

2021 WHITEBOOK

TRADE AND INVESTMENT ISSUES
AND RECOMMENDATIONS



EVFTA IMPLEMENTATION

ENHANCING QUALITY AND A RESPONSIBLE
INVESTMENT ENVIRONMENT

13th Edition

www.eurochamvn.org



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ABOUT EUROCHAM

EuroCham is the voice of European business in Vietnam. Since our establishment with just 60 members in 1998, our chamber has grown to represent more than 1,000 businesses and investors in all sectors and industries from start-up and SMEs to some of the world's leading enterprises. With offices in both Hanoi and Ho Chi Minh City, and Chapters in the Central, North Eastern and South Eastern regions of Vietnam, EuroCham's mission is to improve the trade and investment environment for the benefit of all.

EuroCham is also an umbrella organisation gathering affiliated European business associations: the Belgian-Luxembourg Chamber of Commerce in Vietnam (BeluxCham); the Central and Eastern European Chamber of Commerce in Vietnam (CEEC); the Chamber of Commerce and Industry Portugal-Vietnam (CCIPV); the Dutch Business Association Vietnam (DBAV); the French Chamber of Commerce and Industry in Vietnam (CCIFV); the German Business Association in Vietnam (GBA); the Italian Chamber of Commerce in Vietnam (ICham); the Nordic Chamber of Commerce in Vietnam (NordCham); and the Spanish Business Group in Vietnam (SBG). EuroCham is a founding member of the Vietnam Business Forum (VBF) consortium and chaired the VBF in 2012, 2013 and 2018 representing the FDI private sector.

EuroCham is also a member of the European Business Organisation Worldwide Network ASBL (EBOWWN), representing European businesses in almost 40 countries across the globe and addressing common trade and investment-related issues to the European Commission. In the region, EuroCham is a founding member of the EU-ASEAN Business Council (EUABC). Since the end of 2015, EuroCham has been the implementing partner of the South East Asia IPR SME Helpdesk, providing free-of-charge advice and support on intellectual property protection when entering and expanding in the ASEAN market. In 2017, EuroCham was awarded 'Best Large Chamber of the Year' at the Asia Pacific International Chambers of Commerce Awards. EuroCham has received several Certificates of Merit, including from former Prime Minister Nguyen Xuan Phuc for our contribution to Vietnam's development. Meanwhile, in 2019, EuroCham received a Certificate of Merit from the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR) for our 'Active Contribution to ACAPR's Activities'.

For more information about EuroCham: www.eurochamvn.org
To download the Whitebook: www.eurochamvn.org/whitebook

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Alain Cany

*Chairman of the European
Chamber of Commerce in
Vietnam*

MESSAGE FROM THE CHAIRMAN

It is a pleasure to write the introduction to this 13th edition of the Whitebook as the returning Chairman of EuroCham. When I last chaired our chamber from 2005 until 2012, we launched the Whitebook report and grew it from its first edition in 2007 to be a leading trade-advocacy publication in Vietnam.

I hope that despite the strong fourth wave of the Covid-19 pandemic we will be able to present the Whitebook to the country's high-profile leaders and conduct high-level discussions on how European business can contribute to improving Vietnam's trade and investment environment.

This 13th edition of the Whitebook is published at an important time for our members. The EU-Vietnam Free Trade Agreement (EVFTA) entered into force on 1 August 2020, and we are in the critical first phase of its implementation. While we have seen positive results in the last months, we are also seeing some natural 'teething problems' in implementation – many of which are discussed in this report.

We also have a new government, which I am sure will build upon the positive reforms of its predecessor and give additional impetus for Vietnam's economic growth and development. Meanwhile, we are in the middle of a global pandemic and – despite the government's swift and effective handling of COVID-19 – Vietnam still needs to cope with the impact of the virus on its trading partners, as well as the requirements on steering entries into the country and organising vaccinations for its population.

The 2021 Whitebook gathers together the main insights and recommendations from EuroCham and its 18 Sector Committees – representing European companies of all sizes and in almost all industries across the length and breadth of Vietnam. If the issues we raise in the Whitebook are addressed, we believe that Vietnam will become an even more open, more competitive, and more attractive environment for international investment and foreign enterprise.

This is the reason EuroCham publishes the Whitebook. We want to support European business operations and the government in its efforts to attract more foreign direct investment to Vietnam. Based on their international experience and the provision of excellent solutions, our members are honoured to work with the government, ministries, and local authorities on these proposals to help Vietnam unlock its full potential as a top global business, trade, and investment destination.





H.E. Mr. Giorgio Aliberti

Ambassador of the European Union and Head of the European Union's Delegation to Vietnam

MESSAGE FROM THE EU AMBASSADOR- HEAD OF THE EU DELEGATION TO VIETNAM

Since the last Whitebook was published in June 2020, the outlook for international trade has grown more positive. With Vietnam's effective handling of COVID-19 continuing unabated, and the global roll-out of vaccines gathering pace, we can be more optimistic about EU-Vietnam trade in 2021. Of course, significant challenges remain. This pandemic will continue to affect both local and foreign businesses communities for some time to come.

One of the biggest reasons for this optimism is the entering into force of the EU-Vietnam Free Trade Agreement (EVFTA) since 1 August 2020. The EVFTA is not about trade in goods alone, but also covers trade in services and market access for investment. Many other regulatory policies, including on sustainable development, will make our enterprises more competitive. Greater liberalization will open up new sectors and industries to investors from both sides, and greater convergence with international rules and practices will reduce remaining regulatory frictions. This increased regulatory compatibility should spur a new wave of trade and investment between Vietnam and the EU. It will help businesses and societies to recover from this global pandemic.

To unlock the full potential of this agreement, a dedicated and comprehensive implementation is essential. In this spirit, I was pleased to attend the launch of the EU-Vietnam Business Council (EVBC) in October 2020 in Hanoi. This Council will connect the business communities of EuroCham and VCCI so that their member companies can share information and help each other to make the most of the EVFTA. This report collating the insights and recommendations of EuroCham's 18 Sector Committees is a useful document in this process. It brings together the expertise and experience of European business leaders from companies across Vietnam.

Over the last year, the EU Delegation to Vietnam has therefore been pleased to meet with EuroCham's Sector Committees to discuss specific topics which have arisen in the first phase of the EVFTA implementation. The second phase is going to consider the Vietnamese regulatory framework even deeper. The EU Delegation remains dedicated to working with EU enterprises to improve the business environment by bringing the EVFTA into full fruition.

I am pleased to welcome the 13th edition of the Whitebook. It describes the issues that EU business currently identifies in Vietnam. As such it is a valuable source of inspiration for further efforts to make Vietnam more attractive as a production hub and as a destination for EU high quality FDI. There is still a great potential in our economic relations.

MESSAGE FROM THE BUSINESS ASSOCIATIONS



Bart Verheyen
Chairman of BeluxCham



BeluxCham is a non-profit, non-governmental professional organisation providing and promoting trade relations between Belgium, Luxembourg and Vietnam. BeluxCham offers its assistance and market-knowledge to its members and/or potential companies from Belgium, Luxembourg and Vietnam that want to establish trade, business or open an office in one of these countries. Besides business activities and events, BeluxCham also provides social-oriented events where the Belgian, Luxembourg and Vietnamese communities can gain a better knowledge about each other's cultural heritage.

BeluxCham also promotes and supports the economic trade missions from Belgium and Luxembourg to Vietnam, as well as supporting companies that want to have a better economic relationship with Belgium, Luxembourg or Vietnam. All Vietnamese, Belgian and Luxembourg companies that want to build strong ties are always welcome as BeluxCham members.

For more information, visit our website: www.beluxcham.com.



Thibaut Giroux
Chairman of CCIFV



The Chamber of Commerce France-Vietnam (CCIFV) is a non-profit organisation created in 1998. It gathers 250 members and offers its services in Hanoi as well as in Ho Chi Minh City. CCIFV is part of a worldwide network which is composed of 124 French Chambers in 95 countries. The missions of the CCIFV are:

- Drive the French business community in Vietnam, in particular by helping the share of information and experiences between its members.
- Promote the image of France in Vietnam and facilitate the relationships between the two countries.
- Help the French companies along each step of their development projects in Vietnam by offering practical support and operational solutions such as market survey, partner search, HR and incubation services.
- Support Vietnamese companies willing to approach the French market via business missions and visits to major trade fairs in France.

For more information, visit our website: www.ccifv.org.





Sérgio Pereira da Silva
Chairman of CCIPV



The Chamber of Commerce and Industry Portugal-Vietnam (CCIPV) is an independent, non-profit organization, part of a 61-Portuguese chambers network, that sets out to promote and protect the interests of its Associates in respect to economic and commercial links between businesses in the Socialist Republic of Vietnam and the Republic of Portugal.

Positioning itself as the go to authority for the bilateral exchanges between Portuguese and Vietnamese societies and businesses, CCIPV has the mission of promoting and strengthening the bilateral economic and commercial ties between Portugal and Vietnam.

Achieving such a mission is made possible through CCIPV's services, which are tailored to the specific needs of each business. Aiming to assist companies engaged in trade and investment, to access the appropriate services, guidance and contacts for the furtherance of their business. These range from market research, Macroeconomic analysis, promoting and supporting trade missions, seminars, event organization and management support to B2B matchmaking.

CCIPV's protection and promotion of its Associates interests includes monitoring legislation and policy updates; consulting with Governmental bodies and industry associations; providing a forum for business persons to express their views; performing activities to add value to the economic environment of Portugal and Vietnam; maximise the Chamber's contact network, integration and spirit of cooperation near Governmental Bodies, Business Associations and overall businesses.

We welcome all Vietnamese and Portuguese businesses looking into each other as the country destination for their international expansion and investments, to visit us at www.ccipv.com or contact us at info@ccipv.com.



Marko Moric
Chairman of CEEC



The Central and Eastern European Chamber of Commerce (CEEC) was established in 2015 to enhance cooperation and develop and promote economic, finance, commerce, investment and trade relations between Vietnam and CEE countries. Since then, we have been creating opportunities for professionals and social exchange in both Hanoi and Ho Chi Minh City. Our relations with Governmental Agencies, Diplomatic Bodies and Business Associations have been constantly extended through various Memoranda of Understanding (MoU), as well as intensified with Chambers of Commerce from CEE region.

We have been providing businesses with related services to our members. The "Soft-Landing" program, that includes market entry strategy, site selection, company formation and business development, is considered as an active, professional tool for newcomers to support companies' establishment in Vietnam. To increase knowledge and understanding of the business environment in Vietnam, we introduced a "Doing Business in Vietnam" booklet. It is a diverse tool to facilitate outreach to companies by highlighting the potential in the Vietnamese market in general and with a special focus on some sectors.

The Whitebook is an important compendium of sector and cross-sector specific business issues in Vietnam. CEEC is eager to jointly improve the positive development of the business environment and Vietnam's economy and is looking forward to the continued successful implementation of the EU-Vietnam Free Trade Agreement (EVFTA), which will bring a wide range of investment and trade opportunities to our present and future members as well as our Vietnamese partners.

For more information, visit our website: www.ceecvn.org, or contact us via email: office@ceecvn.org.



Alexander Koch
Chairman of DBAV



The Netherlands is the biggest investor and biggest trading partner from the EU in Vietnam. The Dutch are keen to buy Vietnamese goods and services, and are offering Dutch knowledge and expertise in a wide variety of sectors, particularly in agriculture, maritime and water. The Netherlands will always seek to do business with ambitious partners such as Vietnam, and stands shoulder-to-shoulder with the Vietnamese when it comes to battling issues that over time become all the more pressing, such as climate change and the Mekong Delta salination.

The DBAV seeks to ease trade and promote business ties between The Netherlands and Vietnam, by means of connecting communities and knowledge. We have used the COVID crisis to transform our business association into a dynamic business hub that aims to help international entrepreneurs thrive in Vietnam or The Netherlands.

In that light, 2021 and the Year of the Buffalo comes to us with both opportunities and challenges: amidst the pandemic, the ambitious EVFTA was implemented by both the EU and the Vietnamese government.

The implementation of the EVFTA does not just mean to build on an economic recovery, but a sustainable recovery as well. The Netherlands has a very advanced sustainable agenda, and all government-led or supported investments are going through a tough vetting process – the Dutch have fully committed to the United Nation Sustainable Development Goals. To DBAV, this means that we are looking for partners in business that are willing to raise the bar and look further than economic profit. In the Vietnamese Chamber of Commerce and Industry (VCCI), we are finding a perfect counterpart.

DBAV's particular goal for this year is to help Dutch entrepreneurs, whether members or market entrants, succeed in Vietnam. We welcome all Dutch companies, large or small, to become a member and profit from the dual membership of EuroCham and DBAV. As a participant to EuroCham, DBAV has established strong connections with Government institutions and chambers of commerce in Vietnam. Through this network, DBAV creates a platform through which the Dutch business community is a fundamental part of the larger business community in Vietnam.

A key part of EuroCham's annual workplan is the publication of the Whitebook, whereby European companies can express their views to the Vietnamese Government to improve the business and regulatory environment in Vietnam. Many of our member companies are active across the advocacy groups and have contributed their views in this book.

DBAV maintains close links with the Consulate General of The Netherlands in Ho Chi Minh City and The Royal Netherlands Embassy in Hanoi in order to better assist new or expanding companies to acquire information on the Vietnamese market, policies and relevant local Government ministries.

For more information, visit our website: www.dbav.org.vn.



Alexandre Goetz
Chairman of GBA



The German Business Association (GBA), founded in 1995, approved and licensed by the People's Committee of Ho Chi Minh City in 1998, is the voice and advocate of German businesses in Vietnam, fostering bilateral socio-economic relations between the two countries.

The GBA is one of the longest established business associations and a founding member of EuroCham in Vietnam. It represents more than 300 corporations from large enterprises to start-ups, while the majority of our members are SMEs. The GBA works for the best possible market environment and operating conditions for members in Vietnam. It acts as a competence center for its members, facilitating helpful information on business in Vietnam and establishing new contacts within the local community.

The GBA regularly creates opportunities for professional and social exchange in both Hanoi and Ho Chi Minh City, with the annual Oktoberfests as one of its landmark events and various other formats such as the Monthly Business Meeting, workshops and excursions.

In 2021, we are working towards our key objectives: high-quality business events, supportive partnership for our members for all business-related matters and high engagement in our community.

For the full range of activities and more information about the GBA please have a look at our website: www.gba-vietnam.org.





Michele D'Ercole
Chairman of ICHAM



The Italian Chamber of Commerce in Vietnam (ICHAM) started its activities at the end of 2008 and is now in its 13th year of operation. The Chamber currently has 2 offices based in Ho Chi Minh City and Hanoi with 97 members, among which are well-known Italian names: ENI, Generali, Ferrero, Pirelli, Ariston Thermo, Intesa Sanpaolo, Unicredit, Piaggio, Datalogic, Bonfiglioli, Ghella, Perfetti Van Melle, Marposs, Danieli, Carvico, Tenova, Pacorini, Interglobo, Cigisped, Savino del Bene, Microlys, GIVI, Boncafe, Vina ASC Automotive (FERRARI), Itaco (Maserati) and Segis, Gelato Italia to name a few.

ICHAM's main purpose is undertaking activities to support bilateral trade between Italy and Vietnam, including facilitating the activities of its members; even during the difficulties created from the pandemic situation, we have been organising trade activities, workshops and webinars based on digital services; developing contacts and cooperation with institutions in Italy, with Banks and with the European Union, as a full member of EuroCham and networking with the Chamber of Commerce and with business associations.

ICHAM has also signed an MoU with the Department of Foreign Affairs for Provinces (DFAP) - Ministry of Foreign Affairs of Vietnam, and with the General Department of Vietnam Customs; cooperated with the Vietnamese Embassy in Italy, providing information and support for Italian companies interested in Vietnam by conducting commercial feasibility reports, organising institutional and business missions to Vietnam and vice versa for Vietnamese companies to Italy, utilizing our B2B digital platform Exportlounge, cooperating with the Italian Embassy in Hanoi and the General Consulate in Ho Chi Minh City and also interacting with local business associations and to promote 'Made in Italy' to Vietnam.

For more information, please visit our website: www.icham.org or contact us: info@icham.org.



Thue Quist Thomasen
Chairman of NordCham



On behalf of the Nordic Chamber of Commerce in Vietnam (NordCham Vietnam) and the Nordic business community in Vietnam, we are proud to support the launch of the 13th edition of the important EuroCham Whitebook.

The Whitebook addresses many issues of particular concern to Nordic businesses present in Vietnam, including sectors such as Industrial Products & Engineering, Manufacturing, Information Technology, Pharmaceutical & Healthcare, Green Growth, Sustainability and many more.

NordCham Vietnam are looking forward to an even stronger partnership with EuroCham and its Business Associations now that the EU-Vietnam Free Trade Agreement (EVFTA) has been ratified in the European Parliament and thus improving the opportunities for Nordic business operating in Vietnam and looking to invest in Vietnam.

For more information, visit our website: www.nordchamvietnam.com.



Ana Jarque
Chairwoman of the
Spanish Business Group



The Spanish Business Group is a group of companies and professionals based in Vietnam. Our mission is to provide a unified voice to promote the business relations between Spain and Vietnam, offering assistance and a range of services to facilitate the access to the market. The initiative is backed by the Embassy of Spain in Hanoi and the Economic and Commercial Office of Spain in Ho Chi Minh City with the purpose of fostering the relationships between Spain and Vietnam in many directions:

- Create a favourable business environment for Spanish companies with interest in Vietnam.
- Identify commercial opportunities for Spanish companies, especially in industrial and service sectors.
- Boost economic, cultural and social interactions between Spain and Vietnam.
- Increase the Spanish presence in Vietnam, both enterprises and individuals, and serve as a hub to interconnect the Spanish community.

We aim to become an official chamber of commerce under EuroCham's umbrella during this year 2021, with the main goal of strengthening our relationship not only with the Vietnamese business community but also with Europeans doing business in Vietnam.

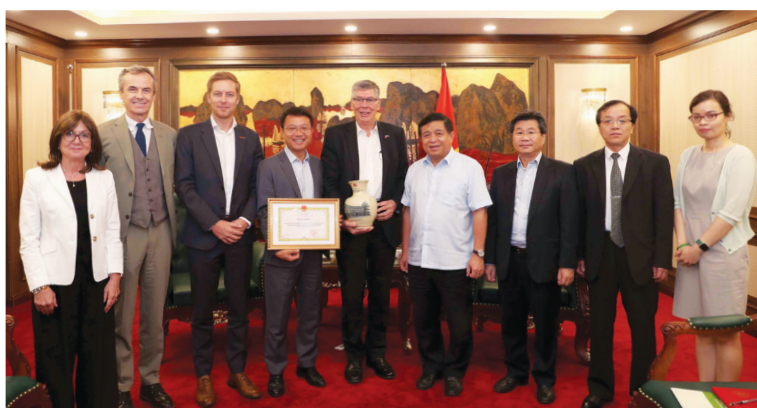
For more information about the Spanish Business Group and our members, please visit our website www.spanishchambervn.com or contact us spanishchambervn@gmail.com.

OVERVIEW OF EUROCHAM ADVOCACY SERVICES



EuroCham is one of the largest foreign Business Associations in Vietnam. We are recognised by Vietnamese and European authorities as well as by international organisations as a powerful and effective strategic advocacy advisor for the European business community in Vietnam. We take seriously our role as a facilitator and bridge between the European business community and central or provincial authorities, as well as European and regional institutions. EuroCham actively engages with many local and international stakeholders on different levels and through a wide range of forums. The Chamber is a key factor enhancing the cooperation and investment between the EU and Vietnam; the driving force facilitating EU and Vietnam trade and Investment cooperation.

There have been considerable improvements in the business environment in Vietnam in recent years. However, a number of constraints to business growth and potential remain.



If these issues are left unresolved, they could inhibit Vietnam's sustainable growth and create detrimental conditions for both the local and foreign business communities.

Our success and progress in addressing these issues is built on our Sector Committees and members. From individuals to start-up companies and multinational corporations, our members all have a significant role in making Vietnam a better business environment. EuroCham offers a plethora of opportunities for members to get involved in Chamber activities. Through our Sector Committees, for instance, EuroCham provides members with various channels to share and disseminate information, discuss, network and advocate business interests and issues.

Sector Committees provide an effective advocacy forum for our members to address common affairs through voicing business interests to the Vietnamese Government. Sector Committees represent a wide range of industries and are an integral part of EuroCham's advocacy mission. Over the years, our Sector Committees have grown in both quantity and efficiency.

