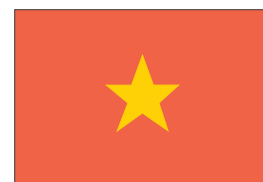


Guide to Doing Business in Vietnam



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Introduction

In the past couple of years, since its accession to the World Trade Organisation (**WTO**) on 11 January 2007, Vietnam has continued to take active steps to revamp its legal framework for business and investment in Vietnam. The changes are largely favourable to both foreign and local investors.

Since the introduction in 2006 of both the Investment Law, which regulates investments in Vietnam, and the Law on Enterprises, which sets out the types of corporate vehicles investors may establish to carry out their investment projects, additional legislation has been enacted to further enhance both foreign investment and foreign invested business operations in Vietnam.

Together, the Investment Law and the Law on Enterprises create a more favourable and clearer legal framework for doing business in Vietnam. Local and foreign businesses alike now enjoy an excellent backbone for future development in Vietnam.

All types of companies must operate according to the same corporate governance rules. This should create a level playing field for doing business. The failure to comply with these corporate rules will lead to personal liability for directors or officers of a company, regardless of whether the company is foreign-owned, Vietnamese-owned or State-owned. Similarly, the Investment Law also now applies to both local and foreign investors.

Forms of Doing Business

WHAT KEY LAW GOVERNS INVESTMENTS IN VIETNAM?

Whether a foreign investor invests “directly” or “indirectly” in Vietnam, the applicable law is the Investment Law. The Investment Law contains a significant number of investment guarantees and provides a roadmap for the conditions and procedures for investment in Vietnam.

“Direct” investment is defined to include the following:

- Establishing wholly foreign-owned enterprises (**WFOE**)
- Establishing joint ventures between local and foreign investor(s) (**JV**)
- Investing pursuant to a contract: Business Cooperation Contract (**BCC**), Build- Operate, Build-Transfer-Operate or Build-Operate-Transfer or Build-Transfer Contract
- Investing in developing a business (to expand the size or improve the capacity of a project or to introduce new technologies, increase the quality of products or reduce pollution to the environment)
- Purchasing shares of, or contributing capital to, companies or branches in Vietnam to participate in management
- Investing in a merger or acquisition of a company or branch and
- Other forms of “direct” investment (to be set out in subsequent legislation)

“Indirect” investment is defined to include the following:

- Purchasing of shares, bonds and other valuable papers
- Investing through securities investment funds and
- Investing through other intermediary financial institutions

The Investment Law requires an investor who invests “directly” to obtain approval for the relevant project. Approval is given via the issuance of an investment certificate (**IC**). In respect of “indirect” investments, the Investment Law stipulates that the investor needs to comply with the Securities Law and other relevant laws.

If a foreign entity does not wish, or is not ready, to invest in Vietnam, but desires to have a commercial presence in Vietnam, it may set up a representative office.

WHAT ARE THE MOST COMMON BUSINESS FORMS FOR DIRECT INVESTMENT IN VIETNAM?

Most foreign investors will utilize either a WFOE, JV or BCC to carry out a project in Vietnam.

A WFOE and JV are both Vietnamese corporate legal entities and therefore, in each case, a Vietnamese corporate vehicle to carry out investment in these forms must be established.

In a BCC, no legal entity is formed. The parties to such arrangement may agree to share profits and losses or conduct their business affairs in a particular manner, in much the same way as a partnership; it is, in effect, a contractual JV.

IN ORDER TO CARRY OUT A DIRECT INVESTMENT PROJECT IN VIETNAM IN WFOE OR JV FORM, MUST AN INVESTOR SET UP A VIETNAMESE LEGAL ENTITY?

Yes, to carry out a business or an investment project in the WFOE or JV form, an investor must set up a Vietnamese legal entity.

In respect of foreign investors carrying out their first project in Vietnam, the incorporation of the Vietnamese company takes place simultaneously with the licensing of their first project. In other words, a foreign investor cannot incorporate a company without a project. However, subsequent to the first project, they have the option to carry out additional projects either using the established corporate vehicle or setting-up new corporate vehicles.

WHAT TYPES OF VIETNAMESE LEGAL ENTITIES ARE AVAILABLE?

A foreign investor (just like a local investor) may select the following Vietnamese legal entities to carry out a project:

- A limited liability company (**LLC**) being either a single-member LLC (**SLLC**) or an LLC with two-or more members (maximum of 50 members) (**MLLC**)
- A shareholding or joint stock company (**JSC**) which is a company with at least three shareholders but no maximum number of shareholders
- A general partnership or a limited liability partnership
- A private enterprise (akin to a sole proprietorship)

WHAT ARE SOME IMPORTANT DIFFERENCES BETWEEN AN LLC AND A JSC?

The key difference is the ability of a JSC to mobilise capital by the sale of shares and securities. Furthermore, a company that wishes to list on a public securities exchange in Vietnam or conduct a public offering must be a JSC. In general, shareholders of a JSC have the right to freely assign their shares. In contrast, in an LLC, the assignment of charter capital (equity) is subject to the right of first refusal by the members. Finally, the corporate governance structure of a JSC is more complex than an LLC.

WHAT FACTORS SHOULD A FOREIGN INVESTOR CONSIDER IN DECIDING TO CHOOSE A JV OR A WFOE?

The two main factors that lead a foreign investor to choose a JV are: (1) many business sectors in Vietnam require a JV to establish a commercial presence in Vietnam and (2) the Vietnamese party has a key asset, local know-how and knowledge, or other factors that make the JV the necessary choice. For example, in real estate development projects, the Vietnamese party usually has the land use rights, which by law cannot be directly transferred to a foreign investor, but may be contributed into a JV.

WHAT IS A REPRESENTATIVE OFFICE PERMITTED TO DO?

A representative office represents the foreign company in Vietnam, as the name suggests. It is often the first step in establishing a commercial presence in the country. A foreign company that wishes to establish a representative office in Vietnam must first be duly established, for at least one year, in accordance with the laws of its home jurisdiction.

Representative offices have limited rights. They are permitted to engage only in certain business activities, including business development and cannot engage in activities that generate profit in Vietnam. The head of the representative office is not permitted to sign economic or commercial contracts with Vietnamese businesses on behalf of the offshore company unless he or she has specific legal authority from the offshore company. Despite the limitations, a representative office may play an important role in facilitating operations and business objectives on behalf of the offshore company.

Government Approvals

WHAT IS THE APPROVAL PROCESS FOR ESTABLISHING JVS AND WFOES?

In respect of foreign direct investment, whether it is in the form of a WFOE, JV, BCC or any other permitted form, an IC must be obtained from the relevant licence issuing body.

To receive an IC, an investor will complete either a registration or an evaluation procedure based on the size and type of project.

Registration applies to projects:

- Under VND 300 billion (approximately USD 16,667) and
- Not on list of “conditional” sectors

The time limit for issuance of an IC: 15 business days.

Evaluation applies to projects:

- Over VND 300 billion or
- On the list of “conditional” sectors

Time limit to issue an IC: 43 business days.

