Giang)
	the standard independent trading value range, many tax officers still insist that companies must be profitable for every product model or every customer, rather than taking into consideration the taxpayer's real status. From a business perspective of the taxpayer, asking someone to be always making profit for every model/customer is impractical.	resulting in higher CIT amounts, which in turn directly deteriorates a company's financial status, and is at the same time arbitrary and impractical.	Finance/General Department of Taxation whether such request from tax officials is based on any legal grounds.	<p>associated transactions, has the right to inspect and consider whether the market price benchmarking practice of businesses complies with the legal provisions.</p> <p>The determination of market prices in particular and the implementation of inspection in general shall comply with the legal provisions. The tax authority, when conducting inspections over associated transactions, has the right to check and review each transaction and determine whether the associated transaction price of the of businesses complies with the legal provisions. The businesses also have the right to prove to the tax authority about their compliance with the comparative analysis rules in determining market prices in accordance with the law.</p> <p>VBF's comments are often related to specific cases. It is recommended that VBF send a detailed report with data and statistics to the General Department of Taxation.</p>



## **SPEECH OF TOURISM WORKING GROUP**

*Presented by  
Mr. Ken Atkinson  
Working Group's Head*

### **1. Background**

Whilst the number of international visitors have shown significant and robust growth over the last 3 years, there are still some fundamental issues and challenges, which we would like to bring to your attention, as we believe unless they are addressed they will be a hindrance to achieving the best potential growth of the industry. We are also seeing significant reductions in the growth in selected key destinations like Danang and Cam Ranh Nha Trang.

The full paper is available in the material you have received. Because of time constraints, I will limit my comments as follows:

### **2. Challenges and barriers to rapid and sustainable development:**

#### **Need for longer stay higher spending visitors**

The goals stated in Resolution 08-NQ/TW of 20 billion USD in visitor export value based on 18.5 million visitors by 2020 implies a goal of 1,080 USD/pax in visitor exports. This will require a significant increase the current average spend per visitor. The average stay for visitors from China and Korea is under 10 days with an average spend per visitor of much less than US\$ 1,000. On the other hand visitors from Europe stay on average 15 days or more and average spend per visitor ranges from US\$ 1,100 to US\$ 1,600 (with an average about US\$ 1,300). Long haul visitors from North America and Australia and New Zealand have similar characteristics to European visitors (longer stay and higher spend).

There is also a need to improve all aspects of the visa regime including visa exemptions, E Visas and Visa on arrival, which are included in our recommendations.

#### **Destination Marketing**

Vietnam is ranked 80th in the world for the effectiveness of its marketing and branding in attracting tourists, according to the World Economic Forum. Vietnam scored 4 out of a possible 7 in the Travel and Tourism Competitiveness Report 2017. To put that in perspective: Vietnam is a long distance behind other ASEAN countries such as Thailand, Indonesia and the Philippines regarding destination marketing and branding and also in spend on Destination marketing. Below is a comparison of spending:

- Thailand: US\$ 80 million
- Malaysia: US\$ 81.6 million
- Philippines: US\$ 32.5 million
- Cambodia: US\$ 3.5 million
- Indonesia: US\$ 200 million

**Environmental Sustainability**

Vietnam is reaching a critical point in terms of environmental sustainability and some areas are already getting a bad reputation with international and local visitors alike. International visitors in particular those from developed countries (the ones Vietnam should target to attract) care about the environment and will avoid places that are not environmentally friendly e.g. places with murky water, places where the beaches are full of litter, public places with widespread garbage, etc. For example, because of issues such as these, Ha Long Bay and Phu Quoc are starting to get bad press. The list of such places will continue to grow as more and more hotels and condominiums are put into operation in areas where the development of the key infrastructure has not been properly planned. The cleaning of public areas and fines for leaving litter or littering could be easily implemented as could the imposition of fines for dumping of waste in public places.

**Condotels**

According to the statistics by Vietnam National Administration of Tourism, by the end of 2017, there were 25,600 tourist accommodation establishments nationwide, of which only 882 establishments with 104,315 rooms were classified from 3 stars and above (accounting for a very small proportion). Viet Nam tourism industry has been trying to improve the structure of international tourists in the direction of prioritizing the attraction of high-income tourists with a long stay ability in order to increase the average revenue from international tourists. Therefore, in addition to the development of traditional hotels of three stars upwards, condotel apartments and villas (mostly ranked at four and five stars) will be a necessary additional source to provide sufficient high-quality rooms for international visitors to Viet Nam.

Up to present, administrative agencies have identified condotels as tourism real estate, including tourist apartments and villas as prescribed in Article 48 of the Tourism Law in 2017. Therefore, condotels need to be managed the same as other tourist accommodation establishments (hotels, resorts) by localities.

**Air transportation and Infrastructure**

Viet Nam's aviation industry has developed massively. In reviewing against specific tasks and goals set toward tourism development into a spearhead economic sector under Resolution No. 08-NQ/TW dated 16 January 2017 by the Politburo the industry is expected by 2020 to attract as many as 20 million international arrivals and serve 82 million domestic tourist arrivals. Furthermore by 2030, it is actually to become a spearhead economic sector, however air travel and airport infrastructure are still considered one of the "bottlenecks" to Vietnam tourism development. In this regard and in order to successfully realise the Politburo's Resolution No. 08-NQ/TW on developing tourism into a spearhead economic sector, we would like to address the status and issues that are being faced by the Vietnam aviation sector as well as recommendations put forward by the business community in addressing these issues:

**Human Resources**

Resolution 08 has set a target for the tourism sector to create 4 million jobs with 1.6 million direct jobs in 2020. It also includes a detailed action plan to develop human resources in the tourism sector up to 2020, which is: (i) to initiate policies to attract investment in vocational training for the travel industry, (ii) to enhance the capacity of training centres/institutions by promoting international cooperation, (iii) to diversify training methods with the application of high technology and (iv) to focus on improving technical skills, foreign language and ethics for workers. These initiatives indicate

that tourism is one of the key sectors that require a sustained effort from both the Government and private sector.

Even though Vietnam is becoming more integrated within the ASEAN Economic Community (AEC), the tourism and hospitality sector continues to suffer from skills shortages at all levels compared to other countries in the region. With the current pace of development in Vietnam's tourism sector, and in light of its key contribution to the economy, it is more important than ever to develop a highly-qualified labour force in this industry.

### **3. Recommendations for rapid and sustainable development:**

The Tourism Working group would like to present to the Prime Minister and the relevant Ministries their key recommendations, which we believe will assist in the rapid and sustainable development of the sector:

#### **Visa facilitation**

- Grant Visa exemptions to nationals from Australia and New Zealand, Canada, Belgium, Netherlands, and Switzerland.
- Extend visa exemptions to a standard 30 days;

#### **Destination Marketing**

- Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion.
- Open tourism information and promotion centers, possibly using virtual technology, around the world once visa restrictions are improved to raise awareness of Vietnam. The Vietnam tourism website standards should be improved.

#### **Environmental Sustainability**

- City urban planners and tourism management authorities need to understand the importance of heritage assets as significant economic and national resources and recognise their economic value and fragility. There is also a need to invest in world-class storytelling at museums, historical and heritage sites (Hue, Hoi An, Dien Bien Phu etc.).

#### **Regulations on Condotels**

- Dispense with further specific regulations, conditions or business licenses for condotels because this is not consistent with the policy of simplifying procedures and business conditions of the Government, causing difficulties for project investors and condotel management and operation.
- Approve the granting of Certificate of Ownership of Tourist Apartments (or Tourist Villas) and to condotel buyers, under the ownership term in accordance with the project duration.

#### **Long term planning for airport development and an open skies policy**

- Create all favorable conditions to facilitate the granting of domestic and international air transport business licenses to enterprises that meet the stipulated conditions so as to have new airlines entering the market
- Promote Investment in Airport Infrastructure Development in Vietnam

### **HR Recommendations**

- Businesses and training institutions should collaborate to raise awareness and provide procedures to efficiently implement the National Occupation Skill Standards for housekeeping and front door operation.
- National Occupation Skill Standards should be developed for other sectors in the tourism and hospitality industry to enhance service quality and increase the competitiveness of Vietnam as a tourist destination in the region.

Our members and those of the Vietnam Tourism Advisory Board and Eurocham sector Committee for Tourism and Hospitality and are all prepared to work with the various Ministries and Agencies to assist the Government in meeting their objectives and targets laid out in Resolution 08-NQ/TW and to ensure that the Tourism and Hospitality Sectors achieve their true potential.

## **SUSTAINABLE DEVELOPMENT OF THE TOURISM SECTOR**

*Prepared by  
Tourism Working Group*

### **I. Background**

Whilst the number of international visitors have shown significant and robust growth over the last 3 years, there are still some fundamental issues and challenges, which we would like to bring to your attention, as we believe unless they are addressed they will be a hindrance to achieving the best potential growth of the industry.

In 2018, 54% of our inbound visitors came from 2 markets China (4.96 million) and Korea (3.49 million), followed by Japan, Taiwan and Russia. China of course is renowned for being a low spending market with most of the revenue from these tours remaining or ending up back in China. The USA is 6<sup>th</sup> largest inbound market with 687,000 visitors but many of these visitors are overseas Vietnamese returning for family visits.

With the formation of the TAB social enterprise there has been a successful PPP established with VNAT for destination marketing with the revamping of the official Vietnam Travel website and support at the major trade shows like ITB and WTM.

The policy for relaxing visa requirements and making visa issuance easier we have seen the confirmation of the extension of Visa exemptions for the 5 European Countries and an increase in the number of countries eligible for E Visas to 81.

However, we would wish to draw your attention to the following which we believe need to be addressed to enable Vietnam to achieve the objectives and targets laid out in Resolution 8 –NQ/TW.

### **II. Challenges for the key stakeholders**

#### **1. Need for longer stay higher spending visitors**

If we are to reach the goals stated in Resolution 08-NQ/TW, including 20 bill USD in visitor exports based on 18.5 million visitors by 2020. This means we have to reach the goal of 1,080 USD/pax in visitor exports and significantly increase the current average spend. The average stay for visitors from China and Korea is under 10 days with an average spend per visitor of much less than US\$ 1,000. On the other hand visitors from Europe stay on average 15 days or more and average spend per visitor ranges from US\$ 1100 to US\$ 1600 (with an average about US\$ 1300). Long haul visitors from North America and Australia and New Zealand have similar characteristics to European visitor's i.e. longer stay and higher spend.

#### **2. Environmental Sustainability**

Vietnam has enormous potential to become a popular tourist destination, attracting visitors from around the world. Vietnam's unique cultural and natural heritage is already a huge draw and, with recent and continued investment in infrastructure development, it appears to be well placed to cater to

the growing demand. As Vietnam moves beyond the period of ‘exoticism’ and into the tourism mainstream, there is a need to focus on preservation and sustainability attributes.

Vietnam’s development of cultural and sustainable tourism has lagged behind the development of tourism infrastructure and national development. Moreover, natural and heritage tourism are some of the most lucrative sectors in global tourism. Tour operators have recorded significant sales increase for sustainable travel offers such as local and community-based tourism excursions, certified ‘green’ accommodations, local organic food and restaurants, responsible wildlife experiences and responsible volunteer experiences.<sup>[1]</sup> Vietnam is a natural fit for these desirable market segments.

Wellness, culture and the environment are massive segments in the tourism industry. They embrace everything from walking, spas, diving and beach holidays to marathons and natural attractions like Ha Long Bay and Phong Nha. They can also embrace cultural activities such as photography festivals, food festivals, film festivals and writers’ festivals. Vietnam has an enviable supply of destinations suited to these activities, including the mountains of the far north, Ha Long Bay, Phong Nha Ke Bang, the spectacular coastline, mountainous Truong Son Range, the Mekong Delta and Central Highlands. These assets are used to different degrees across Vietnam’s tourism sector. Almost without exception, there are concerns that these assets face mild or serious environmental threat or the threat of over-development.

Natural beauty, heritage and a vibrant culture are national assets that have contributed to the continuous growth of Vietnam’s tourism over the last decades. Poor natural resources and destination management, lack of attractive and especially sustainable tourism products and services can, however, jeopardize Vietnam’s competitive advantages and slow down tourism growth in the coming years. Even though Vietnam ranks 34<sup>th</sup> out of 136 in the category “Tourism related natural resources” according to the World Economic Forum Tourism Competitiveness Index 2017, Vietnam’s ranking fell behind to 113 in the category “Tourism services infrastructure.”<sup>[2]</sup>

### **Heritage sites and architecture**

Vietnam’s heritage sites face many threats. All across the country, heritage sites are being demolished or facing heavy-handed destructive renovation or upgrade. The degradation of heritage assets poses a risk to a lucrative existing tourism market and the future development of mid and high-value tourism. Most of Vietnam’s museums have barely evolved since the 1990s. There is widespread under-estimation in Vietnam’s tourism sector of the appetite of travellers for heritage and historical engagement. Vietnam’s museums are well behind international and regional standards. Many of the problems facing museums concern the craft of storytelling rather than the more expensive questions of infrastructure and collections. Museums often occupy valuable but under-utilised heritage spaces.

### **Overdevelopment**

All over Vietnam, there are concerns that the country is over-developing its tourism assets and, in the process, devaluing them. Tourism infrastructure development is essential. So is the delicate balance between development, protection of fragile environments and enhancing their economic potential. Across Vietnam, this balance is being missed. There is a real risk of serious degradation to the country’s natural environment and the economic opportunities this presents.