EuroCham has established 18 Sector Committees in various key industries, aiming to have better engagement in advocacy activities. Sector Committees' scope of work includes meeting and discussing common topics and drafting EuroCham's

SECTOR COMMITTEE	CHAIR
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CropLife Vietnam	Ms. Tuyen Nguyen
Digital	Mr. Bruno Sivanandan
Food, Agri and Aqua Business	Mr. Johan van den Ban
Green Growth	Mr. Tomaso Andreatta
Human Resources and Training	Mr. Joshua James; Mr. Khuat Van Trung
Intellectual Property Rights	Ms. Yen Vu
International Quality Medicines – Generic and Biosimilar	Ms. Magdalena Krakowiak
Legal	Mr. Kent Wong
Medical Devices and Diagnostics	Mr. Torben Minko
Mobility	Mr. Laurent Genet
Nutritional Foods Group	Mr. Douglas Kuo
Pharma Group	Ms. Lynette Moey; Mr. John-Paul Pulicino
Taxation and Transfer Pricing	Mr. Thomas McClelland
Tourism and Hospitality	Mr. Martin Koerner
Transportation and Logistics	Mr. Juergen Weber
Wine and Spirits	Mr. Patrick Madendjian; Mr. Ludovic Ledru
Women in Business	Ms. Elaine Chew; Ms. Roos IJendijk

position papers which subsequently form the basis of our Whitebook and advocacy mandate. Other works also include contributing to the report containing the analysis on the implementation of the EU-Vietnam Free Trade Agreement (EVFTA) and EuroCham publications; attending and speaking at EuroCham's regular meetings and advocacy events and dialogues with Government and authorities.

In 2020, EuroCham Advocacy sent out 154 letters and received 255 letters from the Government and authorities, held 98 internal meetings and organized 124 meetings with Government authorities as well as many advocacy trainings, seminars, and conferences. We provided our members with opportunities to talk directly with many high-level Government officials at high-level meetings and dialogues such as: the Party's Central Economic Committee, the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR) the office of Government (OOG), the Vietnam Business Forum (VBF), Ministries, and the EU-Vietnam Business Council to raise our WhiteBook issues and promote the EVFTA.

On top of these high-profile activities, we continue to advocate on behalf of our members and keep them informed about the important changes that affect their business. We also monitor legislative developments and new policies of the Vietnamese Government and follow their implementation at all levels to assess and provide recommendations.

One of the success stories of our Sector Committees' works include: the issuance of Circular 29/2020/TT-BYT of the Ministry of Health on 31 December 2020 on the extension of Marketing Authorisation for imported pharmaceutical products. We also supported our Sector Committees to obtain clearer guidance from the General Department of Customs, Ministry of Finance on the EVFTA implementation, rules of origins and clarifications for goods going through trans-shipment in Singapore.

In 2020, we also organised meetings with the EU Delegation to Vietnam to update on the positive changes of the implementation of the EVFTA and organised three roundtables on the EVFTA, and conducted customs trainings on HS Codes, customs export, imports procedures, rules of origin, etc for our members. Together with Ministries, industry associations and provincial investment promotion centers, we also facilitated and enhanced investment and trade flow between the EU and Vietnam. Advocacy continues to be the bridge between the EU and Vietnam, facilitating the implementation of the EVFTA and the ratification of the EU-Vietnam Investment Protection Agreement (EIPA).

As the world battles the COVID-19 pandemic, EuroCham continues to update and widely circulate to all members the Government's guidance and supporting policies. We maintain regular exchanges with Government authorities to provide updates on business operations and recommendations to ensure essential lifeline to businesses during these difficult times. We support members to minimise the impacts on their business operations; swiftly react to rapid changes to ensure a quick recovery to normal growth while prioritising the health and safety of employees. For example, EuroCham and Sector Committees continue to propose solutions for stock and supply, importation and transportation of medicines and medical equipment; as well as make donations to the Vietnam Fatherland Front.

Recently, in order to support tourism and other industries, we worked to provide recommendations to the Government for the roadmap and timeline for implementing vaccination programs and suggested the idea of "vaccination passports" as a part of that roadmap. We also raised our members' voice to seek advice on the rollout of vaccinations for foreigners with resident status and consideration of foreigners in the priority list to receive the vaccination here in Vietnam. EuroCham stands ready and is committed to working with the Government and our key stakeholders to find solutions to support the rolling out of vaccinations.

EuroCham is committed to partner Vietnam through these hard times and recover soundly after the pandemic and ensure economic and investment goals are achieved.

SOUTH-EAST ASIA IP SME HELPDESK

Free South-East Asia Intellectual Property advice for European SMEs *#knowbeforeyougo!*

The SEA IP SME Helpdesk provides **free information and services** in the form of jargon-free **first-line confidential advice** on IP and related issues, plus training materials and online resources.

It **raises awareness** about IP matters in South-East Asia affecting European SMEs, and helps them make **informed IP decisions**.

For more information on how we can work together,
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<https://ec.europa.eu/ip-helpdesk>



Project implemented by:



USER'S GUIDE

The EuroCham Whitebook 2021 is designed to provide a concise overview of the issues affecting European businesses in Vietnam. For each chapter, EuroCham has asked our 18 Sector Committees to focus on the issues which they believe the Vietnamese Government should address. The Whitebook also assesses how these issues affect Vietnam, for example through their impact on trade, growth, or employment. Each chapter then puts forward specific recommendations to help improve the situation or to address the challenge identified.

The Whitebook comprises of an introduction, a table of contents, a message from EuroCham's affiliated Business Associations, an executive summary, an overview of topics per authority, one section about the EVFTA, and 23 chapters divided into six parts: Eight chapters are dedicated to the business environment/trade and the economy; four chapters concern sustainable development; five chapters come under the heading of consumer choice; four chapters are in the field of health and beauty; and two chapters concern dispute resolution.

Each chapter is organised as follows:

OVERVIEW

KEY ISSUE

Relevant authorities:

Issue description: a summary of relevant concerns and related issues

Potential gains/concerns for Vietnam: a summary of the potential benefits or barriers to Vietnam

Recommendations: specific recommendations to improve or resolve the issue identified.

ACKNOWLEDGEMENTS

DISCLAIMER

The European Chamber of Commerce in Vietnam (EuroCham) is grateful to all contributing members of the Sector Committees for their input and support in making this 13th edition of the EuroCham Whitebook (Whitebook) possible. The Whitebook is a collective expression of the views of EuroCham's members, represented by the Sector Committees, on specific aspects of the business environment in Vietnam. It does not explicitly represent the views of one or more individual companies. The information and views put forward in the Whitebook are solely intended to promote a constructive dialogue and offer recommendations for the improvement of European-Vietnamese business relations. Furthermore, the Whitebook is strictly intended for the use of EuroCham's members and other interested parties, and not for a particular company and/or institution.

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Furthermore, in no event shall EuroCham, its members, its executive committee and/or the members of its executive committee be liable for any direct, indirect, special, incidental, or consequential damages (including lost profits) directly or indirectly relating to or arising out of the publication of the Whitebook, regardless of the form of action, whether in contract, tort, strict liability, or otherwise, and whether or not such damages were foreseen or unforeseen, even if one has been advised of the possibility thereof. In case of any discrepancy between the English and Vietnamese versions of the Whitebook, the English version shall prevail.

Links to third-party publications and websites in the Whitebook are provided for convenience only to you. EuroCham does not control and is not responsible for any of these third-party publications or their content. Any reliance you place on such information is therefore strictly at your own risk.

The 2021 Whitebook contents were last edited in October 2021.

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OVERVIEW

The background is a deep blue gradient with various geometric elements. On the left, there are vertical and diagonal lines in a lighter blue shade. On the right, there are more complex, angular shapes resembling stylized buildings or architectural structures. Several bright blue light sources or stars are scattered across the image, creating a sense of depth and technology.

CONTEXTUAL INTRODUCTION

OVERVIEW

Over the last 12 months, the Government of Vietnam has continued to make the country an even more competitive, attractive, and business-friendly trade and investment environment for foreign enterprises. In particular, we welcome some specific improvements to the legal framework which have streamlined and modernised Vietnam's business landscape still further since the publication of our last Whitebook and the Government's continued efforts to ensure the double goal of fighting against COVID-19 and ensuring economic development.

REFORM AND PROGRESS

Vietnam has seen strong growth and development over the last three decades. Ever since the Doi Moi reforms of 1986, the country has seen a successful transition from central planning to 'socialist-oriented market economics'. This has triggered major socio-economic changes, transforming Vietnam from one of Asia's poorest countries to one of its biggest success stories.¹

Today, Vietnam is one of the fastest-growing economies in the world. It has seen average GDP per capita growth of 5.3 per cent since Doi Moi. That is the second strongest growth rate in the region, after China.² This has raised the livelihoods, living standards, and life chances of millions of people. To put that in perspective: More than half the population lived on less than US\$2 a day in 1993. Now, that figure is just 3 per cent. Meanwhile, GDP per capita has grown from just US\$360 in 1998 to over US\$ 2,500 in 2018, according to the World Bank.

Moreover, improvements in infrastructure have contributed to a significant rise in living conditions. Less than 50 per cent of people had access to electricity in 1993. Today, access is almost universal even in rural areas and remote islands. Three-quarters of people now have access to clean water and sanitation, up from less than half in 1993. Vietnam has also achieved several of its Millennium Development Goals (MDGs) ahead of time.³

VIETNAM'S ECONOMIC GROWTH

Vietnam was one of just three countries in the region to see positive economic gains in 2020, recording GDP growth of 2.9 per cent despite the impact of COVID-19. This is testament to the Government's swift and effective management of the pandemic which continues to cast a cloud over international trade and investment in other countries around the world. Looking ahead, Vietnam looks set to build on this success with the Asian Development Bank (ADB) predicting GDP growth of 6.7 per cent in 2021. This is set to rise to 7 per cent in 2022, according to the ADB.

This economic growth, alongside Vietnam's favourable geography and its large, young and educated population, has made the country an attractive destination for foreign investors.⁴ In particular, over 60 per cent of Vietnamese people are under 35 years old.⁵ Meanwhile, the number of people living in urban areas is predicted to rise from 33 million in 2016 to 54 million (or over half the population) in 2035. These changing demographics will help fuel Vietnam's labour market in the future.⁶

The Government's Socio-Economic Development Strategy (SEDS) 2011-2020 has seen a number of positive improvements over the last decade. These include macroeconomic stability, economic growth, and economic

1 The World Bank in Vietnam. Available at: <<https://www.worldbank.org/en/country/vietnam/overview>> last accessed on 5 February 2020.

2 'Asia's Next Tiger', The Economist, 6 August 2016. Available at: <<https://www.economist.com/finance-and-economics/2016/08/06/good-afternoon-vietnam>> last accessed on 31 May 2021.

3 World Bank data available at: <<https://data.worldbank.org/indicator/NY.GDPPCAPCD>> last accessed on 31 May 2021.

4 Op. Cit. The World Bank.

5 'Doing Business in Vietnam', PricewaterhouseCoopers, (2017), p. 5.

6 'Spotlight on Vietnam: The Leading Emerging Market', PricewaterhouseCoopers, (2017) p. 14.

restructuring. However, despite this progress, challenges remain such as low productivity, competitiveness, and efficiency. The next SEDS, covering the period 2021-2030, will no doubt aim to address these.⁷

VIETNAM AS AN ATTRACTIVE FDI DESTINATION

Vietnam's stable macro-economic climate, with inflation in the single digits, continues to increase investor confidence in the country's trade and investment environment.⁸ Since becoming a member of the World Trade Organisation (WTO) in 2007, Vietnam has continued to reform its legal framework so that it is better aligned with global standards. As a result, the country has become more attractive to foreign enterprises and international investors.

In particular, Vietnam's low cost of doing business, strong economic growth, booming middle class and business-friendly economic environment make it an attractive destination for FDI.⁹ Vietnam has several advantages including competitive production costs, a good location in Southeast Asia, strong economic performance and growing domestic consumption.¹⁰ The country ranked 70th out of 190 countries included in the World Bank's 2020 "Ease of Doing Business" study. That is a fall of one place since 2019, but is nevertheless a significant improvement on 2016 when Vietnam was placed 82nd. The World Bank found that Vietnam performed well in many areas including "Getting Credit" and "Paying Taxes". However, the country performed less well in "Resolving Insolvencies". Despite the slight drop in ranking, Vietnam's score actually improved in 2020, reaching a total of 69.8.¹¹

Vietnam has seen strong FDI growth ever since the Government first opened the doors through the Law on Foreign Investment in 1987.¹² Just over three decades later, FDI hit US\$28.5 billion in 2020, according to the General Statistics Office. This was a 25 per cent decline compared with 2019's record-highs. However, in light of the COVID-19 pandemic, this still represents significant success. Over 2,500 projects were given the green light last year, with almost half of the FDI flowing into the manufacturing sector. Just under one-fifth was invested in power production and distribution, with a real estate and wholesale being the third- and fourth-most invested sectors.

The Government has continued to reform Vietnam's trade and investment environment to make the country an even more attractive place in which to invest and do business. In 2020 and 2021, EuroCham has continued to work closely with the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR) and applauds the Government's initiatives such as releasing an Annual Report on the Index for Administrative Procedure Compliance Costs (APCI 2020). This is built on a Standard Cost Model (SCM) and surveys at businesses in Vietnam's 63 cities and provinces since 2018. This tool reflects the level of the Government's administrative reforms, improvements to the business environment, and enforcement of policies and laws through analysing the costs enterprises must pay to conduct administrative procedures in line with the law. Thanks to information technology enabling administrative procedures to be completed via electronic platforms, APCI 2020 analysed the process that businesses experienced when using services provided by central and local authorities. In particular, it looked at the nine core administrative activities: Investment, cross-border transactions, start-up/licensing, environment, licenses and practicing certificates, real estate, construction, tax, and specialised inspections. APCI 2020 is expected to be an effective reference and support the Government and authorities to continue the simplification of administrative procedures and enhance the trade and investment environment for the business community.

The Government's efforts have paved the way for the EU-Vietnam Free Trade Agreement (EVFTA) which was implemented on 1 August 2020. According to EuroCham's Business Climate Index in Quarter 2 of 2021, more than 60 per cent of business leaders believe that their companies have already benefitted from the EVFTA. However, 35 per cent report that administrative procedures are a big barrier for them when it comes to utilizing the agreement in their businesses.

7 Vietnam's socio-economic development strategy 2011-2020, World Bank, available at <<https://pubdocs.worldbank.org/en/347151477448693952/pdf/Vietnam-SEDS-2011-2020.pdf>> last accessed 3 May 2021.

8 'Vietnam and ADB', Asian Development Bank (2017). Available at: <<http://www.adb.org/countries/viet-nam/main>> last accessed on 31 May 2021

9 Op. Cit. PricewaterhouseCoopers.

10 'Vietnam Highlights 2017: Investing in Vietnam, Approaching the World', Deloitte, p. 3.

11 'Vietnam Ranked 70th for Ease of Doing Business: World Bank', Dezan Shira & Associates. Available at: <<https://www.vietnam-briefing.com/news/vietnam-ranked-70th-ease-business.html/>> last accessed on 31 May 2021.

12 '30 Years of Foreign Direct Investment Policy Improvement', Vietnam Investment Review, 7 December 2017. Available at: <<https://www.vir.com.vn/30-years-of-foreign-investment-policy-improvement-54504.html>> last accessed on 31 May 2021.

In order to attract more EU FDIs to Vietnam, two out of three European business leaders think it is important to incorporate Corporate Social Responsibility in their business practices as detailed in the Chapter 13 of the EVFTA.¹³

VIETNAM AND THE EUROPEAN UNION

The relationship between Vietnam and the European Union has gone from strength to strength ever since formal ties were first established in 1990.¹⁴ Today, the EU is the fifth-largest foreign investor in Vietnam. In 2020, Vietnam was the 30th-largest partner for EU goods exports (0.5 per cent) and the tenth-largest partner for EU goods imports (2.0 per cent). The three largest importers from Vietnam in the EU were Germany (EUR 7.5 billion), the Netherlands (EUR 6.8 billion), and France (EUR 3.6 billion). Austria (8.0 per cent) had the highest share for Vietnam in its extra-EU imports.¹⁵ The three largest EU exporters to Vietnam were Germany (EUR 2.9 billion), Italy (EUR 1 billion) and the Netherlands (EUR 1 billion). Cyprus (2.7 per cent) had the highest share for Vietnam in its extra-EU exports. European investors are present in all sectors and industries and in provinces across the length and breadth of Vietnam.

Figure 1: EU imports of goods from Vietnam, 2020

	€ million	% of Vietnam in extra EU imports
Germany	7 537	2.0
Netherlands	6 829	2.2
France	3 622	2.1
Italy	2 863	1.9
Austria	2 777	8.0
Belgium	2 181	1.6
Spain	2 040	1.7
Poland	1 322	1.8
Sweden	1 208	2.9
Slovakia	1 073	7.4
Hungary	904	3.1
Portugal	314	1.8
Denmark	301	1.1
Czechia	294	0.7
Greece	203	1.0
Romania	197	0.9
Latvia	171	4.4
Finland	117	0.7
Ireland	110	0.2
Slovenia	82	0.5
Luxembourg	76	3.8
Bulgaria	63	0.5
Lithuania	38	0.4
Cyprus	34	1.1
Croatia	29	0.5
Estonia	21	0.6
Malta	4	0.2

Source: Eurostat and Comext

¹³ EuroCham Business Climate Index, Quarter 1, 2021, available at: <<https://www.eurochamvn.org/sites/default/files/uploads/2021/BCI/BCI%20Q1%202021%20PPT%20v2.pdf>>, last accessed on 3 May 2021

¹⁴ 'Vietnam and the EU', European External Action Service, available at: <https://eeas.europa.eu/delegations/vietnam_en/1897/Vietnam%20and%20the%20EU>, last accessed on 25 January 2019.

¹⁵ Trade with Vietnam by Member State, Eurostat (ext_st_eu27_2020sitc) and Comext DS-018995, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Vietnam-EU_-_international_trade_in_goods_statistics#EU_and_Vietnam_in_world_trade_in_goods, last accessed on 31 May 2021

Figure 2: EU exports of goods to Vietnam, 2020

	€ million	% of Vietnam in extra EU exports
Germany	2976	0.5
Italy	1058	0.5
Netherlands	1005	0.5
France	963	0.5
Belgium	634	0.5
Spain	443	0.4
Poland	349	0.6
Austria	231	0.5
Denmark	198	0.4
Sweden	190	0.3
Finland	105	0.4
Ireland	97	0.1
Hungary	84	0.4
Czechia	61	0.2
Cyprus	47	2.7
Slovenia	46	0.4
Luxembourg	46	1.9
Romania	42	0.3
Greece	42	0.3
Bulgaria	37	0.4
Portugal	35	0.2
Slovakia	34	0.2
Croatia	22	0.5
Lithuania	19	0.2
Latvia	12	0.2
Estonia	11	0.2
Malta	2	0.2

Source: Eurostat and Comext

In 2020, trade in goods between Vietnam and the EU was worth almost EUR 45 billion. One EU Member State had a trade surplus with Vietnam: Cyprus (EUR 14 million). Meanwhile, 26 Member States had a trade deficit with Vietnam. The largest deficit was held by the Netherlands (EUR 5.8 billion), followed by Germany (EUR 4.5 billion) and France (EUR 2.6 billion).

Figure 3: EU trade balance of goods with Vietnam, 2020

	EUR million
Cyprus	14
Malta	-2
Croatia	-7
Estonia	-11
Finland	-12
Ireland	-14
Lithuania	-19
Bulgaria	-26
Luxembourg	-30
Slovenia	-36
Denmark	-103
Romania	-156
Latvia	-158
Greece	-162
Czechia	-233
Portugal	-279
Hungary	-821
Poland	-973
Sweden	-1 018
Slovakia	-1 039
Belgium	-1 548
Spain	-1 597
Italy	-1 805
Austria	-2 547
France	-2 659
Germany	-4 561
Netherlands	-5 823

Source: Eurostat and Comext

EU-VIETNAM FREE TRADE AGREEMENT (EVFTA) & EU-VIETNAM INVESTMENT PROTECTION AGREEMENT (EVIPA)

EuroCham and our Sector Committees continue to work with EU institutions, the EU Delegation to Vietnam, and the Vietnamese Government to promote the EVFTA and its implementation. In particular, we continue to work with the European Parliament's International Trade (INTA) Committee Monitoring Group to provide our comments and expertise on the EVFTA's implementation. And we continue to share Vietnam's progress and achievements together with the EU Delegation through co-organising three roundtables on the EVFTA.

EuroCham has also been working closely with the Office of Government at the meetings on the implementation of the EVFTA, the Ministry of Industry and Trade, and the Ministry of Agriculture and Rural Development to provide our knowledge and guidance on EU standards and requirements for exports of Vietnamese products. We have also supported many Vietnamese provinces and industry associations to promote their local products to EU partners.

EuroCham continues to provide capacity building and training for our members on customs and related tax procedures, HS Codes, and rules of origin. We have also advocated to the relevant Ministries to seek their clear guidance for the EVFTA's implementation. We appreciate the quick support and feedback of the Ministry of Finance through many guiding official letters. We also applaud the Ministry of Health (MOH) for Decision 2241 dated 17 May 2021 promulgating the plan for the implementation of the EVFTA and we look forward to continue working with MOH and relevant stakeholders on this.

In order to monitor the operation of the EVFTA, EuroCham would be honoured to assist the Trade Committee and its Specialised Committees regulated under Art.17.2 in the fields relevant to our business community. In particular, these cover: Trade in Goods, Customs, SPS, Investment, Trade in Services, Electronic Commerce, Government Procurement, and Trade and Sustainable Development. We would also be honoured to participate in the working groups under Article 17.3 (IPR including GIs, motor-vehicles and parts), and other forums established to work with the private sector and social partners to evaluate and enhance trade and investment relations.