“Conditional” is defined to mean investment in sectors impacting:

- National defence and security, social order and safety
- Banking and finance
- Public health
- Culture, information, press and publishing
- Entertainment services
- Real estate
- Survey, prospecting, exploration and mining of natural resources, environment or ecological
- Development of education and training or
- Other sectors as set out by law

WHAT LEVEL OF THE VIETNAMESE GOVERNMENT MUST APPROVE A PARTICULAR PROJECT?

Decree 108/2006/ND-CP dated 22 September 2006, which guides the Investment Law, delegates the authority to issue ICs to the local People’s Committees (PCs) for most types of projects (including real estate) regardless of size except for limited types of “sensitive” projects which require approval directly from the Prime Minister (e.g. casino projects and production of cigarettes).

However, even with respect to these “sensitive” projects, if the Prime Minister has already approved the investment policies for investing in these sectors, the local PCs are authorised to issue the IC.

Business Scope and Authority

WHAT IS THE SIGNIFICANCE OF A COMPANY’S BUSINESS REGISTRATION CERTIFICATE OR AN IC?

All validly existing private business enterprises in Vietnam must have either a business registration certificate (**BRC**) or an IC. For foreign investors, the IC is both the BRC and the approval to undertake the investment project. Foreign invested enterprises (**FIEs**), which include WFOEs and JVs, always need to obtain an IC. ICs are usually issued by the local PC with jurisdiction over the matter. The ICs state the legal name of the company, the nature of the company (LLC or JSC), its business lines, its legal representative, business address, the amount of registered capital, and the details of any authorized project. Without a valid IC, foreign business enterprises cannot legally do business in Vietnam.

WHAT IS A “LEGAL REPRESENTATIVE” OF A VIETNAMESE COMPANY?

The legal representative is an officer of a Vietnamese company who has the primary responsibility and power to act on behalf of the company in its dealing with the State. Pursuant to the Law on Enterprises, either the chairman of the company (in the case of some SLLCs) or the chairman of the members’ council (in the case of some SLLCs and all MLLCs), chairman of the board of management (in the case of a JSC), or the general director (regardless of corporate form) must be designated as the legal representative.

Legal representatives have the authority to bind the company in contracts and are personally liable for the commission or omission of certain acts. For example, in the context of an LLC, the legal representative of the company must notify the business registration body in writing of the progress of capital contribution within 15 days from the date undertaken for capital contribution, and must bear personal liability for any damage to the company and to other persons due to late notification or inaccurate, untruthful or incomplete notification. The legal representative must reside in Vietnam.

WHAT IS THE SIGNIFICANCE OF A VIETNAMESE COMPANY’S “BUSINESS LINES”?

Unlike in most common law countries, a company in Vietnam is only permitted to conduct business activities that are narrowly defined and mostly codified into a State recognised and published list of business activities called “business lines.” Generally, for FIEs, the permitted business lines must be closely tied to what is considered necessary for that particular project. Furthermore, to obtain an IC, the investor needs tangible plans, including a feasibility study, detailing precisely what the investor will do. Broadly drafted business lines such as “doing any lawful business permitted by law” are not permitted.

WHEN DO CONTRACTS IN VIETNAM NEED TO BE NOTARISED?

Generally, all land related documents in Vietnam need to be notarised, including those related to improvements upon land such as the construction of buildings and houses. Most other contracts, including civil and commercial contracts, need not be notarised.

Capital Structure

WHAT IS THE CAPITAL STRUCTURE OF AN FIE?

Generally, for FIEs, there is no per se net worth or capital structure requirement; however, companies must have enough capital resources to successfully realise the business goals set out in their IC. The capital structure is stated in the IC, including the total investment amount. In practice, generally, at least 20% of the total investment amount should be contributed as equity (rather than from loans). In the case of a JSC, founding shareholders of JSCs are required to register to subscribe together for at least 20% of the number of ordinary shares offered for sale.

CAN THE CAPITAL CONTRIBUTION OF AN FIE BE REDUCED, WHETHER BY DISTRIBUTION OR OTHERWISE?

Yes, but there is a qualified waiting or a “lock-in” period. In an LLC, investors may reduce their capital contribution if business operations have been carried out for more than two years from the date of business registration; and, at the same time, ensure that debts and other property obligations of the company are able to be paid in full after returning part of the contributed capital to the investors. In a JSC, within three years from the date of issuance of the IC, the shares of founding shareholders cannot be sold except to other founding shareholders unless the sale is approved by the remaining shareholders.

WHAT ARE THE TIME LIMITS FOR CONTRIBUTING CAPITAL?

Under the Law on Investment, investors must contribute their capital contribution in accordance with the schedule stated in their IC. The Law on Enterprises does not prescribe a set time limit for the owners of LLCs to contribute capital; however, the founding shareholders of a JSC are required to register to subscribe for at least a combined 20% of the number of ordinary shares offered for sale and must pay in full for the shares registered for subscription within 90 days from the date of issuance of the IC of the company.

ARE THERE LIMITATIONS ON THE AMOUNT OF EQUITY A FOREIGNER CAN PURCHASE IN A DOMESTIC ENTERPRISE?

Not generally but there are the following notable exceptions:

- For publicly listed companies, the cap on ownership remains at 49%
- The allowed ownership ratio in the following sectors is restricted: banking, petroleum, civil aviation, publishing, press, education, securities, legal services, and insurance
- The allowed ownership ratio for State owned enterprises undergoing equitization or otherwise converting their form is restricted
- The ownership ratio for sectors set out in Vietnam’s WTO commitments must follow the restrictions set out therein

In practice, it should be noted that there are issues with licencing authorities refusing to register and/or implement foreign acquisitions of domestic companies doing business in certain sensitive sectors, such as real estate and distribution, despite there being no limitations in the law.

Retail and Distribution

ARE THERE ANY FOREIGN OWNERSHIP LIMITATIONS IN THE RETAIL AND DISTRIBUTION BUSINESS IN VIETNAM?

As from 1 January 2009, WFOEs are allowed to engage in trading and distribution in Vietnam, thereby eliminating the last restriction on foreign investment in this sector. Foreign investors directly investing in this business sector will still need to apply for and obtain an IC, and are still limited in the ability to freely establish retail outlets.

WHAT ARE THE REQUIREMENTS TO ESTABLISH A RETAIL OUTLET?

Pursuant to the WTO, Vietnam's commitment on wholesale trade and retailing services states: "The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an Economic Needs Test (ENT)." In turn, the ENT is explained as: "Applications to establish more than one outlet shall be subject to pre-established publicly available procedures, and approval shall be based on objective criteria. The main criteria of the ENT include the number of existing service suppliers in a particular geographic area, the stability of the market and geographic scale." What this means in practice is that the licensing of FIE retail stores, beyond the first one, is at the discretion of the Vietnamese authorities.

ARE THERE ANY RESTRICTIONS ON WHAT PRODUCTS MAY BE SOLD?