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<sup>[1]</sup> “The Case for Responsible Travel: Trends and Statistics”, *CREST*, 2016, p 2. Available at <[http://www.responsibletravel.org/whatWeDo/The\\_Case\\_for\\_Responsible\\_Travel\\_2016\\_Final.pdf](http://www.responsibletravel.org/whatWeDo/The_Case_for_Responsible_Travel_2016_Final.pdf)> accessed on 15 February 2019.

<sup>[2]</sup> Tuoi Tre (The Youth) News Edition dated 14 January 2019, page 6.

The present trajectory of Vietnam's coastal development risks over-allocating precious coastal land to high-intensity development.<sup>[3]</sup> This development has poor sustainability qualities and risks pigeonholing Vietnam as a mass tourism destination at the expense of cultivating other important and lucrative markets. Over the past decade, more and more international cruise companies have included Vietnam's destinations in their cruise itineraries. While the cruise tourism segment is growing double digits worldwide and offers Vietnam's coastal destinations opportunities to welcome more high-yield international, especially non-Asian guests, adequate regulations, cruise terminals, human resources and cruise-related facilities need to be developed simultaneously to avoid air pollution and "over-tourism" in port of calls and popular sites such as HCMC, Halong Bay, Da Nang and Hoi An.

A holistic, cooperative and more inclusive tourism development based on sustainability, rigorous segmentation, strengths of each destination and diversification of activities and services will prove to be crucial for the next growth phase of the tourism sector.

### **Green tourism as an attractive and responsible initiative**

Hotels are at the forefront of tourist destinations, while small-scale, low-impact resorts and successful integration into the local environment are unfortunately rare in Vietnam. Over-development and excessive land use in hotel construction, especially along the coast, are damaging the environment and its limited resources. To reduce this impact, tourism hotspots should be mixed with lower-scale organic development of preserved destinations. Furthermore, hotel management should be held responsible for reducing the environmental impact of mass tourism, with special attention paid to the use of chemicals and hazardous waste, waste management and recycling and the use of natural resources.

### **Pollution and degradation**

Excessive and wasteful use of plastics is a serious environmental problem and Vietnam has been identified as a major source of global plastic waste. Tourists and the tourism industry are large producers of plastic waste (though small in the grand scale of the problem). The industry also suffers from the impact of Vietnam's plastic waste on beaches and in other natural environments.<sup>[4]</sup>

Another issue is water quality. The lack of adequate water treatment, waste management and recycling options has resulted in polluted waterways and beaches. Beyond the environmental implications, the recent use of toxic chemicals released into the ocean has not only affected the fishing industry but also negatively affected the brand image of Vietnam as a tourist destination. Moreover, in the last 6 to 8 years, concerns about the natural environment in Ha Long Bay have become more pressing. Ha Long Bay is Vietnam's signature natural attraction. Its reputation for being polluted and unsafe represents a threat to its appeal to international travellers, causing subsequent reputational damage.<sup>[5]</sup> Similar concerns are mounting along Vietnam's coastline.<sup>[6]</sup>

To respond to the needs of the more environmentally and socially conscious modern traveller, and to preserve national resources for the coming generations, principles of "responsible travel" should be incorporated and safeguarded at every phase and level of the tourism product development and

<sup>[3]</sup> "Vietnam's rush to develop risks damaging its natural attractions", *The Guardian*, 01/08/2015. Available at:

<<https://www.theguardian.com/world/2015/aug/01/vietnam-tourism-rush-development-conservation>> accessed on 15 February 2019.

<sup>[4]</sup> "Phu Quoc feels growing pains as development booms", *VN Express*, 23 October 2016. Available at: <[http://e.vnexpress.net/news/travel-life/phu-quoc-feels-](http://e.vnexpress.net/news/travel-life/phu-quoc-feels-growing-pains-as-development-booms-3487852.html)

growing-pains-as-development-booms-3487852.html> accessed on 15 February 2019.

<sup>[5]</sup> "MONRE highlights severe seawater pollution", *Viet Nam News*, 14 October 2016. Available at: <[http://vietnamnews.vn/society/344438/monre-highlights-](http://vietnamnews.vn/society/344438/monre-highlights-severe-seawater-pollution.html#x8r3r8m7DV67v1DR.97)

severe-seawater-pollution.html#x8r3r8m7DV67v1DR.97> accessed on 15 February 2019.

<sup>[6]</sup> op.cit., *VN Express*

become guiding principles of the national tourism development strategy. VNAT can play a more active role in promoting international and national certifications for environmental protection, public recognition of best practices and sanction of wrongdoing to enhance transparency and raise environmental and social standards of the industry.

Vietnam's tourism planning and development to date has not adequately recognised the economic and environmental value of managed sustainable development. It has often failed to acknowledge the tourism, lifestyle and economic value of Vietnam's rich, diverse heritage and historic assets. With careful planning and sustainable development, the tourism industry has the potential to not only attract more travellers to Vietnam but also act as a window to the world. The rise of civil society and the expansion of grassroots social entrepreneurs is a step towards local development, to which many tourists are eager to contribute. This can be an asset for the country, but it needs to be handled with care, especially to avoid negative effects on Vietnam's social development structure. Tourists will need to be educated and given the chance to learn more about Vietnam's societal challenges and contribute to the solution. International brands and local stakeholders in the luxury travel market are already embracing sustainability and applying its main principles.<sup>[7]</sup>

### 3. Condotel

According to the statistics by Vietnam National Administration of Tourism, by the end of 2017, there were 25,600 tourist accommodation establishments nationwide, of which only 882 establishments with 104,315 rooms were classified from 3 stars and above (accounting for a very small proportion). Viet Nam tourism industry has been trying to improve the structure of international tourists in the direction of prioritizing the attraction of high-income tourists with a long stay ability in order to increase the average revenue from international tourists. Therefore, in addition to the development of traditional hotels of three stars upwards, condotel apartments and villas (mostly ranked at four and five stars) will be a necessary additional source to provide sufficient high-quality rooms for international visitors to Viet Nam.

Up to present, the administration agencies have identified condotels as tourism real estate, including tourist apartments and villas as prescribed in Article 48 of the Tourism Law in 2017. Therefore, condotel needs to be managed the same as other tourist accommodation establishments (hotels, resorts) by localities. TWG would be of opinion that there is no need for additional specific regulations, conditions or business licenses for condotels because this is not consistent with the policy of simplifying procedures and business conditions of the Government, causing difficulties for project investors and condotel management and operation establishments.

Regarding the property ownership (condotel apartments, villas), we support the proposal of Vietnam National Real Estate Association (VNREA) stated in Document No. 03/2017/BC-VNREA dated 24<sup>th</sup> February 2017 on granting Certificate of Ownership of Tourist Apartments (or Tourist Villas) to condotel buyers, under the ownership term in accordance with the project duration. We would also recommend the application of regulations on transfer of condotel sales contracts (apartments, villas), which is similar to those applied for houses established in the future. These proposals are aimed to increase the protection of property rights and the liquidity of condotel asset transactions for the purchasers who are secondary investors.

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<sup>[7]</sup> According to a recent survey, 'today's consumers expect travel companies to build sustainability into their product offer'. A majority of respondents (70%) believe companies should be committed to preserving the natural environment and 55% to fair working conditions. Meanwhile, 75% of consumers want a more responsible holiday and 66% would like to easily identify a 'greener' holiday. *Op.cit.*, CREST p 2.



In order to support the project owners, we would like to propose the promulgation of a set of condotel construction standards because the construction standards for high-rise apartment buildings or hotels cannot be applied to condotel construction works.

Regarding the sales of condotel real estate to foreign individuals, TWG would like to propose that the Government should provide effective policies and measures to encourage this matter, with the aim of attracting secondary investment sources into condotel projects and of increasing the high spending international visitors.

#### **4. Air transportation and Infrastructure**

Viet Nam's aviation industry has developed massively, in reviewing against specific tasks and goals set toward tourism development into a spearhead economic sector under Resolution No. 08-NQ/TW dated 16 January 2017 by the Politburo (precisely, the industry is expected by 2020 to attract as many as 17-20 million international arrivals and serve 82 million domestic tourist arrivals, achieve a total revenue of USD 35 billion from tourists' receipts and the export value through tourism to reach USD 20 billion; By 2030, it is actually to become a spearhead economic sector, however air travel and airport infrastructure are still considered one of the "bottlenecks" to Vietnam tourism development. In this regard and in order to successfully realize the Politburo's Resolution No. 08-NQ/TW on developing tourism into a spearhead economic sector, we would like to address the status and issues that are being faced by the Vietnam aviation sector as well as recommendations put forward by the business community in addressing these issues:

Open Skies and liberalization of air transport is an aviation policy first adopted in the United States in the 1970s, later spread to Europe in the 1980s, and then further extended to the Asian countries. So far, this policy has become a prevailing trend throughout the world. The basic tenets of the air transport liberalization policy aim to:

- Ease air transport business licensing
- Ease domestic and international flight franchise granting
- Minimize or even remove all restrictions under bilateral and multilateral air agreements regarding the number of airlines, number of airports, number of air routes, number of flights, number of seats/capacity, etc.
- Loosen regulations on foreign investment in domestic airlines, and
- Liberalize the general aviation sector, including all civil aviation operations other than air transport activities.

Compared to 30 years ago when the Vietnamese airline industry was turned into a civilian sector (separating itself from the Ministry of Defense), Viet Nam's policies concerning the issues mentioned above have been improved in a more and more open manner. However, compared with the aviation policies of many other countries in the world, and even those in the ASEAN region, Viet Nam is significantly behind in terms of aviation liberalization.

The number of airlines establishment in Vietnam that were granted with a commercial air carriage license is significantly less than that of the top 6 ASEAN countries, which range from 4 to 15 compared to Vietnam's 4.

Thailand stands out as an international tourism destination that directly competes with Vietnam but also a country from which we can study and learn a lot from its experience in synchronized development of tourism and aviation sectors. It is Thailand that adopts a policy of aviation liberalization the second most open among the ASEAN countries (second only to Singapore which has no domestic airline market), especially in granting permit for airlines establishment and air transport business licenses, as well as for foreign investment in airlines. Despite having a population equivalent to just 72% of the Vietnamese population, Thailand has four times more in the number of air carriers compared to Viet Nam (among which there are four foreign-invested airlines, including Thai Vietjet Air – an associate company of Viet Nam's Vietjet Air). Except for requirements of meeting clearly stipulated conditions, Thailand does not set any policy-related barriers to investing and operating domestic or international air transport businesses. Thanks to the higher number of airlines, Thailand has become the most competitive international travel market in terms of tour prices, tourism services and air transport services in the region.

Currently, air space for general aviation has not been established and announced. General aviation businesses are under the control of the Ministry of National Defense, rather than the Department of Transportation, while their operation is purely civil.

Decree No.125/2015/ND-CP of the Government detailing the flight activity management is assigning the responsibility of building the VFR flight routes map for general aviation businesses, meanwhile this should be the accountability of the authorities. Building flight routes to apply for a flight license also does not conform to the characteristics of general aviation: flight areas usually are not fixable due to the flexibility of emergency, rescue, etc.

Regulations on the maintenance of General Aviation Business License also cause difficulties for general aviation business. Decree 92 provides a number of requirements related to ensuring minimum capital levels, ensuring the time of issuing Air Operator Certificate. These regulations are not feasible to ensure for small and medium enterprises.

### **Human Resources**

Resolution 08 has set a target for the tourism sector to create 4 million jobs with 1.6 million direct jobs in 2020. It also includes a detailed action plan to develop human resources in the tourism sector up to 2020, which is: (i) to initiate policies to attract investment in vocational training for the travel industry, (ii) to enhance the capacity of training centres/institutions by promoting international cooperation, (iii) to diversify training methods with the application of high technology and (iv) to focus on improving technical skills, foreign language and ethics for labourers. These initiatives indicate that tourism is one of the key sectors that require a sustained effort from both the Government and private sector.

Even though Vietnam is becoming more integrated within the ASEAN Economic Community (AEC), the tourism and hospitality sector continues to suffer from skills shortages at all levels compared to other countries in the region. With the current pace of development in Vietnam's tourism sector, and in light of its key contribution to the economy, it is more important than ever to develop a highly-qualified labour force in this industry.

Certain measures aimed at resolving the issue have been put in motion. These Decisions meet with the current demands of tourism in Vietnam, as well as conforming with the ASEAN Common Competency Standards for Tourism Professionals (ACCSTP) under the Mutual Recognition Arrangement on Tourism Professionals (MRA-TP). However, efficiently implementing these

standards requires cooperation between Government, businesses and training institutions to develop a proper methodology to make them a reality.

Increasing the number of trained and qualified personnel in the tourism and hospitality industry would enhance the quality of products and services on offer. This, in turn, would have a positive impact on Vietnam's reputation. Better services also translate into greater competitiveness and more visitors, increasing potential GDP contribution and Government revenue. Tourism is a significant sector for the country, so there might also be positive knock-on effects for other industries, improving overall skill levels across the supply chain. This is likely to increase employment and wages for the local population.

It is important that training aligns with the actual needs of the tourism sector in Vietnam. In a modern context, this places more emphasis on "soft" skills such as client service orientation, problem solving and critical thinking. Much of this training is delivered "on the job" or in short courses rather than only long formal courses. As automation removes many of the old repetitive tasks, the human interaction roles become ever more important to Vietnam delivering international standard tourism services.

### **Destination Marketing**

The business of tourism is complex and fragmented. From the time visitors arrive in a destination until the time they leave, delivering excellent value depends on many organizations working together and sharing resources where possible. This is a key challenge in a region where, at present, there is limited cooperation and communication between the public and private sectors and between competing private sector companies.