For Chapter 13 on Sustainable Development, EuroCham offers our support to Government consultations. We would be pleased to share our knowledge and experience of trade-related aspects to facilitate the development and implementation of cooperation and capacity-building activities. In particular, we would be pleased to introduce sectorial experts to participate in the Panel of Experts as provided in Article 13.16.

We would like to continue supporting the Government to amend and supplement the legislative documents necessary for the EVFTA's implementation through the well-tailored mechanism of consulting our business community, Sector Committees and members. We will remain the bridge between Vietnam and the EU to facilitate the exchange of information between both sides. We would be pleased to join the Trade Committee of the EVFTA as well as the specialised Committees following the FTA chapters; and to coordinate with the implementing Ministries, inter-ministerial agencies and localities. We are also available to support the Consulting Technical Groups to advise on the implementation of the Chapter on Trade and Sustainable Development and report to the Trade and Sustainable Development Committee established in this chapter.

The European business community is also willing to support Vietnam and Vietnamese businesses to enhance the competition capacity for industries and businesses – especially SMEs – through enhancing the application of science and technology in production and labour productivity. We are keen to help connect European and domestic enterprises, contributing to the formation and development of supply chains; as well as to developing high-quality human resources, especially in the technical, technology, legal, and insurance fields.

EuroCham, together with our 18 Sector Committees and industry experts, remains ready to contribute to ensuring the full implementation of Vietnam's commitments in accordance with the timeline; to the completion of the institutions, policies and legal framework in accordance with the EVFTA; and to the requirements to enhance the trade and investment environment in Vietnam as well as to exploit and maximise the opportunities that the agreement brings to both business communities.

ACKNOWLEDGEMENTS

The EuroCham Secretariat

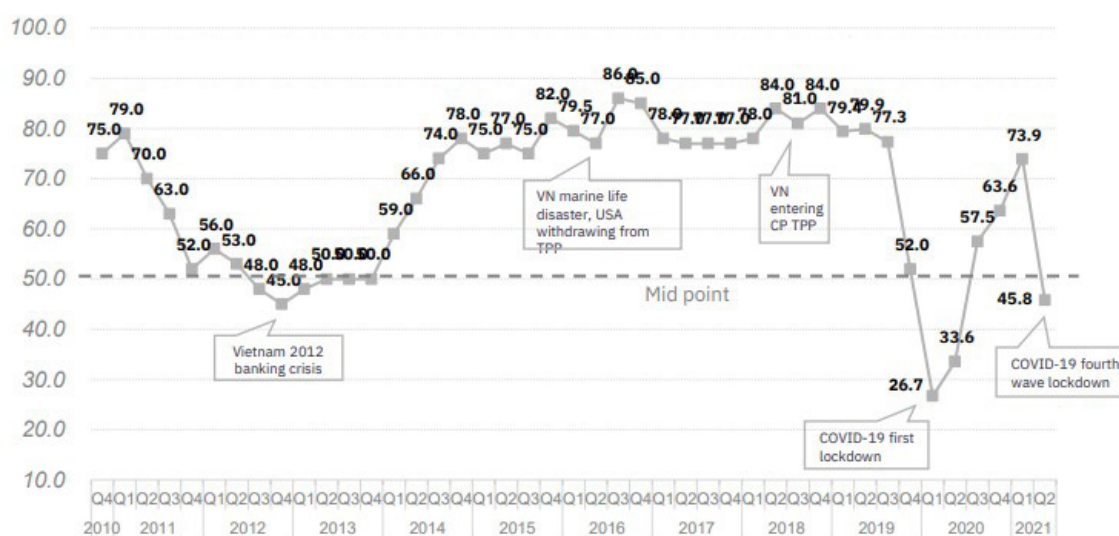


EXECUTIVE SUMMARY

OVERVIEW OF VIETNAM'S BUSINESS CLIMATE

Through our Business Climate Index (BCI), EuroCham has been taking the pulse of European businesses operating in Vietnam since 2010. From 2014 until 2020, our BCI recorded consistent and positive sentiment of over 70 per cent; rising to over 80 per cent for much of 2018 and 2019.

Figure 4: EuroCham Business Climate Index



EuroCham Business Climate Index: Quarter 2, 2021

However, following similar trends around the world, where the impacts of COVID-19 have hit international trade and investment, the EuroCham BCI plunged to its lowest-ever score of 26 per cent in the first quarter of 2020. This drop in positive sentiment was a direct consequence of the impact of COVID-19 and not a reflection on Vietnam or on the policies of the Government. This can be seen in the consistent and positive sentiment of our members right up until the COVID-19 pandemic began. In fact, as a result of the swift and effective actions of the Government – including effective public health measures and a successful stimulus package – some business operations were able to continue to some degree even during COVID-19.

European business leaders began 2021 once again positive and optimistic about Vietnam's trade and investment environment. The BCI hit 73.9 points in quarter one: That was the highest score recorded since the third quarter of 2019, before the COVID-19 pandemic hit global trade and investment. However, this current fourth wave outbreak and the spread of new variants have seen the Index fall almost 30 points in quarter two to 45.8. The fourth wave has also led to increased pessimism about the short-term outlook of Vietnam's business environment. Just one-fifth of EuroCham members (19%) believe that the economy will stabilize and improve in the next quarter. That's down from almost two-thirds (61%) in quarter one.

Nevertheless, business leaders remain confident about the future prospects of their own companies. More than half (56%) anticipate an improved or neutral performance in quarter three. And eight-in-ten (80%) plan to maintain or increase their headcount and investment. This suggests that, despite short-term challenges, European business leaders remain confident in Vietnam's long-term prospects.

EuroCham and our 18 Sector Committees are dedicated to helping the Government to recover the economy and

improve Vietnam's trade and investment environment, for the benefit of all. In the rest of this chapter, we highlight the cross-sectorial and sector-specific issues and recommendations which our members believe will contribute to the Government's aim to make Vietnam a more open, competitive, and attractive place in which to do business.

SUMMARY OF KEY ISSUES AND RECOMMENDATIONS

PART 1: THE BUSINESS ENVIRONMENT/ TRADE AND THE ECONOMY

1.1 Digital

a. Cybersecurity

- (i) Ensure compatibility between Vietnam and the EU with regards to Article 45 of the EU GDPR transfers on the basis of an adequacy decision including a concrete timeline and action list.
- (ii) Establish a Facilitator-institution to resolve conflicting cases with the agreement of the Personal Data Protection Committee.
- (iii) Create a web portal which is accessible to foreign companies that could support with the implementation of the CSL requirements.
- (iv) Start a process and create a working group to bring the EVFTA and the Vietnamese regulations in line with each other, addressing current conflicting situations.
- (v) Classify the data processing and develop a data classification system whereby only national secrets must be onshore and other non-state secrets may be offshore.
- (vi) Remove the requirement on domestic enterprises to keep data in the country to enable cross-border data processing with data hosted offshore.
- (vii) Ensure there will not be conflicting provisions between the 2015 Law on Cyber Information Security and 2018 Cybersecurity Law and future decrees on personal data protection and cybersecurity being drafted.

b. E-Government

- (i) Develop and adopt smart cloud policies to accelerate digital transformation implementing the best practices a transition to a secured, digitalised environment related to:
 - Recognition of certificates for electronic signatures issued to individuals
 - Promoting cloud-first policies
 - Cloud accreditation, compliance, and security
 - Data classification
 - Data privacy and control
 - Data residency
 - Perform a risk and threats assessment (remote access, manual processes presenting a risk of human error and insider threats)

1.2. Intellectual Property Rights

a. Intellectual Property Rights enforcement

- (i) Competent agencies need to be more pro-active in handling violations while coordinating with relevant agencies.
- (ii) Regular exchange, information updates, and expertise sharing between ministries and agencies are recommended.
- (iii) Identify the extent and the object applicable so both the manufacturing and trading in counterfeit goods and the infringement of industrial property rights can be prosecuted.
- (iv) Promulgate specific instructions and regulations on invalidation of protection rights in the civil and administrative handling process by the Supreme People's Court and MOST.

b. Copyright

- (i) Add a limitation (in terms of length or percentage) to the extent that a work can be copied for use as reference information or for preparation of documents used in state agencies for non-commercial purposes.
- (ii) Explain and guide in detail the concepts of “reasonable citation” and “without misleading the author’s intention”.

c. Patent

- (i) Amend Article 131a of the Draft with a reasonable compensation mechanism for patent holders for unreasonable delays in granting the first marketing authorisation by prolonging the protection period of the patents corresponding to the period of delay to ensure compliance with the EVFTA.

d. Industrial design

- (i) Revise Article 4.13 of the IP Law on the definition of industrial design.

e. Geographical indications

- (i) Adopt the appropriate interpretation and application of law to implement the progresses of legal provisions, guarantee the legitimate rights and interests of rights holders, and comply with the commitments under international treaties to which Vietnam is a signatory.

f. Trademark

- (i) Amend Article 72(1) of the IP Law to recognise a sound mark as a mark “that is capable of being represented graphically”.
- (ii) Specify particular and reasonable criteria that properly represent the nature of sound marks in assessing the similarity between two sound marks.
- (iii) Supplement “the application for trademark registration is conducted with bad intentions” as one of the bases for opposing an industrial property registration application that is considered a source of information for the handling of industrial property registration applications.
- (iv) Issue a guideline document provide detailed regulations and instructions on how to identify and prove an applicant’s “bad intentions”.

g. Enforcement of intellectual property rights

- (i) All options aiming to limit the use of administrative sanctions and the increase in civil sanctions given in the Draft are unsuitable and the old regulations should be retained.

h. Responsibilities of intermediary service providers

- (i) Revise the content of Article 198b, Section 75 of the Draft Law to ensure its compliance with Article 12.55 of the EVFTA.

1.3. Mergers & Acquisitions**a. Merger control notification requirements**

- (i) Amend the LOC 2018 and/or Decree 35 to exclude internal corporate group re-organisations from merger control regulation.
- (ii) Amend the LOC 2018 and Decree 35 to exclude from merger control regulations any transaction the underlying economic concentration substance of which has been previously cleared by the competition regulator.
- (iii) Amend Decree 35 to raise the threshold amounts which trigger notifiable transactions.
- (iv) Amend Decree 35 to clarify and narrow the definition of ‘the enterprise or group of affiliated enterprises of which such enterprise is a member’.
- (v) Amend the LOC 2018 and/or Decree 35 to define clearly the concept of ‘the market of Vietnam’.

b. Market access

- (i) Continue reducing the number of conditional sectors.
- (ii) Reduce the degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions.
- (iii) Instruct local licensing authorities in clear and unequivocal terms that foreign investors are legally entitled to invest in the form of up to 100 per cent equity ownership in any sectors that are not subject to any specifically legislated foreign ownership caps.

c. Consular legalisation of corporate supporting documents

- (i) Abolish consular legalisation requirements in connection with foreign investment (including M&A transactions) in Vietnam.

d. Payment of purchase price and obtaining tax clearance.

- (i) Improve the clarity and consistency of procedures applicable to the completion of M&A transactions and the making and processing of capital transfer tax declarations.
- (ii) Abolish the distinction between 'direct investment' and 'indirect investment' transactions and the corresponding special-purpose on-shore bank accounts.
- (iii) Amend the deadline for submitting the tax declarations as well as tax payments for M&A transactions to 10 days from the day on which the registration of the capital transfer with the licensing authorities has been completed in accordance with the relevant law.
- (iv) Ensure faster and smoother processing of the tax clearance procedures necessary for implementing M&A transactions and the transfer of purchase prices.
- (v) Consider abolition of the concept of 'indirect' capital transfer tax (i.e., capital transfer tax on divestments of shares in companies domiciled outside of Vietnam).

1.4. Public-Private Partnerships**a. Develop a pipeline of viable and visible projects**

- (i) Publish, through a centralised process, a list of key national and regional projects, particularly in sectors which have a good track record in other jurisdictions with well-trodden models and which are highly sought after by foreign investors such as transportation and energy with the aim to prioritise economically viable projects as those slated to be implemented as PPPs.
- (ii) Clarify the bidding process for unsolicited projects and the process for converting State-funded projects into PPP format.
- (iii) Submit selected projects to a competitive, transparent tender as contemplated under the Law on PPP.
- (iv) Allow projects to be developed by leading global sponsors on the basis of unsolicited proposals/direct appointment as pilot projects in specified high-priority sectors in order to develop a baseline standard of documentation and risk allocation which would be bankable in the international markets.
- (v) Put potential projects through a rigorous assessment (with the help of international technical and financial consultants) involving homogenous international standard screening procedures.
- (vi) Provide incentives and attractive measures for sectors struggling to attract PPP investment.

b. Improve capacity and coordination amongst government agencies

- (i) Develop (with the help of international consultants with experience in other markets) sets of approved bidding documents, including project contracts containing internationally acceptable risk allocation models, as a basis for bidding to reduce the potential for delay.
- (ii) Bring in tangible projects in line with international best practice to provide the authorised State bodies with hands-on experience.
- (iii) Organise capacity building sessions relating to the Law on PPP to ensure cohesive implementation.

- (iv) Require a joint implementing process involving all key Ministries and authorities for a unified practice in developing projects, potentially leveraging those individuals who have gained experience of bankability and financeability issues in the context of successful power projects.

c. Rationalise detailed implementing regulations

- (i) Provide clear guidance on the Law on PPP and bring existing regulations to an international standard to increase the attractiveness of Vietnamese PPP projects to foreign investors.
- (ii) Create a clear and cohesive framework for PPPs to benefit from VGF, minimum revenue guarantees, and risk-sharing measures.
- (iii) Continue to streamline the policies and guidelines related to PPPs, including implementing focusing on key elements such as the availability and disbursement of such funding and credit support measures.
- (iv) Test these regulations with actual projects.

1.5. Real Estate

a. Condotels, hometels, officetels and investment approvals

- (i) Promulgate legal provisions with specific standards and guidance for condotels, hometels, and officetels.
- (ii) Clarify the applicable land-use term for condotels, hometels and officetels.
- (iii) Amend legal provisions on the classification and mechanism of using land for mixed-use apartments.
- (iv) Grant LURCs and ownership of houses and other assets attached to land for condotels, hometels, and officetels.
- (v) Complete the condominium construction codes defining the concept of condotels, hometels, and officetels.

b. Protecting the interests of investors

- (i) Promulgate legal provisions with specific standards and guidance with regard to the financial capacity of real estate developers.
- (ii) Issue clear guidance to provincial departments so that there is no arbitrary interpretation and application of laws in such transactions.

c. Land Use Right Certificates for foreigners

- (i) Issue the FOPPL, in accordance with the instructions of the PPC, to enable the LURC to be issued for foreigners who have bought residential houses in Vietnam.

1.6. Tax & Transfer Pricing

a. Tax administrative procedure reform

- (i) Amend Point a, Clause 4, Article 7, of Decree 126 so that there is consistency in the requirement on the amendments of the annual finalisation tax returns between the annual PIT withholding tax return and other tax finalisation returns.
- (ii) Amend Decree 126 and Circular 40 to exclude trade and sale discount from the group of incomes taxed in the hand of business individuals/households; and to not impose VAT on bonuses, sale support, and early payment discounts.

b. Taxation of offshore indirect transfer of capital

- (i) Develop concrete and detailed guidance on the taxation of indirect transfers of shares as soon as possible to enhance the transparency of the tax environment in Vietnam.

c. Immovable property ratio determination in double tax treaty application

- (i) Issue clear guidance on the determination of immovable property ratio to all local tax authorities based on an economic test.

d. Corporate income tax and non-deductible expenses

- (i) Clearly state in future CIT regulations the types of expenses which shall be treated as non-deductible where related compliance requirements in non-tax regulations are not met.
- (ii) In the meantime, ensure that unless tax regulations specifically govern the matter, any non-compliance with non-tax regulations which only give rise to an administrative fine are not a reason to reject an expense's deductibility.

e. Decree 132 and covid-19 impact

- (i) Issue detailed guidelines for adjustments of the operating expenses.
- (ii) If this retroactively results in an overpayment, allow the carry forward and offsetting the overpaid amount with the tax payable amounts of subsequent years to maximise support for enterprises.

f. Selection of independent comparable companies

- (i) Issue detailed guidelines about the criteria used for selecting comparable companies to generate a transparent tax policy, as well as remove burdens/difficulties for tax officers and taxpayers in interpreting regulations for the compliance purposes and transfer pricing inspections.

g. Transfer pricing adjustment by local tax authorities

- (i) Issue detailed guidance on the calculation of transfer pricing adjustments in transfer pricing examinations/inspection, in which it is clearly stated that the calculation of the additional tax obligation or loss reductions is based on the segmented financial result for related-party transactions and not the overall company financial results (including third-party transactions).

h. Accounting principles for import duty refunds

- (i) Allow companies to apply the accounting principles (e.g. FIFO or pro-rata basis) to identify the number of imported materials/components used for exported goods and the corresponding amount of import duties to be refunded by the customs authorities.

i. Late submission of payment proof in duty refunds

- (i) Allow exporters to submit refund dossiers (and get Refund First – Audit Later) where there is a payment arrangement between exporters in Vietnam and their offshore buyers if they hold the evidence of either:
 - An “irrevocable L/C” showing the exporter as the beneficiary; or
 - Under TT arrangement, a confirmation issued by the exporter's bank, that payment from the buyer has been received.

j. No penalty for first-time incorrect HS classification

- (i) Restore the tolerance treatment in terms of HS classification to what was applied under Decree 127 and Decree 45 and provide clear implementation guidance.

1.7. Tourism & Hospitality**a. Entry visa policies & administrative procedures**

- (i) Expand the list of visa-exempt countries to all EU countries and extend the visa exemption period from 15 to 30 days.
- (ii) Extend the period of the announced visa exemptions and new exemptions to five years.
- (iii) Create a three-month tourist visa for Europeans who wish to make long-stay holidays.
- (iv) Provide short-stay visa exemption in certain situations.

b. Destination marketing

- (i) Establish overseas tourism offices which officially represent Vietnam in outbound markets.

- (ii) Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion.
- (iii) Appoint PR agencies in European countries to target media by language.
- (iv) Facilitate public-private partnerships to manage and effectively operate the tourism promotion fund.
- (v) Focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long period, visit regularly, and spend more when travelling in Vietnam.
- (vi) Strengthen Vietnam's visibility while saving costs using digital, friendly-to-use applications on smartphones and social marketing channels to develop a professional appearance as well as comprehensive and useful information for tourists.
- (vii) Contribute funding towards initiatives that support the long-term objectives of the industry.
- (viii) Continue to communicate between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organisational structures.
- (ix) Put in place region-wide coordination structures to focus and maximise the actions of cooperating provinces.

c. Long-term prospects and sustainability efforts

- (i) Invest further in world-class storytelling at museums, historical and heritage sites.
- (ii) Put a nationally coordinated action plan in place to keep beaches clean.
- (iii) Prioritise sustainable, diverse developments.
- (iv) Establish effective campaigns to reduce plastic that ends up in the environment.
- (v) Ensure a more systematic approach to sustainable development in tourism by promoting incentives for responsible commitments and actions taken by stakeholders.
- (vi) Support local people through training and economic empowerment.
- (vii) Strengthen the capacities of local non-profit organisations and create a framework for 'voluntourism' activities.
- (viii) Spread useful tips to tourists including information on sensitive social issues, such as behaviours to adopt towards children selling souvenirs in the street or begging, sexual exploitation.
- (ix) Reduce demand for endangered wildlife species and limit uncontrolled interactions with wildlife to protect the limited number of these species in Vietnam.
- (x) Develop information in national parks or natural areas to encourage tourists to respect and protect these locations.
- (xi) Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives.
- (xii) Strengthen the capacity of stakeholders involved in responsible tourism and support initiatives led by and for locals, to develop income-generating activities as a by-product of tourism.
- (xiii) Develop specific and adequate promotion strategies or holistic infrastructure such as integrated transportation systems and conference, shopping and entertainment centers to welcome large-scale international meetings and conferences.

d. Accurate measurement and tourism statistics

- (i) Arrange that guests fill in a mandatory - paper or more technologically advanced – arrival card at the airplane or border checkpoints before immigration.
- (ii) Create quarterly and annual tourism insight statistics that consolidate all collected data and are presented in a way that trends can be clearly defined, and predictions made.
- (iii) Present these reports and statistics in a visually attractive form online, with filter functions, click-and-select functions, and graphically visualised.

1.8. Transportation & Logistics

a. Infrastructure

- (i) Strengthen the supervision and facilitation role of the Government to ensure the effective allocation of resources, as well as the safety and the environmental sustainability of these constructions while creating transparency and fair competition in the logistics sector.
- (ii) Implement the suggestions set out before with regard to warehousing zones, land prices, and industrial park owners vs service providers.
- (iii) Issue implementation documents of Decision 1012.

b. Customs valuation

Latest updates to the regulations of customs valuation

- (i) Provide a more widely defined coverage of software container or activation for easier classification and customs value declaration for the customs value of software.
- (ii) Apply the corresponding methodology of customs valuation.
- (iii) Design a correct basis on which the customs authorities may raise doubts about and reject a declared value.
- (iv) Provide the list of necessary documents that should be provided in cases where customs declarants submit documents proving that the special relationship does not affect the price.
- (v) Do not allow the import and distribution monopoly position of a company to exclude the application of transaction value, given that this company can prove the good faith of all transactions and define them clearly in current regulations.
- (vi) Distinguish the application of preferential tariffs from the penalty applicable to a breach of the law.
- (vii) Do not cancel the enjoyment of preferential tariffs if an administrative error, such as an incorrect declaration in customs declaration sheets, is made.