Although the retail and distribution sector has been further liberalised to permit more foreign investment, there are still restrictions on the distribution of certain products. Often these restrictions relate back to the restrictions on the importation of certain products discussed in more detail below. Foreign investors should consult the relevant product lists prescribed by Vietnam in accordance with its WTO commitments in order to determine whether certain products may be imported and sold in Vietnam.

Taxation

WHAT ARE THE CORPORATE INCOME TAX (CIT) RATES?

The uniform CIT rate is 25%. However, this CIT rate is not applicable to enterprises operating in the following sectors:

- For prospecting, exploring and mining of petroleum and gas and other rare and/or precious natural resources, the CIT rates applicable to these sectors are from 32% to 50%, depending on each specific project and business establishment.
- For education and training, occupational training, health care, culture, sport and environmental related sectors, the CIT rate applicable to these sectors is 10%.

There is a special incentive CIT rate of 10% for a period of 15 years (calculated from the first year in which the enterprise has turnover) for newly established businesses that have investment projects in areas with "specially difficult socio-economic conditions", in economic zones and in high-tech zones; and, for newly established businesses with investment projects in the sectors of high technology, scientific research and technological development, investment in development

of specially important infrastructure facilities of the State, and production of software products. Furthermore, there are tax exemptions or holidays available for a maximum of four years (calculated from the first year the business has taxable income) followed by a 50% reduction in the amount of corporate income tax payable for a maximum of nine subsequent years for the same types of projects.

There is also a special incentive CIT rate of 20% for a period of 10 years from the first year in which the enterprise has turnover for newly established businesses with projects in areas with “difficult socio-economic conditions”. There are also tax exemptions or holidays available for a maximum of two years followed by a 50% reduction in the amount of corporate income tax payable for a maximum of four subsequent years for these types of projects.

WHAT ARE THE VALUE ADDED TAX (VAT) RATES?

There are three VAT rates: 0%, 5%, and 10%, depending on the nature of the transaction.

WHO IS SUBJECT TO PERSONAL INCOME TAX (PIT) AND WHAT ARE THE RATES?

Persons who are considered “resident individuals” are subject to PIT. Non-residents are also subject to PIT, if the income is derived in Vietnam, irrespective of where the income is paid.

Foreigners who fall under the following categories are considered to be resident individuals of Vietnam for the purpose of PIT:

- Those who are physically present in Vietnam for a period of 183 days out of one calendar year or 12 consecutive months from the date of entry into Vietnam or
- Those who maintain regular residence in Vietnam, including registered temporary residents or those who have leased a residential premises in Vietnam for a term of 90 days or more within a tax year

The taxable income of resident individuals includes income arising from both within and outside the territory of Vietnam, irrespective of where the income is paid, i.e., resident individuals are subject to “global taxation”.

The applicable PIT rates are progressive and are set out below.

Monthly Income (in U.S. Dollars)	PIT Rate in %
up to \$312	5
from \$312 to \$625	10
from \$625 to \$1,125	15
from \$1,125 to \$2,000	20
from \$2,000 to \$3,250	25
from \$3,250 to \$5,000	30
over \$5,000	35

The Right to Purchase Foreign Currency and Remit Profits

MAY A FOREIGN INVESTOR PURCHASE FOREIGN CURRENCY IN VIETNAM?

Yes. The Investment Law specifically allows foreign investors to purchase foreign currency at credit institutions licensed to trade in foreign currency in Vietnam to meet their “non-capital” transactions and other permitted transactions (such as repayment of offshore loans, and remittance of dividends abroad) as set out in the foreign exchange laws. The law sets out a broad range of permitted transactions. The banks are in charge of foreign exchange compliance and will guide their customers accordingly. As long as the proper documentation is provided to the bank, remittance offshore is not a problem. There is no profits remittance tax.

Although all enterprises have the right to convert currency, there is no guarantee of the availability of any particular foreign currency in Vietnam except for important projects in certain fields.

IS IT POSSIBLE TO REPATRIATE INVESTMENT FROM VIETNAM?

Yes. The Investment Law provides that a foreign investor, after it has met its financial obligations to the State, may remit the following from Vietnam:

- Profits derived from business activities (profits may be remitted on a quarterly, semi-annual or annual basis)
- Payments received from the provision of technology and services and from intellectual property
- Principal of and any interest on offshore loans
- Invested capital and proceeds from the liquidation of investments
- Other sums of money and assets legally owned by the investor

WTO and Foreign Investment in Vietnam

HOW DOES VIETNAM’S WTO ENTRY BENEFIT FOREIGN INVESTMENT IN VIETNAM?

While the WTO Agreements are not specifically focused on investment terms and conditions, as a condition to entry into the WTO, Vietnam agreed to open up a number of previously restricted or closed sectors to greater foreign investment, including distribution and retail services, architectural and engineering services, construction, banking and education services. Except for a limited number of sectors not bound under WTO Agreements, most sectors are currently open to full foreign investment.

WILL VIETNAM LIVE UP TO ITS WTO COMMITMENTS?

Ultimately, this is a political question. The WTO rules are complex and demanding and many developing countries have trouble complying with all of them. However, Vietnam has many good reasons to comply. First, non-compliance would subject Vietnam to compulsory dispute resolution pursuant to WTO rules and could result in retaliatory measures by the offended nation. Second, the Vietnamese leaders seem to recognise the benefits that WTO membership provides and have issued laws prior to and after WTO accession that have overhauled the legal system to make it more transparent, predictable, fair, investor friendly, and in line with Vietnam’s compliance obligations set out in its WTO commitments.

Import/Export

MAY A FOREIGN INVESTED COMPANY FREELY IMPORT ITS GOODS INTO VIETNAM?

Generally, most goods may be imported into Vietnam. Some goods are prohibited, some are restricted and subject to permission from the MIT, and some others are subject to other regulation (such as health and food products, for example). Even without a physical presence in Vietnam, a foreign company may import goods into Vietnam, but this would require obtaining a certificate of registration of the right to export and import.

WHAT ITEMS ARE PROHIBITED FROM IMPORT?

Currently, the list of goods prohibited include: cigars, petroleum, specialised newspapers and magazines, disks and videos, aircraft and rockets, weapons and ammunition, certain types of second hand consumer goods, materials and transport facilities. This list is not exhaustive and is subject to change from time to time.

Litigation in Vietnam

WHAT IS THE STRUCTURE OF THE VIETNAMESE COURT SYSTEM?

The court hierarchy of Vietnam has three tiers: at the top is the Supreme Court, then the Provincial Courts, and then the District Courts.

The Supreme Court is composed of one Council of Supreme Court Judges and separate special courts, namely the Central Military Court, the Criminal Court, Civil Court, Economic Court, Labour Court, Administrative Court and respective appellate courts. The Supreme Court is empowered to hold supervisory and/or review trials of cases with judgments which have already taken legal effect but have been protested.

In limited cases, the Supreme Court has the power to take up and review judgments of first-instance in the immediate lower courts, which have not yet taken legal effect but have been appealed or protested.