Most destination management issues arising in the region need to be addressed at the provincial level. This is where existing structures of Government should be strengthened. It is therefore important that effective governance structures for tourism are put in place locally, especially in the timely budgeting and clarification of empowerment level. It is at the local destination level that many services vital to tourism are delivered and where the positive and negative socio-economic and environmental impacts of tourism are most apparent, requiring sound local planning and management. Therefore, local teams empowered to deliver a task should also receive the budget to do so in a timely manner in order to exercise their empowerment rights, develop action plans and ensure the project is delivered. In terms of destination marketing, public-private partnerships have been implemented around the world and are proven to provide mutual benefits for both parties.

Digital and social marketing via Facebook, Google, YouTube and Instagram is more cost effective than traditional marketing, and enables tourist-driven content. More and more people around the world are going online for planning and selection of where they intend to enjoy their holidays. Indeed, smartphones are now an essential part of travel and tourism, and family and social circles are important influencers of travel decisions. Online reviews and Internet advertisements are also top drivers for travel demand. In Vietnam, information and communication technology has improved a lot, both in terms of capacity and usage. Such developments show that Vietnam's online presence is growing.

Vietnam is ranked 80th in the world for the effectiveness of its marketing and branding in attracting tourists, according to the World Economic Forum. Vietnam scored 4 out of a possible 7 in the Travel and Tourism Competitiveness Report 2017. To put that in perspective: Vietnam is a long distance

behind other ASEAN countries such as Thailand, Indonesia and the Philippines regarding destination marketing and branding.

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To put this in perspective: the Department of Tourism in Thailand had an annual budget of US\$80 million in 2015. Malaysia's Ministry of Tourism and Culture had a similar budget of US\$81.6 million in 2015. Meanwhile, the Philippines Department of Tourism received US\$54.2 million in 2015. More significantly, Hong Kong allocated US\$240 million for marketing, Meetings, Incentives, Conferences and Exhibitions (MICE) and other industry improvements in 2016/17.

We cannot emphasize enough the importance of travel and tourism to Vietnam's economy: The industry indirectly generates almost 10 per cent of GDP. Furthermore, in light of the Government's ambitious goal to develop tourism into a spearhead of the economy, it is imperative to recognize the sector's contribution to the socio-economic welfare of the State in order to properly support it through an effective strategic plan for international tourism marketing.

### **III. Recommendations**

The Tourism Working group would like to present to the Prime Minister and the relevant Ministries their recommendations:

- **Visa facilitation**

- Grant Visa exemptions to nationals from Australia and New Zealand, Canada, all EU-27 Countries in line with the EVFTA and Switzerland.
- Extend visa exemptions to a standard 30 days.
- Remove the no return within 30 days for visitors entitled to visa exemptions.
- The official website for E Visa application should be upgraded to improve security, access speed, appearance and optimization for mobile usage.
- Offer alternative option to image upload to allow manual input of data.
- Only use one official domain name which should be publicly announced and highlighted on all Vietnamese Embassy Websites Overseas.
- Encourage all Vietnamese Embassy staff to use their embassy email addresses not gmail and other private addresses.
- Allow E Visa application for multi entry and 90 day Visas.
- For Visa on arrival.

- Remove the requirement for the approval letter and follow the example of other ASEAN countries.
- Develop consistent and official guidelines that can be shared on all online official platforms, including Embassy and Ministry websites.
- Allow visas to be self-printed to avoid delays and allow presentation of self-printed visas at the immigration counter as is the case of Cambodia for example.
- **Environmental Sustainability**
  - City urban planners and tourism management authorities need to understand the importance of heritage assets as significant economic and national resources and recognise their economic value and fragility. There is also a need to invest in world-class storytelling at museums, historical and heritage sites (Hue, Hoi An, Dien Bien Phu etc.).
  - Keep beaches clean and prioritise sustainable, diverse development.
  - Ensure a more systematic approach to sustainable development in tourism. Promote incentives for responsible commitments and actions taken by stakeholders.
  - Support local people through training and economic empowerment. Promote activities directly benefiting local people and promoting their authentic local cultures.
  - Strengthen the capacities of local non-profit organisations and create a framework for 'volunteerism' activities.
  - Spread useful tips to tourists including information on sensitive social issues, such as behaviours to adopt towards children selling souvenirs in the street or begging, sexual exploitation, visiting schools or orphanages etc..
  - Provide guidelines, such as 'dos and don'ts for travellers', in heritage locations and spiritual sites to ease interactions with locals and raise foreign tourists' awareness of local customs.
  - Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives.
  - Strengthen the capacity of stakeholders involved in responsible tourism and support initiatives led by and for locals, in order to develop income-generating activities as a by-product of tourism, and;
- **Regulations on Condotels**
  - Dispense with further specific regulations, conditions or business licenses for condotels because this is not consistent with the policy of simplifying procedures and business conditions of the Government, causing difficulties for project investors and condotel management and operation.
  - Approve the granting of Certificate of Ownership of Tourist Apartments (or Tourist Villas) and to condotel buyers, under the ownership term in accordance with the project duration.
  - Promulgate a set of condotel construction standards because the construction standards for high-rise apartment buildings or hotels cannot be applied to condotel construction works.
- **Long term planning for airport development and an open skies policy**
  - Create all favorable conditions to facilitate the granting of domestic and international air transport business licenses to enterprises that meet the stipulated conditions so as to have new airlines entering the market.
  - While working toward long-term target of advancing towards full open skies in ASEAN by ratifying 5th freedom and moving towards 7th freedom of intra-ASEAN traffic rights, in the short run a comprehensive review of all aviation agreements between Viet Nam and other countries and negotiate for amendments towards liberalisation of international air transport

with respect to the provisions concerning airline designation, flight routes, frequency of flights, commercial rights in air transport (extend exchange of commercial rights #5) is of utmost importance.

- Review and remove technical barriers including the simplification and harmonisation of standards around the licensing of professions (pilots, flight crew, cabin crew, engineers, ramp agents, mechanics etc.) and the certification of airlines / aircraft / assets to achieve mutual recognition agreement of licenses and certifications for cost efficiencies and safety.
  - Promote Investment in Airport Infrastructure Development in Vietnam.
  - Speed up the expansion of Tan Son Nhat.
  - Accelerate and ensure the investment progress of Long Thanh Airport.
  - Review the planning works to take proactive action in adjusting and investing in the expansion of Noi Bai, Phu Bai, Da Nang and other international airports so as to remove future bottlenecks.
  - Encourage and support projects to build important infrastructure for general aviation.
- **HR Recommendations**
    - Businesses and training institutions should collaborate to raise awareness and provide procedures to efficiently implement the National Occupation Skill Standards for housekeeping and front door operation.
    - National Occupation Skill Standards should be developed for other sectors in the tourism and hospitality industry to enhance service quality and increase the competitiveness of Vietnam as a tourist destination in the region.
    - The role of Vietnam Tourism Certification Board (VTCB) should be enhanced in assessing, training and providing certification for workers who have gained practical experience, but have not received formal training.
    - Cooperation between the Government and private sector should be reinforced to improve vocational training activities in the tourism sector for both learners and instructors.
    - Ensure that cooperation between training institutions and businesses is sustainable by creating mechanisms, policies and awards to honour businesses that are actively involved in tourism training.
    - Review and restructure the network of tourism training institutions to ensure that they have adequate competencies to provide quality training.
    - Facilitate language education for workers in the tourism industry. This will not only contribute to high-quality service in the tourism industry, but also help ensure locals are qualified to gain important positions in the sector.
    - Invite more educational companies to open their offices in Vietnam with more internationally-oriented teaching methods and give Vietnamese students the chance to earn an international certificate in tourism and hospitality. The Government should financially support such projects which are so important for professional development in the tourism and hospitality sectors, and,
    - Facilitate cooperation and know-how transfer between training institutions and the hospitality and tourism industry, i.e. enhance dual vocational training opportunities to provide practice-oriented “learning by doing” training curricula to respond quickly to the growing demand for skilled workers in the hospitality, tourism and event industry.
  - **Destination Marketing**
    - Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion.

- Facilitate public-private partnerships to manage and effectively operate the tourism promotion fund, aiming to promote Vietnam as a top destination in ASEAN.
- Focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long time, visit regularly and spend more when travelling in Vietnam.
- Strengthen Vietnam's visibility while saving costs using digital, friendly-to-use applications on smart phones, and social marketing channels to develop a professional appearance as well as comprehensive and useful information for tourists.
- Contribute funding towards not only promotional activities, but also initiatives that support the long-term objectives of the industry. These include cultural and environmental preservation, product development and infrastructure improvements.
- Establish improved mechanisms for communication between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organizational structures.
- Put in place region-wide coordination structures to focus and maximize the actions of cooperating provinces and facilitate cooperation, and.
- Open tourism information and promotion centers, possibly using virtual technology, around the world once visa restrictions are improved to raise awareness of Vietnam. The Vietnam tourism website standards should be improved.

# **V. APPENDIX**

## **OTHER REPORTS**



## **POSITION PAPER OF AUTOMOTIVE WORKING GROUP**

*Prepared by  
Automotive Working Group*

### **A. AUTOMOTIVE BUSINESS'S POSITION**

#### **I. Proposal to develop automotive supporting industry**

We would like to highly appreciate Government efforts to improve business environment, which contributes significantly to automobile market development in recent years.

We strongly support Government direction to develop Vietnam automobile industry and its supporting industries so far. We do believe a good policy measure should ensure 3 following aspects as the same time:

- Nurture automobile market expansion with stable growth
- Support to reduce production cost of CKD & part suppliers
- Develop automobile supporting industries with strong and applicable policies

For supporting industry development, we would like to point out some critical issues, as follow:

#### **1. Quality/Cost/Delivery capability of suppliers**

Automotive industry has complex and multi-layered supply chains (Tier 1, Tier 2, Tier 3, and raw material suppliers) consisting of many suppliers in each tier. Tier 2-3 suppliers are required to strictly adhere to production requirements such as Quality/Cost/Delivery (QCD), while for Tier 1 suppliers, R&D requirements such as parts development and proposal capabilities are necessary in addition.

Therefore, development of suppliers requires much effort, time and investment. However, as a matter of fact that not many local suppliers meet required QCD standards to participate global supply chains. Also it requires copywriting permit and/or technology transfer or licensing agreements from genuine part suppliers to local suppliers in Vietnam.

#### **2. Existing policies for automotive supporting industry cannot solve the structural issue of small production volume and CBU Import duty 0% from 2018:**

Even several Decision or Decree for supporting industry development has been issued. However practically not so many suppliers can enjoy the policy because it cannot solve the structural issue of small production volume and CBU import duty 0% from 2018. At the same time, the application procedure is rather complicated. We would like to propose:

#### **For Government:**

- Vietnam Government should offer investment incentives for makers and suppliers to purchase machinery, die and jig... to localize automobile parts, which somehow help neutralize the negative impact of small production volume.
- Import duty elimination for materials for suppliers.
- Invite key suppliers to join automobile dialogue and hold frequent meetings with clear discussion points, and then report to Prime Minister more frequently to improve workability of policies.

**For suppliers:**

- Local supplier tier 2 & 3 should not aim to “leapfrog” to become tier 1 in the short term, but ensure to meet the requirement of QCD.
- Besides, suppliers should take part in auto part supplier databases and business matching programs and create attractive business profile.

**For automobile makers:**

- We would continue share our supplier criteria, list of auto parts that we expect to localize for potential suppliers’ consideration. We are open to recruit suppliers regardless those suppliers are local or foreign-invested.
- Furthermore, some of makers can help potential suppliers to increase their QCD capability and obtain know-how via their supplier enhancement programs.

**II. Comment on Decree 116/2017/ND-CP about lot by lot testing requirement and requirements for automotive parts for CKD production.****1. Lot by lot testing requirements**

After Decree 116 was issued and effective for imported cars from January 1st, 2018, VAMA members made efforts to meet the Decree’s requirements. However, during the implementation process, our members faced many difficulties, especially with the requirements for lot by lot test of imported vehicles. The burden arises when the same type of vehicle is imported. There is no difference in the specifications but still has to test the emissions and safety according to each shipment leading to the time needed to complete the test and certification for product shipment is quite long. This increases costs and customers have to wait for long time to buy a car.

We would like to urgently request MOT and VR to consider revising the testing procedures for imported cars in the direction of applying management on the basis of assessing the risks of goods and the level of law compliance of enterprises. For example: Emission and safety test must only be applied to automobile models representing each type of vehicle in the first imported shipment. This test report is accepted for next shipments of the same type without re-testing based on the ability to meet the risk assessment criteria of the goods and law compliance of the enterprises.

Besides, we also would like to propose: The South testing center should be set up to solve overload capacity in existing centers.

**2. Requirements for automotive parts for CKD production:**

Decree 116/2017/ND-CP by Prime Minister took effect from April 17, 2019 for automobile manufacturing and assembling enterprises. However, the implementation guidelines of the Decree for the provisions applicable to assembly enterprises have not been issued. This made our members very embarrassed during the deployment process and caused many concerns. We are looking forward to the MOT and VR for quickly issuing these guidelines to facilitate our production and business activities more convenient.

At the same time, we have some proposals for the new circular draft. We look forward to your review and approval.

**For automobiles:**

- **Process of issuing Certificates for vehicles that are producing under the new Circular.**

After the new circular comes into effect, all types of producing vehicles need to be re-certified to match the new circular. In the certification process, we propose that MOT and VR consider and approve the COP evaluation results according to Circular 30 & 54, valid test reports (Safety and emissions reports used to be granted previously) to be continuously used to obtain the Certificate under the new circular.

Reason: Test reports have been issued based on the National Technical Regulation (QCVN) and this Regulation has no change at the present time. The cars that are being produced also have no changes.

