

# VBF VIETNAM BUSINESS FORUM

## ANNUAL VIETNAM BUSINESS FORUM 2019

**Roles and support of FDI community  
in rapid and sustainable development**



Hanoi, January 10, 2020

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This publication was created for the Midterm Vietnam Business Forum on January 10<sup>th</sup>, 2020 in Hanoi.

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## **TABLE OF CONTENTS**

### **TENTATIVE AGENDA**

#### **1 OPENING SESSION: PRESENTATIONS AND REPORTS BY CHAMBERS**

- 1.1 Position paper of Vietnam Chamber of Commerce and Industry (VCCI)
- 1.2 Position paper of American Chamber of Commerce in Vietnam (AmCham)
- 1.3 Position paper of Korea Chamber of Business in Vietnam (KoCham)
- 1.4.1 Speech of Japanese Chamber of Commerce and Industry in Vietnam (JCCI)
- 1.4.2 Position paper of Japanese Chamber of Commerce and Industry in Vietnam (JCCI)
- 1.5 Position paper of British Business Group in Vietnam (BBGV)
- 1.6 Position paper of European Chamber of Commerce in Vietnam (EuroCham)
- 1.7.1 Speech of Australian Chamber of Commerce in Vietnam (AusCham)
- 1.7.2 Position paper of Australian Chamber of Commerce in Vietnam (AusCham)
- 1.8 Position paper of Indian Chamber of Commerce (InCham)

#### **2 SESSION 1: HOW TO REGULATE FOR SUSTAINABILITY**

- 2.1.1 Speech of Investment and Trade Working Group
- 2.1.2 Position Paper of Investment and Trade Working Group
- 2.2.1 Speech of Tourism Working Group
- 2.2.2 Position Paper of Tourism Working Group
- 2.3 Position Paper of Tax and Customs Working Group

#### **3 SESSION 2: BUILDING IN SUSTAINABILITY AND GREEN GROWTH**

- 3.1 Position Paper of AgriBusiness Working Group
- 3.2 Position Paper of Power & Energy Working Group

#### **4 SESSION 3: SOFT AND HARD INFRASTRUCTURE FOR INNOVATION**

- 4.1 Position Paper of Banking Working Group
- 4.2 Position Paper of Infrastructure Working Group
- 4.3 Position Paper of Human Resources WG and Education & Training WG

#### **5 ANNEX: OTHER REPORTS**

- 5.1 Position Paper of Mining Working Group
- 5.2 Position Paper of Automotive Working Group
- 5.3 Summary of meeting between SSC and Capital Markets WG
- 5.4 Summary of meeting between Tax & Customs WG and GDC on Oct 30
- 5.5 Summary of Midterm VBF 2019

## ANNUAL VIETNAM BUSINESS FORUM 2019

*Date & Time: 7:30 AM – 1:30 PM, Friday, January 10<sup>th</sup>, 2020*  
*Venue: Sheraton Hanoi Hotel, K5 Nghi Tam, 11 Xuan Dieu, Hanoi*

### ROLES AND RESPONSIBILITIES OF FDI COMMUNITY IN RAPID & SUSTAINABLE DEVELOPMENT

#### TENTATIVE AGENDA

7:00 – 8:00	<b>Registration</b>
8:00 – 8:15	<b>Opening Remarks</b> <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>Ms. Virginia B. Foote, Co-Chair</i></li> </ul>
8:15 – 9:15	<b>Presentation by 7 Chambers</b> <ul style="list-style-type: none"> <li>Vietnam Chamber of Commerce and Industry</li> <li>American Chamber of Commerce</li> <li>Korea Chamber of Business in Vietnam</li> <li>Japanese Chamber of Commerce and Industry in Vietnam</li> <li>British Business Group in Vietnam</li> <li>European Chamber of Commerce in Vietnam</li> <li>Australian Chamber of Commerce in Vietnam</li> </ul>
<b>SESSION 1 – HOW TO REGULATE FOR SUSTAINABILITY</b>	
9:15 – 10:00	<ul style="list-style-type: none"> <li><u>Investment &amp; Trade WG</u>: Enabling businesses to become driving force of the economy &amp; solutions for high quality sustainable and innovative investment.</li> <li><u>Tourism WG</u>: Role of environmental awareness and importance of sustainability of Vietnam tourism.</li> <li><u>Tax &amp; Customs WG</u>: E-government, success of Customs efforts to date and next steps for efficient e-tax and e-customs.</li> </ul> <p><i>Responses from the Government</i></p>
10:00 – 10:15	<b>TEA BREAK</b>



SESSION 2 – BUILDING IN SUSTAINABILITY AND GREEN GROWTH	
10:15 – 10:45	<ul style="list-style-type: none"> <li>• <u>AgriBusiness WG</u>: Develop sustainable farming techniques, value added supply chains and innovative agriculture.</li> <li>• <u>Power &amp; Energy WG</u>: Sustainable energy security attracting private investment for Industry 4.0.</li> </ul> <p><i>Responses from the Government</i></p>
SESSION 3 – SOFT AND HARD INFRASTRUCTURE FOR INNOVATION	
10:45 – 11:30	<ul style="list-style-type: none"> <li>• <u>Capital Markets WG &amp; Banking WG</u>: How to attract investment for a sustainable financial sector supporting innovation in the Fourth Industrial Revolution.</li> <li>• <u>Infrastructure WG</u>: Sustainable infrastructure development including PPP, waste management, water management, and public transportation.</li> <li>• <u>Human Resources WG and Education &amp; Training WG</u>: Leapfrogging to education &amp; workforce 4.0.</li> </ul> <p><i>Responses from the Government</i></p>
11:30 – 11:45	<b>KEYNOTE ADDRESS: GOVERNMENT LEADER</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, Co-Chair</i></li> <li>• Ministry of Planning and Investment – <i>Mr. Nguyen Chi Dung, Minister</i></li> </ul>
12:00 – 13:30	<b>LUNCHEON</b>

# **I. PRESENTATIONS OF CHAMBERS**



## **REPORT OF VIETNAM CHAMBER OF COMMERCE AND INDUSTRY AT THE ANNUAL VIETNAM BUSINESS FORUM 2019**

### **SUBSTANTIVE AND COMPREHENSIVE EFFORTS ARE NEEDED FOR BUSINESS ENVIRONMENT IMPROVEMENT AND ENTERPRISES DEVELOPMENT**

Vietnam Government has been recently making efforts in establishing a strong, stable business environment and encouraging entrepreneurship. This is not just a statement of “Acting and Enabling Government” or “Businesses as Object of Public Services”, rather, it now becomes concrete actions of recently promulgated and implemented economic policies. Laying at the heart of such efforts are Resolutions of the Government on business environment and enterprises development, including Resolutions No. 19 promulgated annually from 2014 to 2018, Resolution No. 02 in 2019 (replacing Resolution No. 19) and Resolution No. 35 in 2016.

The Government has a hands-on approach in instructing ministries, industries and local governments on specific actions to improve score and ranking of business environment, competitiveness, national innovation indexes. Vietnam Chamber of Commerce and Industry (VCCI)’s surveys in 2019 showed that Vietnam business environment is considered to be developing more positively, though there is still an disparity among sectors. VCCI conducted a report reflecting business community’s perspective and analysing how ministries and local governments have been implementing Resolutions No. 02 in 2019 and Resolutions No. 35 in 2016, and main findings are<sup>1</sup>:

- Among Resolution No. 02’s areas, *business establishment and access to electricity are the two most improved*. On the other hand, *business bankruptcy, investor’s protection and import - export procedures* have been evaluated as having little improvement;
- Business registration: according to our survey, online registration, registration via post office or public service centers increases from 12,5% to 17,4%. However, positive evaluation on information technology application in this area decreased from 60% to 36%;
- Tax: taxation procedures are improved, the easiest one is tax payment, the two most difficult ones are tax refund and tax reduction procedures. Online tax claim raises up to 98.4%. However, tax inspection has not been improved much, with 33% of enterprises responding that tax officers interpret legal provisions in a disadvantaging way for businesses, and 30% reporting existence of unofficial cost during tax inspection and examination;
- Issuance procedure of construction license and other related licenses: enterprises still need to spend much travelling time in submitting their dossiers (3 trips on average for each procedure). Procedures for construction and fire-protection and prevention are not yet merged. Up to 63% of enterprises have to apply for fire-protection and prevention certificates, 30% report difficulties while applying;
- Access to finance: it is still the second most difficult area of enterprises, the biggest constrain being necessity of collateral for loan granting (86% of enterprises agrees). 39%

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<sup>1</sup> Full report (Vietnamese) has been published on VCCI’s website at <http://vibonline.com.vn/chuyen-muc/an-pham>

of enterprises responded that there is a common bribe practice for loan officers in order to get approval;

- *Real estate registration and land management*: administrative procedures related to land are evaluated as positively improved. Yet, lack of transparency and published information from government authorities on land is becoming a major problem for business community;
- *Judicial reform, bankruptcy and dispute resolution*: after 5 years of continuous decrease (from 60% in 2013 to 36% in 2017), the rate of enterprises that choose to bring their disputes to court has increased, up to 45% in 2018;
- *Regulation compliance cost*: in general, score on required documents and effectiveness of processing administrative procedures by public officials has improved. Cost of time for searching for and complying with legal regulations also decreased. Nevertheless, rate of enterprises that have to take multiple trips in submitting their documents has increased;
- *Corruption control*: evaluation from enterprises on the popularity and value of unofficial cost are both decreased. However, petty corruption during administrative procedures is still an issue of concern;
- *Infrastructure and access to electricity*: mainly, positive evaluation of Vietnam's infrastructure is slightly increasing throughout recent years. However, about half of survey respondents consider transportation and industrial infrastructure still not able to satisfy their needs;
- *Business and investment conditions*: there is a dramatic improvement in reduction of investment and business conditions: only 48% of enterprises have to apply for Conditional Business License (decreased from 58%) and 34% of enterprises said they countered difficulties when apply for business License (decreased from 42%). Yet the reduction of conditions lying in Appendix No. IV of Law on Investment and other laws must be continued;
- *Industry-specific inspection*: almost all ministries have reduced product range as subject of examination and clarified HS code. However, request from the Government to extensively apply risk management, and moving from goods check at border to goods check during market circulation, is still not widely applied. There are still cases of broadening scope and intensification of industry-specific inspection procedure in labor safety area. The designation and recognition of conformity assessment's results is improved, but there are still delays in designation, limited designation that leads to monopolization, or refusal to recognize results of some authorized organizations. There are still cases where goods without technical requirements are included to the scope of examination;
- *National One Stop System*: the number of administrative procedure connected to One Stop System dramatically increased, however, most of enterprises are still required to submit paperwork documentation instead of full online submission. IT infrastructure of the System needs to be improved as 40% of survey respondents reported frequent systematic and access errors, slow loading speed, network congestion, denied access and specific browsers and/or computer system compatibility;
- *Online Public Services Portal of ministries and local governments*: almost ministries and local governments have their Online Public Services Portal which provide level 3 and 4 of services. Despite that, only some of them work effectively. Majority of portals have very low online submission rate, amounting only to only some submissions or less than 1% of total accepted applications. In some cases, government agencies refused to accept hard-copy applications in order to force enterprises and individuals for online application;
- *Electronic payment*: policies on promoting electronic payment are being developed and implemented, yet slower than planned;
- *Target of One million enterprises in 2020*: if the growth rate of new enterprises registered as recent 3 years is maintained, by the end of 2020, Vietnam will have approximately

984.000 enterprises. Hence, reform solutions must be maintained and further facilitated in the rest year to reach that target;

- Stability, consistency and predictability of policy: it is worrying practice that rate of enterprises who said they can predict the change of policy in recent 5 years has been continuously decreasing. Number of enterprises never or hardly able to predict policy's changes increase from 42% in 2014 to 67% in 2018. In particular, businesses are very concerned about tax policy changes. The constant change and high tax rates, particularly the changes of excise tax affect not only the businesses that are subject to this tax but also impact on many related industries as well as the whole economy. Therefore, any change in tax policy should be carefully studied and consulted by experts and the business community;
- Principles of fair competition: non-discrimination between domestic and foreign enterprises, between private and state-owned enterprises tends to decrease in all areas, except the allocation of land resources. Whereas, the favor treatment toward "backyard" enterprises are still a serious problem;
- Organize Dialogue between the Government and enterprises, resolve problems for enterprises: proportion of enterprises satisfied with the organization of dialogue, resolve problems of ministries and local governments has slightly increased;
- Inspection and examination: there is a dramatic decline in percentage of businesses that encounters double inspection or examination in a year, from 40% to 19%. In addition, the percentage of enterprises reporting duplicated content in inspection and examination also decreased from 14% to 11%;

As such, ministries and local authorities need more substantive and comprehensive reforms to create a favorable business environment for business community. Here are some recommendations to promote business environment and support entrepreneurs:

- Starting a business: Government agencies should continue to promote the simplification of post-enterprise registration procedures such as labor declaration, social insurance registration, purchase of invoices, opening of bank accounts, payment of license fees. The most appropriate simplification is still linking or combining administrative procedures so that businesses can do many procedures at the same time. In addition, some unnecessary procedures such as licensing fees and business seals may be abolished.
- Paying taxes: About taxation, reform measures need to focus on a number of issues such as a) simplifying regulations on invoice purchase procedures, self-printing invoices or using electronic invoices; b) improving the implementation of tax refund procedures, tax exemptions and tax liabilities; c) tax policies should be clear to avoid conflicts between tax authorities and enterprises when determining tax obligations. In addition, the tax authorities should accelerate activities to support taxpayers, especially for business individuals and microenterprises.
- Construction licenses and related licenses: The linking of different procedures and resolving overlapping administrative procedures of a construction investment project at present should be the policy focus in the coming time. Procedures in the fields of investment, land, construction, fire protection and environmental protection need to be further studied so that they can be carried out in a coordinated or combined scheme to shorten time, costs and risks for the implementation of the project. In addition, it is necessary to socialize, allow different entities to participate in providing verification, evaluation and conformity assessment services in the area of design, construction, fire protection, environmental protection.

- *Land management and real estate registration:* The biggest problem in the area of land management and real estate registration currently in Vietnam is the ability to connect data and assessment of land information. Detailed land information for each parcel of land, both current and planned, needs to be accessible to third parties, although conditions and costs may be applied.
- *Judicial reform, dispute resolution and bankruptcy:* State agencies need to have a comprehensive strategy for judicial reform to support business environment. This strategy should focus on narrowing the time and anticipation of trial activity. This strategy should set goals and solutions to shorten the time and increase the effectiveness of the civil judgment enforcement.
- *Infrastructure and access to electricity:* Transport infrastructure and industrial parks still need stronger investment to meet the business demand of enterprises. Although the electricity infrastructure has received positive evaluation in the past few years, the risk of electricity shortage is returning. Therefore, measures to attract investment, especially private investment in infrastructure, need to be focused. Among them, the promulgation of Law on public-private partnership investment is considered a key solution.
- *Reform of business investment conditions:* The mechanism for controlling investment and business conditions should ensure the consistence between laws and decrees. Laws also need to meet the criteria of transparency, feasibility, and plausibility of business investment conditions, avoiding the case of promulgating provisions in general terms and then assigning the Government to stipulate in detail. The list of conditional business investment sectors in Appendix 4 of the Law on Investment should also be targeted for study in order to continue reducing, therefore maintaining freedom of business and reducing the need to apply for sub-licenses.
- *Import - export and specialized inspection:* Import - export and specialized inspection still have plenty of room for reform. The National One Stop System needs to be upgraded to increase processing speed, avoid network errors, aim at digitalization of the whole procedure, eliminate paper-based filing. The shift to risk-based management requires a new breakthrough which relies on database and computer assessment of risk level according to predetermined criteria. The conformity assessment needs to be further socialized and strictly managed instead of the current management by registration and conformity announcement procedures.
- *Control corruption and reduce business costs for enterprises:* The problem of petty corruption when carrying out administrative procedures, inspection and examination should continue to be focused. The focal solutions are a) application of information technology to monitor the implementation of administrative procedures, b) regular inspection of public activities, c) aligning responsibility for controlling corruption with assessment of public officers.
- *Public Service Portal:* State agencies should continue to promote the application of Public Service Portals when carrying out administrative procedures. The initial phase of building the framework is over, and soon, local ministries and agencies need to focus on improving the efficiency of Public Service Portals, ensuring the rate of online service delivery and processing is increased by time. In addition, national databases need to be shared as soon as possible to reduce costs and facilitate procedures.
- *Stability of policy:* The principle of non-retroactivity must be ensured when formulating legal regulations. The process of consultation on draft of legal documents should be carried out substantially and more regularly, avoiding sudden promulgation of new policies and changes to existing ones. In addition, business license expiry date needs to be extended or indefinited to help stabilize business and investment environment for enterprises.

- *Fair competition:* The principle of fair competition needs to be improved in land accessibility area by realizing the tendering policy for selecting investors which is stated in the Investment Law. Bidding and auctioning to allocate resources such as natural resources, contracts, business opportunities should be expanded or continue to be conducted in a more transparent way.
- *Transparent inspection and examination:* The inspection and examination of enterprises needs to gradually shift to the principle of risk management; high-risk enterprises will be conducted more inspection than low-risk enterprises. The selection of subjects to examination and inspection must be processed by computer based on predefined criteria and objective input information. The results of inspection and examination should also be publicly announced.

This position paper was the main research findings of VCCI's *Report on the Implementation of Resolution No.19/2019 and No.35/2016 of the Government* supported by "Australia Supports Economic Reform in Vietnam" (Aus4Reform), a program between the Government of Australia and the Government of Vietnam (funded by Department of Foreign Affairs and Trade – DFAT) supporting Vietnamese agencies in achieving goals of Master Plan on Economic Restructuring.



## **AMCHAM STATEMENT AT THE ANNUAL VIETNAM BUSINESS FORUM 2019**

*Presented by  
Mrs. Amanda Rasmussen  
Chairwoman*

Good morning and thank you for the opportunity to speak about AmCham's view of promoting an innovative and sustainable business environment in Vietnam.

AmCham members have contributed significantly to the transformation and growth of Vietnam's economy for more than 25 years. As we begin this new decade, AmCham remains committed to working in partnership with the Government to help improve business conditions that strengthen the private sector, ensure sustainable economic and social development, and promote prosperity here.

AmCham members have brought high-quality products and state-of-the-art technologies, services, and business practices to Vietnam. We have partnered with Vietnam to develop high-tech, innovative industries. We are committed to upholding Vietnam's labor and environment laws, and to being good corporate citizens. Our companies are leaders in promoting sustainability and innovation in Vietnam through global business practices that ensure responsible supply chains and combat climate change. We want to partner to develop infrastructure that ensures energy security and facilitates sustainable growth. We share an interest in developing a globally competitive workforce, creating quality jobs, and investing in the professional development of our Vietnamese team members. We will help find solutions to emerging concerns - such as air quality - in order to ensure a healthier, safer, cleaner and greener Vietnam.

Vietnam continues to be one of the fastest growing export markets for the United States and the United States remains the largest export market for Vietnam. With a growing trade imbalance, it is critical that our members encounter a level playing field in Vietnam and that barriers to trade and investment are eliminated.

### **DEVELOPING AN ENABLING REGULATORY ECOSYSTEM**

Promoting a fair, transparent, predictable, and streamlined regulatory ecosystem that values innovation will help Vietnam continue to attract, retain and grow high-quality trade and investment, including by AmCham member companies.

*Fair and Predictable Tax Policies:* AmCham seeks fair, predictable tax policies aligned to global standards to attract and retain investment. Changes in tax policy, including retroactive applications, are among the biggest concerns of our member companies. We urge adoption of OECD guidelines on transfer pricing, as well as enabling advance pricing agreements to facilitate business planning. We also seek improvements in efficiency to reduce the compliance burden,



include adherence to the 15-day period for simple audits. We request reforms of these and other policies on a national level to improve investor confidence and stimulate trade and investment.

*Customs Modernization:* We appreciate the efforts and progress of the General Department of Vietnam Customs and some local customs departments in initiatives to modernize customs and improve transparency and efficiency for Vietnam's importers and exporters. We encourage further progress to increase streamlining and transparency in customs clearance processes, including the flexibility to provide express delivery services. We welcome the U.S.-Vietnam Customs Mutual Assistance Agreement and look forward to its implementation. We encourage adoption of a more focused approach to target reviews of high-risk importers, rather than legitimate traders. AmCham also seeks to reduce uncertainty and misalignment during customs audits by greater implementation of advanced rulings. We believe greater efficiencies and compliance will be achieved if more companies know which items qualify for an advanced ruling; for example, classification, valuation and origin, and the procedure for doing so. Equally, AmCham appreciates the Government's new initiative to make border gate customs officers the focal point for specialized inspections. However, we are concerned that the short time allowed for development of draft regulations could compromise the effectiveness and sustainability of the new scheme. The ongoing collaboration between the General Department of Vietnam Customs and USAID's Trade Facilitation program offers a means of addressing this and many of the business community's other outstanding customs issues.

*Elimination of Technical Barriers to Trade:* U.S. agricultural exports provide key inputs to Vietnam's growing apparel and furniture business, as well as supplying animal feed and safe, high-quality food and beverage products for Vietnamese consumers. Agricultural trade also helps balance the bilateral trade relationship. However, technical barriers to trade have created uncertainty and negatively impacted U.S. agricultural exports. We continue to urge Vietnam to eliminate technical barriers to trade through science-based standards consistent with international norms. Recent regulations on some agricultural imports - including grains imported from the United States - imposed a zero-tolerance policy, causing confusion and uncertainty, deterring companies from shipping to Vietnam, and negatively impacting the Vietnamese food-processing industry. AmCham recommends the establishment of a regular consultation process to address policies related to plant health concerns. Through this platform, Vietnam can identify best practices with industry assistance and apply science-based, internationally accepted industry protocols that will enable Vietnam to continue importing US wheat, soybeans, and corn.

*Transparent and Timely Land Use Permitting:* Our members' reduced ability to develop real estate impacts a broad range of stakeholders across all segments of the economy. Conflicting regulations on zoning, land use, and construction codes, as well as bureaucratic caution resulting from ongoing investigations, have brought many projects to a stand-still. This has deterred investors from developing high-quality projects that would bring innovation and generate economic growth opportunities to many parts of Vietnam.

## **UNLOCKING INNOVATION AND THE FULL POTENTIAL OF THE DIGITAL ECONOMY**

Entrepreneurs have long been a major part of Vietnam's growth and development. It is the innovative spirit and foresight for change that has driven the growth and development of Vietnam's economy since relations renewed with the United States. The inventive spirit continues today, and is further amplified by the readiness for further innovation. Consider Vietnam's large, youthful population ready for new technologies; the high number of Internet users and smartphone apps usage - in both urban and rural areas; and the increase in software production and technology

manufacturing. Vietnam and its people are poised to embrace the fourth industrial revolution (Industry 4.0).

With the digital revolution affecting every industry, several key factors will foster the innovation necessary to accelerate growth of Vietnam's digital economy. One of the more significant factors is market access by U.S. and other foreign enterprises that bring skills and technology to Vietnam. There are, however, several critical areas that currently create barriers to this potential growth engine and threaten to limit Vietnam's transition to Industry 4.0.

*Free and Open Digital Economy:* The digital economy is a major component of the digital revolution happening in Vietnam. Maintaining a free and open digital economy is key to maintaining Vietnam's competitiveness and promoting innovation. The digital economy significantly reduces costs, provides products and services to a broader range of consumers, and increases access to newer and bigger markets. And a big part of Vietnam's dynamism is the innovation that takes place on social media platforms.

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. Increasing digital literacy will also help all Vietnamese people, including many in the labor pool, to approach and accept innovations that allow them to adapt to changes in skills and the types of jobs necessary to support new ways of living and working.

*Cybersecurity:* The integrity of network cybersecurity is of critical importance to our members. The lack of digital standards, norms and certification, coupled with the risks of cyber threats, may stifle robust development of the corporate infrastructure necessary to accelerate the implementation of technologies necessary to support innovation and economic growth. Vietnam can achieve an open, innovative, and secure online environment that fosters commerce. Requirements under current law for data localization and local offices impose unnecessary burdens to service providers without corresponding benefits. AmCham seeks implementing guidance to reduce confusion and ease uncertainty.

*Financial Services and Fintech:* 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. For example, non-cash payments are critical to innovation, smart cities, and Industry 4.0. Those services and the supporting technology come from major foreign fintech companies currently operating and investing in Vietnam.

The introduction of foreign ownership limits to the fast-growing payments and fintech sector will 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. The current draft decree amending Decree 101 that imposes a foreign-ownership cap may drive out current innovation and prevent others from coming. Fintech services rely on the use of artificial intelligence and big data analytics - where foreign companies have led in the development of these technologies. Overall, such limits would make it very challenging for the sector to grow and we hope that the government will enable fintech services to contribute to technology, innovation, and financial inclusion in Vietnam.

## DEVELOPING PHYSICAL INFRASTRUCTURE TO PROMOTE SUSTAINABLE GROWTH

AmCham members are eager to partner with Vietnam to develop infrastructure that integrates the country and promotes inclusive, sustainable growth. Currently, infrastructure is one of the key constraints limiting Vietnam's economic growth. Mobilizing the capital needed for infrastructure requires private sector participation which in turn requires market-based risk adjusted returns for investors. Our member companies need the government to establish a Public Private Partnership (PPP) that enables private investment in infrastructure projects. Sustainable growth in Vietnam depends on investments in port infrastructure, airport facilities, roads, and public transportation to support increased movement of people and goods in Vietnam

*Clean, Reliable Energy:* Energy security is essential to support and accelerate the process of sustainable industrialization and modernization of Vietnam. Today, the risk of power shortages is real and immediate, especially under extreme weather conditions and projections for predicted energy demands for socio-economic development in the next one to five years. AmCham members are eager to partner to provide the energy infrastructure Vietnam needs to provide energy security and promote clean energy and sustainable economic growth. The *Made in Vietnam Energy Plan 2.0* highlights these opportunities. Renewable energy sources, LNG developments and imports, a regulatory and permitting environment to attract private sector investments, as well as SME and off-grid investments, are among some of the key initiatives our members have raised to ensure that Vietnam's energy development meets the environmental, health, economic and geopolitical security goals of the country. Yet, with no backup plan and delayed electricity projects, the risk of energy shortages remains high. Renewable energy solutions are not only sustainable in Vietnam, but are also inexhaustible and non-polluting. Other opportunities, such imported LNG and domestic power plant developments by U.S. enterprises, are other ways to avoid imminent energy shortages to support continued growth and innovation.

*Transportation and Logistics Infrastructure:* Another key constraint on Vietnam's development is its transportation infrastructure. AmCham members welcome a more balanced approach to transportation infrastructure development that supports investment and economic growth throughout the country. Port and airport facilities should be convenient to population areas but not so close that they contribute to the growing traffic congestion challenges caused by urbanization trends. We encourage efforts to promote port decongestion and more efficient use of deep-water ports. AmCham members and other U.S. companies offer high-quality aviation technologies and services and are eager to participate in aviation infrastructure development, supported by the US-ASEAN Aviation Cooperation Partnership.

*Smart Cities Infrastructure:* Vietnam's major cities are rapidly urbanizing; smart and creative cities development approaches can help Vietnam leapfrog its development of modern sustainable cities. AmCham members are eager to support Vietnam develop its major urban areas into smart, creative cities and welcome more information about plans, including traffic management, flood and water resource management, and efforts to minimize air pollution. U.S. companies are global leaders in smart cities solutions, including intelligent transportation, emergency response, energy, e-government, cybersecurity, healthcare, education, and financial services.

*Healthcare Infrastructure:* AmCham members are global leaders in healthcare, pharmaceuticals, devices, and services. We want to partner with Vietnam to promote healthcare innovation to enable Vietnam to serve the healthcare needs of its citizens and attract medical tourism. We are concerned about new draft decrees that would severely restrict the ability of foreign medical practitioners to provide medical services in Vietnam. We are hopeful Vietnam can continue to allow innovation and access to top medical care by participation of both domestic and foreign medical professionals.

We also seek responsible, secure digital systems as Vietnam mandates the creation of a digital portal of pharmaceutical sales, including sensitive business data of hospitals, drug manufacturers, pharmacies and operators, as well as private patient data on medical conditions/diagnoses and drug treatment protocols used. AmCham urges the Ministry of Health and the Drug Administration of Vietnam to consider modifications to Directive 23 & Decision 540, to ensure rigorous privacy and security policies to protect the use and access of this sensitive and private data as part of the proposed Vietnam Pharmaceutical Portal (VPP). We also recommend that patient consent is obtained prior to the collection and use of the patient's medical records in the VPP, which under current law is entitled to high protection as a state secret. As Vietnam pursues digital collection and use of data, it is imperative that its use and storage have security and privacy measures in place to protect against improper and damaging uses.

*Promoting Sustainability Through Corporate Practices:* AmCham members prioritize sustainability through their business practices as well as their corporate social responsibility activities. Many of our member companies are investing in renewable energy to meet global commitments to combat climate change. Another example of industry-led sustainability initiatives includes the recent launch of a nationwide recycling program created and funded by beverage and packaging MNCs in Vietnam. These members of AmCham and other chambers have created and funded a comprehensive plan to reduce waste in Vietnam and create education and other tangible benefits for the people of Vietnam. This is just one example of the business community working for a sustainable future.

## **DEVELOPING A GLOBALLY COMPETITIVE WORKFORCE**

*Labor Laws Aligned with Regional and Global Standards:* Labor laws represent one of the most influential factors in determining growth in productivity and wages, which has a direct impact on maintaining sustainable economic growth. AmCham welcomed the adoption of the revised Labor Code which contains significant changes and improvements, consistent with Vietnam's global trade commitments. There are, however, a number of areas of concern that the revised Labor Code failed to address. We call for the Government's support to clarify these issues in the implementing decrees. First, we suggest that the implementing decrees clearly provide the special situations for 300 hours annual overtime cap and confirm that enterprises will only need to notify, not to obtain approval from, the labor authority to have employees work for 300 overtime hours per year. Second, we suggest that the implementing decrees provide a streamlined new work permit application process for those foreign employees who have been working in Vietnam and have been granted work permits in Vietnam, even after the first renewal.

*Talent Development and Increased Productivity through Education and Training:* The expansion of the population and workforce in Vietnam over the past 25 years has been a major factor in stimulating economic growth and attracting investment to Vietnam. The foundation for improving the operational efficiency and competitiveness of Vietnamese-based businesses is workforce productivity. Numerous studies show that educational curricula in Vietnam are outdated, teachers overwhelmed and underpaid, and graduates lack the job-ready skills sought by the private sector. To continue attracting investment and to upgrade the skills of its workforce, the government should take further action to modernize and upgrade its national education system, particularly at the vocational and university levels. Modernizing education will ensure that Vietnam has a skilled workforce of managers, engineers, and manufacturing and construction technicians that can move up the value chain as the economy grows. In addition, companies that are considering shifting production to Vietnam are looking closely to see if the workforce has the skills required for their business. Some of our member companies are educational organizations directly involved in academic reform efforts. Other member companies are active contributors to education and

workforce development here in Vietnam, and continue to invest in their own employees' professional development.

## **INVESTING IN THE FUTURE**

AmCham members together represent billions of dollars in foreign investment, tens of thousands of direct employees, hundreds of thousands of indirect employees, and a significant share of Vietnam's exports and tax revenues. We are committed to partnering with Vietnamese authorities to develop the regulatory ecosystem, physical infrastructure, and talent to promote sustainable economic growth and innovation, and to ensure that Vietnam is a leader in the digital economy and Industrial Revolution 4.0. As major investors here, American companies have an interest in Vietnam's continued success. We are investing in the future. We are invested in the future.

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 AT THE ANNUAL VIETNAM BUSINESS FORUM 2019**

### **1. Difficulties concerning the denial of duty exemption on the outsourced parts of raw materials for export**

We would like to talk about the difficulties that we are facing regarding the denial of duty exemption on the outsourced parts of raw materials for export. On Sept. 26<sup>th</sup> 2019, KOCHAM sent an official letter (1911/HHTMHQ) to the relevant Vietnamese authorities including Vietnam's finance minister, which included proposals to deal with "our difficulties concerning the denial of duty exemption on the outsourced parts of raw materials for export." However, we received a reply (6768/TCHQ-TXNK) from the General Department of Vietnam Customs, stating that the process outsourcing when producing goods for export does not fulfill the duty exemption requirements specified in Clause 2, Article 12 of Decree 134/2016/ND-CP.

In this regard, KOCHAM submitted a letter of petition (1921/HHTMHQ) on Dec. 2<sup>nd</sup> 2019 to the relevant authorities including the Prime Minister, offering four solutions as follows with respect to the Ministry of Finance's statutory interpretation and the difficulties that the companies face due to the denial of duty exemption on the outsourced parts when producing goods for export.

*Firstly*, we need to take into account the reality that many exporting manufacturing companies are confronted with. Generally speaking, manufacturing companies are rarely 100% self-reliant when producing goods for export. Rather, it is quite reasonable for manufacturing companies to outsource a specific work process or processes to their affiliates or external companies for the sake of efficiency.

*Secondly*, we need to consider the key players in exporting and manufacturing. From the perspective of the companies, all companies including those which import raw materials for export and those which are commissioned to undertake a specific work process or processes are classed as the key players in manufacturing goods for export. Thus, each process outsourced to a company makes up the work necessary for manufacturing one common good for export. Thus, it is fair to believe that if imported raw materials are used in a process of manufacturing an exported final good, they will be exempt from duty.

*Thirdly*, there are concerns over the retroactive taxation and penalties which could be imposed on such companies. One of the main concerns that the companies have is that unless the statutory interpretation which only recognizes self-production as being exempt from duty is withdrawn, it may inevitably lead to the retroactive taxation.

*The fourth issue* raises questions over the level of fairness with export processing enterprises. According to the Decree, export processing enterprises are entitled to duty exemption on raw materials imported for export even under a processing contract. However, considering the fact that the processing outsourcing of export manufacturing companies creates more added value and greatly contributes to the Vietnamese industrial development, it is clear that no entitlement of duty exemption can be viewed as unfair treatment.

Rather than taking the position on whether the statutory interpretation is right or wrong, we

strongly believe that the tax policy should focus on the development and growth of the SMEs in the components and materials industry which serve as the country's foundation. In doing so, Vietnam will achieve both economic growth and national development fueled by an increase in exports and the national income. To this end, on behalf of the entire FDI companies including Korean companies, we sincerely ask for your consideration regarding the difficulties that we are confronting and for your support in amending the relevant regulations so that the retroactive taxation is not imposed due to an unclear statutory interpretation.

## **2. Suggestions for reductions in NG (Natural Gas) consumption**

I would like to now focus on the companies' views on a reduction in NG consumption. KOCHAM member countries have put great efforts into reducing NG gas consumption upon PV GAS's requests that were made twice—one in Dec. 2018 ~ Jan. 2019 and the other one in May ~ June 2019. However, many companies are now struggling as the companies' financial balances have deteriorated due to an increase in manufacturing and processing costs, and a rise in the clients' complaints over the delays in the delivery of products.

The affected manufacturing factories which are experiencing troubles in the supply of NG may have to undergo a temporary suspension of process, pre-heating and preparations for the rerun. As a result, a greater amount of gases are consumed and productivity decreases, leading to a dramatic increase in manufacturing costs.

In particular, most of the companies that are using NG are in the materials industry which produce steel, chemical and agricultural materials rather than consumable products. It means that the struggles of these companies may translate into other companies which use those materials to produce export goods, agricultural products, home appliances, kitchenware, architectures, etc. At this time, there is a mounting concern over its impact across Vietnam's manufacturing industry.

In this regard, KOCHAM sent an official letter expressing our opinions to the relevant authorities including the Ministry of Industry and Trade of Vietnam on Nov. 20<sup>th</sup> 2019. Through VBF, we hope you take into account the impact of a reduction in NG consumption on the related companies and the entire Vietnamese manufacturing industry and their difficulties. Also, when developing an NG supply plan, we request that you ensure it is supplied sufficiently for the companies. If there is a need to reduce the supply, it would be beneficial if you could notify us at least 30 days before making any decision on possible reductions and the reductions should be determined as a minimum so that the companies can prepare in advance.

## **3. Our views on the labor environment**

*First of all*, one of the concerns that we have is the outflow of the workforce. As more and more Chinese companies are investing in North Hanoi, the workforce outflows have become a serious issue facing all Korean companies.

*Second*, it is an issue regarding country-level support. Companies that are investing in Central Vietnam are struggling to deal with a lack of highly skilled workforce and increasing labor costs.

*Third*, we ask for the stabilization of labor costs. We have expanded our presence in China and in the south of Vietnam, Binh Duong, as well as investing \$100 million in Quang Nam Province in 2015. Currently, 6,700 workers are employed. However, we are facing a serious business problem due to increased labor costs. In this respect, we ask for your assistance by implementing measures

to help stabilize the rising labor costs.

#### **4. Our views on industrial infrastructures**

*First of all*, we would like to direct your attention to the paper industry. In Vietnam, the paper industry is still not fully developed which leaves us with no choice but to import raw and subsidiary materials from China and Korea. However, we believe that the development of the Vietnamese paper industry will enhance the competitiveness of local companies as well as foreign investment companies.

*Second*, there is a need for the stabilization of logistics cost. Since 2019, we have invested in Ho Chi Minh City to produce automotive batteries and are currently importing raw and subsidiary materials. However, our competitiveness has been undermined because of the relatively high logistics cost in Vietnam. To this end, we would like to request for your assistance in stabilizing the logistics cost.

*Third*, there is an issue related to the area of land lease. When renting land for an industrial complex, the land offered is in a large size. Because of this, many companies are struggling over losses made on their initial investment even if a large area of land is not required.

#### **5. Suggestions for business support policies**

In general, it takes about 3~5 years to nurture a specialized workforce for new industries. However, the actual level of workers is below the average due to a lack of specialized institutions providing high-quality training. Even if companies want to undertake an autonomous training program, the government's support and incentives remain insufficient. Thus, we ask for your active support and more incentives on this front.

#### **6. Suggestions for intellectual property**

The counterfeit goods of Korean products such as MUMUSO and mini Gucci are being sold across the globe including Vietnam. Acknowledging that the current intellectual property law is insufficient in controlling such an issue, we ask the Vietnamese government to be fully committed to stopping the trade of counterfeit goods through a continuous crackdown and relevant prevention measures.

#### **7. Suggestions for licensing and permit requirements**

*First of all*, we would like to address the effective date of the Central Government's decree. Currently, the Vietnamese government lacks consistency in its policy stance. Oftentimes, the Vietnamese government unilaterally changes the requirements for an investment license. In particular, it takes far too long for the changes made to the Decree by the Central Government to be applied to the local governments. As a result, even though investors are willing to abide by the changed requirements for investment, they are having difficulties in obtaining an investment license because of local public officials who are ignorant of the changes that have been made to the requirements.

*Second*, we would like to request an ease on foreign investment restrictions. Recently, more and more Korean companies are willing to enter the Vietnamese market thanks to the fourth industrial revolution and the growth of the smart city industry. However, it still remains true that foreigners



who wish to establish a local corporation and undertake business activities in the local IT industry are still faced with a number of restrictions. Therefore, we kindly ask for the easing of restrictions on foreign investment in the IT industry.

*Third* is to do with the bidding. During the general bidding and e-bidding, bidders are required to follow strict standards. To ensure a level playing field between foreign and local companies, we ask for your support and sufficient levels of improvement.

## **8. Suggestions made by individual companies**

*First*, this is related to a procedure for establishing a factory and the relevant laws.

In 2020, we are planning to invest \$14 million in building a power plant that reuses the wastes generated from Binh Thanh Thermal Power Plant in Ba Ria-Vung Tau for cement and ready-mixed concrete raw materials. However, the procedure to adhere to for the establishment of a factory is still unclear and the documents requested by the government change far too often. We suppose there is a large gap between law and the actual implementation thereof. In addition, a new law was established to prevent illegal waste disposal and to promote the recycling of thermal power plant wastes as an Ordinance of the Prime Minister. Unfortunately, no step to enforce such a law has been taken, failing to provide incentives to the actual establishment of a power plant.

*Secondly*, there are issues regarding imported raw and subsidiary materials and the supply of local raw materials. (Rio Industries Co.) When the rival Chinese factories import raw and subsidiary materials from China, they are required to pay 20% for import duties. Rather, they use an incorrect HS Code issued by an agency authorized to issue the certificates of origin and make an incorrect claim for the preferential tariff when importing them into Vietnam. Due to their misconduct, the competitiveness of import companies fully observing the law is being undermined. Furthermore, not only in the garment industry but also when exporting goods to Europe, United States, Korea, etc., we are required to use Vietnam's local raw materials. Yet due to their unstable supply, we are not fully enjoying the benefits of the FTA. Thus, we ask you to come up with the relevant measures on this matter.

## **9. Suggestion for an open mind when building major infrastructure**

Earlier this year, we participated in the international bidding for the PPP section of the North-South Highway Project. However, the Ministry of Transport reversed its decision to allow foreign companies to participate in the bidding and restricted the bidding to Vietnamese enterprises only.

The fact that the Ministry canceled a tender not only undermines Vietnam's national credibility, but also serves as a considerable disadvantage for national growth by ruling out foreign companies and discouraging advanced countries' experiences and infrastructure technologies from entering into the Vietnamese market.

We suggest that you invite foreign companies to the additional SOC (Social Overhead Capital) projects in the future.

## **10. Suggestion for implementing fair trade remedies**

It is undisputable that foreign-invested production companies that are established in Vietnam,

similar to domestic companies can also make a request for trade remedies such as anti-dumping, safeguard, etc. to protect and maintain the market order when low-priced, low-quality foreign products are imported in large quantities.

Regardless of foreign-invested or domestic companies, this is the right granted to companies with respect to fair trade. Therefore, we ask for the Vietnamese government's active cooperation in responding to reasonable requests for trade remedies.

## **11. Suggestions for foreign loan agreement registration and facilitating enterprises in Vietnam**

*First of all*, we would like to extend our warmest regards and sincerest thanks to you for your support and cooperation over the past years. Through this letter, we would like to draw your great attention to the foreign loan agreement registration issue and suggest that you take on a number of measures and/or actions and use your voice to better facilitate enterprises in Vietnam.

It is a fact that we are currently operating two (02) enterprises in Vietnam, namely Vina Pioneer Industrial Co., Ltd and Pioneer Plastic Industrial Co., Ltd IN Pho Noi A Industrial Park, Hung Yen Province. For the purpose of developing and expanding our businesses, we have carried out the registration of foreign loans with the State Bank of Vietnam. However, we are unable to proceed with our application as it has been refused on the basis being a resident in the territory of Vietnam (Foreigner staying for more than 183 days in Vietnam) in compliance of Clause 1, Article 11 of the Circular No. 03/2016/TT-NHNN dated 26 February 2016, providing several instructions on foreign exchange administration in respect of Enterprises borrowing and the foreign debt repayment of Enterprises clearly states that the "Foreign loan agreement as the basis for the loan registration (hereinafter referred to as the foreign loan agreement) refers to agreements effecting the fund withdrawal which are entered into between borrowers and non-resident creditors, and under which the debt repayment obligations of the borrowers or debt instruments issued by residents to non-residents arise".

Reviewing clause 1, Article 11 of the Circular No. 03/2016/TT-NHNN, we suppose that this regulation makes no sense at all and that the registration of foreign loans is completely feasible and allowed regardless of the resident or non-resident individuals. In addition, our owner is a Foreigner and Investor who has assets overseas, thus lending in USD is absolutely reasonable.

Furthermore, it is evident that the Enterprises or/and affiliates in Vietnam based in Korea reserve the rights to borrow loans from their Parent Company, so we are wondering whether this policy should be also applied for an individual foreign investor in Vietnam?

By acknowledging the difficulties and challenges confronted by individual investors in general in the loan agreement registrations, we strongly recommend that you raise your voices to ask for policy changes in order to foster and stimulate individual overseas enterprises to make investment into Vietnam and ensure equality in business.

## **12. A need for expanding licenses for Korea-based banks to financially support the early-stage companies entering into Vietnam**

Since the establishment of diplomatic relations in 1992, many Korean companies that have invested in Vietnam have contributed greatly to Vietnam's industrial and economic development.

So far, about 8,000 Korean companies have invested in Vietnam and will continue to increase. Korean companies are rapidly expanding their investment areas from the industrial parks of Hanoi, Ho Chi Minh City, and the outer provinces of Hai Pong, Phu Tho, Dong Nai, and Binh Duong to the central part of the country.

In order for Korean companies investing in Vietnam to settle down in a stable manner, they need financial support from Korean banks. Early investment companies with no business records need to rely on the credit or assets of their parent companies to obtain loans and they want to get local information and financial counseling from Korean banks. In addition, various support policies operated by Korea's policy financial institutions (credit guarantee fund, technology guarantee fund, etc.) are also available through Korean banks.

Korea is the No. 1 country that has invested a total of \$61.7 billion in Vietnam since the establishment of diplomatic relations. 71.5% of these companies are investing in technology and manufacturing SMEs, and they are mainly investing in the provincial industrial complex. So we would like to ask for the SBV's support to allow the Korean banks to open additional branches and establish bank subsidiaries in the region.

With the support of the Korean banks, the more Korean companies grow stably, the more jobs will be created in Vietnam. Korean companies will grow together in cooperation with Vietnamese companies in the supply chain, which will contribute to Vietnam's transformation into a manufacturing-based economy



## **SPEECH OF JAPANESE CHAMBER OF COMMERCE & INDUSTRY IN VIETNAM AT THE ANNUAL VIETNAM BUSINESS FORUM 2019**

*Presented by  
Mr. Nobufumi Miura  
Chairman*

Today, on behalf of JCCI, I would like to highlight the significance of prioritizing certain agendas so that Viet Nam, a country with potential growth, can continue to improve the investment environment to its fullest. Therefore, I would like to propose the following 5 points, “Environmental Protection”, “PPP (Public-Private-Partnership) Law”, “Construction of Global Value Chain”, “Human Resource Development” and “Legal Stability and Investment Incentives” that heavily affects the outcome of Viet Nam investment environment.

### **First point, “Environmental Protection”.**

As of 2019, Hanoi City showed the worst value in the “Air Quality Index” (AQI), followed by HoChi Minh City, the third. Concerns are raising from the pollution of air in both rural and urban areas of Vietnam, a result of giving excessive priority to economic development without considering environmental countermeasures. It is estimated that 5% of the GDP would be lost due to air pollution, this indicates a possibility of a decrease in investments from foreign companies. By promoting and enforcing standardized development of laws and regulation, the quality of air in enclosed areas where people spend most of the day, would tremendously improve AQI, leading to reduction in health hazards.

Thus, Viet Nam should learn from the Japanese as they have experienced a similar situation such as the "Polluted Islands" in the 1970s. By referring to past cases that have succeeded in achieving both industrialization and environmental protection, it is possible to achieve growth in Viet Nam investment with consideration to the environment by obtaining understanding and support from foreign companies, enabling Vietnam to be a role-model to emerging countries.

As such, we would like to request the Government of Viet Nam to set clear and standardized regulations such as "health priority over industry". Moreover, the Japanese companies are prepared to utilize their past experiences to provide Viet Nam with technical assistance and know-how to improve the environment. With the help of the Japanese companies, we believe this is Viet Nam's growth strategy.

### **2ndly, “PPP”.**

Currently, the shortage of power, roads, airports, and hospitals are also becoming a more serious problem in Viet Nam. we believe that the active implementation of PPP schemes will be useful to promote infrastructure development for solving these issues. However, it is important to establish the risk-sharing between the Government of Viet Nam and private sectors to ensure that there will be no unreasonable risk.

Henceforth, we would like the Government of Viet Nam to adopt the “Governing Law”, “Government Guarantee”, “State Capital Contribution” and “Termination Payment” as hastening PPP will improve the investment environment.

### **3rdly, construction of the Global Value Chain.**

It is vital to foster and develop Vietnamese enterprises in the Global Value Chain. This way, it will enhance the attraction of overseas manufacturing bases and make developments in the manufacturing field sustainable. For foreign companies with manufacturing bases in Viet Nam, it is expected that nurturing Viet Nam companies participating in the Global Value Chain will lead to lower manufacturing costs. It has been set that the local procurement rate would increase to 30% by 2025 and 40% by 2030. Thus, the participation of Viet Nam companies in the Global value chain will strengthen the collaboration between Viet Nam and foreign companies. We would like the Viet Nam government to consider measures such as giving incentives to foreign companies when they achieve high local procurement rates and make the application process of, for example, subsidies for human resource development in Small and Medium enterprises stipulated in Decree 39/2018/ND-Cp simpler.