Customs valuation: The impact of transfer pricing

- (i) Encourage customs authorities to inspect the way the price is established.
- (ii) Guarantee a reasonable period of time for operators asked to provide further information in view of transaction value reliability assessment.
- (iii) Consider promulgating a mechanism of price adjustment dealing with the intense desire of transfer pricing adjustments of international corporations investing and operating in Vietnam.
- (iv) Guarantee that the practice of transfer price adjustments cannot, in principle, be used to reject preferential tariffs for goods imported under an adjusted transfer price.

Customs valuation advance rulings

- (i) Implement a general customs valuation advance ruling mechanism.

Custom Valuation - Price consultation

- (i) Let Customs officers, who conduct price consultations, hold the supporting rationale behind the values on the database, and authorise them to disclose that information to importers enabling a more transparent and effective price consultation process.
- (ii) Conduct more promotion activities to encourage companies to apply for the 'one-time price consultation for multiple uses' scheme, including detailed guidance of execution.
- (iii) Ensure that the price consultation process will be valid for a 12-month period provided declared values in the 12-month period do not move outside an acceptable threshold (e.g. +/- 5 per cent), then no further price consultation should be required.

Transfer price adjustments

- (i) Publish guidance on how importers and exporters could handle retroactive transfer price adjustments, including whether previously registered import or export declarations are required to be re-declared.
- (ii) Allow for bulk declaration due to transfer pricing adjustment if re-declaration is required.
- (iii) Adapt the customs systems to accept bulk adjustments.
- (iv) Allow importers and exporters to make voluntary disclosures of adjustments.
- (v) Not to impose penalties on voluntary declarations of transfer price adjustments.

HS Code classification: Rulings/Notifications

- (i) Specify the applied supporting rationale behind the HS code classifications provided.

Manufacturing/processing for export

- (i) Provide detailed guidance specifying the step-by-step procedures for the enterprises to apply for the Duty refund.

c. Rules of origin under the EVFTA

- (i) Issue guidelines on making customs declarations on both EU-origin and non-EU origin goods imported into Vietnam in the same shipment.
- (ii) Issue guidelines on making customs declarations on EU exported goods but from a non-EU seller based in a third country (a non-member country).
- (iii) Provide clarifications on using the REX code in terms of GSP and the EUR.1 to choose the most preferential tariff in respect of the goods exported to EU.
- (iv) Speed up the completion of the self-declaration system for the exporters to the EU.

d. Sustainability

- (i) Set up a forum with all stakeholders to support a review of opportunities and to permit input into a roadmap for logistics sustainability.
- (ii) Prepare longer-term plans which need to be more radical to move to much lower/or zero emission vehicles and greater fuel economy.
- (iii) Design a detailed roadmap for the development and transition of these vehicles in Vietnam by 2030.
- (iv) Identify incentives and policies to guide businesses to future requirements and redundancies.
- (v) Create a roadmap to sustainability (in the context of transportation and logistics).
- (vi) Identify the key stakeholders within both central government and provincial authorities.
- (vii) Prepare a timeline to reach net-zero carbon and identify what steps must be taken to reach this goal.
- (viii) Obtain businesses' support and instigate measures to collaborate with central and provincial authorities to navigate through the changes required to deliver the triple bottom-line (people, profit, and planet).

PART 2: SUSTAINABLE DEVELOPMENT**2.1 Energy & Electricity****a. Renewable energy**

- (i) Prioritise effective measures to stimulate investment by all power consumers in energy efficiency measures to achieve the national energy efficiency strategy goals.
- (ii) Maximise the contribution of solar, biomass, small hydropower, wind and offshore wind power within the energy system.
- (iii) Revise the contract between EVN and clean energy producers to meet international standards so as to harvest the full cost-reduction benefits of the planned auction processes.

- (iv) Enhance energy security with the inclusion of natural gas as a transition fuel to temporarily replace coal,
- (v) Implement the intention to halt approvals for any new coal-powered plants in the Draft PDP VIII.
- (vi) Allow power consumers access to clean energy by implementing DPPAs in pilot schemes and by reducing the front-end regulatory barriers to behind-the-meter clean energy plants.
- (vii) Expand the pilot project, encourage private investment in the important power transmission network; evaluate and allow investors who meet the requirements to build 220kv and 500kv transmission lines on their own.
- (viii) Define the industrial and commercial power tariffs that are likely to be applicable under the PDP VIII in a clear Roadmap to Power Tariffs to 2025.
- (xi) Increase the ambition of the NDCs greenhouse gas emissions reductions reflecting increased targets for clean energy and better energy efficiency measures.
- (x) Promote the benefits to the power transmission and distribution system by continuing the support for the growth of rooftop solar power plants.
- (xi) Consider facilitating the development of offshore wind power.
- xi(i) Expand the initial MARD G-PFES pilot scheme to the national level in 2021 and continue to use the financial benefits entirely for increased forest habitat and wildlife protection.
- (xiii) Allow storage on-site with solar power.
- (xiv) Encourage EVN to investigate the benefits of widespread storage capacity at clean energy plants of all types, including rooftop solar power plants.

2.2 Green Growth

a. Circular economy

Waste management

- (i) Continue strict enforcement of waste regulations and fair results-oriented prosecution for non-compliance.
- (ii) Complete the legal framework on waste management, especially waste classification.
- (iii) Legalise the secondary material marketplace.
- (vi) Continue providing a conducive business environment for compliant waste management businesses.
- (v) Increase public awareness on solid waste management.
- (vi) Set up a public-private committee to propose solutions.

Addressing plastic pollution

- (i) Implement the existing regulations as promulgated and ensure strict enforcement of punishments on cases infringing waste regulations.
- (ii) Promote legislation that would incentivise Vietnamese companies to comply with EU regulations to allow the country to enter global supply chains.
- (iii) Implement strict regulations to meet the target of a complete ban on single-use, non-compostable polyethylene products by 2025, starting by increasing applicable tax.
- (iv) Implement a step-by-step approach to achieve the complete ban on single-use plastics by creating controlled pilot models and introduce compostable plastic that can be certified under EU and US standards to prevent the current green washing.
- (v) Enable cost-effective recycling and treatment of domestic waste collected at the household level through classification, accompanied by comprehensive policies to favour private investments.
- (vi) Encourage cooperation with the private sector and international organisations which are actively addressing plastic pollution.
- (vii) Define a meaningful and appropriate Extended Producer Responsibility (EPR) philosophy and practices in cooperation with the private sector and relevant government authorities.



Wastewater issues

- (i) Increase the enforcement of relevant legal regulations, such as Decree 80, QCVN 14:2008/BTNMT.
- (ii) Apply severe sanctions to industrial parks that dump untreated wastewater into the environment to deter others.
- (iii) Encourage the reuse of wastewater by providing legal frameworks, guidelines and standards.
- (iv) Adjust domestic and industrial wastewater fees to full cost recovery, implementing the “polluter-pays” principle.

Engaging the private sector to ensure safe water supply

- (i) Provide sustainable conditions and improved framework conditions for foreign investment in water supply.
- (ii) Facilitate public-private partnership in the water sector using transparent international bidding procedures.

Air quality control

- (i) Accelerate the revision of the Law on Environmental Protection 2014, particularly with regard to air pollution.
- (ii) Introduce specific policy targets and regulations for air quality control and emissions.
- (iii) Increase tax for coal power plants, cement factories and other major polluters according to the estimated socio-economic and health impacts.
- (iv) Introduce clean air as a high-level KPI for energy companies, starting with EVN.
- (v) Invest in filters and other devices that reduce pollution, starting from power stations.
- (vi) Accelerate the development of a non-polluting public transportation sector.

b. Green and energy-efficient buildings in a sustainable city

- (i) Integrate detailed regulations on NFB, sustainable building materials and energy efficiency into the draft law revising the Law on Construction 2014.
- (ii) Enforce and promote the application of sustainable building materials solutions through the VABM.
- (iii) Apply a comprehensive life-cycle approach.
- (iv) Promote green labels and EPD.
- (v) Provide greater transparency on the timing of the introduction of market-based pricing for electricity.
- (vi) Remove subsidies on fossil-based electricity.
- (vii) Publish a Roadmap to Retail Electricity Tariffs for commercial and industrial power consumers.
- (viii) Make buildings more energy efficient.
- (xi) Make minimal certification a precondition for licensing of types of buildings regardless of its use and incentivise higher levels of certification.
- (x) Prepare a clear urban planning showcase, including not just green buildings but also water, waste, traffic and environmental livelihood improvement solutions.

2.3. Human Resources & Training**a. Labour organisations at enterprises and trade union fees**

- (i) Clarify the role and relation in the event an “independent union” and a “traditional union” both exist in the same enterprise in guiding regulations of the new Labour Code and the amended Law on Trade Union.
- (ii) Revise regulations on the financing of both an “independent union” and a “traditional union” to ensure clarity, prudence, equality and correctly reflect the rights of employees’ representative organisations in deciding their financing.

b. Expansion of termination by employer

- (i) Expand the scope of acts of misconduct subject to immediate dismissal; expand the statute of limitations for settling a labour disciplinary action from 12 to 24 months, and; set out the threshold as a basis to determine “seriously detrimental” or “posing seriously detrimental damages”.

c. Work permit for foreigners

- (i) Allow foreign workers one renewal of their existing work permits – even if they have already received renewals in the past – and recognize university degrees which are within the same general subject matter as the job position.

d. Social insurance for foreign workers in Vietnam

- (i) The pension and survivorship regimes should not be applied to foreign workers, or applied only on an optional basis. Following the approval of the removal of the pension and survivorship from SI regimes, the SI contribution rate of foreign employees should reduce significantly; and foreign workers should be able to receive a one-off social insurance allowance upon repatriation from Vietnam.

e. Digital transformation in labour, training and education

- (i) Improve the network infrastructure nationwide and connect citizens to 4G/5G at reasonable prices in.
- (ii) Develop a National Education Platform as an online platform; perform more extensive research and application of e-learning.
- (iii) Assure that the draft Circular promulgating the organisation of online teaching for high schools and continuing education centres which are believed to allow teachers and pupils to utilise e-learning tools will be adopted at short notice.
- (iv) Assure that regional and provincial authorities play a leading role in cooperating with local digital competence centres.
- (v) Adapt programs to take into consideration the large variety of specialised IT occupations allowing students to study one or more specialised IT occupation program from their second year.
- (vi) Make a longer internship at IT companies or IT departments in medium and large enterprises mandatory.
- (vii) Collaborate with private institutions to enhance the abilities of local teachers.
- (viii) Enhance the attractiveness for the education sector by prioritising efforts to improve air quality.

2.4. Women in Business**a. Labour regulations affecting female employees**

- (i) Issue guiding regulations to assure equal treatment of men and women, including equal pay, and details on implementing these provisions; set up a commission within each DOLISA to specifically handle complaints relating to equal employment rights.
- (ii) Discourage gendered recruitment, and ensure the ILO standard is observed in any and all recruitment activities under the direction of a national or local Government authority.
- (iii) Set out clear incentives for employers who adopt policies in line with Article 79.2(a) of Decree 145 in forthcoming decrees.
- (iv) Amend the law regarding the tax cut for companies employing many female employees concerning broadening the scope of applicable sectors and industries and the percentage of tax reduction.
- (v) Implement a quota based on the number of female employees in upper-level management positions instead of the total number.
- (vi) Remove the provision offering the option of female employees receiving pay in lieu of the break.
- (vii) Clarify that disciplinary action only can be applied in the case of an unfounded complaint where there is clear and concrete evidence of the complainant’s intention to provide untrue information.

b. Other legislation

- (i) Prioritise the Gender Equality Law's review and update in 2021 and 2022.
- (ii) Prioritise the implementation of the current Law on Domestic Violence as well as improvement thereof.

PART 3: CONSUMER CHOICE**3.1. CropLife Vietnam and Food, Agri, & Aquaculture Business****a. A sustainable agricultural sector**

- (i) Create a regulatory roadmap towards the Government's goal of achieving a 30 per cent reduction of crop protection product use without sacrificing the sustainability and competitiveness of Vietnamese agriculture.
- (ii) Perform a proper assessment in cutting off crop protection products.
- (iii) Encourage farmers to use advanced, safe, and effective crop protection products with the appropriate stewardship training programs.
- (iv) Accelerate the GM approval process to ensure no restrictions on GM imports.
- (v) Foster opportunities for constructive dialogues to address any outstanding topics or concerns that the Government may have in this regard.
- (vi) Develop a new stewardship approach in cooperation with the stakeholders (government, industry, farmers).
- (vii) Cooperate with stakeholders to deliver the latest innovations that can help farmers overcome increasingly complex economic and environmental challenges.
- (viii) Reinforce policies together with stakeholders that encourage agriculture innovation supported by a transparent, science-based regulatory system consistent with international best practice.
- (ix) Ensure that corresponding services such as laboratory testing, regulatory review, and phytosanitary certification and clearance continue to operate at full capacity.

b. Organic fruit and vegetable market and food safety policy

- (i) Control of distributors of pesticides should be increased.
- (ii) Instruct suppliers of pesticides to use labels which mention both the name of the distributor and the manufacturer with the country of origin and include a clear identification of the name of each molecule in the bottle of the pesticide product.
- (iii) Match the regulation of standards regarding domestic organic production with the export requirements.
- (iv) Evaluate, clarify and select the right organic labels and logos for Vietnamese organic products.
- (v) Accredited selected international certified control bodies for better control and follow-up of organic farmers.
- (vi) Provide financial support to farmers shifting from conventional to organic farming together with agriculture banks.

c. Counterfeit and sub-standard products

- (i) Improve knowledge and responsibility of enforcement personnel on the Law on IP Rights.
- (ii) Prepare guiding regulations to support the identification and avoidance of IP violations on the local market.
- (iii) Ensure that production and trading of counterfeit crop protection products is punished severely and considered a crime.
- (iv) Enhance the monitoring and supervision of use of crop protection materials more strictly.

- (v) Implement stricter inspection, control, and management of cases of counterfeit crop protection products.
- (vi) Enforce existing regulations on the use of counterfeit and illegal products and on clear labelling and instructions' contents.
- (vii) Increase the awareness of farmers, producers, and retailers about the consequences of irresponsible use of counterfeit and sub-standard products.
- (viii) Cooperate with the private sector to organise training for farmers, producers, and retailers to avoid using counterfeit and sub-standard products.

d. Food Safety: Residue management on Agri-products

- (i) Develop a functioning, predictable legal framework based on scientific grounds and in harmonisation with international standards.
- (ii) Allow registrations of any crop protection product and its use unless there are unacceptable risks in terms of consumers' or operators' exposure or environmental safety.
- (iii) Develop internationally aligned regulations to manage residues not exceeding national MRLs.
- (iv) Develop an MRL database with requirements for agricultural commodities in importing countries accessible to producers and exporters.
- (v) Facilitate relevant stakeholders to promote the correct and safe use of crop protection products applying GAP.
- (vi) Step up monitoring domestic markets, including ensuring that residue-related issues among agricultural commodities are addressed.
- (vii) Implement current regulations on goods labelling and clear information provision to ensure farmers' proper and safe use.
- (viii) Develop appropriate regulations for effective enforcement.

e. Meat Value chain in line with EVFTA opportunities

- (i) Modernise the farming system to improve productivity leading to a reduction in operating costs and to meet requirements for export to the EU.
- (ii) Allow use of farm antibiotics only if prescribed by a veterinarian.
- (iii) Improve the "links" in the value chain.
- (iv) Modernise the meat processing industry.

f. 2021: transitional year for recovery and future development

- (i) Update the agriculture master plan covering all sub-sectors important for food security. Form an independent agency specialising in helping local businesses with exports in particular in light of the EVFTA.
- (ii) Work on solving inconsistencies in terms of import-export processes with the EU.
- (iii) Create a special "task force" among ministries for import-export guidance, or at a high level, import-export coordination.
- (iv) Review the LoFS regarding bodies relevant to the import, export, distribution, and retail of food.

3.2. Automotive

a. Taxation issues

- (i) Introduce a 50 per cent registration tax reduction scheme for mild hybrid, hybrid, and fully electrical vehicles for a period of up to three years.

b. Homologation requirements for automotive business

- (i) Consider the possibility of signing the 1958 UNECE Agreement to facilitate the import of automobile products and auto parts from Europe earlier than the schedule specified in the EVFTA;



- (ii) Implement Annex 2-B earlier than scheduled under the EVFTA.
- (iii) Accept certification documents under UNECE automatically without COP assessment.
- (iv) Accept UNECE documents for products from the EU under the EVFTA.
- (v) Authorise that UNECE documents are immediately accepted.
- (vi) Limit the presentation of certificates for those parts qualifying as “compulsory-component approval” parts for CBU imports, when the parts reference number on the vehicle declaration differs from the previous document.

c. Electric Vehicles

- (i) Grant a limited number of tax-free EV CBU to both CBU importers and/or CKD assemblers to test the technology.
- (ii) Refrain from applying import taxes on EV and hybrid CBU cars imported for pilot projects, and CKD kits, raw materials, and production equipment to be imported for EV manufacturing and assembly.
- (iii) Reduce SCT on evs, hybrids, and mild hybrid vehicles by 50 per cent.
- (iv) Provide stronger incentives for technology transfer for evs above the current support in prevailing regulations to customers and CBU-importers and CKD manufacturers on national and provincial levels;
- (v) Invest in key charging infrastructure to pave the way for transportation electrification development providing full support to EVN to develop a charging station network to develop smart cities.
- (vi) Clarify the modalities and price for companies to invoice power charging to EV users at public and private-owned charging stations at - for example - car dealerships with EVN.

d. Waste disposal and recycling

- (i) Build a suitable ecosystem for the automotive sector in cooperation with the industry.
- (ii) Delay implementation until a roadmap for solid waste collection, disposal, and recycling channels is in place – including enforcement – to ensure credit mechanism for compliant companies or fines in case of violations.

3.3. Motorcycles

a. Ban on motorcycle circulation in big cities by 2030

- (i) Consider effective solutions to address the issues of traffic congestion, pollution, and traffic accidents in big cities.
- (ii) Focus on the quality of the circulating vehicles rather than indiscriminately on the quantity, in order to properly address the issue of pollution.
- (iii) Only manage or ban out-of-date motorcycles, incentivising the use of low-emissions vehicles.
- (iv) Reduce congestion and pollution by adopting best practice from other countries, where advanced public transport and traffic infrastructure are used in harmony with motorcycles.
- (v) Evaluate the social impact on people who depend on motorcycles but now have to change to public transportation which has not developed enough to meet demand.
- (vi) Raise awareness about traffic regulation and safety.

b. Registration fee

- (i) Set up a comprehensive management system to solve the notification of the tax rate in which the GDT notifies the district tax departments immediately after receiving the notice from enterprises.
- (ii) Encourage district tax departments, upon the receipt of dossiers, to notify the superior tax department in case no notice of the price has been received.
- (iii) Determine the price for the registration fee calculation in cases where multi-version motorcycles have the same COC symbol.

- (iv) Implement the process of receiving price notification and registration fee dossiers by the tax departments through a software system.

c. Intellectual property rights protection

- (i) Strengthen the efficiency of protection and enforcement of industrial and product designs.
- (ii) Create a different and independent evaluating organisation of IPR protection-infringing cases.
- (iii) Strengthen the voice of IP-related authorities (such as NOIP) on IP Issues.
- (iv) Implement a mechanism for IPR owners to appeal VIPRI's evaluation.
- (v) Establish specialised tribunals on IP matters, improving the IP knowledge and experience of judges.
- (vi) Enhance cooperation between IP enforcement bodies and relevant agencies in fighting against smuggling, commercial fraud and counterfeit goods.

d. Environmental protection

- (i) Prepare a schedule of applicable penalties for non-compliance with recycling regulations.
- (ii) Apply penalties only to non-compliance with recycling methods but not the ratio.
- (iii) Amend the definition of producers and importers to include non-authorised importers who also import vehicles into Vietnam for sale, under a type of parallel importation.
- (iv) Monitor brand owners for the collection and recycling and make it a shared responsibility for many brand owners' clusters/suppliers providing parts and components for assembling the vehicles.