- **First CoP assessment under the new circular.**

We understand that as soon as the new circular comes into effect, we need to have the factory assessment results in accordance with the new circular in order to continue producing and assembling. However, in order to facilitate enterprises, reduce the load of the same activities happening right at the time that the circular takes effect, we would like to propose MOT and VR to combine the first assessment to match the new circular and the next annual review of enterprises.

**For parts:**

- **Certificate of part type**

With Certificate of part type granted before and still valid at the time that the circular takes effect and in accordance with the conditions of Decree 116/2017/ND-CP, we respectfully request that MOT and VR extend the validity of these Certificates for a period of 36 months in accordance with the spirit of Decree 116/2017/ND-CP.

- **For CoP evaluation results of overseas component factories.**

According to the guiding spirit in the meeting between the Department of Science and Technology, Vietnam Register and enterprises on January 22, 2019 about the drafted content of the Circular on Inspection of Technical, quality safety and Environmental protection in automobile assembly and production subject to Decree 116/2017/ND-CP, the first CoP assessment with overseas component manufacturers will be carried out by Vietnam Register and from the next times, Vietnam Register will accept the CoP results assessed by overseas authorities (ECE CoP).

With the same above guiding spirit, we would like to propose that MOT and VR consider and approve that the overseas components factory which has been evaluated by Vietnam Register will be considered as first evaluation. Next evaluations accept the CoP results assessed by overseas authorities (ECE CoP).

## **B. MOTORCYCLE BUSINESS's POSITION**

### **1. Driving license for electric motorbikes**

Recently, the use of electric vehicles has become popular and popular, especially among junior and high school students. The fact is that we still lack necessary regulation such as age of riders and driving licenses. As the result, many incidents occur to riders and also transportation participants. Currently, the Draft Revision of Road Traffic Law 2008 mention about adding regulation related to age and driving license or driving skill/regulation training for EV riders. We absolutely agree with this content and hope that Government officially issues the regulation soon that clearly stipulating the minimum age allowed to drive electric vehicle and regulations on driving licenses for electric motorcycles.

## **2. Regulation on Motorcycle Gas emission control**

Motorcycle is the necessary means of transportation in daily lives of Vietnamese people. During the course of production and business, motorcycle manufacturers are constantly making effort to improve the quality, meeting the strict regulations of state-management bodies in terms of safety, gas emission standard towards to the greener and cleaner products. Since 2017, Vietnam has been applying Euro 3 emission standards for motorcycles. Regarding vehicle in operation, Vietnam have just applied safety and environment protection periodical inspection to Automobile while Motorcycle has not been applied yet. According to the study, huge number motorcycle using countries like Vietnam also have roadmap to apply higher emission standards for motorcycles as well as apply the periodical emission test for this vehicle from years ago as Taiwan, Thailand, Indonesia. Therefore, with our continuous efforts to improve our products, bring to consumer's cleaner products, and regarding regulatory frameworks, we fully agree with the Draft of the Law on Transportation Revised 2018 proposing the application of emission testing to motorcycles in operation to contribute to improvement of air environment. Gas emission testing should apply simple procedure with low cost, at the beginning, Gov. should have support testing fee at free of charge, and could consider socializing in the establishment of gas emission control stations, so the testing can be smoothly and effectively conducted, has less impact on life and expense for people as well. We also expect the Government to introduce clear roadmap for applying Euro 4, Euro 5 emissions standard to new vehicles soon so that manufacturers will well plan for investment, preparation to make the better products for their customers and environment.

**ENCOURAGING FOREIGN DIRECT INVESTMENT (FDI) THAT CAN BRING  
MODERN INTERNATIONAL TECHNOLOGY AND BEST PRACTICES TO  
TRANSFORM VIETNAM'S AILING MINING INDUSTRY INTO A VITAL PART OF  
VIETNAM'S SUSTAINABLE ECONOMIC GROWTH**

*Prepared by  
Mining Working Group  
Vietnam Business Forum*

**1. Overall perspective**

Discovery and mining of Vietnam's valuable, untapped mineral resources, if carried out with FDI using modern technologies and international best practices in an efficient, environmentally responsible, sustainable and safe manner, would make a vital difference to Vietnam's economic growth and reduction of national debt.

Responsible mining using modern technology, which is usually conducted in the more remote, undeveloped parts of a country, has long been recognized to be one of the most effective drivers of infrastructure improvement around the world. The areas where mineral deposits are found tend to also be the more mountainous, and therefore usually the poorest socio-economic parts of a country, and this certainly applies to Vietnam. Modern mining cannot operate efficiently without good infrastructure and communications, and therefore responsible mining companies have a strong incentive to be a contributor to, or provider of, such infrastructure development. The other obvious benefit of responsible mining is the contribution it can make to help alleviate poverty in the remote areas it operates in by creating strong employment opportunities and orders for local goods and services.

Therefore, modern mining in Vietnam would also meet two of the World Bank's key 2019 objectives of its Country Partnership Framework which are to deliver infrastructure and broaden the economic participation of ethnic minorities in Vietnam.

Mining has historically been one of the key drivers of economic growth and infrastructure development in many countries around the world. This can be so in Vietnam too, as the country is rich in untapped mineral resources. It is estimated that less than 10% of its base-metal and precious-metal resources have been discovered to date because the country has never been systematically explored using modern technologies and methods to find more deeply buried, large or richer deposits. The Vietnamese mining industry, through the state-owned and private local companies that dominate the industry, has primarily focused to date on easily found outcropping or near-surface energy minerals such as coal, and bulk commodities such as iron ore, bauxite, sand and limestone.

However, Vinacomin, Vietnam's largest state-owned enterprise, is the first to acknowledge that the challenges it, and nearly all Vietnamese mining companies currently face, include dealing with "outdated technology and low levels of mechanization, poor infrastructure, a large but low productivity workforce, excessive energy use, high safety risks and unacceptable environmental pollution".

## **2. The challenge**

The challenge the Government has to address is to make Vietnam's mining industry more efficient, productive, safe and environmentally sustainable. This can only be achieved by encouraging the introduction of modern technologies, technological innovation and international best practices that come to Vietnam through foreign direct investment and joint ventures between domestic and foreign companies.

Unfortunately, it is not happening yet, because inconsistent mining legislation in Vietnam and royalty rates, export tariffs and other fees that are far higher than in other countries are a huge disincentive for foreign direct investment, and at the same time have made even modern mining operations in Vietnam unprofitable or marginal. This has resulted in mine closures or suspension of operations at the only two modern operations in Vietnam by foreign investors at Phuoc Son and Ban Phuc.

Even at Nui Phao, now the world's largest tungsten-producing mine and a good example of where modern technology and international standards have been applied to a Vietnamese-owned mining operation, profitability is still subject to factors outside the mine's control, such as fluctuating world commodity prices, and the operation is vulnerable to Vietnam's unrealistically high taxes that do not take these factors into consideration.

Although the ultimate goal of any mining tax system is to ensure the greatest possible benefit to the Government and people of Vietnam, this cannot be achieved if mines are forced to close because they are unable to operate profitably in a sustainable, responsible manner.

Closure of these modern operations, which should be an example of the way mines should operate, only means the loss of a valuable source of tax revenue for the central and provincial governments, continuation of inefficient and wasteful mining practices and degradation of Vietnam's environment, as well as encouraging increased illegal mining.

## **3. The solution**

There appears to be conflicting interpretation of royalty, export tariffs, customs duties, environmental protection fees and related mining fee issues between central and provincial level authorities, and between Ministries such as MONRE, MOIT and MOF. There is an urgent need for Government assistance in guidance for the mining industry and inter-governmental department coordination, so that providers of FDI and strong local investors are more confident with Vietnam's mining legislation.

The Mining Working group once again respectfully urges the Prime Minister's Office and Government Office, with the input of MPI, VCCI and the World Bank where appropriate to:

- Re-examine existing mining legislation and introduce a more investor-friendly, competitive regime which includes an equitable tax system that is fair to both the Government and the investor, legislation that provides for consistent policies for long-term commitment that will attract FDI and modern technology to Vietnam's mining industry;
- Seek better coordination between Ministries and Departments of MONRE, MOIT and MOF at central and provincial level to encourage more consistent interpretation of Vietnam's mining legislation, to understand the benefits of FDI in the mining industry, and to change

the attitude of, and to educate, such agencies as the Taxation and Customs Departments in Vietnam to understand the complexities of fluctuating world commodity prices and other mining issues that adversely affect profitability and viability of mining on a cyclical basis. The sometimes uncompromising approach of these government agencies to date has resulted in foreign-invested and local operations having to close down, even though they would now be profitable with improving metal prices, and as a consequence have deprived the Vietnamese Government and the people involved in the mining operations of valuable income and provision of services.

- Accelerate Vietnam's commitment to opening its mining investment regime, prohibit the introduction of new export taxes, and eliminate or reduce existing export taxes, as provided for in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

#### **4. Conclusion**

The Government of Vietnam more than ever now recognizes the importance of FDI together with science and technology reform and innovation for Vietnam's economic and sustainable development. Unfortunately, modern technologies, technological innovation and world best practices will only come to Vietnam's mining industry through FDI when and if the Government provides incentives to encourage such investment, not penalize it.

To its credit, the Office of the Government has recently published a draft for an amended decree to reduce and make more flexible payments under the Mining License Grant Fee (MLGF), and in particular, the Vietnam Foreign Investment Agency (FIA) has announced the draft for new-generation FDI attraction orientation and strategy for 2018-2030, prioritizing sectors which bring the most added value, apply new technology, promote R&D activities and create spill-over effects. For the reasons outlined in this Position Paper, modern, sustainable mining should be a key component of this commendable strategy.

**APPENDIX - ASSESSMENT BY VIETNAMESE MINING COMPANIES****RESOLVING THE ADMINISTRATIVE SHORTCOMINGS IN TAXATION THAT ADVERSELY AFFECT THE MINING INDUSTRY IN VIETNAM****1. Context**

"Mineral resources strategy to 2020, with a vision toward 2030" under Decision No. 2427/QĐ-TTg dated December 22, 2011 approved by the Prime Minister states the directive viewpoint: *"Minerals are nonrenewable natural resources, important national assets to be managed, protected, exploited and used rationally, economically and effectively in order to meet the requirements of national industrialization and modernization and immediate and long-term sustainable socio-economic development and national defense and security, environmental protection"*.

As mentioned in the Article 3 Mineral Law (2010) *"The State assures that minerals will be protected, exploited and utilized in a rational, economical and effective manner; promotes investment projects on mineral mining associated with the processing and utilization of minerals to manufacture metal, alloy or other products of high value and socio-economic effectiveness"*.

As such, mineral resources are so considered as resources for socio-economic development with the main role of raw materials and fuels for production sectors and life. All policies applied to minerals must comply with the above mentioned viewpoints for minerals. However, current tax and fee policies on the mineral appear not to be appropriate for long-term goals and go against the development of potential mining industry.

Information issued by the Ministry of Natural Resources and Environment shows that, based on statistics of countries in Southeast Asia and some countries with similar mineral industries, Vietnam is one of the country with the highest royalties and export taxes in mineral sector in the world. It is actually in contrary with the nature of the policy of considering the mineral resources as the resource for socio-economic development and to be exploited to the maximum and use economically and efficiently and add more burden to the businesses as well.

Some argue that taxes in various form is to strengthen mineral resource management but that position is sophistic and unrealistic. Strengthening the management of mineral resources can only be done through improving the quality and discipline of planning, licensing, inspection, supervision and control of exploration, exploitation and use of minerals and reasonable policies on mineral resources; not through tax regime.

By considering all relevant aspects, the current tax and fee policies including royalty, export tariffs, customs duties, environmental protection fees, VAT and related mining rights currently serve the only goal of increasing the state budget revenue, instead of maximizing the mineral resources to serve socioeconomic development. However, the goal of state budget revenue should not be aimed when there is no assurance for the existence and development of businesses. To be able to compete in the international market of geological mineral resources, the Government should nurture revenue from enterprises reasonably, so that they have good production capacity and will create a persuasive mechanism to attract foreign investment. The pursuit of short-term budget goals without consideration on risks and failure to promote production and business activities will harm the trust and creativity of investor.



The businesses investing in other minerals also, in the general context, suffer from burden of taxes, fees, financial difficulties leading not to exploit thoroughly the minerals, accept the exploitation of the most valuable resources to obtain revenue, ignore technology research due to its long-term and large financial investment in the early stage, insufficient environmental treatment solutions, limited community support and behaviour which make the community, society give unsympathetic perceptions, ignore the contributions of mining in the country's economic development and instead only concerns about the environment, losses.

## **2. Challenge**

- Taxes in various forms that our business is subject to is excessive and too complex in relation to other countries and makes Vietnamese mining companies less competitive and less inclined to invest further in its business. Inconsistent legislative interpretations further consume time and resources of both the company and the relevant government authorities that will be frightening off investment in the sector. Miners and in particular the larger multi-nationals will generally favour countries where the rules are clear and consistently enforced.
- Inconsistency, overlap between laws and the decentralization of the authority levels leads to no jurisdiction to deal with conflicts between laws that lead enterprises be stuck and unprotected. Additionally, there appears to be conflicting interpretation of royalty, environmental protection fees and related mining fee issues between central and provincial level authorities, and between Ministries such as MONRE, MOIT and MOF. Mining right fee is an example of inconsistency between the laws which lead mining enterprises to be stuck and unprotected as both ministries (MOF or MONRE) has not make endeavour to determine the reasonable reserve price for calculation of mining right fee.
- Some preferential policies are issued but there are no specific rules or regulations on conditions and procedures for preferential treatment that make enterprises have difficulties in applying for certification of beneficiaries. Although government tend to support the policy to encourage the Mining companies to invest in deep processing of mineral, mining enterprises bear the risks and losses caused by policy changes. Over last 3 years (2015-2018) deeply processed products with high added value have been challenged by changes in VAT refund regulation, therefore many billions dong of input VAT was stuck un-refundable after export according to Decree 100/2016 despite such deep processed products are legally VAT refundable before 2016 and after the 2017.