### **4thly, “Human Resource Development”.**

As Viet Nam is facing a shortage of engineers due to the entry of foreign companies and an increased number of companies in the manufacturing sector, trained engineers are needed in Viet Nam. In Japan, numerous Vietnamese work as technical interns or highly skilled professionals. However, there are situations whereby employees are being forced into a poor working environment. It is desirable to prepare an appropriate working environment so that these experienced employees who have learned in Japan can impart their skills to other Vietnamese engineers.

We would like to request the Government of Viet Nam to consider providing workers with a fair explanation of working conditions, refer them to work based on their expertise, collect fees appropriately and have qualifications submitted properly. We believe that a safer labor system in Viet Nam and secure work systems abroad would further improve the investment environment of Viet Nam.

### **Lastly, we would like to mention “Legal Stability and Investment Incentives”.**

There are still situations in which the rational interests of foreign companies and investors are not protected in the operation of this legal regulation. These are business risks that foreign companies cannot overlook and can be the reason why they are hesitating from investing further. If incentives given by the government are retroactively denied by tax authorities and provisions confirming such retrospective denials are repeatedly inserted into the draft investment law, incentives would be ineffective in promoting and attracting investments. Additionally, fences and cameras cannot be installed before the establishment of the company, and prior regulation could suddenly be stricken because of the issue of Decree 82 on the provisions that already existed in the past. Also, Export Processing Enterprise (EPE) license would not be issued until after the establishment of the company. These are all outcomes that lack the legal stability of the government.

We would like to suggest to the Government of Viet Nam to develop a pre-inquiry system for companies to contact the Government including tax authorities, for regulation inquiries related to incentives in advance, issue an EPE-licensing from the beginning of company establishment and adopt

a way to confirm compliance with Decree 82 by a post-audit to increase foreign direct investment and improve the investment environment.



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

I would like to propose from the JCCI five agendas that the Government of Viet Nam should prioritize to improve the investment environment. (“Priority Agendas”)

### **1. Environmental Protection**

In Viet Nam, which is aiming for further growth in the future, deterioration of the environment due to air pollution and the treatment of industrial waste is concerned. Such environmental pollution can lead to health hazards for the Vietnamese nation. It may also affect foreign interest, for example, a decrease in investments from foreign companies. Thus, to improve the environment, it is essential to strengthen government-initiated regulations and raise the Vietnamese nation's attention to its environment.

In September 2019, Hanoi City showed the worst value in the "Air Quality Index" (AQI), followed by Ho Chi Minh City, the third. In urban areas, exhaust gases from motorcycles and automobiles pollute the air, while in rural areas the effects of post-harvest burning. It is estimated that this air pollution causes a loss of 5% of GDP in Vietnam, which is a severe social and economic problem. Water pollution is also a serious problem, with drainage from industrial complexes and households giving rise to pollutant concentrations several times higher than the national standard for most urban rivers.

To counter these environmental problems in Viet Nam, we should learn from Japanese cases, one of which was called the "Polluted Islands." From the 1960s to the 1970s, environmental pollution was a serious problem in Japan during the high growth period. It was serious enough to be described in a report from the Organization for Economic Co-operation and Development (OECD) as “Japan in the 1960s is one of the most polluted countries”. Due to air pollution, it has developed into national health hazards such as asthma. In 1973, about 46% of the cities met the environmental standards for air pollution. At that time, Japan was growing at an annual rate of approximately 8%, like Viet Nam today. It was a result of giving excessive priority to economic development without considering environmental countermeasures.

When pollution (air pollution, water pollution, soil pollution, noise, vibration, land subsidence, offensive odor, etc.) became a social problem, the government of Japan restrained the backlash of the economic world by revising the "Environmental Pollution Prevention Act" in 1970. Until then, the government had been reluctant to adopt strict environmental standards because of the adverse impact it might have on the economy. However, the government removed the clause stating "Harmonization of Pollution Prevention with Economic Development" from this law and revised the national policy from industrial priority to the Japanese nation's health priority. This law led to the establishment of guidelines for environmental measures and specialized departments, which the government supported them with tax incentives and low-interest rate loans. As a result, pollution was reduced significantly in a short period. By 1982, 99% of cities cleared the standard of air pollution.

The Government of Viet Nam has been committed to environmental protection through various measures such as the Environment Protection Law (Law55/2014/QH13). In order to continuously improve the environment that is deteriorating in the face of rapid economic growth, it is necessary

to set clear regulations such as "health priority over industry" (although the "Environment Protection Law" stipulates "harmony between environmental protection and economic growth" as one of the principles of environmental protection (Article 4, Paragraph 2 of the Law), but it should be noted that economic growth and environmental protection are difficult to be harmonized). It is necessary to implement and strengthen scientific, rational, and effective regulations, as well as to promote the implementation of the latest environmental protection technologies to meet such regulations.

The development of laws and regulations on a building design, construction materials, ventilation methods, and national evaluation standards, the quality of air in closed spaces such as homes, schools, and offices that spend most of the day can be improved. This improvement of Indoor Air Quality (IAQ) will lead to reduce human health damage. Although the Ministry of Construction has already commissioned the VACEE (Vietnam Association of Civil Engineering Environment) to develop the standardization, we strongly suggest further acceleration of this effort. In addition, we believe that regulation to force the standardized content will be necessary in order to rapidly improve air quality. Japanese companies are willing to cooperate so that the legislation will be effective.

Concerns can be understood that regulations may hinder the process of economic growth, but if the environmental issue is left as it is, adverse effects such as the reluctance of foreign companies making new investments will become apparent. Japanese companies are prepared to utilize their past experiences to provide Viet Nam with technical assistance and know-how to improve the environment. Therefore, to counter this problem, Japanese companies would like to provide full cooperation for the sustainable economic growth of Viet Nam.

Vietnam will acquire an understanding, empathy, respect and support from other countries and foreign companies by exploring ways to achieve economic growth with utmost environmental considerations with referring to examples of countries that have succeeded in achieving both industrialization and environmental protection. This eventually leads to increase foreign investment and accelerate growth in Vietnam, and serves as a model for other developing countries. This would be the unique growth strategy of Vietnam.

## **2. PPP (Public-Private-Partnership) Law**

Since the VBF Midterm Meeting in June this year, the JCCI has been working closely with the Ministry of Planning and Investment on the draft article of the PPP Law by providing the opinions of Japanese governmental agencies, private enterprises, and lenders. Thank you again.

Currently, the shortage of power, roads, airports, and hospitals are also becoming a more serious problem in Viet Nam. While these issues can be a factor to keep drive foreign investors away from activities in your country, we believe that the active implementation of PPP schemes will be useful to promote infrastructure development for solving these issues. Moreover, as described in Resolution 50-NQ/TW (2019), the implementation of PPPs further encourages investments from foreign companies in Viet Nam.

However, for foreign companies, including Japanese companies, to participate in the PPP project in Viet Nam, it is important to clarify the risk-sharing among the Government of Viet Nam, investors, and financial institutions so that there are no unreasonable risks to investors and financial institutions. Unless this point is being clarified, even if the PPP law is established in Viet Nam, it will be difficult for foreign companies to participate in PPP projects.



Following, it overlaps with our remarks in the previous session in June this year, but we would still like to repeat the following four requests to the Government of Viet Nam for consideration.

- **Governing Law:** There is no objection to setting the Vietnamese law as a principle to promote projects. However, obtaining agreement between the parties and the adoption of foreign law would depend on each project.
- **Government Guarantee:** Government guarantees are provided to avoid undue risk burden on private enterprises, such as the provision of foreign currency guarantees to the extent required for the implementation of PPPs, including debt repayment.
- **State Capital Contribution:** Develop a mechanism to ensure that government funding is more reliable and flexible.
- **Termination Payment:** Early termination of PPP would be permitted if authorized government agencies, contract signers, investors, and project entities are significantly affected by ineligibility. The project can be then purchased by the Government of Viet Nam.

Through the improvement of the above four points and the enactment of the PPP bill, it is expected that Japanese companies will drive infrastructure development and economic growth in Viet Nam.

### **3. Construction of Global Value Chain**

With economic development and expansion of domestic demand in Viet Nam, Viet Nam is attracting attention as a global manufacturing base. Establishments of new manufacturing plants and factory relocation of foreign enterprises, including Japanese companies from China, are observed in Viet Nam. To enhance the attraction of overseas manufacturing bases and make developments in the manufacturing field sustainable, it is vital to foster and develop Vietnamese enterprises in the Global Value Chain.

For foreign companies with manufacturing bases in Viet Nam, including Japanese companies, it is expected that nurturing Viet Nam companies participating in Global Value Chain will lead to lower manufacturing costs, mainly by the procurement of components. In Resolution 50-NQ/TW (2019), the Government of Viet Nam has set a target of raising the local procurement rate (Localization Rate) from 20-25% to 30% by 2025 and 40% by 2030 and, promote industrial development. To achieve this goal, we would like to propose the following two points.

- The current Vietnamese government's assistance focuses on Vietnamese companies that deliver parts and products to foreign companies rather than foreign companies that have manufacturing bases in Viet Nam. Therefore, we would like the Government of Viet Nam to consider measures such as giving incentives to foreign companies when they achieve high local procurement rates. This could potentially encourage foreign enterprises to support Vietnamese enterprises more frequently.
- With the application process of the government subsidy system being complicated and time-consuming, the implementation of support measures for Viet Nam companies should have simplified procedures from the central and local governments. Hence, we would like the Government of Viet Nam to correct this issue as soon as possible. Examples related to the subsidy programs are: Subsidies for human resource development in small and medium-sized enterprises stipulated in the Decree 39/2018/ND-CP, exemption for company license application fee, and providing assistance for the Supporting Industry Development Center based on the determination of supporting industry assistance measures by 2020 promulgated by the Ho Chi Minh City People's Committee (15/2017 / QD-UBND).

The participation of Viet Nam companies in Global Value Chain is expected to not only attract more manufacturing bases in Viet Nam but also establish the core industries with international

competitiveness. With the intention of further development in the manufacturing industry in Viet Nam, we are requesting support from the Viet Nam Government. This will lead to strengthened collaboration between Viet Nam companies and overseas companies including Japanese companies.

#### **4. Human Resource Development**

To maintain the current economic growth of Viet Nam, it is urgent to train engineers to promote industrialization and IT in the domestic market. Viet Nam is facing a shortage of engineers due to the entry of foreign companies and an increased number of companies in the manufacturing sector. The objective of Resolution 50-NQ/TW is to increase the percentage of engineers in the total workforce to 80% by 2030. To achieve this, educational support to increase engineers in Viet Nam is needed. In Japan, numerous Vietnamese work as technical interns or highly skilled professionals. However, there are situations whereby employees are being forced into a poor working environment. Hence, the Government of Viet Nam needs to build an appropriate labor force system to enable young people working in Japan to learn skills with a peace of mind. It is desirable to prepare an appropriate working environment so that these experienced employees who have learned in Japan can impart their skills to other Vietnamese engineers.

The demand for Vietnamese engineers working in production lines such as industrial complexes has been increasing yearly, but there are certain aspects of human resource development that has not caught up. The U.S. research firm estimates that only 12 percent of the 57 million labor force population has a high level of skill. Also, in the conventional fields of textile & garment and electronic devices, the development of IT personnel will be essential for promoting a digital society. The Vietnamese government should establish an institution to learn these technologies in the country and promote technical education widely.

There are approximately 300,000 Vietnamese workers and students, including technical interns, international students, and highly skilled professionals in Japan. Among them, there are about 160,000 (majority) technical interns. Since Japan specializes in the industrial sector, this will be an effective system to convey technologies in Viet Nam, but there are many cases whereby workers were placed in a poor working environment or be forced to do jobs that they are unwilling to do. These are problems on top of the existing problems caused by the lack of management system in Japan and the acceptance of interns by Japanese companies as a cheap labor force. Thus, it should be solved by the Japan side, but there are several problems that Viet Nam could do to improve the situation.

One of them is the existence of malicious labor exporters. Labor exporters are required to (1) provide interns with a fair explanation of working conditions, (2) refer them to work based on expertise or their desired course after returning home, (3) collect fees appropriately, and (4) submit various qualifications appropriately. Several exporters did not meet these requirements, resulting in poor working environment for Vietnamese workers and a situation in which they must travel with a large amount of debt. The existence of these illegal exporters is detrimental to young Vietnamese workers who are seriously thinking of acquiring skills in Japan.

Incidents and accidents involving illegal employment of Vietnamese workers are increasing worldwide, not only among technical interns in Japan. The Government of Viet Nam should rigorously identify malicious labor exporters to ensure effective labor mobility and secure work systems abroad.

It is important to improve the working environment for those who have acquired the skills in foreign countries to utilize the experience after returning home. Currently, there are cases whereby

there are no enterprises or organizations in Viet Nam to utilize the skills acquired, after technical interns and highly skilled professionals return home upon completing training and duty in Japan. It is desirable to make use of the skills of trainees in Japan, such as supporting companies that have accepted trainees in Japan to establish a base in Viet Nam, and to secure opportunities to pass on to other Vietnamese engineers.

Along with the issues of the Japan side that accept the labor force, more active personnel exchange between Japan and Viet Nam is necessary to develop a safe system for labor mobilization and a post-return system in Viet Nam.

## **5. Legal Stability and Investment Incentives**

We believe that the Government of Viet Nam already issued incentives to foreign enterprises and investors. To further entice them, including Japanese companies, we would like to request the Government of Viet Nam to develop appropriate laws that operate stably, including incentives.

There are still situations in which the rational interests of foreign companies and investors are not protected in the operation of this legal regulation. The establishment and implementation of regulations still lack legal stability. For example, sudden changes in laws or the implementation of new regulations that cannot be reasonably explained. These are business risks that foreign companies cannot overlook, which can be a reason to hesitate from investing further. If incentives given by the government are retroactively denied by tax authorities and provisions confirming such retrospective denials are repeatedly inserted into the draft investment law, incentives would be ineffective in promoting and attracting investments. The Government of Viet Nam is encouraged to ensure legal stability to achieve an increase in investments from foreign sources.

Regarding taxation incentives, the tax authorities should not retrospectively reject the interpretation of the legal regulation related to investment incentives. At this point, we would like to propose to the Government of Viet Nam to develop a pre-inquiry system so that companies can contact the Government, including tax authorities, for legal regulation inquiries in advance. The introduction of a pre-inquiry system as part of the Administrative Procedure Law corrects and reduces discrepancies in legal regulation interpretations and help to ensure the legal stability of enterprises' business in Viet Nam.

## **6. Abolition of the 50% reduction in individual income taxes in special economic zones**

So far, a 50% reduction in individual income taxes has been granted to enterprises belonging to the special economic zone, mainly the industrial complexes located in Hai Phong. We have been improving the taxes and advancing to the economic special zones on the premise of this taxation incentives. However, the Decree 82/2018/ND-CP, which was issued on May 22, 2018, and was enforced in a short period as of July 2018, abolished the 50% reduction in personal income taxes. The abrupt removal of these tax incentives greatly affected the profit and loss and the funding strategy of the enterprises located in the special economic zone, leading to large disruption to the enterprises. Moreover, the predictability of legal regulation could not be ensured.

It is a big risk in business development for foreign companies and investors that such incentives promised in the past are unilaterally countered by sudden changes in laws and regulations. In the future, when changing incentives, there should be an appropriate transition period. It is also desirable to take into consideration companies that would be disadvantaged by changes in legal regulations.

## **7. Correction of Guidelines for the Licensing of New EPE**

Decree 82/2018/ND-CP has also caused serious obstacles to export-processing companies (Export Processing Enterprises) and new-entry manufacturing industries that have received IRCs since July 2018.

While it takes about one year from the obtainment of the IRC/ERC to the completion of the factory, Decree82 required the whole factory to be fenced and to be equipped with security cameras. If the factory does not wait for confirmation by the customs authorities, it will not be recognized as an EPE. Before the construction of the factory, it is common to start purchasing some raw materials, machinery, equipment, and parts. As a result, it has led to an impediment in company activities as EPE will not be approved until the construction of the factory is done, imports are not approved unless exempt import tariffs and imported VATs are paid. Even if VATs are paid, the situation will still be unstable for the company as it is uncertain whether companies would be refunded after being granted the EPE license. Besides, it is very difficult for export processing enterprises living in rental factories to establish fences in-house, hence, making it extremely difficult for them to deal with these issues. The establishment of new EPEs has ceased in several provinces in the northern region of Viet Nam.

Fences and cameras cannot be installed before the establishment of the company, and prior regulation could suddenly be stricken because of the issue of Decree82 on the provisions that already existed in the past. Also, EPE-licensing would not be issued until after the establishment of the company. These are all outcomes that lack the legal stability of the government.

To increase foreign direct investment, we would like to ask the Government of Viet Nam to issue an Export Processing Enterprise (EPE) license from the beginning of the company establishment and adopt a way to confirm compliance with Decree 82 by a post-audit. Similarly, in the case of a rental factory, we would like to suggest the Government to judge that the requirement is satisfied with the condition that the factory is segregated from other companies by walls.



## **POSITION PAPER OF BRITISH BUSINESS GROUP VIETNAM (BBGV) AT THE ANNUAL VIETNAM BUSINESS FORUM 2019**

The British Business Group Vietnam extend their greetings to the Chairs and Co-chairs of the Vietnam Business Forum.

We also continue to congratulate the Government on their 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 member companies.

### **A. HEALTHCARE AND PHARMA**

#### **1. Online medical learning**

BBGV recognizes that all healthcare practitioners need to study and update their knowledge and skills through Continuous Medical Education (CME) or Continuous Professional Development (CPD). E-learning are accepted for CME/CPD. The UK companies offers online CME/CPD through their own learning platform. Such learning methodology by the UK companies are accredited for the purposes of CME/CPD in over 70 countries, but not yet in Vietnam. We would like to have legislative regulation in place so that online learning can be accredited for the purposes of CME/CPD. This would ultimately benefit Vietnamese population countrywide.

#### **2. Foreign Investment Enterprise (FIE)**

In addition to the previous point UK pharma companies currently operating with Representative Offices in Vietnam who now want to set up a Foreign Investment Enterprise (FIE) face difficulties during the set up process and feasible operation of FIE in the future, particularly in relation to undertaking marketing activities.

Therefore, BBGV recommends that Vietnam provides a feasible transition period together with clear technical guidelines for the transition to FIE establishments and, for their feasible operation in the future, legalise FIE's right to build up and protect the brands by themselves or by supporting the fee for the distributors to do marketing activities

#### **3. Certificate of Pharmaceutical Product (CPP)**

Circular guiding registration of pharmaceuticals for marketing authorization in Vietnam (Circular 32) requires the content of CPP must include the information "*Drug Product's specification, Drug Substance's specification and Drug Substance's manufacturers*".

Following the feedbacks for regulatory authorities, CPPs are issued in accordance with World Health Organization (WHO) CPP Scheme, so cannot fulfil all above requirements.

BBGV members are significantly concern about the feasibility of the above regulatory requirements of Circular 32 (so far, several stringent Health Authorities (UK MHRA, EMEA, Swissmedic, Danish Medicines Agency, Australia (TGA) have feedback that impossible to get such required CPP) and hence, potential impact on patient access (much delay of approval timeline).

### **Recommendations:**

- Harmonize the requirements for CPP contents submitted in Drug Registration dossiers in Vietnam with WHO CPP scheme through revising the relevant clauses in Circular 32 to remove additional information beyond WHO CPP format.
- In the interim, awaiting the revised Circular 32, we recommend the acceptance of Ministry of Health, Drug Administration for Drug Registration dossiers to be submitted with current CPP under WHO template, accompanied by applicant's Justification letter.

## **B. EDUCATION**

### **1. Qualifications recognition**

BBGV recognises that there remains a problem for obtaining nationwide recognition of internationally recognised qualifications and foreign language certificates offered by UK education organisations.

We request that MOET consider nationwide recognition of internationally recognised qualifications and foreign language certificates in areas such as student admission, training and graduation, especially for high school exit and university admissions; teacher recruitment, training and development; (3) civil servant recruitment, training and development. The recognition should be based on a clear and transparent set of criteria.

### **2. International school establishment and operation**

UK companies still face difficulties and complex procedures in getting a licence to establish an international school. This is normal across the world but transparency and reliability are the most important aspects of the process. We would like to request the authorities to lay down a clear process, with clear timescales and a clear line of appeal if they don't fulfil their obligations.

## **C. FINANCIAL AND PROFESSIONAL SERVICES**

### **1. Information transparency and accounting standards**

BBGV welcomes the Ministry of Finance's efforts in implementing the draft roadmap project in compulsory adoption of International Financial Reporting Standards (IFRS) after 2025. We recommend Vietnam to apply IFRS consistently and have been working closely with MOF to develop IFRS roadmap in the future.

### **2. Fintech**

Fintech regulatory framework which is not in place has created uncertainties for companies who want to access the market. Investors seeking to establish a Fintech business in Vietnam continue to face a number of hurdles and there is little legislative guidance and licenses in place rather it is based on the discretion of the authorities. In the case of the government considering a foreign

ownership cap on Fintech companies such as intermediary payment services, it would limit/handicap sustainable Fintech growth in Vietnam.

Lack of clarity around the data localization and local entity requirements under Cybersecurity Law creates more uncertainty for foreign investors and businesses in digital/tech. BBGV would recommend this is addressed fully as soon as possible.

### **3. Phytosanitary certificate**

Finally but not least: The requirement of a phytosanitary certificate issued by Vietnamese authorities for imported plant products when a phytosanitary certificate has already been issued by the government authorities in an EU country for export to Vietnam. It is expensive, creates delays and exposes importers to requests for bribes from Vietnamese government officials. The UK and all EU countries respect Vietnamese phytosanitary certificates for importing into the EU so this is a completely uneven playing field.

BBGV Recommends removing the requirement for Phytosanitary certificates issued by Vietnamese authorities when importing plant products into Vietnam and when goods are accompanied by a Phytosanitary certificate issued by the UK or an EU country.



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

H. E. Prime Minister Nguyen Xuan Phuc, Ministers and Government Officials, Country Directors of the World Bank and International Finance Corporation, Ambassadors, colleagues of the Vietnam Business Forum, Chambers of Commerce, Ladies and Gentlemen.

EuroCham appreciates the strong support of the Vietnamese Government for the signing of the EU-Vietnam Free Trade Agreement (“**EVFTA**”) and EU-Vietnam Investment Protection Agreement (“**EVIPA**”) on 30 June 2019 in Hanoi. These agreements will create a breakthrough moment, contributing to perfecting the legal framework and business environment and ensuring a huge leap forward in cooperation between Vietnam and the EU, building a solid foundation for sustainable development. EuroCham has actively promoted the EVFTA’s ratification process, particularly toward the European Parliament and remains committed to working with the Vietnamese authorities to further enhance the implementation roadmap. We believe the EVFTA will open markets, increase trade and make Vietnam a more attractive investment destination for European companies in South East Asia. Looking long-term, the trade deal will increase trade and investment on a ‘win-win’ basis and also improve environmental and social standards. Thus, it will support Vietnam to adapt to rapid development and make investments into Vietnam more sustainable.

We note with much appreciation the 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 welcome the fact that the Vietnamese Government in general, and the Ministry of Planning and Investment and other Ministries in particular, are creating more favourable conditions to promote business and investment activities. EuroCham on 12 December 2019 had a successful and constructive dialogue with the Advisory Council for Administrative Procedure Reform of the Prime Minister (“**ACAPR**”), Office of the Government and relevant Ministries. We are committed to continuing to work closely with the Government and all Ministries to support them in substantially enhancing Vietnam’s profile, making it one of the most attractive, competitive, efficient, and sustainable investment destinations for European businesses in ASEAN. We would like to present the following recommendations to strengthen our commitments.

### **I. GREEN BUSINESSES IN RAPID AND SUSTAINABLE DEVELOPMENT**

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

The Ministry of Construction’s (MOC) target of over US\$10 billion of investment for water supply and drainage by 2020 is very ambitious. It is also challenging to reach this target 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 private sector investment 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 continued environmental degradation.

EuroCham Green Growth Sector Committee recommends 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. 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 of green buildings is still in its infancy in Vietnam; only around 40 buildings have certification, with the majority of these being in the industrial sector.

We recommend that, for 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. This does not necessarily imply higher investment costs. Integrating energy-efficient devices, ideally during construction, but also retroactively, 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 a Building Licence at the Basic Design Stage.

## **3. Waste management and the Circular Economy**

In Vietnam, most waste is still dumped into landfills without classification or further processing. The lack of co-ordinated 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. 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. The Prime Minister's Decisions should be implemented as promulgated. True reasons for non-compliance with current environmental regulations concerning waste treatment should be clarified.

We also recommend that classification of domestic wastes at household level should be implemented thoroughly at both the national and local level and the disposal of different materials should be separated to avoid contamination and reduce manual sorting to a minimum. It is also important to provide a more 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 incentivised, while strict enforcement of punishment should be applied to 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 can generate enough reusable materials for new entrepreneurs to open recycling factories that today do not exist in Vietnam.

The most immediate issue is the way waste is disposed of. Raising awareness about responsibilities and best practice needs to be prioritised. Households and organisations that use resources, and the companies serving them, have to fundamentally change the way they look at disposing of things they do not need anymore, be it packaging or the object itself. The aim should be that nothing is thrown back into the environment but reused as much as possible and transformed into something else including eventually energy. Items should also be treated to have the least impact on the environment.

## **II. SUSTAINABLE FOOD CHAINS, AGRICULTURE AND FARMING**

### **A. EuroCham Croplife Vietnam**

#### **Issue description:**

Adoption of plant science products is an important solution to support the Government to achieve the goal of sustainable development, improve farmer incomes and address climate change.

The competitiveness of Vietnamese farmers and future investment in Agricultural innovation can be ensured by implementing and complying with a transparent, science-based regulatory system consistent with international best practices.

Training farmers to use agriculture innovation applications in a responsible and effective way will produce a more positive impact than simply restricting their use.

#### **Recommendation:**

- **Crop Protection:** Crop protection tools should be properly assessed through a consistent, scientifically rigorous process in line with risk-based, internationally accepted methods and standards.
- **Biotech:** The science-based, predictable regulatory framework on genetically modified technology in Vietnam needs to be implemented to help Vietnam achieve its development goals and improve local farmer incomes.
- **Stewardship:** Vietnamese farmers should be encouraged to have access to the most advanced crop protection and biotechnology products supported by high quality training and education. This will ensure that they continue to produce more safe, affordable and nutritious food for the community and export in a responsible manner.

## **B. EuroCham Food and Agri-Aqua Business Sector Committee**

### **1. A call for rational and adapted use of antibiotics in livestock and aquaculture production in Vietnam**

Antimicrobial Usage (“AMU”) in Agriculture should be regulated in the global scope of Antimicrobial Resistance reduction (“AMR”). The World Health Organization<sup>1</sup> indicated that Vietnam is among the countries that, in recent years, have witnessed a growing threat of AMR, brought about by the irrational use of antibiotics at all levels of the health care system, in aquaculture and livestock production and in the community. Because of AMR, a growing number of common infections, such as pneumonia, urinary tract infections, tuberculosis and food-borne illness are becoming harder and sometimes impossible to treat.

Several countries, such as India and China, recently banned colistin<sup>2</sup> for use in food for animals, particularly after mcr-1 gene, which confers resistance to colistin, was detected in food samples. Recent years have seen a great improvement in antibiotic use regulation in animal farming in Vietnam and we are very pleased that the last livestock law mentions the ban of antibiotics as growth promoters in complete feed. However, major improvements can still be made in terms of field farm practices.

Indeed, recent studies in Vietnam have found that antimicrobials are still predominantly used to prevent rather than to treat infections in poultry and pig production systems.<sup>3</sup> Additionally, it has been reported that AMU in chicken production in the Mekong delta is approximately six times greater than in many European countries. In Aquaculture, another study<sup>4</sup> has evidenced a high prevalence of contamination (22.5%) of shrimp samples with antimicrobial residues. This high prevalence of antimicrobial residue was also related to high level of multi drug resistance (58.9%) on isolated non-typhoidal *Salmonella* (“NTS”). These issue was result of:

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<sup>1</sup> <https://www.who.int/vietnam/health-topics/antimicrobial-resistance>

<sup>2</sup> The European Agency for the Evaluation of Medicinal Products Veterinary Medicines and Inspections, committee for veterinary medicinal products: “Colistin is a cyclopeptide antibiotic produced by cultures of *Bacillus polymyxa* var. *colistinus*. It belongs to the polymyxin therapeutic class and is identical to to Polymixin E. Colistin is used for the prevention and treatment of diseases caused by sensitive bacteria in rabbits, pigs, poultry, cattle, sheep and goats. It is used in poultry producing eggs for human consumption and cattle, sheep and goats producing milk for human consumption.

<sup>3</sup> Assessing antimicrobial misuse in small-scale chicken farms in Vietnam from an observational study, Choisy et al. BMC Veterinary Research (2019) 15:206, <https://bmcevetres.biomedcentral.com/articles/10.1186/s12917-019-1947-0>

<sup>4</sup> Yen NTP, Antimicrobial residues, non-typhoidal *Salmonella*, *Vibrio* spp. and associated microbiological hazards in retail shrimps purchased in Ho Chi Minh city (Vietnam), Food Control Volume 107, January 2020, 106756, <https://www.sciencedirect.com/science/article/pii/S0956713519303457>

- Firstly, the Antibiotics product selling system in Vietnam has been described<sup>5</sup> and veterinary drug shops have been identified as main sources of supply and advice on antimicrobials for animal use. Moreover, as antimicrobials can be legally and easily purchased without prescription by anyone from any of the ~12,000 veterinary drug shops across the country, raising concerns about what extent the ease of access and affordability contributes to excessive use or misuse of antimicrobial products in animal production.
- Secondly, deficiencies in quality and labelling contents of antimicrobial products have been identified. A recent survey<sup>6</sup> realised in the Mekong Delta shows that 65% of the products investigated had an indication for ‘prophylactic use’ in the label (normally followed by a list of bacterial diseases). This labelling openly conflicts with the animal health authorities’ efforts to discourage routine use of antimicrobials for preventing disease (Aidara-Kane et al., 2018; Anon 2013) and sends a ‘wrong’ message to farmers. This study also shows that withdrawal times for both meat and eggs were stated in only 40% of products. Worryingly, over half (55.9%) of these products contained at least one Antibiotic of critical importance (highest priority) according to the WHO (i.e., colistin, quinolones, and macrolides).

We therefore would recommend to: Enhance the regulation and inspection of antimicrobial product labelling, crucially removing the indication for prophylactic use. In all cases, products should indicate withdrawal times for meat, eggs and milk. It would be desirable to limit the access to antimicrobials of critical importance for human health for veterinary use. As a first step, we highly recommend banning colistin, and therefore development of policies aimed at this should be a priority.

## **2. A golden opportunity to restructure the livestock farming industry linking to demand: An Agro-Food policy**

The ASF outbreak in Vietnam has been causing considerable adverse effects to the livestock industry and challenges in Government management. 25% of the country's total pig herd could be lost to the ASF by year's end<sup>7</sup>. As a direct consequence, demand for feed from the hog industry has fallen about 20%-25%; pig feed production and respective trading activities regarding feed ingredients such as corn in Vietnam are expected to be on a fall. The poultry sector has softened the blow for pig feed and farming sector with consumption of the other meat going up<sup>8</sup>; however, this shift in protein demand will also cause trouble for the livestock planning overall as production shift from pig to poultry cannot happen overnight and will become increasingly difficult at the large-scale farming level. Furthermore, Vietnam's October 2019 consumer price index has reached a three-year high in the situation that depressing pork supplies towards the end of 2019 and beginning of 2020<sup>9</sup>. We therefore note that an unfavourable impact to the pig farming industry, with pork being the key type of meat in Vietnam, would also deliver an unwanted situation for the poultry industry, feed ingredients trading activities, and Government's annual target.

<sup>5</sup> Phu, D.H.; Giao, V.T.Q.; Truong, D.B.; Cuong, N.V.; Kiet, B.T.; Hien, V.B.; Thwaites, G.; Rushton, J.; Carrique-Mas, J. Veterinary Drug Shops as Main Sources of Supply and Advice on Antimicrobials for Animal Use in the Mekong Delta of Vietnam. *Antibiotics* 2019, 8, 195, <https://doi.org/10.3390/antibiotics8040195>

<sup>6</sup> Yen NTP, Phu DH, Van Nguyen C, et al. Labelling and quality of antimicrobial products used in chicken flocks in the Mekong Delta of Vietnam. *Vet Med Sci.* 2019;00:1–5. <https://doi.org/10.1002/vms3.189>

<sup>7</sup> “African swine fever: China's pig population may drop by 55%,” *cnn.com*, accessed October 2<sup>nd</sup>, 2019, <https://www.cnn.com/2019/10/03/african-swine-fever-chinas-pig-population-may-drop-by-55percent.html>.

<sup>8</sup> “Vietnam's corn demand for pork feed falls on African swine fever,” *vietnamnews.vn*, accessed September 9, 2019, <https://www.spglobal.com/platts/en/market-insights/latest-news/agriculture/090919-vietnams-corn-demand-for-pork-feed-falls-on-african-swine-fever>.

<sup>9</sup> “October's CPI reaches three-year high,” *vietnamnews.vn*, accessed October 30, 2019, <https://vietnamnews.vn/economy/537623/octobers-cpi-reaches-three-year-high.html#pEdcxuvCS03LaJYp.97>.

The 2018 livestock law regulates breeding activities, rights and obligations of organizations and individuals in livestock activities, national management of breeding with 8 chapters and 83 articles. The law is also regulated to be effective from January 1<sup>st</sup> 2020. However, the master plan of Vietnam agriculture is only to 2020, with the vision to 2030, with the accompanying Decision 124/QĐ-TTg, February 2<sup>nd</sup> 2012<sup>10</sup>. So, we believe that it would be the best time to have the updated master plan of Vietnam agriculture to 2030 following the 2018 livestock law. Minister of Agriculture and Rural Development Nguyen Xuan Cuong also stressed the importance of forming strong connectivity between production and demand; at the same time, Vietnam's agriculture sector will also be subjected agricultural restructuring and the production of key products at national, provincial, and communal levels to meet future target of export<sup>11</sup>. Both the 2018 livestock law and the direction of Minister of Agriculture and Rural Development pose an interesting question about how the total domestic consumption and future export potential can be identified and forecasted accurately so that the planning can be performed accordingly. We note that the connectivity between production and demand, stated by the Minister, is an innovative approach helping minimize risks amid future challenges. In planning for 2030, we could review the current situation and see that the ASF outbreak in China affects both Vietnamese production and trade activities; the incremental growth of cross-border export from Vietnam to China and the rising official export volume from other countries to China gives concern for Vietnam's local supply and import activities<sup>12</sup>. This challenge of managing the total pig and pork supply in Vietnam indicates that a national planning for both total supply and demand must consider different global scenarios regarding trading activities. We suggest that the understanding and forecast of consumption and export should take numerous angles into account, namely: The total protein consumption landscape in Vietnam; Cross-border export and import activities in Vietnam; Export potential; Import planning; and Global trade activities landscape.

The understanding of the protein consumption landscape of Vietnam is vital to understand both in the long term, for planning, and short term, given the temporary switch in protein consumption when there is a shortage of supply or consumption impact from a disease. It is important to create a necessary buffer in terms of planning for types of protein so that the market could re-adjust as required. Cross-border export and import activities are also part of the puzzle to view the supply and demand in Vietnam; live-weight pig exports, which were mostly a cross-border activity, to China were cancelled and pig farming went into the problems as supply exceeded demand. As a result, farmers have been reporting losses during 2017 and a half of 2018<sup>13</sup>. The cross-border activities of export and import must be considered together with official declared activities so that supply and demand can be inspected from a holistic perspective. Finally, a review of global trade activities and what is the role of Vietnam as a country will help to decide both at strategic level and tactical level in the upcoming EVFTA context. We propose a three-phase approach for livestock planning linked to demand:

- Phase 1: Understand and forecast total demand, import and export activities
- Phase 2: Consider the livestock sector's long-term targets when restructuring the planning, including but not limited to, traceability, food safety and standards, and improving the living standards of farmers

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<sup>10</sup> “Luật Chăn nuôi 2018 có hiệu lực từ ngày 01/01/2020,” [nhachannuoi.vn](http://nhachannuoi.vn/luat-chan-nuoi-2018-co-hieu-luc-tu-ngay-01-01-2020/), accessed December 14, 2018, <http://nhachannuoi.vn/luat-chan-nuoi-2018-co-hieu-luc-tu-ngay-01-01-2020/>.

<sup>11</sup> “Vietnam seeks to boost agricultural production, consumption,” [vietnamnews.vn](https://en.vietnamplus.vn/vietnam-seeks-to-boost-agricultural-production-consumption/147739.vnp), accessed December 8, 2018, <https://en.vietnamplus.vn/vietnam-seeks-to-boost-agricultural-production-consumption/147739.vnp>.

<sup>12</sup> “Increasing pork prices in China a magnet for Vietnamese traders,” [vnexpress.net](https://e.vnexpress.net/news/business/industries/increasing-pork-prices-in-china-a-magnet-for-vietnamese-traders-3979439.html), accessed September 9, 2019, <https://e.vnexpress.net/news/business/industries/increasing-pork-prices-in-china-a-magnet-for-vietnamese-traders-3979439.html>.

<sup>13</sup> “The difficulties in reaching Vietnam's agricultural export target,” [vir.com.vn](https://www.vir.com.vn/the-difficulties-in-reaching-vietnams-agricultural-export-target-56439.html), accessed February 22, 2018, <https://www.vir.com.vn/the-difficulties-in-reaching-vietnams-agricultural-export-target-56439.html>.

- Phase 3: Build the 2030 livestock planning considering all integrated sub-sectors into a national agro-food policy

The new national agro-food policy must cover all the sub-sectors that are important to Vietnam's food security including rice, fishery, livestock, crop, high-value agriculture, agro-based industry and agro tourism. This completed and futuristic view about agribusiness and food will help to navigate through uncertainty and ensure a better overall planning when there is a need to adjust or modify a specific sector, such as pig farming.

Many countries have been successful in implementing a National Agrofood Policy. The case study from Malaysia shows that the 2011 – 2020 policy has created great impacts toward the development of the agricultural sector in Malaysia and agriculture remains an important economic driver and contributes toward a developed nation. At the same time, key challenges were identified in a timely manner<sup>14</sup>.

Our view about food safety has been consistent throughout the development of Vietnam's agriculture industry. The issues we have been addressing for the crop, livestock and aquaculture sector, among many others, in our opinion, are best approached through a national food-agro policy. The policy considers not only the connectivity between production and demand but also the complex dynamic among including rice, fishery, livestock, crop, high value agriculture, agro-based industry and agro tourism sectors. This will help Vietnam's agriculture to achieve the following objectives: adequate food security and safety, a competitive and sustainable future, and increasing farmers' and agribusiness entrepreneurs' income.

## **C. EuroCham Nutritional Foods Group**

### **1. Proposed excise tax on sugary drinks**

In August and November 2017, the Ministry of Finance released draft Amendments to the Law on value added tax, special consumption tax (“SCT”), corporate income tax, personal income tax and natural resource tax. This draft law is still under the Government's consideration. The drafts proposed introducing a SCT of 10% on “*sugared drinks, except for milk products*”. Such a definition of drinks subject to SCT is too broad and vague, which may lead to serious difficulties during implementation.

The term “*sugared drinks*” may contains any drinkable liquid products containing any type of sugar, not only beverages for thirst-quenching purpose, but also medicines, nutrition food products with health benefits, which need to be encouraged for use, such as:

- There are many liquid medicines containing sugar (e.g. cough syrup and others): These products play an important role in medical treatment;
- Liquid infant formulas (in which some formulas are not made from milk but from soy protein or whey protein, used for lactose-intolerant children, cow-allergy children; liquid food for special medical purposes for patients. These products are categorized by the Ministry of Health as supplemented food for special dietary purpose; and medical foods, not as milk;

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<sup>14</sup> “Impacts of National Agrofood Policy towards Agriculture Sector in Malaysia,” <http://ap.fttc.agnet.org/>, accessed September 04, 2018, [http://ap.fttc.agnet.org/ap\\_db.php?id=853&print=1](http://ap.fttc.agnet.org/ap_db.php?id=853&print=1).

- Dietary supplement in liquid form: Those containing vitamins, minerals, amino acids, fatty acids, enzymes, probiotics and other biologically active substances to prevent the deficiency of these substances in public health;
- Other functional foods in liquid form: Those includes nutritional liquid products for special dietary use for dieters, the elderly, or pregnant women, etc.

The imposition of SCT on products with health benefits will make it harder for Vietnamese people to access nutritional products, hence, this has a detrimental effect on realizing the Government's goals of Resolution No. 20-NQ/TW dated October 25, 2017 of the Party Central Committee ("**Resolution 20**") and the National Health Program stipulated in the Prime Minister's Decision No. 1092/QĐ-TTg dated September 2, 2018 ("**Decision 1092**").

While an SCT on sugared drinks would create a new revenue stream for the Government, it would also negatively impact sales, company profits, and employment in Vietnam – all of which contribute to state taxes through value added tax, corporate and personal income taxes. Additionally, the increase in price of milk and functional foods as the result of SCT may contribute to increased cross-border smuggling, especially given that China does not impose an SCT on sugar sweetened beverages. Any increase in illicit flows of these products into Vietnam would lead to tax loss and damage to local industry.

We would therefore recommend to not impose excise tax on sugary drinks. **In the case Vietnam's Government considers that an excise tax on sugary drinks is necessary, we recommend to replace the term "sugared drinks" with "sugared thirst-quenching beverage" in the draft Amendments:** the term "*thirst-quenching beverage*" clearly communicates the products' use, making it easy for state management bodies to distinguish thirst-quenching beverage from products with different uses (such as nutritional supplements and medical foods). This replacement facilitates the implementation of the law and aligns with the requirement of specifying product uses stipulated in the Decree No. 43/2017/ND-CP<sup>15</sup> on goods' labels. Furthermore, it truthfully reflects the purpose of the SCT, which is to tax sugar-sweetened thirst-quenching beverages with the aim of reducing consumption of unhealthy products. Besides, we suggest **excluding "Milk, milk products and functional foods" from the coverage of SCT's taxable items**. These exclusions should seek to clarify tax coverage and facilitate the implementation of the tax as well as ensuring there is no negative impact on health-related products. "Milk, milk products and functional foods" play a critical role in achieving national goals of improving public health in Resolution 20 and Decision 1092.

## 2. Unsuitable new requirements of labelling "does not contain", "not added" in Article 8, Circular 05/2019/TT-BKHCN

Circular 5/2019/TT-BKHCN<sup>16</sup> ("**Circular 05**") dated 26 June, 2019 providing details for a number of articles of Decree 43/2017/ND-CP of the Government on goods labels ("**Decree 43**"). Article 8 of Circular 05 has a new requirement: "In case the label of a product indicates that the product does not contain or does not added one or several ingredients, these ingredients should not exist in both the product and its ingredients".

This new requirement is unsuitable because "should not exist" means the level is 0. However, in nature, there is almost no substance which has a level of 0. This unsuitable requirement will lead to

<sup>15</sup> Decree 43/2017/ND-CP dated 14 April 2017 of the Government on Good labelling

<sup>16</sup> Circular 5/2019/TT-BKHCN of Ministry of Science and Technology dated 26 Jun, 2019 providing details for a number of articles of Decree on good labels.

many food products having to revise their labels or being withdrawn from the market, despite their original labels being in-line with international practice are consumed widely for many years. For example “lactose-free milk”, “no preservative fruit juices...” cannot be at 0-level as these substances are always existing in nature, but in very low levels. This requirement creates an unsuitable trade barrier, and might negatively impact trading and production for both local and imported products.

In the Dialogue on administrative reform dated 12 December 2019, when NFG raised the above issue, the Ministry of Science and Technology (“**MOST**”) stated that this new requirement is in-line with international standards and protects consumers. NFG considers MOST’s answer is not accurate, for the following reasons:

- **The international requirements of Codex stipulates the requirements for certain substances such as sugar, salt, energy, fat..., and defines the specific level for each substance** (e.g. sugar free means <0,5g/100g; energy-free means <4kcal/100g, and fat-free means <0,5g/100g). **In contrast, Circular 05 is applicable for all substances, and all levels are set as 0.** This is clearly non-scientific, and it contradicts Codex stipulations.
- For necessary claims for consumer health, such as “lactose free”, “no preservatives”, etc. which are not included in Codex but which have been used in many countries: Due to Circular 05 and its unrealistic 0 level, these cannot be used in labelling food in Vietnam. These claims will have a negative impact on consumers, and will not protect consumers as MOST intended.
- If the “does not exist” requirement (0 level) in Circular 05 is applied for Dioxin almost all of South Vietnamese soil would be considered “dioxin contaminated” soil, since the dioxin level detected is around 1-2 ppt. If the soil is considered “dioxin contaminated”, this could put at risk the international reputation and global sales of Vietnam’s agricultural products. For comparison, in the U.S., the standard for free-dioxin agriculture soil is 27 ppt, and in the EU it is 10 ppt.

We propose amending Article 8 of Circular 5/2019/TT-BKHCN to align it with the Codex on Labels Nutrition CAC/GL 23-1997.

### **3. Simplification of administrative procedures to enhance exporting product**

Circular 52/2015/TT-BYT<sup>17</sup> (“**Circular 52**”) of Ministry of Health dated December 21, 2015 regulates the process of issuing Health Certificate (“**HC**”) for exported food products which require this certificate to be issued for each export shipment and with a licensing period of 5 working days.

However, businesses takes a lot of time and effort from exporters to have the paper due to the very complicated procedure. In particular, before exporting the product, the product must be tested at an accredited independent testing laboratory or a designated testing laboratory for obtaining Certificate of Analysis (“**COA**”). This process takes at least 2 weeks and costs about VND 3 million. However, if the company urgently needs the result of COA to ensure that they meet the deadline of an exporting contract, they have to pay a higher price. The product must be tested at an accredited independent testing laboratory or a designated testing laboratory for obtaining test results.

After receiving a COA, businesses must submit the dossier for Health Certificate (“**HC**”) issued by Ministry of Health. According to Circular 52, the time limit for application inspection is no longer

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<sup>17</sup> Circular 52/2015/TT-BYT of Ministry of Health dated December 21, 2015, regulations on state inspection of imported food safety, and applications and procedures for grant of certificate of exported foods under the administration of the Ministry of Health



than 5 working days, however, in common practice, it usually takes up to 2 weeks and the costs to 1 million VND. Moreover, **the validity of HC is per shipment**. Therefore, if each month an enterprise has several shipments to export food products they will have to repeat the same process for each shipment which becomes a major barrier affecting the export progress of goods of businesses.

We are concerned about a commodity that arrives at the port of the importing country but has to wait until the business provides all certificates required by the Government. Such long waiting time causes heavy burden on administrative procedure for businesses, especially for items with a short expiry date like yogurt or fresh milk which face risk of damages because of long waiting period at the port.

We recommend to reduce the frequency of inspection from all exported shipments to 1 time/year for products manufactured at the factory which has standardisation of the management systems like GMP, ISO 22000, HACCP, IFC, FSSC 22000, BRC or equivalent. We also recommend to reduce the issuance time for HC from 2 weeks to 3 days as stipulated in Decree 69/2018/ND-CP.<sup>18</sup>

### **III. HUMAN RESOURCES AND TECHNOLOGY DEVELOPMENT**

#### **A. EuroCham Information and Communication Technology Sector Committee**

##### **1. Promotion of electronic signatures in business operations**

Electronic signatures have been recognised by law in Vietnam since 2005 and can now be applied for the majority of general business transactions. We acknowledge with appreciation recent efforts of the Government and the Ministry of Information and Communication in promoting the use of electronic signatures in the coming time.<sup>19</sup> However, several difficulties still remain in their adoption resulting in the business community's reluctance to use electronic signatures in general business transactions.

According to Article 9 of Decree 130/2018/ND-CP<sup>20</sup>, it is understood that the valid use of electronic signatures is closely linked to the requirement of a digital certificate: Electronic signatures are considered secured electronic signatures if they are created during the valid period of digital certificates and inspected by the public key recorded on such valid digital certificates; and are created by using the private key corresponding to public key recorded on digital certificates. These digital certificates are granted by public certification authorities who have a license granted by the Ministry of Information and Communications, such as VNPT, Nacencomm, BKAV, Viettel, FPT, etc. However, the electronic signature overseen by the Government, called a Qualified Electronic Signature (“QES”), is only one distinct type of electronic signature. Meanwhile, from applicable laws, we understand that any type of electronic signature could be used:

- Article 124.1 of the Civil Code 2005, replaced by Article 119 of the Civil Code 2015, regulates that civil transactions by way of electronic means in the form of data messages prescribed in the law on electronic transactions shall be deemed to be written civil transactions.