3.4. Nutrition & Milk Formula Products

a. Goods labelling in Circular 05

- (i) Issue a document to amend/remove this regulation as soon as possible.

b. Health certificates for exported food in Circular 52

- (i) Promulgate a document to allow other inspection agencies under MOH, in addition to the VFA, such as the National Institute of Food Control, the Institute of Public Health, and the Pasteur Institute, to issue health certificates for exported food.
- (ii) Ensure that the inspection agency issues health certificates within one working day of obtaining satisfactory testing results.
- (iii) Apply risk management related to testing for granting a Health Certificate for production establishments that have advanced certificates such as ISO 22000, GMP, or HACCP and have not committed any violations related to product quality within the last 12 months by testing a batch every two months for each product.

c. Quarantine regulations for pre-packaged food

- (i) Remove the quarantine requirement for ready-to-eat, prepackaged foods and prepackaged, heat-processed foods under HS codes 17, 19, 20, 21, 22, and 35 requiring only food safety inspection with submission of veterinary documents including a Medical Certificate.
- (ii) Combine food safety inspection and quarantine for prepackaged, processed foods.
- (iii) Inspect only food safety for products of animal origin when carrying out import procedures requiring veterinary documents.
- (iv) Require only quarantine procedures on the national single window system and eliminate the requirement to submit the original medical certificate which is kept on site for post-inspection.
- (v) Do not refuse to quarantine products with a Medical Certificate issued by the exporting country without a clear legal basis.
- (vi) Reduce the list of items subject to pre-clearance inspection and types of pre-clearance inspection.
- (vii) Only conduct 1 type of pre-clearance inspection for the item with the highest risk.

d. Contribution to the environmental protection fund for product and packaging recycling

- (i) Change the word “contribution” to “environmental protection fee for recycling products and packages”.
- (ii) Provide specific and clear fee formulas in the Decree.
- (iii) Review the composition, operational structure, functions, and duties of the National EPR Council and the National EPR Office to distinguish between the public sector and the private sector and avoid increasing state personnel. Finance activities of the National EPR Council and Office from the state budget instead of the fund paid by businesses.
- (iv) Consider removing inappropriate regulations on the payment time limit, sanctions for late payment, no customs clearance for late payment, and labelling.
- (v) Postpone the date on which companies will have to start contribution to 1 January 2025.
- (vi) Develop an appropriate fee scale which starts with a low fee gradually increasing every three years while the new fee level is notified one year in advance so that businesses have time to prepare.
- (vii) Start the required recovery rate at 40 per cent, increasing every three years by no more than 5 per cent.

e. Regulations on advertising functional foods

- (i) Change “functional foods” to “health supplements” in Article 52(1) and 52(2) of Decree 38 for alignment with food regulations, international practice, limiting costs for food enterprises.

3.5. Wines & Spirits**a. Special Consumption Tax**

- (i) Maintain the predictability and stability of the current SCT system to ensure an enabling regulatory framework that supports increasing revenue and fostering a responsible drinking environment.
- (i) Develop a model combining the application of ad valorem and specific taxes applicable to the wine and spirits industry to achieve both increased tax revenues and business development.

b. E-Commerce of Wine and Spirits

- (i) Amend Decree 105 to take into account the specific nature of e-commerce, particularly in view of the public audience.
- (ii) Do not impose any geographical restrictions or boundaries on e-commerce sales of alcohol before the consultation has taken place.
- (iii) Assure that the regulation amending Decree 52 will provide a clear and transparent framework for e-commerce sale of alcohol for the benefit of consumers, traders, and management authorities.

c. Alcohol social policy and corporate social responsibility

- (i) Support the alcohol harm prevention programs and campaigns by sharing a strong message on responsible consumption, irrespective of the type of alcohol.
- (ii) Continue the dialogue with all relevant stakeholders to further a joint effort.

PART 4: HEALTH & BEAUTY

4.1. Cosmetics

a. Removal of cosmetic advertisement approval requirement

- (i) Amend Decree 181 and Circular 09 and issue new regulations removing the requirement of approving cosmetics advertising contents and focus on post-market surveillance.
- (i) Abolish the requirement of approving product information sold on e-commerce platforms while implementing the issuance of new regulations.
- (i) Simplify, and streamline administrative procedures and allow businesses to take full responsibility for the accuracy and honesty of the advertised content.

b. Streamlining administrative procedures, enhancing and implementing online public services

i. Cosmetics notification and advertising notification

- (i) We suggest that the DAV and the relevant Departments of Health complete shortly level 3-4 public services for the process of cosmetics notification and cosmetic advertising notification (after removing the requirement of advertising approval).
- (i) We further recommend limiting the requirement of document submission, receipt of hard-copy results, and direct fee payment.

ii. Registration of marketing and advertising content of chemicals, insecticides, and disinfectants

- (i) Simplify and streamline the marketing authorisation process for chemicals, insecticides, and disinfectants.
- (ii) Make the procedure for marketing authorisation and advertising registration level 4 online public services as soon as possible.
- (iii) Accept results of tests conducted in foreign qualified laboratories instead of requiring enterprises to re-conduct them in Vietnam.
- (iv) Issue a separate registration process for sanitiser products for human use to reduce conditions and shorten the time for this particular product group.
- (v) Amend Decree 91 in order to reduce the conditions and shorten the time for antiseptic products from six months to a maximum of one month.

iii. Promotion notification at the Departments of Industry and Trade

- (i) We recommend that all local authorities improve the electronic system to fully apply the online process at all DOITs as soon as possible.

c. Certificate of Free Sale requirement

- (i) Apply the MFN principle of the EVFTA to cosmetic products imported from the European Union.
- (ii) Add cosmetics imported from the EU to the list of countries exempted from the CFS requirement and work towards to goal of completely abolishing this requirement.

d. Strengthening control of fake cosmetics and smuggled goods through online sales

- (i) Enhance the management of e-commerce platforms to create a fairer and healthier business environment.
- (ii) Mention information on the legality of two sales channels on exchanges and avoid confusion for customers.

4.2. International Quality Medicines: Generics & Biosimilar

a. Affordable treatment options for vietnamese patients

- (i) Automatically remove originator status and merge all products from branded group to relevant groups once three Market Authorisations are active.

- (ii) Remove the price negotiation mechanism.
- (iii) Ensure the high quality of all drugs in Group 1. Specifically, strict standards should be developed for domestically-produced drugs.
- (iv) Introduce a consumption priority in hospitals to generic drugs from Group 1 and Group 2 over brand-name drugs due to their advantages of high-quality and reasonable price.
- (v) Expand the list of bioequivalence drugs.
- (vi) Streamline the registration process for high-quality medicinal products.

b. Maximise the benefits of the EVFTA in healthcare

- (i) Revise and redraft the drug registration policy.
- (ii) Prepare a clear annual audit plan for DAV which is approved and implemented periodically.
- (iii) Draft a clear code of conduct for all pharmaceutical companies operating in Vietnam defining rules and guidelines within the healthcare sector.

c. Biosimilars: increasing patient access to state-of-the-art therapies

- (i) Consider the early issuance of regulatory pathways for biosimilar medicines.
- (ii) Facilitate the introduction of high-quality true biosimilar medicines to reduce health expenditure and balance healthcare expectations.
- (iii) Re-assess biocopies (NCBs) that have not achieved regulatory approval according to the regulatory pathway for biosimilars after the local regulatory pathways for biosimilar medicines have been issued.
- (iv) IQMED - Generic and Biosimilar Sector Committee are committed to putting patient benefit and safety at the centre of care. We are willing to accompany Vietnam's Government and relevant State authorities for a bright success of the national health plan in the period of 2018 – 2030.

4.3. Medical Devices & Diagnostics

a. Digital transformation in Vietnam's healthcare industry

- (i) Vietnam should be prepared for the changed approach of the healthcare market by approaching current and future patients in a different way.
- (i) Train staff to handle the new digital options and hire appropriate new staff where necessary.
- (i) Invest in new hardware and software suitable to provide these new digital services.
- (i) Find alternative flexible funding or partnership models to save costs.
- (i) Optimise workflows using the options the (new) digital environment provides.
- (i) Ensure that patients' data is protected.
- (i) Develop legislation governing Big Data and AI for healthcare applications.

b. Machine installation model in hospitals

- (i) Add the machine installation model to the official documents of consistent policy from relevant Ministries regarding the model of placing equipment in public health establishments.
- (ii) Continue and approve insurance payment for technical services performed on placed machines until the new regulations to amend and supplement the machine installation model have been issued.
- (iii) Circulate the documents and provide training for relevant stakeholders to allow a better understanding of the policy as well as full compliance with the law.

4.4. Pharma Group

a. A predictable and sustainable investment environment is needed to achieve Vietnam's vision

- (i) Address immediate hurdles in policy and implementation, by focusing on the three key pillars: Drug registration, procurement and reimbursement.

- (ii) Implement quantitative measures in the development and assessment of policy by further improving APCI towards OECD best practices based on EuroCham Pharma Group's global experience and information resources.
- (iii) Provide an enabling business environment for innovative companies through effective enforcement of Intellectual Property Rights (in line with the EVFTA and other free trade agreements) and support for companies to establish FIE importers, effectively operationalise their legal entities and import medicines to Vietnam.
- (iv) Develop attractive and sustainable incentives in policy to attract further investments from the innovative industry, with a focus on three key pillars: (i) Clinical trials to develop R&D capabilities, (ii) manufacturing of innovative medicines through technology transfer, and (iii) digital health.

b. Immediate challenges limiting sustainable patient access and further investment

i. Drug registration

Regulations solutions

- (i) Establish a mechanism for Marketing Authorisation (MA) to remain valid throughout the product lifecycle, similar to the practice in other countries, instead of being subject to renewal every 5 years.
- (i) Harmonise administrative requirements with international guidelines and practices (most notably for the Certificate of Pharmaceutical Product).
- (i) Remove administrative requirements that are challenging to implement while not adding to the assurance of product safety, quality and efficacy
- (i) Enable automatic synchronisation of approved updates/variations across different lists to ensure drug information is always up to date while reducing workload for the authorities.
- (i) Apply more appropriate drug registration fees to be on a par with other countries in the region, especially since the review of clinical dossiers requires expertise and additional resources.

Implementation solutions

Optimise the dossier review and appraisal process with clear accountability and commitment to regulated timelines including:

- (i) Organising fixed, preferably monthly, Drug Committee meetings to ensure shared understanding and consistent feedback from dossier review experts.
- (ii) Ensure an effective and efficient online registration system that is implementable for both regulator and industry, and can truly speed-up the dossier review timeline.

ii. Procurement

- (i) Assure that the implementation of Price Negotiation adheres to the principles set out (i) sustainability in price reduction magnitude and frequency, (ii) predictability of the criteria applied and clarity in the implementation schedule for all parties, and (iii) a transparent and meaningful process, to increase access instead of eliminating products from the market.
- (ii) Improve the predictability in the development of regulations to avoid sudden changes in procurement mechanism for originators, as transparency, consistency and predictability are critical to ensure sustainable patient access.
- (iii) Amend relevant legislation to enable patient/doctors' access to originators outside the current public hospital procurement system.

iii. National Reimbursement Drug List

- (i) Revise and update the NRDL regularly, either on a rolling basis, or with an increased cycle frequency (at least on an annual basis), with appropriate measures to ensure implementation.
- (ii) Allow for simultaneous review of the registration for Marketing Authorisation and NRDL submission and innovative medicines approved by reference/stringent regulatory authorities should be eligible for inclusion in the NRDL upon MA approval, to enable fast patient access.

- (iii) Allow for fast-track review and/or NRDL updates supplemented through a decision issued by the MOH.
- (iv) Allow experts from patient associations and the pharmaceutical industry to be part of the consultation sessions with MOH and VSS to ensure that decisions to update and supplement the NRDL are made based on complete data and references from global experience.

PART 5: DISPUTE RESOLUTION

5.1. Judicial & Arbitral Recourse

a. Courts and the competition authority

- (i) Publish the judgments of all court levels.
- (ii) Publish all decisions of the competition authorities.
- (iii) Amend the Law on Lawyers to allow fully qualified Vietnamese lawyers to represent clients before Vietnamese courts, even if she or he is working for a foreign law firm.

b. Arbitration in Vietnam

- (i) The Supreme People's Court and the Chief Justice could provide more and stricter instructions to lower-level courts to consistently limit court interventions during arbitration proceedings.
- (ii) Introduce a right of appeal against first-instance court decisions on jurisdiction or on the validity of an arbitral award.

c. Recognition and enforcement of foreign arbitral awards

- (i) Implement the Civil Procedure Code so that it provides for the strict application of the provisions of the NYC.
- (ii) Introduce the automatic referral to the relevant Superior People's Courts of all cases where an application has been rejected by the Courts of First Instance.
- (iii) Organise more seminars and training courses to ensure that judges are properly trained to deal with applications for recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.

5.2. Commercial Mediation

- (i) Continue implementing measures to increase awareness of commercial mediation and develop it.
- (ii) Unify regulations of commercial mediation as developed under Decree 22 and in other previous laws and practice.
- (iii) Focus on raising awareness and guidance on the implementation and impact of the EVFTA and EVIPA regarding the mediation mechanism so Vietnamese enterprises can benefit.
- (iv) Enhance capacity building and training for legal practitioners about commercial mediation to prepare for the future.
- (v) Consider joining the international treaties related to commercial mediation to complete the legal corridor for the entire process of dispute settlement through commercial mediation.

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ABOUT THE EU-VIETNAM FREE TRADE AGREEMENT

OVERVIEW

On 12 February 2020, the European Parliament ratified the EVFTA followed on 30 March 2020 by the Council of Ministers. On 8 June 2020, Vietnam's National Assembly ratified the EVFTA and EVIPA after almost ten years of negotiation. Finally, on 1 August 2020, the landmark agreement entered into force. The EVIPA requires ratification in all 27 EU Member States and this process is still ongoing.

The Vietnamese Government issued Decision No. 1201/QĐ-TTg listing MOIT as a contact point to provide information, guide and clarify the commitments and issues related to the EVFTA.¹ MPI has also issued an action program to review and perfect mechanisms, policies, and laws to improve the investment and business environment in light of Vietnam's commitments in the EVFTA.²

In July 2021, the first meeting of the EVFTA Trade Committee took place online. During the meeting, participants reviewed the implementation process and discussed issues related to trade and investment in bilateral and multilateral frameworks. Decision 01 was adopted at this meeting and provides for the operation mechanism of the committee, including regulations on its function, membership, secretariat, decision-making procedure, and information transparency. It was also agreed that, to speed up the implementation of the deal and cope with matters that may negatively impact the operation of businesses on both sides, parties would coordinate closely.³

From January to July 2021, exports to the EU accounted for US\$ 22.5 billion for the following products: mobile phones and accessories, computers, electronic products and components, garment and textiles, other machinery, equipment, tools and spare parts, footwear, handbags, wallets, wood and wooden products, and fishery products.⁴ This is a year-on-year rise of 15.5 per cent. Vietnam imported accessories, automobile spare parts, completely-built-up cars and household appliances from the EU worth US\$ 9.7 billion, a rise of 19.6 per cent compared to 2020.⁵

The numbers could have been higher were it not for the impact of COVID-19. This caused issues in logistics, such as a lack of containers, delays in discharging goods, higher costs due to fines, and impacts on labour because of social distancing.⁶

It is clear that, in the seven months after the agreement entered into force, trade between the EU and Vietnam outperformed trade between the EU and other countries. For example, although exports from the EU to Vietnam fell by ten per cent, exports to third countries fell by 19 per cent. Furthermore, exports from Vietnam to the EU increased by two per cent, while there was a ten per cent drop in other exports from other countries.⁷

Exports from Vietnam in the first quarter of 2021 increased for the following countries: Greece (23.5 per cent), the Czech Republic (64.7 per cent), Portugal (36.6 per cent), Italy (26.4 per cent), Belgium (19.9 per cent), Ireland (23.2 per cent), Austria (10.3 per cent), and Denmark (20.2 per cent).⁸

In addition to the positive effect on trade, the EVFTA also bolstered investment activity between Vietnam and the

1 Decision 1201/QĐ-TTg dated 6 August 2020 of the Prime Minister approving the Plan on implementation of the Free Trade Agreement between Vietnam and the European Union.

2 "Action plan on EVFTA enforcement released", Online newspaper of the Government, 06 August 2020. Available at: <http://news.chinhphu.vn/Home/Action-plan-on-EVFTA-enforcement-released/20208/41086.vgp>, last accessed on 19 August 2021.

3 "Vietnam, EU review bilateral trade deal implementation" Vietnam News. Available at: <https://vietnamnews.vn/economy/995826/viet-nam-eu-review-bilateral-trade-deal-implementation.html>, last accessed on 19 August 2021.

4 "Vietnam sees 15.5 percent rise in exports in EU market", Vietnamplus, 03 August 2021. Available at: <https://en.vietnamplus.vn/vietnam-sees-15-5-percent-rise-in-exports-in-eu-market/205702.vnp>, last accessed on 19 August 2021.

5 Ibid.

6 "Better utilising opportunities of EU-Vietnam free trade agreement", Nhandan, 03 August 2021. Available at: <https://en.nhandan.vn/business/item/10244202-vietnam-reaps-bigger-fruits-from-regional-integration.html>, last accessed on 19 August 2021.

7 "EU-Vietnam Free Trade Agreement: a promising start", Upplify, 11 May 2021. Available at: <https://market-insights.upply.com/en/eu-vietnam-free-trade-agreement-a-promising-start>, last accessed on 19 August 2021.

8 "COVID-19 pandemic: Proposal of VND 62,000 billion support package, targeting 20 million people", Agribank, 07 April 2020. Available at: <https://www.agribank.com.vn/en/ve-agribank/tin-tuc/dtl?current=true&urle=wcm:path/agbanken/ve-agribank/news/market-news/proposal-of-support-package-targeting-20-million-people>, last accessed on 19 August 2021.

EU. As of June 2021, the EU has invested US\$22.216 billion in 2,221 projects in Vietnam, up US\$449 million and 142 projects from a year earlier. The EU accounted for 5.58% of total foreign investment in Vietnam.⁹ However, foreign investment from EU member states is lower than, for example, from the Republic of Korea, Japan, and Singapore investing over US\$72 billion, US\$63 billion, and US\$62.2 billion, respectively. The Netherlands ranks tenth and is the largest European investor in Vietnam with more than US\$10 billion, followed by France, and Germany with US\$3.6 billion, and US\$2.3 billion, respectively. European companies have invested primarily in small-scale projects in 18 out of 21 major Vietnamese industries.¹⁰ Consistent policies, legal stability, and intellectual property are essential for European companies in the decision-making process when deciding where to make investments in large or high-tech projects.¹¹

Since 1 August 2020 a total of 180,551 certificates of origin have been issued for goods¹² exported to the EU, for a total value of US\$6.6 billion.¹³ If certain criteria are met, companies can arrange self-certification of origin to utilise preferential tariffs, and this has been done for a value of more than \$10.88 million.¹⁴

One particular highlight was the first container freight train that left Hanoi at the end of July for Belgium, with goods destined for the port of Rotterdam for further transport.¹⁵

LEGAL ENVIRONMENT AND SUMMARY OF MAIN POINTS

The EVFTA is the most comprehensive and ambitious trade and investment agreement that the EU has ever concluded with a developing country. It is the second agreement in the ASEAN region, after Singapore, and intensifies bilateral relations between Vietnam and the EU. Vietnam now has access to a market of around 448 million people with an average GDP of US\$13.9 billion. Meanwhile, exporters and investors from the EU also have opportunities to access one of the largest and fastest-growing countries in the region.

Customs and Tariffs

Nearly all customs duties – over 99 per cent of the tariff lines – will be eliminated in the next ten years. The rest will be partially liberalised through duty-free quotas. Vietnam has liberalised around 65 per cent of the value of EU exports, representing around half of the tariff lines, at entry into force. The remaining duties will be eliminated over the next decade.

Meanwhile, the EU agreed to eliminate duties for 84 per cent of the tariff lines and 71 per cent of its trade value for goods imported from Vietnam from 1 August 2020. Within seven years from the effective date of implementation, more than 99 per cent of the tariff lines will have been eliminated for Vietnam. Because of the EVFTA, the sectors that will benefit most are the main export sectors that used to be subject to high tariffs from the EU including textiles, footwear, and agricultural products.

Vietnam benefits more from the EVFTA compared with similar agreements, since Vietnam and the EU are complementary markets. In other words, Vietnam exports goods that the EU cannot or does not produce itself (i.e. fishery products, tropical fruits, etc.) Meanwhile, the products imported from the EU are also those Vietnam does not make domestically, including machinery, aircraft, and high-quality pharmaceutical products.

9 “Better utilising opportunities of EU-Vietnam free trade agreement”, Nhandan, 03 August 2021. Available at: <https://en.nhandan.vn/business/item/10244202-vietnam-reaps-bigger-fruits-from-regional-integration.html>, last accessed on 19 August 2021.

10 Main sectors are: food processing, garments, textiles, shoes, machine-building; mining, coal, steel; cement, chemical fertilizer, glass, tires, oil, mobile phones, tourism, logistics.

11 “Vietnam urged to fine-tune legal system to attract greater FDI from Europe” VOV, 12 August 2021. Available at: <https://english.vov.vn/en/economy/vietnam-urged-to-fine-tune-legal-system-to-attract-greater-fdi-from-europe-882017.vov>, last accessed on 19 August 2021.

12 Goods such as footwear, aquatic products, textiles and garments, agricultural products, cereal products, and electronic goods.

13 “Businesses continue to utilise incentives from EVFTA”, Public Security News, 16 June 2021. Available at: <https://en.cand.com.vn/Business/Businesses-continue-to-utilise-incentives-from-EVFTA-i589183/>, last accessed on 19 August 2021.

14 “Exports to the EU reach nearly \$5 billion thanks to EVFTA”, Vietnam News, 16 April 2021. Available at: <https://vietnamnews.vn/economy/926328/exports-to-the-eu-reach-nearly-5-billion-thanks-to-evfta.html>, last accessed on 19 August 2021.