## **3. Solution**

Based on the challenges mentioned above, there is an urgent need for Government assistance in guidance for reviewing, amending and supplementing the mining legislation to effectively attract FDI and strong local investors. As the Mineral Law has been used for 8 years and valid for 7 years, it is respectfully requested that the Prime Minister's Office and Government Office consider supplementing and amending some unreasonable provisions of the Mineral Law, in which the regulations on collection of fee for mineral mining right and royalties should be revised.

**ANNUAL VIETNAM BUSINESS FORUM 2018**  
**Hanoi, 4 December 2018**

**SHARING OPPORTUNITIES IN THE WORLD OF CHANGING TRADE**

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**SUMMARY**

**OPENING REMARKS**

***Mr. Nguyen Chi Dung, Minister of Planning and Investment***

Despite ever-changing turbulences in the region and the world, which significantly impacts the economy, the Government still managed to navigate through all challenges and led all levels and sectors in effectively implementing all solutions, restructuring the economy, reforming growth model, accelerating administrative reform, improving the business environment, and achieving good progress across all aspects in a spirit of “discipline, integrity, action, innovation, and efficiency.

Vietnam's economy is still faced with many difficulties and challenges such as potential inflationary pressures; substandard although improved growth quality; limited labor productivity and competitiveness; low resilience of the economy against external shocks; worsening impacts of climate change; middle income trap, etc.

To overcome these shortcomings, the Government of Vietnam is determined to comprehensively innovate the economy in the direction of:

- Pursuing macroeconomic stability, rapid and sustainable economic growth;
- Further accelerating the economic restructuring, transforming fields, regions and sectors to be more market-oriented;
- Radically implementing administrative reforms, public sector downsizing, building an enabling, innovative and ethical government, improving the business & investment environment, creating an open and favorable environment for businesses and people to develop.

***Mr. Kyle F. Kelhofer, Senior Country Manager, Vietnam, Lao PDR, Cambodia – International Finance Corporation***

The current state of world trade remains dynamic amid the environment of increased uncertainties and challenges, yet the worldwide challenge also means opportunity, which is precisely why we are here today, discussing both public and private sectors to find the opportunities for Vietnam.

I would like to share and discuss three such opportunities:

*First*, I am encouraged to see Vietnamese authorities and partners alike are actively seizing the opportunity on this agenda. Together this free trade agreement represents a game changing opportunity, to not only increase stability and benefit from increased international trade, but also to categorize reforms to increase the productivity of the private sector, both domestic and foreign, to support Vietnam’s continued journey to become a modern, high income digital economy.

*Secondly*, I look forward to our three morning sessions, all addressing the issue of attracting better FDI, including how to develop and pay for the necessarily modern and reliable infrastructure, how to bring in relevant knowledge and educated workforce for a modern digital

economy, and how to improve the efficiency of key business enabling institutions. Among these solutions is a common theme of increased opportunity to leverage the private sector, including increased use of PPPs. On infrastructure in particular, I would like to highlight Vietnam's unique opportunity to present global leadership on climate change, by enabling increased use of renewables and other low carbon private sector solutions.

The *third* opportunity will be determined by Vietnam's ability to further develop a productive and innovative private sector, able to spot higher value global, value chains. This requires an educated workforce and efficient resource allocation, ranging from infrastructure to the financial sector. But it also requires innovation enabling a local business environment with strong institutions, leveraging experiences globally, but for Vietnam's specific solutions, and creating opportunities for innovative domestic private firms to support and secure global value chains of the increasingly higher value FDI.

***Mr. Tomaso Andreatta, Co-Chair – Vietnam Business Forum Consortium***

A fundamental theme in PPP is the confidence investors have in Government policies. A special policy that is more important in Vietnam than in most countries of the world are prices, which here are not determined by the market but the government. Not having a long-term plan for the evolution of prices, or, worse, not following it, is the same as discussing the introduction of a new tax that totally changes the returns of investors: it will seriously deter all those investors who do not have very large margins to absorb the change.

In energy, there will be no financial breakthrough without a bankable PPA. It is also clear that some part of the government budget needs to be rationally dedicated to supporting projects on a multi-year basis.

In capital markets, we expect the creation of a local, reliable rating agency, and the extension of the investment products to infrastructure and green bonds for insurance and pension funds, as two important steps to help mobilizing capital towards realizing infrastructure. We also look forward to the full sale of the SOEs that will expand capital markets and attract new money.

In education, Vietnam is doing a good job in giving literacy and mathematical tools to students, especially in the cities, but is very much lagging most other countries' school systems in languages and problem solving.

Preserving the environment is fast becoming an emergency in Vietnam. The answers are already available today: reducing carbon emissions by making efficient buildings, using more renewable energy sources, making companies use efficient production processes, taking combustion engine vehicles off the roads and making agriculture more advanced in part by decreasing the consumption of poisonous substances and saving water and energy for the first, and circular economy for the second.

One of Vietnam's most widely recognized strengths is the workforce. We welcome the efforts of the Government to protect the workers from exploitation and poor treatment, especially for women when they become pregnant; on the other hand an excess of rules and regulations that make the labour market too rigid may not work in the interest of the workers, especially those who find it more difficult to find employment.

Paying taxes has become a problem. All companies belonging to VBF, as reported by the totality of our chambers, are hurt by the process of paying taxes, especially by multiple inspections with

retroactive effects and penalties. VBF members prefer a transparent higher tax level than a system that has so much uncertainty.

## **PRESENTATIONS BY 6 CHAMBERS**

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

Global trade and value chains are shifting and Vietnam is forecast to be among the countries most benefiting from this process. Domestic institutional reform is key to translating opportunities into reality.

Despite positive changes in Vietnam's business environment in 2018, the room for reform remains quite large. To further improve the business environment and promote business development, we would propose the following specific solutions:

- *Relaxing business and investment conditions and specialized inspections:* There has not been a consensus on a set of criteria for the removal or retention of conditions. Therefore, it is necessary to agree on the standard business conditions for effectiveness and consistency.
- *Regulatory reforms:* The Single Window system shall be replicated. It is necessary to develop plans for the highest connectedness between administrative procedures under the authority of various agencies. Any submissions of an enterprise should be only made to a single government agency which is responsible to circulate the submissions to other agencies as required. This would enable the enterprise to perform different procedures at the same time instead of having to do so one by one. Such a system would strengthen the supervision, monitoring, and evaluation of government officers who receive the submissions and handle administrative procedures.
- *Organization of dialogues:* The organization of dialogues should be covered by business associations in terms of preparation of handouts and sending out invitation letters to businesses. It is necessary to look at potential mechanisms to address issues faced by enterprises more effectively. Independent bodies shall be in place to supervise the resolution of such issues and make resolution results available to the general public and businesses.
- *Inspection and examination:* Provinces should assign provincial inspectorates to act as focal points for controlling inspections and examinations of enterprises in their provinces, including inspections and examinations made by ministries and central-level agencies. Accordingly, provincial inspectorates must be informed about all planned inspections in order for them to arrange the inspections to achieve 3 objectives: (1) reduce the number and time of inspections; (2) avoid duplication of inspections and examinations; (3) maximally increase interdisciplinary inspection teams instead of separate inspections conducted by each agency, adopt the risk management principles in inspections and examinations. (4)
- *Data transparency:* Ministries, central agencies, and provinces should further promote data transparency on their websites.

***European Chamber of Commerce (EuroCham) – Mr. Nicolas Audier, Co-Chairman***

Alongside the broader issue of market access, our members would like to highlight a number of issues for consideration:

- In the pharmaceutical sector, to ensure this is as effective as possible, our members request a feasible, predictable transition period to ensure companies can maintain high standards and continue to provide the best possible treatment solutions.
- Turning to medical devices, EuroCham's Medical Devices & Diagnostics Sector Committee (MDD SC) supports the Government's aim to provide hospitals with modern equipment. However, a lack of clarity and coherence between various Ministerial documents and long-term solutions regarding the model of placing equipment is creating problems not just in the placement of new equipment, but also in the management of current equipment in hospitals.
- In the mobility sector, in order to maintain quality control and facilitate trade, our members recommend that MOT identifies importers in good standing regarding technical compliance, instructs Vietnam Register to inspect only one, typical type of model, and randomise sampling according to the compliance level of CBU importers. Regarding Circular 41/2018/TT-BGTVT, we foresee four outstanding issues: the discrepancies in terminology, a lack of competent vehicle testing centers, an inadequate transition period, and the need to accept ECA documents for vehicles, spare parts, and components.
- Wine & Spirits Sector Committee would like to request that the Government reconsider its ban on the sale of alcohol over the Internet. This prohibition is inconsistent with e-commerce trends, and does not help address the problems of alcohol abuse.
- Work permits for foreigners: this remains a time-consuming procedure due to the complicated process of legalising documents in different countries. We recommend broadening the definition of 'inter-company transferee' and permitting a fast-track procedure for issuing work permits. With statutory Social Insurance contributions for non-permanent foreign workers, we recommend an alternative solution in which foreign workers could claim a lump-sum allowance when returning to their home countries.
- Online copyright infringements need to be more strictly enforced, and this could be achieved through amendments to the Law on Intellectual Property, increasing administrative fines, and strengthening the enforcement environment. The Government could consider adopting a data classification system, whereby only national security data should remain in Vietnam, in order for the country to remain competitive in the region

***European Chamber of Commerce (EuroCham) – Mr. Denis Brunetti, Co-Chairman***

The European Chamber of Commerce (EuroCham) is committed to the Vietnamese Government's strategic agenda on embracing Industry 4.0, enabled by 4G & 5G Internet of Things (IoT) network infrastructure, as Vietnam seeks to accelerate the digital transformation of all industries, including Manufacturing, Agriculture, Healthcare, Education, Finance & Banking and Energy.

EuroCham recognises the pivotal role ICT and High Tech Innovation has played in fuelling and driving the phenomenal journey of socio-economic development experienced by Vietnam over the past twenty-five years since the inception of Mobile Communications.

Vietnam's accelerated adoption of Industry 4.0, enabled by the establishment of nationwide 4G & 5G IoT enabling platforms, coupled with continued institutional reforms, increased focus on education and training in Data Science and suitable levels of technology transfer, will ensure that all industries become more efficient, productive, and cost efficient, securing Vietnam's global competitiveness and the prosperity of all its people.

***American Chamber of Commerce (AmCham) – Mr. Michael Kelly, Chairman***

Our investors need a level playing field, not only to attract more investments in the future but also to maintain the investment that is already here. AmCham recommends that the government consider an instruction on investment protection to prevent negative and retroactive binding effects of new laws and regulations on existing projects.

With respect to *power needs*, there is a clear and urgent need to address the growing shortfall in the supply versus the demand for electrical power. The government has made policy decisions on how to price power generation and power sales but sometimes do not always reflect the need to encourage efficiencies and cleaner energy. We hope PDP8 can adequately address these pricing issues; specifically, we need a bankable Power Purchase Agreement, more efficient and timely decision-making procedures for investment projects, a tariff and tax regime that reflects government priorities, and a market-driven power pricing road map for the next five years.

On *customs*, very frequent – and largely unnecessary – post-import audits are creating burdens for companies. We encourage Customs to adopt a more focused approach to target reviews of high-risk importers, rather than legitimate traders. Additionally, our companies are facing recurring tax audits often questioning long-standing procedures. We encourage the Government to use OECD procedures for transferring pricing regulations and implementing the awarding of Advance Pricing Agreements or APA, which has been long awaited.

The foundation for improving the operational efficiency and competitiveness of Vietnamese-based businesses is *workforce* productivity. Workforce development initiatives – particularly vocational – will improve worker output, but efficiency also depends on one critically important input: labor costs. A particular cost concern is the controversial new requirement for expat workers in Vietnam to contribute into Vietnam's social insurance fund. This has raised concerns among foreign workers and businesses regarding aggravated costs and is unjustified given the likelihood foreign employees will ever benefit from such contributions.

On *digital economy*, AmCham also strongly supported – and continues to support – Vietnam's effort to establish a legal framework on cybersecurity. We are concerned that the Cybersecurity Law and implementing draft decrees would force the localization of data, which may cause severe economic harm to Vietnam's economy by impeding the free flow of data upon which the global digital economy is built. Specifically, we would ask that the cyber decree reduce the covered services and establish an extensive open process before inflicting the severe cost and risk of requiring data localization.

***British Business Group in Vietnam (BBGV) – Mr. Kenneth Atkinson, Chairman***

We would like to bring to the attention of the Government the following issues which have been raised by our members:

- *Tax filing and inspections*: BBGV concerns include administrative errors caused internally within Vietnam often due to the differences in interpretation of the tax and customs laws and regulations, even between the same departments in different cities and

provinces. The under resourcing of staff in the tax and customs departments often means that inspections take place late and up to five years after the reporting period and the administration fines and late payment penalties are considered unfair and onerous. To help resolve these issues BBGV would like to see the creation of an independent body which can hear appeals from taxpayers against administrative fines and penalties from the tax officers.