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<sup>18</sup> Decree 69/2018/ND-CP dated May 15, 2018 on guidelines for the Law on Foreign Trade Management

<sup>19</sup> “State organisations to promote use of digital signatures” by Vietnam News, 13 October 2019, available online at <http://vietnamnews.vn/society/536830/state-organisations-to-promote-use-of-digital-signatures.html#VZQhguObG2oUhZKU.99>, last accessed 8 November 2019.

<sup>20</sup> Decree 130/2018/ND-CP dated September 27, 2018 of the Government on guidelines of the law on e-transactions of digital signatures and digital signature authentication

- Article 14.1 under the Law on E-transaction regulates that a data message cannot be disclaimed in terms of its validity as evidence for the sole reason that it is a data message.

The lack of comprehensive regulations on the adoption of digital signatures has led to confusion and reluctance from both foreign and local enterprises in applying solutions other than qualified electronic signatures with a digital certificate and token. Multiple other electronic signature solutions<sup>21</sup> (“**other solutions**”) are available on the market. However, it is not clear whether they are compliant with prevailing regulations and standards,<sup>22</sup> nor if they are legal or recognised for either local or global business transactions.

The European business community has taken note of many cases when local companies are not sure about application of electronic signatures and how to check the validity of an electronically signed document, leading to delayed administrative approval. Our member companies have encountered cases when business contracts have been signed electronically between an overseas company and a local Vietnamese company using other solutions, but the local bank in Vietnam has denied the validity of the contract as a justification to approve the related inbound or outbound wire transactions. On the other hand, this same bank accepts the un-notarised, scanned hand-signed business contract by email as valid document despite the fact that the scanned contract could have been falsified more easily. Not until weeks later, after many exchanges between the local company and the local bank, did the local bank accept electronically signed contract as valid.

Thanks to the Circular 16/2019/TT-BTTTT<sup>23</sup> dated December 5, 2019 from the Ministry of Information and Communication, a significant step taking effect from April 1, 2020, clarification of compulsory standards has been provided for digital signatures and digital signature authentication services according to digital model on mobile devices and remote digital signatures. It also clarifies the relevant Government bodies, namely The Ministry of Information and Communications, The Department of Science and Technology and The National Electronic Authentication Centre (“NEAC”). However, we would appreciate support from NEAC on evaluating non-QES electronic signature solutions with both local and international solutions) and providing a non-exhaustive list of non-QES solutions that have met the compulsory standards. EuroCham remains at disposal if any further details were needed.

## 2. Issuance and implementation of Decree guiding the Cyber Security Law

EuroCham and its ICT Sector Committee take note of the Law on Cyber Security 24/2018/QH14 which started taking effects on 1 January 2019 and is expected to provide an opportunity for public and private organisations to work together without losing the knowledge or freedom that the Internet has brought us. We acknowledge with appreciation the opportunities to participate in the drafting process and receiving the final draft of the Decree guiding the Law. We understand that the final draft Decree was submitted to the Government and ready for issuance and implementation in 2020.<sup>24 25</sup>

<sup>21</sup> For example, DocuSign, PandaDoc, SignRequest, ZohoSign,...

<sup>22</sup> For example, the National standard TCVN 7635:2007 on Cryptography technique - Digital signature

<sup>23</sup> Circular 16/2019/TT-BTTTT dated December 5, 2019 of Ministry of Information and Communication on the list of compulsory standards for digital signatures and digital signature authentication services according to digital model on mobile devices and remote digital signatures

<sup>24</sup> “Decree guiding Law on Cyber Security will be issued and applied to enterprises and users”, by Tri Thuc online news, 20 August 2019, available at <https://trithucvn.net/tin-tuc-vn/se-ban-hanh-nghi-dinh-luat-an-ninh-mang-truoc-het-ap-dung-voi-dn-va-nguoi-dung.html>, last accessed 8 November 2019.

<sup>25</sup> “Decree guiding Law on Cyber Security will be issued in 2019”, by Cong An Nhan Dan online news, 16 August 2019, available at <http://cand.com.vn/Su-kien-Binh-luan-thoi-su/Se-ban-hanh-Nghi-dinh-huong-dan-Luat-An-ninh-mang-trong-nam-2019-561757/>, last accessed 8 November 2019.

We therefore hope to see the guiding Decree be issued and implemented to reflect the purpose of giving the ability to secure information, information systems and human activities on cyber space without harming national sovereignty, national interests and security, social order and safety, State secrets, and importantly: the legitimate rights and interests of organisations and individuals. We also look forward to the issuance of a decree which provides clarifications and guidance on several provisions of the Law which still remain concerns of the business community, such as scope of the data localisation and local office. Referring to previous statement of Mr. Hoang Phuoc Thuan, Director of the Cyber Security Department under the Ministry of Public Security,<sup>26</sup> we look forward to seeing detailed guidance and full clarification on limitation of enterprises that would be subject to the data localisation and local office requirements.

## **B. EuroCham Human Resources and Training Sector Committee: Expanding definition of “internal transfer”**

According to Clause 1, Article 3, Decree 11/2016/ND-CP of the Government dated 03 February 2016,<sup>27</sup> *“Foreign workers internally re-assigned in the company are the managers, chief executive officers, experts and technicians of a foreign enterprise which has established a commercial presence in Vietnam, are temporarily reassigned within the same enterprise to its commercial presence in Vietnam and have been employed by the foreign enterprise for at least 12 months”*.

According to Article 2, Circular 35/2016/TT-BCT dated 28 December 2016 of the Ministry of Industry and Trade<sup>28</sup>, *“Commercial presence is defined by clause 1 Article 3 of the Government’s Decree No.11/2016/ND-CP dated 03 February 2016 on elaboration of a number of Articles of the Labour Code in respect of foreign workers in Vietnam (hereinafter referred to as Decree No. 11/2016/ND-CP) and is presented in the following forms:*

- a) Foreign-invested business organizations;*
- b) Representative offices and branches of foreign traders in Vietnam;*
- c) Executive offices of foreign investors as stipulated business cooperation agreements.”*

Given the above, the tax, labour and insurance authorities are interpreting that only the assignment of foreigners from the overseas parent companies to subsidiaries in Vietnam whose 100% capital are owned by the parent company is considered as internal transfer. Meanwhile, **the mobilisation of employees from other companies within the group, or to other affiliated companies in Vietnam which are not fully owned by the parent company, is not considered as an internal transfer.**

**From the work permit application perspective, an expatriate can work in Vietnam under the form of internal assignment (i.e. assigned by the overseas entity to work in Vietnam) or local hire (i.e. signing a labour contract with the Vietnamese entity).** Therefore, in case an expatriate is mobilized from the group company other than the parent company to an affiliate in Vietnam, the Vietnamese company is required **to sign a labour contract with him/her for work permit application and employment cost deductibility purposes as he/she does not meet the condition of an internal transferee.** This leads to the following consequences:

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<sup>26</sup> “Cyber-security Law cannot abuse rights” by Tien Phong gazette, 16 June 2018 available at <https://www.tienphong.vn/xa-hoi/luat-an-ninh-mang-khong-the-lam-quyen-1285732.tpo>, last accessed 19 September 2018

<sup>27</sup> Decree 11/2016/ND-CP of the Government dated February 03 2016 detailed regulations on implementing a number of articles of the labor code regarding foreign workers in Vietnam

<sup>28</sup> Circular 35/2016/TT-BCT dated 28 December 2016 of the Ministry of Industry and Trade on identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in Vietnam’s WTO commitments on services

- The arrangement of signing a labour contract misleads the employment relationship while the Vietnamese entity is not the real employer of such expatriate;
- Because of the labour contract, additional costs of social insurance and health insurance (and possibly union fees) are incurred, which are costly for both employees and employers;
- This also causes trouble for expatriates to comply with local regulations, such as claiming tax deductions for unavoidable compulsory insurance schemes in both their home location and Vietnam; and
- Above all, it is time consuming and an administrative burden for enterprises in resolving the above matters with different authorities during their operation in Vietnam.

According to international practice, human resources are often mobilised globally within the group to take advantage of the large pool of human resources and meet the business requirements. The requirement that the Vietnamese enterprises must sign labour contracts with foreigners who are dispatched from non-parent companies or to a Vietnamese enterprise which is not a 100% owned subsidiary has distorted the nature of internal transfer and international practice.

Therefore, EuroCham recommends the Government and relevant Ministries to expand the definition of “internal transfer” to eliminate restrictions on human resource allocation from the parent company, reflect the meaning of internal transfer, and keep pace with the developments of the international labour market.

#### **IV. VISA ENTRY POLICY FOR A SUSTAINABLE TOURISM: EUROCHAM TOURISM AND HOSPITALITY SECTOR COMMITTEE**

Entry visa policy is one of the Government policies that has the biggest impact on international tourist flow. International tourists consider visa procedures as an additional barrier in terms of cost and time. If the cost of visiting a destination exceeds tourists’ budget, they will choose a more convenient alternative. To increase competitiveness, attract direct investment and international tourist flows – in order to increase foreign currency income and create jobs – many countries are considering incrementally increasing visa exemption. Vietnam grants an entry visa exemption to 24 countries, far fewer than other ASEAN nations. Moreover, Vietnam’s most common visa exemption (15 days) is much shorter than that granted to tourists elsewhere in ASEAN (usually 30 days). Not only does this create time constraints for travellers, but also difficulties for tour operators in designing travel plans for tourists. This is particularly true for European visitors. Direct, long-haul flights from Europe last, on average, 12 hours and take place overnight. In practice, this reduces their exemption period in Vietnam to just 13 days.

We believe that the list of visa-exempt countries should be further expanded, so that tourism can fulfil its key role to develop into a spearhead sector of Vietnam’s economy. Furthermore, we believe that it is inconsistent to have FTAs with countries while still maintaining that tourists from those countries require a visa. In particular, with the EVFTA expected to be ratified soon, we hope the Government will extend visa exemption from 5 EU countries to all EU Member States as a tool to enhance the competitiveness of Vietnam’s tourism industry. We would recommend:

- 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. This will enhance the competitiveness of Vietnam's tourism sector by enabling travellers to visit for long enough to discover Vietnam's culture and natural beauty;
- Urgently clarify the procedures and rules allowing returns within 30 days for visa-exempt travellers. The problem seems, in part, to have been resolved with the imposition of a US\$5 administration fee. However, it is not yet clear how this will operate in practice. This is a major hindrance to visitors who take flights to Vietnam and return from Vietnam, but who want to visit neighbouring countries such as Cambodia or Laos during their trip. Clear regulations and guidance on implementation needs to be issued;
- Improve the appearance, access speed and procedures of the current E-visa website;
- Extend the list of countries eligible for E-visa application to help visitors acquire a visa and save time, as well as reducing administrative dossiers for both the Government and visitors;
- Allow transit visas to be issued on arrival for up to 72 hours for passengers with connecting flights.
- Make greater efforts to allow international airlines to fly into Vietnam's airports (Hanoi, Ho Chi Minh City, Da Nang, Nha Trang and Phu Quoc) to ease travel time for international guests.

## **V. MOBILITY FOR A RAPID DEVELOPMENT: EUROCHAM MOBILITY SECTOR COMMITTEE**

### **1. Homologation for imported CBU – Revision of Decree 116/2017/ND-CP<sup>29</sup> (“Decree 116”) and its guidance circular for homologation process for CBU imports**

Decree 116/2017/ND-CP, issued on 17 October 2017, regulates the requirements for manufacturing, assembly and imports of motor vehicles and trade in motor vehicle warranty and maintenance services. After the issuance of the Decree, MOT released Circular 03/2018/TT-BGTVT on 10 January 2018 with effect from 1 March 2018.

Proposed revision of Decree 116 has been published on MOIT website for comments. One of the key improvement of the draft revision is the type homologation for imported CBU replacing lot-by-lot base as it is. MOT is assigned to promulgated homologation procedures.

We thank the Office of the Government and the Ministry of Transport on their kind update on progress of revised Circular 03 which reflects amendments in the revised Circular 116. In order to avoid different effective dates of the Decree and its guiding Circular, which hinders early preparation of enterprises to comply with the regulations, we look forward to seeing the revised Decree 116 and revised Circular 03 to be issued and take effect at the same time.

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<sup>29</sup> Decree 116/2017/ND-CP of the Government dated 17 October, 2017 on requirements for manufacturing, assembly and import of automobiles and trade in automobile warranty and maintenance service

## **2. Certification of automotive safety parts for CBU and CKD Products (Vehicles and Components) - Proposed Revision of Circular 41/2019/2018/TT-BGTVT<sup>30</sup> (“Circular 41”)**

Circular 41 stipulates that vehicles 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. Safety related CBU parts and CKD components - tires, lamps, mirrors, glass, wheels and fuel tanks – are to be tested in Vietnam according to Articles 6.1.b and 6.1.c. of Decree 116. Decree 154/2018/ND-CP<sup>31</sup> makes testing compulsory by Vietnam Register in Hanoi for safety parts related to Circular 41. However, difficulty in the enforcement has led to a transitional measure in accepting UNECE/ECE certificates and test reports for renewable period of six months.

Accepting UNECE/ECE certificates and/or test report for CBU as well as CKD parts is fine and aligns with existing Vietnam National Technical Standards and with EVFTA commitments as Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles refer to UNECE/ECE standards and regulations.

We noted at the Dialogue with ACAPR on 12 December 2019 that the Ministry of Transport and the General Department of Customs have had exchanges on the issue and aligned on guiding provincial customs departments to allow customs clearance if a certification of manufacturer is provided.

We recommend accepting UNECE/ECE certificates and test reports without further local testing becomes the regular process. We also suggest that the customs authorities should be allowed to release partial shipment for all parts not related to Circular 41 instead of having the whole shipment blocked to simplify administration for businesses.

## **3. Import for exportation**

Vietnam authorities signed a record number of free trade agreements, welcomed foreign direct investment and are willing to develop the automotive industry in Vietnam. However recent decisions from Vietnam Authorities prevent foreign owned automotive companies to proceed to import for export or transshipment specifically Decree 69.<sup>32</sup> Decree 74<sup>33</sup> complicates trade further by requesting vehicles imported for export to proceed in Vietnam to basic homologation without local test even though those vehicles are not intended for use in Vietnam.

Vehicle Importers with valid business license already including transshipment can only proceed until the expiration of their business license as per Article 72 on Transitional regulations, Point 2 “Licenses issued by Ministries and ministerial-level agencies to traders as prescribed in the Government's Decree 187.<sup>34</sup> However transshipment of their vehicles must now take place within thirty days and Circular 38<sup>35</sup> restricts them to proceed to transshipment from the same customs checkpoint.

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<sup>30</sup> Circular 41/2018/TT-BGTVT dated 30 July 2018 of the Ministry of Transport

<sup>31</sup> Decree 154/2018/ND-CP dated 9 November 2018 of the Government

<sup>32</sup> Decree 69/2018/ND-CP dated 15/05/2018 on Guidelines for the Law on Foreign Trade Management, Article 18.2

<sup>33</sup> Decree 74/2018/ND-CP dated 15/05/2018 Article 1. Amendment and supplement to a number of articles of Decree No. 132/2008/ND-CP dated December 31, 2008, detailing the implementation of a number of articles of the Law on Products and Goods Quality

<sup>34</sup> Decree 187/2013/ND-CP dated November 20, 2013 on guidelines for the Law on Commerce in respect of international trade of goods and activities of agency for sale and purchase, processing and transit of goods involving foreign parties and guiding documents before effective date of this Decree shall keep valid until their expiration date”

<sup>35</sup> Circular 38/2015/TT-BTC, Article 89

Vietnam Authorities want to develop the automotive industry and a regional hub. To the contrary recent decisions restrict trade rights of foreign invested automotive companies registered in Vietnam jeopardizing such regional development from Vietnam. Foreign invested companies in automotive should be allowed to transshipment without restrictions. Transshipment should continue to be allowed from the Customs entry point so that vehicles arriving to Vietnam by boat should be allowed to tranship by truck or boat to their final destination. It should be also allowed to multimodal transport to tranship or export to landlocked Laos or Cambodia by truck or boat with no restriction.

In line with FTA commitments, to handle automotive as an open international trade for foreign invested companies in Vietnam, we recommend that the Vietnamese authorities: allow transshipment as well temporary import for export for foreign invested automotive companies; remove the new restrictions to trade on transshipment limitation for vehicles such as basic homologation for transhipped vehicles as their final destination is not Vietnam; and instruct customs authorities that multimodal transportation for transshipment is allowed.

#### 4. Ban on motorcycle Circulation in big city by 2030

##### Hanoi

The Hanoi People's Committee has approved Resolution 04<sup>36</sup> ("**Resolution 04**"), which aims to deliver the following: Managing the number of Units in Operation (UIO); Managing the quality of UIO; Managing the operation scale of UIO; Finding solutions to develop and improve the effectiveness of public transportation; Finding solutions to apply information technology in traffic management and control (smart transportation); Finding solutions to strengthen the capability of relevant State agencies regarding transportation system management.

The roadmap to banning motorcycle circulation in Hanoi's inner-city districts in order to strengthen the management of UIO and reduce congestion and pollution is set out in the table below:

**Table 1: Timeline for implementing Hanoi's motorcycle ban**

No.	Task	Timeline
1	Publicity on banning motorcycle circulation in Hanoi by 2030.	Yearly
2	Research and sum-up total number of UIO (based on production year)	2017-2020
3	Research and set regulations on technical and emission standards in order to manage the quantity of motorcycles in operation	2017-2020
4	Recall and destroy out-of-date and unqualified motorcycles*	2017-2030
5	Pilot to ban motorcycle circulation during set hours and on set dates on selected main roads and in the city centre	2025-2029
6	Ban motorcycles in inner-city-districts in Hanoi	2030

*\* When legal regulations and required technical and emission standards are on the ground*

##### Da Nang

On 7 July 2017, authorities in Da Nang approved a proposal for the "improvement of public transportation, management of individual vehicles in circulation, control and management of traffic flows in the City". The proposal includes the following objectives: Developing mechanisms and

<sup>36</sup> Resolution 04/2017/NQ-HDND dated 4 July 2017 on strengthening transportation management to reduce congestion and pollution in Hanoi from 2017 to 2020 and vision to 2030.

regulations for urban-traffic planning; Investing in and developing proper urban-traffic infrastructure; Improving and expanding the public transportation system; Introducing the application of IT and smart management of traffic control; Managing individual vehicles; Managing traffic in the city centre; Implementing solutions to traffic-management issues

### **Ho Chi Minh City**

In 2017, Ho Chi Minh City authorities discussed a proposal to limit and ban motorcycles in order to solve traffic congestion and pollution. So far, there has been no further official decision on this issue.

### **Analysis:**

The motorcycle is essential to the daily lives and livelihoods of millions of people. It has become the most economical, convenient and flexible mode of transportation, particularly in cities like Hanoi and Ho Chi Minh City, where streets are narrow and there are very few alternative methods of transport. Now and in the near future, public transportation infrastructure in large cities might not be sufficient to meet public demand. Therefore, banning motorcycles could create significant difficulties and inconvenience for people in large urban areas; Jakarta is a case in point here. The Indonesian government banned motorcycles, but this met public opposition and was later overturned because Jakarta's infrastructure and public transportation were insufficient to meet public demand.

Banning motorcycles, on its own, is therefore not an effective solution to improve traffic congestion and pollution and reduce traffic accidents in big cities. The causes of these issues include a lack of effective management of UIO, poor driving skills and low road-safety awareness. The proposed ban may also cause significant challenges to the motorcycle manufacturing industry which, over the last decade, 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, not least through tax contribution and local job creation.

We would therefore recommend local authorities could consider other, more effective solutions to address the issues of traffic congestion, pollution and traffic accidents in big cities, including: Undertaking research, referring to and adopting best practice from other motorised countries such as Taiwan, where advanced public transport and traffic infrastructure are used in harmony with motorcycles, and European well developed cities such as Milan and Paris, successfully implementing limited traffic zones. Besides, the authorities should take into consideration peoples' needs in order to propose a feasible master plan, minimise disturbances to people's daily life and work and avoid negative economic consequences. We also suggest to only manage or ban out-of-date motorcycles which are the main cause of air pollution, following the example of India, where the government only banned motorcycles over 20 years old; and raise awareness about and compliance with traffic regulation and safety.

## **VI. CONSUMERS' CHOICE IN SUSTAINABLE AND RAPID DEVELOPMENT**

### **A. EuroCham Cosmetics Sector Committee**

#### **1. Removal the cosmetics' advertising pre-approval requirements**

Decree 181/2013/ND-CP<sup>37</sup> ("**Decree 181**") guiding the Law on Advertising 16/2012/QH13 ("**Advertising Law**") requires the pre-approval for advertising content from relevant authorities

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<sup>37</sup> Decree 181/2013/ND-CP dated 14 Nov, 2013 guiding a number of articles of the Law on Advertising



for special products and services, including cosmetics.<sup>38</sup> From a legislative point of view, such requirement is not in line with Article 20.4.b of the Law on Advertising, where only the cosmetics Notification as prescribed by law provisions on medicines is required.<sup>39</sup>

From an industry practice point of view, this pre-approval requirement also does not help much for advertising management and for dealing with violations compared with post market surveillance approach, i.e. enhancing inspecting on real market for violation enforcement. This is also the management approach used by many countries (such as the EU, Australia, New Zealand, US, Canada, Singapore, Philippines, Thailand...) who do not require regulatory approval from an authority.

Meanwhile, this requirement can slow down cosmetic business growth, reduce the business opportunities and increase costs. Cosmetics are fast-moving consumer goods products where business need to move fast and change fast to update the new trend to be competitive in the market. We also take into consideration that cosmetics is in low-risk product category as the application on body is only external, and does not go inside the body unlike foods and drugs. Removing this administrative procedure will support harmonisation with international practice and ensure consistency in advertising regulations within Vietnam, creating a more competitive business environment for the cosmetic sector.

We would like to propose the removal of the pre-approval requirement for cosmetics advertising and simplify the process of submitting document for post-market surveillance which requires no waiting time to ensure consistency in the legislation and to ensure practical business activities. We thank the Ministry of Health on their kind alignment with EuroCham's recommendations in both terms of practice and legal framework. We took note with appreciation that the removal has been added to a draft decree amending several decrees on business conditions and look forward to seeing an early issuance and entry into force of the decree in which the removal is reflected.

## **2. Removal of Certificate of Free Sale ("CFS") requirement from exporting countries for importing cosmetics into Vietnam**

Article 4 of Circular 06/2011/TT-BYT of the Ministry of Health dated 21 June, 2016 ("**Circular 06**")<sup>40</sup> regulates that for imported cosmetics, the Cosmetic Notification Process requires submission of CFS issued by relevant authority of export countries.

CFS is only an administrative document from exporting countries or manufacturing countries to confirm that this product can be sold in the exporting countries. A CFS does not certify the product's quality or safety. The product having such a document, in many cases, might not actually be distributed in such countries. Therefore, in practice, the requirement of submission a CFS in the Cosmetic Notification Process does not actually help to ensure the product's quality or safety, but sets an unnecessary administrative burden. In many cases, the exporting countries cannot provide a CFS to Vietnam since they cannot meet Vietnam's requirement on CFS content and the cosmetics industry loses the opportunity to bring this market to Vietnam.

Removing CFS for all importing cosmetics will fully align with Government's Administrative Transformation Program.

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<sup>38</sup> Article 12.1 Decree 181/2013/ND-CP dated 14 Nov, 2013 guiding a number of articles of the Law on Advertising:

"Advertisements for the special goods and services mentioned in Articles 3 to 11 of this Decree may only be published after their contents are certified by competent authorities."

<sup>39</sup> Article 20.4.b Advertising Law: "Having the cosmetics announcement sheet as prescribed by law provisions on medicines when advertising cosmetics"

<sup>40</sup> Circular 06/2011/TT-BYT of the Ministry of Health dated 21 June, 2016 providing Cosmetics Management

The industry highly supports and would propose to manage cosmetics with a post-market surveillance approach and remove the requirement on CFS for imported cosmetics from all countries. At the Dialogue with ACAPR on 12 December 2019, we received feedbacks from the Ministry of Health that the removal will be applied to 11 signatories of CPP first, while there will be a further detail plan for products from other countries, which is to be submitted to MOH for approval. We would like to advise MOH to extend the removal to all countries, particularly to the EU Member States, in view of the imminent entry into force of the EVFTA.

### **3. Free VAT tax for goods donated to non-government organisations (“NGO”)**

According to Article 4.19.b of Circular 219/2013/TT-BTC<sup>41</sup> regarding goods and services that are not subject to VAT including all imported products which are given to socio-political organization as a gift prescribed by the laws on gifts. However, if the products are imported for trading purpose and these goods are given to socio-political organizations at a later stage shall not be applied to this Article and it shall be subject to VAT. This practice leads to the situation that enterprises prefer to burn the products (if the products are close to the expired date) to avoid VAT instead of donating it to various organizations who are in need. Additionally, it goes against the Government’s efforts in term of sustainability development and environment protection.

We suggest to apply VAT exemption for goods which are donated to all political-society organisations without confining the original purpose of imported products.

### **4. Intellectual property of imported branded products**

In common practice, in case customs authorities hold a shipment with suspected fake products, they will request the brand’s owner to provide the identical version of the fake product to prove that these products are fake according to Article 6.1.c of Circular 13/2015/TT-BTC.<sup>42</sup> This requirement is impossible for the brand owners to fulfil because they do not produce fake products hence cannot have the exact copy as per request. As a consequence, anti-counterfeiting authorities often release the fake shipments which results in the fact that fake products always available for sale in the Vietnamese market.

We find that the requirement for brand owners to provide identical version of the fake product is a significant barrier in fighting against counterfeiting. We request for detailed guidance from the Government on addressing fake proofs to solve the current issue. Our proposed solution is: Brand owners are not required to provide identical version of the fake product, but will take full responsibility before the law regarding issuance of confirmation of fake products in such suspected cases.

## **B. EuroCham Wines and Spirits Sector Committee**

### **1. Ensuring implementation of EVFTA supporting enterprises**

EVFTA is a comprehensive, high quality, balanced agreement of interests for both Vietnam and the EU, and at the same time complies with the provisions of the World Trade Organization (WTO).

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<sup>41</sup> Circular 219/2013/TT-BTC dated 31 December, 2013 the Ministry of Finance guidance on the implementation of the Law on Value-added tax and the Government's Decree No. 209/2013/ND-CP dated December 18, 2013 providing guidance on some Articles of the Law on Value-added tax.

<sup>42</sup> Circular 13/2015/TT-BTC dated 30 January, 2015 on defining inspection, supervision, temporary suspension of customs procedures for exported and imported that are subjects to intellectual property rights control of counterfeit goods and goods infringing intellectual property rights.

Following signature of EU – Vietnam Free Trade Agreement (EVFTA) and EU – Vietnam Investment Protection Agreement (EVIPA) in Hanoi in June 2019, Wine and Spirits Sector Committee looks forward the successful ratifications to be completed speedy and smoothly. EVFTA will facilitate the market access of EU wines and spirits to Vietnam through tariff reductions, and ultimately elimination, on EU originated wine and spirits. This will based on non-alteration rules and a clear set of guidelines and requirements to prove origin in order to qualify for the concession benefits, European brand and Geographic Indications (GIs) protection, as well as trade facilitating reforms to simplify administrative measures and to harmonize the technical regulations with international practices without imposing unnecessary technical barriers to trade.

We noted some delays in the practical implementation of Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which entered into force on 14 January 2019. It takes around 10 months for Vietnam to complete the legalized local documents for enforcement, especially on the implementation of rules of origin e.g. the clear guidelines on the documentation requirement for goods transhipped via another CPTPP country which acts as the regional hub. We expect some improvements in the promulgations of all legal guidance for full implementation of EVFTA for EU wine and spirits business, whether or not it is directly shipped from the EU or via a third-party hub country, to be able to claim for preferential tariff effectively once the EVFTA comes into force in Vietnam. Ensuring the implementation of EVFTA as soon as it takes effect will help enterprises of both sides enjoying practical benefits from the agreement. This will help boosting trade between Vietnam and the EU member states.

One of the benefits from the EVFTA is the gradual reduction of tariffs on goods imported from the European Union. However, in order for the agreement to be effectively implemented as soon as it takes effect, that is, after the two sides ratification, from the Vietnamese side, it is necessary to start preparing the guiding documents. Through our experience in implementing the CPTPP, we would like to recommend that the Vietnamese Government pay attention to the following issues:

- The Government and the Ministry of Finance need to promulgate special preferential tariffs to reduce tariffs according to the committed schedule. This tariff schedule will be effective as soon as the two sides complete the approval process. Although there may be a delay in the issuance of this document, the Vietnamese Government must create all conditions and ensure the rights of enterprises to be benefited from agreed concessional tariff according to the schedule committed in the Agreement.
- The Ministry of Finance, the General Department of Customs from central to local level should promulgate regulations and guidelines to clarify the specific instructions on documents and dossiers as prescribed by the EVFTA so that enterprises can complete customs clearance and tariff reduction claims once when EVFTA takes effect.
- Implementing regulations and guidelines on Rules of Origin, especially for goods transported via intermediate ports located in third party countries of the EVFTA (such as Singapore or Hong Kong), should consider the following:
  - *Certificate of Origin (COO)*: We would like to have a clear guidance on the Certificate of Origin in terms of who issues the COO, template and guidance for filling the template etc.
  - *Transshipment via a third country*: In the case of goods being transhipped via a regional port (such as Singapore as mentioned above), at which the goods are split, separated or consolidated at a bonded warehouse under the supervision of Singapore Customs Authority before being exported to Vietnam, we recommend the General Department of Customs provide any specific requirements on documents to prove that “the goods retain their

origin”. We would like Vietnamese Government to pay attention to the fact that the Customs Authorities of third-party countries (such as Singapore) would only issue the Non-Manipulation Certificate or similar to certify that the transhipped goods are under their supervision before goods are exported to Vietnam, and it takes 5-7 days. Once the goods have been removed from the bonded warehouse and exported to Vietnam, the trader does not have the right to retrospectively apply for such a certificate. Therefore, we would like to recommend the early issuance, before the effective date of EVFTA, of the relevant regulations and guidance especially if the Non-Manipulation Certificate is mandatory for all transhipped goods via third party countries.

- *Third-party invoice:* We need to have a specific guidance for this case including the text or any template.
- *Extension of limit for supplementing of Certificate of Origin due to delay of promulgation of guidance:* According to current regulations, an importer has the right to supplement Certificate of Origin within 30 days from the date of opening the Customs Declaration. However, we would like to ask for reasonable extension of the 30 days limit if there is any delay of promulgation of guidance or clarification from the Vietnamese authorities to ensure the rights of enterprises to be benefited from the agreed concessional tariff according to the schedule committed in the Agreement.
- *Requirements for documents for shipments arrived Vietnam from the effective date of EVFTA and before the Vietnamese guidance documents take effect:* We urge the Ministry of Finance and the General Department of Customs to provide specific guidance before the effective date of EVFTA, so the trader is able to apply for preferential tariff treatment. If not, there should be specific guidance to ensure that traders would get a refund of the tariff paid less the concessional tariff for shipments imported into Vietnam after the effective date of EVFTA.

## **2. Special consumption tax for wines and spirits**

The most recent SCT reform took place in 2016. It has introduced 3 consecutive annual increases on the ad valorem (AV) tax rate, and changed the tax based on imported products from CIF to the importers’ selling price. The reform has had a significant impact on imported W&S, and totally nullified the potential benefits from the EVFTA concluded in December 2015. There are always pressured to further increase the AV tax on alcohol during the legislative discussion of APCL. Despite the serious problem of unrecorded, non-tax paid, alcohol in Vietnam (75% of the total consumption), MOF has repeatedly relied on the international agencies’ comment that tax on alcohol in Vietnam is low compared with other countries in the region. This is not accurate for premium wines and spirits.

In light of the fact that Vietnam has been expending significant efforts to improve the business environment, enhance national competitiveness, and actively participate in multilateral trade agreements, we are concerned that any changes in the tax policy at this stage will hinder these efforts and cause an unexpected impact to the economic development of Vietnam.

EuroCham Wines & Spirit Sector Committee would like to highly recommend that the Ministry of Finance consults with the Vietnamese Government to maintain the predictability and stability of the current SCT system in order to facilitate the operation in Vietnam of foreign businesses in general and in particular, the European business community.

- *Predictable and stable tax policies are necessary for business development:* Any changes to tax policies will affect the business and investment plans of enterprises. Since 2003, the Law on SCT has been amended five times in 2003, 2005, 2008, 2014 and 2016. From 2014 alone, the SCT rates for liquor have increased every year. For instance, the SCT rate applicable for liquor has increased from 45% in 2014, to 50% in 2015, from a CIF basis. In 2016 there was a further increase of the rate from 55% in 2016 to 65% in 2018, as well as a change of the calculation methodology with the application of the “wholesaler prices” as the basis for calculation. These changes have led to a tripling of the SCT in absolute terms. Every year the industry must adjust the tax expenses which affect both of the short-term and long-term plans of businesses. Such instability creates more burden in terms of operation costs and impacts, thus affecting the confidence of businesses to invest or further expand their activities in Vietnam. This, in turn, will also impact the competitiveness of the business environment of Vietnam.
- *Free Trade Agreements and inappropriate timing to amend the SCT regime:* Vietnam has just implemented the CPTPP and signed Free Trade Agreements with the European Union with expectations that, once ratified and implemented, these agreements will bring significant benefits to the business community of both Vietnam and EU Member States, especially in terms of import/export tariff reduction. In light of this, the increase of SCT on items imported from the EU and the CPTPP’s member countries could potentially cause concerns from international and EU enterprises about Vietnam’s position in trade promotion and the level of support for the businesses from the partner countries to enjoy the benefits from those agreements. We are concerned that this would have a negative, adverse effect on the ongoing efforts for the EU and Vietnam to ratify the EVFTA.
- *Question on whether the ultimate goal of SCT increase on liquor and beer has not been reached:* Although the SCT Law has been amended five times since 2003, and the tax rates for liquor and beer increased annually since 2014, there has not been any comprehensive assessment of the social and economic impacts of such tax reforms. The increase of SCT on liquor and beer products was proposed to reduce alcohol abuse and protect public health. However, there have not been any reports or studies on the impact of the previous amendments, in terms of both tax rates and calculation methodology, on alcohol consumption and the improvement of public health. Since more than 70% of the liquor consumed in the market is unrecorded, including homemade, smuggled or counterfeit liquor<sup>43</sup>, the SCT increase does not help to reduce liquor abuse, but instead facilitates the growth of illicit liquor as consumers turn to the informal market, as legitimate liquor products cannot compete in terms of pricing.
- *No discrimination between imported and domestic products:* In the spirit of the General Agreement on Tariffs and Trade (GATT), specifically, the Most-Favored-Nation rule and the National Treatment principles, every member country shall apply fair tax policies without discrimination between countries or between domestically produced and imported products. Therefore, tax policies need to ensure an equal compliance level and avoid the discrimination between imported and domestically produced goods.

## **VII. HEALTHCARE IN SUSTAINABLE DEVELOPMENT: EUROCHAM PHARMA GROUP**

Vietnam, with its aging population and growing demand for high-quality healthcare products and services, is at the turning point towards the next revolution in healthcare system. The Government has set certain objectives to not only improve the citizen’s health but also to optimize the social and

<sup>43</sup> Global status report on alcohol and health 2014, WHO, 2014. Available at [https://apps.who.int/iris/bitstream/handle/10665/112736/9789240692763\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/112736/9789240692763_eng.pdf?sequence=1)

economic values of the healthcare sector. The innovative pharmaceutical industry strongly believes in the potential of Vietnam to climb the value chain in the pharmaceutical sector, and healthcare in general, ahead of several other ASEAN countries; and we are proud to play a key role in this journey.

For the past decades, the globally leading research-based pharmaceutical companies have continued expanding its investment into the country, include, but are not limited to, investments in patient assistance programs, medical education, clinical trials etc. The industry is ready and eager to expand such investment including the enhancement of Vietnamese manufacturing and innovation capabilities - cornerstones for Vietnam to move focus from manufacturing to Research & Development (R&D), services and digital healthcare.

Benchmarking with already developed healthcare hubs in the world, the journey to realize the vision of Vietnam as a regional hub for high quality healthcare in ASEAN starts with the determination of the Government to develop patient-centric legislation, to build a favorable and incentivized environment to attract foreign direct investment.

- With global experience, we would like to highlight that the **principle of harmonization of local requirements with global standards and practices lies at the heart of a patient-centric legislation system, also first step for any countries to integrate into the global value chain.** Pharma Group is honoured to be recognized as a reliable partner and advisor to the Government, towards perfecting legislations, reducing unnecessary administrative burdens and at the same time ensuring quality assurance for patient safety.
- Pharma Group appreciates efforts of the Government to facilitate smooth establishment and operation set-up for legal entities. The industry commits to becoming long-term partner in Vietnam, not only to ensure Vietnamese patients have fast and sustainable access to safe, high-quality and innovative medicines, but also to contribute to the broader development of a sustainable healthcare ecosystem. Thus, we encourage and look forward to **continued exchange about the scope of activities of these legal entities**, paving the way for further investment in the sector development.

EuroCham Pharma Group stands ready to continued dialogues with the Government, Ministry of Health and relevant Ministries on the above topics, with the overarching objective to build a high-value, self-sustaining life sciences sector and position Vietnam as an attractive investment destination in ASEAN.



**SPEECH OF AUSTRALIAN CHAMBER OF COMMERCE IN VIETNAM (ON BEHALF  
OF VBF ASSOCIATE MEMBER CHAMBERS)  
AT ANNUAL VIETNAM BUSINESS FORUM 2019**

*Presented by  
Mr. Phillip Dowler  
Chairman*

The Australian Chamber of Commerce in Vietnam pleased to make the following comments on behalf of the Associate Members of the VBF.

Vietnam has enjoyed remarkable success over the past thirty years since embarking on its *doi moi* economic reforms. A critical part of this success has been the deliberate and effective commitment to global trade and regional and international integration through bilateral and multi-lateral agreements. These agreements have driven Vietnam's economic development, attracted foreign investment, created jobs, and improved the health and well-being of its citizens. This commitment is all the more impressive and valuable in light of the stress that rules-based order is under around the world today.

Vietnam has underlined its commitment by succession to an impressive array of high-quality trade agreements including AANZFTA, the agreement establishing the ASEAN-Australia-New Zealand Free Trade Area, and CPTPP, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, one of the most far-reaching multilateral trade agreements reached to date.

However, Vietnam will only realize maximum benefit by ensuring full and timely implementation of its agreements. In this regard, we note that Vietnam delayed implementation of its tariff and rules of origin commitments under the CPTPP, affecting a number of Australian companies and AusCham members. While we welcome Decree 57/2019, Circular 62/2019 and the other administrative processes enabling CPTPP members access to preferential tariffs, we encourage Vietnam to ensure all future CPTPP-related administrative procedures are implemented on schedule.

We also encourage Vietnam to treat companies utilizing CPTPP Certificates of Origin and seeking retrospective application of CPTPP tariff rates consistently and in accordance with Vietnam's trade commitments.

We looking forward to working with the Ministry of Planning and Investment (as the VBF convener) to ensure Vietnam continues to benefit from economic integration and open trade.

Additionally, AusCham has many education sector members including universities, primary and secondary schools, technical institutions, English language centres, and training consultants. Education is fundamental to development of a productive, competitive, innovative and sustainable economy and AusCham's education sector members, and Australia, are committed to this goal. A robust education system provides the human capital necessary to foster innovation and achieve

Vietnam's goal of rapid and sustainable development. It also increases the capacity of its citizens to obtain a better quality of life and contribute effectively to community wellbeing.

Australian educational institutions have a strong focus on lifelong learning and soft skills, technical skills, and interpersonal skills for all students. In addition, they can help to improve the standard of education in Vietnam in areas such as research, quality, vocational and technical education, and skills development. Therefore, the environment should be optimised encourage quality education institutions from across the globe to invest in Vietnam and/or collaborate with Vietnamese education institutions.

A final point of note is difficulties our members have faced conducting tax clearances when seeking to close their businesses in Vietnam. This process is unnecessarily difficult, time consuming and costly, often forcing our members to consider initiating formal bankruptcy proceedings when liquidation is the appropriate step.

Most significantly, tax clearances amount to a complete tax review going back many years, suggesting that companies cannot rely on their previous tax audits, filings and dealings with tax authorities. It is important for systemic tax system confidence that companies are able to rely on previous tax filings and dealings rather than completely re-opening their entire tax history.

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On behalf of the Associate Members of the VBF Board, we thank the Government for the opportunity to raise issues important to us. We express our commitment to support Vietnam to achieve rapid and sustainable economic development.





## **AUSTRALIA CHAMBER OF COMMERCE IN VIETNAM POSITION PAPER AT THE ANNUAL VIETNAM BUSINESS FORUM 2019**

### **Introduction**

On behalf of the members of the Australian Chamber of Commerce in Vietnam (**AusCham**) we would like to thank the VBF for facilitating this integral and ongoing dialogue with the business community. The Australian business community is proud of its contribution to Vietnam's economic development and through this forum would like to encourage new initiatives to achieve rapid and sustainable development in the Vietnamese economy.

The areas that we are covering in this report are as follows:

1. Education and Training;
2. The Tax Office Clearance Process; and
3. Tariffs and Broader Trade Commitments.

### **1. Education and Training**

The Australian Chamber of Commerce represents many educational institutions that are involved in education in Vietnam. These institutions include Universities, Primary and Secondary Schools, Technical Institutions, English Language Centres, and Training Consultants. They are all contributing to the development of Vietnamese students and helping Vietnam to leapfrog to Education 4.0.

An example of this is RMIT where the teaching and learning model is based on international best practice and includes classroom learning experiences, facilitated online and self-directed learning, engaging digital learning materials and activities, peer learning, and the development of employability skills. Another example is the Australian International School (AIS) that is committed to providing a high quality international education. The AIS inquiry based approach (which includes the development of critical thinking) uses both direct instruction and facilitated learning.

In addition, Australia has funded many projects and programs in Vietnam including Aus4Skills. This program will help move Vietnam towards Education and Workforce 4.0 through supporting Vietnam to access and use high-level professional and technical knowledge, skills and competencies to contribute to the country's sustainable economic and social development. The program components include promoting industry linkages with vocational education and training, improving the quality of universities in the Northern Mountainous Region, and advancing inclusive leadership.

AusCham believes that education is fundamental to the development of a productive, competitive, innovative and sustainable economy. A robust education system will not only provide Vietnam with the human capital necessary to foster innovation and encourage economic

growth but also increase the capacity of its citizens to obtain a better quality of life and contribute more effectively to general community wellbeing.

We firmly believe that Australian institutions can play a key role in helping Vietnam to “Leapfrog to Education and Workforce 4.0”. There are a growing number of Australian education institutions offering programs in Vietnam, with many in partnership with local institutions. Given Australia’s international reputation for high quality, affordable education we hope that this trend will continue well into the future.

Australian educational institutions have a strong focus on lifelong learning and soft skills, technical skills, and interpersonal skills for all students. In addition, they can help to improve the standard of education in Vietnam in areas such as research, quality, vocational and technical education, and skills development. Therefore, the environment should be optimised encourage quality education institutions from across the globe to invest in Vietnam and/or collaborate with Vietnamese education institutions.

## **2. The Tax Office Clearance Process**

The tax office clearing process is difficult and costly – and creates significant concerns for a number of our members. Specifically, issues arise include:

- Companies that have had recent tax audits, then seek to be closed down, are reviewed again and different interpretations arise – resulting in double taxation, or opening closed matters
- Tax authorities can take considerable time periods (allocated officers standard excuse is “I am busy”), resulting in additional administration costs for foreign companies, that are seeking to close their representation in Vietnam (including document storage/offices).
- Companies that have incurred significant losses and are being wind up by the owners due to those losses (i.e. their capital has been eroded and they have leant funds to wind the company up), are being assessed additional taxes for a range of reasons without having the resources to pay. The company can enter bankruptcy, which can have significant implications on the Legal Representative, or send further funds to Vietnam. Where the parent company is no longer willing to support the loss making operations, this results in a standoff – with the Legal Representative exposed.
- The Tax Clearance process is a complete review of everything (tax related) of a company, and suggests that previous tax related dealing with the authorities cannot be relied upon by a company. This should never be the case, and a tax clearance should be a review based upon previous tax filings/dealings and not a completely separate process
- Once a tax assessment is issued, this needs to be paid before windup can occur. Where this is in dispute, the tax authorities can pursue and block the legal representative from travelling – causing concern where there are no assets from which the Legal Representative can settle claimed debts (i.e. loss-making company where assets have been eroded).
- The other option, of commencing bankruptcy, is itself extremely long-winded (and unnecessarily in a structured windup), and also puts pressure on the Legal Representative.

## **3. Tariffs and Broader Trade Commitments**

We welcome Vietnam's commitment to regional and international economic integration.

- Economic integration has helped drive Vietnam's economic development, attract foreign investment, create jobs and develop Vietnam's impressive manufacturing capability.
- Vietnam's commitment to open trade is important at a time when the rules-based order is under great stress. This commitment is demonstrated by Vietnam's succession to a number of high-quality free trade agreements including AANZFTA and the CPTPP.
- We encourage Vietnam to ensure implementation of commitments under these agreements is both comprehensive and timely – only through full implementation will Vietnam accrue the maximum economic benefit from these agreements.
- We note implementation of Vietnam's tariff and rules of origin commitments under the CTPPP were delayed, affecting a number of Australian companies and AusCham members.
- While we welcome Decree 57/2019, Circular 62/2019/TT-BTC and the other administrative processes enabling CPTPP members to access preferential tariffs, we encourage Vietnam to ensure all future CPTPP-related administrative procedures are implemented on schedule.
- We also encourage Vietnam to ensure companies utilising CPTPP Certificates of Origin and seeking retrospective application of CPTPP tariff rates are treated consistently and in accordance with Vietnam's trade commitments.
- We looking forward to working with the Ministry of Planning and Investment (as the VBF convener) to ensure Vietnam continues to benefit from economic integration and open trade.

## **Conclusion**

The Vietnamese economy continues to grow and this is of benefit to the citizens of Vietnam. In order to continue this forward momentum the opportunities and issues raised by AusCham, the other Chambers, and the VBF business groups need to be taken into account and acted upon. By leveraging on opportunities and resolving issues the Vietnamese economy will continue to grow thus raising the standard of living of Vietnamese citizens. The Australian business community, through AusCham, will continue with its commitment to assist Vietnam in achieving rapid and sustainable development in the Vietnamese economy.

Finally we - as AusCham - are very open to receiving feedback on how AusCham can also better support the Vietnamese Government's initiatives, as the success of any partnership involves a two way discussion. We look forward to seeing progress in the above areas and again would like to thank the VBF for inviting us to present at this forum.



## **POSITION PAPER OF INDIAN BUSINESS CHAMBER IN VIETNAM POSITION PAPER AT ANNUAL VIETNAM BUSINESS 2019**

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 investment environment in Vietnam. As a matter of fact, we recognize enormous potential from Indian players to invest in Vietnam and accordingly, we would like to take this opportunity to bring to your kind attention to our comments on the key sector policies that may affect not only the Indian industry in Vietnam but also link with the overall foreign investment sector in Vietnam.

We look forward to receiving consideration from the Vietnamese Government on our suggestions divided into two sections as below:

### **I. Amendments to the LOI and LOE**

On 15 October 2019, the Ministry of Planning and Investment (“**MPI**”) has published on their official website the latest draft law on amendments to the Law on Investment (the “**LOI**”) and the latest draft law on amendments to the Law on Enterprises (the “**LOE**”). This is the separate draft law instead of the joint draft law on amendments for both the LOI and the LOE as before.

#### **1. Key amendments to LOEs**

##### ***1.1. Removal of unsuitable administrative procedures:***

(i) Notification on changes of managers (Art.12):

Under the LOE, enterprises are no longer required to notify DPI where there is any change of their managers i.e. Members of the Board, Supervisors, and General Director/Director. This change is in light with the fact that the change of managers, in nature, is an internal decision of enterprises in business.

(ii) Submission of hard-copy of enterprise registration dossier (Art.27):

According to the LOE 2014, the registration of enterprise may be conducted online and following which the enterprise is required to submit a hard-copy of registration dossier. The LOE removes such requirement to streamline the enterprise registration process and cut off unnecessary incurred costs.

(iii) Enterprise's seal (Art.44):

The LOE provides two changes in respect of enterprise's seal: (a) enterprises may choose not to use seal in their operation; (b) if there is any seal used, enterprise are not required to notify DPI.