The Council of Supreme Court Judges is the highest body for trials that apply *supervisory and review procedures* (highest body for trying *supervisory* and review cases) and the supreme authority on guiding courts on the uniform application of laws.

Under the procedural laws of Vietnam, a *supervisory trial* is a hearing that reviews judgments that have been rendered but have been protested for a possible serious violation of law. A serious violation of law is defined as (i) conclusions in the judgment do not reflect the objective facts; (ii) a serious violation of procedural laws; and (iii) a serious mistake in the application of the law.

A *review trial* is a hearing of judgments which have been rendered but have been protested based on the discovery of new facts that can materially affect the contents of those judgments.

Protest is the procedure (or the right of the Procuracy Office or Superior Courts) in which the procuracy office (prosecution office) or the superior court makes an appeal or objection to the judgment of a court. There are two types of protests. First, the Procuracy Office of the same level or higher may protest a judgment by requesting an appellate court hear the case following the

appellate procedure. The Procuracy Office may appeal a judgment of a court of first instance to the court of appeal regardless of the parties' wishes. Second, the Procuracy Office or Superior Court may protest the judgment by requiring a competent court hear the case via *supervisory or review* procedure.

A Provincial Court is composed of one Committee of Provincial Court Judges and separate special courts, namely the Criminal Court, the Civil Court, the Economic Court, the Labour Court, and the Administrative Court.

A Provincial Court is empowered:

- To hold first-instance trials of cases according to the provisions of the Code of Civil Procedure which include:
 - Transportation agreements via airway or sea way, sales of securities, disputes in investment, banking, insurance, intellectual property, and company
 - Cases where a concerned party to the dispute is living abroad or the disputed property is located abroad
 - Cases that a Provincial Court takes from a District Court where it deems necessary
- To conduct appellate trials of cases where the first-instance judgments and/or rulings of lower courts have not yet taken legal effect but have been appealed and/or protested against according to the provisions of the procedural law
- To supervise, review cases where judgments and/or rulings of lower courts have already taken legal effect but have been protested, according to provisions of the procedural law

The Committee of Provincial Court Judges has the power to hold supervisory and review trials which have already taken legal effect but have been protested.

Generally, a District Court has the power to hold first-instance trials in civil, commercial, and labour cases except for when the Provincial Courts deem it necessary to exert jurisdiction over a matter.

WHAT ARE THE QUALIFICATIONS OF JUDGES IN VIETNAM?

According to the 2002 Law on Organisation of the People's Courts and Ordinance on Judges and Peoples' Assessors, to be appointed as a judge a person must meet the following conditions:

- (a) be loyal to the Fatherland and the Constitution of the Socialist Republic of Vietnam
- (b) have good qualities and virtue
- (c) be incorruptable and honest, determined to protect the socialist legality
- (d) have a bachelor's degree in law and have been trained in the Judicial Academy
- (e) have engaged in practical work for a period of time prescribed by law
- (f) have the adjudicating capability
- (g) have good health to ensure the fulfilment of assigned tasks

The required time set out in point (e) above is four years for a District Court.

To become a Provincial Court judge, a person must have been a District Court judge for at least five years or if not appointed as a District Court judge, a person must have worked in the legal profession for at least 10 years.

To become a Supreme Court judge, he must have been a Provincial Court judge for at least five years or if not appointed as a Provincial Court judge, he must have worked in the legal profession for at least 15 years.

The term of office for every judge is five years. Upon the termination of the term, a Judge Selection Council will review the performance of a judge and decide if he is qualified for reappointment. The components of the Judge Selection Council are different according to the level of a judge, i.e., District or Provincial or Supreme Court judge.

IS THE ROLE OF JUDGES SIMILAR TO OTHER CIVIL LAW JURISDICTIONS IN THAT THEY TAKE THE LEAD IN INVESTIGATING THE CASE?

The revised Code of Civil Procedure has introduced some features of a more adversarial litigation system, including: burdens of proof and requiring parties to take the initiative in adducing evidence to support their case. Therefore, it has lessened the judge's role as the lead investigator in the case. However, it is a civil law system and the rule for the parties' right to discovery is not comprehensive.

WHAT IS THE SYSTEM FOR ENFORCING COURT JUDGMENTS?

From 1 July 2009, an order to execute a civil judgment is governed by the Law on Execution of Civil Judgments. Once a judgment is obtained, it is given to the civil judgment- executing bodies who must issue a decision to execute the judgment. The executors must allow the debtor at least 15 days, counting from the date of decision to execute the judgment, to voluntarily comply with the judgment. However, in situations where it is necessary to prevent the judgment debtors from dispersing, destroying or hiding executable assets from execution, the fifteen day wait period is not applicable.

The executors are entitled to apply, among other things, the following measures to effect a judgment:

- Seizure of account deposits, seizure of money, recovery of valuable papers of the judgment debtors
- Seizure of incomes of the judgment debtors
- Blockade of accounts, property of the judgment debtors at banks, credit organisations, State treasuries
- Detaining, or handling of the assets of the judgment debtors, including their assets being held by the third persons
- Forced handover of houses, transfer of land use rights or handover of objects or other assets
- Banning judgment debtors from doing certain types of work/employment or forcing judgment debtors to do certain types of work/employment

The time frame from filing a lawsuit to obtaining a judgment is 90 days or more, depending on the complexity of the case and the court workload. After the judgment, the losing party has 15 days to appeal. Add to this the 15 days to await voluntary execution, most judgment creditors will likely wait at least one 120 days from the date of filing the civil petition for a decision to force judgment execution. The actual execution of the decision by "executors" may take additional time.

In order to reduce the workload of the state judgment-executing agencies, on 19 February 2009, the Prime Minister issued Decision No. 224/QĐ-TTg to approve the establishment of the private bailiff system. Pursuant to this decision, several pilot bailiff offices will be set up in Ho Chi Minh City. The bailiff office is not intended to be part of a state body. Rather, it is to be a private enterprise. A bailiff has, among other powers, the power to execute court judgments. However, the effectiveness of the private bailiff system in executing judgments remains to be seen because the Government is in the process of drafting legislation to guide the operation of the private bailiff system and, consequently, bailiff offices are currently not in operation.

HOW INDEPENDENT OF POLITICS IS THE VIETNAMESE COURT SYSTEM?

Independence of the judiciary system from politics is guaranteed under the laws of Vietnam. However, in practice, most members of the judiciary system are members of the Communist Party and will seek its advice on sensitive matters.

POLITICAL ISSUES APART, HOW WELL DO VIETNAMESE COURTS WORK?

Anecdotal evidence indicates that litigants are often dissatisfied with the quality of the judicial system in Vietnam. The common cause seems to be the lingering perception that the judicial system is not transparent or accountable. Moreover, since the hearing process may encompass stages of first instance, second instance, appeal, supervision, and review, reaching a final judgment is often quite long and frustrating. Nonetheless, with recent and pending legislation, the situation is improving and will hopefully continue to improve.

IS ARBITRATION IN VIETNAM PREFERABLE TO LITIGATION?