- *Education:* BBGV continues to recommend that there needs to be strong links between the business community and higher educational establishments to ensure that graduates are prepared and ready for the workplace environment in both domestic and international companies, at all levels including vocational as well as degrees, postgraduate and professional. It is recommended that universities and colleges engage more with business leaders to develop and promote courses and programs including both hard and soft skills that equip students to enter the workforce. BBGV would ask that consideration be made to limit the increases announced in Social Security payments for International Educators as we believe this added burden will limit further investment and hence the development of an Industry 4.0 ready workforce.
- *Infrastructure and pollution:* The combination of pollution from traffic and coal fired power stations will need to be addressed if expatriates are to continue finding working in Vietnam's urban areas attractive. The metro when completed should provide some assistance but traffic congestion is still likely to get worse for some time.
- *Public Private Partnership:* a new PPP Law is unlikely to solve the current administrative obstacles to PPPs. We would suggest that it may be more fruitful to focus on building up dedicated governmental bodies in charge of each infrastructure sector, with best practices being spread through a coordinating body.

### ***Korea Chamber of Business in Vietnam (KoCham) – Mr. Ryu Hang Ha, Chairman***

Vietnam and Korea have made remarkable progress for the past 26 years since it first established diplomatic ties. Both countries have worked closely together as “nearest neighbors and economic allies. Therefore, it is time for the two countries to prepare for the "Korea-Vietnam Cooperation 2.0" in line with the new frame of the 4th Industrial Revolution.

The development of human resources is a key to succeeding in the 4th Industrial Revolution. Vietnam is experiencing difficulties in establishing a foothold in the 4th Industrial Revolution despite rapid economic growth because they are heavily specialized in labor-intensive industries. It is important for the government to dedicate itself to nurture technical personnel and specialists for high-tech industries even if that will take considerable time and funding, such as in technology transfers for hiring different levels of technicians or specialists.

The Vitalization of the Infrastructure PPP (Private-Public Partnership). Korea is leading smart city and public infrastructure development. These can be areas for potential cooperation. In order to promote investment in the Public-Private Partnership business, investors should be given more diverse financing options. Today, however, strict regulations have been a stumbling block to attracting investment. The Public-Private Partnership business in terms of infrastructure would

become active if there is (1) an Act to recognize the diverse ways for the private sector to finance and (2) a ‘government guarantee’ to lower the risks of investors.

Request for reconsidering the authentic interpretation that denies the import duties exemption on inland exports. In order to raise Vietnam's national competitiveness and prepare for the 4th Industrial Revolution era, it is imperative to strengthen components/materials and processing industries. Also, please reconsider the interpretation and the guidance of the literal active taxation described in Decree 134.

### ***Japanese Chamber of Commerce and Industry (JCCI) – Mr. Koji Ito, Chairman***

JCCI would like to talk about four areas that the Vietnamese Government can focus on to enhance the country’s investment environment and strengthen linkages between Vietnamese and Japanese companies.

- PPP Projects: we would like to propose four aspects of the decree that the government can consider reviewing to enhance its effectiveness in promoting infrastructure growth in the country:
  - Clearly stipulate that “foreign law” may be specified as the governing law,
  - Allow dispute resolution by arbitration outside Vietnam on all infrastructure projects, including those involving “real estate”,
  - Allow investors and project executors to mortgage land use rights, assets on land, and the right to operate project facilities,
  - Have the Vietnamese Government share a certain amount of risk pertaining to termination of payments and foreign exchange certificates.
- Reform of State Owned Enterprises (SOEs): we would like to request the following three actions:
  - Ensure rational pricing for the sale of state-owned shares,
  - Adopt standard international M&A processes wherever possible for the divesting of state-owned shares,
  - Introduce stronger measures to protect the rights of minority shareholders.
- Cyber Security Law: the law might have a negative impact on foreign direct investment if it is used to arbitrarily collect and control personal information. We respectfully **request** the Government to implement the Law with the utmost consideration, especially with regards to the stipulations in Article 26.
- Development of supporting industry:
  - Enhance its framework for developing local technical experts
  - Introduction of measures to encourage well-reputed Japanese supporting companies with high technical capabilities in priority sectors
  - Introduce “investment incentives” to encourage investment and partnership with Vietnamese firms for enhancement of manufacturing technologies.

## **SESSION 1: PAYING FOR INFRASTRUCTURES**

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

The Infrastructure Working Group would like to raise a few suggestions about how to make PPP (Public-Private Partnership) work.



*Current Status:* There have been hardly any projects complying with the Public-Private Partnership scheme under Decree 15 and Decree 63. There have been no Public-Private Partnership projects for which viability gap funding has been obtained based on Decree 15.

*Why have there been no Genuine Public-Private Partnership Projects?* Public-Private Partnership is difficult in any country, and is politically sensitive. Public-Private Partnership can only be sustainable if it is done well and fairly. This means building up a class of experts who can administer the program. The Public-Private Partnership regulations are highly prescriptive. And often the requirements are too complicated to meet in a timely fashion. Tenders (???) have proven difficult and no better for Vietnam than privately negotiated projects.

*What might work?* A combination of short term – template projects. If these are custom-designed, they can establish market knowledge that sets a base for later projects. Particularly around risk allocation; Medium-term – New Law. A new law that is carefully designed to overcome some of the existing issues will help enormously; so will long-term investment in administrative capacity.

In terms of specific issues to solve, the Infrastructure Working Group would suggest focusing on: risk allocation principles in each infrastructure sub-sector; clear principles on viability gap funding and on how to obtain Government support where there are risks that cannot be borne except by the Government; change of law. A company can build a power plant that complies with today's environmental laws and lock itself into a fixed tariff, but it cannot do that if it is responsible for spending \$100 million tomorrow to comply with new environmental laws.

***Response from Mr. Nguyen Dang Truong, Director of Public Procurement Agency, Ministry of Planning and Investment***

The National Assembly is considering a draft law on Public Private Partnership (PPP) law, which will be submitted by the Ministry of Planning and Investment (MPI) in the 7<sup>th</sup> National Assembly session, and expectedly adopted in the 8th session.

The Ministry of Planning and Investment agrees with the Infrastructure Working Group on the following issues: *First*, MPI concurs with the viewpoint that the law on Public-Private Partnership (PPP) is a new and complex law, which involves many other regulations and requires practical case studies to gain experience and translate into regulations of the law, thereby ensuring enforceability of the law in practice. *Second*, MPI agrees with the viewpoint that it is necessary to engage experts, especially international experts, to develop the law in line with international practices, ensuring market principles. *Third*, MPI also concurs with the proposal that there should be competent state agencies and specialized agencies to be in charge of each sector and field.

MPI is willing to share with the Infrastructure Working Group detailed information and listen more from experiences of the donors, development partners and experts.

***Power & Energy Working Group – Mr. John Rockhold, Head***

The made in Vietnam energy plan in Vietnam presented by the Vietnam Business Forum in 2016 laid out a road map of reform that is to be implemented to attract an estimated 7 billion dollars a year in energy annually from the private sector. The plan highlights fast, low risk, economic efficiency and fully renewable energy resources. If Vietnamese policies make renewable energy investment bankable in Vietnam, we would see a major growth in Vietnamese jobs in the Fourth

Industrial Revolution. Recently we have been employing thousands; we would be employing tens of thousands.

I would like to, however, refer to the three key reforms to accelerate investments in the power energy sector that Power Energy Working Group is willing to work with the government.

The Power Energy Working Group offers *digital planning and support* to the government in Vietnam in implementing their strategies of private sector and investments, involvement in the power energy sector, specific contributions in market assessment, pricing assessment, commercial finance mapping, legal on policies support, climate finance resource mapping, retail energy policies, and the promotion from the private sector of how we need to invest.

The second key reform is *road mapping* so we can get the companies to do more about efficiency.

None of the roof top solar panel systems have been reimbursed for the energy they are putting into the grid right now. So we have to solve this problem. We are looking forward to finishing this pilot program, and working with you to find the solution here.

***Response of Mr. Cao Quoc Hung, Vice Minister of Industry and Trade***

MOIT highly appreciates the report of the Power and Energy Working Group which highlights the very core issues of investment, energy security and the 4th Industrial Revolution. MOIT also highly appreciates the Working Group's inputs in developing the Power Master Plan 8 (PMP8) during the past time.

MOIT would like to respond to the Power and Energy Working Group's concerns as below:

*First*, regarding risk sharing and PPAs with renewable energy projects, we agree with the Working Group's viewpoint that the PPAs should be properly drafted. Currently, MOIT has cooperated with relevant agencies to develop a draft DPPA and PPA for renewable energy, especially as part of PMP8 development process. MOIT acknowledges and will further consider the comments mentioned in the report.

*Second*, on encouraging investment in energy efficiency, MOIT will consider electricity prices to report to the Prime Minister and will discuss further with the Working Group on the three solutions mentioned in the report.

*Third*, on developing rooftop solar power and the mechanism of purchasing solar power, we have been working with the Ministry of Finance and relevant agencies to fine tune the Circular on the purchase and sale of rooftop solar power in the near future, expectedly at the end of 2018 or early 2019.

*Fourth*, on coordinating with VBF in developing energy policies and investment strategies in the energy sector, MOIT recognizes the need for energy strategy planning, and informs us that they are in the early stage of fine-tuning a master plan of the energy sector, which will soon be submitted to the Prime Minister.

*Fifth*, on issues related to financing readiness to respond to climate change, MOIT acknowledges that Vietnam does not have a long-term sustainable mechanism for this issue, and acknowledges VBF's proposal to support in the future.

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

Vietnam's Stock Market today has outgrown the size and capital flow targeted by the Government. This is a golden opportunity to concurrently achieve three goals. *First*, tackling inconsistencies between the Law on Securities and some other laws. *Second*, tackling unnecessary discrimination between Vietnam and Thailand, Philippines, and Indonesia when Vietnam is not considered an emerging market, but only a marginalized market. *Third*, tackling a number of risk and efficiency issues in transactions.

These opportunities are viewed by the Capital Market Working Group in light of three problem groups, corresponding to three recommended solutions:

*The first problem group* is the scope of governing of the Law on Securities as compared with a number of other laws, including Article 23 of the Law on Investment, which hinders domestic and foreign enterprises. Therefore, the Capital Market Working Group proposes to review Article 23 of the Law on Investment and revise some articles of the Law on Investment and the Law on Enterprises, which shift the mechanisms of listed companies to the Law on Securities.

*The second problem group* relates to the ownership of foreign investors. The Capital Market Working Group proposes to allow companies to issue Non-voting depository receipt (NVDR), making Vietnam an emerging market and capable of raising capital quickly.

*Finally*, regarding trading risks, the Capital Market Working Group recommends that the Government facilitate the review of regulations on pre-availability of money, ownership of the settlement bank, and regulations on protecting assets of investors in the funds.

### ***Response of Mr. Pham Hong Son, Vice Chairman of the State Securities Commission***

In 2018, Vietnam's stock market enjoyed decent and sustainable growth, our stock market's capitalization has increased by 11% and bond market's capitalization has grown by 22%. Moreover, regarding the participation of foreign investors, Vietnam's stock market is fairly open with many areas opening up to 100% foreign ownership; only a few conditional business sectors will be limited. In particular, Decree 60 of the Government gives further permission and Vietnam's commitments upon WTO accession and other agreements are also very open to foreign investors.

First, regarding the opinion of the Capital Market Working Group on the issue of the amended Law on Securities, the State Securities Commission acknowledged the Group's comments and is currently consulting with market participants.

Second, regarding the issue of market upgrading, under the Government's direction, we are trying to upgrade Vietnam to an emerging market. Currently, in terms of size, Vietnam's stock market can be qualified; however, qualitatively, there are still some biases from investors against Vietnam's stock market. We believe Vietnam is doing relatively well in terms of market opening and information disclosure on the stock market.

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

The theme for Banking Working Group (BWG) is about "Quality credit as a primary fuel for innovation". Even being one of the fastest GDP growth rates in Asia in 2018, Vietnam's credit growth still declined in comparison with the previous year. It showed that credit has been channelled to productive sectors. The share of foreign banks in the total loans in Vietnam is still

very small impacting our ability to lend to Foreign Direct Investment, local companies including Small Medium Enterprises, Supplier Finance, and Consumer sectors to grow the economy.

Therefore, BWG provides three recommendations for the State Bank of Vietnam (SBV):

*First*, SBV should revise percentage growth targets with a formula which reflects total size of assets/loans of the banks plus quality of the credit portfolio. Also diversify the loan books, ensuring that loans are channelled to the priority sectors of the economy and banks can be more proactive in financing our client production, investment, and business operations.

*Second*, SBV should exclude "Mortgage lending" from real estate lending statistics because this product should be encouraged to provide housing to people for residential purposes on the condition that such loans are properly controlled.

*Third*, SBV should allow offshore parents companies to provide counter guarantees for onshore banks and exclude the counter guarantees of the offshore parent entities out of SBL (Single Borrowing Limit)/GBL (Group Borrowing Limit) in order for foreign banks to support large infrastructure projects and large-scale production projects in Vietnam.

Moreover, regarding resolving the technical issues during the communication between BWG and the SBV, we appreciated the positive cooperation and noted four technical items needed for the coordination of relevant Ministries, which includes: (1) The necessity of development of Regulatory framework for Derivative and Cash pooling products; (2) The digitization of the Vietnamese economy, focus on Cyber Security and customer data protection; (3) The development of regulatory framework for eKYC (Know Your Customer), removal of the requirement of Wet signature, Chief accountant's signature, dual signature verification on Host to host, e-Portal payment channel and e-platform for foreign exchange transaction; (4) The misalignment between different laws governing banking operations.

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

In 2018, the banking industry has fulfilled its role as an effective credit provider of the economy, contributing directly to economic development. Besides, the State Bank of Vietnam also upholds its mission in restructuring and handling bad debts of the banking system, further improving the legal framework to support the Industry 4.0's technological advancements and innovating banking operations, products, and services.