##### ***1.2. Amendments to the administration of Joint stock companies (JSCs) and Limited Liability Companies (LLCs):***

(i) Capital contribution/Payment of subscribed shares upon incorporation (Arts. 48 & 112):

As per the LOE 2014, one must contribute their shares of capital contribution to the company/pay the subscribed shares in full and in the type of assets as undertaken/subscribed

within ninety (90) days from the date of issuance of the Enterprise Registration Certificate (“ERC”). The LOE has made a positive shift and provided that in the circumstance where one contributes capital/pays the subscribed shares by way of assets, the time of importation and implementation of administrative procedures to transfer ownership of such assets shall not be included in the time limit for making capital contribution.

Nevertheless, in both LOE 2014 and draft LOE, the 90 day time limit for capital contribution apply only for the first time the capital is injected in the company but the law keep silent on any further capital contribution scenario, in case the investor subsequently raises the capital the law does not specify any timeline for contributing such increased charter capital. Taking advantage of the ambiguity in the laws, many companies have increased their capital in the ERC but do not make the contribution/payment in time, which leads to false statistics with the MPI on the registered charter capital and increases the burden on the authorities to ensure timely capital contribution as stated in the ERC of the company or in case the member/shareholder is incapacitated to contribute/pay the increased charter capital, the authorities are required to deal with the default or entertain charter capital reduction in the ERC.

- (ii) Removal of the requirement to establish a Board of Supervisors (“**BOS**”) in one-member LLC owned by institution (“**Institutional LLC**”) (Art.78):

The LOE 2014 requires the inclusion of a BOS in Institutional LLC to supervise the operation of such enterprise. In practice, this requirement is a burden on enterprise since the BOS in many cases are not efficient and there are more effective supervisory regimes compared to the statutory supervisory e.g. hiring an independent supervisory.

### ***1.3.Amendments to the definition and other regulations on state-owned-enterprises (“SOEs”):***

- (i) Expansion of the definition of SOEs (Art.4):

As to implement the policy on restructuring SOEs, the LOE broadens the scope of SOEs to include (i) enterprises wholly owned by the state (as prescribed under the LOE 2014); and (ii) enterprises in which the state holds more than 50% of its voting shares/capital. As a result, relevant regulations on the structure and operation of SOEs are amended to ensure the consistency with the new definition.

- (ii) Amendments to the scope of related persons and preference shares held by the State:

The LOE expands the scope of related persons prohibited from being members of the Board, Director or General Director to include son-in-law, daughter-in-law, brother-in-law of an individual.

Additionally, the LOE amends the regulation on voting preference shares held by the State (‘golden’ shares) to be of no time and preference voting restraint.

## **2. Key amendments to LOI:**

### ***2.1.A new definition of “capital investment” is introduced in the LOI.***

This definition is clearer than the previous definition stipulated under the LOI 2014 by listing up types of assets as capital investment e.g. proprietary rights, future assets, IP rights, etc.

### ***2.2.Narrowing the scope of application:***

The LOI excludes public-private partnership projects (“**PPP**”) from its scope of application, which will be subject to the application of a separate law, i.e. the Law on PPP which is under drafting stage as of the date hereof.

Besides, the LOI clears out the threshold of application of itself with the Law on management and use of state capital invested in enterprises, the Law on public investment, and the Law on Construction.

### ***2.3.Business lines***

The LOI eliminates 12 business lines from the list of conditional business sectors, amends 19 business lines, and adds 6 new business lines into the existing list under the LOI 2014 as amended, particularly:

- (i) Eliminated business lines: logistics services, franchise and massage service, debt trading etc.
- (ii) Amended business lines: trading in industrial explosives except for destruction; power generation, transmission, distribution, wholesale, retail, specialized electricity consultancy; services of testing biological preparations, micro-organisms, chemicals, environment remedial agents serving aquaculture and breed; services of evaluation services, evaluation and technology appraisal; services of film production and distribution; supply of intermediary payment services and payment services without customers' payment accounts etc.
- (iii) Newly introduced business lines: register fishing vessel; services of import press release; and business architectural services), etc.

### ***2.4.Additional conditional-market-access-business-lines for foreign investors:***

As to implement the policy on the attraction of foreign investment under the Resolution No.50/NQ-TW, the LOI introduces a list of conditional-market-access-business-lines for foreign investors in a positive approach by writing up lists of (i) business lines that foreign investors are not facilitated with market access and (ii) business lines with conditional market access for foreign investors. With respect to unlisted business lines, foreign investors apply the conditions as for domestic investors.

### ***2.5.Additional regulations on investment incentives:***

- (i) The LOI adds the following lines into the existing list of preferential investment business lines: manufacturing and trading of products formed from science research; college education; manufacturing of goods or services provision creating and participating in a chain of values, cluster of sectors; and innovation start-ups.
- (ii) New preferential investment areas: centralized information technology zones
- (iii) In order to ensure the effectiveness and quality of the implementation of preferential policy (Clauses 7,8 &8 of Art. 15), new provisions on principles, conditions for the application of such policies are added e.g. time-limited incentive, project outcome base; the preferential conditions are met during the time of incentives, etc.
- (iv) New investment supporting measures in case of project delay due to authority decisions and new investment capital support forms from the state budget (Art.20.1.d&h)

## ***2.6. Supplements and amendments of provisions on investment policy approval:***

- (i) Selection of investors to implement investment projects in Vietnam, the LOI introduced three forms of selecting investors, including: (a) auction of land use rights and assets attached to the land; (b) tender for selection of investors for the project; and (c) following the procedure for approving in-principle investment approval.
- (ii) Projects not subject to investment policy approval (Art.28.6):
  - Projects approved under the Law on Planning, except for projects subject to the National Assembly/Government's investment policy approval;
  - Projects with investors selected via auction/tender;
  - Projects not subject to investment policy approval under Arts.30,31&32 of LOI 2014.

## ***2.7. Supplements and amendments of provisions on foreign investors:***

- (i) Under the LOI, foreign investors are not required to have a investment project or IRC when establishing innovation start-ups and innovation start-up investment funds
- (ii) The foreign investors wishing to engage in public companies, securities companies or investment funds shall comply with the Securities Law, which means that, these investors will be subject to the investment conditions, ownership restrictions and investment procedures as under the Securities Law. Should the Law on Securities have no regulation on these matters, the investment conditions, ownership restrictions and investment procedures under the LOI shall be applied.
- (iii) M&A approval will no longer be required in the case such M&A does not lead to the increase of foreign ownership ratio in enterprise.

## **Suggestions**

- Removal of the requirement for escrow deposit or security guarantee that is required to be made to the relevant investment registration authority to reduce the cost burden which is not included in the investment project. The reason being escalation in costs as the escrow deposit amounts ranges from 1% – 5% of the guarantee amount for arrangement of the guarantee.
- LOE request for full contribution of charter capital within 90 days for the first time after ERC issuance. The LOE does not address this issue and it would be in the interest of businesses that such short timeline should be extended for the first time charter capital contribution and there should be clarity on the timeline for contributing any subsequent increase in the charter capital as abovementioned to a plausible time frame to support the investors and at the same time provide the authorities ample time with a clear legal base to manage the paperwork.
- LOE regulates the performance of enterprise registration procedures. Although the LOE does not emphasize on this, it is pertinent that according to the provisions of the LOE, the enterprises shall carry out the business registration procedures within 10 days from the date on which such changes are made to the business registration contents of the enterprise. In the transactions of purchase, sale and transfer of shares, capital contribution (“M&A”), the registration agency interprets this provision in a way that the seller and the purchaser must complete the transfer of payment of shares/capital contribution before the company is allowed to carry out the procedures to record the name of the new shareholders/members (the purchaser) into the content of the enterprise registration. This mechanism seems to deflect with the actual practice and the international standards with respect to M&A transactions. The reason being that it do not guarantee the purchaser's benefits when it is required to pay 100% of the transfer value while its name has not been recorded in the

content of the enterprise registration. A more specific and clear provision on implementation of procedures for changing business registration for M&A transactions is required.

## **II. PPP draft law**

The draft Law on Public-Private partnerships (PPP) contemplates permitting a PPP structure in the following -sectors:

- Transportation;
- Power plants, transmission systems, and public -lighting systems;
- Systems for water -supply, drainage, and wastewater -treatment;
- Urban zone infrastructure and parks;
- Offices for state authorities and official resident -housing;
- Facilities related to health, education, training, -culture, sports, and tourism;
- Telecoms and IT;
- Facilities for the further development of science and technology;
- Commercial infrastructure, including development of economic zones;
- Agricultural and rural -facilities; and
- Other areas that require the private sector to invest in -infrastructure or to provide public services. However, these sectors can be widely interpreted to envisage better PPP opportunities for investors and putting Vietnam on a booming PPP model for a streamlined national development.

### **1. Minimum investment capital**

Under the draft law on PPP, the minimum investment capital of a PPP project is marked at VND200 billion (\$8.7 million approx.) excluding the case of an operations and management agreement. According to the Ministry of Planning and Investment (MPI), requirements on the minimum of total investment capital for PPP projects is necessary for the selection of worthy projects for investment in such form as PPP contracts are normally long-term ones that necessitate numerous governmental commitments. Hence, this condition would prevent thinned-out investment leading to low investment efficiency.

This provision raises the question of how projects under VND200 billion (\$8.7 million approx.) can be implemented in the form of PPP. However, in reality the proportion of projects falling below the cut-off is significantly low (about 30 per cent, according to MPI data). However, many small-scale projects in health, science and technology, environmental protection, and education with total investment below VND200 billion (\$8.7 million approx..) – but which still fall under the encouraged sectors for their adding-up value to society – should also have a legal basis to be considered as a PPP project. The government may consider issuing a guiding decree with similar regulations but simpler than the PPP law for such small-scale projects.

Additionally, PPP projects would be classified according to their specifics, similar to the classifications of projects regulated under the Law on Investment and the Law on Public Investment. To be specific, some projects will be subject to approval from the National Assembly (NA), whereas on some projects the policies would be approved by the Prime Minister (PM) and a few projects would be under approval of the competent authorities stipulated in the draft PPP law.

There is a lack of clarity in relation to the competence as to who shall decide on investment policy. In particular, the competent authorities which include ministries and provincial people's



committees have the authority to approve projects which are not subject to approval at the NA or PM level. However, the draft law does not clearly regulate on the delegation of powers to approve the investment project in the PPP sector between various authorities.

Such ambiguity under the draft law on PPP will lead to complications on the project approval side which will affect investors and give rise to uncertainties, including variable timeline to obtain the investment policy approval. In the light of the above, it is proposed that the draft should be crystal clear on the delegation of powers among various authorities at different levels to mitigate uncertainties on the policy aspects.

## **2. Termination of PPP contract**

Under Article 46 of the draft law on PPP, early termination of the PPP contract can be opted in by the investor under two circumstances.

The first is in the case of authorised state agencies or contract signing agencies seriously violating the performance of obligations of the PPP contract. The second is in the case of obtaining an agreement on terminating the PPP contract with the authorised state agencies or contract signing agencies, as well as approval of the competent authority which approved the investment policy.

Further, the authorised state agencies are empowered to terminate the PPP contract if the project enterprise is determined to probably achieve the state of losing their ability to perform the obligations as stipulated under the PPP contract. It is pertinent from the above that investors will be in an unequal and less favourable position as compared to the authorised state agencies.

The rights and interests of investors should be protected and respected by:

- Further expanding the circumstances in which the investor may terminate prior to the term of the contract in accordance with the provisions of the civil law contract termination; and
- The authorised state agencies terminating the PPP contract when determining that the investor or project enterprise is incapable of fulfilling their obligations specified in the PPP contract, and cannot transfer the project to a third party as stipulated in the draft law on PPP.

## **3. Government guarantees**

Under the draft law on PPP, the government shall provide to the investors the guarantees relating to (i) access to land, exercise of land use rights, and rights to use public assets; (ii) mortgage of assets and the rights to commercially operate infrastructure facilities and systems; (iii) revenues for project enterprises implementing PPP contracts; (iv) conversion of foreign currency for project enterprises; (v) use of guarantee service of a third party; and (vi) the obligations of providing materials for the project enterprises. These guarantee regulations convey the seriousness of the government to encourage investment in PPP sectors. However, these guarantees need to be further refined to increase the bankability of such ventures.

Nevertheless, the draft Law on PPP does not mention the guarantee for circumstances relating to the change in the laws, which alarms investors that have raised concerns on the unpredictability of Vietnamese laws which continue to change. PPP projects require greater stability from the policy side since they are long-term and implementation is time consuming. A provision to safeguard the investor from the risks linked to the change in laws will be a plus point.

## **4. Governing laws**

In PPP projects, as per the regulations of the draft law, contracts and other relevant documents shall be governed by the Vietnamese law. The compulsory requirement of using Vietnamese laws is different from the Civil Code 2015 of Vietnam where one party is foreign. It makes up a civil relation involving foreign elements to choose overseas law as the governing law of the contract.

However, the draft law on PPP is the first piece of specific legislation that will govern the PPP sector in Vietnam and deflects from the Civil Code which exists at present and may be construed to form the roots of Vietnamese laws in civil relations. Such deflection under the draft law on PPP has raised concerns among investors and it may restrict lending options since the lenders prefer to choose more advanced and stable laws that have dealt with PPP related concerns for the past several years and have evolved with time.

In a PPP project where a public and a private partner -enters into a contract and are located in Vietnam, they will be subject to the laws of the land and shall have to follow Vietnamese laws which gives a way to the principle of 'applicable law'. Understanding the fundamentals of the governing law and applicable law aspects is important and the -partners to a PPP contract need to acknowledge the same, but the legal regime should be more transparent in providing a better picture from a jurisdiction and regulatory point of view.

From the investor's desk, this provision would be a significant factor affecting their capital flow since practically, for the execution of any PPP project, the investor shall have to avail funding from lenders. International lenders may have reservations on the mandatory application of Vietnamese laws as the governing law of PPP contracts, given the fact that the Vietnamese laws witness timely changes that is pertinent in developing legal systems. It would be challenging to reach agreements with lenders when proposing for the disbursement of funds, and it is subject to the consideration by the government and shall depend on the decision of NA.

Despite the fact that PPP projects require a huge amount of capital to build and operate, the pay-back ability and profits derived from such projects attract significant concern on the part of the investor. It is -precedent that several projects are built to facilitate socio--economic development and strengthen national infrastructure. Accordingly, investors should consider by estimating the financial viability of each project closely.

The draft law on PPP is expected to see the light of the day soon, and it is expected to carve out a path for glowing -investment opportunities in Vietnam.

InCham Hanoi would like to thank the Government of Vietnam and VBF for arranging an effective platform to share suggestions in the interest of our members and Vietnam market. Our suggestions in this position paper are mostly based on policy evaluation and focused towards the betterment of business scenario in Vietnam.

We look forward to our perspective 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**

### **HOW TO REGULATE FOR SUSTAINABILITY**

## **SPEECH OF INVESTMENT & TRADE WORKING GROUP**

### ***Enabling businesses to become driving force of the economy & solutions for high quality sustainable and innovative investment***

*Presented by  
Fred Burke  
Working Group's Head*

#### **1. Investment in Innovation**

Today our Working Group was asked to focus our feedback on investment in innovation. Indeed, this is an appropriate theme because Vietnam has some of the conditions for successful investment in innovation, but at the same time, still confronts some serious obstacles to maximizing its tremendous potential.

For this purpose, we take "innovation" to mean the combination of existing technologies for new applications. Innovation is a fundamental element of healthy competition in nearly every area of the economy. Indeed, we live in a world where the pace of innovation seems to accelerate more and more every day.

Innovation requires a flexible and supportive regulatory environment that allows innovators to take risks, try new things, and enjoy legal protection for their investments. Since the last Vietnam Business Forum, some steps have been taken to address the issues raised then. But for Vietnam to assume its proper place in the global innovation ecosystem, more obstacles need to be removed at the local and central level.

Please allow me to briefly summarize the key points of our Working Group's paper on this theme.

#### **2. The Comprehensive and Progressive Trans-Pacific Partnership, EV-FTA and other important Trade Agreements**

But before that, we wish to recognize that there is good news in the area of free trade agreements. Congratulations are due to all eleven parties on the successful entry into effect of the Comprehensive and Progressive Trans-Pacific Partnership ("CPTPP"). Looking ahead, we are looking forward to conclusion of the Regional Comprehensive Economic Partnership ("RCEP") as well as implementation of the Hong Kong ASEAN Free Trade Agreement and Hong Kong ASEAN Investment Agreement. Vietnam's pro-active integration into the global economy continues to produce great rewards in terms of reducing poverty and providing sustainable development opportunities.

In order to take full advantage of these opportunities, we encourage the relevant ministries and the donor community to review and provide trainings on these agreements to facilitate investor adoption with minimal disruption. Members of our Working Group are happy to participate and contribute their valuable experience to these implementation efforts because it is crucial to giving full play to their positive effects, especially in an environment where international trade wars can erupt over market access issues and different ideas of what constitutes "fair trade".

#### **3. Issues Raised in Last Vietnam Business Forum**

Some progress has been made on three important issues were raised by the Investment & Trade Working Group in the VBF, but for each, the underlying issues is still unresolved. These issues are:

- The requirement for registration of "technology contracts": Technology Transfer Law and Decree 76/2018/ND-CP;
- Issues arising in respect to the approval requirements for imported used equipment: Decision No. 18/2019/QD-TTg on the Import of Used Machinery, Equipment and Technological Lines, and its related regulations from 15 June 2019; and
- The Ministry of Construction's Response to our Questions on Restrictions on foreign individual ownership of housing in Vietnam.

In all three cases, there has been movement, but not complete resolution. In the interest of time, and to move forward with new issues, we refer you to our paper for details.

#### **4. New challenges to innovation and suggested solutions**

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

The first set of new issues relate to the proposed amendments to the **Investment Law** and the **Enterprise Law**. Specifically, in our paper, we highlight some key concerns on the most-recent versions of the two Draft Laws amending Investment Law and Enterprise Law.

Briefly, here are some of our key concerns.

**First**, we must note that times have changed since Vietnam undertook specific commitments to open up certain important service industries. Did the negotiators at the WTO accession meetings know about Revolution 4.0, IoT (Internet of Things), e-platforms, e-health, online education, Fintech, the regulatory sandbox, and so on? Of course not. Innovations happen quickly, across disciplines, and no one in 2007 could have anticipated what has happened since then. For this reason, the negotiators were not to be blamed if the list of WTO commitments appears to be so outdated today. However, it would be a shame if Vietnam is mired down in debates over what is a "foreign investor" and, trying to pigeonhole today's ways of doing business into yesterday's boxes.

Two examples:

- In the renewable energy sector, for the application for Investment Registration Certificate for foreign-invested companies doing rooftop solar business in Vietnam, the definition of "location of a project" has to be updated to enable rooftop solar energy service providers to operate at multiple-location power consumers.
- Innovations in the insurance sector have been threatened by strict interpretations of industry regulations in the life insurance industry. Specifically, concerns have arisen over changes in policy regarding the deductibility of agent fees and distribution agreements with Vietnamese banks. Specifically, retroactive changes in the deductibility of compensation and payments under distribution agreements that are normal in other countries have recently been challenged by tax inspectors. Innovations need more careful consideration before they are thrown out, especially retroactively.

Turning back to the Draft Amendments to Enterprise Law and the Investment Law, among the key issues addressed in our paper are the following:

- **Enterprises are asking for more protection of investment against regulatory changes and retroactive application of new laws or implementation of old laws.** The Draft Amendments to Investment Law do not resolve this issue, addressing only "incentives" and even there without change to the existing rules. Please see the more meaningful languages suggested in our paper.
- **A Transitional period is provided for but it needs to** cover the Investment Registration Certificates that were issued prior to 01 Jan 2021 (which is anticipated the date of effectiveness of the draft Amendment Law to Investment Law).
- **A Positive Step: "Negative list" approach:** A major breakthrough in the Draft Amendment to the Investment Law is Art. 9 on the proposed "negative list of services" in which foreign investors will be restricted in terms of market access. Accordingly, a foreign investor can be approved to invest in any services that are not listed in such "negative list" that the Government will issue from time to time. This would create a meaningful change to the investment environment only when such "negative list" is limited to only the ones that have been reserved by Vietnam under international treaties. We urge the MPI to strictly limit the "Negative List", with an eye to the services reserved by Vietnam in its different international treaties.
- **We seek clarification in respect to the ongoing confusion regarding the effective time for transfers of shares/contributed capital.** Here, we respectfully suggest that the Draft Amendment to Enterprise Law include additional clause to specify that the parties in a share transfer can decide the time to make payment, and that the effective time for a share/contributed transfer is when the amended ERC is issued to the buyer.
- **We also suggest eliminating the inconsistency regarding the method for the payment of shares/contributed capital transactions by eliminating Article 36.3 of the Enterprise Law, which is redundant** because forex regulations will govern the forex transactions of foreign investors. Furthermore, this Art. 36.3 of the Enterprise Law is contradictory to Circular 06/2019/TT-NHNN dated 26 June 2019, which does not require the payment for transfers of shares and contributed capital among foreign buyers and foreign sellers be effected via DICA. Therefore, we respectfully suggest that Art. 36.3 of the Enterprise Law be removed to avoid confusion.
- **The current law is unclear as to whether a limited liability company with 2 or more members can set a voting rate to be lower than 65% - 75%.** Therefore, we respectfully suggest that the Draft Amendments to Enterprise Law provide clearer language for limited liability companies with two or more members to understand that they can set a voting rate to be lower than 65% - 75% in the charter. The principle of party autonomy that underlies all of these suggestions is intended to enable enterprises to innovate, to create an eco-system that nurtures new ideas, new innovations, new technologies, and better ways of doing business.

## 4.2 Innovation Hotspots - Fin Tech and Digital Commerce

Next, I'd like to touch on key hot spots of the digital economy that are detailed in our paper, and which have been the subject of numerous stakeholder consultation meetings recently. While Vietnam has agenda to achieve the 4th Industrial Revolution and smart cities initiatives, some proposed regulations remains problematic and may serve as an obstacle against innovation.

### 4.2.1 First - Digital media

Innovation thrives on the free flow of ideas and information. The draft revisions to Decree No. 06/2016/ND-CP on the Management, Provision and Use of Radio and Television Services may have serious unintended consequences for access to the global marketplace of ideas, making on-demand 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 on-demand services, thus establishing a barrier to trade for these overseas services, crippling domestic players who want to integrate with the global market for digital content, animation and the like, and destroying an important condition for an innovative economy.

#### **4.2.2 Second - Non-Cash Payments (e.g., by mobile phone): Draft decree amending Decree No. 101/2012/ND-CP on non-cash payments**

Electronic payments is another area where innovation around the world is thriving. However, there are several restrictions in the draft legislation that may kill Vietnam's chances at becoming a global innovation hotspot for such technology. Among the major concerns is the proposed 49% cap on foreign participation in non-cash payment service providers, which would discourage investors and investment in this space.

#### **4.2.3 Third - Cybersecurity Law and its Implementing Decree**

Finally, and perhaps most important, is the Cybersecurity Law. The digital tools and services we use depends on the ability for data to cross borders, and it is a vital condition for innovation within the digital economy space. At present, the Cybersecurity Law creates a lot of questions and concerns on whether there will be impediments on cross-border data flows.

#### **4.3 Use Innovation to Protect Vietnam's Environment: Renewable energy and manufacturers' interest in rooftop solar**

We urge the Government to prioritize the highly promising innovation that rooftop solar energy offers. Existing manufacturers can replace the dirty diesel generators they now rely on in favor of solar, clean and renewable energy. New manufacturers shifting their supply chain to a "green" Vietnam need not put pressures on power transmission systems.

#### **4.4 The new amended Labor Code: Employment and Labor**

We welcome the adoption of the revised Labor Code by the Vietnamese National Assembly on 20 November 2019. The revised Labor Code contains significant changes and improvements, in keeping with Vietnam's commitments under the international trade agreements. We have some concerns, however, regarding a couple of issues that the revised Labor Code has failed to address and therefore call for the Government's support in addressing those issues in the implementing decrees.

**First**, we believe that the annual overtime cap of 200 hours for normal working conditions and 300 hours for some special situations is too limited, even though the law does expand the number of such special situations. At a minimum, we suggest that the implementing decrees clearly provide more special situations and confirm that enterprises will only need to notify, not to obtain approval from, the labor authority to have employees work for 300 overtime hours per year.

**Second**, the revised Labor Code imposes a limit on the number of extensions of work permit that a foreign employee may apply for, that is the maximum term of the work permit is two years,

and can be extended only once with another maximum term of two years. We therefore suggest that the implementing decrees provide that the new work permit application process will be more streamlined for those foreign employees who have been working in Vietnam and previously been granted work permit.

Another important issue is that the revised Labor Code provides for arbitration as a new dispute resolution venue for individual and collective labor disputes. This is a progressive development but we have concerns over the operation of these "Labor arbitration courts". We suggest that Vietnam may want to consider building on the current commercial arbitration system, instead of trying to establish totally new arbitration courts for labor disputes.

#### **4.5 Master Planning Law**

Our members are still concerned about the implementation of the Law on Master Planning and its impacts of delaying the approval process for power, energy and infrastructure projects (even though recently the National Assembly's Standing Committee issued Resolution No. 751 on 16 August 2019 and the Government issued Resolution No. 110 on 02 December 2019 on the transitional provision of the Master Planning Law with the list of previously approved master plans). The licensing process for proposed power and energy projects and their inclusion in the master plans are still overly complex and very time-consuming. They are also inappropriate to effectively and sustainably deploy and develop solar and wind energy sources for power generation.

#### **4.6 Final Financing Issue related to the Land Law**

Finally, we'd like to quickly mention a financing issue related to the Land Law from enterprises' perspectives.

Our members find that the prohibition against mortgaging their land use rights to overseas lenders cuts them off from a large capital source and stifles innovation. This would be an appropriate topic for consideration in light of the pending amendments to the Land Law in 2020.

Thank you for your engagement today and throughout the ongoing stakeholder consultation process. This process has proven itself to be a very effective mean for achieving consensus on the resolution of issues that need to be overcome to ensure Vietnam's continued rapid development, including the establishment of its position as a hub for innovation in the future.



## POSITION PAPER OF INVESTMENT AND TRADE WORKING GROUP

### 1. Progress since last forum - Issues and status

#### 1.1 Investment in Innovation

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For this purpose, we take "innovation" to mean the combination of existing technologies for new applications. Innovation is a fundamental element of healthy competition in nearly every area of the economy. Indeed, we live in a world where the pace of innovation seems to accelerate more and more every day.

Innovation requires a flexible and supportive regulatory environment that allows innovators to take risks, try new things, and enjoy legal protection for their investments. Since the last Vietnam Business Forum, some steps have been taken to address the issues raised then. But for Vietnam to assume its proper place in the global innovation ecosystem, more obstacles need to be removed at the local and central level.

#### 1.2 Administrative Procedure Obstacles in terms of

##### 1.2.1 Requirement for registration of "technology contracts": Technology Transfer Law and Decree 76/2018/ND-CP

Let's start with some of the issues raised during the last Forum, first among them being the current law on technology transfer. We have received a copy of Official Letter No. 954 dated 5 April 2019 detailing the MOST's responses to the MPI. Our concern then was that Vietnam has adopted a "Law on Technology Transfer" that may backfire and discourage real technology transfer if not reviewed carefully. By requiring all "technology contracts" (and that is defined still very broadly) to be registered as a condition of effectiveness was a serious threat that many investors are still not even aware of.

MOST responded to our concerns in Official Letter 954, addressing some of them, but in the spirit of creating an environment where innovation thrives, we have some remaining concerns as follows.

##### a. No need for the Registration of Technology Transfer Contracts

###### MOST's response:

- According to MOST, the 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, according to MOST, registration of technology transfer is also one 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 lay out specific rules for the *subjects, process, procedure of technology transfer registration*. According to MOST's Official Letter, 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 of what it was previously).

VBF's further comment:

- We maintain our opinion that the overly broad scope of the registration requirement is unnecessary to achieve the stated policy objectives of the Law, and indeed, due to the costs and risks of compliance the Law still does more to discourage innovation than encourage it because it will discourage technology transfer that is a part of innovation.
- 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 handle 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 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 or even the basic issues of valuation of technology. It should be also noted that Vietnam's regulations on anti-transfer pricing, i.e., Decree No. 20/2017/ND-CP, are not even applicable to the technology transfers between unrelated entities.

The registration requirement will slow down the execution and implementation of technology transfer agreements, scaring away investors by adding risk where there should be none.

- Under the current legal provisions, a technology transfer agreement that 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 for this "baby permit" have been minimized in theory, it still greatly affects the execution of the technology transfer agreements in practice. The parties cannot implement the technology transfer contract until it is registered by a competent science and technology management authority. In most cases, the technology is new and by definition the officials have insufficient specific technical knowledge to second guess what investors in the market place decide about the value and use of a given technology. We believe that this registration requirement will certainly cause unnecessary delay to the transfers of technology and stymie innovation.
- We also maintain our opinions that such registration requirement is against all the Government's good 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:*

In response to our concern regarding the protection of confidential information in the registration process, MOST has replied that technology transfer agreements only comprise "general information" such as rights for technology transfer, transfer subjects, rights and obligations of parties, technology transfer duration, warranties etc. Registration dossiers provided do not include processes, secrets and detailed information on technologies, thus registration of technology transfer does not impact confidentiality requirements of parties in technology transfer contracts. In addition, management of technology transfer contracts by the 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:*

We do not agree that technology contracts do not contain confidential information - they do contain sensitive commercial information in almost every case. Even if the registration dossiers only included the general information listed (in worrying detail) by MOST, this information is quite commercially sensitive and may affect the negotiation of the parties, the value of the contract and indeed the property rights of the investor. In addition, the 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. The authority will usually not issue a Certificate of Registration until it has every bit of information it likes about the technology in question. Thus, both the transferor and the transferee are afraid of the security and protection of the confidential information if it has to be disclosed during the registration process.

**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 still 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.
- **In conclusion**, the registration requirement for "technology contracts" will discourage innovation in Vietnam by scaring away transferors of technology. Local companies will not have access to the same technologies that their competitors abroad do, and which they have had access since the old Law on Technology Transfer was abolished in favor of a more commonly used regulatory approach, mainly competition law. We urge a major overhaul of this Law, or even its abolition, if Vietnam is serious about wanting to attract investment in innovation.

#### **1.2.2 Approval requirements for imported used equipment: Decision No. 18/2019/QD-TTg on the Import of Used Machinery, Equipment and Technological Lines - New regulations restricting imports of used machines, equipment, and technological lines from 15 June 2019**

##### Issue

Now we turn to the issue of regulating the import of used equipment. We highly appreciate Government's efforts in adjusting regulations on importation of used machines, equipment, technology chain by promulgating Decision No. 18/2019/QD-TTg ("**Decision 18**"). Decision 18, at a certain extent, establishes the flexibility in importation of these products. However, Decision 18 still includes some impractical conditions, particularly the regulations on remaining capacity and actual vs design energy consumption. Again, if we wish to encourage innovation, we must adopt a more flexible regulatory framework, which gives more freedom to Vietnamese innovators to choose the equipment they desire, in compliance with existing environmental, health and safety standards.

The ultimate purpose of the regulation on importation of used machines/equipment is purportedly to secure the safety, energy saving, environmental protection, and avoidance of outdated technology. But the conditions of remaining capacity and actual vs design energy consumption stipulated in the Law 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, often as an innovation based on existing technologies.

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, unpredictable and costly.

Vietnam does need to pay more attention to energy efficiency, but that can be done in the legal framework of the energy efficiency law, with energy pricing reforms, tax incentives for energy efficient investments, and other more commonly used measures. We believe that it is counterproductive to impose conditions that do not secure the ultimate policy purpose, while causing burden and expenses to enterprises is an impractical approach.

### Recommendation

We recommend the elimination of the conditions regarding remaining capacity and actual vs design energy consumption in the context of importation of used equipment.

### **1.3 Ministry of Construction Response Restrictions on foreign individual ownership of housing in Vietnam**

At the last Forum, we raised certain concerns regarding issues with the implementation of the laws allowing for foreign ownership of residential housing. In response, we have recently received a copy of response from the Ministry of Construction (under Official Letter No. 876 dated 23 April 2019 sent to the MPI). This may not relate directly to the theme of innovation, but attracting international innovators is a part of creating a nurturing environment for innovation so it does relate here.

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.

### 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 those information online is now to be done by the provincial departments of construction.

However, it appears that not much 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. Free trade agreements: The EV FTA, Comprehensive and Progressive Trans-Pacific Partnership, and other important Trade Agreements**

There is good news and more on the horizon in the area of free trade agreements. Congratulations on the successful entry into effect of the CPTPP.

The Investment and Trade Working Group congratulates Vietnam on assuming the role of Chairperson for ASEAN in 2020, under the theme '*Cohesive and Responsive*.' 2020 stands to be a busy year with on-going attention the Regional Comprehensive Economic Partnership RCEP as well as implementation of the Hong Kong ASEAN Free Trade Agreement and Hong Kong

ASEAN Investment Agreement. We encourage Vietnam to proceed with harmonization of policies within ASEAN as well as the larger RCEP.

We commend Vietnam for continuing to introduce new legislation ushering in certain provisions of the Comprehensive and Progressive Trans-Pacific Partnership ("CPTPP"). We encourage relevant ministries to review and provide trainings on the terms of the Agreement to facilitate investor use with minimal disruption.

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. We understand that the Government would like to expedite the ratification process for the EVFTA in the 1st half of 2020 (under the Government's regular meeting in November 2019).

In addition to the EU-Vietnam FTA, the Investment and Trade Working Group appreciate Vietnam's on-going process for amending the relevant laws for implementation of the CPTPP. The growing trade and investment opportunities offered by these important agreements can be fully exploited only if Vietnam itself creates an environment that fosters fair competition and innovation.

### **3. New challenges to innovation and suggested solutions**

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

We have a general comment, and some specific comments, on two of the most important laws on the table today: Law No. 67/2014/QH13 ("**Investment Law**") and the Law No. 68/2014/QH13 ("**Enterprise Law**"). In addition, we also highlight some key concerns on the most-recent versions of the two Draft Laws amending Investment Law and Enterprise Law ("**Draft Amendments to Investment Law**" and "**Draft Amendments to Enterprise Law**") which were submitted by the Government to the National Assembly. We have prepared and submitted 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. Below are some of our key points.

First, as a general comment, we must note that there is still a tendency among investment licensing authorities to take a conservative view and treat any of Vietnam's international commitments in terms of market access and national treatment as a "ceiling not a floor", which means that any new commercial service that was developed since the time when Vietnam's commitments were established is very difficult to get approval for. In the age of the 4th Industrial Revolution when business innovations arise every day, this approach threatens to freeze us in time in 2008. A fundamentally different mentality is needed, such as the shift from the "positive list" to a "negative list" system as provided for in the CPTPP.

On 15 November 2019, the National Assembly was discussing the draft revised Investment Law and Enterprise Law. It has been almost exactly 5 years from 26 November 2014 when the National Assembly adopted the Investment Law and Enterprise Law, but the debate seems to be stuck on the same intractable issues, such as what constitutes a "foreign investor", "foreign invested company", "organization with foreign investment capital", and such similar concepts and approaches, still exist? The answer seems to be that the law makers and regulators are still struggling with the same debates and issues presented in 2014 and before.

Vietnam adopted the first Law on Foreign Investment in Vietnam in late 1987. Vietnam adopted the revised Investment Law in 1996, and 2004. Vietnam then spent 12 years from 1995 to

negotiate and ultimately joined the World Trade Organization (WTO) in 2007, with the commitment to open up the market for foreign investment in a number of industries and services.

What has happened in Vietnam in reality? Under the Investment Law 2004, foreign investment projects were subject to registration or appraisal, depending on the types of the investment project. A manufacturing project that would create many jobs and use many machinery and equipment was subject to a 15-day registration process. A service project that may be innovative but may not generate labor intensive jobs was subject to 45-day appraisal process, and was subject to the review of all the relevant Ministries, which could easily make a 45-day process a 6-month process. Under the current Investment Law, any foreign investment projects that fall under WTO commitments of services dated 13 years ago can be issued an investment registration certificate within 15 days; any foreign investment projects that fall outside the list of the WTO commitments of services are subject to the Ministries' discretionary consideration without any time limit.

Did our negotiators at the WTO accession meetings know about Revolution 4.0, IoT (Internet of Things), e-platforms, e-health, online education, Fintech, sandbox, and so on? The answer is no. Simply because innovations happen quickly, across disciplines, and no one in 2007 could anticipate what may happen since then. For this reason, the negotiators were not to be blamed if the list of WTO commitments appears to be so outdated today. However, it would be a shame if Vietnam cannot move ahead from 2007.

With that general comment in mind, here are our specific comments and suggestions.

- **Protection of investment against regulatory changes**

The Draft Amendments to Investment Law has provided Article 14 in order to protect the investment projects which have been licensed against regulatory changes. This Article 14 of the draft IL remains exactly the same as Art. 13 of the existing IL. However, this provision protects foreign investors against changes of laws that have negative impact on the "incentives" being awarded to foreign investment project only. Many in the business community think that the provision should expand to cover any changes to the laws that would have a negative impact on the "terms, conditions, and incentives" already awarded to investment projects in order to protect the investors (i.e., as opposed to protection to just "incentives").

We respectfully suggest that the amendments to Article 14.2 be revised to make it clearer as follows: *"In case the newly released legislations provide for investment incentives, **terms, and conditions** which are less favourable than the incentives, **terms, and conditions** that the investors previously have been entitled to, the investors shall continue to be entitled to the incentives, **terms, and conditions** as stipulated in their Investment License, Investment Certificate, Investment Registration Certificate and their amendments in the remaining valid duration of their investment projects."*

- **Transitional period**

Art. 76 of the draft IL provides for transitional period. Art. 76 provides clearly that Investment License, Investment Certificate, and Investment Incentive Certificates, which were issued prior to 01 July 2015, are allowed to follow such licenses.

For completeness, we suggest that Art. 76.1 also cover the Investment Registration Certificates, which were issued prior to 01 Jan 2021 (which is anticipated the date of effectiveness of this draft Amendment Law to Investment Law).



- **"Negative list" approach**

A major breakthrough in the Draft IL is Art. 9 on the proposed "negative list of services" that foreign investors will be restricted from market access. Accordingly, a foreign investor can be approved to invest in any services that are not listed in such "negative list" that the Government will issue from time to time. This would create a meaningful change to the investment environment only when such "negative list" is limited to only the ones that have been reserved by Vietnam under international treaties.

We respectfully suggest that the MPI keep such list to strictly limited to including the services reserved by Vietnam in its different international treaties.

- **Confusion regarding the effective time for transfers of shares/contributed capital**

Some investment authorities, in particular, the DPI of Binh Duong province, require that payment for transfer of shares and contributed capital must be done prior to registration and amendment of the ERC, based on the requirements under Art. 31.2, or Art. 77.1 of the EL that a company must register the "change", or "capital transfer" within 10 days from the date of "change" or "completion of the transfer of shares/contributed capital". These DPIs, such as Binh Duong DPI, have interpreted this regulation to mean that "completion of the transfer" is "completion of the payment for the transfer". This interpretation is contradictory with many provisions under the Civil Code, including Art. 450 of the Civil Code re the effective time of asset rights transfer, under which asset rights are considered "transferred" only when the registration certificate has been done under the name of the buyer, and Art. 434.3 allow the parties to agree a time to make payment. This causes great concern among investors that something can go wrong following their payment and they will lose their money.

We respectfully suggest that the Draft EL include additional clause to specify that the parties in a share transfer can decide the time to make payment, and that the effective time for a share/contributed transfer is when the amended ERC is issued to the buyer.

- **Lack of clarity for the method for the payment of shares/contributed capital transactions**

On a related topic, Art. 36.3 of the Enterprise Law requires that the payment for transfers of shares and contributed capital of foreign investors must be effected via the Direct Investment Capital Account (DICA) of the foreign investor. This provision is redundant because forex regulations will govern the forex transactions of foreign investors. Furthermore, this Art. 36.3 of the Enterprise Law is contradictory to Circular 06/2019/TT-NHNN dated 26 June 2019, which does not require the payment for transfers of shares and contributed capital among foreign buyers and foreign sellers be effected via DICA.

We therefore respectfully suggest that Art. 36.3 of the EL be removed to avoid confusion.

- **Location of an investment project**

Currently, an investment project is defined as "a set of proposals for medium or long-term capital investment to conduct business and investment activities in a specific area for a specified period of time." We note that investment projects nowadays can be conducted not just in "a specific area". A prime example is rooftop solar projects, where Vietnamese government encourage in order to provide a sustainable power source; unfortunately, such clean energy projects are currently rejected because they are not conducted in "a specific area", but on many rooftops of

power consumers. In many other services projects, services are provided throughout the country at the location of the customers - so the definition of an investment project is at least out-dated.

We suggest that this definition be amended to account for innovations such as the solar rooftop business model mentioned above, so that the Law would read: "*an investment project means a set of proposals for medium or long-term capital investment to conduct business and investment activities in a specific area for a specified period of time*" to facilitate the approval of rooftop solar power systems.

- **Whether a limited liability company with 2 or more members can set a voting rate to be lower than 65% - 75% under the Enterprise Law**

Currently, the language of the Enterprise Law and the Draft Amendments to Enterprise Law is unclear whether a limited liability company with 2 or more members can set a voting rate to be lower than 65% - 75%. To create a legal environment that allows for more reasonable party autonomy in agreeing on the investors' mutual rights and obligations, a more flexible clarification or amendment should be considered.

We therefore respectfully suggest that the Draft Amendments to Enterprise Law provide clearer language for limited liability companies with two or more members to understand that they can set a voting rate to be lower than 65% - 75% in the charter.

The principle of party autonomy that underlies all of these suggestions is intended to enable enterprises to innovate, to create an eco-system that nurtures new ideas, new innovations, new technologies, and better ways of doing business.

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

#### Issue

One of the most welcome innovations of the past decade for consumers in Vietnam and in most of the world is the tremendous increase in access to digital content brought about by innovations in the 4th Industrial Revolution. These amazing changes in the flow of global information and culture enable innovators around the world in their quest for better ideas. But sometimes old regulatory frameworks are not appropriate for new technologies.

Previous draft revisions to Decree No. 06/2016/ND-CP on the Management, Provision and Use of Radio and Television Services proposed making on-demand services on the internet subject to existing regulations for broadcast television providers. These revisions would force both domestic and foreign on-demand service 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 will not make up less than 30% of the total programs shown.<sup>1</sup> This would be too restrictive as in some cases, domestic programs are not sufficiently available to make up for 30% of the program of a large on-demand service provider. In addition, foreign programs are required to have their

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<sup>1</sup> Article 1.11.d, Draft Decree No. 06.

contents edited and translated into Vietnamese by a press agency licensed to conduct radio and television activities.<sup>2</sup> However, translation of content should be up to the service providers' discretion instead of being obligatory. Another burdensome requirement is that advertisements (if any) must be installed in Vietnam, edited by press agencies that possesses a proper radio/television license, and comply with Vietnamese laws.<sup>3</sup>

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 on-demand 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 on-demand services, thus establishing a barrier to trade for these overseas services, and destroying an important condition for an innovative economy.

### Suggestion

In line with global best practices, we recommend not applying local rules for broadcast television to offshore on-demand services; consider opportunities for de-regulation of the existing broadcasting sector, which is supported by global policymakers.

## **3.3 Master Planning Law**

Our members are still concerned about the implementation of the Law on Master Planning and its impacts of delaying the approval process for power, energy and infrastructure projects (even though recently the National Assembly's Standing Committee issued Resolution No. 751 dated 16 August 2019 and the Government issued Resolution No. 110 dated 02 December 2019 on the transitional provision of the Master Planning Law with the list of previously approved master plans).

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.

## **3.4 Law on Tendering**

### Issues

Innovation thrives where there is good infrastructure, and tendering law is something that has to work transparently and efficiently for international investors to get involved. We have some input from investors on the current laws on tendering, which are in some ways still opaque and overly-complicated, especially when it comes to foreign participation.

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<sup>2</sup> Article 1.6.b, Draft Decree No. 06.

<sup>3</sup> Article 1.11.dd, Draft Decree No. 06.

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. procurement in such projects 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 issues identified in the current Law, we respectfully 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.

### **3.5 Draft decree amending Decree No. 101/2012/ND-CP on non-cash payments**

#### Issue

- Non-cash payments is an area where innovation around the world is thriving, and the pace of change shows no sign of letting up. Vietnam should not miss the boat.
- Under Article 26.2(c) of the Draft Decree, one of the conditions for non-bank entities to provide support services for cash collection and/or cash payment service is to have a Plan for the Provision of Intermediary Payment Services ("IPS") detailing, among others, the mechanism for opening and maintaining account balance of the payment security account, purposes for using the payment security account. However, this business condition is burdensome and unnecessary because the purpose of using such payment security account is unclear for providers of support services for cash collection and/or cash payment service.
- Under Article 29.2 of the Draft Decree, the maximum ratio of capital contribution of the foreign investors, including direct and indirect ownership, is 49% of the charter capital of the IPS providers. However, the proposed cap is highly likely to be incompatible with Vietnam's commitments under international trade agreements (e.g., GATS, CPTPP, AFAS and EFTA). In addition, this cap may discourage future foreign investment, which brings international experience, knowledge and technology, especially in Vietnam's fintech industry, which is developing at an impressive pace.
- Under Article 42.1 of the Draft Decree, IPS providers having licenses granted before the effective date of the Decree and having foreign ownership ratios higher than 49% shall be allowed to maintain their foreign ownership ratio until a change of the foreign investor or expiry of the IPS Provision License. This transitional provision would contradict other regulations, namely (i) Article 74.1 of the Law on Investment where investors that have been issued with the investment license/investment registration certificate before the date of the effective of the Law on Investment to continue implementing the projects following such issued license/certificate; and (ii) Article 156.1 of the Law on Promulgation of Legislative Documents where a legal normative document is only applied to an act occurring from the time such document is effective. In addition, this transitional provision may adversely affect

the development of existing IPS providers and force them to cease their operation in Vietnam. Especially, the provision would expose Vietnam to expropriation claims by foreign investors under domestic law and international treaties.

### Suggestion

We respectfully recommend the Government to:

- remove the business condition of opening and maintaining account balance of the payment security account for providers of support services for cash collection and/or cash payment service;
- reconsider its proposed foreign ownership cap of 49%; and
- reconsider the proposed retroactive application of the foreign ownership cap. Should the Government ultimately opt to impose a foreign ownership cap, foreign ownership at the time the law is passed should be grandfathered in, and not required to divest due to the limitation under the law.

## **3.6 Cybersecurity Law and its Implementing Decree**

The 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.

## **3.7 Deductibility of insurance agency related expenses**

We would like to shift to an issue that has arisen for members of the life insurance industry, which has tried to use innovation in its efforts to build a healthy and dynamic insurance sector in

Vietnam. Specifically, concerns have arisen over a change in policy regarding the deductibility of agent fees and distribution agreements with Vietnamese banks. Specifically:

Under Article 85 of the Insurance Business Law, scope of work of an insurance agent includes:

- Introduce, offer insurance for sale;
- Arrange for conclusion of insurance contracts;
- Collect insurance premiums;
- Arrange for payment of compensation, insurance proceeds upon occurrence of insured event;
- Carry out other activities relating to performance of insurance contracts.

Under Article 69 of Decree No. 73/2016/ND-CP, insurance companies can incur the following tax-deductible expenses with respect to agents:

- Agent commission.
- Expense for management of insurance agents, including initial training and certification exams, advanced trainings for agents, agent recruitment, incentives and supports for agents; and
- Other expenses according to the law.

The current industry practice leverages on tiered agency structures for recruitment, referrals, training and serving as a guide and cultural framework for new agents. Life insurance companies provide financial and other management support to agents. Leveraging existing agents for these tasks are the common and well-established business practice amongst life insurance companies, not only in Vietnam but also all over the world. It is the most efficient and effective sales distribution model, with benefits shown through in many areas of insurance activities:

- Recruitment: the agency structures are best-placed to identify suitable talent given their experience in recruiting, training and supporting agents. Therefore, the quality of service provided to customers will be higher.
- Referrals: agency, given their proximity to the customer and their awareness of customer needs, are best-placed to identify new clients, emerging product trends and needs of their customers.
- Training: agencies provide vast amounts of training (both to new agents and ongoing) to ensure their agents are fully equipped with technical knowledge about products, customer needs, soft skills such as being able to sufficiently explain product characteristics and conduct a needs analysis, and training on rules and regulations. In addition, agencies also spend significant amounts of resources on training of cultural values, customer first values and ethics. While insurance companies could provide some of the training, the agencies are best equipped to do this on an ongoing basis.
- Provision of a cultural framework and administrative support: again, agencies are better equipped to provide this support to their agents than an insurance company. This will ensure faster handling of customer requests and enabling agents to stay close to their customers.