Because of the appeal rules and the lack of “practical” independence of the judiciary, arbitration in Vietnam is sometimes preferable. Furthermore, the enactment of the 2003 Ordinance on Commercial Arbitration has improved the terms of commercial arbitration. One benefit of the Ordinance on Commercial Arbitration is that, for disputes that fall within its scope, an arbitral award arising pursuant to it may be brought directly to an enforcement agency for enforcement unless such award is cancelled by a Vietnamese court.

The Ordinance on Commercial Arbitration only applies to disputes arising from commercial activities. The Ordinance broadly defines “commercial activities” to mean “the performance of one or more commercial acts by a business organisation or an individual, comprising of purchase or sale of goods; provision of services; distribution, commercial representation or agency; bailment; leasing out or leasing; hire-purchase; construction; consulting; engineering; licensing; investment; finance and banking; insurance; exploration and exploitation; transportation of goods and passengers by air, sea, rail or road; and other commercial acts in accordance with law.” This encompassing definition generally means most disputes likely will satisfy the criteria for using this form of dispute resolution.

IS OFFSHORE ARBITRATION POSSIBLE?

Yes, under the Law on Investment the parties may choose offshore arbitration. The Code of Civil Procedure sets out guidelines on the recognition and enforcement of foreign arbitral awards in Vietnam. Vietnam has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 28 July 1995. It should be noted that enforceability is often an issue with foreign arbitral awards because the awards must not be contrary to the fundamental principles of Vietnamese law. According to some published

Vietnamese court opinions, any violation of Vietnamese law could be construed as being as against the fundamental principles of Vietnamese law. This means Vietnamese courts are given a second chance to review a decided arbitral award which may frustrate the party seeking to enforce such award.

ARE FOREIGN JUDGMENTS ENFORCEABLE IN VIETNAM?

Generally, foreign judgments are not enforceable in Vietnam. Under the Code of Civil Procedure, Vietnamese Courts will only consider the recognition of judgments issued by Courts in countries that have entered into a judicial agreement with Vietnam. To date, most of the countries that have entered into a judicial agreement with Vietnam are socialist regimes.

With regard to countries that have not signed a judicial agreement with Vietnam, the recognition of the judgements issued by the courts in those countries may be considered for recognition on a reciprocal basis. However, in practice, few judgements issued by courts in foreign countries (most of them socialist countries) have been recognised by the Courts of Vietnam.

Real Estate Law

IS IT POSSIBLE FOR FIIES TO OWN LAND IN VIETNAM?

Technically, no. In Vietnam, land belongs to the people and the right to use the land is administered by the State for the people. Ownership is referred to as a “right to use land” (**LUR**) and evidence of such right is a land use right certificate (akin to a title deed) (the “**LUR Certificate**”) which sets out the term and the purpose of the land use. LURs can be granted on a “long- term” basis (i.e. without a specific term of use) or for a limited term. In general, “long-term use” LURs are only granted for a number of very limited purposes such as for residential, personal use, for households and individuals that have already been granted long-term LURs to use for the family’s production, business purposes, for national security purposes, etc.

While a LUR Certificate is similar to a deed in most countries, some differences and uncertainties should be noted. For example, LUR may be used only for the specific purpose for which it was granted. Failure to do so can lead to withdrawal of the LUR. In general, the State is required to provide compensation if it withdraws or reclaims the land. However, there are circumstances when no compensation is required. For example, the Government may withdraw land:

- When the term in the LUR Certificate has expired and no extension is given:
 - Regarding land and the assets on land, no compensation will be paid
- When the land for an investment project has not been used for 12 consecutive months or when the implementation schedule has been delayed for 24 months from the date committed to in the project authorization documents after the date the land was handed over and no approval is granted for such delay:
 - No compensation is payable “in respect of land”
 - Government will issue (but has not yet done so) legislation on compensation for assets on land

Furthermore, the term or duration of the LUR for foreign investors is usually 50, and may be up to 70 years (in the case of residential land and in special circumstances), but not in

perpetuity. However, pursuant to Decree 84/2007/ND-CP, foreign developers of residential land may obtain a land lease for 70 years which may be extended without limit, each time for an additional period of 70 years without being required to pay additional rental fees for the extended duration.

There are four forms of LUR: The first two comprise an allocation with or without payment of a land use fee (LUF); and the last two comprise a lease with payment annually or a lump-sum payment for the whole of the lease term. Previously, foreign individuals and organisations were entitled only to: (1) receive a lease (and could not receive an allocation) from the State or (2) obtain land as capital contribution by a Vietnamese party into a JV with a foreign company. Currently, under Article 24 of Decree 84/2007/ND-CP, the law allows the “assignment of projects using land” from *domestic economic organisations* (e.g., domestic companies) to foreign invested companies in a variety of circumstances, providing foreign investors additional avenues to acquire land in Vietnam.

CAN A FOREIGN COMPANY OR INDIVIDUAL OWN IMPROVEMENTS AND OTHER ASSETS ON LAND IN VIETNAM?

Yes, when a foreign developer builds assets on land for which it has a LUR, it has an ownership interest in the assets provided the developer registers the assets. However, with regard to purchasing existing assets on land, the answer is more complex.

Generally, the law does not allow a foreign investor to directly purchase assets, such as buildings for the sole purpose of buying, selling, or leasing assets on the land. It does, however, allow a foreign investor to invest in an existing asset to improve it. The extent of the improvement needed to satisfy this requirement is still unclear.

ARE THERE ANY LIMITS ON THE DEPOSIT AMOUNT OR ADVANCE PAYMENT AMOUNT A DEVELOPER MAY REQUEST FROM A PURCHASER OF RESIDENTIAL HOUSING?

Yes, there are legal limits as to when a deposit or advance payment can be collected. Pursuant to the Law on Residential Housing and the Law on Real Estate Business, a deposit or advance payment for commercial residential housing:

- Cannot be collected unless
 - The design of the residential housing has been approved
 - The construction of the foundation has been completed
 - The developer has completed the construction of the infrastructure servicing the real estate project in accordance with the approved contents and schedule of the project and
- Cannot exceed 70% of the selling price before handover

HOW IS THE LAND USE FEE (LUF) AND LAND RENTAL CALCULATED AND WHEN IS IT PAYABLE?

LUF is based on the land price list issued by the People’s Committee of each city or province on 1st January every year. The land price list is based on the land’s market value. It is unclear as to whether improvements upon the land are included in the land price. LUF is payable when the land is allocated.

Land rental is payable annually or in one lump-sum payment when the land is leased from the State pursuant to a land lease agreement and is about 0.5% - 2% of the land price.

MAY LAND BE MORTGAGED AND IS REGISTRATION OF A MORTGAGE REQUIRED?

In respect of an investor leasing land from the State, the land may only be mortgaged if the land rental is paid, in advance, in a lump-sum. Furthermore, the land may only be mortgaged to credit institutions licensed to operate in Vietnam, not to offshore lenders or shareholders.