In response to the report of the Banking Working Group, SBV asserts that there is no pending issue or disagreement between the BWG and SBV. However, what is mentioned in the speech by the head of BWG mainly relates to specific business issues, so we suggest that they discuss them in a separate meeting on the principle of constructive listening and compliance with legal regulations.

Regarding two issues: cash flow management and account holder. These are two issues that the State Bank has agreed with the BWG to continue to coordinate with other ministries. For example, SBV will coordinate with MPI in managing cash flows, improving legal framework, and coordinating with the Ministry of Justice related to account holders.

In addition, SBV will coordinate with ministries such as the Ministry of Finance and relevant ministries to propose specific solutions such as forex transaction documents, the value in words on payment order, etc.

## **SESSION 2: BRINGING IN AND DIFFUSING RELEVANT KNOWLEDGE FOR MODERN INDUSTRY**

### ***Education & Training Working Group – Mr. Brian O'Reilly, Head***

There are some outstanding issues causing confusion that have not been stipulated clearly in the draft law including, but not limited to, the legal status of the foreign investment enterprise and also the university as both the enterprise and university have a separate legal status.

*Decree 86:* Foreign investment in education and training are vital to bring the required knowledge and skills to Vietnam. This investment helps prepare human resources to be effective for Industry 4.0 and these foreign institutions will both compliment and collaborate with Vietnamese institutions already adapting to the challenges and needs of the new economy.

We would like to request that the Ministry of Education and Training expedite the drafting of the Circular guiding Decree No. 86. This will provide clear understanding of what is expected from educational institutions and what they need to do with regards to implementation. Many schools are facing great difficulties when working with authorities to amend their licenses because of the lack of a guiding Circular.

*Decree 143 - Law on Social Insurance:* This decree provides a guide as to how to enforce the Law on Social Insurance. Under this decree, most foreigners working in Vietnam shall be subject to compulsory social insurance. This decree has a major impact on many educational institutions as they employ a substantial number of foreign staff. There are a number of issues with regards to this decree and we recommend that these issues, provided to you through other chambers and working groups, are scrutinised and addressed in a satisfactory fashion for all stakeholders.

*Technical and Vocational Education and Training (TVET):* The new law on Vocational Education and Training is an important step in improving TVET in Vietnam. Much work has already been carried out in conjunction with local and overseas agencies. Continued collaboration through active working groups, coordinated by MoLISA, would ensure that the impact of this work is more effective.

It is important that MoLISA and the Government approve the revised Decree to replace the Decree No. 48 relating to the operation of foreign invested colleges. It has been reviewed by Government over the past two years. However, the reviewing process has been protracted and is affecting the operations of all colleges. The General Directorate of Vocational Training is not accepting applications for conversion with the justification that they are waiting for the revised Decree No. 48.

### ***Response from Mr. Le Quan, MoLISA Deputy Minister***

The MoLISA would like to convey our thanks to the business associations, Chambers of Commerce & Industry, the Education and Training Committee and the Human Resources & Training Sector Committee, who have provided support and contributed ideas and recommendations on the development of human resources, social insurance, and Labor Code.

Firstly, regarding social insurance, multiple feedback from the associations and working groups has been obtained on the Government's Decree 143 that is aimed to guide the implementation of the Law on Social Insurance. Long-term compulsory social insurance for workers is applicable through January 1, 2022, and the Law on Social Insurance is expected to be revised in 2022 according to the Resolution of Party Central Committee. Regarding insurance payment

procedures, it can be affirmed that the one-time claims for insurance payment among foreign workers only require five days and the application can be filed on the Internet.

Secondly, regarding the feedback on the Labor Code, the MOLISA undertakes that the consultation on the draft will last full 60 days in accordance with the law, and we are indeed collecting feedback from many associations at different forums and still working on updating the draft. The draft updated Labor Code is expected to be submitted to the National Assembly for the first discussion on its next session.

Thirdly, as of human resource development and vocational training, this was an area of good coordination between the MOLISA and the Working Group last year. We see that the shortage of human resources is no longer a pressing issue, as the MOLISA and provincial DOLISAs have effectively worked with the Vietnam Chamber of Commerce and Industry to deliver on-demand training programs. Regarding the quality of human resources, in order to meet the requirements of the Industry 4.0, we have received and now respond to some of the recommendations. Specifically: (i) Regarding the recommendation on English language training, English has been introduced as a compulsory subject at the colleges and secondary schools; (ii) Regarding soft skills, the MOLISA has required allocation of more study time for practice and internships at enterprises, creating conditions enabling enterprises to deeply participate in the training process, from course design to the delivery of training and recruitment.

Finally, as of other decrees, Decree 48 has been submitted to the Government for issuance and business conditions for foreign investors have been significantly simplified in terms of facilities, procedures to set up representative offices, procedures for human resources development, promotion of autonomy in international cooperation. Regarding the opinion of Japanese representatives on retired experts, the MOLISA is currently developing a recruitment program of foreign experts, which is expected to help attract foreign retired experts to engage with us in supporting vocational schools.

***Response from Mr. Pham Quang Hung, Director General of International Cooperation Department, Ministry of Education and Training***

Regarding the improvement of higher education (HE) quality, the updated Law on Higher Education was recently adopted by the National Assembly on November 19, 2018 to address some of the key issues. For the development of the updated Law on Higher Education, the revision process focused on four major policy issues. Firstly, as of the establishment of private universities, the investors are enabled to directly establish universities with or without formation of legal economic entities in advance. The economic entities and universities have their own legal status to ensure that: firstly, economic entities can invest in many different fields and sectors; secondly, public and private universities can be putted on an equal footing and have the same legal status.

*Promotion of academic-industry linkage.* Organization of training based on the needs of the labor market and strengthening the academic-industry linkage are major policies of the Government and the Ministry of Education and Training (MOET) and have thus been strongly delivered. The MOET has always actively encouraged industries to work with academics by development of a number of foreign-funded projects and programs, initiatives and forums to bring universities closer to private sector and labor market.

As of the *Decree 86* on investment cooperation with foreign partners in the field of education and training, the MOET obtained the Government approval of Decree 86 on June 6, 2018 to replace Decree 73. Decree 86 has introduced more modalities of foreign investment and

cooperation while offering favorable conditions for investors in terms of land tenancy, facility lease, and rights of foreign investors in equity contribution, purchase of shares and purchase of contributed equity at local educational institutions. The MOET is actively finalizing a Circular guiding the implementation of Decree 86 for early issuance in 2019.

***AgriBusiness Working Group – Mr. David John Whitehead, Head***

A growing number of farmers in Asia and in Vietnam are starting to adopt digital technology and data-driven innovations. However, for Farming 4.0 to become a reality in Vietnam, we need a dedicated joint effort between the public sector, industry players, and the farming community. Above all, decision-makers and the national government need to ensure that the fundamental digital infrastructure is put in place. The government should enact policies that help to address the investment gap in agriculture, particularly in times of low commodity prices.

One third of the global population still relies on agriculture for a living. Although more advanced precision farming technologies require large upfront investments, farmers in developing countries like Vietnam are benefitting from mobile technology.

Precision agriculture means the application of precise and accurate inputs at the correct time for increasing crop productivity and maximizing its yields. Farmers thus obtain a return on their investment by saving on water, pesticides, and fertiliser costs.

The second, larger-scale benefit of targeting inputs concerns environmental impacts. Applying the right amount of chemicals in the right place and at the right time benefits crops, soils, and groundwater, and thus the entire crop cycle.

Consequently, precision agriculture has become a cornerstone of sustainable agriculture, since it respects crops, soils, and farmers. Sustainable agriculture assures a continued supply of food within the ecological, economic, and social limits required to sustain production in the long term.

Precision livestock farming (PLF) is the use of advanced technologies to optimize the contribution of each animal. Through this "per animal" approach, the farmer aims to deliver better results in livestock farming.

Using modern information technology, farmers now can record the attributes of each animal, such as pedigree, age, reproduction, growth, health, feed conversion, and carcass weight as a percentage of live weight, and meat quality. When this information is available, huge benefits can be derived.

***Response from Mr. Phung Duc Tien, Deputy Minister for Agriculture and Rural Development***

In terms of current development, Vietnam has now applied Industry 4.0 technologies in the agricultural sector such as the application of biotechnology in agriculture, cell culture techniques, gene technology for improved plant and animal varieties, microbiology technology, application of automation and semi-automation technologies in agricultural production, and information technology adopted for high-value crop production models.

However, the application of Industry 4.0 technologies in agriculture is also faced with difficulties and challenges in terms of infrastructure, supplementary industries and human resources. The Ministry of Agriculture and Rural Development (MARD) has identified a number of key tasks and solutions as follows:

For the key tasks, it is needed to firstly recognize agriculture as a priority sector for medium and long-term development. In particular, it is important to give priority to the importation and mastery of advanced technologies in the world plus a focus on applied research to quickly improve productivity, technological capacity, and skills in design, manufacturing, and application of technologies for production of key agricultural products of which Vietnam has a competitive advantage. It is also important for the agricultural sector to focus on development of technical capacity, technology management, corporate governance, and improvement of training quality, ensuring quality inputs in the sector and further international integration by seizing opportunities and overcoming challenges for fast and sustainable agricultural development, and enhanced awareness of the challenges and opportunities that Industry 4.0 brings.

Regarding the implementation of solutions, the sector needs to firstly focus on intensive research, transfer and application of biotechnology, advanced technologies, information technology, and remote sensing technology to facilitate the introduction of key agricultural products towards improved added-value production and sustainability. Secondly, it is critical to foster the implementation of the national scheme for stronger application of remote sensing technology in the period 2016-2020, vision to 2030, for skill development for Industry 4.0. Thirdly, it is required to list all technologies to be developed in the agricultural sector in the medium and long term to keep up with latest technology trends in the world. Fourthly, order-based development of key technological products for which Vietnam has a competitive advantage shall be promoted, in addition to the development and delivery of a scheme for a startup ecosystem in the agricultural sector.

#### ***Tourism Working Group – Mr. Colin Pine, Head***

It is important to remember that Vietnam as destination is competing both worldwide and especially with many other attractive destinations among its neighbors in ASEAN. In order to continue to compete and stay among the fastest growing tourism destinations, Vietnam needs to continue to make sure its “APP” is best in class. “APP” in this context stands for, in English, Access, Promotion, and Product. These three categories are particularly important to increase international visits, but are also relevant to continuing the growth of domestic tourism.

The World Travel and Tourism Council has stated that visa facilitation can add 10% to international arrivals. Vietnam has continued to take measured steps to reduce the requirement for visas and to make it easier to obtain one when one is required by increasing the number of countries with visa waivers to 24 and by implementing a true e-visa platform. The Tourism Working Group however has recommendations to further enhance these efforts which we believe are achievable now and should be implemented.

Aviation policy, regarding both airlines and airports, is the second key area regarding access. Vietnam is tied with Singapore for the fewest number of licensed public transportation airlines among the major ASEAN destinations and among the four approved carriers. This relative lack of competition to growing destinations not served directly by international airports likely increases the cost of travel and this is implied where the cost of some domestic tours is higher than the costs of equivalent international tours travelling the same distance and for the same duration.

Promotion is a second important key to continuing to cultivate Vietnam tourism. Having an adequately funded and coordinated State actor is also important. The decision to establish a Tourism Development Fund is an important step in this direction. However, to date, the specifics around the funding mechanism for this Fund and how the Fund will be administered in



detail remain to be finalized. The Tourism and Hospitality sector sincerely asks that such decisions be made expeditiously and balancing other key initiatives for promoting tourism.

Key areas that are related to the innovations that are accompanying the developments from “Industry 4.0” are both lodging products and tourism services that are provided through “sharing economy” platforms where assets or labor can be provided on a fractional basis and “on demand”.

#### **KEYNOTE ADDRESS BY H.E. Mr. NGUYEN XUAN PHUC – PRIME MINISTER**

The International Monetary Fund has cut 0.2 basis points of its global economic growth forecasts in 2018 and 2019, down to 3.7%. This action indicates that the prospect of the global economy in 2018 was not as expected and the situation may repeat in 2019. World trade is facing tremendous challenges, including the rise of protectionism, trade wars, and degradation of confidence in the free trade system. Vietnam will always be seeking for new cooperation opportunities within the mainstream of peace, cooperation, and globalization.

With this belief, Vietnam's economy continued its impressive growth rate in 2018. However, Vietnam was still able to sustain the macro-economic stability, control inflation as targeted, significantly reduce budget deficits and public debts, all while the balance of payments achieved doubled surplus and interest rates and exchange rates were stabilized in the context of emerging trade tensions and the volatility of global financial markets.

Vietnam is a “manufacturing powerhouse” of the world and a fulcrum for many large transnational corporations to provide competitive products and services in the region and worldwide. The presence of many of the world's leading corporations in Vietnam and thousands of other FDI enterprises is the guarantee of Vietnam's investment environment and growth prospects.

The Government believes that for the realization of opportunities and successful cooperation, efforts and collaboration from all three parties are required:

*Firstly*, the effort must come from Vietnamese enterprises themselves. All enterprises have their own comparative advantages which need to be identified and capitalized on. Enterprises should no longer expect support from the Government and must actively seek for opportunities.

*Secondly*, the cooperation and sharing of opportunities from FDI enterprises are required. The Government of Vietnam urges international corporations and FDI enterprises to be more open in their supply policies, thus enabling and supporting Vietnamese enterprises deeper engagement in the value chain, enhancing technology transfer and human resource training for Vietnam, and putting more confidence in the capacity of Vietnamese enterprises.