Insurance companies provide financial and other support to the agency structures to help with the above. For this, the agency structures will need to be compensated, and the expenses are legitimate business expenses for the insurance companies. The monies paid to the agencies in exchange for providing these very valuable services fundamental to the core of effective

insurance sales distribution are legitimate business expenses, helping to ensure superior training for agents and ultimately serve customer needs better.

The nature of the activities is consistent with that of deductible expenses of an insurance company as provided by law. The MOF and tax authorities have been fully aware of this insurance operational model for over the last 2 decades, since the start of the life industry in Vietnam. This aligns with the Vietnam MOF's aspirations to achieve insurance penetration rate of 15% by 2020. A change in application of the law retroactively, as is being threatened, could spell disaster for the sector.

First, it is important to understand that all qualified insurance agents do not need to be direct employees of an insurer. Indeed, it would be impractical and costly for life insurance companies to maintain a huge in-house HR or administrative functions to handle tens of thousands of agents on a nation-wide basis.

However, recently during inspection/audit proceedings, it appears the MOF has changed its view to apply retroactively a new and narrower interpretation of the law. Particularly, the MOF now proposes to take the position that an insurance agent's scope of work does not include recommendation for recruitment, training or agent management and accordingly reject expenses incurred for the recruitment, training and agent management activities conducted through agents. In addition, expenses other than the ones specifically listed out under Article 69 would not be acceptable although this provision does refer to "other expenses".

This unexpected and sudden change to a restrictive application and narrow interpretation of the law puts life insurance companies in severe difficulties given that many insurers apply the same or similar models and cannot change the existing common business as mentioned above without incurring significant costs and strain on financial and management capacity. If maintained, this change would definitely result in negative and disruptive impacts on the Vietnam insurance business as a whole, and severely impede the growth and development of the life insurance market, and adversely impact the Government's expressed desire for greater life insurance penetration and protection for the people of Vietnam.

### Recommendation

In light of the above, we respectfully request that the MOF and the tax authorities should take a broader view with respect to the agency operational models of life insurance companies and accept agency and other related expenses that are valid and necessary for strong growth and development of the insurance business sector and allow for these normal, popular innovations. To avoid any potential change of interpretation and inconsistent application of the law that risks certain insurance companies having to change their existing business model and destabilizing the country's multitudes of agency forces, the MOF should take a more prudent approach taking into account all players' opinion. If this is a new, considered and purposeful shift in interpretation, notwithstanding it being contrary to international practices, and if it really intends to limit such tiered agency distribution models, it should do so by the usual process of amending the law and implementing the necessary regulations prospectively. Its application should be announced well in advance and provide the industry an appropriate transition period to permit a change of business strategy and model for all affected companies.

### **3.8 Use Innovation to Protect Vietnam's Environment: Renewable energy and manufacturers' interest in rooftop solar**

On another front, we would like to go into more detail regarding an issue that was raised above in the discussion of the Investment Law amendments - rooftop solar power. The need to protect



the environment has become a virtual emergency. Our living cities and countries are encroached by plastic wastes, and our lands are disappearing under the rising tides and sea water. Renewable energy, such as wind and solar power projects, are an innovative and sustainable way of providing energy without as much negative impact to the environment. Global supply chains are shifting toward locations where "green" energy can be substituted for dirty coal power. This means innovation is needed for Vietnam to catch the opportunity of doing good and doing well.

The Prime Minister's Decision No. 11/2017/QĐ-TTg provided a framework for solar projects to develop. Developers are awaiting another Decision of the Prime Minister to continue the momentum of Decision No. 11, and to create a more comprehensive set of rules for both grid-connected and rooftop solar projects. Meanwhile, rooftop power projects with less than 1MWp capacity, although quite sufficiently provided for under Decision No. 11 and Circular No. 05/2019/TT-BCT of the Ministry of Industry and Trade, are still facing challenges under the Investment Law procedures, if such projects are invested by foreign investors.

Specifically, foreign investors would like to set up 100% foreign owned companies and joint ventures in Vietnam to engage in generation of solar power using rooftop solar model. Obviously, generation of rooftop solar power is a rather innovative business activity. Electricity will not be generated at any specific location of "investment project implementation" which is required by the Investment Law of a foreign investor during the registration process for an Investment Registration Certificate. Instead, electricity will be generated on rooftops of a third party customers. The business model is clear, but the investment authorities are not able to fill out the box of "investment project location" for a "production project", which in their practice and implementation of the Investment Law the "production" must have a specific site, not from site to site, from roof to roof like that. Again, this is where a good investment project is facing the challenge of form over substance that has been created consistently by regulators.

Bigger picture, this should no longer be a form over substance battle; this should become a long-term goal of every Government and every person to accommodate innovative and sustainable projects to help protect and preserve the Earth. With a switch of the mindset, the authorities may already muster enough understanding and create solutions to many such challenges. In essence, any such challenges as how to describe a location of an investment project, how to rationalize that power can be produced on someone else's rooftop, and so forth, would appear very insignificant, when comparing to the goal of how Vietnam can develop sustainably. Rooftop solar power will not only contribute to resolving the problems of power shortage in the near future, but it will also work as a green energy source that contribute to environment protection. Goods produced by using green energy will be certified, and be valued more and more by aware consumers.

### **3.9 The new amended labor Code: Employment and Labor**

We welcome the adoption of the revised Labor Code by the Vietnamese National Assembly on 20 November 2019. The revised Labor Code contains significant changes and improvements, in keeping with Vietnam's commitments under the international trade agreements. We have some concerns, however, regarding a couple of issues that the revised Labor Code has failed to address and therefore call for the Government's support in addressing those issues in the implementing decrees.

First, we note the revised Labor Code retains the annual overtime cap of 200 hours for normal working conditions and 300 hours for some special situations, even though the law does expand the number of such special situations. We suggest that the implementing decrees clearly provide

these special situations and confirm that enterprises will only need to notify, not to obtain approval from, the labor authority to have employees work for 300 overtime hours per year.

Second, the revised Labor Code imposes a limit on the number of extensions of work permit that a foreign employee may apply for, that is the maximum term of the work permit is two years, and can be extended only once with another maximum term of two years. That raises concerns over the administrative burden for preparing a refreshed labor plan and justification of qualifications, and submitting a new full application dossiers to apply for new work permit. This can potentially create disruption to the businesses as well as difficulties for personal circumstances of qualified foreigners who have been working in Vietnam. We therefore suggest that the implementing decrees provide that the new work permit application process will be more streamlined for those foreign employees who have been working in Vietnam and previously been granted work permit.

Another important issue is that the revised Labor Code provides for arbitration as a new dispute resolution venue for individual and collective labor disputes. This is a progressive development of the revised Labor Code in providing flexibility and multiple dispute resolution mechanism for employers and employee, which development is much welcomed. However, we express concerns over the establishment and operations of these "Labor arbitration courts". We suggest that Vietnam may want to consider utilizing the current commercial arbitration courts system, instead of establishing totally new arbitration courts for labor disputes.

This will help Vietnam take advantage of the infrastructure and expertise that the current arbitration courts have built up over time.

### **3.10 Land law and the mortgagability of land use rights**

Innovation often requires capital, and Vietnamese innovators need better access to global capital markets. We have seen various Vietnamese companies having failed to get access to a cheaper financing sources outside Vietnam because they could not mortgage their factory and land use rights to foreign lenders. This is clearly a comparative disadvantage to Vietnamese companies in competing with foreign companies. As the National Assembly of Vietnam has now decided to approve an amendment to the Land Law in 2020, there is a good opportunity to propose an amendment to the Land Law that could allow companies in Vietnam to mortgage land use rights to offshore lenders. Given the fact that Vietnamese law has allowed foreign investors to establish a wholly foreign owned companies in Vietnam to engage in real estate and many other business sectors, we believe that such amendment to the Land Law should not cause any negative impact to the current legal framework of Vietnam.

## **SPEECH OF TOURISM WORKING GROUP**

### **ROLE OF ENVIRONMENTAL AWARENESS AND IMPORTANCE OF SUSTAINABILITY OF VIETNAM TOURISM**

*Presented by  
Mr. Kenneth Atkinson  
Working Group Head*

The Tourism Working Group would like to express their congratulations to all agencies and the private sector on attaining the record number of 18 million foreign visitor arrivals but continue to express their concern that only 2 source markets China and South Korea make up more than 50% of foreign visitor arrivals. We have seen the risks in the past of being over dependent on individual markets.

Making tourism more sustainable is a continuous process of making optimal use of environmental resources, enhancing the respect for host communities, and ensuring viable long-term economic operations. The fair distribution of benefits among tourism stakeholders requires adequate management and evidence-based public policies.

The United Nations and World Tourism Organization did publish the sustainable development goals (SDG's), and the National Council for Sustainable Development and Competitiveness Improvement and World Bank supported several actions in Vietnam and the future Socio-Economic Development Strategy 2021-2030. These should be the economic, social and environmental framework to be developed as a future ASEAN leading tourism destination.

Related to environmental sustainability, Vietnam increased its position globally according to the World Economic Forum (WEF) Travel & Tourism Competitiveness Report 2019 (up 8 ranks, from 129/136 to 121/140), thanks to the strong growth of the environmental treaty ratification index (up 24 ranks). However, other indicators that have been downgraded include the enforcement of environmental regulations (down 23 ranks), sustainability of travel and tourism industry development (down 12 ranks), stringency of environmental regulations (down 11 ranks), forest cover change (down 10 ranks) and this is a clear sign of the need for new rules and enforcement.

These ranking changes are strong indicators of the impactful environmental hazard facing many destinations, where sustainable plans have not been applied and required legislation is not fully aligned with the tourism growth levels and tourism master plans. Management of energy use, carbon footprint and emissions reduction, waste management, transportation and their impact on health, safety and employment practices and meaningful engagement with local communities is key.

Our full detailed paper outlines a comprehensive list of recommendations a few of which I highlight here:

- Through ecotourism services, smart city development, forest re-plantation and national parks promotion we must diversify Vietnam's portfolio and reduce overcrowding in congested areas.
- Mandatory policies and investment from both central and local authorities are required for the development of new facilities, or through PPP, need to be developed to support existing properties and future developments, aligned with environmental responsibility measures and fully developed waste management programs.

- 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 and develop appropriate policies for their protection
- Developing the future tourism workforce and re-training of “old school” employees particularly with the promotion of the benefits and advantages of working in the Tourism sector might help address the lack of professionals in the industry.

The Tourism working group is willing and ready to work with the various authorities to implement any of our recommendations.

## **ROLE OF ENVIRONMENTAL AWARENESS AND IMPORTANCE OF SUSTAINABILITY OF VIETNAM TOURISM**

Sustainability is a concept that Vietnam is starting to focus on, or should be seriously addressing. Environmental respect, society awareness of such decisive actions is key in order to develop an insightful guideline which benefits both visitors and residents alike.

Making tourism more sustainable is a continuous process of making optimal use of environmental resources, enhancing the respect for host communities, and ensuring viable long-term economic operations. The fairly distribution of benefits among tourism stakeholders is an activity involving a diverse number of economic, environmental, social, and political challenges, which require adequate management and evidence-based public policies.

United Nations and World Tourism Organization did publish the sustainable development goals (SDG), and the National Council for Sustainable Development and Competitiveness Improvement and World Bank supported several actions in Vietnam and future Socio-Economic Development Strategy 2021-2030. The EU also supported Vietnam with their ESRT Program, offering tools to provide a better integrated information base and clear sustainable tourism information is basic, facilitating the dialogue between different sectors and encourage integrated will produce locally relevant decisions. The economic, social and environmental framework to be developed as a future ASEAN leading destination.

Even the growth of both foreign and domestic tourists during the last three years had been remarkable in terms of percentages (reaching 15,5 million international arrivals and over 80 million domestic travellers is a good progress in 2018), the fact is that several of our regional neighbours are not highly rated in the area of environmental sustainability, hence the area requires urgent consideration from all sides.

Related to environmental sustainability, Vietnam increase positions globally (up 8 ranks, from 129/136 to 121/140), thanks to the strong growth of the environmental treaty ratification index (up 24 ranks). However, other indicators that have been downgraded include the enforcement of environmental regulations (down 23 ranks), sustainability of travel and tourism industry development (down 12 ranks), stringency of environmental regulations (down 11 ranks), forest cover change (down 10 ranks) and this is a clear sign of new rules reinforcement needs.

These recent year's increases do represent an impactful environmental hazard for many destinations, where sustainable plans had not been applied and required legislation is not fully aligned with the tourism growth level and tourism master plan. Involvement in equitable energy use, carbon footprint and emissions reduction, waste management, transportation and its involvement on health, safety and employment practices and its meaningful engagement with local communities is key.

As mentioned in the ASEAN Tourism Forum last January 2019, Vietnam needs to focus on the future projection and a better planned and developed environmental awareness. Involving both public and private sector, should consider experiences in similar countries, mistakes occurred in other destinations and a clear guideline which protects both cultural and natural heritage destinations, carries out best environmental preservation and future plans ahead.

Circular flow value chains must drive strategies that offer environmental and cost saving benefits. Opportunities for upcycling, recycling, and reusing can be identified easily in several destinations in Vietnam. The need of take a closer look at how "waste" can be conceptualized in a clear vision as a valuable tool in Vietnam's context.

Vietnam's limited awareness of potential actions and their potential impact is affecting local destinations: community-based tourism excursions, certified 'green' accommodations, local organic food in restaurants, responsible wildlife experiences and responsible volunteer experiences and many others are often not fully aligned with provincial and country master plans, the lack of a deep concern on environmental protection and the priority of building at any cost are not producing any sustainable growth.

Several areas of Vietnam are currently suffering loss of assets and are exposed to serious environmental threats (no waste management plans or regulations, polluted waters or land, construction over-development among others) without unified efforts being deployed. Such issues did arrive to the media, as the case of Phu Quoc's pollution which reduced attractiveness for the Japanese market. Another sample, in cities like Ho Chi Minh City there is very limited use of fluvial transportation for visitors and residents (now just three districts have an operative line) as a green and effective way of moving and easing road congestion and dynamizing rivers & canal resources the point must be prioritized.

Natural beauty and heritage preservation are considered national assets and must contribute to future growth and development of Vietnam. Lack of long-term vision and future impact guidelines for future & present investors do affect most of Vietnam's natural resources. Even though Vietnam ranks 34<sup>th</sup> out of 136 in the category "Tourism related natural resources" according to the World Economic Forum (WEF) Tourism Competitiveness Index 2017, Vietnam's ranking fell behind to 113 in the category "Tourism services infrastructure." (Tuoi Tre, 14.01.2019, p. 6)

### **Main areas affected**

Vietnam's has remarkable heritage sites and we need to protect them against degradation and there is currently a lack of preservation in the country, including coastal & islands over development. Lucrative private cruise companies affecting destinations with its itineraries and investments & profits are rarely re-invested in the society where tourism used is applied. Flood mitigation to be reinforced as several tourism plans were under water recently due to such factors (cases of Kien Giang, Da Lat, Nha Trang, are not isolated).

There is a lack of knowledge of what is required to enable sustainable development in many parts, if not throughout the whole country. Even considering infrastructure improvement is required, lack of sustainable plans or ignorance of current guidelines do affect the delicate balance between development, protection, use of facilities and environment enhancement. Satellite cities and districts might support and minimize population pressure.

Human Resources country plan to be developed simultaneously with sustainable and environmentally friendly policies, ensuring awareness is applied from all top sectors down to low level of society. ASEAN vocational training and employment opportunities for local communities and entrepreneurs has several tools in hand to support and align Vietnam to neighbour countries like Thailand, Philippines or Indonesia.

Accommodation (hotels, apartments, resorts, condotels, ...) is being built with low green level environment considerations and guidelines: rare are the samples where a property shines by its respect to the natural environment. Instead, no-friendly constructions and concrete mammoths with a clear lack of awareness & safe procedures are being built – no clear waste management plans prior & during operation, no recyclable programs and no reduction of pollution by private both public & private sectors are considered.

Day-to-day excessive waste, water quality and no-treatment as well as low recycling programs are a serious environmental problem and Vietnam has been identified as a major source of global plastic waste. Result is a tourism industry which suffers from the impact of Vietnam's plastic waste on beaches and in other natural environments, resulting in a no-return of visitors.

### **Potential benefits for Vietnam**

Responsible Tourism Policy / Principles that have been developed with the support of the EU-ESRT Program, in a countrywide participation process (workshops) and introduced by VNAT, need to be revisited and actions taken from there in order to develop a cleaner visitor and involvement with the destination chosen, benefiting each local is basic for each visitor in the area.

A more active role in promoting such green policies must position Vietnam as a leading ASEAN tourism destination on involvement and companies' certifications for environmental protection. The Government and local authorities should help promote these programs by having more annual awards. Recognition of best practices and sanctions of wrongdoing will enhance transparency and raise environmental and social standards of the industry, developing green investors and a long-term vision in Vietnam.

Destinations enhancement and a focus on quality of visitors rather than number is necessary as so as to reduce the environmental impact particularly on heritage sites. Vietnam has already recognised the need to attract longer stay and higher spending visitors.

Fluvial development in rivers (Hanoi, Danang, Ho Chi Minh City, Mekong delta) might support tourism & residents alike: actual poorly developed docking berths, inadequate tourist programs and high tour fares must be replaced by convenient, non-polluted and affordable options which benefit all sides.

### **Proposed implementations in sustainable tourism**

Long term sustainable measures do Improved coordination of destination planning and product development together with incentives for responsible investors will align future projects leading the market.

Each individual new hotel room brings with it increased demand of electricity, water, waste management and other basic services affecting environment, a complete plan should be included in initial license to ensure all aspects are included and fully aligned with sustainable practices.

Full control of tourism carrying capacity affecting selected areas, reducing overcrowded destinations and ensuring a correct sustainable diversification to new areas and corners. Ecotourism services, smart city development, forest re-plantation and national parks promotion must diversify Vietnam's portfolio and congested overcrowded areas.

Developing the future tourism workforce and present re-training of "old school" actual employees with updated refreshment as a mandatory and regulated follow up at industry level (ASEAN recognition support). The actual 1,954 vocational educational institutions might add support to the lack of professionals in the industry.

Waste management mandatory policies from both central and local authorities and the development of new facilities to be created by investment from local authorities or through PPP, need to be developed to support existing properties and future developments, aligned with environmental responsibility measures and full produced waste programs.

Protecting environmental and cultural assets. City urban planners and tourism management authorities need to understand the importance of heritage assets as a significant economic and national resources and recognise their economic value and fragility. Samples like My Son, Da Lat, Ho Chi Minh City are frequently in media due to the lack of protection. Measures need to be developed to control the number of visitors, as practiced in many countries.

Provide guidelines, such as ‘dos and don’ts for travellers’ related to sustainability and environmental protection, raising both local and foreign tourists’ awareness of local customs. Development of community-based tourism (CBT) initiatives. Many suggestions were put forward in the EU funded ESRT project and others (SNV, HITT) which need to be urgently revisited and also to look at initiatives adopted in other countries (Spanish project AECID)

Reduce demand for endangered wildlife species and limit uncontrolled interactions with wildlife to protect the limited number of species in Vietnam. Promotion and information in National Parks or natural areas could be developed in order to encourage tourists to respect and protect these sensitive locations.

Further development of regional tourism: proposals like the linkage between Quang Ninh province (Vietnam), Udon Thani (Thailand) and Luang Prabang (Laos) are a fantastic way of improving connectivity, share of profits and promoting this “World Heritage Triangle” area. Similar interactions might be working well in other areas in central, highlands and southern Vietnam.

Supply chain sustainability changes might produce benefits at short term, with ethical and environmental plans which might benefit cost efficiencies, improved revenues as reports presented showing. Creating ecosystems to grow in this landscape must be implemented at all levels linking other sectors with tourism and environment.

Sustainable Tourism Indicator System (SITS) are tools to support our Vietnam’s strategy: control of environmental spending per resident, energy consumption and emissions in tourism, tourism intensity or accommodation water consumption or waste separation, or blue flag beaches are only few of the 30 measures at our hands to impact the future trends in Vietnam. Although it is recognised that information may be expensive or difficult to collect baby steps can be taken as an initial approach. The Vietnam Tourism Competitiveness Index also monitors some Environmental aspects in the accommodation sector, we could revive the Green Lotus.



## TAX POLICY REPORT

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. Conditions for being recognized as Export processing enterprises (“EPEs”) and applying tax regulations of EPEs of the Company specializing in manufacturing products for export activities in industrial parks and economic zones**

Decree 82/2018/ND-CP issued by the Government on May 22, 2018 (effective from July 10, 2018) replacing Decree 29/2008/ND-CP, has changed the definition of an EPE. Accordingly, EPEs that are not located in export processing zones are separated from the outside areas according to the regulations applicable to "non-tariff areas", specifically: *“Export processing zones, export-processing enterprises or industrial parks reserved for export-processing enterprises shall be separated from the outside by fence systems, have ports, entrance and exit doors, and fulfill requirements concerning supervision and control by customs authorities and related functional agencies according to regulations applicable to non-tariff areas and regulations laid down in the legislation on import and export duty.”*

#### **Issue 1**

The standard *“fulfill requirements concerning supervision and control by customs authorities and related functional agencies”* has not specified clearly what specific requirements are. Therefore, different agencies will also have different inspection, supervision and control requirements, making it difficult for enterprises to meet the standards to be recognized as EPEs.

In fact, a number of enterprises registered to operate under EPEs' regulations during the investment period were not allowed by the customs authorities to be exempted from tax at the import stage because they did not meet the above infrastructure conditions as regulated in Decree 82/2018/ND-CP.

#### **Issue 2**

For the VAT amount already paid at the import stage in the investment period at the request of the customs office as mentioned above due to the enterprise has not yet met the conditions to apply as an EPE, in principle, the VAT for the investment period should be refunded as a normal enterprise.

However, the local tax authority, based on the business registration certificate which stated that the enterprise operates under the EPEs' regulations and thus, does not allow VAT refunds during the investment period for the amount of VAT already paid at import stage due to the lack of legal mechanism.

The inconsistencies among regulatory documents of the authorities cause a lot of damage and trouble for businesses.

### **Recommendation**

- The Ministry of Finance should promulgate detailed guidance on the standard *"fulfill requirements concerning supervision and control by customs authorities and related functional agencies"*, facilitating enterprises to fully comply with the regulations on EPEs.

Besides, the Ministry of Finance should provide specific regulations on the time limit for customs authorities (and relevant authorities) to be responsible for checking and confirming the fulfillment of requirements as EPEs since the date the business sent the invitation. Thereby, enterprises can start applying regulations to EPEs as soon as they meet the prescribed requirements, avoiding the delay of the authorities to interrupt the production and business activities of the enterprises.

- The Ministry of Finance should promulgate legal mechanism for enterprises to be allowed to declare input VAT during the investment period when they have not met the conditions of EPEs and they can carry out tax refund procedures according to the regulations on VAT for the investment period.

## **2. The time of export revenue recognition**

### **Issues**

The time of export revenue recognition for tax purpose is stipulated in the guiding documents of several tax laws. Specifically, pursuant to Clause 2, Article 5, Circular 78/2014/TT-BTC<sup>1</sup>, the time of revenue recognition for calculating taxable income is determined as follow *"For goods sale: the time when the right to ownership and/or right to enjoyment of goods is transferred to the buyer."* Clause 4, Article 16, Circular 219/2013/TT-BTC<sup>2</sup> provides that: *"... The day to determine revenue from export to calculate tax is the day on which customs procedure completion is confirmed on the customs declaration"*.

As such, according to the guiding regulations of Law on valued added tax, the time of recognition of export revenues is the time of confirmation of the customs procedure completion, which may not be the time at which ownership of goods is transferred in accordance with related parties' agreement / applied incoterm. Nevertheless in practice, in case the ownership of goods has not been transferred at the time of customs procedure completion as shown in the custom declaration (in accordance with the applied incoterm and the parties' agreement), many local tax officers still follow the regulations on value added tax to insist that at the time on which the customs procedures is completed, the export revenue must have been recognized for CIT purpose. On such basis, the tax authorities request the enterprise to increase the corresponding CIT taxable income. Such a view of the tax authorities, in our opinions, does not align with the intention of the prevailing laws on corporate income tax.

### **Recommendation**

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<sup>1</sup> Clause 2, Article 5, Circular 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance guiding the implementation of regulations of Law on corporate income tax, amended by Article 3, Circular 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance

<sup>2</sup> Clause 4, Article 16, Circular 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance guiding the implementation of Law on value-added tax, amended by Clause 7, Article 3, Circular 119/2014/TT-BTC dated 25 August 2014 of the Ministry of Finance

To ensure the equality and avoid any disadvantage to tax payers, we kindly request the Ministry of Finance to provide guidance to the above issue to facilitate the appropriate application of regulations on each type of tax.

### 3. Exclusion from deductible expense due to violation of specialized laws

#### Issues

Currently, for numerous reasons, a number of enterprises have failed to comply with the provisions of specialized laws. Based on that, the tax authorities exclude the related expenses of the enterprises from the deductible expenses for CIT purpose. We would like to refer to a number of typical examples as below:

- Regards to overtime hours, the Labor Code stipulates that the total amount of overtime hours of employees shall not exceed 200 hour/year and 300 hour/year for special cases prescribed by the Government<sup>3</sup>. Many enterprises, due to unexpected requirements of work and following their negotiations with the employees, have had employees working for more than 300 overtime hours a year and paid them accordingly to the corresponding overtime hours.
- Regards to work permit, due to objective reasons or lack of information, enterprises fail to apply for a foreign worker work permit timely as required by related regulations. The enterprises have paid such foreign workers wage and salary, insurance and other related payments prior to the permit grant.
- The promotion programs are required to be registered with the Department of Industry and Trade under the prevailing regulations provided by Government's Decree No. 81/2018/ND-CP dated 22 May 2018 of the Government elaborating the regulations of Commercial Law on trade promotion. For several reasons, the enterprises fail to timely register the promotion programs as required by related regulations.

For all above three cases, the local tax officials often follow the provisions of specialized laws to require enterprises to exclude the related expenses from the deductible expenses for CIT purpose, such as: overtime salary expenses in excess of 300 hours, the salary and insurance expenses for the period that the employees have worked in absent of a work permit, and the promotion expenses of unregistered promotion programs.

In our opinion, the exclusion from deductible expense due to violations of specialized laws as above is unreasonable and inappropriate with the intention of CIT law because: Firstly, violations of specialized laws shall be subjected to penalties according to the sanctions prescribed for such specialized fields. *Secondly*, as prescribed by regulations on CIT, *enterprises may deduct all expenses that fully satisfy the conditions* at Point 1, Article 6, Circular 78<sup>4</sup>. As such, if the above

<sup>3</sup> Article 106, Labor Code 2012 issued by the National Assembly of the Socialist Republic of Vietnam on 18 June 2012.

<sup>4</sup> According to Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance guiding the implementation of Decree No. 218/2013/ND-CP detailing and guiding the implementation of Law on enterprise income tax, amended, and supplement as regulated in Article 4, Circular No. 96/2015/TT-BTC guidelines for corporate income tax in Decree No. 12/2015/ND-CP on guidelines for the Law on amendments to Laws on taxation and amendments to degrees on taxation; amendments to some articles of Circular No. 78/2014/TT-BTC, Circular No. 119/2014/TT-BTC, and Circular No. 151/2014/TT-BTC, in effect as of 06 August 2015:

**Article 6. Deductible and non-deductible expenses for determining taxable income**

1. Except expenses specified in Clause 2 of this Article, enterprises may deduct all expenses that fully satisfy the following conditions:
  - a/ Actual expenses arising in relation to production and business activities of enterprises;
  - b/ Expenses with adequate lawful invoices and documents as required by law;
  - c/ For expenses for purchase of goods or services with invoices valued at VND 20 million or more (VAT-inclusive prices) each, there must be non- cash payment documents.

expenses satisfy the conditions at regulations on CIT then they should be recognized as deductible expenses for CIT calculation.

### **Recommendation**

To ensure consistency and appropriateness to the application of the law in each specialized field, we respectfully request the Ministry of Finance to consider and provide general guidance for the cases where enterprises violate specialized laws as presented above.

## **4. Overlapping scope in Post-clearance Audit (PCA)**

### **Issues**

PCA is a professional activity which receives special attention in recent years by the customs authorities, in accordance with the policy of simplifying the administrative procedures, moving from pre-inspection to post-inspection. By conducting PCA, many violations were detected in time, preventing revenue losses to the State Budget, on the other hand also assisting the inspected businesses to review their operations to ensure compliance with the law.

The principles and processes of PCA are specifically provided under the Law on Customs, the Law on Tax Administration as well as other legal documents by the Ministry of Finance and the General Department of Customs. Clause 2đ, Article 5 of the Post-clearance audit procedures enclosed with Decision No. 575/QĐ-TCHQ dated March 21st, 2019 on the handling of duplicates in the content and scope of post-clearance audit is as follows:

*“To look the history of post-clearance audit on the STQ01 System when issuing audit decision. The content and scope of the decision on post-clearance audit shall not overlap with the previously inspected content and scope.*

*In case there are signs of violation affecting the tax payable amount belonging to the content and scope of the previous audit decision, but has not yet been concluded and handled, it must be reported to the competent officer who has right to sign the audit decision to consider whether to expand the content and scope of the audit decision (to re-inspect with the inspected content having signs of violation). ”*

Regardless, in reality, there is no clear regulation to restrict duplication of content and scope of audits, resulting in overlapping inspections, causing difficulties for businesses, such as

- The enterprise had been PCA-ed for tax and customs compliance for the period of 5 years from 2012-2017. Customs authority has issued its conclusion and the enterprise complied with customs authority’s guidance in this decision. In 2019, Company continued to be inspected for the period of 5 years from 2014-2019. When customs authority concluded that there were violations in certain transactions, the enterprise was imposed taxes for the period which customs authority has not concluded any violations in the previous audit.
- The enterprise was inspected to extend the AEO status. The customs authority requested to re-audit for the years which the enterprise has already been PCA-ed by the same customs office.

### **Recommendation**

For each PCA, enterprises spend a huge amount of money and effort to prepare. Therefore, we propose that the General Department of Customs and the Ministry of Finance promulgate clear

regulations of NO overlapping post-clearance audits, to avoid causing confusion to the enterprises when the inspected and concluded issues might still be re-opened for inspection.

## **5. Import duty refund for exports which part or whole production process is entrusted to an EPE under toll-manufacturing arrangement**

### **Issues**

When a Vietnamese entity (non-EPE) signs a toll-manufacturing contract with a foreign enterprise, then assigns part or wholly the production process to an EPE, then when receiving the processed goods from the EPE, the domestic entity shall pay import duty on the added value of imported processed goods. In addition, the materials that the domestic entity imports but then sub-contracts to another party to produce is not entitled to import duty and VAT exemption under Official letter 2689/TKNK-CST dated 28/5/2018 by the General Department of Customs.

Since the processed products will eventually be exported or continue to be processed to be exported, in principle, the domestic entity should be refunded the paid import duty (the General Department of Customs has issued Official Letter No. 4400/TXNK-CST dated 9/11/2017 to confirm this tax treatment). However, in practice, there is no mechanism for enterprises to apply for tax refund in this case.

### **Recommendation**

This issue was raised in the previous Report of VBF and in the dialogue between VBF and the General Department of Customs in 30 October 2019. However, the General Department of Customs concluded that due to there is no mechanism for enterprises to apply for tax refund, the companies shall not be refunded in this case.

With the growing trend of enterprises using outsourcing to optimize production capacity to focus on the professional segment and improve competitiveness, we propose that the General Department of Customs release instructions or regulate this specific case to resolve the issue and avoid double taxation for enterprises.

## **6. VAT on goods delivered and received outside of Vietnam**

### **Issues**

When two domestic enterprises trade imported goods, however, the ownership of the goods are transferred before customs clearance (for example, at an international seaport or airport in Vietnam): The Seller buys goods abroad and requests to ship the goods to Vietnam, then the Buyer will directly receive the goods at the port and carry out import procedures to bring the goods to his warehouse. In this case, it can be understood that the trading takes place outside of Vietnam's territory since the goods are not yet imported. Pursuant to the Law on VAT, such activity is in theory subject to VAT at 0%. However, the tax and customs authorities have issued rulings that there is not sufficient ground to to apply 0% VAT to this activity but they view this transaction as domestic trading, so generally the Buyer must pay VAT twice (on the amount paid to the Seller and upon importation). On the other hand, the trading of goods in bonded warehouse (when the Buyer picks up the goods at the bonded warehouse and carry out customs procedures) is considered as trading in non-tariff area and not subject VAT (Official letter 8221/CT-TTHT dated 24/7/2015 of HCM Tax Department and Official letter 45107/CT-HTr dated 10/7/2015 of Hanoi Tax Department).

**Recommendation**

In our opinion, the above tax treatment is in line with with the principles of VAT. We petition the General Department of Taxation and the Ministry of Finance to consider and give appropriate guidance for enterprises to implement. VBF would like propose as below:

- Goods traded between two Vietnamese entity but delivered before clearance is subject to 0% VAT (pursuant to clause 1a and 2 Article 9, Circular 219/2013/TT-BTC).
- The Buyer pays import duty and VAT (if any) when carrying out import procedures. Customs value is the selling price in accordance with the contract between two Vietnamese entity (not the selling price of the Seller and the foreign party).

**7. EPEs import molds for domestic enterprises to rent/borrow to produce goods for EPEs****Issues**

When an EPE engages a domestic enterprise for toll-manufacturing, according to customs regulations, the materials as well as machinery and equipment rented/borrowed by the domestic enterprise from the EPE to serve the production are exempted from import duty.

However, in the absence of a toll-manufacturing contract, the EPE purchases finished goods from the domestic enterprise, to ensure that product conforms with its technical standards as well as protect its technology secrets while the domestic enterprise does not have enough capacity to produce high precision molds, EPE imports molds from abroad for the domestic enterprise to rent/borrow to produce goods wich will then be mainly sold to the the EPE. The molds usually have a short lifetime, often serve the specific requirements of each order, so by the time the EPE receives the molds back, the value of the mold is fully depreciated. Some customs authorities consider that because the value of the molds is mostly used in the domestic market, this import activity of the EPE can be considered as import activity for trading purpose, so the EPE must pay import duties when importing the molds. In essence, this case is similar to the case of lending the molds under toll-manufacturing contract as above (because the molds are only used to produce for the orders of the EPEs), and when carrying out temporary import procedures, the domestic enterprise has paid import duty for those molds, and when re-exporting the patterns back to the EPE, because the value of the molds was used up, the domestic enterprise does not apply for refund of the import duties that were paid.

**Recommendation**

This is a common business model for many manufacturing enterprises due to technical requirements, product technology secrets, we propose the General Department of Customs to give specific guidance on procedures and import duties treatment in this case for enterprises to implement. VBF would like to propose the following solution:

- The import and rent/lending of the molds of the EPE as explained above, even though the molds are fully used up in the domestic market but serve the purpose of producing exports, not for the purpose of trading. Therefore, it should not subject to import duty and VAT at importation for the EPE.
- When receiving the molds from the EPE, the domestic enterprise carries out temporary import procedures and pays import duty and VAT on the value of the molds upon importation. When returning the molds back for the EPE, the enterprise carries out re-export procedures and may apply for refund on the residual value of the molds. We found this

treatment is in line with the recent guiding ruling No. 6089/TCHQ-TXNK dated 24 September 2019 by the GDC.

## 8. Issues of FDI enterprises' trading activities

### Issues

Regarding on-spot import-export activities: According to Article 5, Law on Foreign Trade Management and other Decrees on the trading activities of FDI enterprises, currently, there is not any regulation that allows FDI enterprises having right to export, to use goods purchased in Vietnam (goods that are not manufactured by these enterprises) to export on-spot. Due to the above policy restrictions, the local customs authorities may not proceed the on-spot import export procedures for the FDI enterprises. This issue was also put forward by the HCM Customs Department in Official letter 3327/HQHCM-GSQL dated 1/12/2016 and Official letter 717/HQHCM-GSQL dated 21/3/2017 but as far as we know, up until now the General Department of Customs has not provided any feedback to resolve this matter.

Regarding the transfer of ownership in bonded warehouses (BWH): A common business model is that a domestic enterprise purchases goods from an EPE or from overseas and then stores the goods in the bonded warehouse for sale to another EPE or domestic enterprise in the future. This model is advantageous for the trading enterprise in terms of transportation expenses as well as customs procedures, and appropriate with the intended purpose of the bonded warehouse. However, under Official Letter No.620/XNK-CN dated May 11th, 2017, the Ministry of Industry and Trade has the opinion that FDI enterprises which do not have the right to distribute but transfer ownership of purchased goods in BWH is **not in compliance with the provisions** of clause 1 Article 5 of Circular 08/2013/TT-BCT, without giving any of other solutions for the enterprises. While under Article 63 of the Law on Customs, owners of goods can transfer ownership inside BWH. The opinions and regulations between different ministries are not consistent making it difficult for enterprises to comply with. Many enterprises had to give up this business model.

### Recommendation

The above-mentioned commercial activities are not in the prohibited or restricted activities of FDI enterprises. However, due to the absence of legal basis in the field of foreign trade administration on on-spot import export and ownership transfer in BWH of FDI enterprises, the customs authorities are currently unsure how to proceed the customs procedures for enterprises (although there are many other official letters on tax and customs guiding the tax treatment, invoicing and customs procedures for these cases). This has immensely affected enterprises' business plan as these activities were still allowed in previous period.

We propose the Ministry of Industry and Trade and the General Department of Customs to discuss and work with the Government on the above issues for FDI enterprises operating in Vietnam.

## 9. Supplement declaration for import export goods

### Issues

According to prevailing custom regulations, in case of errors in the customs declarations, the enterprise needs to amend each declaration. In fact, many businesses face the following difficulties:

- For imported goods: The enterprise imports raw materials for production. However, due to the characteristics of the raw materials (for example: very small, required sterilization, large quantity and difficult to count immediately upon receiving), there is often a difference in quantity between custom declaration and actual. This difference will only be detected when the enterprise starts or finishes production.
- For export goods: The export price in custom declaration form is the provisional price. Only by the end of the month/quarter that the enterprise can finalize official price, from then on there is a requirement to amend the value on the customs declaration.

For enterprises with large import-export turnover, the number of customs declarations is very huge, therefore, amending each declaration one by one as above costs a considerable amount of money and resources, although the tax payables are not affected (as the importing enterprise imports to produce exports and the exporting enterprise exports duty-free goods). The amendment of many declarations also affects the compliance status of enterprises, although this is an unintended cause, due to the characteristics of goods as well as production and business models. Therefore, the enterprises would like to propose to amend one single declaration (possibly for each sub-department of custom) or submit a master list at the end of a certain period. The enterprise are committed to retaining adequate documents to justify the amendment, the quantity reconciliation can also be tracked on the internal management system. Many enterprises have petitioned to the General Department of Customs, and HCMC Customs Department even sent Official Letter 2714/HQHCM-TXNK dated August 28, 2017 on this issue to the General Department of Customs; However up until now, the General Department of Customs has not been able to support enterprises due to the constraints of the declaration system, and the regulations related to customs statistics cannot support such amendments.

### **Recommendation**

To save the time and cost for enterprises, as well as make it easier for the customs authorities to manage, we recommend the General Department of Customs and the Ministry of Finance to consider and support enterprises with the proposal for master file amendment as above. If the current System of customs declaration is not supported, we propose the Government to do a benchmark research in other countries if possible, to come up with a more reasonable declaration method for enterprises.



## **III. SESSION 2**

### **BUILDING IN SUSTAINABILITY AND GREEN GROWTH**

## **SUSTAINABLE AGRICULTURE, SUPPLY CHAINS AND INNOVATION**

The goal of sustainable agriculture is to meet society's food needs in the present, without compromising the ability of future generations to meet their own needs.

Sustainable agriculture seeks to integrate three main objectives:

- a healthy environment,
- economic profitability, and
- social and economic equity.

Every person involved in the food agriculture supply chain—growers, processors, distributors, retailers, consumers, and waste managers—can play a role in ensuring a sustainable agricultural system.

There are many practices commonly used by people working in sustainable agriculture and sustainable food systems.

- Growers use methods to promote soil health, minimize water use, and lower pollution levels on the farm.
- Consumers and retailers who are concerned with sustainability look for “values-based” foods that are grown using methods promoting farmworker wellbeing, that are environmentally friendly, or that strengthen the local economy.
- And researchers in sustainable agriculture often cross disciplinary lines with their work: combining biology, economics, engineering, chemistry, community development, and many others.

However, sustainable agriculture is more than a collection of practices. It is also a process of negotiation: a push and pull between the competing interests of an individual farmer or of people in a community as they work to solve complex problems about how to grow crops, raise animals, fish and seafood, and prepare food for market.

**Sustainable agriculture** is based on an understanding of ecosystem services. It includes profit, environmental stewardship, fairness, health, business and family relationships in a farm setting.

There are many methods to increase the sustainability of agriculture. Sustainability focuses on the business process and practice of a farm in general, rather than a specific agricultural product.

Agriculture has an enormous environmental footprint; it is simultaneously causing environmental impact, and being affected by those changes.

Sustainable agriculture provides a potential solution to enable agricultural systems to feed a growing population within changing environmental conditions.

Governments, small landholders and large international agribusinesses have a responsibility to understand, develop and maintain sustainable agricultural processes.

The World Bank and the International Finance Corporation (IFC), member of World Bank Group with the mandate of private sector development have been focusing on **sustainable agriculture** through working with Governments and lead firms, to deliver climate-smart agriculture that achieves the triple win of increased productivity, enhanced resilience, and reduced emissions. Climate-smart agriculture is an integrated approach to managing landscapes—

cropland, livestock, forests and fisheries--that address the interlinked challenges of food security and climate change.

**The Agriculture Supply Chain** includes many and varied players from governments to Banks to farmers to distributors, to suppliers and marketers, to retailers and consumers.

Each link in the chain has expectations and needs. Sustainable agriculture recognizes the needs of all the players in the Supply Chain.

Agriculture, Food and Horticulture are key sectors in Vietnam and in South East Asia, accounting for a substantial share of the region's GDP and employing an important part of the workforce. With an increasing population, climate change, rising levels of urbanization and workforce challenges due to rural de-population, there is an urgent need for innovative solutions for the agriculture sector.

In this context, Vietnam has great opportunity to join the international agriculture supply chain and tap into high value markets, particular. But only if we can convince the global market place that we are capable of supplying high quality, clean and hygienic meat, fish and produce that meets the quality and traceability standards of the international market. This is because consumers in Europe, USA, Australia and other countries require not only high quality, but also knowledge of how the product was grown, processed, packaged, prepared and transported, how animals were treated, and how water was used, and waste managed.

In order to achieve this goal, the sector should be able to tackle the challenges including Salinity, Flooding, Soil Degradation, Climate Change, Disease management, Overuse of pesticides and herbicides, Water and waste management, and the tension between urbanization, commercial business needs, and farming land.

The government should engage private sector in providing solutions to these issues such as introducing smart IT systems, drones, sensors, the Internet of Things, Artificial Intelligence and Machine Learning, and other advanced technologies, and crucially networking those assets to set up sustainable supply chains to produce quality and safety products while maintaining efficient use of resources and support for the environment;

The Government should also play the role in strengthening legal framework and institutional capacity to enforce quality standards compliance so as to improve international recognition for made-in-Vietnam agricultural products.

**MADE IN VIETNAM ENERGY PLAN 2.0**

*A business case for the primary use of Vietnam's domestic resources  
to stimulate investment in clean, secure, and affordable energy generation.*

**EXECUTIVE SUMMARY****GOALS**

This report is designed to update the Made in Vietnam Energy Plan ("MVEP") prepared by the VBF Power and Energy Working Group in 2016 and to look at ways to put Vietnam's power generation and use on a more sustainable path. The full report is available on the website: [www.vbf.org.vn](http://www.vbf.org.vn).

Sustainable energy is the practice of using energy in a way that "meets the needs of the present without compromising the ability of future generations to meet their own needs". Meeting Vietnam's sustainable energy goals is widely considered to be one of the greatest challenges facing the country over the next 15 years. Achieving these goals will require government policies that meet growing demand while also encouraging private sector investment, safeguarding the environment, and increasing energy efficiency.

Previous government assessments noted that Viet Nam will require about 130 billion USD in new energy investment through 2030, with an average of about 12 billion USD per year, of which about 9 billion USD would need to be invested in electricity generation and 3 billion USD in the transmission grid. While we think these numbers are unnecessarily high, it is clear that more electricity is urgently needed.

Sustainable electricity plays an extremely important and indispensable role and is a decisive factor to accelerate the process of sustainable industrialization and modernization of Vietnam. Until recently, the development of electricity sources has met the supply requirements for sustainable socio-economic development. This has largely been due to the availability of hydropower to fill the need for increasing energy demand. The Power Development Plan VII recognized the limits of hydropower and proposed meeting new demand with coal thermal power.

It has now been widely recognized that the structure of power sources needs to change compared to the Power Development Plan VII, and far greater emphasis needs to be placed on sustainable, clean and zero emissions energy sources to attract advanced, clean and sustainable industry, promote the efficient use of electricity and awareness of our need to protect natural resources such as the Mekong River and our planet overall. Vietnam's air quality has declined rapidly over the past decade and is now ranked among the worst in the world. Promoting clean, low emissions and zero emissions energy sources is a fundamental means of resolving these issues.

In December 2016, the VBF published the Made in Vietnam Energy Plan (MVEP). The plan recognized high levels of private sector interest in renewable energy and a far lower interest in coal thermal than the PDP VII anticipated. Since the publication of MVEP, we have seen most of our expectations met. Over the past year, 7,000 MW of solar utility energy has been installed, of which roughly 4,500 MW has already been grid connected. These new sources of energy have already begun compensating for shortages due to the delay or cancellation of coal thermal projects. This figure, by the way, does not include the many manufacturers, urban land developers, and industrial zones that have already and have begun installing "behind the meter" renewable energy to meet their own needs and the needs of their clients.

Solar power and wind power have many advantages over other energy sources in that they do not emit pollutants, can be installed quickly, and have high interest from private sector and FDI. Renewable energy sources also enable Vietnam to meet and exceed its nationally determined contributions to emissions reductions. Hence, this source of electricity is easier to mobilize domestic capital for smaller scale utilities on land and water, grid connected and behind the meter rooftop solar installations, and other installations on farms and in fisheries, but also to mobilize foreign capital for large individual projects that contribute significant electricity capacity.

Expanding renewable energy sources is financially feasible and in the public interest. We applaud the government's effort to mobilize 4,500 MW in solar power and 400 MW in wind power in less than 2 years. This is a phenomenal achievement that has not only contributed to offsetting power but has also garnered internal recognition for Vietnam's capacity to mobilize the private sector to meet sustainable energy goals. Development of a regulatory environment that truly unleashes the potential for renewables, efficiencies, gas and a reduced dependence on coal will require a regulatory environment that continues to encourage domestic and foreign investment. In addition, regulatory mandates that encourage private sector investment in grid improvements and expansion are now urgently needed.

Our updated report, the Made in Vietnam Energy Plan - version 2.0 (MVEP 2.0) builds on the previous report with an energy strategy that focuses on renewables, natural gas, energy efficiency and battery storage as well as grid improvements and expansion that will attract private sector investment to meet Vietnam's sustainable energy goals. These investments will not only help to meet Vietnam's growing energy needs but also produce a cleaner environment that attract the clean industries that require renewable and low emissions energy. Media outreach regarding the government's renewables led strategy will also create opportunities to raise public awareness on the roles all residents play in increasing energy efficiency and reducing emissions.

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

## **RECOMMENDATIONS**

### **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, targeting 10GW through the grid and with behind the meter systems. These alternative scenarios, which are aligned with Vietnam's Nationally Determined Contribution (NDC) commitments and global concerns, require regulatory support and incentives to leverage private sector investment now seeking opportunities to invest in Vietnam while meeting Vietnam's target on energy security by reducing its dependency from energy import. Engaging the private sector, with their experience in market analysis, finance, and consumers' needs, in developing the Power Development Plan VIII would increase the effectiveness of the planning process.

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

MVEP 2.0 recommends tax levelization for the development of certified domestic 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. Incorporating imported LNG supply into the energy-mix adds to Vietnam's energy capacity while long-term supply contracts for domestic offshore gas are developed.

**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, solar and gas 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 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 projects become simpler and more profitable and work towards reverse auction.

DPPA: MVEP 2.0 recommends Direct Power Purchase Agreement (DPPA) regulations that promote access to clean energy for end users by power generation and storage directly with renewable energy generators for both behind-the-meter and grid-scale projects. DPPAs can accelerate renewable energy development between buyer and seller and relieve pressure on EVN by mobilizing private capital, and access to grid-scale renewable energy is an increasingly important requirement for large companies as they consider where to build facilities. We encourage the government to seize the benefits of facilitating investment in behind-the-meter solar, battery, biomass, and waste-to-energy plants and other renewables developed by power consumers and specialist suppliers. This regulation will develop a new dynamic market model while preserving a safe and reliable power supply. As an immediate step, we urge the government to launch a meaningfully sized DPPA Pilot Program and stand ready to support a successful pilot.