15 “Container freight trains from Vietnam to Belgium help boost railway logistics services” Vietnamplus, 03 August 2021. Available at: <https://en.vietnamplus.vn/container-freight-trains-from-vietnam-to-belgium-help-boost-railway-logistics-services/205736.vnp>, last accessed on 19 August 2021.

With better market access for goods from the EU, Vietnamese enterprises can source EU materials, technology, and equipment at a better quality and price. This, in turn, improves their own product quality and eases Vietnam's burden of over-reliance on other trading partners.

The EVFTA is considered a template for the EU to further conclude FTAs with different countries in ASEAN. It is a stepping stone to the ultimate aim of concluding a region-to-region agreement once there is a sufficient critical mass of agreements with individual ASEAN countries.¹⁶ This process could take about 10-15 years. Thus, Vietnam should take advantage of this window of opportunity, before FTAs with others in the region are concluded and take effect, to become a regional hub.

Market Access for EU Service Providers

Although Vietnam's WTO commitments are used as a basis for the services commitments in the EVFTA, Vietnam has not only opened additional (sub)sectors for EU service providers, but also made commitments going farther than those outlined in the WTO, offering the EU the best possible access to Vietnam's market. (Sub)sectors that are not committed under the WTO, but in the EVFTA, include interdisciplinary research & development services; nursing services, physiotherapists and para-medical personnel; packaging services; trade fairs and exhibitions services; and building-cleaning services.

Technical Barriers to Trade

The provisions to address technical barriers to trade (TBT) in the EVFTA go beyond the obligations of the WTO TBT Agreement. These provisions are necessary to ensure that technical regulations, standards, and conformity assessment procedures are applied in a non-discriminatory way and do not create unnecessary obstacles to trade.¹⁷

Sanitary and Phytosanitary Measures

Sanitary and phytosanitary (SPS) measures are necessary to ensure that traded food and feed is safe. However, these measures are sometimes misused and become a protectionist barrier. The SPS provisions in the EVFTA cover the EU as one entity, so it is not necessary to obtain access to all member states. Another relevant provision is regionalisation, which means that, in case of issues, not all imports will be blocked, just from the area at risk. Finally, prelisting will improve trade as it accepts the decisions by establishments in the EU and, if in doubt, Vietnam can order an inspection but would need to pay for the costs.

Rules of Origin

A Rule of Origin (ROO) is used to connect a product with a country and will be used to grant a tariff preference to the product based on its origin. The main features of the ROO included in the EVFTA are the same as those in the EU's General Scheme of Preferences and its FTA with Singapore. Some limitations and flexibilities apply, which take into account Vietnam's specific situation. This is, for example, the case for products containing sugar and dairy, steel products, mechanical machinery, and electrical machinery. Some simplifications will guarantee a similar level of flexibility as the GSP rules both for Vietnam and the EU. Some principles included in the Protocol on Rules of Origin are non-alteration, certification and self-certification, cumulation, and duty drawback is allowed.¹⁸

Geographical Indication

A Geographical Indication (GI) is a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin.¹⁹ If a product is recognised as a GI it is better protected internationally against misuse and counterfeiting.

¹⁶ EU negotiations and agreements. Available at: <<http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>>, last accessed on 29 March 2021.

¹⁷ "Guide to the EU-Vietnam Trade and Investment Agreements", Delegation of the European Union to Vietnam. Available at: https://trade.ec.europa.eu/doclib/docs/2016/june/tradoc_154622.pdf, last accessed on 7 August 2021.

¹⁸ Ibid.

¹⁹ Ibid.

IPR

The EVFTA contains several positive improvements in the IPR field, which will benefit both IPR owners and consumers. These improvements are related to copyright, trademarks, designs, patents, plant designs, protection of undisclosed data, geographical indications and enforcement.

Government Procurement

Vietnam has one of the highest ratios of public investment-to-GDP in the world (39 per cent annually from 1995).²⁰ However, until now, Vietnam has not agreed to its Government procurement being covered by the Government Procurement Agreement (GPA) of the WTO.²¹

Now, for the first time, Vietnam has undertaken to do so in the EVFTA. The FTA commitments on Government Procurement mainly deal with the requirement to treat EU bidders, or domestic bidders with EU investment capital, equally with Vietnamese bidders when the Government purchases goods or requests a service worth over the specified threshold. Vietnam undertakes to follow the general principles of National Treatment and Non-discrimination. The FTA also requires its parties to assess bids based on fair and objective principles, evaluate and award bids only based on criteria set out in notices and tender documentation, and create an effective regime for complaints and settling disputes.²² These rules require parties to ensure that their bidding procedures match the commitments and protect their own interests, thus helping Vietnam to solve its problem of bids being won by cheap but low-quality service providers.

Investment Dispute Settlement

Investment Dispute Settlement is covered in the EVIPA. In disputes regarding investment (for example, expropriation without compensation or discrimination of investment), an investor can bring the dispute to the Investment Tribunal for settlement. To ensure the fairness and independence of the dispute settlement, a permanent Tribunal will be comprised of nine members: three nationals each appointed from the EU and Vietnam, and three appointed nationals from third countries. Cases will be heard by a three-member Tribunal randomly selected by the Chairman to ensure consistent rulings in similar cases, thus making the dispute settlement more predictable. The EVIPA also allows a sole Tribunal member where the claimant is a small or medium-sized enterprise or the compensation of damaged claims is relatively low. This is a flexible approach considering that Vietnam is still a developing country.

In case either of the disputing parties disagrees with the decision of the Tribunal, it can appeal to the Appeal Tribunal. While this is different from the common arbitration proceeding, it is quite similar to the two-level dispute settlement mechanism in the WTO (Panel and Appellate Body). We believe that this mechanism could save time and costs.

The final settlement is binding and enforceable from the local courts regarding its validity, except for a five-year period following the entry into force of the EVIPA (please refer to further comments in the Legal Sector Committee's chapter on Judicial and Arbitral Recourse).

²⁰ "Vietnam Investment: % of GDP", *CEIC*. Available at: <www.ceicdata.com/en/country/vietnam>, last accessed on 29 March 2021.

²¹ Agreement on Government Procurement dated 12 April 1979 of the World Trade Organisation.

²² Chapter 9 on Public Procurement, EVFTA. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:186:FULL&from=EN#page=77>> last accessed on 29 March 2021.

THE EVFTA IN THE WHITEBOOK

In several chapters, our Sector Committees raise issues and challenges in the implementation of the EVFTA. An overview of these Committees and issues can be found below:

Chapter 2. IPR III. Draft IP Law 2. Patent 3. Industrial design 4. Geographical Indications 7. Responsibilities of intermediary service providers	Chapter 15. Motorcycles III. Intellectual Property Rights (IPR) Protection
Chapter 8. Transport and Logistics III. Rules of Origin under the EVFTA	Chapter 18. Cosmetics III. Certificate of Free Sale Requirement
Chapter 10. Green Growth I. Circular Economy 2. Addressing plastic pollution	Chapter 19. IQMED G+B II. Maximise the Benefits of the EVFTA In Healthcare
Chapter 13. CropLife and FAABS IV. 2021: Transitional Year for Recovery and Future Development	Chapter 24. Commercial Mediation I. Commercial Mediation 2. Mediation in light of the EVFTA and EVIPA
Chapter 14. Automotive I. Homologation Requirements For Automotive Business 1. Certification of automotive safety parts 2. Certificate of Production 3. Product composition declaration at customs clearance	

THE FUTURE: REGULATORY COOPERATION

Regulatory differences across jurisdictions are costly for companies and will regularly prevent high-quality foreign direct investment if the business opportunities of the local market are limited. These costs are the result of variations in domestic conditions and preferences. For a country to become part of global value chains, a seamless regulatory environment with those it wants to attract appears to be a precondition.

Not all of these divergences are a result of protectionist intent. In many cases, they are the outcome of a rule-making process working in isolation and lacking consideration of the realities of today's international business environment.²³ For an economy to be fully integrated in the global economic system, it needs to internationalise its own regulatory system and the mindset of its regulators. These were often set up in a time when only domestic policy considerations were of relevance. The fundamental assumption is that all regulators in specific areas pursue the same public policy objectives of enhancing the lives of its citizens through safer, healthier and more environmentally friendly, or climate-change improving production and consumption.

Regulatory cooperation has been in use in many relations. Originally developed in trade matters between regulators of the U.S. and the EU,²⁴ the EU has expanded this approach to all OECD members, and many emerging economies. Whilst being used in many areas with Japan,²⁵ it is also the cornerstone of the EU-Japan FTA in the car sector. It accompanies the functioning of the EU-South Korea FTA as well as the EU-Canada FTA, including on better regulation and regulatory coherence. The regulatory cooperation approach was introduced in EU-China relations in financial sector regulations and capital markets already some 15 years ago. But also with Taiwan, regulatory cooperation is an approach used.²⁶ This cooperation method has shown its effectiveness in cross-cutting areas like accounting and auditing and competition policy.

It mobilises a wide variety of actors in the national and international rule-making environment. At the country level, lawmakers and regulators across policy areas are the key initiators. In the international arena, intergovernmental organisations, private standard-setters, and trans-governmental networks of regulators provide the platform for regulatory cooperation to take place in specific subject areas.²⁷

To reach the next level in EU-Vietnam economic integration, both in trade and investment, regulatory cooperation may just be the right approach, at the current stage, for the further EVFTA implementation. Regulatory cooperation focuses on mutual understanding of good regulatory practices, the modernisation of national regulatory frameworks, the de-bureaucratisation of old-fashioned regulatory approaches, the adoption and improvement of international standards and practices by regulators, and is a precondition for the use of cross-border recognition frameworks, regulatory convergence, legislative harmonisation, mutual recognition and equivalency arrangements.²⁸

Regulatory cooperation means that regulators from two different countries or regions, in this case, the EU and Vietnam, get together to:

- Share real-world experiences and information.
- Identify areas of mutual interest for joint work to bring about a higher degree of regulatory coherence.
- Accompany the reform and modernisation of antiquated domestic regulatory frameworks and systems.

23 "International Regulatory Co-operation and Trade", OECD iLibrary. Available at: www.oecd-ilibrary.org/governance/international-regulatory-co-operation-and-trade_9789264275942-en, last accessed on 19 August 2021.

24 "EU-US Regulatory Cooperation" International Affairs, US Chamber of Commerce. Available at: www.uschamber.com/sites/default/files/documents/files/EU%20US%20Reg%20Coop_2.pdf, last accessed on 19 August 2021.

25 "An introduction to the EU-Japan Economic Partnership Agreement". Available at: www.eu-japan.eu/tags/regulatory-cooperation and https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155720.pdf#:~:text=Regulatory%20cooperation%20will%20remain%20entirely%20voluntary.%20It%20will,to%20the%20measures%2C%20practices%20or%20approaches%20they%20adopt, last accessed on 19 August 2021.

26 "Introduction about EU Business and Regulatory Cooperation with Taiwan", EBRC. Available at: www.ebrctw.org/eng/about_EBRC.aspx, last accessed on 19 August 2021.

27 "International Regulatory Co-operation - Adapting rules to an interconnected world", OECD. Available at: www.oecd.org/gov/regulatory-policy/irc.htm, last accessed on 19 August 2021.

28 "Regulatory Cooperation – A Reality Check", Elizabeth Golberg, April 2019. Available at: www.hks.harvard.edu/sites/default/files/centers/mrcbg/img/115_final.pdf, last accessed on 10 August 2021.

- Work together on developing international standards, especially in international fora.
- Discuss how to address issues arising when the two sides' regulations diverge or are incompatible and create important trade or investment obstacles.²⁹

The input of businesses of both sides is absolutely essential for regulators to identify where the biggest hurdles for better trade and investment integration are. Foreign and domestic businesses often encounter the same regulatory issues. EuroCham and its Sector Committees are willing to engage both with the EU Delegation and the Vietnamese regulatory authorities in providing specific input and sharing its ideas on how to modernise and improve the Vietnamese business environment. We are willing to reflect with VCCI on how to make best use of the recently created EuroCham-VCCI Business Council in this context.

29 "An introduction to the EU-Japan Economic Partnership Agreement". Available at: https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155720.pdf#:~:text=Regulatory%20cooperation%20will%20remain%20entirely%20voluntary.%20It%20will,to%20the%20measures%2C%20practices%20or%20approaches%20they%20adopt, last accessed on 10 August 2021.

The background is a deep blue gradient with various geometric elements. On the left, there are several vertical and diagonal lines in lighter shades of blue, some with a fine, repeating diagonal pattern. Bright, star-like light flares are scattered across the composition, particularly along the left and right edges. The overall aesthetic is modern and technological.

A

BUSINESS ENVIRONMENT / TRADE AND THE ECONOMY

CHAPTER 1 DIGITAL

OVERVIEW

Digital is a transverse tool for the economy, impacting all sectors and industries. Digital transformation accelerates and enhances traditional businesses and procedures, and this is paramount to remain competitive in this fast-changing economic world.

However, what exists in the real world still needs to be digitalised and a real change would be having legal electronic alternatives for wet signatures, personal identification, business licenses, and so on, without having to file a hard copy for compliance reasons. This would allow business or administrative procedures to be performed remotely.

Vietnam should aim to be an appropriate environment for companies to thrive by leveraging digital technologies. This is especially relevant in light of the global COVID-19 pandemic, where businesses and governments need to adopt new technologies and standards to compete in the global market.

The EVFTA is a milestone for Vietnam in its global integration. Yet, one of the biggest challenges at the moment is the COVID-19 crisis creating challenging conditions for trade. The Digital Sector Committee would like to suggest prioritising projects that will improve these conditions, involving international experts in dialogues to align with global standards.

Since the EVFTA entered into force on 1 August 2020, it has become the steppingstone to implement solutions that will enhance the digital economy. Vietnam is working on its Digital Transformation to reach its objectives by 2025-2030. To take advantage of the EVFTA and other trade agreements, Vietnam would need to facilitate cross-border trade more than it already does.

We believe that the following topics would be beneficial both at a national and global level:

- › Cross-border electronic signature recognition to cover global agreements;
- › Implementing platforms and tools towards traceability, the origin of goods, and transparency;
- › Free movement of data across borders; and
- › Adoption of internationally-recognised technology security standards.

E-government is a great step in this direction and the Digital Sector Committee is interested to see how it progresses. In this light, the topic of E-signatures becomes particularly important since it is the solution for businesses to continue operating when it has become difficult to sign in person.

We are keen to support the development of E-government and act as middlemen between Vietnam and the EU.

I. CYBERSECURITY

Relevant authorities: Ministry of Information and Communication (MIC), Ministry of Public Security (MPS); Office of the Government (OOG)

Issue description

It has become even more important to apply the Law on Cyber Information Security¹, which sets the cyber security standards and the Cyber Security Law², which frames the usage of digital services and ensures data sovereignty for national “data capital”. This regulation protects - in the broadest sense - “subjects” on Vietnamese soil (for example, users using online services or accessing and transferring data) and establishes a framework and set of rules foreign

1 Law No. 86/2015/QH13 dated November 19, 2015 of the Government on Cyber Information Security.

2 Law No. 24/2018/QH14 dated June 12, 2018 of the Government on Cybersecurity law.

companies in the Vietnamese market need to comply with. With these laws, Vietnam ensures its economic actors' systems are adequately protected. It offers a reliable ground for business partnerships within and outside Vietnam to happen, as investors will trust the compatibility of the systems with international regulation.

Both EU and Vietnamese regulations compel companies to secure their systems at a technical level, preventing any leaks from a cyber-attack. However, there are still differences in the legal processing of the data and the privacy as mentioned below.

Following our analysis of the scope and application of the Vietnamese regulations, the following three challenges might exist:

- Making Vietnamese's standards understandable for all stakeholders who must comply and bringing the same standards as written in the EU and its General Data Protection Regulation – (EU GDPR).³
- Addressing conflicts that may arise for companies already subject to the EU GDPR and for Vietnamese companies doing business with EU "data subjects" and that, therefore, need to comply with the EU GDPR.
- Finding a data policy that fulfils the Vietnamese Government agenda of data security while addressing the concerns of the business community. The economic impact of such policies needs to be considered.

1. Harmonisation of the Vietnamese regulation and GDPR

Ensuring efficient data transfer across borders underpins the digital economy and plays a fundamental role in driving the economy toward digitalisation. The establishment of a Facilitator to deal with conflicting cases in agreement with the Personal Data Protection Committee, or any relevant institution on the Vietnamese side, the European Data Protection Board and the European Commission, would assist in this regard. For instance, a facilitator could certify any Vietnamese company processing GDPR-protected data. Certification implies adherence to a code of conduct, where the said company states that it complies with the EU-GDPR standards to do business with EU partners.

The facilitator would handle any issues or difficulties between Vietnamese and European subjects. For example, any request relative to the Vietnamese Regulation that could conflict with the EU-GDPR would be addressed by the Facilitator.⁴ Exceptional access to the EU-GDPR protected data can be granted under EU-GDPR Article 49 (Derogations) and in conformity with a Judiciary Agreement (EU-GDPR – Article 48) from the EU side. The Facilitator could be a newly-created institution consisting of a member of the Personal Data Protection Committee for the Vietnamese side and nominated members from the EU, or it could be included in a third-party institution, for instance at the ASEAN level.

As the EU-GDPR was adopted after the EVFTA was finalised, the EVFTA does not contain any relevant provisions. Therefore, a working group within the Trade Committee could be created to tackle this and other E-Commerce and digital issues. This working group could consist of experts under the European Commission or the platform under the EU-Vietnam Business Council. We also recommend implementing the EVFTA by finding ways of consensus at two levels: first, through negotiation between the EU and Vietnam and, second through the practice of assessing cases.

We would suggest bringing the requirements under the EVFTA and the Vietnamese regulation in line with each other as this will ensure the stability of the national economy as well as facilitate bilateral trade. It is important to enable a public and transparent process, especially on such an important topic for the public related to the privacy of citizens.

2. Impact on Vietnam's Economy

It will be disruptive and costly for Vietnamese companies that use global payment, social media, e-payments, smart technologies, cloud computing and advertising services to store data in Vietnam while the services from international providers are also not hosted in Vietnam. Businesses in Vietnam are leveraging ICT and other services to increase business and participate in cross-border trade.

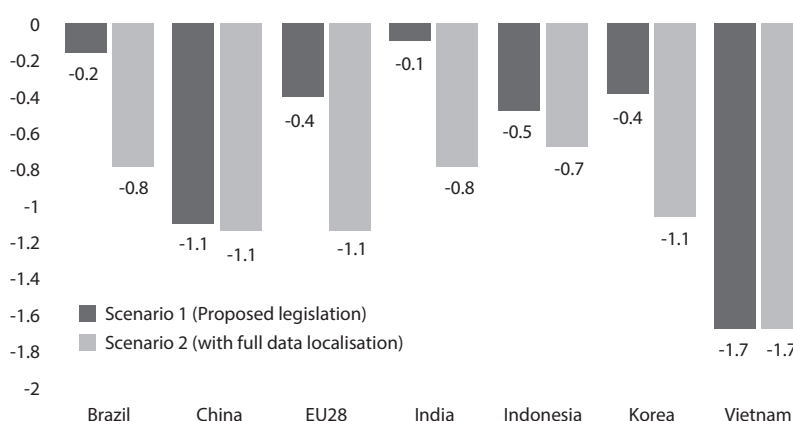
³ General Data Protection Regulation dated 14 April 2016 of the European Union.

⁴ For example, Article 21 CSL on the prevention and response to cybersecurity emergencies.

Vietnam would become the only country in ASEAN with a broad national data residency law in the private sector.⁵ To ensure Vietnam remains regionally competitive and aligns with best practices, the Government should adopt a data classification system whereby only public sector national security data must remain in Vietnam. China is often cited as a country with a successful data localisation policy, but this analysis fails to account for the differences in the economies of China and Vietnam. China has an enormous domestic middle-class market and local national champions that can provide all digital services locally. At its current stage of development, Vietnam relies on digital services that are provided by global companies to power its Fourth Industrial Revolution. As such, Vietnam would be better served by modelling its digital economy policies on countries with similar economic structures and at similar levels of development to Vietnam.

Vietnam stands to grow its GDP one per cent for every 20 per cent of spending on ICT, with mobile Internet accounting for 6.2 per cent of GDP and 3.2 per cent of total employment between 2015 and 2020. The government has targeted e-commerce spending to reach US\$ 350 million annually, with B2C revenue rising to US\$ 10 billion and accounting for five per cent of all retail spend.

Figure 5: GTAP simulations on gross domestic product (GDP) for selected countries



A previous study by the European Centre for International Political Economy found that Vietnam's data localisation policies will reduce Vietnam's GDP growth by 1.7 per cent.

3. Impact on Companies

Vietnamese companies compete on a global scale and, as a result, require cutting-edge resources and industry-leading security to ensure they remain competitive with their regional peers. The nature of forced localisation limits business' ability to access tools necessary to lower IT costs, innovate, and scale rapidly.

A report from the Leviathan Security Group shows that data localisation measures raise the cost of hosting data by 30-60 per cent. This is because the Internet enables centralised data storage and processing which results in economies of scale and a seamless, global internet resulting in lower costs.