*Thirdly*, it is necessary to promote the constructive role and the companion of the Government.

Accordingly, the Government prioritizes the following three key issues:

*First* is the determination to maintain the social and political stability and macroeconomic foundation with the stable political and macro environment along with optimal geopolitical position. The Government is committed to further strengthening structural reforms, improving institutional quality and state governance capacity, reforming state-owned enterprises, financial systems, bad debts handling and public debt management, etc. Efforts will be made to clear bottlenecks for faster and more sustainable development.

*Secondly*, the Government will continue to accelerate the improvement of business environment quality and enhance national competitiveness. In three consecutive years of 2016, 2017 and 2018, the Government has issued Resolution 19 on improving the business environment and enhancing national competitiveness. This demonstrates the continuous update and reform by the Government in the context of ever-changing national and international developments, so Vietnam will not be left behind by the world.

*Thirdly*, the Government will place more priority on investment in science and technology, improvement of R&D capacity, and investment in infrastructure especially smart and digital infrastructure, to promote and take advantage of the opportunity of Industry 4.0. Along with science and technology, the Government will also increase investment in human resources education and training.

The Government will devotedly support the development of enterprises; specifically, the Government is committed to establish an open, fair, and low-cost business environment, facilitating the import and export activities, reforming specialized management and inspection, and promoting electronic administrative procedures.

### **SESSION 3: OVERCOMING OBSTACLES TO BUSINESS**

#### ***Investment & Trade Working Group – Mr. Fred Burke, Head***

New issue is rise almost every day starts to log and earlier, and paper provides a lot of details that are too boring to sight for you today. A few points of those that I would like to try to emphasize because there are broadly relevant.

*The Enterprise Law and Investment Law:* There are a lot of vaguely defined terms in these laws cause trouble for investors, the confusion to the respect of using M&A approval versus investment licensing issues nowadays. There are obstruction of license procedure, there are proposals in our paper enhance the parties' autonomy in the Enterprise Law. We are hoping for more flexibility in choosing between electronic and physical enterprise registration, there is other technical issue there.

*The Technology transfer Law:* Vietnam does need to help limitation on the re-export of the important technology and certain sense of the area such as nuclear energy and environmentally sensitive technology. The law is regressive, replicated and almost done 2 decades ago. We stronglier to the implementation of this real exam and narrow the scope so that companies can come to Vietnam and operate in a normal environment.

*The Law on Cyber Security:* One of the biggest issues is one that seems to be in consisted with the CTPP e-commerce chapter another international obligation that Vietnam may undertake. That has to do with locations of server in Vietnam, especially by international financial insitutions that worry about security. These are elaborated in the paper, so little more time to discuss and possibly to create some cores about in the decrees will probably be a good idea.

*The Compulsory Social Insurance:* There's a lot of categories of workers, who we want to keep in Vietnam, but social insurance too heavy, they drive them away.

*The new Labor code:* There is a lot of work going on there, very complicated law. This is has been a good amount of time for stakeholder consultation, and it's being taken seriously, especially in terms of implementing the commitments under CTPP and EU FTA. One issue

that really does impacts employers these days is about the right to terminate or suspend employment agreement with employees or managers, who assist in engaging and corrupt practices. The current law is far too protective of the employees, enabling them to attend the position right up until they are convicted of the crime. That so Labor Law implement to give the employers more flexibility in this area; it will continue to have deeply debilitating effect on the fight against corruption.

*The Tax Administration Law:* With the contribution of tourism and the role of online travel agents, the proposal of the new law is too reach out and grab these company operating offshore, requiring them to set of wrap-up in Vietnam, just to pay tax in Vietnam on service they get paid for from Vietnam. There is actually already a very good tax in Vietnam that foreign contractor would holding tax is the commonly called, they can in catch the income, or just hotel or pay on the tax or don't think want to pay it. It's not really a good enough reason to create a whole new category of tax pay for people don't have the prime minis. establishment in Vietnam. It's gotta be better solution.

*The circular 32 on the bank account:* wrap-up business association, NGOs will have to close down their bank accounts if this takes affect, supposed to be in March. If the wrap-ups have to close down their accounts and re-open with the name head office, foreign business association and NGOs suppose to keep all the cash one of the name of their employees, it's not a reasonable system. So we hope that it will resolved. This is the issue where the State Bank and the draft of civil code have different opinions and we can resolve them in our working group, it has to go to the Office of the Government for higher level decision.

*On arbitration:* progress with the Vietnam International Arbitration Center. Strengthening is better, but the court system still has to be built up and improved, so that the enforcements are more automatically, the arbitration works granted legally by VIAC.

*Cash pooling:* It's normal practice in most jurisdiction, and we hope that Vietnam can do it to help companies become more efficient. It's important to have a really sensible and stable cash pooling mechanism.

### **Customs & Tax Working Group – Mr. Mark Gillin, Head**

Tax is the big issue facing businesses in Vietnam. Initially, we have to regconize the essential investment, about GDT and GDC use of technology to enhance e-tax and e-custom. Tax administration which is committed to establishing trust would really solve most of the issues.

First, respecting the investors' protection and honoring the tax incentives promised at the time of investment and included in the investment certificate.

Second, investment protection in supply equally to all companies in Vietnam, not applying it to selectively base on which company makes the most noise, requires honoring the 50% PIT reduction, keeping promises to investors in the economic zone time, and eliminating the double duty on export and import transaction and retroactive taxation. It requires the consistent application of FCT categorisation on realties, not categorizing them as one thing for CIT assess but another thing for VIT assessment. And immediately ceasing the practice of applying administrative penalty of 20% when the ER is over-payment, as is currently happening with Hanoi tax department.

It is important that the Government address the issues raised here and in the paper. More importantly, to commit to fundamental reform of culture tax in administration in Vietnam, by

borrowing from best practices around the world. World Bank and Vietnam Partner stand ready to assist.

***Response from Mrs. Vu Thi Mai - Vice Minister of Finance***

*Regarding the comment that in tax declaration and tax collection, there seems to be a tendency to raise taxes for offsetting budget deficits:* The declaration and collection of tax by tax authorities must be performed in accordance with tax laws, and in the context of Vietnam's deeper regional and international integration, tax policies should be reviewed and restructured, which has been reflected in Resolution 25 of the National Assembly on restructuring the state's budget. However, the MOF will sustain a basic principle as also stated in the Prime Minister's speech. Accordingly, the tax policies must be clear and transparent while encouraging and attracting investment and enabling the development of production and business activities of enterprises.

*Regarding the comment that the tax authorities is lacking staff to perform annual tax examination and inspection. The annual tax examination and inspection must be performed timely, there should not be a five-year gap between tax examination and inspection and retrospective collection and sanctioning:* The examination and inspection activities of tax authorities are risk-based. For enterprises which have strictly complied with tax laws, the tax authorities will provide supporting services and encourage voluntary compliance. Examination and investigation will be performed on enterprises having tax risks, and this is the principle of tax administration of advanced countries around the world. We hope that enterprises will timely update us on policies for better compliance with tax laws.

*Regarding the comments about on-site import and export:* The MOF acknowledges these comments, and we will receive further comments from enterprises to amend Decree 134. Currently, the amendment of Decree 134 guiding Law 107/2016/QH13 Export and import duties is at the final stage. These comments will be carefully considered for clear and transparent stipulation in Decree 134, thus encouraging the on-site import and export activities. This Decree is expected to be submitted to the Government in late December or early January, and will certainly be issued as soon as possible.

*Regarding the recommendations about imported goods for exporting:* The recommendations are incorporated in Decree 146 amending the shortcomings of Decree 100, which have been submitted by the MOF to the Government for promulgation. Regarding the issue where imported goods for exporting is not eligible for tax returns, Decree 146 has overcome this shortcoming. Decree 100 will still be applicable for the period from 07/01/2016 to 02/01/2018, and after Decree 146 is issued and comes into effect, this shortcoming will be resolved.

*Regarding the shortcomings of tax returns for expansion investment:* The MOF receives these comments for further study.

*Regarding the comments on Draft Law on Tax Administration related to e-commerce:* The MOF is developing and completing the Draft Law on Tax Administration. We will comprehensively study the recommendations raised by many Associations today. Reasonable comments will be incorporated in the Draft Law on Tax Administration submitted to the National Assembly in May 2019 meetings.

*Regarding comments on further facilitating the APA structure, reconsidering the imposing of tax on sugary drinks and other general comments for the Customs:* The MOF acknowledges these comments for further study and reasonable comments will be received.

## **CLOSING**

### ***World Bank Group – Mr. Ousmane Dione, Country Director***

In a world of changing patterns and profound technology disruptions, the ones who survive and succeed are not necessarily smarter, not conservative, but instead, the ones who better adopt to changes.

Since we are all in a ship called “Vietnam,” an analogy of this excellent Prime Minister a minute ago, let me share some of the take away for us to successfully reach the destination.

I will start with T as Trade, but also T as Technology. Vietnam is already a vibrant trading partner of the world. This is technology critical for Vietnam’s growth in the digital era and sharing knowledge transfers, sharing innovation between domestic and FDI, and promoting occupation as critical. This is the engine of our ship called Vietnam.

R as Resilience, in case we now engage in high quotas, but also R as Risk. Because of the changing of the world economy to which Vietnam is integrative. Four dimensions of risk are critical: managing risk, multi-gating risk, adopting to risk, and finally sharing risk. This is the letter where the business community expect more from Vietnam’s leadership. This is the break of our ship, and the way we made over it going forward will determine the speed to reach for our destination.

I in TRIP is Investment, but as World Bank today I’m not going to talk about investment, let me talk to an ISS. I will focus on execution as the reality of our ship. Reform of financing is more flexible an implementable PPP law. Enhancing regulation, target setting and taxation, new mechanism and execution, and everything building on the digital will be important.

P of TRIP is Partner. We are all partners in this room, but also P as people. Investing in people with knowledge is paramount in this digital era to keep the pace of productivity and make the required scale for an increasing risk of sophisticated business agenda into maintain competitiveness. This is the fuel of our ship.

So for the TRIP to head to success, let me reassure the Government’s leaders and the business community, that the World Bank group will remain even by default, but assist the pilot or an active passenger.

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

Vietnam Business Forum (VBF) is a unique and effective model of public private partnership in the area of policy making and promoting economic reform in Vietnam. With the theme of sharing opportunities in the world of changing trade, the Forum has outlined the picture of the business environment and institutional qualities of Vietnam. Highlights in this picture are: institutional reforms have gained more motivation, confidence of business community is improved, most enterprises are planning for further business expansion in Vietnam, the number of newly established enterprises is soaring, and innovative start-ups are promoted. However, there are still concerns among the business community regarding the reform of administrative procedures, implementation of e-government, and the business environment and competitiveness of Vietnam. In the context of integration and implementation of Free Trade Agreements, Vietnam must overcome the above problems as soon as possible by strictly enforcing discipline to create a new development room for the country.

The business community advised the Government, ministries, and agencies with solutions to promote the development of national economy. These include developing the digital economy, promoting the development of private sector, strengthening the Public Private Partnership, developing micro, small and medium-sized enterprises, applying clean energy to smart agriculture, improving the quality of human resources, etc. The business community is also looking forward to having dialogue and cooperation with governmental agencies in developing the Decree for enforcing the Law on Cyber Security to ensure the security without creating barriers for the digital economy.

The Prime Minister's decision on the establishment of the Public Private Partnership Committee under the National Council on Sustainable Development and Competitiveness Improvement of Vietnam has recently been decided. The President of the Vietnam Chamber of Commerce and Industry will also be the President of the Public Private Partnership Committee. We hope that governmental agencies, VBF members and international institutions will actively engage in the activities of the Committee to promote the mobilization of social resources at home and abroad for development in the future.

***Ministry of Planning and Investment – Mr. Nguyen Chi Dung, Minister***

The theme of this Forum is very on point; reports of working groups have been carefully prepared with profound and practical comments and recommendations for better attraction and utilization of foreign investment in the context of investment restructuring conducted by investors and multinational corporations in the region.

Summary of issues that have been discussed in three sessions is as below:

*First*, infrastructure development requires improved policies and mechanisms to attract investment through PPP in a more effective manner; diversify renewable energy sources such as wind power and solar power and develop capital market, channeling high-quality credit into infrastructure development.

*Second*, with regard to labor, the Forum emphasized initiatives such as career counseling to develop manufacturing workforces and improve labor productivity in the era of Industry 4.0. With regard to social insurance issue, concerns about increasing labor costs, labor discipline issues, and the order of gross misconduct will also be addressed by the business community in the coming time.

*Third*, recommendations for the Government towards Agriculture 4.0 through precision agricultural development and successful agricultural revolution in the new context are valuable proposals for reference and policy improvement in the future.

*Fourth*, in the tourism sector, state agencies acknowledge proposals for development across three areas to increase attractiveness and promote the contribution of the tourism industry in economic growth, namely visa policy, tourism promotion, and diversification and standardization of tourism products.

*Fifth*, with regard to legal enforcement, many agencies still interpret and apply laws inconsistently, given ambiguity and generality of these regulations, especially the issues related to the Law on Securities, Law on Technology Transfer, Law on Environment, Law on Energy, etc. Proposals are made to introduce more transparency to tax and customs regulations.

In addition, other issues such as trade facilitation, intellectual property rights protection, administrative procedure reforms, exploration of digital economy potential in Vietnam, accelerated equitization of state-owned enterprises, recognition and enforcement of foreign arbitral awards in Vietnam, etc, have also been discussed.

The Ministry of Planning & Investment will follow the Prime Minister's direction and will consolidate all issues and recommendations raised by business community at today's Forum to report to the Prime Minister in the coming time.

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