**Construct a regulatory and permitting environment that promotes energy efficiency:**

TARIFFS: 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. To complement the Roadmap, it is also important to have a promotional campaign aimed to educate stakeholders on the need for, and benefits of, energy efficiency.

EFFICIENCY: 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. Promote public awareness, modernize mandatory efficiency regulation, and enhance enforcement.

**Construct a regulatory and permitting environment that attracts smaller scale off-grid investment in clean energy generation:**

ROOFTOP: VBF recommended in its submission to the solar energy rooftop draft regulations in 2017 that the exemption from the requirement to obtain a 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. We also recommend a change in regulation to allow for onsite direct power purchase contracts between owners of onsite solar systems and host facilities using the electricity.

BEHIND-THE-METER: VBF recommends that behind the meter clean energy power generation, that exports no power to the EVN grid are:

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

**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, transmission maintenance and upgrades, battery storage, and flexibility.

**Halt any new approvals for coal:**

Given the numerous concerns and delays related to expanding coal capacity as proposed in the PDP VII, we recommend halting 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.

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

1. Engage energy specialists from the private sector to assist in producing a PDP VIII with a strong prioritization on investment in 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.
2. Implement regulatory frameworks and incentives that encourage private investment in large and small renewable energy projects, such as rooftop solar, battery storage, solar farms, floating solar, and offshore and onshore wind projects, biomass, with simplified approval processes, while still maintaining safe power systems.
3. Standardize the energy DPPA and PPA as an internationally bankable agreement used internationally and in other ASEAN countries.
4. 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.
5. Assess the urgent demands on the grid transmission system and the least-cost means of developing grid infrastructure to support increased renewable energy and increased distributed energy generation.
6. 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 energy waste at residential, office and manufacturing levels.

## **RESULTS**

**These proposed actions will provide for an affordable, reliable, and a sustainable energy security plan that the Vietnamese and International Private Sectors has both the Expertise, Technology and financial capability to implement.**

The action items of MVEP 2.0 outlined above will result in the following major sustainable outcomes:

1. Help cleaning up Vietnam's environment and air quality while addressing energy needs for sustainable growth.
2. Help reducing government' burden in reducing state owned investment by attracting investment and capital sources from private sector and FDIs.
3. Make Vietnam ready to attract new investment in companies looking for clean energy.
4. Make Vietnam ready to adopt new energy technologies as they are developed globally, by reducing the number of large 30 year projects locked into increasingly obsolete and dirty types of power generation.
5. Reduce the health and environmental impact of growth by reducing greenhouse gas emissions and air pollution and the other costs relative to a coal-focused energy plan and alignment with Vietnam's NDC commitments.
6. Increase 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.
7. Improve the financial sustainability for EVN and other companies in the energy sector.
8. Support SME and other private industry innovation that reduce energy intensity and increase energy efficiencies through public education and regulatory procedures.



## **IV. SESSION 3**

### **SOFT AND HARD INFRASTRUCTURE FOR INNOVATION**

## POSITION PAPER OF BANKING WORKING GROUP

### SUMMARY OF TECHNICAL ISSUES

#### Notes:

- Category 1:** *Issues for which consensus has not been reached in terms of standpoint and how to deal with at a technical level between SBV and BWG: **No pending issues.***
- Category 2:** *Issues that SBV has acknowledged and will soon have a plan to deal with in the near future*
- Category 3:** *Issues of a mutual cooperation nature, and issues that SBV has acknowledged and will consider and follow-up when revising its Circulars and Decrees*
- Category 4:** *Issues that pertain to other ministries' jurisdiction and responsibilities*

<u>NO.</u>	<u>ISSUE</u>	<u>DESCRIPTION</u>	<u>CONCLUSION &amp; NEXT STEPS</u>
<b>CATEGORY 2: ISSUES THAT SBV HAS ACKNOWLEDGED AND WILL SOON HAVE A PLAN TO DEAL WITH IN THE NEAR FUTURE</b>			
1.	<b>e-KYC and e-signature</b>	<p>As part of the traditional practice for account opening process, there are 2 specific steps in the KYC process that all of the banks are following: wet signature on the form and a physical face-to-face meeting by bank staff. In the context of digital world and capability in technology investment, BWG would like to propose new methods to conduct these 2 steps. We believe that both customers and the banks are well protected as the authenticity of the transaction is assured and the necessary steps of the account opening form are still fulfilled.</p> <p>1. Face-to-face meeting for identity verification and account opening:</p>	<p>BWG &amp; SBV (Legal Department, IT Department, Payment Department, International Cooperation Department) organized a meeting to discuss on November 13, 2019.</p> <p>At the meeting, the SBV and BWG discussed details on the proposed solution, clarified the related issues on customer identification and technical details, potential risks, control measures and the BWG's recommendations on Sandbox / pilot implementation for a number of foreign banks.</p> <p>SBV listened to the presentation, sharing relevant knowledge from other partners and concerns from the state management perspective. The SBV noted the issue, understood the pros / cons of each solution and would choose a positive approach. The SBV also updated the roadmap to revise relevant regulations at the end of 2019 and in 2020 such as Decree</p>

		<p>Traditionally, the bank will need to meet up physically with customer to do identity verification. This process requires either bank staff or customer to travel to a physical meeting point which costs time and money for both sides. With the unstoppable development of modern technology, we are all of the same view that this process can be fulfilled by other methods that can be conducted in real-time while also ensuring the highest levels of security:</p> <ul style="list-style-type: none"> <li>• Customer and bank staff to verify identification using video call to conduct conversation (acceptable in the European Union)</li> <li>• Customer and bank staff to conduct conversation using phone call with audio record function</li> <li>• Assigned third party vendors are granted the authority to conduct this identity verification process which the banks can use to complete the KYC process</li> <li>• Opportunity for customers to upload photo ID/passport, supporting documents on KYC to mobile app for verification</li> </ul> <p>2. Signature in the account opening form:</p> <p>Traditionally, to confirm the transaction between customer and the bank, customer's signature is collected in ink form (wet signature). However, with the development of technology, there are different ways to confirm the transaction between 2 parties that we see as alternatives:</p> <ul style="list-style-type: none"> <li>• Customer can sign directly on bank mobile app</li> <li>• Customer can take picture of his/her signature then upload to the bank via secured link</li> </ul>	<p>116/2013/ND-CP detailing implementation of a number of articles of law on anti-money laundering (amended content: abolishing the requirement of face-to-face meeting), Circular 23/2014 /TT-NHNN guiding the opening and use of payment accounts at payment service suppliers (reflecting the e-KYC in the amended circular).</p>
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2.	<b>Reimbursement of interest rate subsidies</b>	<p>Over the last years, banks have been waiting for the reimbursement of 20% of due interest subsidies under the interest rate support initiative that ended in 2009. We have actively worked with the SBV and provided relevant data. The State Audit Office of Vietnam has reviewed and concluded the amount with some banks. Following our previous meetings with SBV in late 2012, we note that the figures has been checked and finalized for a number of BWG members. We also understand that this is a complicated matter that may have bearings on the public funding balance sheet and national financial health. However, since the unpaid accumulated reimbursements are presenting themselves as a problem with the banks in relation to their internal accounting systems and audited financial statements, the working group would appreciate if SBV wraps this up and starts releasing this interest rate refund as soon as possible.</p>	<p>Through a technical meeting on December 16, 2019, BWG has been updated by the SBV about the process of reimbursement of interest rate subsidies. The SBV has been collecting, supplementing and finalizing documents of some credit institutions as well as submitting to the Prime Minister for approval the plan of the total package, in particular the difference between the amount of VND and USD.</p> <p>After receiving instructions from the Government, the SBV will proceed to refund.</p>

3.	<b>Circular 18/2018/TT-NHNN on information system security in banking operations</b>	<p>BWG proposed to discuss with the SBV on a number of related issues as follows:</p> <ul style="list-style-type: none"> <li>a. Definition on critical system</li> <li>b. Back up data</li> <li>c. Admin user</li> <li>d. Annual pentest frequency</li> </ul>	<p>BWG had some discussions with IT Department, specifically:</p> <ul style="list-style-type: none"> <li>- The amendment of regulations on customer information classification is a state secret that has been reviewed and submitted to the Government by the SBV. This will solve some problems when implementing Circular 18 (definition of information system at level 2).</li> <li>- SBV's IT Department acknowledged and will soon have a comprehensive review of circular 18. SBV's IT Department suggested BWG to continue working closely when revising Circular 18 and solve the outstanding technical issues.</li> </ul>
<b>CATEGORY 3: ISSUES OF A MUTUAL COOPERATION NATURE, AND ISSUES THAT SBV HAS ACKNOWLEDGED AND WILL CONSIDER AND FOLLOW-UP WHEN REVISING ITS CIRCULARS AND DECREES</b>			
4.	<b>Developing a legal framework for cash pooling product:</b>	<p>BWG recommend to develop the legal framework and allow domestic physical cash pooling solution in VND, within a common group of legal entities under the same parent company.</p>	<p>BWG &amp; SBV (Legal Department, Monetary Department, Payment Department, International Cooperation Department) organized a meeting to discuss on November 5, 2019.</p> <p>At this meeting, the SBV listened to BWG's proposal (product characteristics and recommendations). The SBV also noted that the current legal framework does not prohibit, however, according to the recent developments, the banks propose and need the support from the SBV and the Government to formulate and develop relevant legal framework as official guidance to support banks &amp; businesses in particular and the economy in general.</p> <p>The relevant departments will coordinate to report on this proposal. SBV will continue to work with BWG and relevant ministries (if necessary).</p>

5.	<b>FWD can be settled at mark to market value at point of pre-delivery or extension</b>	<p>Before the settlement date of FX Forward transaction, for many objective reasons, the client may request the bank to change some details of the transaction (for example, the settlement date, the amount of payment) that made earlier. According to international practice, for amendments to FX Forward transactions, banks often use FX swap transactions because the use of FX swap will ensure the accurate reflection of the re-evaluation value of FX forward transactions at the time of revision and guarantees the interests of clients.</p> <p>In case FX Swap cannot be performed, when canceling the old transaction, the system of banks will automatically re-evaluate the original transaction at market value and may incur a loss or gain with customer (MTM loss / gain) and this amount should be paid between the two parties.</p> <p>It is suggested that FX SWAP and / or payment of re-evaluation transaction value (Mark to Market) between banks and customers upon early termination or renewal of FX FWD transactions.</p>	<p>- BWG and SBV held a meeting on August 16, 2019, both sides exchanged specific details regarding the bank's difficulties, and client's needs, SBV's concerns &amp; relevant technical recommendations toward a solution. The Monetary Policy Dept. / SBV acknowledged the issue, would report to the SBV leaders and would consider in the plan to revise Circular 15.</p>
6.	<b>CCS to be booked in trading book instead of banking book</b>	<p>According to Circular 40/2018/TT-NHNN revising Circular 13/2018/TT-NHNN, Circular 41/2016 provided the definition of propriety trading <i>"Propriety trading means the purchase, sale, or exchange by commercial banks, foreign bank branches, subsidiaries of commercial banks in compliance with the law with the purposes of purchase, sale, or exchange for a duration of <u>less than one year</u> to obtain profits thanks to market price</i></p>	<p>BWG and SBV held a meeting on August 2, 2019.</p> <p>BSA recognized the problem and provided instructions on how to record transactions as follows:</p> <p>1. Banks comply with regulations at Circular 41/2016 / TT-NHNN and 40/2018 / TT-NHNN. The accounting will be based on the nature of the transaction - depending on the</p>

		<p><i>differences for commercial banks, foreign bank branches from financial instruments, including:.. d) Derivative products;"</i></p> <p>In fact, the interest rate swap derivative transactions between the two currencies usually have a tenor of over 1 year.</p> <p><b><u>Recommendation:</u></b> We suggest that the State Bank consider revising this regulation so that derivative transactions with tenor of more than one year are allowed to be recorded in the trading book.</p>	<p>trading policies of each bank: accordingly, CCS as trading transactions will be recorded in the business book.</p> <p>2. Regarding the Repo and reverse repo transactions, the BSA provided guidances to book in banking books, based on the current accounting regulations (Circular 04, Circular 21 specifies the transaction nature as a loan).</p> <p>+ At present, there is still differences in the definition of "Credit extension in the form of buying and selling Collateral security" between the provisions of Circular 21 (forward transactions) and Circular 04 (discount).</p> <p>+ Recommendation: Continue to coordinate and handle due to issues related to Circular 04 (Department of Accounting), Circular 21 (Department of Monetary Policy) and propose the BSA to give opinions in its professional competence and based on the relevant regulations, in terms of products - the nature of the market, for the provisions of the 2 circulars 21 &amp; 04 above.</p>
7.	<b>Underlying transaction for hedging could be a hedging transaction</b>	<p>From the perspective of valid customer demand and large scale of transactions, BWG proposed that the SBV amend the requirements of valid documents to facilitate implementation of derivative products and help customers actively participate in hedging exchange rate and interest rate risks according to Circular 01/2015 / TT-NHNN ("Circular 01").</p> <p>- According to the provision of Circular 01, Article 7: Legal entities using interest rate derivative products are to prevent and limit interest rate risks for their original transactions. Instead of just using merely the original derivative contract as the basis for the second</p>	<p>- BWG and the SBV held a meeting on August 16, 2019 to discuss details about this issue.</p> <p>BWG presented the technical details and the reason why CCS transactions should be allowed as the underlying transaction for interest rate derivative transactions to hedge the exchange rate and interest rate risks.</p> <p>SBV noted the problem and reported to SBV's high-level, but the SBV has not yet had a plan / roadmap to revise Circular 01.</p>

		CCS, customers may use both their original loan contract along with the IS they did to hedge interest rates, as a basis for hedging exchange rate of both principal and interest. We would like to ask for SBV's comments on this approach.	
8.	<b>Circular 24/2016/TT-NHNN on amendment and supplement to a number of articles of circular no. 42/2011/TT-NHNN on grant of syndicated loans to clients by credit institutions</b>	<p>The SBV's Circular 42/24 stipulated that to be able to act as some appointed agent roles (security agent/dau moi nhan tai san bao dam, facility agent/dau moi cap tin dung etc....), such a member must be a lender/credit provider (thanh vien cap tin dung). In fact, as per international practice, those agent roles can be played by a separate party jointly appointed by lenders, not necessary to be one of the lenders. Even some credit institutions are specialized in providing those services for lenders in a syndication.</p> <p>BWG suggest amendment to facilitate further arrangement of syndication transaction in Vietnam for big projects for which financing requirements exceed either Single Borrowing limit ("SBL") or appetite of a single bank.</p>	<p>SBV and BWG held a meeting on December 17, 2019 to discuss details. The SBV listened to BWG's proposal and acknowledged the actual needs of the market and the difference between current regulations and international practices for syndicated loans.</p> <p>The SBV advocates for changes that are in line with international practices and facilitates market expansion. The SBV will conduct internal consultations and survey banks' opinions, based on which amendments to the relevant legal provisions will be considered.</p>
9.	<b>Circular 52/2018/TT-NHNN prescribing credit rating of credit institutions and foreign bank branches</b>	<p>Pursuant to Circular 52/2018/TT-NHNN prescribing credit rating of credit institutions and foreign bank branches</p> <p><i>"Article 23. Management of credit rating results</i></p> <p><i>1. Credit institutions and foreign bank branches shall not be allowed to provide credit rating results for any third party (including parent banks of foreign bank branches) in any form.</i></p>	<p>At the meeting on December 16, 2019, the SBV explained further about the ranking criteria mentioned in Circular 52 and based on these criteria, the banks can perform assessment and calculate the ranking by themselves. Banks may officially share with third parties information regarding the criteria and the ranking method, except the ranking results.</p> <p>The SBV noted the banks' implementation difficulties and the BWG's proposal to share the ranking results with third parties (including the parent bank of foreign bank branches) and will</p>



	<p><i>2. Bank Supervision and Inspection Agency, State Bank branches in provinces and centrally-affiliated cities, other affiliates of the State Bank and other regulatory entities or authorities having access to credit rating results of credit institutions and foreign bank branches as provided in clause 4 of Article 22 herein shall have to keep custody and make use of credit rating results in accordance with laws on protection of state secrets in the banking sector.”</i></p> <p>Circular 52/2018/TT-NHNN on credit rating of credit institutions and foreign bank branches: Foreign banks (both subsidiaries and foreign bank branches) are not allowed to share credit rating results with parent banks which has been communicated by the SBV. Other countries’ practice still allows banks to share the local observations with their parent banks. We have been advised by our Region (for ex: Monetary Authority of Singapore) permits the sharing of annual ratings with the Head Office (HO), but not with other Bank offshore entities. We would like to obtain a better understanding on why SBV imposes such a restriction that foreign banks are not allowed to share with our HO the rating assigned by SBV. Typically, HO regulators will require the HO to have oversight over the operation of its global branches/subsidiaries where such rating assessments provided by country regulators offers an important data point and in fact helps garner HO support on local areas of focus, and is important for managing global franchise reputation and risks. We therefore believe that our communication of our risk</p>	<p>continue to study further on international commitments and feasible solutions in the future.</p>
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		<p>assessment ratings by SBV to our HO would be necessary and for a good cause.</p> <ul style="list-style-type: none"> <li>○ We assume that a foreign bank under a subsidiary level will need to be able to share the rating at their Local Board level and we assume that the shareholder will be among the board member so it would mean that the rating cannot be discussed at Board level? Is the same instruction valid for local bank. no discussion of the rating at Board Level? Then there is an issue of proper governance and transparency. If ever Board can discuss the topic, then Branches of Foreign banks will be negatively discriminated.</li> <li>○ According to the rating and weakness observed, management of the bank may need to take decision and these may trigger change of Business Plan or investment. On this basis management should be allowed to effectively explain the Genesis of the request to their shareholder or HO.</li> </ul> <p><b><u>Recommendation:</u></b></p> <p>Based on the aforementioned analysis, BWG recommend that the SBV consider revising Circular 52 so that it does not treat the parent bank as a third party of the foreign bank branch and allows the branch to share information about the ratings with parent bank.</p>	
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CATEGORY 4: ISSUES THAT PERTAIN TO OTHER MINISTRIES' JURISDICTION AND RESPONSIBILITIES			
10.	<b>Close-out netting in derivative transactions (under normal trading conditions)</b>	BWG proposed SBV to allow Close-out netting in derivative transactions (under normal trading conditions).	- Tentative workshop in Q2/2020.
11.	<b>Requirement on chief accountant's signature on operating bank account.</b>	- Regarding this issue, there have been a number of meetings between BWG and Department of Settlement, SBV, and Ministry of Finance. The origin of this issue is the Law on Accounting and SBV's Decision No. 1789 in 2005. Before, banks have not met with a lot of difficulties in implementing this decision because transactions were paper-based. Yet the online transaction systems have been well developed, with 2 groups of signatures: those of the legal representatives and chief accountants and authorized representatives, thus the requirements set out in this decision is no longer practical for banks' operations. For example, on SBV's CITAD system, only one person can now log in to approve the transactions and send the payment orders, and approval of both groups is not required. Some banks have developed the mechanism for granting ID as well as password for customers to assign an authorized person to carry out the transactions. Yet, due to the barriers in Law on Accounting and Decision No. 1789, banks face with compliance risk, because when customers use a bank's payment system, both they and the bank cannot prove both groups of signatures as required.	- BWG raised the issue at the Mid-term VBF 2019.  The SBV to cooperate with the Ministry of Finance in amending the Accounting Law.

		<p>According to discussion between BWG and the Ministry of Finance, the latter agreed that these requirements were developed based on paper transactions and were no longer appropriate with the current e-transactions.</p> <p><b>Recommendation:</b> With experience in development of e-banking systems in parent banks in developed countries, BWG would like to further work with functional entities under SBV and support SBV in the drafting and revising the relevant laws, and developing a legal system for conduction of e-transactions in Vietnam - such as the revision of Decision 1789 to be in line with the current development status of e-banking.</p>	
<b>ISSUES THAT HAVE BEEN ADDRESSED</b>			
12.	<b>Decree 87/2019/ND-CP and Circular 20/2019/TT-NHNN on anti-money laundering</b>	BWG proposed to discuss with the State Bank on issues related to anti money laundering	BWG discussed with SBV's AML Department and provided comments on these documents.

## POSITION PAPER OF INFRASTRUCTURE WORKING GROUP

### SUSTAINABLE INFRASTRUCTURE DEVELOPMENT – THE DRAFT PPP LAW

In order for 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.

Vietnam spends a lot of money on infrastructure as a percentage of GDP and should be proud of the progress it has made. But it has struggled to formulate a public-private partnership (**PPP**) scheme that works. As we have pointed out before, 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.

It is now working on a PPP Law. The big question is whether this law will work. There are many forces at play here. Our perspective is not solely that of the private sector developer, as that perspective can be seen to be self-oriented, but of the larger private sector that benefits from good and sustainable infrastructure.

Problem	Sustainability Goal	PPP Law Position
<b>Guarantees.</b> Vietnam has a high debt-GDP ratio and limited resources to meet demand for infrastructure. It used to issue government guarantees or enter into Government Guarantees and Undertakings Agreements ( <b>GGUs</b> ) for the development of infrastructure projects by the private sector, but is now limiting or declining to enter into such guarantees at all.	Guarantees are efficient if properly structured. They can target the specific risks that make a project unbankable. There are lots of risks that can be covered. For example: <ul style="list-style-type: none"> <li>• If an investor is worried about EVN's ability to pay for the power that the PPP power project sells to it, but the Government is confident about EVN, a guarantee can bridge the gap at little cost to the Government.</li> <li>• If a PPP road project is worried about demand on its road, that specific risk can be addressed through a minimum revenue guarantee.</li> </ul>	<b>Guarantee of obligations of SOEs:</b> The new PPP Law should contain the flexibility, subject to appropriate safeguards, to issue guarantees where it is necessary. Large 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.  <b>Revenue - risk sharing:</b> The draft PPP Law allows the contracting State agency to

Problem	Sustainability Goal	PPP Law Position
		<p>agree to increase the tariff or service fees or extend the operational term of the project if the actual revenue derived by the project is lower than that in the financial model agreed in the concession contract. If such adjustments are not sufficient to cover the project's operating expenditures, the Government may consider paying up to 50% of the difference between the actual revenue of the project and the amount agreed in the concession contract. But this will be limited to certain very important projects – the provision only applies to projects approved by the National Assembly or the Prime Minister. So the utility of this flexibility is correspondingly limited.</p> <p>In general, the Infrastructure Working Group believes that there should not be a hard limit on the level of guarantees that can be granted (e.g. the draft PPP Law currently provides for a maximum 30% foreign currency convertibility guarantee). Rather, the ASA should be permitted to propose the guarantee needed for a specific project subject to the needs and nature of such projects. Projects in new areas, especially in more sustainable sectors (e.g. gas-fired power projects or LNG-to-power projects) should be encouraged and should receive better guarantees.</p>
<p><b>Risks come in all shapes and sizes.</b></p> <p>The most fundamental principle of PPPs is that risk has to be allocated to the party that is best able to</p>	<p>The new PPP law should allow the Government the flexibility to allocate project risk to get the best value for its money.</p>	<p>The new PPP Law should provide principles or guidelines to differentiate and match forms of government support to deal with different</p>

Problem	Sustainability Goal	PPP Law Position
<p>handle it. But the risk - in a road project – that not enough cars and motorbikes use it, is not the only risk. Plenty of other risks exist such as land acquisition delays or construction cost increases caused by unexpected geological conditions.</p>		<p>risks in each infrastructure sector.</p> <p>The new PPP Law should not be subordinated to the Public Investment Law. PPP projects are projects promoted and financed by the private sector. Government support 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 such support, but it does not mean that the Public Investment Law procedures have to be applied to private sector sponsors.</p> <p>The new PPP Law should also provide for a dedicated fund for State support and viability gap funding for PPP projects. Having such a dedicated fund would allow more clarity to sponsors and lenders with respect to the source of funding for State support in PPP projects. It would also limit the dependence on the Public Investment Law in mobilising State support capital by the State body entering into the PPP project.</p>
<p><b>Flexibility.</b> The PPP process has been bogged down by being overly prescriptive.</p> <ul style="list-style-type: none"> <li>State authorities that try to bid out projects cannot anticipate and address all elements of basic design, environment assessment, technology and risk allocation at the time of preparing the RFP.</li> </ul>	<p>The new PPP Law should provide broad principles, not prescriptive regulation of detail for State authorities to use for review, assessment and selection of the sponsors which have prepared and made a project proposal.</p> <p>The government’s goal is to set out principles that ensure that it does not lose fiscal control and supports a project only if and to the extent it is necessary to make it bankable.</p>	<p>A broad PPP law can refer the details to the sector-specific decrees and circulars. Circulars can be revised by the ministry that issues them in a process that is much quicker and more effective than amending a law. They can therefore respond much more readily to changes in the market, such as an increasing acceptance by sponsors of risks that in prior deals had perhaps rendered a development unbankable.</p>

Problem	Sustainability Goal	PPP Law Position
<ul style="list-style-type: none"> <li>Sponsors can develop their own projects. But these are then open for bidding by others. Evidently, this does not encourage and incentivize sponsors to work out and propose complex infrastructure projects.</li> </ul>		
<p><b>Selection of investors.</b> The award of projects to private parties is 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. 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.</p>	<p>Investors should be encouraged to focus on technical and financial capacity to deliver projects, including environmental effects. Cheap prices often correlate to lower quality technology and lack of environmental protection standards.</p>	
<p><b>Governing Law.</b> Vietnamese law of course applies to the operations of infrastructure in Vietnam. Power plants and roads in Vietnam cannot do anything else. But the contracts under which they are built and financed can be governed by a non-Vietnamese law. Vietnam is naturally concerned about applying a non-Vietnamese law to a contract relating to important infrastructure in Vietnam.</p>	<p>Using a foreign governing law for a PPP contract is sometimes necessary and in Vietnam’s best interests. This is because PPP contracts can be complicated and Vietnam does not have all the legal concepts to which the banks are accustomed. Furthermore, English law (for example) has a deep set of legal precedents so bankers know what the contract means with much greater precision if it is governed by English law than Vietnamese law. Investors can therefore be reasonably confident how a</p>	<p>Under the general law in Vietnam, application of foreign law would be allowed, subject to some reservations. The draft PPP Law is considering changing this general principle to require the application of Vietnamese law to project contracts. Any mandatory Vietnamese law requirement would render foreign project financing of large projects either unobtainable or more expensive and so not be in Vietnam’s interests.</p>



Problem	Sustainability Goal	PPP Law Position
	court will resolve common disputes. This enables banks to provide financing or to provide it at a lower cost, which in turn saves money for the government.	The PPP Law should maintain the position in the general law and allow the parties to negotiate in each specific instance whether to use Vietnamese or foreign law.
<b>Change in law.</b> Vietnam has a dynamic economy where change is constant. While this can be handled by a manufacturing operation that can adjust its inputs and output when necessary, it is not so easy for a project that is fixed and for which the income has been set in advance for a long period of time.	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. This is currently not in the draft PPP Law but an enabling provision could assist in ensuring that the point can be negotiated in the project contract.
<b>Flexibility in providing security to the bank – the land problem.</b> 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, security over land use rights has been limited to those permitted under the Land Law. This requires a project company to have paid for the land it uses – which runs up against the fact that land is provided free of rent in the first place.	If a project is exempt from the obligation to pay land rental, the project company should still have the right to grant security over land use rights. This will reduce financing costs and hence the cost of the project to the Government.	The Government did not intend to preclude security over land when it agreed that a project was free of 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. This should be recognized in the new PPP Law.
<b>Flexibility in providing security to the bank – the</b>	The same security interests over land and sea water areas	Sovereign rights over sea water areas can and should be

Problem	Sustainability Goal	PPP Law Position
<p><b>sea problem.</b> Sea water use rights are often needed by large PPP projects such as power plants that need cooling water or port facilities; port projects that build jetties, offshore wind power projects that have onshore components etc. However, different government authorities have reached different conclusions over security interests over sea water areas that are part of a project site.</p>	<p>should be available to a bank, so as to ensure the integrity of the project site and unnecessary splits of security interest packages for the financing of the project. The more secure a security interest, the lower the financing cost, and hence the cheaper the project to the Government.</p>	<p>preserved, of course, but this can be regulated clearly in the PPP Law while at the same time enabling the quick and clear grant of security interests to a bank.</p>
<p><b>Project transfers.</b> Decree 63/2018 does 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 (<i>COD</i>).</p>	<p>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 or a third party sponsor nominated by the lenders at any time if there is a breach of or non-compliance with the financing agreements.</p>	<p>The draft PPP Law has removed the restriction of transfer to lenders before completion of construction but still keeps the restriction on transfer to other sponsors. 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 relevant Government authority, the Government 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.</p>

## **LEAPFROGGING TO EDUCATION AND WORKFORCE 4.0 THE ROLES AND SUPPORT OF THE BUSINESS COMMUNITY IN RAPID & SUSTAINABLE DEVELOPMENT**

### **Introduction**

Will the current education system in Vietnam prepare this generation for a future filled with opportunities and challenges? Most children in school today will be entering into jobs that are unknown to us today. This generation is markedly different from previous generations in terms of exposure, availability of information and content and adaptability to the new technologies. Educational institutions have the responsibility to enable individuals to be future ready and reduce their rate of obsolescence.

Vietnam has always attached great importance to investing in the education sector which is regarded as a key factor in ensuring sustainability in socio-economic development. This can be seen in the revised Law on Education which was passed in June points out that at least 20 per cent of the total state budget must be allocated to educational development. The sector in particular is eager to prepare and develop a skilled workforce through the extensive use of STEM-related programs that are expected to help meet market requirements amid the widespread Industry 4.0.

Industrial Revolution 4.0 is transforming the world with technologies such as the Internet of Things (IoT), Big Data, and Artificial Intelligence (AI) impacting major industries, and in turn, jobs. This implies that Industry 4.0 will not only affect industries but consequently will transform the way jobs and education will be seen. This will result in the evolution of education 4.0.

Thus, it can be said that the fourth industrial revolution will affect the roles for which today's students will be prepared. This will require educational institutions in Vietnam to produce a workforce for working in this technologically transformed era. Further, it will also require the current workforce to upgrade their skills and knowledge to match these newly created job roles. For this, a revolution in education is essential to enable people worldwide to harness the opportunities created by the advent of these technologies.

This paper will provide an overview of what Education 4.0 is, why we need it, the benefits of Education 4.0, and its role in supporting the business community in Vietnam to achieve rapid and sustainable development.

### **What Is Education 4.0?**

Broadly speaking, education 4.0 is a school of thought that encourages non-traditional thinking when it comes to imparting education. Education 4.0 essentially uses technology-based tools and resources to drive education in non-traditional ways. This means that students are no longer in traditional classrooms learning from teachers using textbooks, pens and papers only. Instead, with Education 4.0, you can have remote students that sign into their classrooms using the internet through modes like massive online open courses or video chat or dialling in through voice calls, to learn materials that are more dynamic in nature with peers who might or might not be learning at the same pace as them.

Education 4.0 was developed as a response to Industry 4.0 that saw a marked increase in the use of internet-based technology and communication tools across industries. Education 4.0 is developed as a response to Industry 4.0, in order to create trained, qualified professionals who are ready for a highly globalised and digital-driven world of work.

The future of education:

- It will cater to the need of Industry 4.0 enabling the workforce and machines to align to explore new possibilities.
- It will deploy the potential of digital technologies, open-sourced content, and personalised data of this globally connected and tech-driven world.
- It will create a blueprint for the future of learning – from school-based learning to learning at the workplace.

### **Why Do We Need Education 4.0?**

Much recent research shows us that education must keep pace with the world it is training students for, for them to have safe futures that are financially viable. Education 4.0 ensures that the teaching experience is similar to the working experience by creating a similar environment for both, through the use of technologies and tools that are endemic to Education 4.0.

Education 4.0 is thus a more realistic and practical approach to learning, resulting in great student learning outcomes. It is important to keep pace with the changing world, and Education 4.0 being the approach implemented across educational institutions ensures that.

Research also shows that increased personalisation in education leads to better student learning outcomes. Education 4.0 makes this personalised learning possible. This is because Education 4.0 uses tools like smart school management systems, learning management software, communication tools etc. to help with teaching and learning. Personalised learning through Education 4.0 results in faster understanding, more learning of diverse materials that actually interests the students, more specialisation, and better recall. It also means that students get a head start on becoming experts in what they are interested in – overall, Education.

### **The Benefits of Education 4.0**

Education 4.0 is a system that benefits multiple stakeholders and really benefits teachers and educators in educational institutions because they are able to better serve their students' specific needs.

- **Students:** The key goal of Education 4.0 for all educational institutions is to benefit students and improve student learning outcomes. Students are the ultimate stakeholders in any educational ecosystem and the key beneficiary everyone is working for in the educational ecosystem in general. Education 4.0 centres students as the beneficiary like never before. Through the use of technology, students have better access and relationships with their various other stakeholders in the system – from better communication with teachers, more allied goals with parents, and management and administration also find it easier to help the student overall. Student learning outcomes improve proportionately to how well education 4.0 is implemented. Finally, Education 4.0 will help students learn much better and more effectively than previous teaching and learning methodologies and also make learning more accessible.
- **Lecturers:** The use of tools and technology makes it easier to provide this personalised learning attention for students. This results in better student learning outcomes which means better teaching outcomes also since what the teaching educators and teachers are doing actually achieves practical results.
- **Management and Administration:** Management and non-education staff, like administrators, will also benefit from education 4.0. This is primarily because education 4.0 is built around the optimal use of tools and resources driven by technology. It allows these workers to reduce bureaucracy and instead focus on what they are best at. This positively affects student learning outcomes as administrative staff is better able to focus on supporting their needs. For management, education 4.0 makes the system more

efficient, which obviously has better financial outcomes in addition to moving towards more productive workplaces and thus a more productive business model under Education 4.0.

- **Industry:** The benefit to industry is that the education system will supply industry with higher quality graduates who are more work ready. This will improve the performance of the workforce and thus the performance of industry and the economy as a whole.

### The Current Situation in Vietnam

Vietnam has amongst the highest scores in the world on the PISA educational attainment level for school children. But technology has changed the rules. How can Vietnam keep on winning in the 4.0 age?

Education used to be all about making people into human computers - teaching them to memorise, calculate and process repetitive tasks. But now real computers are much better at being computers than we are. This is good as computers are welcome to do all of the boring tasks. So what are the new “human” tasks needed by the workforce when the computers are busy doing the computing?

These are the “thinking” skills such as customer empathy, understanding context, analysing information, lateral thinking, problem solving, creativity and results orientation. In the workforce having these modern skills is the difference between a worker being replaced by a computer or being able to produce actual valuable results for a company. These are often called “soft” skills but “survival” skills are a more appropriate term. There is nothing soft about losing one’s career.

These new transformational times offer massive risk and opportunity at the same time. Due to technology, companies already have too many workers doing obsolete tasks that could already be automated. At the same time companies in Vietnam and worldwide have a desperate shortage of people with relevant skills. Therefore, the bad news is many old jobs will be lost but the good news is many new ones will be created.

The most important question then is how to retrain people for the new jobs. This is both very difficult and very easy at the same time. Life is not simple, so let an explanation is needed.

The difficult part is these is that these human skills are best learned in childhood and it is really challenging to teach “common sense” to an adult who missed out on this learning experience as a child. Vietnam with its relatively young population is in an excellent position to teach children these new skills by adapting modern teaching methods already used by more advanced economies.

However, that still leaves us with the reskilling of adults.

- **A Practical Solution:** The good news - reskilling of adults can be done quickly and cheaply if approached in the correct way. To explain this, let us use a practical example from that most modern of sectors, software programming. The old, slow, complicated coding languages took years to learn. The new ones are far more powerful and user friendly - so can be learned free online in a day. What previously took thousands of lines of code to achieve can now be done in a few lines of block coding. With the gaining of skills this dynamic and continually changing, education becomes less formal. When we learned to use Facebook, did we have to go to a university to do so, or did you just work it out in a few minutes online? If I put a fancy stamped certificate on my office wall saying I can use Facebook, then people would rightly laugh at me. The same goes for these modern programming languages - they get more similar to Facebook in ease of use by the day.

So, the leapfrogging is possible. It looks totally different from the old traditional education. Education itself has to change business model to be relevant. The old memorisation and certificate-based education is rapidly losing value, but at the same time education becomes more important than ever.

### **What Needs To Be Done In Vietnam To Leapfrog To Education 4.0?**

Vietnamese needs that align with a range of policies, strategies and resolutions with an effort to reform its education by 2020 towards Industrial Revolution 4.0. Specifically, the Fundamental and Comprehensive Reform of Higher Education in Vietnam 2006–2020 and the National Human Resource Development 2011–2020 have focused on lifelong learning and soft skills, technical skills, and interpersonal skills for all students.

Directive No.16/CT-TTG regarding “On strengthening the access to the Fourth Industrial Revolution” in May 2017 requested a dramatic change in education with regards to policies, contents and methods to provide human resource adapted well with constant changes and new technology trends in Industry 4.0. To turn those ambitions on reforming education into practice, the Vietnamese government has been encouraging collaboration between educational institutions and international agencies.

There are many initiatives and projects already being undertaken in Vietnam and a number of these are listed in the Reference List below. The following are some recommendations that should be considered in order to enhance the role of educational institutions in supporting the business community in Vietnam to achieve rapid and sustainable development:

- Higher education institutions, with regards to Education 4.0, should focus on the learner, supported by technology, in-person guidance, and industry relevant content to meet the learner’s individual learning needs. Higher education institutions have a critical decision to make: Embrace new opportunities and succeed or make the wrong choice and perish?
- Focus on building unrivalled student experience through flexible program structures that enable lifelong learning and provide learners with multiple entry and exit options. They could provide learners with predictable schedules and opportunities for collaborative learning.
- Enhancing the skills of teaching staff at all levels of the state education system by providing them with access to international standard continuous professional development and teacher training in modern educational practices.
- To further encourage foreign investment in this sector, local public education institutions should be encouraged to partner with private international education institutions to in the training of teachers working in the public school system.
- Employers should move away from checklist-based recruiting to more modern methods to determine if candidates can do modern jobs - such as aptitude testing, psychometrics and behavioural based interviews
- Address employability challenges by providing the required employability skills and integrating with industry to provide greater exposure to students right through their university experience. Tertiary education institutions should collaborate much more with the private sector to find out the remedial reskilling being done by companies, then incorporate it into their courses so students are prepared before joining the workforce.
- Regulators need to appreciate online as a viable medium of learning. They would have to provide a forward-looking ecosystem for Education 4.0 and work with higher education institutions on developing a regulatory framework that addresses issues of quality control, accreditation, and information privacy. Self-learning online should be encouraged at every opportunity by explaining its real value to people’s careers

- The new law on higher education came into effect on the 1st July 2019, the law on education will come into effect on the 1st July 2020. We greatly appreciate these new regulations and the progressive outlook of these new laws. However, a decree to guide the implementation these laws is urgently needed. Therefore, we petition to amend the decree 46/2017/ND-CP and decree 86/2018/ND-CP to make them consistent with the new regulations and help achieve Education 4.0 in Vietnam.
- The amendment and addition to some clauses of the decree 46/2017 and decree 86/2018 would impact strongly to the change of education models in the private education sector. This would help to improve the quality of education.
- Please revise decree 11/2016 to be consistent with circular 21/2018/TT-BGDĐT and decree 86/2018 which regulates the qualifications of foreign language teaching teachers (The condition to issue a work permit for teachers stipulated in the decree 11 is a university degree, however, in decree 86/2018/ND-CP and circular 21/2018/TT-BGDĐT, the condition is only a college certificate).

### **Conclusion**

In conclusion, the Vietnamese economy needs to be prepared for the challenges and opportunities that will arise with the advent of Industry 4.0. As mentioned in the introduction, Vietnam has always attached great importance to investing in the education sector which is regarded as a key factor in ensuring sustainability in socio-economic development. This development needs an education system that will supply the workforce needed. Only through the successful implantation of Education 4.0 can this be achieved.

Both the Human Resources and the Education and Training Working Groups, through the VBF, will continue with their commitment to assist Vietnam in achieving its economic potential.

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# **V. APPENDIX**

## **OTHER REPORTS**

## **POSITION PAPER OF MINING WORKING GROUP**

### **THE SIGNIFICANT CONTRIBUTION MODERN MINING USING INTERNATIONAL TECHNOLOGY AND WORLD BEST PRACTICES CAN MAKE TO VIETNAM'S RAPID AND SUSTAINABLE DEVELOPMENT**

#### **1. THE CHALLENGE**

Where there are mineral resources, they will always be mined. This is the case in Vietnam, but unfortunately much of the mining is carried out by inefficient practices and often illegal operations. Even the Vietnamese state-owned mining enterprises admit they operate with outdated technology and low levels of mechanization, poor infrastructure, a large but low productivity workforce, excessive energy use, high worker safety risks, and unacceptable environmental pollution.

There are currently no major international mining companies operating in Vietnam, unlike in other South East Asian countries. However, there is growing interest and world recognition that Vietnam is rich in untapped mineral resources that have yet to be discovered by modern systematic exploration or developed by environmentally sustainable, innovative and efficient modern mining technologies.

Therefore, the challenge for the Vietnamese Government is to make Vietnam's mining industry more efficient, productive, safe and environmentally sustainable. This can only be achieved in the short-term by attracting Foreign Direct Investment and foreign major mining companies to come to Vietnam either in their own right or in joint ventures with domestic companies.

#### **2. THE BENEFITS**

The benefits for Vietnam are that modern mining companies contribute to a country's development in a number of ways. Importantly, they cannot operate efficiently without good infrastructure and communications, and therefore responsible mining companies have a strong incentive to contribute to, or even provide such infrastructure development.

The areas where mineral deposits are found tend to be in the more remote mountainous, and therefore usually the poorest socio-economic parts of a country, and this is certainly the case in Vietnam. The other benefit, apart from infrastructure development, is the contribution that responsible, sustainable mining can make to help alleviate poverty in these remote areas by creating strong local employment opportunities and orders for local goods and services.

It is perhaps no coincidence that modern, sustainable mining in Vietnam would also meet two of the World Bank's key 2019 objectives of its Country Partnership Framework, which have been:

- 1) to deliver infrastructure; and
- 2) to 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 it is estimated that less than 10% of its base-metal and precious-metal resources have been discovered to date. Discovery and mining of such resources by Foreign Direct Investment 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, and deliver a valuable source of tax revenue to both central and provincial governments.

Vietnam has many of the metals which are essential for the country's sustainable growth such as:

- iron, alumina, tungsten and titanium for just about every form of construction, industrial and household products;
- copper, cobalt and nickel that will be important in the rapid growth of electric vehicles,
- rare earths for use in mobile phones and the advanced IT industry; and
- gold and other precious metals for national strategic monetary reserves.

Many deposits containing these minerals are yet to be discovered, but those that have been found are unfortunately often being inefficiently mined and are often wasted and degraded.

### **3. THE PROBLEM**

There are no major international mining companies operating in Vietnam because inconsistent mining legislation in Vietnam and royalty rates, export tariffs and other fees that are far higher than in other countries and have until now been a huge disincentive for such companies and therefore Foreign Direct Investment.

There also 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 Foreign Direct Investment and strong local investors are more confident with Vietnam's mining legislation.

### **4. THE SOLUTIONS AND OPPORTUNITIES**

The Mining Working group has recently been approached by some of the world's, and particularly Australian, leading mining companies on mining possibilities in Vietnam. This is therefore an opportune time for the Prime Minister's Office and/or Government Office, with the input of MPI, VCCI and the World Bank where appropriate to assume a greater role in order 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 Foreign Direct Investment 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 Foreign Direct Investment

in the mining industry, and to change the attitude of, and to help such agencies as the Taxation and Customs Departments in Vietnam to understand the complexities of the “cyclical” nature of mining, fluctuating world commodity prices and other mining issues that adversely affect profitability and viability of mining at any given time. 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.

The VBF’s Mining Working Group would be most willing to participate in this process in an advisory capacity if invited. In the meantime, the Mining Working Group is also encouraged by:

- The Government’s recognition of the importance of Foreign Direct Investment together with science and technology reform and innovation for Vietnam’s economic and sustainable development;
- The Office of the Government’s 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) draft for new-generation Foreign Direct Investment 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. Modern, sustainable mining should be a key component of this commendable strategy;
- Finally, Vietnam’s membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and other important trade agreements should help eliminate or reduce existing export taxes, and hopefully accelerate Vietnam’s commitment to opening up its mining investment opportunities.

## POSITION PAPER OF AUTOMOTIVE WORKING GROUP

### A. AUTOMOBILE BUSINESS'S POSITION

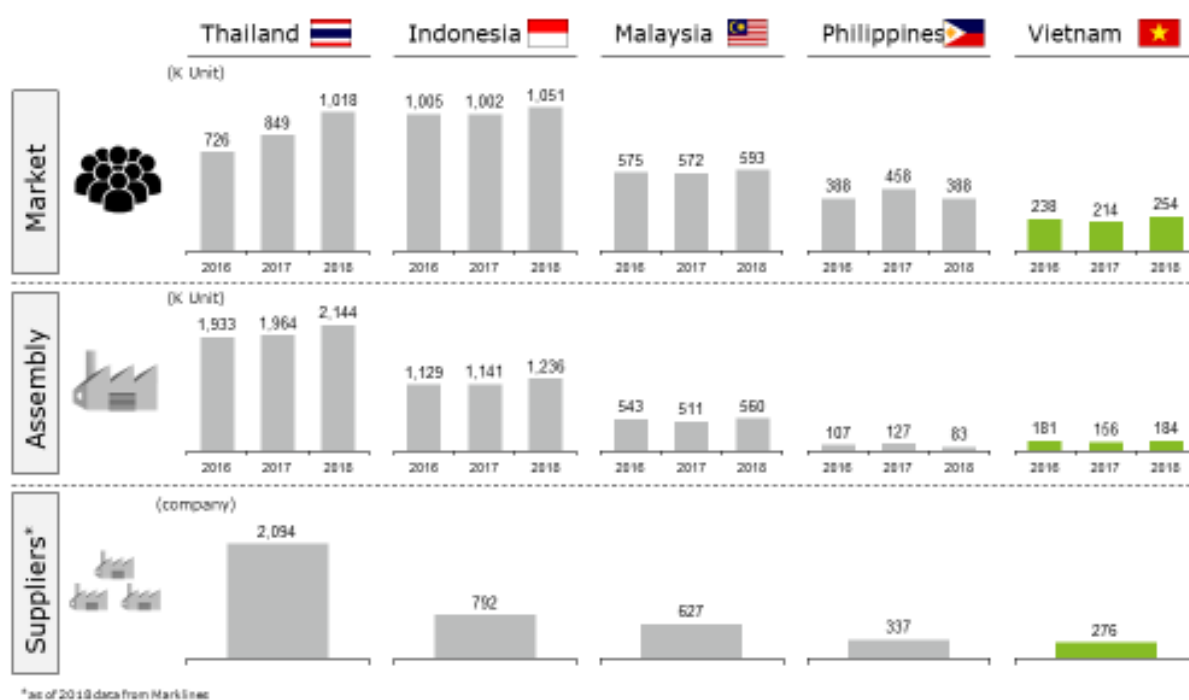
#### I. Proposal to develop automobile supporting industry:

##### 1. Current situation of automobile industry in Vietnam:

We highly appreciate Vietnam authorities' efforts to improve business environment, which contributes significantly to automobile market development in recent years. However, in the context of fully ASEAN integration in 2018, when the CBU import duty became 0%, we recognize some difficulties for domestic manufactured vehicles (CKD) as follows:

Vietnam's automobile market is currently too small compared to Thailand and Indonesia (only 1/4 or 1/5).