Registration of a mortgage is required and registered at Land Use Right Registration Offices. The procedures for registration are fairly clear and LUR Registration Offices have prescribed time periods to carry out registration formalities.

Enforcement of a mortgage is based on the contract. If enforcement cannot be carried out under the contract, the mortgagee may sell the land or request a State body to sell the land by auction and commence proceedings.

CAN FOREIGN INDIVIDUALS OWN AN APARTMENT IN VIETNAM?

Yes, under a 5 year pilot program, individuals who have permission to reside in Vietnam for more than one year have the right to purchase and “own” apartments for a maximum period of 50 years if they meet the following criteria:

- An individual who invests directly in Vietnam or is working in a managerial position of an enterprise
- An individual whose contribution to Vietnam has been rewarded with a decoration or medal from the State President and made special contribution to Vietnam as decided by the Prime Minister
- An individual who currently works in the socio-economic sector and holds a bachelors or higher degree from a university and possesses special technical knowledge and/or technical skills which Vietnam requires
- An individual who has married a Vietnamese citizen

A foreign individual may own only one apartment. The foreign individual will be issued a home ownership certificate and, if the apartment is sold, devised or donated, the new owner obtains the apartment for an additional term of 50 years if the purchaser is foreign, and for an unlimited term if the purchaser is Vietnamese. A foreign-owned apartment may be mortgaged.

Internet

WHO REGULATES INTERNET RELATED BUSINESSES?

Internet Service Providers (**ISPs**) must be licensed by the Ministry of Information and Communication (**MIC**), and licences once issued will be valid for up to ten years. Internet Content Providers (**ICPs**), defined as a body, organisation or enterprise that provides information on the Internet through an ISP, must also be issued a licence by the MIC. It seems to be the case that ICPs only need to obtain a one-time permit to post information on the Internet instead of a permit on every occasion. Further, these organisations are subject to governmental control by MIC and Ministry of Public Security.

DOES VIETNAM HAVE LAWS RELATING TO ELECTRONIC COMMERCE?

Yes, Vietnam has laws governing electronic commerce. The MIC is the Governmental authority responsible for presiding over electronic transaction activities. The law stipulates the legal validity of data messages and electronic signatures, signing and performance of electronic contracts, and security, safety, protection and confidentiality in electronic transactions.

DOES VIETNAM CENSOR CERTAIN TYPES OF CONTENT THAT MAY BE PLACED ON INTERNET WEBSITES?

Yes, under Vietnamese law an ICP cannot publish content on websites that may oppose the State and/or the Communist Party, cause people to rebel against the State and/or the Communist Party, infringe upon the ethics and customs of Vietnam, or disclose national secrets. Misuse of the internet can result in fines that range from VND 100,000 to VND 100,000,000 and/or criminal charges.

Labour

WHAT APPROVALS DO EXPATRIATES NEED TO LEGALLY WORK IN VIETNAM?

The majority of expatriate employees and overseas Vietnamese who wish to work in Vietnam for three months or more must obtain a work permit. A work permit will allow them to work in Vietnam for up to 36 months. However, a work permit may be extended in the following cases:

- When an employer has a labour plan to train a Vietnamese worker to replace the foreign employee in such position but the Vietnamese worker is not yet capable of performing the required task; or
- When a foreigner enters Vietnam to work in the fields of economics, commerce, finance, banking, insurance, science and technology, culture, sports, education or medicine and the time required for such work exceeds 36 months

The following categories of persons are exempt from obtaining a work permit for his or her employment in Vietnam:

- Those entering Vietnam to work for a period of less than three months
- Those who are a member of a MLLC
- Those who are the owner of a SLLC
- Those who are a member of the board of management of a JSC
- Those who are entering Vietnam to offer services
- Those who are entering Vietnam to resolve an emergency situation, such as a breakdown or a technically or technologically complex situation which Vietnamese or foreign experts in Vietnam are unable to adequately deal with. However, even in such situations, if the required emergency work exceeds three months, a work permit must be obtained
- Foreign lawyer to whom the Ministry of Justice has issued a certificate to practise law in Vietnam

WHAT ARE THE KEY CONDITIONS FOR AN EMPLOYMENT CONTRACT IN VIETNAM?

All workers, both foreign and Vietnamese, must have an employment contract that covers a number of general issues, including the nature of the work, working hours, breaks, salary, location and duration, etc. If an employee is called for military or public service, the employment contract shall be suspended for the duration of that particular service.

Normally, the employment contract must be signed by the employer and the employee, though an authorised person may sign on behalf of a group of workers. The employment contract may take one of three forms:

- A contract for an indefinite term
- A contract for a definite term of 12 to 36 months or
- A seasonal or fixed term of less than 12 months

A contract for a definite term or seasonal term is automatically converted into an indefinite term contract if at the expiry of the contract the employee continues to work for the employer and the parties fail to sign a new contract within 30 days from the date of expiry. In addition, a definite term contract may only be extended on one occasion; thereafter, the employee must either be released or employed on an indefinite term basis.

ON WHAT GROUNDS MAY AN EMPLOYER TERMINATE AN EMPLOYEE?

An employment contract shall terminate upon the following:

- Employment contract has expired
- Work/assignment in accordance with the employment contract has been completed
- By mutual agreement between employer and employee
- By court decision in respect of employee's prison sentence or prohibition of the employee's resumption of work
- By the employee's death/or declaration by the court that the employee is missing

It is difficult for an employer to unilaterally terminate an employment contract. A simple termination notice, no matter how far in advance, is not by itself permissible unless the employee agrees. Otherwise, an employer may only unilaterally terminate an employment contract in limited and defined circumstances as follows:

- The employee is legally dismissed
- The employee repeatedly fails to perform the work required as per the employment contract
- The employee suffers illness or injury and remains unable to work after having received treatment for a period as stipulated by law
- Reasons of force majeure forcing the employer to scale down production and reduce the number of employees
- The enterprise ceases its operation

Dismissal is only permitted when the employee has committed one or more of the following acts:

- Theft
- Embezzlement

- Disclosure of technological and business secrets
- Any act that causes severe losses to the company's assets and interests
- Repeating a breach while on a disciplinary sanction for an earlier breach
- Repeating a breach after being demoted for the earlier breach
- Absence for five working days or more in a month or 20 working days in a year without justifiable reasons

Prior to termination the employer must send a notice of termination to the employee as follows:

- 45 days prior to the last day of work for an indefinite term contract
- 30 days prior to the last day of work for a definite term contract of between 12 months and 36 months
- 3 days prior to the last day of work for a seasonal or fixed term of contract less than 12 months

Environmental Law

WHAT ENVIRONMENTAL REPORTS OR STUDIES MUST BE SUBMITTED FOR INVESTMENT PROJECTS IN VIETNAM?

There are two kinds of documents that anyone wishing to invest in Vietnam may be required to submit: an environmental impact assessment report (the “**EIA Report**”) and an environmental protection undertaking (**EPU**). An investor, depending on their investment sector and/or their scope of investment, may have to prepare one or the other.