Many Vietnamese enterprises and start-ups already use offshore ICT services to (1) improve security, (2) ensure quality control, and (3) access the most innovative services in data analytics, machine learning and "Internet of Things". If this will no longer be possible, companies will no longer be able to serve their customers efficiently. Companies which will be negatively impacted by such a requirement include:

- Vietnamese government owned and private airlines;
- National television networks;

⁵ Indonesia, which previously was a point of comparison, has allowed the majority of private sector data to be stored and processed offshore since October 2019.

- Subsidiaries in healthcare, ICT, car assembling, e-commerce of some large “national champions”;
- Manufacturers of lighting and electrical equipment;
- Many start-ups with focus on payments to games, media and social applications;
- State-owned enterprises and Vietnamese private and public listed enterprises in finance, retail, real property, social media, are using global cloud-based accounting, productivity, and security services;
- Many banks and consumer financing companies, fully digitised or are digitising their processes and services; and
- Large government owned and private corporations and financial institutions using global banking services by international financial institutions.

The distinction between “domestic” and “foreign” enterprises would likely lead to significant confusion and disruption. For example, it is not clear if “domestic enterprises” would include Foreign Direct Invested (FDI) companies registered under the Vietnam Investment Law and incorporated in Vietnam (both wholly-foreign-owned and majority foreign-owned). If it does, these digital service providers in Vietnam will be required to store users’ data in Vietnam. This is inconsistent with the business model of most multinational companies that provide digital services. Even if multinationals use some data storage services in Vietnam to reduce latency to customers, for many of these entities, most data processing and advanced analytics occurs offshore due to cost efficiencies and service improvement insights made possible through data aggregation. It is, therefore, unclear how multinationals providing digital services could continue operating in Vietnam if this data localisation requirement is implemented.

4. Impact on Security

The Government has the responsibility to ensure national security and protect its citizens. However, the data localisation provisions will not meaningfully improve security. Security is not related to the physical location of the data. The Internet is global, so any system connected to the Internet, directly or indirectly, is vulnerable to attacks (cross-border attacks and data breaches are the norm).

Security is fundamentally about (1) the security of the physical infrastructure where data is stored and (2) who owns and controls the data (and can, therefore, assist law enforcement). Vietnamese companies should be able to store and process their data in the most secure data centres, which independent third parties audit against global security and privacy standards. In this regard, only global service providers can provide this level of security.

EuroCham’s Digital Sector Committee believes that it is possible to achieve the Government’s underlying security/ law enforcement access aims without imposing hard localisation requirements on domestic companies. In using international data services, domestic companies will continue to have effective control over their data regardless of where it is physically stored and can retrieve that data and/or provide access to that data to Vietnam law enforcement officials exercising their authority. This will not be limited by storing data offshore.

Potential Gains/Concerns for Vietnam

As set out before, the fact that the Vietnamese regulations possibly conflict with regulations from other regions might cause difficulties for businesses. For example, a Vietnamese business that collects and processes the personal data of data subjects in another country with strict data protection regulations (e.g. the EU GDPR) could be put in an untenable position with respect to how it processes the personal data of those data subjects. Compliance with the Vietnamese Regulation could be deemed incompatible with various EU requirements under EU GDPR.⁶ In case both Vietnamese law and other laws govern a conflict, businesses would be confused about which regulation would be applicable and, therefore, might risk non-conformity with one regulation while adhering to the other, risking large fines. This might be a reason for a company to renounce developing its business in Vietnam. It is important to ensure compatibility between Vietnam and the EU with regards to Article 45 of the EU GDPR transfers based on an adequacy decision.

⁶ For example, a Vietnamese data processor could have to share personal data in its system under the CSL article 21. If in the meanwhile this data is protected by the GDPR through Standard Contractual Clause, there is a conflict.

Recommendations

We would like to make the following recommendations⁷:

- › Ensure compatibility between Vietnam and the EU with regards to Article 45 of the EU GDPR transfers on the basis of an adequacy decision including a concrete timeline and action list.
- › Establish a Facilitator-institution to resolve conflicting cases with the agreement of the Personal Data Protection Committee, or any relevant institution on the Vietnamese side, the European Data Protection Board and the European Commission.
- › Create a web portal which is accessible to foreign companies and includes practical guidance, training leaflets for staff, a forum, templates for the conformity files, basic consulting, and a list of consultants that could support with the implementation of the Vietnamese regulations' requirements.
- › Start a process and create a working group to bring the EVFTA and the Vietnamese regulations in line with each other, addressing current conflicting situations.
- › Classify the data processing and develop a data classification system whereby only national secrets must be onshore and other non-state secrets may be offshore to lower the economic impact on the local economy, especially more vulnerable start-ups, and small and medium sized companies.
- › Remove the requirement on domestic enterprises to keep data in the country to enable cross-border data processing with data hosted offshore, to enable Vietnamese companies to have minimal costs on their IT systems and multinational companies to maintain their consistent global business models.
- › Ensure there will not be conflicting provisions between the 2015 Law on Cyber Information Security and 2018 Cybersecurity Law and future decrees on personal data protection and cybersecurity being drafted.

II. E-GOVERNMENT

Relevant authorities: Office of Government (OOG), Ministry of Information and Communication (MIC)

Issue description

We applaud the Government's impressive progress in its Digital Government program in 2020. In the digital government journeys, the world's leading digital governments rely on the cloud's flexibility, innovation, and scale to empower officials with the insight they need to deliver top-tier public services. Modern governments work on the front lines of service delivery and face a challenging fiscal environment. With no room for administrative waste, governments increasingly need rapid access to technologies that simplify their processes, deliver massive reductions in administrative costs, and enable innovation to create efficient and effective citizen services.

In order to make further progress, it would be important to recognise certificates for electronic signatures issued to individuals. The foundation of a digitalised world is to provide electronic alternatives for wet signatures and personal identification. Aligning Vietnam's standards with those defined by The Electronic Identification and Trust Services Regulation (eIDAS)⁸ would be the first step, expediting the regulation around the Electronic Signature standards and converging towards a global standard. Furthermore, governments issue policy statements with an actionable directive – including timetables – creating a framework for the implementation of cloud technologies, clarifying the roles and responsibilities of government entities and Cloud Service Providers (CSPs), and establish a procurement vehicle that is designed to gain the full benefits of cloud technologies. Governments use existing domestic and international cloud-centric accreditation systems to evaluate CSPs (rather than create their own unique certification programs) and leverage the shared responsibility model for cloud security. When government

⁷ The Law on Cyber information Security (No. 86/2015/QH13) addresses the regulation of content related to cybersecurity for e-Government, for Cloud and Personal Data Security law so recommendations are given taken considering the provisions in that law.

⁸ The Electronic Identification and Trust Services Regulation dated 23 July 2014 of the European Union.

customers leverage third-party certifications, they avoid subjecting themselves to duplicating, burdensome processes or approval workflows that may not be required for a cloud environment. Using such accreditations also enables governments to build a more efficient and fast compliance process.

Governments categorise their data based on its level of sensitivity, and then manage each segment in a manner consistent with its level of sensitivity. Data classification helps organisations safeguard sensitive or critical data with appropriate levels of protection. Regardless of whether data is processed or stored in traditional on-premises systems or the cloud, data classification is a starting point for maintaining the confidentiality (and, potentially, the integrity and availability) of data based on the data's risk impact level. Reputable standards organisations, such as the International Standards Organisation (ISO) and the National Institute of Standards and Technology (NIST) of the United States Department of Commerce, recommend data classification schemes so that information can be more effectively managed and secured according to its relative risk and criticality, advising against practices that treat all data equally. Governments establish and/or adopt complementary security, data processing, and privacy policies to support a successful transition to cloud computing.

Governments retain full control and ownership over their data, and have the ability to choose the geographic location(s) in which it is stored. Cloud providers should also provide identity and access controls enabling government agencies to restrict access to their infrastructure and data. These are part of the important basic concepts regarding data ownership and management in the "cloud shared responsibility" model, and below are the four others:⁹

1. Governments can download or delete their data whenever they like.
2. Governments can "crypto-delete" their data by deleting the master encryption keys that are required to decrypt the data keys, which are, in turn, required to decrypt the data.
3. Governments should consider the sensitivity of their data and decide whether and how to encrypt the data while it is in transit and at rest.
4. Governments should ensure that CSPs provide documentation detailing how government agencies can use cloud services to meet specific compliance and data privacy/protection requirements, based on international standards.

Data residency requirements do not improve the overall security posture of an organisation. Governments should assess their data classification approach and hone in on which data needs to stay within their country or region, and why. By doing so, governments may find that their data, potentially even official or secret data, may be stored and/or replicated elsewhere if there is no particular legal or policy geographical requirement.

As technology continues to advance and change customer threat vulnerabilities and vectors, governments must re-evaluate how they are modelling their data management, privacy strategies, and risk tolerance. Three fundamental realities have disrupted the traditional 'full stack control' model of data management.

1. Most threats are exploited remotely. The physical location of data has almost no impact on threats propagated over the Internet.
2. Manual processes present risk of human error. Human process failure plays a role in root cause failure of most cybersecurity.
3. Insider threats prevail as a significant risk. The vast majority of data compromises occur either through unintentional error or intentional malicious behaviour through authorised accounts.

Breaches do not require physical access to a server, but instead exploit a lack of effectively implemented logical security controls. The best mechanism to protect, detect, respond, and recover is to use the transformational security a CSP offers through modernisation and automation.

⁹ Some references can be found here: European Regulation on Data Protection: <https://gdpr.eu/>, European Mechanism of Standard Contractual Clauses: https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en, Singaporean Regulation on Data Protection: <https://sso.agc.gov.sg/Act/PDPA2012>, Singaporean Model Contractual Clause: <https://www.aeilegal.com/tldr/asean%20data%20mgmt>, UK Government Security Classifications: Government-Security-Classifications-Supplier-Briefing-Oct-2013.pdf (publishing.service.gov.uk), US National Security Classifications: The President Executive Order 13526 | National Archives, Philippines' Cloud First Policy: DICT Releases Amended Cloud First Policy for Gov't Transition to "New Normal" | DICT.

Potential Gains/Concerns for Vietnam

In recent years, governments around the world have started adopting policies that encourage government agencies to use cloud computing services. The reason for this is that governments recognise the role cloud computing can play in creating better citizen services and facilitating collaboration and data sharing between government agencies. Infrastructure transformations can benefit governments and their citizens by galvanising innovation, facilitating inter-agency collaboration, and accelerating the timetable for services to reach constituents. We are pleased that Vietnam has issued Decision No. 942/QĐ-TTg approving the Strategy for E-Government Development towards Digital Government in the 2021-2025 period, with a vision to 2030 which sets out the vision for Central Government Cloud, Agency Government Cloud and Enterprise Government Cloud.

Recommendations

We would like to make the following recommendations:

Develop and adopt smart cloud policies to accelerate digital transformation implementing the best practices identified and set out in the beginning of this paragraph allowing a transition to a secured, digitalised environment related to:

- › Recognition of certificates for electronic signatures issued to individuals
- › Promoting cloud-first policies
- › Cloud accreditation, compliance, and security
- › Data classification
- › Data privacy and control
- › Data residency
- › Perform a risk and threats assessment (remote access, manual processes presenting a risk of human error and insider threats)

ACKNOWLEDGEMENTS

EuroCham Digital Sector Committee.

CHAPTER 2 INTELLECTUAL PROPERTY RIGHTS

OVERVIEW

Intellectual property rights (IPR) protection is an increasingly important issue for businesses operating in Vietnam. Companies are mainly concerned about the high requirements of IPR protection standards and expect that Vietnam's IP law and practice will effectively protect their legitimate rights and interests. With the EVFTA having taken effect on 1 August 2020, Vietnam needs to make considerable changes to its IP law to comply with the commitments under the agreement which will also help Vietnam to increase its competitiveness compared to other countries in ASEAN.

According to the EVFTA, Vietnam is obliged to incorporate many obligations into domestic legislation. These include the regulations on the protection of sound trademarks, the procedures and measures to protect European Geographical Indications (GIs), and mechanisms to compensate invention owners for delays in granting pharmaceutical marketing authorisation. In the field of IPR enforcement, the EVFTA's provisions on the responsibilities of intermediary service providers for online IPR infringing content are notable.

We are pleased to see that the above regulations have been incorporated in the Draft Law amending and supplementing a number of articles of the IP Law expected to be approved in June 2022. However, some proposed amendments and supplements in the Draft do not meet the requirements set out in EVFTA.

I. INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

Relevant authorities: Ministry of Culture, Sports and Tourism (MCST), Ministry of Information and Communication (MOIC), Ministry of Science and Technology (MOST), Ministry of Industry and Trade (MOIT), Vietnam Directorate of Market Surveillance (VDMS), Supreme People's Court (SPC)

Issue description

Unlike most countries where IPR infringements are handled by civil remedies in courts, administrative sanctions continue to be the most commonly applied method of handling IPR infringements in Vietnam.

Furthermore, the IP Law contains no provisions on the handling of IPR infringements by criminal measures. However, Article 212 of the IP Law stipulates that individuals committing acts of IPR infringement involving elements which constitute a crime shall be examined for penal liability in accordance with the criminal law.

Finally, one of the biggest difficulties of enforcing property rights in general, and applying civil and administrative sanctions in particular is the invalidation of IPRs. In most IPR disputes, the violator will intentionally file a request for invalidation of protection rights for unfounded reasons. The courts and competent authorities seem hesitant and often suspend the settlement when there is an invalidation request and wait until IPO Vietnam has resolved this issue.

Potential gains/concerns for Vietnam

In recent years, the Inspectorate of MOST has opted for civil remedies. However, this will lead to a limited selection for rights holders in handling cases related to inventions and industrial designs due to technical complexities.

Meanwhile, in the field of copyright, practically only the Inspectorate of MCST is capable of handling copyright infringement cases. Even though other agencies such as the Market Surveillance Agency and the Police also have the handling authority. However due to limited professional knowledge in the field of copyright, they often do not agree to handle the requests of rights holders.

To improve the effectiveness of administrative measures, competent agencies need to be more proactive in handling violations and coordinating with relevant agencies. Specifically, MOST should coordinate with IPO Vietnam to handle infringement of the rights to inventions and industrial designs. Likewise, the Inspectorate of

the MCST can guide and transfer tasks to the provincial Departments of Culture, Sports and Tourism for handling. It is necessary to coordinate with Market Control and local police so regular exchange, information updates, and expertise sharing between ministries and agencies are recommended.

For most cases with the characteristics of a crime - such as IPR infringement involving manufacturing and trading of counterfeit goods, industrial property infringement, infringement of copyright and related rights - agencies only prosecute the act of manufacturing and trading counterfeit goods instead of the act of infringing industrial property rights or copyright.

The identification of a crime for criminal prosecution against entities committing acts of IPR infringement is complicated because of the overlap of objects of crime. The regulations do not define the difference between the act of manufacturing and trading counterfeit goods and the act of infringing industrial property rights. This leads to implementation difficulties and even discretion in referring to which articles regulate the sanctions. Therefore, it is necessary to identify the extent and the object applicable to these two crimes.¹

The delay of the enforcement and application of sanctions has an inadvertent but serious impact on the settlement process because it takes two to four years to handle the request for invalidation of protection rights at IPO Vietnam. As a result, civil cases will be delayed and unable to be adjudicated in accordance with the procedural regulations.

Recommendations

We would like to make the following recommendations:

- › Be pro-active in handling violations while coordinating with relevant agencies.
- › Coordinate with Market Control and local police to exchange, information updates, and expertise.
- › Identify the extent and the object applicable so both the manufacturing and trading in counterfeit goods and the infringement of industrial property rights can be prosecuted.
- › Promulgate specific instructions and regulations on invalidation of protection rights in the civil and administrative handling process by the Supreme People's Court and MOST.

II. DRAFT AMENDED IP LAW

Relevant authorities: Ministry of Science and Technology (MOST), Ministry of Culture, Sports and Tourism (MCST), Ministry of Information and Communication (MOIC)

1. Copyright

Issue description

The Draft Amended IP Law (Draft)² proposes amending some points related to the cases of using the published works without the permission of the copyright holder or paying royalties.

Article 25.1.a supplements the following provision "Copying works in order to have information or documents used in the internal operations of state agencies not for commercial purposes", and Article 25.1.c "Reasonable citation of the works without misleading the author's intention for writing articles, for use in periodicals, broadcasts, and documentaries".

Potential gains/concerns for Vietnam

These proposed exceptions do not mention the limitation or extent to which a work can be copied. We believe that even if it is intended for internal and non-commercial use by government agencies; and if unnecessary or

¹ Article 14, Criminal Code No. 100/2015/QH13 dated 27 November 2015 of the National Assembly.

² Draft Law amending, supplementing a number of articles of the Law on Intellectual property rights, 17 November 2020, Chinhphu.vn. Available at: < http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?_piref135_27935_135_27927_27927.mode=reply&_piref135_27935_135_27927_27927.id=3993 > last accessed on 20 November 2020.

non-mandatory contents are also copied in this internal activity, this copying is not in the public interest (other than for the state agency), and may reduce the urge to learn more about the entire content of the work. This act could possibly affect the rights of the copyright holder with respect to the copied work.

The concepts of “reasonable citation” and “without misleading the author’s intention” need to be clarified. Otherwise it will create difficulties in interpreting the acts of “reasonable citation” and “without misleading the author’s intention”, thereby leading to problems in determining whether a citation falls into the cases of using the published work without permission of the copyright holder or paying royalties.

Recommendations

We would like to make the following recommendations:

- Add a limitation (in terms of length or percentage) to the extent that a work can be copied for use as reference information or for preparation of documents used in state agencies for non-commercial purposes according to the revised provisions in Article 25.1.a1 to balance the interests of the public and copyright holders.
- Explain and guide in detail the concepts of “reasonable citation” and “without misleading the author’s intention”.

2. Patent

Issue description

Compensating mechanism for pharmaceuticals circulation licensing delays

Article 131a of the Draft provides two options for implementing Article 12.40 of the EVFTA³ on the compensation for patent holders for unreasonable delays in the granting of the first marketing authorisation. However, both options put forward monetary compensation mechanisms which are not satisfactory in the spirit of Article 12.40 of the EVFTA. In particular:

Option 1: Resolution 102/2020/QH14⁴ sets out a compensation mechanism by exempting patent owners from paying the protection titles usage fee within the corresponding period of delay. This amount is negligible and is not of practical significance compared with the actual loss resulting from the delayed circulation licensing. Above all, to be exempted from this fee, the patent owners need to ask the competent agency issuing pharmaceuticals marketing authorisation to confirm the delay. In fact, the effort, time, and service costs required to obtain such confirmation from the competent authority may exceed the fee for using protection titles from which the owners could be exempt.

Option 2: specifying a mechanism to make up for the royalty payable by patent users within the corresponding period of delay. This compensation mechanism is also unreasonable because the delay is caused by the agency authorised to issue pharmaceuticals marketing authorisation. As a result, directly requesting patent users to pay royalties as compensation is not feasible. Normally, in order for the request to be feasible, it must be given by an agency with the enforcement authority such as the Court. Furthermore, the provision stipulating “the amount payable is equivalent to the compensation price specified by law for the case where the patent is licensed in accordance with a compulsory decision within the corresponding scope and period of use” is also impractical because, in fact, there are no specific regulations or guidance on the compensation price specified by law for such case. Accordingly, before requesting a third party to compensate, the patent holders need to ask the agency or organisation to confirm the compensation price. On the other hand, applying a compensation amount based on the patent licensed under a compulsory decision in cases specified by law such as national needs, illness, abuse of owner’s rights, etc. where the licensing is mandatory (unequal pricing relations) is also inadequate for the loss of the patent holders because the licensing price according to the decision will be much lower than the economic loss when users are required to compensate for the actual loss caused by the use of the patent in the period of delay.

³ Article 12.40, Chapter 12: Intellectual Property, EVFTA.

⁴ Point 3, Annex 3, Resolution 102/2020/QH14 dated 8 June 2020 of the National Assembly on the ratification of the EU-Vietnam Free Trade Agreement.

Guarantee for patent holders to exercise rights before products are put on the market

Article 128(3) of the Draft is intended to implement Article 18.53 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).⁵ Specifically, this Clause is the option of Article 18.53(1). However, Article 128(3) is not compatible with the provisions of Article 18.53(1) to ensure the patent holder has enough time and opportunity to take the necessary protective measures against any third party's application for pharmaceutical marketing authorisation when the pharmaceutical in question is an element infringing the patent holder's rights. In particular, the fact that the competent agency only publishes information about the applications submitted later based on data proving the safety and efficacy which has been licensed for circulation of other pharmaceuticals on its electronic portal instead of directly informing the patent holders is not satisfactory. In addition, Article 128(3) of the Draft also does not have reasonable provisions to ensure adequate time and opportunities for patent holders to prepare necessary procedures such as filing a lawsuit or request for handling a violation.

Potential gains/concerns for Vietnam

The mechanism to compensate invention owners for unreasonable delays in granting the first marketing authorisation to enforce Article 12.40 of the EVFTA according to applicable provisions of Article 131a of the Draft is not practical for the patent holders and, therefore, does not actually benefit the owners.

The current regulations in the Draft guaranteeing information and time for patent holders to exercise their rights before the products are put on the market under Article 18.53 are not in line with the regulations in Article 18.53.