#### Data about automobile industry



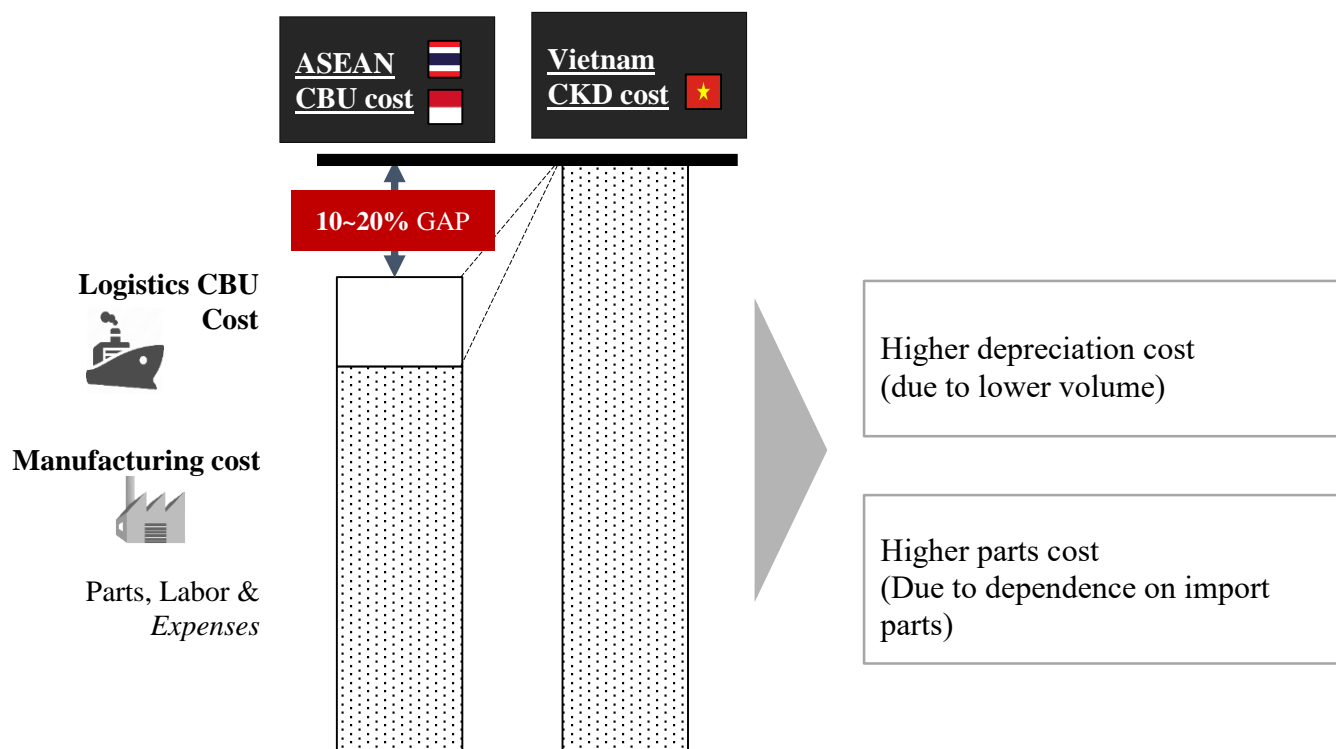
**Image 1: Industry comparison in ASEAN**

The biggest difficulty of the Vietnamese automobile industry is the small market size and small production volume (for example, the production of Vios produced in Vietnam is only one-eighth of Thailand). This makes the production cost in Vietnam higher than other countries in the region, especially the depreciation cost.

Because production volume is too small, most makers have to import CKD parts to produce cars. This results in high costs for packaging, shipping, and import duties.

Besides, the automobile supporting industry has not developed due to lower production volume (refer to next page).

The aforementioned factors make CKD cost in Vietnam higher than Thailand and Indonesia. Currently, the cost of manufacturing cars made in Vietnam is about 10% -20% higher than in Thailand and Indonesia.



**Image 2: Cost GAP between CBU: CKD**

Prior to 2018, when vehicle import and export taxes from ASEAN countries were still high, domestic cars were still able to compete with imported cars. But from 2018 when it is no longer protected, the ASEAN tax rate to 0%, CKD can not compete with CBU. This is very difficult for car manufacturers to maintain production in Vietnam.

## **2. Our thinking way of how to design a policy to support automobile:**

In current situation, when automobile industry is difficult to survive, we expect concrete policies to be issued. We believe that a comprehensive approach should be implemented:

- 1) Firstly, policies for maintaining stable market growth. Those policies should provide transparent, fair treatment and enough lead time for industry side's preparation.
- 2) Secondly, policies to narrow production cost gap of CKD vs. CBU vehicles. The policies should offer fair, transparent treatment to all domestic makers and be aligned with international practices. And policies also should create a well-balanced of CKD: CBU ratio.
- 3) Thirdly, policies to enhance automobile supporting industry.

### **2.1. Stable market and enhance CKD production:**

Regarding the issue (2) above, we need the Government to support CKD production under the condition that import duty for Asean CBU was already eliminated to 0% from 2018. Technical barriers or administrative barriers could not be the solutions because it cannot create a well-balanced CKD:CBU ratio and a healthy market development. We believe automobile-related tax policy should be implemented to enhance the cost competitiveness of CKD in the long-term (while impacts of Decree 116 shall be eliminated).

Recently, we have learned that related ministries are discussing about a SCT incentives scheme which offer tax base exemption for the local value added. Considering actual practice in many other countries, we think that SCT incentives could be a relevant solution, as long as the Government should put below factors into consideration when drafting the SCT revision:  
From the makers viewpoint, we expect such SCT incentives scheme should

- 1) Provide **sufficient protection** to CKD vs. CBU;
- 2) Offer **same chance of getting incentives** to all CKD makers;
- 3) Not create a big fluctuation to the market (i.e. **no wait & see demand**)

From the Government viewpoint, there are some concerns of how to:

- (4) Minimize **international friction** among countries;
- (5) Minimize impact to **tax collection**;
- (6) Promote **industry growth** (including supporting industry, etc.)

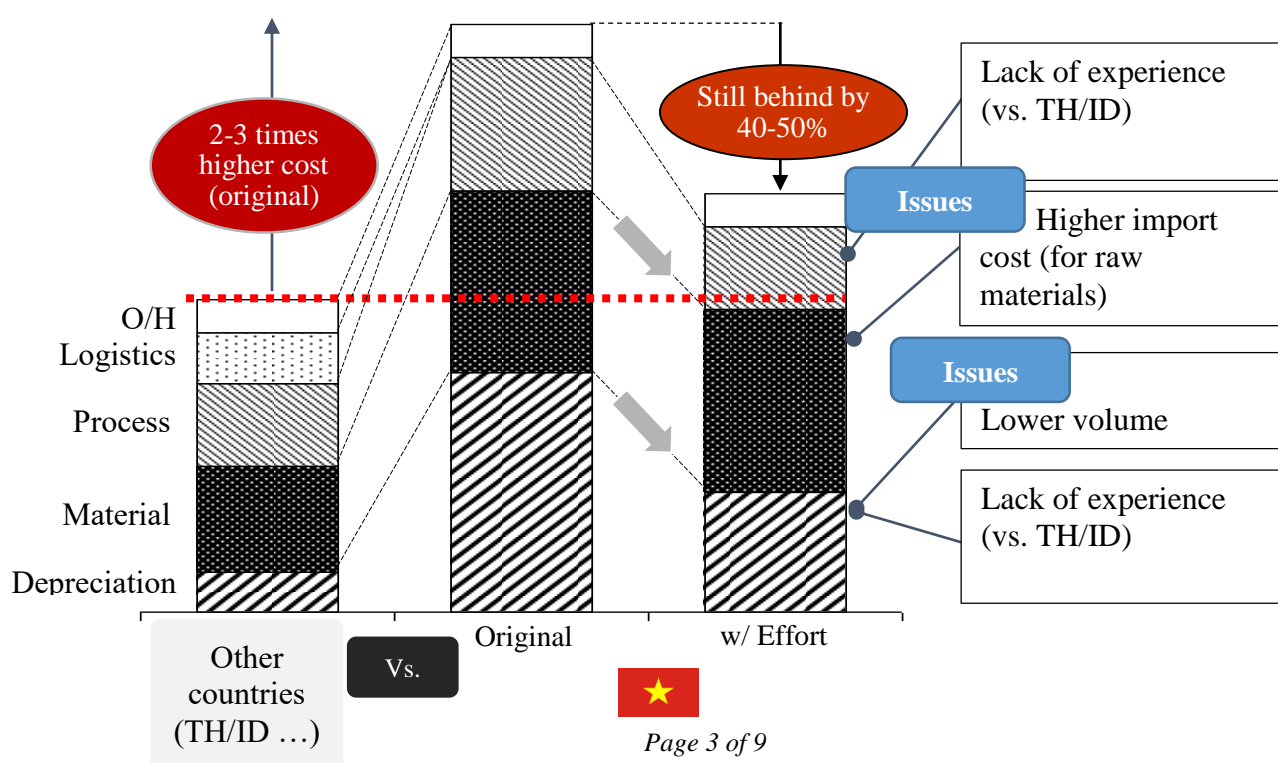
Therefore, we are looking forward to your serious consideration of transparent, fair policies and just enough support to CKD makers, while eliminating market wait-and-see movement; which would motivate further makers' efforts and potential investment for long-term development of automobile industry and supporting industries.

## 2.2. To develop supporting industry in Vietnam:

Regarding the issue (3), the automobile supporting industry in Vietnam is difficult to develop due to:

It's small volume, and lack of the production management experience of local suppliers and the high quality material industry is not available, it is forced to import materials, so manufacturing cost in Vietnam are higher than regional countries like Thailand or Indonesia from 2-3 times; it makes increasing local part costs in Vietnam.

**Image 3: Cost GAP between import part vs. local part**



Therefore, despite the efforts of suppliers and the support of makers and certain Government's policies, there has been a certain number of localized parts (such as bulky parts, localization to reduce import logistics costs; or labor-intensive parts with cheap labor costs ...)

These parts have competitive costs compared to imported part, they are localized and contribute to reducing CKD cost. Even some parts were able to compete well on price and quality compared to other countries, they could be export.

However, most of the remaining parts and components have the following problems:

- a) *high investment which cannot be reasonable under current volume;*
- b) *there is no high quality material industry in Vietnam yet*
- c) *lack of experience from suppliers.*

These 3 issues (a) (b) (c) make local part costs are higher than those made in other countries.

- d) *it takes a long time to accumulate design capacity; ability to master technology and quality management; deep expertise, skills; copyright ... especially with parts that require technology.*

Therefore, the production cost of these parts are much higher than imported parts. In fact, before the localization of a part in Vietnam, the maker will have to compare the cost of producing the part in Vietnam with the total cost of importing this part to Vietnam. If lower, makers can localize, if higher, they must import. If makers are trying to use local part with much higher cost. It makes increasing CKD cost and reduce competitiveness compared to CBU. So, it can not be sustainable.

In fact, some makers have advocated positive localization has actively supported local suppliers to accelerate the learning process, accumulating experience to handle (c) above; This will help local suppliers to actively improve production experience and efficiency, and cut costs, which are issues that the automobile industry needs to resolve.

But there are still systematic issues such as (a) - *high investment but small volume*, and (b) - *no high quality raw material industry*. These issues still generate cost GAP; and strong and specific governmental guidelines and policies are needed to quickly narrow down the cost GAP. If such policies and orientations are available, it can speed up process, thereby expanding the list of localizable parts. So that, we have some proposals to Government: Vietnam Government should offer investment incentives for makers and suppliers to invest machinery, die and jig to localize automobile parts (incentive CIT expansion...); reduce import duty for raw material with high quality...

Finally, the parts with high technology content, requiring time to accumulate design capacity, technology, intellectual property copyright ... will need time and many factors to be able to localize.

## **II. Proposal on current issues:**

### **1. Decree 125 revision:**

Regarding the draft revision of Decree No. 125/2017/ND-CP dated November 18, 2019, we would like to thank the Ministry for listening and receiving our comments, additional options for committed volume conditions to be applied to committed only group to encourage more enterprises to invest.



In this document, there are still some issues, we would like to propose MOF to continue considering and amending:

### ***1.1.For volume requirement:***

We propose to expand the option of conditions on the **general overall volume** in case the enterprise produces **many groups of different HS heading**. Specifically, we propose to amend the wordings as below:

In case the enterprise produces many Heading groups of vehicles and in which at least two (02) Heading groups of vehicles have met the incentive conditions of the program (in terms of general overall volume and committed volume), it is allowed to add a heading group of vehicles to be enjoyed incentives provided that the general overall volume of the three (03) heading groups produced by the enterprise meets the conditions for the general overall volume of those three (03) Heading groups of vehicles under the Program.

### ***1.2.Regarding the selection of fuel consumption cycle for cars of under 9 seats:***

According to the provisions of Decree 125/2017/ND-CP dated November 16, 2017, Article 7a\_ Conditions on fuel consumption for models committed to manufacture and assembly of passenger cars under 9 seats, the cylinder capacity of 2500cc or less is below **7.5l/100km**.

We propose to add on Article 7a as follows:

“01 model committed to manufacture and assembly in a group of passenger cars under 9 seats, with a cylinder capacity of 2,500cc or less, fuel consumption of under 7.5l/100km based on **combined cycle specified in the Certificate of fuel consumption issued by Vietnam Register in accordance with the current regulations**”.

Combined cycle is a combination of fuel consumption from both urban and non-urban cycles continuously at a specified distance, so it can best reflect the average fuel consumption of vehicles.

### ***1.3.For HS in Group 98.49:***

HS listed in 98.49 are not enough for a practical set of components. Therefore, we propose the MOF to refund tax on all imported components, except for those in Appendix V of Circular 01/2018/TT-BKHDT and amended circulars.

## **2. Comment on draft Circular amending and supplementing Circular No.03/2018/TT-BGTVT (Circular 03) Regulation on inspection of technical safety and environmental protection for imported cars subject to Decree 116/2017/ND-CP**

### ***2.1.Regulations on criteria and standards for ex-factory quality inspection***

In Annex VII of the Circular draft: “Regulation on assessing Conformity of Production (COP evaluation)”, the COP evaluation is conducted according to the criteria stated in IATF 16949 and includes content: “Evaluating the completeness and appropriateness of production and assembly guiding procedures, professional quality control procedures suitable to the type of vehicles manufactured from quality control of input components, quality control on each stage, quality control of ex-factory ...”. However, this Annex does not specify which inspection items, standards for ex-factory quality inspection to be followed (Vietnamese regulations or regulations applied by car manufacturers). This can lead to inconsistencies in the evaluation point of view and make it

difficult for manufacturers to comply, as currently some of Vietnam's factory quality control regulations are not the same as the regulations of other countries. For example: the regulations on checking the front lights, loudness, horn, etc. If in the case of the evaluation of inspection items, standards for ex-factory quality inspection shall comply with Vietnamese regulations, vehicle manufacturer may need to revise the inspection items, inspection standards, record systems, and documents in the process. In particular, they may have to invest more equipment, arrange and repair the inspection line. This change will result in additional time and cost.

From the above reasons, we would like to propose to supplement Annex VII as follow:

"The evaluation of inspection items and quality inspection standards for finished vehicles will be based on the regulations that foreign automobile manufacturing and assembly enterprises are applying."

## ***2.2.Regulations on inspection and testing contents for types of imported cars in small quantities***

According to Article 1, Clause 3 of the Circular Draft, amending Clause 2, Article 5 of Circular 03/2018 / TT-BGTVT related to quality inspection of imported unused cars, modified items 2.3 refers to requirements to assess the quality assurance conditions of automobile manufacturers and assemblers in countries applying the type-based certification method. In case enterprises only import the type of vehicle once or import in small quantities, the COP evaluation according to this requirement will take a lot of time and cost for importing enterprises as well as inspection agencies.

Therefore, we propose adding the following to Article 1, Clause 3: "With the type of cars imported from automobile manufacturing and assembly enterprises in countries applying the type-based certification method, in case the quality assurance conditions by the quality management agency are not assessed, the certification testing and inspection will apply to each lot of imported goods of the same type".

## ***2.3.Randomly select vehicles on the market to test for vehicles from countries with self-certification systems***

In Section 2.4, Clause 3, Article 1, the Circular draft regulated: *"Every 12 months from the effective date of this Circular, inspection agencies shall coordinate with importing enterprises to take random sample vehicles from a dealer to test safety and environmental protection for each type of imported cars manufactured from countries applying self-certification management..."*

We proposed to change as follows: *"Every 36 months from the effective date of this Circular, inspection agencies coordinate with importing enterprises to take random samples at dealer or warehouses of importers to test safety and environmental protection for each type of imported cars manufactured from countries applying self-certification management ..."*

- The reasons for the proposal are:  
According to the sales contract between the importer and the dealer, the vehicles at the Dealer is the property of the Dealer and no longer owned by the importer. Moreover, once the vehicle has been delivered to the dealer, information about the vehicle delivery plan has been notified to the customer. If the inspection agency takes samples of cars at the Dealer, the Dealer will not be able to deliver the vehicle to the customer on time as in the Sales Contract, the customer may complain. Incase, sample vehicle chosen by the inspection agency might be coincident of very low demand colour, it will be very difficult for the dealer to delay the delivery to the customer and has to order the other vehicle from the manufacturer, that will take a lot of time.

We recommend MOT to apply the same 36-month inspection cycle to vehicles from countries applying the type approval and self-certification. Because of the requirement of randomly selecting vehicles from the market to test for imported vehicles manufactured from countries that apply the self-certification management alternative to the condition for COP assessment at foreign factories, therefore the general application period should be 36 months.

#### ***2.4. Random check for vehicles during the import process***

In Item 2.2, Clause 3, Article 1, the draft Circular regulated: "... randomly taking one sample for each type to check and compare the actual vehicle structure with the test report. ...", we understand that in the import process, if there is any change related to the test reports, we must notify the Vietnam Register, then the Vietnam Register will consider, evaluate and decide if the car needs to be tested again.

We propose as follows:

- MOT and Vietnam Registry shall guide and stipulate to clarify the changes of structures and components that need to be re-tested as well as the processing time and notification to enterprises upon receipt of official information on changes so that enterprises know and implement to avoid affecting the import and business process.
- Accept using of image/documents on the system of components that must be removed during the probability test to avoid damage during the remove and assembly process.

#### ***2.5. Cycle for random check***

In Annex VI of draft Circular 03 revision, provision on cycle for random check (12/24/36 months) based on number of testing time of Type I test, the tests are allowed to be repeated to achieve the results specified by QCVN86:2015. It is difficult to use the number of repetitions of the test as a criterion of risk management because according to QCVN86:2015 on emissions, a pass result will still be considered satisfactory whether one or three tests are carried out to achieve. The type I test is required to be repeated 3 times without any special conditions. Moreover, for the inspection of vehicle and engine emissions monitoring, deviations among products during mass production and assembly are unavoidable, resulting in measured emissions for each vehicle may a bit vary.

Therefore, repeating the type I test three times is a standard and should not be treated less favourably. With above reasons, Automotive Working Group propose to remove annex VI and apply fixed 36 months' cycle for random check.

#### ***2.6. Regarding sample vehicle type test***

For vehicles subject to emission test, according to item 3.2, QCVN86:2015, manufacturers and importer shall provide documents and sample. Therefore, we propose to amend point b, Item 2.1, Clause 3, Article 1 as follow: "The importers will randomly choose 1 or 2 sample vehicles (if the importers wish to have 1 vehicle undergoing safety inspection and 1 vehicle undergoing emission test) of each type in the lot and the importer will deliver them to the testing facility.

#### ***2.7. Certification method by country***

Provision on randomly select sample vehicle for safety and emission test according to Item 2.4, Clause 3, Article 1 only apply to imported vehicle type manufactured from countries with self-certification method prescribed in Annex IV. Therefore, we propose to amend the content of Annex IV will only mention countries applying self-certification method.

## **2.8.Regarding transitional provisions**

Regarding the transitional provision, Automotive Working Group hopes that the Ministry will promptly issue the emended Circular and it's shall be effective right after the effective date of Decree amending and supplementing a number of articles of Decree 116 for enterprises compliance. In case the amended Circular is not promptly issued or not yet effective right after the effective date of amended Decree, Automotive Working Group would like to propose the following amendments to Clause 2 Article 4, to include vehicles that are waiting to be tested or in the process of existing models should be allowed to be covered under the Decree Revision, so that approved Safety and Emissions test reports can be carried over for subsequent Type Approval evaluation and certificate issuance without the need for any further Safety and Emissions testing. Automotive Working Group proposes to amend Clause 2, Article 4 of draft Circular: "For imported vehicles have timing for opening customs under Customs Law or arrived at the port in Vietnam, including vehicles that are waiting to be tested or in the process of being tested, from effective date of Revision Decree, but before effective date of Circular, it should be applied Revision Decree.

According to the content in Clause 4, Article 4 of the Draft Circular, Automotive Working Group understands that the copy of the document on the result of the assessment of quality assurance conditions stated in Clause 2, Article 1 of this Circular will be exempted from application in within 6 months from the effective date of this Circular. However, there're enterprises import vehicles from different manufacturing and assembling facilities. We are afraid that the preparation and arrangement timing for quality assurance assessment in such 6 months will not be enough for for both regulatory authorities and enterprise. For that reason, Automotive Working Group would like to propose the following content: "Copy of documents on results of assessment of quality assurance conditions stated in Clause 2, Article 1 of this Circular is exempted from application within 12 months from the effective date of this Circular.

## **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.

Above are our proposals to develop the automobile and motorcycle industry in Vietnam. We look forward to feedback from relevant ministries and agencies.

**MEETING BETWEEN THE STATE SECURITIES COMMISSION  
AND VBF CAPITAL MARKETS WORKING GROUP**

*Date: Wednesday, 11<sup>th</sup> December 2019  
Venue: SSC's office, 234 Luong The Vinh, Hanoi*

**SUMMARY**

*Prepared by  
Capital Markets Working Group  
(hereinafter referred to as **CMWG**)*

**I. PARTICIPANTS**

- **State Securities Commission (“SSC”)**
  - Mr. Pham Hong Son – Vice Chairman;
  - Representatives from relevant departments.
- **VBF Capital Markets Working Group**
  - Mr. Dominic Scriven – WG Head/ Chairman of Dragon Capital;
  - Representatives of CMWG Steering Committee:
    - Mr. Tran Anh Duc – Allens Overy
    - Ms. Le Thi Le Hang – SSI AM
    - Ms. Bui Thu Thuy – HSBC
    - Mr. Tran Hai Ha – MBS
    - Mr. Kien Nguyen – Dragon Capital
  - Other CMWG members.

**II. KEY ISSUES**

**1. Update on creation/members of CMWG Steering Committee**

VBF CMWG has set up a Steering Committee consisting of representatives from fund management companies, securities companies, law firms, foreign investors, and custodian banks.

**2. Funds related issues:**

*CMWG:*

- In the coming guiding documents of the amended Securities Law (New Law), CMWG wish the SSC to:
  - (a) Exclude **ETFs** from “related parties” for the reporting purposes, which is consistent with the international practice and management nature of the reporting.
  - (b) Exclude **advised funds from funds managed by the same fund manager** from “related parties” for the reporting purposes.
- Allow the establishment of the money market fund.

*SSC Response:*

- Regarding ETF:
  - Swap: may exempt from information disclosure obligation.

- Proactive transactions: At present, there is insufficient basis to exclude from the obligation of information disclosure by related foreign investors.
- Management of Securities Investment Fund/ Securities Investment Advice: The bylaws will focus on the nature of these definitions to give guidance in accordance with Vietnamese law. In fact, there are cases where the fund manager registers its securities investment advice service but actually manages the fund.
- Money market fund: it is not prohibited according to securities regulations. Need to discuss with the SBV to harmonize the regulations on investment conditions.

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

CMWG:

- FOL: The following conditions are suggested to be included in the Government's decree on implementation of the New Law:
  - (a) 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;*
  - (c) the Total Foreign Ownership in the company is continuously maintained for 1 year.*
- ➔ Which is consistent with the international practice and the State's management purposes.
- NVDR: The definition and allocation of the voting right are expected to provide in the amended Enterprise Law.

SSC Response:

- The SSC well-noted VBF's 3 ideas on FOL, however, it is necessary to consider the new Investment Law for specific guidance. In addition, management feasibility, particularly of VSD, should be considered.
- NVDR: The SSC had technical meetings with the HOSE. Currently, there are many technical issues that HOSE needs to fix.

### 4. Taxation of proposed provident funds

CMWG:

- Tax exemption level: VND 4 million for enterprises; VND 1 million for individuals.
- According to the regulations of the Ministry of Finance, investors are allowed to withdraw from the fund before retirement age with a penalty of 10%, while the penalty according to international practices is 35%.
- ➔ Participants as well as the long-term development of voluntary supplementary pension funds are not encouraged.

SSC Response:

- The SSC well noted for discussion with the Ministry of Finance.

## 5. Review of pre-funding requirements for institutions

CMWG:

- Does the SSC allow other entities, such as securities companies, to provide guarantees for investors?
- Can banks in foreign countries provide payment confirmations to foreign investors in transactions on Vietnam's stock market?

SSC Response:

- For custodian banks, as per securities regulations, foreign investors do not need to guarantee 100% money and securities before trading if guaranteed by custodian banks.
- For securities companies, due to the market structure and weak financial capacity of securities companies in Vietnam, this regulation cannot be removed.
- In the long run, this regulation will need to be removed; however, Central Counterparties (CCPs) are required to ensure market security.
- Foreign investors are allowed to place orders for securities transactions when they do not have sufficient money in their custodian bank accounts but there is a confirmation from the overseas bank that they have enough money.

## 6. Review of central clearing party/ government owned settlement bank

CMWG:

- Propose to apply CCP to ensure transaction safety.

SSC Response:

- Concerned about risks in the current payment structure (BIDV: settlement bank for stocks trading; Vietinbank: for derivatives; SBV: for government bonds) are quite theoretical. In fact, there have not been any risks since implementation.
- The CCP is not mandatory for all markets and is not a criterion to consider market upgrade. Currently, the CCP has been implemented for the derivatives market and will be considered for spot market.

## 7. Update on private placement regulations, esp for bonds

CMWG:

- The definition of “*Professional Investors*” in the New Law includes “*an individual whose annual taxable income is at least of VND1 billion*”.
- The base of VND 1 billion is too low. It is suggested to revise in the guiding documents.

SSC Response:

- SSC will record and review. It is possible to set the level of VND 1 billion only including income from salaries and wages.

## 8. Licensing for custodian banks

CMWG:



- Restrictions on securities business, provision of securities services when no license, certificate or approval has been obtained from the SSC (Article 12.4 of the New Law): Has the SSC prepared an approval process for foreign banks to engage in transactions in Vietnam?
- The depository license issued by the SSC does not mention fund management and transfer agent services. The State Bank license also does not mention these services. This leads to legal risks for the custodian banks that are currently providing the above-mentioned services.

*SSC Response:*

- Restrictions apply only to the securities companies and fund management companies.
- Regarding the scope of the license, VBF is requested to provide wordings to the upcoming decree.

## **II - SOME DETAILED COMMENTS FOR THE BYLAWS FROM CUSTODIAN BANK MEMBERS**

1. **Foreign investors' deposit in foreign currencies when participating in the auction of equitization and state capital divestment:** The SBV has issued regulations allowing deposits in foreign currencies. However, relevant regulations of the Ministry of Finance still require deposits in VND.  
→ It is recommended that regulations on deposits in foreign currencies are specified in the guidance documents of the Ministry of Finance.

*SSC Response:*

- The SSC will discuss with the Corporate Finance Department in the upcoming meeting.
2. The SSC has accepted the application file for foreign investor's trading code in English without requiring translation/notarization. However, for transactions such as off-exchange transfer,...still requires translation into Vietnamese (Circular 05/2015/TT-BTC).

*SSC Response:*

- It is suggested that the custodian banks will specify each situation to facilitate the resolution process.
3. **Off-exchange trading:** It is proposed to consider supporting the DVP payment mechanism for off-exchange transfers of listed/UPCOM securities. Accordingly, the cash settlement must be made simultaneously and associated with the payment of securities similar to the current way of payment on the exchange, specifically, VSD will transfer the securities and at the same time request the settlement bank to perform cash settlement.

*SSC Response:*

- Comprehensive evaluation is needed, avoiding additional barriers. VSD is ready to deploy if it is agreed by the relevant regulator.
4. **Information disclosure obligation by related foreign investor group:** It is recommended that the regulation on information disclosure obligation of related foreign investors will be removed from Circular 123/2015/TT-BTC. Foreign investors will only need to comply with the information disclosure obligation under the provisions of Circular 155/2015/TT-BTC.

*SSC Response:*

- In case the foreign fund entrusts domestic fund management companies to buy without disclosing information, it will cause a “difference” in information disclosure obligations of domestic and foreign investors. The domestic fund management companies cannot clearly know the purpose of the foreign fund management companies. So, it is necessary to have the above regulation to ensure market transparency.
- 5. Difficulties in calculating the net asset value (NAV) for domestic funds having corporate bond transactions listed on Hanoi Stock Exchange (HNX):** Currently, corporate bond transactions on the HNX are made under the agreement method on the stock trading system, all transactions in the day, if any, are included in the HNX price list. The transaction regulations issued by the Department also do not specify whether the price of corporate bonds put into the system is clean price or compound price. The price list of HNX also gives all information on prices and the corresponding volume of all agreed transactions in the day, there is no average price or listed price at the end of the day for corporate bonds to be used by fund management companies/service providers as the NAV calculation price as prescribed. The SSC is requested to have specific guidance on this issue.

*SSC Response:*

- In case the Stock Exchange does not provide appropriate prices as prescribed, the fund management companies may use the approved pricing policy as a basis for pricing corporate bonds. So, different fund management companies may have different pricing policies, and different funds of the same fund management company may have different approved pricing policies.
- 6. Signature of the Chief Accountant or authorized person is required on transaction documents for entrusted assets at the fund management company with the bank.** However, the role of the Chief Accountant at the fund management company is to handle payments for direct operations of the Company, not related to the investment activities of the investment funds/entrusted portfolio that such fund management company manages/is authorized to manage. The SSC is proposed to work with the SBV to amend and supplement the regulation so that it's in line with operational practices of fund management companies.

*SSC Response:*

- For investment funds or entrusted portfolios, the expenses/earnings of the funds do not just include securities investment. Therefore, the involvement of a chief accountant is required. Further consideration is needed on whether or not the signature of the chief accountant should be clearly stated.

**III. CLOSING:**

*Mr. Pham Hong Son – SSC Vice Chairman:*

- It is expected to issue 4 decrees and about 10 circulars guiding the implementation of the New Law. CMWG representatives are suggested to participate in the drafting of 4 major decrees.

**ISSUES, RECOMMENDATION FROM VBF TAX AND CUSTOMS WORKING GROUP  
AT THE MEETING ON OCTOBER 30<sup>th</sup>, 2019**

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
1	<p><b>Guidance on duty exemption/refund for imported toll-manufactured product</b></p> <p>When a domestic enterprise (non-EPE) entered into a toll-manufacturing contract with a foreign entity, then sub-contracts partially/wholly to another EPE for processing, the non-EPE has to pay import duty on the added value of the imported processs goods when receiving these goods back from the EPE.</p> <p>As these final processed products shall be exported, in principle, the non-EPE shall be subject to duty refund (GDC has issued Official letter 4400/TXNK-CST dated 9/11/2017 confirming this tax treatment). However, in practice, there is currently no mechanism for enterprise to apply for duty refund dossier in this situation.</p>	<p>Specifically, when receiving processed product/semi-product from EPE, enterprise shall register import declaration under customs code E41 (import of toll-manufactured products from overseas).</p> <p>Currently, duty refund only applies when performing customs declaration under some specific customs codes, for example, for imported goods that needs to be re-exported (Import A12 – Export B13), or materials imported for business purpose but finished goods are exported (Import A12 – Export E52 or E62), or some cases when there is overpayment of duty. There is no applicable mechanism for duty refund of imported products/semi-products under customs code E41. Accordingly, what is specific requirement in terms of refund application and customs code in order to get refund?.</p>	<p>As more and more enterprises are turning to outsourcing as an solution to maximize efficiency to focus on their specialized business sector and improve their competitive advantages, GDC should have a detailed guidance on tax refund mechanism as a way to encourage the business and improve the attraction of the investment environment in Vietnam.</p>	<p>According to the provisions in Article 36 of Decree no. 134/2016/ND-CP, regarding goods imported for production and business which have been put into production for export, exported to foreign countries or exported into non-tariff areas, the amount of import duty paid will be refunded. There is no tax refund for products/semi-finished products imported under code E41 which are then manufactured and exported.</p> <p>The GDC acknowledges the problems of enterprises and will submit to the competent authorities for consideration, amendment and supplementation of relevant documents.</p>	
2	<p><b>Basis on duty exemption for sub-contracted processing in export manufacturing scheme</b></p> <p>One of the basis to assess the import</p>	<p>When outsourcing to another entity for processing, the enterprises still have production establishment and the indirect right to use the machinery and</p>			

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
	<p>duty exemption and refund for imported materials under export manufacturing scheme is that the organizations or individuals must have production establishment within Vietnam's territory and have the right of ownership or usage of the machineries and equipment at production establishment appropriate with the imported materials.</p> <p>On this basis, GDC has issued rulings in which enterprises outsource part of or whole production process to other enterprises (even though having production establishment, except when the sub-contracted entities is 100% owned by the enterprise) shall not be eligible for import duty exemption/refund. To our knowledge, the latest draft Decree amending and supplementing Decree 134/2016/ND-CP shall include similar provisions.</p>	<p>equipment of the subcontractors. Therefore, what is the basis for allowing import duty exemption for only the outsourcing to subsidiaries and dependent branches, while other cases are not allowed?</p>	<p>Kindly request GDC to give appropriate/ reasonable basis for the differentiation in tax treatment for the cases of hiring subsidiaries, dependent branches and cases of hiring independent processing subcontractor since this issue have a huge impact to many enterprises.</p>	<p>According to Clause 2, Article 12 of Decree No.134/2016/ND-CP dated September 1, 2016 of the Government stipulating the basis for determining duty-free goods, <u>no exemption of import duty shall be available for cases where taxpayers bring some parts or all of imported raw materials, supplies, components, semi-finished products or semi-finished products manufactured from imported raw materials, supplies and components to reprocessing.</u></p> <p>To address the problems where goods imported for export production require the participation of many enterprises in the production process, the Decree amending and supplementing the Decree No. 134/2016/ND-CP has stipulated in the following direction:</p> <ul style="list-style-type: none"> <li>- In case the taxpayer brings some parts or all of imported raw materials, supplies, components, semi-finished products or semi-finished products manufactured from imported raw materials, supplies and components to other organizations which have the ownership or the right to use the manufacturing facilities or machinery and equipment at the manufacturing facilities in the territory of Vietnam for processing one or several stages of production</li> </ul>	

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
				<p>then receives the semi-finished products to continue manufacturing exports or receives the finished products to export, the taxpayer will be entitled to exemption of import duty for materials, supplies, components and semi-finished products. Taxpayers must inform the customs authorities of the manufacturing facilities of the processor and the processing contract in accordance with the customs law.</p> <p>- In case the taxpayer brings some parts or all of imported raw materials, supplies, components, semi-finished products to an organization wholly owned by the taxpayer, which have the ownership or the right to use manufacturing facilities or machinery and equipment at the manufacturing facilities in the territory of Vietnam, for processing one or all stages of production then receives the semi-finished products to continue manufacturing exports or to export, the taxpayer will be entitled to exemption of import duty for materials, supplies, components and semi-finished products.</p> <p>- In case the taxpayer exports imported raw materials, supplies, components, semi-finished products or semi-finished products</p>	

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
				<p>manufactured from imported raw materials, supplies and components to foreign countries or into non-tariff areas for processing one or several stages of production then imports the semi-finished products back into Vietnam to continue manufacturing or receives the finished products to export, the taxpayer must inform the customs authorities of the manufacturing facilities and the processing contract in accordance with the customs law and will be entitled to exemption of import duty for materials, supplies, components and semi-finished products exported for processing. Products processed in foreign countries and imported back to Vietnam must pay import duty according to the provisions at point d, Clause 1, Article 11 of this Decree.</p> <p>The General Department of Customs has provided guidelines in the Official Correspondence no. 7565/TCHQ-TXNK dated December 25, 2018.</p>	
3	<p><b>Non-EPE sell goods to EPE</b></p> <p>Under prevailing customs regulation on customs, non-EPE imports materials for export manufacturing; when selling finished products to EPE shall be considered as export, accordingly is exempted from import</p>	<p>This provision leads to unfair tax treatment between parties of transaction, as well as between enterprises manufacturing exported products selling to EPEs with different business purpose:</p> <p><i>(i) Non-EPE sells product A to</i></p>	<p>Therefore, do non-EPEs require to know the purchasing purpose of EPEs in order to conduct the most appropriate customs procedures or issue suitable invoice?</p>	<p>1. In case domestic enterprises import goods under the form of export production then export them to EPEs (meeting the provisions at Clause 1, Article 4 of the Law on Export and Import Duty no. 107/2016/QH13).</p> <p>Domestic enterprises import goods</p>	

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
	<p>duty of imported materials and exported products are subject to 0% VAT.</p> <p>However, under clause 4 Article 77 Circular 38/2015/TT-BTC (amended and supplemented by Circular 39/2018/TT-BTC), EPEs which has trading activities (conduct the right of import, export) shall declare VAT. Thus, for goods purchased for trading purpose of EPE from domestic market, enterprises still have to issue VAT invoice to EPEs.</p> <p>Thus, in general, non-EPE manufacturing products from imported materials and selling to EPEs will lose the right of import duty exemption for input materials, at the same time is not subject to 0% output VAT if EPEs purchase goods for trading purpose.</p>	<p><i>EPE (with the purpose of trading product A):</i></p> <ul style="list-style-type: none"> <li>- Non-EPE has to fulfill import duty and VAT for imported material serving production of product A; non-EP when selling A to EPE has to issue VAT invoice 10%</li> <li>- EPE when selling A to overseas shall be exempted from export duty and entitled to VAT 0%</li> </ul> <p><i>(ii) Non-EPE sell product B to EPE (without trading purpose of product B):</i></p> <ul style="list-style-type: none"> <li>- Non-EPE is exempted from import duty and VAT for imported materials serving production of</li> <li>- When selling A to EPE, non-EPE is not subject to export duty and subject to VAT 0%</li> <li>- When EPE uses A to produce B and export overseas → EPE is not subject to tax/duty for transaction of purchasing A and selling B</li> </ul>	<p>To request detailed guidance from GDC for enterprise to implement</p>	<p>under the form of export production then export them to EPEs (meeting the provisions at Clause 1, Article 4 of the Law on Export and Import Duty no. 107/2016/QH13) are exempted from import duty and do not have to pay VAT for the import stage. When exporting products, they have to pay export duty (if any) and declare 0% VAT rate for exported products.</p> <p>2. In case domestic enterprises import goods under the form of export production then export them to EPEs to exercise the right of export and import</p> <p>Pursuant to Clause 7, Article 30 of the Decree no. 82/2018/ND-CP dated May 22, 2018 of the Government: "<i>When export processing enterprises are permitted to perform the purchase and sale of goods and other activities directly related to the purchase and sale of goods in Vietnam, they must open accounting books to separately account revenues and expenses related to the purchase and sale of goods in Vietnam and arrange a storage area separated from the storage area for production activities of the export processing enterprise or establish a separate branch outside the export processing enterprise or export processing zone</i></p>	

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
				<p><i>to carry out these activities.”</i></p> <p>Pursuant to Article 77 of the Circular no. 38/2015/TT-BTC amended and supplemented in Clause 53 Article 1 of Circular no. 39/2018/TT-BTC:</p> <p><i>“2. EPEs are responsible for fulfilling tax obligations and other financial obligations for the performance of goods trading activities and other activities directly related to the sale and purchase of goods as prescribed by law. Investment incentives, tax incentives and other financial incentives applicable to production for export of EPEs do not apply to goods trading activities and other activities directly related to the sale and purchase of goods of EPEs.</i></p> <p>....</p> <p><i>4. Using invoices when selling or purchasing goods under the export and import rights of EPEs</i></p> <p><i>a) EPEs shall apply for tax registration with the inland tax authorities to declare and pay VAT for export and import activities under the export and import rights;</i></p> <p><i>b) When EPEs purchase goods from a domestic enterprise, the domestic enterprise will issue VAT invoices to the EPEs. The invoices must clearly indicate the VAT rate as prescribed by laws;</i></p>	



No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
				<p><i>c) When exporting, EPEs issue invoices like other domestic enterprises having goods exported to foreign countries and are entitled to the VAT rate of 0% and input VAT refund if they meet all prescribed conditions for tax refund."</i></p> <p>Based on the above provisions, in case a domestic enterprise imports goods for export production and then sells products to EPEs to exercise the right of export and import, the domestic enterprise must pay export duty and issue VAT invoices to EPEs. The invoices must clearly indicate the VAT rate as prescribed by laws (as for goods sold domestically). When exporting, EPEs shall issue invoices like other domestic enterprises having goods exported to foreign countries and are entitled to the VAT rate of 0% and input VAT refund if they meet the conditions for tax refund.</p>	Accordingly, we understand that it is mandatory for domestic enterprises to know the purpose of buying goods of EPEs because the tax treatment and invoicing are different in these two cases?
4	<p><b>Regulations on customs value for re-purposed goods under Circular 60/2019/TT-BTC</b></p> <p>Under new regulations under Circular 60/2019/TT-BTC amending several articles under Circular 39/2015/TT-BTC on customs valuation, customs values of goods re-purposed for sale for both used and unused goods are declared price.</p>		To request detailed guidance from GDC for enterprise to implement	<p>- Pursuant to Clause 9, Article 1 of the Circular No. 60/2019/TT-BTC, if imported goods used and unused imported goods in Vietnam, which are not automobiles or motorcycles having intended use modified from the non-taxable or tax-exempted use, are sold, customs value is the declared value determined on the basis of actual sale price.</p> <p>- Manufactured goods are considered</p>	GDVC is requested to provide specific answers for the 2 situations where imported goods change their purpose for sale as stated in the column "Concerns" (section 4): Used imported goods and unused imported goods; the point of time

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
	<p>We request for GDC's confirmation on our understanding of the above provisions as follows:</p> <ul style="list-style-type: none"> <li>- For used goods: declared price is re-selling price at the time of re-purpose</li> <li>- For unused goods: declared price is initial import price</li> <li>- Can goods which have been processed considered unused goods?.</li> </ul>			used goods in Vietnam.	<p>for determining the declaring price (please specify).</p> <p>GDVC is requested to clarify the case where materials have been used to manufacture finished goods, what value should be used when the purpose of use is changed?.</p>
5	<p><b>Confirmation of Customs authority on the conditions to implement export processing scheme for newly established EPE</b></p> <p>In accordance with regulation at Article 30, Decree 82/2018/ND-CP:</p> <p><i>1. Export processing zones and export processing enterprises shall be subject to regulations applicable to separate customs areas and non-tariff zones, except for particular regulations applicable to non-tariff zones within bordergate economic zones. If export processing enterprises may be exempted from applying for the Certificate of investment registration, such exemption shall be specified in their investment registration certificates or written document issued by the competent investment registry. The investment registry shall be held</i></p>	<p>The delay in confirming/non-confirmation from customs authority on the ability to satisfy EPE criteria has impeded the operation of investment projects and business production plans of many enterprises.</p>	<p>To request GDC to consider and provide solutions for this issue in the direction as follows: enterprises which commits to implement and ensure to meet the criteria of an EPE as prescribed are still allowed to apply the tax/customs policy as an EPE. After completing the construction of factory and warehouse, customs authority can inspect and confirm. In case the enterprise violates/ does not meet the conditions, they will be strictly penalized.</p>	<p>Acknowledging the problems encountered by the relevant enterprises.</p> <p>Currently, the Ministry of Finance is reporting to the Prime Minister to remove difficulties for enterprises in the Official Correspondence no. 10579/BTC-TCHQ dated September 10, 2019. After receiving instructions from the Prime Minister, the Ministry of Finance will provide guidance on customs inspection and supervision when EPEs are established.</p>	

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
	<p><i>responsible for gathering opinions from the competent customs authorities on the capability to satisfy conditions of the customs inspection and supervision before issuing the investment registration certificate or confirmation in writing to investors.</i></p> <p><i>2. In industrial parks, there may be industrial sub-zones for export processing enterprises. Export processing zones, export-processing enterprises or industrial parks reserved for export-processing enterprises shall be separated from the outside by fence systems, have ports, entrance and exit doors, and fulfill requirements concerning supervision and control by customs authorities and related functional agencies according to regulations applicable to non-tariff areas and regulations laid down in the legislation on import and export duty."</i></p> <p>Currently, many newly established EPEs are facing difficulties in obtaining confirmation from customs authority on its ability to meet customs control and supervision conditions, thereby affecting the tax benefits that EPEs should be entitled to (e.g. Not subject to/exempted from import duty and VAT) although</p>				

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
	granted to operate under processing-export scheme in the Investment Registration Certificate.				
6	<p><b>EPE selling goods to domestic enterprises</b></p> <p>Pursuant to Official letter no. 128/GSQL-GQ2 dated 14/1/2019 and Official letter 760/GSQL-GQ2 („OL 760”) dated 15/3/2019 issued by GDC, the customs procedure for goods that an EPE sells to domestic enterprises must follow the EPE's Business license and method of sale. Therefore:</p> <ul style="list-style-type: none"> <li>- In case EPE (having main business activities of trading product B) sells product B to a domestic enterprise: EPE must pay import duty and VAT for input materials, (if the taxes have not been paid at import stage, EPE must re-purpose the materials and pay taxes as regulated); when selling to domestic enterprise: issue VAT invoice of 10%; Domestic enterprise is not required to pay import duty for product B.</li> <li>- Notwithstanding that, in case EPE imports materials for export manufacturing/processing, with the texts in OL 760 might be interpreted that enterprises must re-purpose and pay import duty and VAT for materials used for manufacturing of</li> </ul>	<p>- Based on the prevailing regulation under: + Article 30, Decree 82/2018/ND-CP: „<i>Exchange of goods between export processing zones or export processing enterprises and other areas within the territory of Vietnam, except for non-tariff zones, shall be defined as an export or import relationship, unless otherwise stipulated in clause 3 of this Article and except in the cases where customs procedures are not required under regulations adopted by the Ministry of Finance...</i>”</p> <p>+ Article 22, Decree 134/2016/ND-CP regulated: „<i>Where goods manufactured, processed, recycled or assembled in a free trade zone using imported raw materials or components, they shall be dutiable when imported into the domestic market according to the duty rates and their dutiable values.</i>”</p> <p>- For EPE importing materials to manufacture goods, even when exporting or selling domestically, at import stage, the EPE enterprise must declare under customs code E11 (Import of raw materials from</p>	<p>Kindly request GDC to confirm and provide guide clearly for the case of importing materials for manufacturing of goods when: EPE not subject to import duty; when selling goods manufacturing in export processing zone to domestic enterprise, both parties shall perform customs declaration as regulated at Article 86 Circular 38/2015/TT-BTC (amended at Circular 39/2018/TT-BTC), domestic enterprises paying duty as regulated at Article 22 Decree 134/2016/ND-CP</p>	<p>* Regarding the customs procedures: Pursuant to Clause 5 Article 25 of the Decree No. 08/2015/ND-CP dated January 21, 2015 of the Government (amended and supplemented in Clause 12 Article 1 of the Decree no. 59/2018/ND-CP dated April 20, 2018), for goods being raw materials, supplies and components imported for processing or manufacturing of exports which have been released or cleared customs, but after that change their intended use to domestic consumption, new customs declaration must be registered. Management policies and tax policies applicable to imported and exported goods will be implemented at the time of registering the new customs declaration unless all relevant policies have been implemented at the time of registering the initial declaration.</p> <p>- Pursuant to Article 79 of Circular No. 38/2015/TT-BTC dated 3/25/2015 (amended and supplemented under Clause 55, Article 1 of Circular 39/2018/TT-BTC) by the Ministry of Finance: + EPEs can liquidate the following imported goods: machinery,</p>	<p>GDVC is requested to address the following concerns: EPEs import materials and supplies to produce goods and sell part of the goods to domestic enterprises. In this case, do EPEs have to declare the change of purpose of use (and thereby paying taxes) on the amount of imported materials and supplies in goods sold to domestic enterprises?</p>

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
	<p>goods to sell domestically (if any).</p> <p>In practice, until now, we haven't observed any case where customs authority requested enterprise to re-purpose imported materials for domestic goods manufacturing as in OL 760. Additionally, GDC and local customs authorities issued official letters following prevailing regulation, particularly:</p> <ul style="list-style-type: none"> <li>+ EPE imports materials for manufacturing (including export overseas and domestically): tax exempted</li> <li>+ EPE sells goods manufactured from imported materials to domestic enterprise shall perform export customs procedures, exported goods are exempted from duty,</li> <li>+ Domestic enterprise purchases goods manufactured by EPE shall perform import customs procedures, pays import duty and VAT following the tax rate and value of such goods.</li> </ul>	<p>overseas by EPE) and E15 (Import of raw materials from domestic market by EPE).</p> <ul style="list-style-type: none"> <li>- If EPE is required to re-purpose imported materials, it is not clear which customs code should be used, while the EPE model and the nature of production activities of the enterprise remains unchanged.</li> <li>- Additionally, OL 760 does not clearly mention: if EPE must re-purpose imported materials used for manufacturing of goods to sell domestically, the VAT to be paid at import stage (if any) shall be declared and creditable or not, and currently there is no mechanism for EPE to declare VAT under credit method for manufacturing activity?</li> </ul>		<p>equipment, means of transport, raw materials, supplies and other imported goods owned by the enterprises in the following manner: exporting, selling, offering, donating or destroying in Vietnam;</p> <ul style="list-style-type: none"> <li>+ In case of liquidation by sale, EPEs may choose to perform either of the following two forms:</li> <li>++ If EPEs choose to change the intended use, new customs declaration must be registered. Management policies and tax policies applicable to imported and exported goods will be implemented at the time of registering the new customs declaration for changing intended use (unless all relevant policies have been implemented at the time of registering the initial declaration); the tax base includes the taxable value, tax rate and exchange rate at the time of registering the new customs declaration for changing intended use as stipulated in Article 21 of the aforementioned Circular.</li> </ul> <p>After changing the intended use, the sale of these goods on Vietnam market does not have to go through the customs procedures;</p> <ul style="list-style-type: none"> <li>++ Where EPEs choose to perform the on-spot import and export procedures as prescribed in Article 86 of the aforementioned Circular,</li> </ul>	

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
				<p>EPEs shall carry out on-spot export procedures; domestic enterprises shall carry out on-spot import procedures and pay taxes according to the applicable regulations. At the time of carrying out the procedures for on-spot export and import, no policies on management of export and import goods are applied, except for cases where specialized conditions, standards and inspection have not been implemented for applicable goods upon initial import; goods managed by license must be approved in writing by the import licensing agency.</p> <p>* Regarding tax policies: Proposing the Reform and Modernization Committee to summarize based on the comments of the Import and Export Tax Department.</p>	
7	<p><b>Determination of origin in case of adjustment of HS code or expenses</b></p> <p>The below two criteria are used to determine origin of goods:</p> <ul style="list-style-type: none"> <li>- 'Local/Regional value content' (LVC/RVC): In case accounting adjustment leads to decrease in production expenses, which affects LVC/RVC after C/O issuance and exportation, what should the exporter do?</li> <li>- 'Change in tariff classification' (CTC): In case customs authority</li> </ul>		To request detailed guidance from GDC for enterprise to implement	<ul style="list-style-type: none"> <li>- Adjustment of costs will affect the calculation of the localization rate: currently, the Ministry of Industry and Trade is the governing body for goods origin and the Import and Export Department - the Ministry of Industry and Trade is responsible for guiding the issuance of preferential C/O for Vietnam's exports. Please contact the Ministry of Industry and Trade (Import and Export Department) directly for guidance.</li> <li>- Adjustment of HS codes for goods after post-clearance inspection:</li> </ul>	Concerns related to

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
	<p>adjusts HS codes of input material during post-clearance audit, which affects origin determination after C/O issuance and exportation, what should the exporter do?</p> <p>- In case the above subsequent adjustment does not affect origin criteria, does the exporter have to report to customs authority and C/O issuing authority?</p>			<p>Clause 2, Article 1 issued together with the Circular No. 62/2019/TT-BTC dated September 5, 2019 amending and supplementing the Circular No. 38/2018/TT-BTC dated April 20, 2018, stipulates the differences between HS codes on the certificate of origin and HS codes on the import customs declaration.</p> <p>Based on the enterprises' declarations, import dossiers, information on C/O and information obtained from actual inspection of consignments (if any), the customs authorities will determine the eligibility for applying the tax rate prescribed in the Free Trade Agreements.</p>	<p>exported goods. Pursuant to the Circular no. 39/2018/TT-BCT, the Customs is the competent authority for checking and verifying the origin of exported goods as well as conducting post-clearance audit. So for the situation mentioned in this section, it is proposed that GDVC provide measures for handling so that enterprises can feel secure in their business and production activities.</p>
8	<p><b>AEO Certificate</b></p> <p>Is there a limit to AEO certification when only approximately 60 certificates are issued?</p>		<p>Companies wonder if there is a limit on AEO certificates as there are only 60 or so issued by Customs, companies request more AEOs be issued and a more thorough and pre-notice process for withdrawal of the AEOs.</p>	<p>- There is no limit in recognizing Authorized Economic Operator (AEO); the proposal to recognize AEO is submitted by the enterprise voluntarily. Based on the provisions of applicable laws and regulations, the customs authorities will consider and evaluate. If the enterprise is eligible, it will be recognized as an AEO.</p> <p>- For enterprises whose AEO certificates have been revoked, there are provisions in the following:</p> <p>+ Point c Clause 4 Article 11, chapter II, Decree no. 08/2015/ND-CP dated January 21, 2015 having a</p>	

No.	Issues	Impacts	Recommendations	GDC's responses	VBF's responses
				<p>number of articles amended and supplemented in the Decree no. 59/2018/ND-CP dated April 20, 2018 with detailed provisions and measures for enforcement of customs law on customs procedures, inspection, monitoring and supervision.</p> <p>+ Point c, Clause 1, Article 22 of Circular 72/2015/TT-BTC dated May 12, 2015, having a number of articles amended and supplemented in the Circular 07/2019/TT-BTC dated January 28, 2019 stipulating the application of priority mechanism in the implementation of customs procedures, inspection and monitoring for imported and exported goods of enterprises. Enterprises are suspended from applying the priority mechanism in the following cases: "... Enterprises propose to suspend the application of the priority mechanism..."</p> <p>Therefore, when an enterprise wants to revoke its AEO certificate, it will voluntarily apply for revocation; The customs authorities will perform the procedures for suspension of AEO.</p>	
9	<b>Discrepancy between provinces and lack of coherence and global standards</b>		We suggest GDC have authority for overall procedures, standards and policies and be able to serve as in an appeal process.	The VBF needs to review and raise the specific problems and recommendations so that the GDC will have the basis to respond.	