The content of the EIA Report must include:

- Specifications of the project
- Operational technology of the project
- Measures to minimise any negative effects on the environment; an undertaking to apply environmental protection measures during the construction and operation phases and
- Opinions of the local PC and the community where the project is carried out.

The contents of the EPU report must include:

- The project site
- the form and scale of production, trading and services, materials and raw materials used for the project
- Likely waste to be produced from the project and
- The undertaking to apply measures to minimise and treat waste and comply with the laws on the environment.

The undertaking must be registered with the local district PC where the project is located before commencement of the project.

WHAT ARE SOME OF THE POSSIBLE ENVIRONMENTAL RELATED FINANCIAL OBLIGATIONS AN INVESTOR MAY FACE IN VIETNAM?

An investor may face the following environmental related financial obligations:

- *Environment tax*: Any organisations or individuals producing goods that have negative environmental and health consequences are subject to this tax.

- *Environmental protection fees*: These must be paid by organisations or individuals discharging waste that could be harmful to the environment.
- *Natural resource exploitation and restoration funds*: An organisation or individual that exploits natural resources must give a deposit to a credit institution operating in Vietnam or to the environment protection fund where the exploitation is taking place.
- *Environment protection funds*: The State and each of its provinces have financial agencies to protect the environment. These agencies are funded by the government and are charged with protecting the environment from further damage.

Bankruptcy Law

WHO MAY FILE BANKRUPTCY IN VIETNAM?

The bankruptcy law recognises liquidation and re-organisation of enterprises, co-operatives and alliances of cooperatives established and operating pursuant to the law. There is no individual bankruptcy legislation. Moreover, certain enterprises are subject to special treatment under the bankruptcy law.

WHICH COURT HAS JURISDICTION OVER A BANKRUPTCY?

There is no separate bankruptcy court. Depending on where the business is registered, it will be under the jurisdiction of the District People's Court or the People's Court in a province or a city under the Central authority. The Court of Appeal under the People's Supreme Court has jurisdiction to review any appeal. The judge has the power to collect evidence, investigate, convene, and chair meetings of the creditors. Real estate is not treated differently than other assets in insolvency proceedings.

Intellectual Property

WHAT LAWS PROTECT INTELLECTUAL PROPERTY IN VIETNAM?

The Civil Code and the Law on Intellectual Property codify the bulk of the regulations on intellectual property. Vietnam is also a signatory to the Paris Convention, the Madrid Agreement and the Stockholm Convention of 1967, the Berne Convention for the Protection of Literary and Artistic Works, and the Geneva Convention for the Protection of Producers of Phonogrammes against Unauthorised Duplication of their Phonogrammes.

Industrial property and copyright are regulated separately. Industrial property is administered principally by the Ministry of Science and Technology and copyright is regulated by the National Office of Intellectual Property.

IS REGISTRATION REQUIRED TO PROTECT INTELLECTUAL PROPERTY?

Yes, registration is generally required except for copyright. Registration of copyright will create prima facie evidence for protection. Generally, for other intellectual property rights, the rights are protected upon registration on a first to file priority basis. Exceptions to the first to file rule are trade secrets, geographic indications, and trade names which are entitled to legal protection upon fulfilment of their own conditions for formation and usage.

WHAT IS THE DURATION OF PROTECTION FOR PATENT, COPYRIGHT, TRADE MARK, INDUSTRIAL DESIGN AND TRADE NAME?

TYPE	BRIEF LEGAL DESCRIPTION	DURATION OF PROTECTION
PATENT	A technological solution presenting worldwide novelty, an inventive step applicable in socio-economic fields	20 years from the date of application
COPYRIGHT	Rights of an organisation or individual to works which such organisation or individual created or owns – “works” means a creation of the mind in the literary, first artistic or scientific sectors, expressed in any mode or form	Authors’ life plus 50 years except for movies, photographs, plays, applied fine arts works which enjoy only 50 years’ protection from date of publication
TRADE MARK	Marks used to distinguish goods or services of different organisations and individuals. They may take the form of words, images or any combination presented in one or more colours	10 years from the date of application, renewable for successive 10 year periods without limit
INDUSTRIAL DESIGN PATENT	The outward appearance of a product embodied in three dimensional configuration, lines, colours or a combination of such elements	5 years from the date of application, renewable for an additional two periods of 5 years – up to a maximum of 15 years
TRADE NAME	The designation of an organisation or individual used in business activities in order to distinguish the business entity bearing such trade name from other business entities in the same business sector and area	Entire duration of use

Technology Transfer

WHO HAS THE RIGHT TO TRANSFER TECHNOLOGY?

The following organisations and individuals have the right to transfer, the right to use (by licensing / sub-licensing) or the ownership of technology:

- The owner of the technology
- Any organisation or individual being permitted by the owner of the technology to transfer the use or ownership of the technology

A technology transfer must be implemented on the basis of a written contract that includes specific terms required by law and, generally, must be registered with the competent State body.

WHAT KIND OF TECHNOLOGY MAY BE TRANSFERRED?

The legal objects of technology transfer are:

- Technical know-how
- Technical knowledge in the form of technological plans, technical solutions, formulae, technical parameters, design drawings, technical plans, computer programs, and data information about the transferred technology
- Solutions for rationalisation of production and renovation of technology, licences for special business rights and other objects as provided in the Law on Technology Transfer.

In situations where the technology is also subject to protected intellectual property rights, the transfer of such technology must be conducted together with the transfer of intellectual property rights in accordance with the Law on Intellectual Property.

WHAT TECHNOLOGY TRANSFERS ARE PROHIBITED?

The following technologies are not permitted to be transferred:

- Technology that does not meet the regulations of the law on occupational safety, occupational hygiene, ensuring the health of people, or on protection of the environment
- Technology that adversely affects culture, security and social safety
- Technology which fails to have technical, economic or social efficiency
- Technology which serves national security or defence, but the permission of the authorised State body has not been obtained

WHAT APPROVALS OR PROCEDURES SHOULD BE FOLLOWED IN ORDER TO TRANSFER TECHNOLOGY IN VIETNAM?

A technology transfer must be implemented on the basis of a written contract which must include specific terms required by law.

The technology transfer contract is subject to registration with the competent State body, in the following circumstances:

- The transfer of foreign technology into Vietnam
- The transfer of Vietnamese technology outside of Vietnam
- Domestic transfer of technology within Vietnam where the value of the technology transfer contract exceeds VND 500,000,000 (approximately USD 27,777)

Registration must take place within ninety days after executing the technology transfer contract. The parties to a technology transfer contract may agree on the price where the transferee does not use State funds. If a transferee is to use State funds, it must submit the contract to a competent State body for approval.