**MIDTERM VIETNAM BUSINESS FORUM 2019**  
**Hanoi, 26 June 2019**

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

**SUMMARY**

**OPENING REMARKS**

***Mr. Nguyen Chi Dung, Minister, Ministry of Planning and Investment***

During the first 6 months of 2019, it is obvious that the economic situation has experienced some complicated and unpredictable developments. The participation in new generation free trade agreements (FTAs) such as CPTPP and EVFTA has put great pressure on Vietnamese economy in terms of requirement for sustainable development and extensive integration. To overcome these issues, Vietnamese Government has been determined to comprehensively reform and renovate our economy in the direction of:

To improve the economy's internal strength and resilience, to consolidate and maintain macroeconomic stability, to promote growth drivers, to drastically implement strategic breakthroughs, to speed up the application of advanced science and technology, to effectively realize the potential of the 4th Industrial Revolution, to digitalize and form a Center of Innovation to attract talents and connect with large technology centers worldwide.

To establish an organizational structure of discipline, integrity, action and service, to continue to create an enabling business and investment environment for the business community and people.

To strengthen administrative reform, to construct an e-Government, to strictly implement regulations on renovation, to conduct organizational restructuring and staff downsizing, to restructure the contingent of civil servants and officials, and to simplify and cut administrative procedures. The essence is to create better and more favorable conditions, to reduce costs and time for people and businesses.

***Mr. Kyle F. Kelhofer, Senior Country Manager, Vietnam, Lao PDR and Cambodia, IFC***

There's additional value in extending to pre-production including design and R&D and post - production including digital marketing and services. An improved local supply chain would not only directly translate into an improved business competitiveness but also Vietnam's sustainable development aspiration.

Other opportunities include increased accesses to sustainable, renewable power and ensure that we maximize the development of the clean and sustainable wind and solar energy while at the same time minimizing cost to make it financially sustainable. This includes leveraging power contract practices around the world with no impact on the fiscal situation nor Vietnam's Debt/GDP ratio. Simply by addressing some provisions such as the contract termination risk provision. Simply by ensuring that contracts are honored as they are written. Such more secured contracts as practiced elsewhere in the world could reduce the financing cost of renewable power by one to two cents of kilowatts hour, saving up to 20% of the cost of power to Vietnam, sustainably saving cost of power to Vietnam and provide an additional 20% of its revenue for other uses for energy security.

Sustainable access to finance to ensure long term business success and competitiveness, particularly for domestic companies. In today's world, where international savings vastly exceed investment opportunities elsewhere in the world, if international finance have the same potential security arrangement as onshore finance, specifically, transferable mortgage securities with no actual rights to own the land and violate national securities and foreign ownership limits, then onshore borrowers can tap into international financing and international landing at a much lower cost. This is sustainably practiced in neighboring countries and could be equally sustainably implemented here in Vietnam.

***Ms. Virginia Foote, Co-chair, Vietnam Business Forum Consortium***

Foreign and domestic investors need an equal, level and predictable playing field as a solid foundation not only to attract new investment but also to maintain and grow and deepen the investment that is already here. OECD and other international best practices can be the benchmark for business integrity, open competition, digital economy advances, cyber security, a global standard accounting system, reducing corruptions efforts and burdensome administration procedures, fair tax policy and implementation of cash reduction standard.

In term of the physical framework, sustainable infrastructure development is key to growth and there is a clear and urgent need to work towards what is called a circular economy. Proper waste management and recycling can be an enormous growth area in Vietnam since Vietnam is currently one of the five largest contributors to the global's release of plastic waste into the ocean.

The vision for the future of sustainable economy should be prioritized. Vietnam is well known for talents in science, internet, engineering, entrepreneurship, and creativity overall. This can lead to innovations in IT, FinTech, medical innovation, consumer products and many many other fields that we can contribute to. Encouraging both foreign and domestic private investment and innovation research and development, at both academic institutions and within companies require tightly inspecting intellectual property rights, but it can help pave the way for the next chapter of Vietnam's success.

## **PRESENTATIONS BY 7 CHAMBERS**

***Dr. Vu Tien Loc, President, Vietnam Chamber of Commerce and Industry***

*It is necessary to quickly deal with the bottlenecks in administrative procedures and legal framework:* to speed up the revision of the legal system to ensure uniform and consistent implementation throughout the country. It is necessary to promulgate the Law on Public Private Partnerships in the earliest manner, together with required regulations and guidelines to facilitate the domestic private sector's effective participation in large projects of national importance.

*There is a need to increase information transparency for businesses:* 50% of businesses think that it is still difficult for them to access some important information related to their development orientation, and up to 60% of businesses think that they must have a "relationship" with the authorities to get this information.

*It is required to revise the Law on Enterprises* which should include the provision that "Business household is considered a form of enterprise", while minimizing administrative costs and procedures for business households. It is necessary to create more favorable conditions for enterprises, particularly micro, small and medium enterprises in accessing capital.

*Regarding the amendment of the Labor Code, it is recommended to increase the maximum overtime hours to 400 hours and not to use the Progressive Payment System for overtime to create favorable conditions for businesses and for employers to have more income and work. It is advisable to have measures to further improve the quality of human resources to meet the demand of the current digital economy.*

*It is recommended to ensure the reliability and stability of the business climate. We are particularly concerned about the application of recent legal provisions on investment policies to supporting product projects licensed before January 1, 2015. This is hindering the continued supporting industry development projects in Vietnam.*

*It is required to minimize retroactive regulations and not to promulgate retroactive provisions when issuing new business regulations. It is necessary to enhance the judicial effect of courts in resolving contractual and commercial disputes to create a safe business environment, and to quickly resolve problems in business development.*

*There is a need to further promote the provision of information for businesses and more effective services to support businesses related to the free trade agreements to which Vietnam is a signatory in order to take full advantage of these agreements.*

***Mr. Mark Gillin, Representative, American Chamber of Commerce***

The Prime Minister's Council on Administrative Procedural Reforms is a significant step toward broad reduction of the regulatory burden on businesses and we encourage increased emphasis on this initiative. Reform of tax administration would have the greatest impact on enterprise productivity and investor confidence. On the one hand, recent advances in e-tax and customs have reduced burdens at the filing or clearance stage, but tax inspection is overly disruptive and burdensome and need significant reform.

Internet and digital businesses will drive future productivity by efficiently connecting buyers and sellers and creating market access. FinTech and payment technologies can significantly reduce the time and cost in sending and receiving payments. The full future benefits of these technologies depend on openness, competition and restraining from regulations that will increase costs or stifle competition.

Transport infrastructure can improve efficiency of moving goods and people but requires thoughtful master planning which ensures road capacity to outpace vehicle growth as Vietnam shifts from motorbikes to cars. And the placements of ports and airports should reduce rather than increase traffic pressure in urban areas.

MOST should encourage rather than restrict the use of any equipment, including used equipment of any age which can economically improve the productivity of workers, without harming the environment. And technology transfer registration should be simplified to avoid duplication and safeguard IP security.

Increasing the foreign ownership limit for banks would allow them to raise international capital which could be injected into the country's economy. It would also deepen Vietnam's capital markets and attract foreign institutional investors who can provide liquidity to the market.

***Mr. Kim Han Yong, Chairman, Korea Chamber of Commerce and Industry in Vietnam***

The Government should consider adopting credit policy to attract offshore funds. If precise evaluation and information about the enterprises could be obtained through the partnership with trustworthy overseas credit rating agencies, more foreign capital can be induced. Moreover, if regulations on deposit account for foreigners can be relaxed, additional funds can be made available to corporates and financial market.

We expect Corporate Income Tax incentive policies shall be implemented in consistency with the original intent of the amended Law Corporate Income Tax, to ease the tax exemption requirements for many exports and import companies. In addition, the same tax exemption or tax refund is needed for companies who are manufacturing part or semi final product of the exporting good.

Payment for Government funded infrastructure projects should be settled sooner. Many of these contracts face financial bottleneck that deserve sizeable attention. We also hope the ongoing licensing procedures for development projects in HCMC will be facilitated.

Government guarantee is more crucial for big projects including the North-South Expressway Project. However, the project is expected to be opened for bidding this year, while the PPP law will be passed early next year. As such, the Government should take some measures to ensure that the contract is concluded only after this law is passed.

Over time work regulations should be positively considered special needs of FDI enterprises in labor intensive industries such as the garment and the textile and the footwear. Annual overtime work limit of 300 hours is not sufficient for both employers and employees. Labor intensive industries are eager to see a more overtime work hour allowed legally.

***Mr. Nobufumi Miura, Chairman, the Japanese Chamber of Commerce and Industry in Vietnam***

On behalf of JCCI, I would like to highlight three proposals – “PPP”, “Supporting industries” and “Predictability in amendments of laws.”

*PPP:* 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 adoption of "Foreign currency exchange guarantee system" and application of "Foreign Law" as governing law.

*Supporting industries:* Supporting industries face global cost-competition, and those supporting industries need further support from the Government to improve productivity in Vietnam. Specifically, Government’s support in providing incentives is highly appreciated.

*Predictability of legal amendments:* 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. 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.

***Mr. Peter Rimmer, Representative, British Business Group in Vietnam***

*Education:* BBGV believes it is important to further strengthen technical and vocational training to address future social economic and most importantly business needs. On the job learning services, especially in business and management as well as other sectors such as I.T. are required to be supported and recognized in order to meet future demand and address the requirements of all businesses so that they can remain strong and competitive in both the domestic and international markets in future years.

*Agricultural products:* Agricultural product trade is an important factor for Vietnamese and indeed many businesses, especially in a country with such a large growing population. Currently to import a food product from an EU country into Vietnam, it is necessary to apply for a license. The process is not required in EU countries in the issuing of an import license for Vietnamese food products. Finding and implementing a process of parity on licensing is important to maintaining good and sustainable business across this sector for the UK and other countries currently trading with Vietnam.

*Renewable energy:* Investors are concerned about Vietnam's low feed-in tariffs and the bankability of the power purchase agreement to unlock potential of renewable energy projects. Vietnam should consider pricing reform good market regulation and more access for the private sector for blended finance products. In 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 be welcomed.

***Mr. Tomaso Adreatta, Vice-Chairman, European Chamber of Commerce in Vietnam***

SOEs reforms need to be even faster and deeper, financial markets need strengthening, banks equity to be boosted, new rules on M&A, competition and bankruptcy have to be approved to support corporate growth.

Together with education knowledge and training, infrastructure investment is a key driver of productivity improvement. This will not happen in the size necessary without a working PPP framework. It has to be clear that PPP projects are hybrid and not government's projects.

Energy is a condition for growth. This year has seen the success of the first phase of allowing private investors to provide the eolic and solar energy. But the regulations much improved from last year still need the final touch to be bankable. Since renewable sources could account for a lot safer energy than today it is planned. While concentrating resources in improving transmission, MOIT and the regulators have to work out fair and transparent strategies for dealing with the possibilities of having to curtail buying energy without harming suppliers. Evidence has shown gas to be a more sustainable source of continuous energy than coal.

A new longer roadmap for energy prices to substitute the one announced by the Prime Minister two years ago would help companies and consumers plan for energy efficiency which could reduce the need for new energy by up to 20 percent.

***Mr. Seck Yee Chung, Vice President, Singapore Business Group in Vietnam***

*Industry revolution 4.0 and smart cities initiatives:* The Government should reduce the regulatory red tape for high tech companies to avail to preferential tax rates. We understand that the Government is considering foreign ownership caps on fintech companies such as intermediary payment service providers. This impacts the ability for founders to raise capital to develop talent and undermines the confidence of investors, both foreign and local. The Government can instead focus on evolving regulations or adopt a regulatory sandbox to ensure

there is consumer protection. We urge the Government to narrow the provisions and requirements on data localization when considering the draft regulation that will implement the Cyber Security Law.

*Foreign investment:* The Government should continue efforts to streamline the foreign investment licensing and approval process. This can be achieved with the use of emails of courier between licensing authorities and regulators. Retail licensing can be streamlined so that real estate developers can speed up bring tenants into their projects. The Government should also develop the use of online applications for foreign investment and M&A approvals.

*Environment:* Vietnam should have a framework of environmental regulations, for example, relation to waste management. However, maintenance and enforcement of standards and obligations have to be uniformly applied and are forced upon all businesses. We also encouraged that Vietnam has continues to pave the way for renewable energy projects.

*Human resource:* The Government should continue to encourage enable investment whether foreign or domestic into education and training sector. Whilst we understand the focus on STEM subjects in this age of technology, we should not forget the humanities subjects, philosophy, literature or history.

#### **KEYNOTE ADDRESS BY DEPUTY PRIME MINISTER H. E. MR. TRINH DINH DUNG**

In order to achieve the goal of rapid and sustainable development, *first* Vietnam is focusing on investment restructuring, particularly public investment, and enterprise restructuring, with a focus on state-owned enterprises. Restructuring the banking and financial system, particularly commercial banks. Restructuring the industries and sectors, with a focus on development of core industries in close association with the development of supporting industries to increase added value of industrial production and to participate in the global value chains.

*Second*, we focus on the development and use of clean and renewable energy such as wind, solar energy, and natural gas. Along with that, it is necessary to restructure the industries, sectors, and products related to climate change resilience, environmental protection, and smart city development. *Third*, we prioritize investment in developing a synchronous infrastructure system, including transportation, health care, and urban in order to increase Vietnam's economic competitiveness. *Fourth*, we promote human resource development, with a focus on promoting education, training and technology development as a key national policy for Vietnam to improve human resource quality.

*Fifth*, Vietnam is focusing on institutional improvement to create a more transparent and competitive environment to mobilize resources both at home and abroad. At the same time, we also focus on reforming administrative procedures to reduce costs for businesses and people, contributing to improving investment and business efficiency. Sixth, the research role of universities is strengthened, and key science programs continue to be strongly renewed. The establishment of private research institutes is encouraged, especially in the field of science and technology. Innovation and start-ups are incentivized. Businesses are encouraged to invest in research, particularly artificial intelligence.

*Seventh*, we continue to multi-lateralize and diversify foreign relations, with deeper and wider regional and international integration through active participation in new-generation free trade agreements with the developed regions worldwide.

In today's forum, I would like to emphasize corporate social responsibilities in terms of three aspects of economic, legal and ethical ones. *Economically*, businesses need to balance between profits and equitable treatment of workers. Businesses also need to take advantage of science and technology, to develop new resources, to provide quality and safe products. *Legally*, businesses must also fulfill their legal responsibilities to stakeholders by way of complying with regulations on competition, customer protection, environmental protection, promotion of fairness and equity, etc. *Ethically*, what the businesses do right and their sharing of benefits will be respected and welcomed by the society, and vice versa.

## SESSION 1

### ***Mr. John Rockhold, Head of Power and Energy Working Group***

The Made in Vietnam Energy Plan 2.0 provides Vietnam's energy future by a cleaner more affordable and a sustainable energy pathway with three primary goals: meeting the growing energy demand in Vietnam, securing energy independence and enabling consumers to access cleaner energy. Based on consultations and a careful review of the national and international trends, the plan proposes that there are *five business orientated solutions* that would improve reliability, affordability of Vietnam's energy system.

- Prioritize renewable energy in the National Power Plan
- Increase the use of natural gas as the current best fit baseload for renewable energy
- Construction of a regulatory and permitting environment that attracts private sector investment in clean energy generation and energy efficiency
- 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.
- Invest in grid infrastructure to improve stability and capacity

These proposed actions will provide an affordable, reliable, energy security. And the results will be in five major outcomes: enhance energy security in Vietnam, reduce power system costs, increase private investment, “socialized” electricity market that protects the disadvantaged households with the least capacity to pay and create thousands of new SMEs and hundreds of thousands of new jobs for Vietnamese, mainly in industrial 4.0 areas and bring in about 12 billion dollars a year in energy generation and grid extension.

### ***Response from Mr. Hoang Quoc Vuong, Vice Minister, Ministry of Industry and Trade***

The major contents of Vietnam's strategy for power development planning over the next 10 years will focus on the following orientations:

*Promote the development of large energy sources*, with a focus on developing natural gas energy, properly developing coal-fired power projects using advanced technology and developing new forms of energy, particularly potential renewable energy such as wind, solar energy, etc. In terms of power tariff reform, Vietnam's power tariffs needs to be adjusted and reformed in the coming time to be a signal not only for investors in the power and energy sectors but also for consumers to prepare for energy efficiency. It is necessary to concentrate on the development of the power market in a comprehensive manner and to restructure the power industry.

*Develop renewable energy*, with attractive incentives in recent years, renewable energy in Vietnam, especially wind and solar energy, has made breakthrough developments. It is necessary

to review the "Standard power purchase agreements" to reduce costs and attract more foreign investors. The mechanism for issuing direct power purchase agreements between renewable energy developers and foreign businesses is under development and expected to be promulgated this year. In addition, we also make efforts to encourage the development of rooftop solar power to maintain a stable feed-in-tariff rate of 9.35 US cents and hope that rooftop power will grow strongly which is a solution to meet the power needs of big cities in a short time.

***Mr. Kien Nguyen, Representative of Capital Markets Working Group***

In order for the capital market to achieve stronger development and for Vietnam to make deeper integration in the fields of securities, the Capital Markets Working Group would like to recommend two solutions as follows:

*With respect to foreign ownership limits*, Vietnam should study and allow the issuance of non-voting depository receipts (NVDR): allowing Vietnamese government to maintain the current rate of foreign ownership, to control domestic companies through the voting mechanism of NVDR issuer. And especially permitting foreign investors to invest in listed companies with restricted foreign ownership.

*In order to develop domestic institutional investors*, Vietnam needs to complete the tax incentives for supplementary pension funds so that these funds can operate and become an important factor in development of domestic institutional investors. At the same time, it will lessen the pressure for Social Insurance of Vietnam.

***Response from Mr. Pham Hong Son, Vice Chairman, State Securities Commission of Viet Nam***

Foreign investment attraction is very important to the stock markets and the Government has issued a number of solutions to attract foreign investment into Vietnamese economy in general as well as Vietnamese stock markets in particular. The foreign ownership ratios have now been greatly increased. In some sectors, foreign investors can own 100% of the businesses. About the two proposals of the Capital Market Working Group:

*Regarding Non-Voting Depository Receipts*, the general definition of depository receipt has now been included in the draft Law on Securities and in the near future we will have a document related to the group's proposal on this issue.

*Regarding tax applicable to pension funds*, the Ministry of Finance is currently studying and considering to promulgate a mechanism for development of voluntary supplementary pension fund.

***Mr. Aymar De Liedekerke Beaufort, Co-Head of Bank Working Group***

Banking Working Group highly appreciates the positive cooperation with SBV in resolving many technical issues. We would like to contribute our recommendations on digitalization topics that Government can support at the top level:

- Prompt development of biometric ID and allow banks to connect to the government's National ID system to enable e-KYC that would help clients can transact with the bank anytime, anywhere. At the same time, the juridical system and juridical authorities must recognize electronic documents, electronic data, electronic signatures, FX e-platform etc.,



- Recommend SBV to partner with other Ministries to develop the regulatory frameworks to remove requirements on chief accountant's signature and wordings in accounting vouchers stipulated by Accounting Regulations that have heavy impact on E-Portal solutions between customers and banks;
- We are glad to hear that SBV is taking the lead in e-government initiatives. We encourage SBV to speed up and simplify administration processes.

Sustainable financing is at the heart of International banks strategy. Many of them have voluntarily stopped to finance activities / assets that proved to be harmful for population and wildlife. Hopefully all banks in Vietnam supported by the Vietnamese Government will apply the same restrictions.

For Renewable Energy Financing, the legal framework will need to be strengthened. Purchase Agreements price fixation and tenor will have to match the Financing tenor needed. Indeed, we have to ensure that the projects bear reasonable risk. This is important for all stakeholders in the country.

## SESSION 2

### ***Mr. Phong Tran, Co-Head of Infrastructure Working Group***

The three biggest challenges that Vietnam is facing include *limited public investment, failure to attract private investment and challenges of sustainable development*.

The Infrastructure Working Group would like to make recommendations on institutional development for Vietnam to develop sustainable infrastructure to match the rapid economic development, including:

- *Attracting private investment through the law on public private partnership:* Under the current regulations on public-private partnerships, the principle of risk sharing has not been specified in each area of infrastructure development. Project investors have no opportunity or guidelines on negotiation to have appropriate risk sharing mechanisms in each field.
- *Government guarantee:* New forms of support under the current law on public-private partnership have not been implemented due to the strict control of the use of state budget capital under the law on public investment.
- *Not to manage private investment in accordance with public investment procedures:* The new law on public-private partnership should include a chapter or section specifying the principles of financing with and use of state capital but that does not mean that the procedures under the law on public investment will apply to private investors.
- *Guarantee of obligations:* The Law on Public-Private Partnership should cover the guarantee of contractual obligations not only for State-owned enterprises but also for State-controlled enterprises.
- *Delays in procurement process and negotiation of public-private partnership projects:* The Law on Public-Private Partnership should provide principles for competent authorities to set out investors' evaluation criteria which had been prepared and submitted together with the project proposal.
- *Mechanism for protection against changes in laws:* All cost increases or decreases that may be caused by Government actions, including changes in laws, must be reflected in the tariffs and product prices of public-private partnership projects.
- *Establishing and implementing project assurance measures:* The fact that Decree 15 limits the mortgage of land use rights at credit institutions licensed to operate in Vietnam has made it difficult to use land use rights as a security asset to raise capital. This has led to investors

having to apply for land tax reduction or land rent reduction in order to ensure for the rights of this security asset.

- *Restrictions on transfer:* According to Decree 63/2018 and the latest draft of the Law on Public-Private Partnership, investors are not allowed to transfer a part or all of their rights and obligations under agreements to any creditors or other investors until the completion of construction or commercial operation date (“Commercial Operation Date”). However, according to current regulations, such transfer is permitted, subject to many conditions such as no change in project objective, size, specifications, total investment and project implementation progress.

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

The draft PPP law requires that project contract be governed by Vietnamese law that will kill international project financing of these projects. We would suggest that *clause be reconsidered so as to allow the possibility, at least, of foreign law governing those contracts if the parties agree.*

***Response from Ministry of Planning and Investment – Mr. Nguyen Duc Trung, Vice Minister***

The first draft of the Law on PPP has been finalized and is in the process of broad consultation. The Law on PPP must be consistent with international practice while reflecting Vietnam's socio-economic conditions, thereby creating an attractive business environment to investors.

Regarding the application of Vietnamese laws or foreign laws when resolving disputes between foreign investors and contracting agencies in Vietnam, the Ministry will further study this issue. There are many different views on this issue. The United Nations Commission on International Trade Law (UNCITRAL) proposes two solutions: 1/ apply the internalized laws of the enacting country to resolve the dispute; 2/ as agreed by the parties in the contract.

Regarding the delay in bidding, investor selection and financial arrangements, especially in power projects, it is proposed that the design of the law should facilitate sustainable development, in which the State and competent agencies will have to proactively prepare projects, select good projects, appraise and approve projects in a prompt manner. Good preparation will help attract qualified and experienced investors, thereby facilitating quick financial and bidding arrangements.

Regarding land use rights, the Ministry is discussing with the Ministry of Natural Resources & Environment about amending the Land Law, in which case the land use right may be used as collateral for loans. However, for PPP projects eligible for exemption of land use fees, it is very difficult to utilize this right.

Regarding restriction of share transfer, the Ministry differentiates 2 cases: 1/ transfer of shares to other investors in accordance with normal regulations: current regulations require the completion of the construction phase; 2/ on the right of the lender to take over the project, in case the investor loses capacity or for some reason fails to implement the project, once the financial arrangement are already made, the right to transfer or take over remains valid as usual.

With regard to foreign currency conversion, the Ministry is working with the State Bank of Vietnam to ensure feasibility given Vietnam's moderate foreign exchange reserves.

The Ministry would like to acknowledge other comments. It is expected that the Ministry will have high-level talks between the ministry leaders, the World Bank, and other donors to discuss the Draft Law on PPP in detail on July 4.

***Response from Ministry of Transport - Ms. Le Thi Thu Huong, Director of Business Management Department***

The correlation between the transport infrastructure master plan and new export processing zones and distribution zones master plan should be carefully studied at the inter-ministerial level to ensure the optimization of future use. This is a very big issue, not only related to the ministries, but also to the local, regional and national master plans. Road infrastructure connectivity between ports, airports, inland waterways, industrial parks and export processing zones will contribute to reducing social costs, facilitating import and export and fast go-to-market. Amendments and supplements to the master plan will need to be consulted with ministries and local authorities. The new construction must also conform to the local socio-economic development plans.

The application of science and technology such as blockchain, among others, to transportation is one of the solutions that the Government has instructed to reduce logistics costs. The Ministry of Transport has just embarked on study and application at seaports as well as electronic toll booths. Regarding the motorbike and automobile industry, although Decree 116 and Circular 41 pose many limitations, the Ministry of Transport has tried to amend and supplement the risk-based inspection and management process, evaluation of businesses' legal compliance, thereby introducing technical improvements during the inspection process. Regarding the proposal to abolish and restrict the application of Circular 41 on spare parts which are not built in CPU models not yet registered with Vietnam Register, since inspection is aimed at ensuring safety for vehicles and vehicle occupants, this is still a mandatory requirement. However, Vietnam Register will propose to the Ministry improved procedures similar to checking imported automobiles to shorten inspection time.

Regarding the acceptance of CEC certificate for assembly components, review of the draft circular of CKD components that accepts the validity period of 3 years and the certification documents that meet the requirements of Decree 116 and the new Circular, Vietnam Register informed that the upcoming EVFTA and AFTA will have exclusion conditions to apply under the terms signed between the two sides.

Regarding the motorbike ban to big cities by the end of 2030, currently there is no regulation on the Law on Roads. In fact, no locality has reported to the Ministry of Transport on this issue yet. In the event of receiving local reports, the Ministry of Transport will study in detail and report to the higher level.

***Mr. Bill Howell, Head of Mining Working Group***

Modern mining companies contribute to a country's development in a number of ways. For example, they cannot operate efficiently without good infrastructure and communications, and therefore responsible mining companies have a strong incentive to contribute to, or even provide such infrastructure development.

The other benefit of responsible mining, apart from infrastructure, is the contribution it can make to help alleviate poverty in these remote areas it operates in by creating strong local employment opportunities and orders for local goods and services.

The challenge the Government has to address is to make Vietnam's mining industry more efficient, productive, safe and environmentally sustainable. Unfortunately, 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 the very few modern mining operations in Vietnam marginal or unprofitable or forced to close down.

The Mining Working Group is encouraged that the Government, more than ever now recognizes the importance of foreign direct investment, together with science and technology reform and innovation for Vietnam's economic and sustainable development.

***Response from Ministry of Natural resources & Environment - Mr. Vo Tuan Nhan, Vice Minister***

Regarding the legal provisions on mineral exploitation, Vietnam promulgated the Law on Mineral in 2010, followed by 07 Government decrees, 05 Prime Minister decisions and over 40 circulars by related ministries, thus creating a full legal framework for the mining industry. The Ministry of Natural Resources and Environment is assigned by the Government to study and advise in issuing a decree to replace Decree 203 in 2013 on the calculation methods and fees for granting mineral rights. The Ministry is also reviewing and revising the regulations to better tackle difficulties and obstacles when implementing Decree 203.

The Ministry of Natural Resources & Environment is reviewing 8-year implementation (from 2010) of the Law on Mineral, thereby proposing adjustments and supplements to a number of policies related to minerals production and trading towards improving transparency and enabling competition, public disclosure of mineral master plan orientations, supporting policies to guide businesses in accordance with the development plan, ensuring the interests of investors, reducing business risks, thereby facilitating equitable access of private enterprises to development resources.

Tax issues require coordination between the Ministry of Natural Resources and Environment, the Ministry of Industry and Trade, the Ministry of Finance and the Ministry of Justice. Currently, the Ministry is studying and proposing general tax policies and fees in the field of minerals.

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

The new draft Labor Code is generally well balanced between facilitating the economy towards rapid growth, whilst protecting all parties in a sustainable fair way.

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.

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.

***Response from Ministry of Labor, Invalids and Social Affairs - Mr. Mai Duc Thien, Legal Department***

Recently, the Ministry has advised and submitted the Government and the National Assembly two important documents: 1/ the draft Labor Code; 2/ Convention 98 for ratification. These two documents are among the key milestones in promoting the signing of Vietnam - EU Agreement. Regarding the Labor Code, one of the main amendments is to ensure transparency and flexibility in businesses' recruitment and employment process, further improving the labor competitiveness of Vietnam, besides protecting the basic rights and obligations of workers and businesses. There are many amendments, such as equal employment opportunities between men and women, overtime (proposed to increase the maximum overtime for some occupations from 300 to 400 hours/year), and a phased roadmap to increase retirement age in line with aging population and future labor shortages.

The draft Labor Code also provides the rules and bases for determining the minimum wage (based on the economy, employment, unemployment, and especially businesses' affordability).

Regarding upskilling of employees, the Draft adds responsibilities and incentives so that businesses can directly provide training to their staff. Regarding vocational education and training, MOLISA has submitted to the Government for promulgation of Decree 15/2019/NĐ-CP guiding the implementation of the Law on Vocational Education and Training, in which a series of issues on expanding and improving the rights and responsibilities of businesses related to foreign investment activities in vocational education and training have been prescribed.

Regarding the labor subcontracting, the Draft Decree has expanded the scope from 17 to 20 eligible occupations, which also provides more specific provisions on the purpose of subcontracting labor, i.e. to meet the sudden increase in the employers' demand for labor or replacement for short-term maternity leave.

The Labor Code has also added a series of new definitions to technology-linked labor markets, for example: Uber/Grab drivers, freelancers, etc.

The Labor Code will be submitted to the National Assembly for adoption in the October 2019 Session.

### ***Education and Training Working Group - Professor Raymond Gordon, Head***

The Education and Training Working Group continues to support both MOET and MOLISA in improving the standard of education in Vietnam and towards circular economy.

The Working Group suggests it focuses its resources and efforts on research that builds on the successful work that's already been done by MOET and MOLISA and some individual education institutions. This research would involve the following:

*One*, undertake a survey of the VBF industry members to find what skills and other support they need to grow in a sustainable manner. This can be undertaken with collaboration between government industry and higher education representatives.

*Two*, undertake a parallel study of higher education institutions to establish what types and levels of skills and other support the graduates will provide industry over the next decade and beyond.

*Three*, prepare a gap analysis report based upon the results of the surveys and identify previously unidentified gaps between what is needed by industry and what is provided by the higher education sector.

This work would involve the support of the VBF chambers including higher education representatives of MOET, MOLISA and other institutions such as the World Bank. It would lay the foundations for a strategic and effective approach to helping industry in Vietnam develop and maintain skills currency and enhance sustainable development and growth.

## **SESSION 3**

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

Given the limited time available today, I'd like to address five key issues of significant concern.

*First*, the Law on Technology Transfer and its implementing Decree 76 use a needlessly heavy handed approach that will discourage technology transfer as it did when Vietnam had a similar regime back in the 1990s. Among other things, the expansive definition of technology cast too wide a net and the so-called registration or really approval process will delay or frustrate technology transactions. At a minimum and implementing rules, we respectfully request MOST to narrow the registration requirement to apply only to those cases where it's truly necessary for national security, health or safety, environmental impact or compliance with international treaty commitments.

*Second*, the Law on Tendering. One technical detail to clarify is when the Law on Tendering will apply to procurements relating to proportional investments of the State capital or capital in state-owned enterprises. It's often difficult to determine the amount of capital of the state-owned enterprises in an investment project. A decree from the government or a circular from MPI could clarify application of the law tendering in such cases.

*Third*, investors are always concerned about the dependable recognition and enforcement of foreign arbitrary awards as a backstop to ensure implementation of their contractual agreements. The recent response from the People's Supreme Court says that it will provide guidelines on processing requests for recognition and enforcement of foreign arbitrary awards in Vietnam. The private sector expects the New York convention on recognition and enforcement of foreign arbitrary awards to be strictly applied, which means that the Court should not retry the cases that have been properly resolved by the arbitration.

*Fourth*, to increase the pace and focus of sustainable development, Vietnam will attract the best international investors if it shows its determination to practice sustainable policies as it becomes an important part of the global supply chain. Two key points: 1/ The Decision 18 on importation of used machines equipment and technology chains does give back a modicum of flexibility but it still includes impractical conditions, particularly the usually irrelevant regulations on remaining capacity and actual versus design capacity consumption for energy.

*Last*, many of us here in the room have signed off on the UN's Sustainable Development Goals. VBF hopes that today's meeting will accelerate the achievement of the goals in Vietnam.

***Response from Ministry of Science and Technology – Mr. Tran Van Tung, Vice Minister***

Regarding the registration for technology transfer, the current regulations are aimed at properly preventing obsolete technologies from entering Vietnam so that Vietnam will not become a dumping site for e-waste. In order to facilitate businesses' technology transfer, the registration time has been shortened from 15 days previously to only about 5 days now. This registration time is also stipulated in the law to facilitate the businesses' technology transfer.

Decision 18 of the Prime Minister on the import of second-hand machinery and technology lines does not impose a fixed regulation on equipment age 10 years as before, but introduces age ranges to suit each type of industry and field.

In order to ensure that Vietnam is not a dumping site for e-waste, the Ministry has stated that such machines and equipment must be manufactured by the standards of G7 countries and European countries. In addition, imported second-hand machinery and technology must ensure minimum requirements in terms of energy efficiency and capacity to meet businesses' operating and production demands. In recent years, the Ministry has worked with associations of Japan, South Korea and other countries to amend and supplement regulations and guidances related to the import of second-hand machinery and equipment in a timely manner.

***Mr. Takahisa Onose, Representative of Tax and Customs WG***

Tax and Customs policy and practices can contribute to sustainable growth in three fundamentally important ways:

1. Increasing certainty and security regarding the impact of tax on future profits.
2. Building trust and confidence in government institutions as wise, fair and principled.
3. Improving the productivity and competitiveness of Vietnam based enterprises through continuous reduction of time, cost and effort of tax compliance and audits in particular.

Vietnam can provide certainty on treatment of related party transactions 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.

Investors need to trust that as Vietnam's tax authorities face the challenges and opportunities of new and more sophisticated transactions and business models, they will respond with fairness and reasonableness based on application of core principles. Applying core tax principles to the following issues will instill confidence that the tax authorities are listening and trying to do the right thing.

For example, deductibility of expenses that were actually incurred, were in pursuit of revenue and backed by clear evidence is a fundamental tax principle. We encourage the GDT to apply this principle by allowing deductions for bad debt without requiring acknowledgement from the debtor; and we request removing limits of deductions on interest when the loan involves parities in jurisdictions with similar tax rates; and that business related activities that are in violation of non-tax laws be fully deductible.

The principle of the right to an independent appeal of tax assessments, initially outside of the courts, is fundamental to nearly all tax jurisdictions and should be developed in Vietnam, and the timing and severity of destructive enforcement measures like freezing bank accounts should occur in only after all reasonable remedies have been explored and only after such appeals process has run its course.

Revenue recognition must also be based on core principles such as the actual provision of the product or service and the actual right to receive proceeds based on that provision; not simply the existence of a contract.

Applying arms-length pricing principles only to transactions involving jurisdictions with differing tax rates and not to corporate restructuring where no profit arises will not only simplify management of transfer pricing, it will instill confidence.

Application of the principle of VAT exemption during the investment period should apply regardless of whether such investment period is in start up or expansion stage.

The recruiting criteria, training, accountability and discipline of tax inspectors should be directed toward building an inspection team that understands these and other tax principles and the law, and who applies them with fairness and integrity.

However, companies increasingly complain about tax inspections and the significant toll they take on enterprise productivity. The tax inspection process must be significantly reformed and streamlined so that audits last only as long as permitted by law; request only those documents required by law or are reasonably necessary; provide the specific legal basis of any reassessment, and provide information that is fully accurate.

***Department of Taxation - Mr. Nguyen The Manh, Deputy Director General***

The General Department of Taxation will seriously take into account comments related to investment incentives, tax refunds, related transactions, and Decree 20 on prevention of pricing transfer, electronic invoices, customs procedures, etc. Regarding problems in the implementation of current policies, businesses can directly contact tax authorities/customs authorities for guidance.

In terms of policy amendments, some of VBF's comments have been incorporated and are being reviewed for amendment to suit the reality. The General Department of Taxation is also reviewing and evaluating a number of amendments for adoption in the soonest time possible.

***Tourism Working Group - Mr. Kenneth Atkinson, Head***

*Visa facilitation:*

- To expand visa exemptions particularly to the North America, Australia, New Zealand, and three countries in developed Europe and to extend visa exemptions to a standard 30 days.



*Destination marketing:*

- To allocate a more reasonable amount to the National Tourism Promotion Fund from the State budget to support tourism promotion.
- To open tourism information and promotion centers possibly using virtual technology around the world once visa restrictions are improved to raise awareness of Vietnam.

*Environmental sustainability:*

- To ensure a more systematic approach to sustainable development in tourism.
- To promote incentives for responsible commitments and actions taken by stakeholders.
- City urban planners and tourism management authorities need to understand the importance of heritage assets as significant economic and material resources and recognize that economic value and fragility.

*Regulations on condotels:*

- Condotels need to be managed the same as other tourist accommodation establishments like hotels and resorts by localities. It is recommended that the authorities dispense with further specific regulations conditions or business licenses for condotels causing difficulties for project investors and condotel management and operation.
- To approve the granting of certificate of ownership of tourism apartments and tourism villas and to condotel buyers under the ownership term in accordance with the project duration.

*Long term planning for airport development and open skies policy.*

- It is recommended that the authorities create all favorable conditions to facilitate the granting of domestic and international air transport business licenses to enterprise that meet the stipulated conditions so as to have new airlines entering the market and promote investment in airport infrastructure development in Vietnam.

*H.R. recommendations:*

- Businesses and training institutions should collaborate to raise awareness and provide procedures to efficiently implement the national occupational skill standards for housekeeping front door operations in addition to the standards that have already been approved.
- National occupational skill standards should be developed for other sectors in the tourism and hospitality industry to enhance service quality and increase the competitiveness of Vietnam.

## **CLOSING**

***Ministry of Planning and Investment – Nguyen Chi Dung, Minister***

VBF has made recommendations for Vietnam in promoting rapid and sustainable development, expanding value chains, promoting a circular economy, implementing a green growth model, improving waste treatment, reforming administrative procedures, and developing small and medium businesses via facilitating their access to capital at a low cost. Infrastructure development to improve the competitiveness of the economy should be further promoted in addition to mechanisms and policies to attract investment through public-private partnership (PPP), which emphasizes the role of private investment in infrastructure development in the form of PPP. Accordingly, it is necessary to quickly study and issue the laws and regulations on PPP. The government is in the process of fine tuning this draft law. This is a new, challenging and complicated law whereas Vietnam does not have much experience in this field. The Ministry wishes to refer to international practices that are suitable to the practical situation in Vietnam. In the near future, the Ministry will broadly consult agencies, the business community, experts,

international organizations and embassies to collect practical comments and ensure feasible implementation of the Law.

VBF also discussed diversification of renewable energy sources such as wind power, solar energy, waste treatment, public transport related issues, and sustainable development of the capital market.

Regarding labor, the new regulations on labor subcontracting towards simplifying administrative procedures and improving regulations related to gender, collective bargaining, employers' management, minimum processes, etc. are important advances of the labor code.

For the tourism industry, government agencies recognized innovation proposals across six areas for growth, improved competitiveness, and bigger role of tourism in economic growth, such as visa policy, promotion, environmental sustainability, condotel regulations, long-term regulations on airport development, etc.

Regarding law enforcement, many agencies still have inconsistent ways of interpreting and applying the laws due to ambiguous regulations, particularly issues related to the laws on securities, health, technology transfer, environment, energy, etc. Proposals are made to introduce more transparency to tax and customs regulations.

In addition, there are many other issues of business community's interest 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.

The Government of Vietnam is determined to reform and restructure the economy, renew the growth model towards productivity, quality, efficiency and competitiveness, so as to achieve higher and more sustainable growth rates. However, it should be noted that rapid development must be in alignment with sustainable development context. To ensure such sustainability, the entire political system, especially businesses, plays a crucial role.

The Ministry appreciated the comments of associations and working groups, especially active discussions and thorough preparation of representatives from ministries and agencies. The Ministry of Planning and Investment will summarize all comments to submit to the Government and will further work with the ministries and agencies in the course of actualizing commitments and listening to the valuable recommendations from the business community.

***World Bank Group – Mr. Ousmane Dione, Country Director***

The discussion can be summarized by the terminology of “GRASP” as follows:

The “G” as “Growth”, in which Vietnam needs to embrace green growth first. There are many agendas unfolding within the green growth agenda. Pollution agenda is extremely critical for Vietnam. Vietnam can no longer ignore the impacts of the pollution on its green growth going forward. The waste agenda is also critical for Vietnam, whether it is related to the plastic or the waste water. The management of the natural resources will be critical. In reality, the cost of repairing a degradation of the environment will be much higher than to conserve the environment.

The “R” is about the “Reforms”, which need to be accelerated. The current context provides good opportunities to accelerate reforms, including the reform on the energy sector to look at the

issue of the bankability of the PPAs and also the issue of a transparent and cost based energy, the reform to enable a further business environment through the SME law and resolving insolvency.

The “A” is about “Adaptations”. How are Vietnam and the business community going to adapt in a fast changing world? It will be important to embrace innovations to modernize businesses and administrations. That modernization has also contributed to take the digital economy going forward. Artificial intelligence, fintech, smart cities or zones are opportunities within the digital economy which both businesses and the government should embrace going forward.

The “S” as “Social” – the need of investing in human capital. We need to improve capacities, skills through education, training and vocational training. issues related to pensions, modernization, and fast ageing population.

The “P” as “Productivity” – the quality of growth. That will require investment in quality of infrastructure, transport, and delivery services.

### **Vietnam Chamber of Commerce and Industry – Mr. Vu Tien Loc, President**

Aiming at a prosperous Vietnam in 2045 requires cooperation between the Government and businesses. VBF appreciates the efforts of the Government in reforms and open door policies. EVFTA will create another new momentum for Vietnam's rapid and sustainable development.

However, currently only 40% of the preferential tariffs of free trade agreements have been utilized by us in recent years. In addition, 70% of Vietnam's export comes from FDI sector. This means that only a marginal fraction of domestic enterprises can take advantage of market expansion opportunities from free trade agreements. This is one of the biggest challenges to Vietnam's trade development.

What can be done to help domestic private enterprises in Vietnam take advantage of opportunities to work with FDI to make good use of market expansion opportunities and reform. This is also a way to facilitate FDI businesses to take deeper roots in Vietnam's economy, through the value chains established with domestic businesses.

Regarding public-private partnerships, each year Vietnam needs up to USD 25 billion for infrastructure development projects and engaging private investment and public-private partnerships will be the key to solving this problem. Achievements in Vietnam's economy over the past 30 years are attributed to the attraction of ODA and FDI, and we hope that Vietnam will continue to succeed in mobilizing capital through PPPs for to finance the country's development in the coming years. PPP investment is a formula for institutional reform, both in infrastructure development and human resource training.

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