Government of Vietnam and Charts of Major State Agencies

OVERVIEW OF THE GOVERNMENT OF VIETNAM

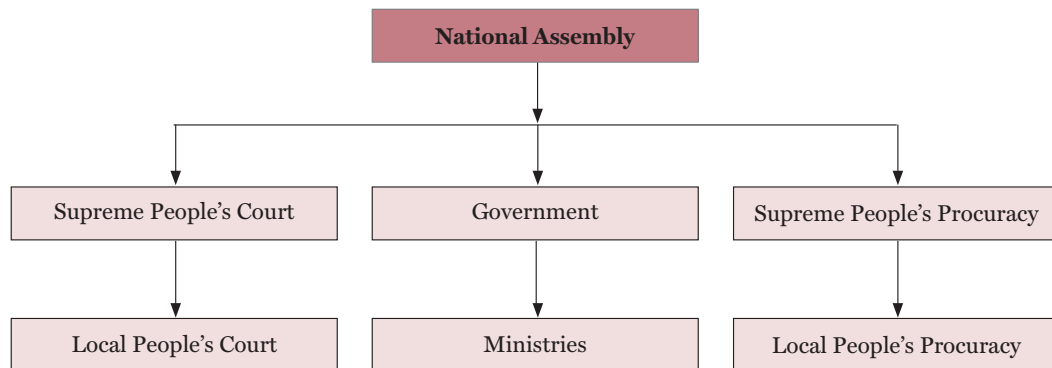
The Socialist Republic of Vietnam is a single-party state. Only political organisations affiliated with or endorsed by the Communist Party are permitted to contest elections. The President of Vietnam is the titular head of state and the nominal commander in chief of the military of Vietnam, chairing the Council on National Defence and Security. The Prime Minister of Vietnam is the head of government, presiding over a council of ministers.

The National Assembly of Vietnam is the unicameral legislature of the government, composed of 498 members. It is superior to both the executive and judicial branches. All members of the council of ministers are derived from the National Assembly. The Supreme People's Court of Vietnam, which is the highest court of appeal in the nation, is also answerable to the National Assembly. The General Secretary of the Communist Party is perhaps one of the most

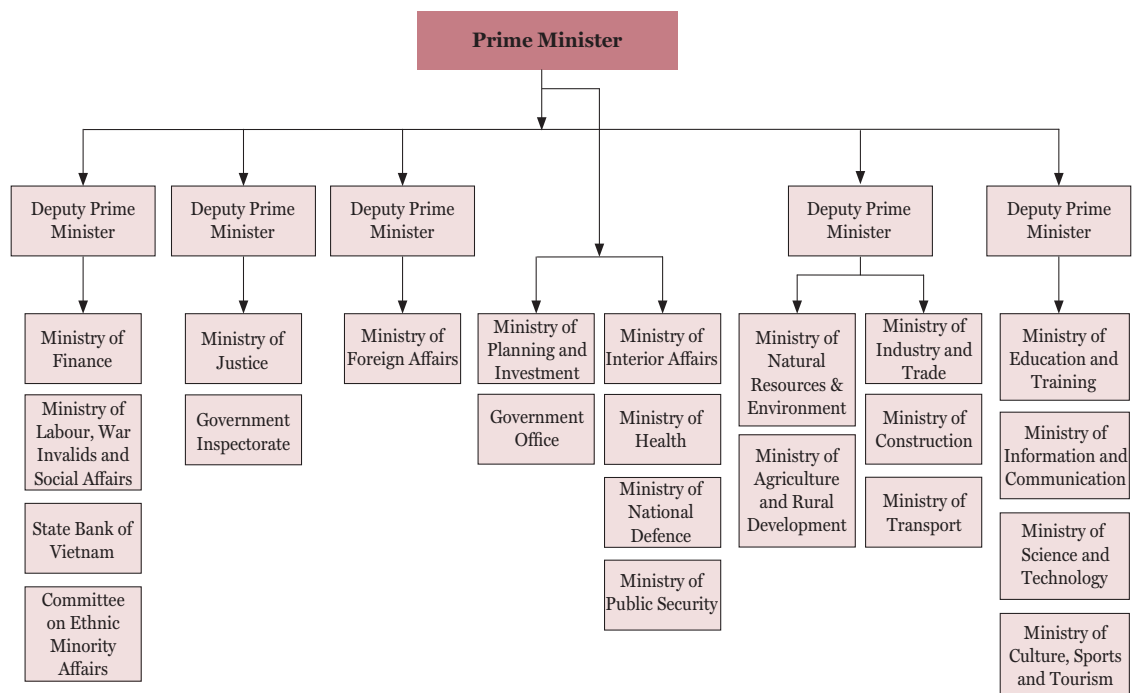
important political leaders in the nation, controlling the party's national organisation and state appointments, as well as setting policy.

The following charts show the general organisational structure of the Socialist Republic of Vietnam.

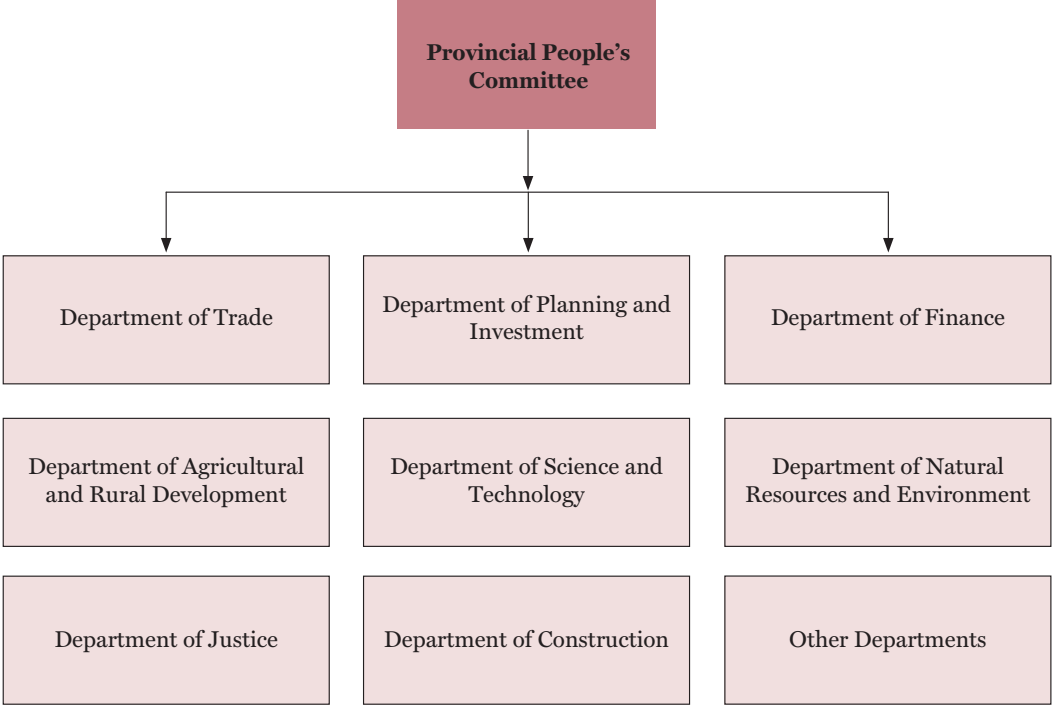
NATIONAL STRUCTURE



GOVERNMENT OF VIETNAM



LOCAL STRUCTURE



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