Recommendations

We would like to make the following recommendations:

- Amend Article 131a of the Draft with a reasonable compensation mechanism for patent holders for unreasonable delays in granting the first marketing authorisation by prolonging the protection period of the patents corresponding to the period of delay to ensure compliance with Article 12.40 of the EVFTA.
- Amend Article 128(3) of the Draft so that when the competent agency allows later applicants to rely on the fact that a drug has been licensed for circulation, or on the data proving safety and efficacy of a drug that has been licensed for circulation (patent holder's data) to apply for a circulation license for another drug, the licensing agency must notify directly in writing the person under whose name the pharmaceuticals' marketing authorisation was registered.
- Add a provision to Article 128(3) that permits patent holders to request the competent agency to suspend the marketing authorisation licensing in a reasonable period in order for them to prepare necessary documents and procedures to request the handling of infringements to their patent rights following Article 18.53 of the CPTPP.

Industrial design

Issue description

Article 12.35.1 of the EVFTA⁶ specifies that "design" is the appearance of the whole product or a separable and/or inseparable part of a product. This means an inseparable part of a product is also protected in the name of industrial design.

Article 12.35.2.a of the EVFTA⁷ specifies that "if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter". The word "incorporated" in this Article does not mean "assembled" but rather "integrated" (present on the finished product). This means that the part may be present on the finished product as "separable from the finished product" or "inseparable from the finished product" as long as it is visible on the finished product.

Whereas, Article 4.13 of the Draft provides the definition of industrial design but uses the concept of 'assembly'.

⁵ Comprehensive and Progressive Agreement for Trans-Pacific Partnership signed on 8 March 2018.

⁶ Article 12.35.1, Chapter 12: Intellectual Property, EVFTA.

⁷ Article 12.35.2.a, Chapter 12: Intellectual Property, EVFTA.

Therefore, the word “assembly” in the Draft will narrow the protection scope of “partial” design (no protection in case the ‘part’ cannot be separated from the finished product) as compared to Article 12.35.2.a of the EVFTA, which is incompatible therewith.

In addition, “Appearance is represented by shapes, lines, colors or a combination of these elements and is visible while the finished product is being used” is not logical and incommensurate because this governs the design of both the “finished product” and the “part”. Meanwhile, “visible during the use of the finished product” corresponding to the provisions of Article 12.35.2.a of the EVFTA is intended only for “parts of the finished product”.

Potential gains/concerns for Vietnam

The definition of industrial design in the Draft, which has narrowed the protection scope of “partial” design, is incompatible with the provisions of the EVFTA.

Recommendations

We would like to make the following recommendation:

- Revise Article 4.13 of the IP Law on the definition of industrial design as follows “Industrial design is the appearance of a finished product or a part of it which is visible while the finished product is being used. Appearance is represented by shapes, lines, colors or a combination of them.”

4. Geographical indications

Issue description

The Draft Law amending and supplementing a number of articles of the IP Law provides 16 amendments regarding GIs with notable contents including, but not limited, to the protection of homonymous GIs.

Potential gains/concerns for Vietnam

On the one hand, the amendments are intended to fulfil the Vietnam’s obligations under the EVFTA. On the other, there are shortcomings in the interpretation and application of existing laws on GIs. In particular, regarding the current practice of applying the law on GIs, there are difficulties in determining the protection scope of GIs, with different views and interpretation of the law in that:

- a. The scope of protection of a GI includes the correct geographical name registered for the product bearing the GI; or
- b. The scope of protection of a GI includes the geographical name registered for the product bearing the GI and names of the places in the area identified as the geographical scope within which a product bearing the GI is produced (e.g. names of communes, wards, or district towns where a protected district name is the geographical indication for a particular product). This makes it difficult to apply laws or to enforce the protection of GIs, especially opposing the registration of a trademark confusingly similar to the relevant GI.

It is not practical to require rights’ holders to apply for protection of GIs for each small place in a large geographical area. Moreover, these small places have the same characteristics of soil, human intervention, and other conditions to produce the same product. They constitute and bear the same indication of a large geographical area – which is to be protected as a GI. A GI should only be registered for a particular place in the larger geographical area if there are clear differences in the characteristics and properties of the product which are determined by its human intervention and natural conditions.

With respect to the Draft, the supplement of a provision to protect homonymous GIs (not limited to wine products under Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement))⁸ is encouraging. However, the current Draft, despite having specified conditions of protection that a homonymous GI “shall not confuse consumers about the geographical origin of the product bearing the GI”, does not set the criteria/exceptions to be considered as satisfying the above condition.

⁸ Agreement on Trade-Related Aspects of Intellectual Property Rights signed on 15 December 1993 and effective from 1 January 1995.

To limit confusion, the homonymous GI could be presented together with its country/region of origin. The incorporation of these prerequisites into domestic legislation instead of assigning the responsibility to interpret the law to lower-level legal documents will create favourable conditions for rights holders and avoid creating difficulties in the interpretation and application of law to the relevant state management agencies.

Recommendations

We would like to make the following recommendations:

- Adopt - in addition to perfecting legal frameworks on GIs - the appropriate interpretation and application of law to implement the progress of legal provisions, guarantee the legitimate rights and interests of rights holders, and comply with the commitments under international treaties to which Vietnam is a signatory.
- Apply consistently the interpretation of law regarding determining the scope of protection for GIs - according to the above paragraph under point b.
- Set out measures/requirements of protection to satisfy the condition of “not causing confusion”.

5. Trademark

Issue description

Sound mark

The Draft’s recognition of sound marks, for the first time, shows the goodwill of Vietnam in implementing the country’s commitments under international treaties.

However, the form of expression of sound marks as specified in the Draft and explained in the report, specifically that the sound mark must be “a sound sign that can be capable of being represented graphically”, will be concretised in the circular or regulation guiding the implementation (for example: staves, lyrics, sound wave diagrams, etc.) to widen or narrow the types of sound that can be registered as a mark depending on each stage of socio-economic development as well as human and material resources. This regulation is inconsistent with the nature of a sound sign and could cause difficulties for both the sound mark owners and the registrar in the application for sound mark registration as well as in the assessment of confusing similarities between sound marks.

Therefore, Article 72(1) of the IP Law should be amended to recognise a sound mark as a mark “that is capable of being represented graphically”. The provisions on implementation guidance should also be amended so that the submission of the trademark sample, together with the trademark registration application, includes not only the sound mark’s graphic representation but also the sound data carrier and other similar forms. In addition, it is necessary to specify particular and reasonable criteria that properly represent the nature of sound marks in assessing the similarity between two sound marks.

Furthermore, it is necessary to supplement “the application for trademark registration is conducted with bad intentions” as one of the bases for opposing an industrial property registration application that is considered a source of information for the handling of industrial property registration applications. In addition, both for grounds for opposing industrial property registration applications and requests for the invalidation of registered rights because “the application for trademark registration is conducted with bad intentions”, a guideline document should be issued to provide detailed regulations and instructions on how to identify and prove an applicant’s “bad intentions”. A case of nullification of the entire validity of a protection title has been supplemented to Article 96 of the Draft, namely “the application for trademark registration is conducted with bad intentions”. This is considered a progressive amendment compared to the current regulation which only mentions that “the protection title is granted due to the applicant’s dishonesty” in the provision on the time limit for exercising the right to request invalidation of protection titles. Indeed, it does not clearly state it as one of the statutory grounds for invalidation of protection titles or have any detailed instructions on how to identify and prove the applicant’s dishonesty.

However, the Draft just sets “the application for trademark registration is conducted with bad intentions” as one of the bases to request invalidation of protection rights. It does not specify it as a ground to oppose an industrial property registration application to prevent the issuance of the protection title. Specifically, Article 112a of the Draft prescribes that an objection related to the registration of a right and protection conditions is the basis corresponding to the cases of total or partial invalidation under clauses (a) and (b), point 1a, of Article 96. This

is completely independent from the ground “the application for trademark registration is conducted with bad intentions” at Article 96(1)(a). Thus, third parties may not have grounds to file an objection to an industrial property registration application to be considered as a source of information for the processing of an industrial property registration application under the provisions of Article 112a. In this case, they can only give an opinion to the agency establishing the industrial property rights on the issuance of protection rights. This written opinion is only considered as a source of reference information for the processing of industrial property registration applications under the provisions of Article 112.

Potential gains/concerns for Vietnam

The provision that a sound mark must be represented graphically is hardly meaningful. This is because, in many cases, consumers can only “hear” the sound. They do not have access to other graphic representations (staves, lyrics, sound wave diagrams, etc.) representing the sound. Therefore, consumers recognise the sound mark through the sound itself, not through its graphic representation. Limiting a sound mark to its graphic representation makes it more difficult to submit a sound mark sample associated with a rights establishment application. Moreover, two sounds (e.g. sound waves) which are represented graphically in a similar way can still result in absolutely different sounds, and vice versa. In this case, it is difficult or even inaccurate to assess the similarity between two sound marks based on their graphic representation.

The lack of a provision which specifies “bad faith trademark application” as one of the bases to oppose a trademark registration application forces the rightful owner to wait until the issuance of the certificate to request its invalidation. This has substantially lengthened the rightful owners’ process of taking legal action to challenge the bad-faith trademark application and obtain registration of its trademark. This, in turn, has contributed to making it more difficult for them to enter the Vietnamese market while facilitating “trademark squatters” to continue to “steal” intellectual property of other parties for illegal profit.

In addition, if the way to identify and prove “bad intentions” is not specifically explained, it may also make the process of consideration and resolution of the rightful trademark owner’s requests more lengthy, troublesome, and ineffective.

Recommendations

We would like to make the following recommendations:

- Amend Article 72(1) of the IP Law to recognise a sound mark as a mark “that is capable of being represented graphically”.
- Specify particular and reasonable criteria that properly represent the nature of sound marks in assessing the similarity between two sound marks.
- Supplement “the application for trademark registration is conducted with bad intentions” as one of the bases for opposing an industrial property registration application that is considered a source of information for the handling of industrial property registration applications.
- Issue guidelines to provide detailed regulations and instructions on how to identify and prove an applicant’s “bad intentions”.

6. Enforcement of intellectual property rights

Issue description

One of the biggest changes in IPR enforcement in the Draft is the limited use of administrative sanctions and the increase in civil sanctions. Particularly, Article 211 of the Draft sets out two options. Option 1 is to apply only administrative sanctions to the handling of goods with counterfeit trademarks. Option 2 is divided into two cases: (i) only applying administrative sanctions to infringement of copyright and rights to trademarks and plant varieties or (ii) only applying to copyright infringement.

Potential gains/concerns for Vietnam

With the Draft, administrative agencies clearly do not want to handle infringement of invention rights or industrial design as well as unfair competition acts but, instead, alternate to civil sanctions. Given the practical difficulties in

imposing civil sanctions, this change will cause great difficulties for rights holders to enforce and protect their IPR.

Recommendation

We would like to make the following recommendation:

- Retain the old regulations about IPR enforcement.

7. Responsibilities of intermediary service providers

Issue description

The situation of online infringement of copyright and related rights in Vietnam is still complicated and difficult to control. On e-commerce websites, frequent copyright-infringing goods include books, toys, articles with printed infringing images (e.g. T-shirts, mugs, phone cases, etc. with printed cartoon characters), etc. In entertainment, music and movies which infringe copyright are still widely posted on websites and social networks. Recently, State bodies have actively applied technical measures to handle infringements such as requiring network operators to block the connection to websites with infringing content. However, these measures have not thoroughly resolved the situation because owners of infringing websites can easily create new domain names or move servers abroad to continue operating.⁹ In recent years, infringers have also used cloud storage services to store and deliver pirated movie content.

The regulations on copyright and related rights lack strict provisions on the responsibilities of intermediary service providers in protecting copyright online. Therefore, the intermediaries have not seriously implemented the verification and handling of infringing contents when receiving information about them.¹⁰

With respect to the above issues, Article 5 of Joint Circular¹¹ lists intermediaries' obligations to protect copyrights and related rights, prescribes specific cases in which the intermediaries must be liable for damages caused by the infringement, and has no provision on safe harbors. This provision is currently proposed to be legalised under Article 198b, Section 75 of the Draft.

The intermediary's responsibility approach under Vietnamese law contradicts EVFTA regulations. Specifically, according to Article 12.55 of the EVFTA, intermediaries are implicitly liable for infringement of copyright and related rights on their platforms unless they are entitled to limitations and exemptions. This includes cases where (i) The intermediary only transmits content provided by the user (mere conduit), (ii) The intermediary only temporarily stores the content provided by the user (caching), and (iii) The intermediary stores the content provided by the user for a long time (hosting) but is unaware of the infringing content or, as soon as they learn about the infringing content, acts quickly to remove or prevent access to it.

Potential gains/concerns for Vietnam

According to the above analysis, the Draft's regulations on the responsibilities of intermediary service providers under Joint Circular 07 are not consistent with Vietnam's commitments under the EVFTA. At the same time, the practice shows that these regulations are not strict enough to bind the intermediary's responsibilities for the infringing content, specifically as follows:

First, the cases in which intermediary service providers are responsible for compensating for damage caused by

9 A typical example is Phimmoi - one of the largest websites specialized in publishing the infringing movies in Vietnam, has changed its domain name three times within a month by changing the domain name at the highest level from ".net" to ".com", and adding "z" after the domain name after this website is blocked from accessing. Please refer to the article "The pirated movie website continuously changed its name", VN Express. Available at: <<https://vnexpress.net/website-phim-lau-lien-tuc-doi-ten-4128605.html>>, last accessed on 20 November 2020.

10 A typical dispute related to the responsibilities of intermediaries is the dispute between First News and Recess - the owner of the e-commerce website Lazada in Vietnam. On 4 September 2020, First News filed a lawsuit against Recess for having taken no action against books that infringe First News's copyright on the e-commerce website Lazada.vn when receiving a notice from First News. Not until Recess received a written request from the Vietnam e-Commerce and Digital Economy Agency under the Ministry of Information and Communications in October 2020 did Recess remove the content of infringing books. Please refer to the article "First News sued Lazada for allowing sales of pirated books", VN Express. Available at: <<https://vnexpress.net/first-news-kien-lazada-tiep-tay-ban-sach-gia-4159173.html>>, last accessed on 20 November 2020.

11 Joint Circular 07/2012/TTLT-BTTTT-BVHTTDL dated 19 June 2012 of the Ministry of Information and Communications and the Ministry of Culture, Sports and Tourism stipulating duty of intermediary service providers in protection of copyright and related rights in the internet and telecommunication network environment.

the infringing content according to Article 5.5 of Joint Circular 07 are not clear. Definitions such as an “intermediary”, is the “originating source of posting, transmitting or providing digital information content”, or an intermediary is the “secondary source of distributing digital information content” is not specifically prescribed. Accordingly, intermediaries will not voluntarily comply with the protection of copyright and related rights when there are no clear provisions of law on their compensation liability. At the same time, right holders will also have difficulties in proving the faults of the intermediary to claim damages.

Second, intermediaries are only obliged to remove and delete the infringing content at the request of the Inspectorate of MIC or the Inspectorate of MCST or other competent state agencies. This provision prevents rights holders from directly requesting the intermediaries to handle the infringing content, meaning that IPR holders have to spend a lot of time, effort, and costs to protect their IPRs.

Third, sanctions for intermediaries that fail to fulfil their obligations are not clearly and fully defined. The law only stipulates administrative sanctions for businesses providing social networking services and websites and has no sanctions applicable to other types of intermediaries.

In addition, due to the lack of provisions on safe harbors, legally, there is no mechanism to protect intermediaries that have taken measures to protect copyrights and related rights at the request of the right holders from liability for damages.

We believe that the revision of the intermediary’s responsibilities in Vietnamese regulations, to comply with Article 12.55 of the EVFTA, will help to more effectively resolve online IPR infringement. Specifically, according to the provisions of the agreement, intermediaries must absolutely comply with the requirements under safe harbors to protect themselves from liability for damages. In particular, Article 12.55(2)(b)(v) of the EVFTA requires intermediaries to coordinate directly with the rights holders to remove the infringing content on their platform. For example, when this provision applies, cloud storage service providers will be obliged to verify the infringing content and remove or prevent access to film websites with infringing content without the need for the intervention of the State agency.

Recommendation

We would like to make the following recommendation:

- Revise the content of Article 198b, Section 75 of the Draft Law amending and supplementing a number of articles of the IP Law to ensure its compliance with Article 12.55 of the EVFTA.

ACKNOWLEDGEMENTS

EuroCham Intellectual Property Rights Sector Committee



CHAPTER 3 MERGERS AND ACQUISITIONS

OVERVIEW

The Mergers and Acquisitions (M&A) market in Vietnam remains strong and vibrant, despite the significant adverse impact that arose from the COVID-19 pandemic during 2020. M&A transactions continue to be widely regarded as one of the most effective means to achieve market entry and business expansion in Vietnam. Although Vietnam continues to be viewed by many foreign investors as being a highly desirable investment destination, the volumes and value of M&A transactions in Vietnam decreased during 2020 (in comparison with 2019), to a degree broadly commensurate with the corresponding global decreases.¹

Similar to 2019, the sectors in which M&A activity was strongest in 2020 in Vietnam were real estate, manufacturing, pharmaceuticals, education, retail, and energy.² Investors from Japan, Korea, and ASEAN countries played a crucial role in the M&A scene in Vietnam during 2020, similar to 2019.

On 1 January 2021, the new Law on Enterprises 2020³, Law on Investment 2020⁴, and Law on Securities 2019⁵ came into force, replacing the former Law on Enterprises 2014⁶, Law on Investment 2014⁷, and Law on Securities 2006 (as amended in 2010)⁸. The new legislation introduces a number of significant changes which are of a positive and welcome nature, although the number and extent of the changes are modest. The new laws are undoubtedly improvements on their predecessors. A number of key items of implementing legislation have been promulgated pursuant to these new laws, which have provided a significant degree of additional clarity and detail in relation to the new legal developments arising from the new laws. The legal and investment communities look forward to further enhanced levels of clarity and detail arising from the promulgation of further implementing legislation pursuant to the new laws and their implementing decrees in the foreseeable future in addition to the numerous items of implementing legislation that have already been promulgated as at the date of this publication.

I. MERGER CONTROL NOTIFICATION REQUIREMENTS

Relevant authorities: Ministry of Industry and Trade (MOIT) and (following its eventual establishment) the National Competition Council (NCC)

Issue Description

When structuring an M&A deal it is often necessary for the parties to consider the applicable provisions of Vietnamese competition legislation.

In particular, under Vietnamese competition law, an M&A transaction may be prohibited on merger control grounds. Or, it may require notification to and approval of the Vietnamese competition authorities before it can proceed, if certain degrees of 'economic concentration' will result from the transaction. Relevant for this purpose is the Law on Competition 2018⁹, which came into force on 1 July 2019, in addition to its implementing Decree No 35/2020/ND-CP (Decree 35)¹⁰, which came into force on 15 May 2020.

1 "Vietnam M&A market 2019-2020", MAF Research and CMAC Institute. Available at: <[http://mavietnamforum.com/hinhanh/icon/\[CMAC\]%20Tong%20quan%20VN%202019-2021.pdf](http://mavietnamforum.com/hinhanh/icon/[CMAC]%20Tong%20quan%20VN%202019-2021.pdf)>, last accessed on 20 November 2020.

2 Ibid.

3 Law 59/2020/QH14 dated 17 June 2020 of The National Assembly on Enterprises.

4 Law 61/2020/QH14 dated 17 June 2020 of The National Assembly on Investment.

5 Law 54/2019/QH14 dated 26 November 2019 of the National Assembly on Securities.

6 Law 68/2014/QH13 dated 26 November 2014 of The National Assembly on Enterprises.

7 Law 67/2014/QH13 dated 26 November 2014 of The National Assembly on Investment.

8 Law 70/2006/QH11 dated 29 June 2006 of the National Assembly on Securities, as amended by Law 62/2010/QH12 dated 24 November 2010 of the National Assembly amending the Law on Securities.

9 Law 23/2018/QH14 dated 12 June 2018 of National Assembly on Competition.

10 Decree 35/2020/ND-CP dated 24 March 2020 of the Government elaborating on several articles of Law on Competition.

The Law on Competition 2018 (LOC 2018) prohibits ‘economic concentration’ transactions including M&A transactions which ‘cause or are capable of causing a significant impact in restraint of competition in the Vietnam market’.¹¹ Merger control determinations are to be made by the NCC under the MOIT.¹² In imposing this prohibition, the LOI 2018 does not distinguish among ‘economic concentration’ transactions (including M&A transactions) which are implemented: (i) wholly within Vietnam; (ii) wholly outside of Vietnam; or (iii) partly within Vietnam and partly outside of Vietnam.

Decree 35 sets out a list of threshold tests in relation to ‘economic concentration’ (including M&A) transactions which, if satisfied, require the transaction to be formally notified to the NCC (or to the MOIT, pending establishment of the NCC). The competition authority will then determine whether to: (i) prohibit the transaction; (ii) approve the transaction unconditionally; or (iii) approve the transaction subject to conditions.¹³ The implementation of a notifiable transaction without the approval of the NCC (or the MOIT, pending establishment of the NCC) exposes the transaction parties to extremely punitive fines and other sanctions.

The threshold tests established by Article 13.1 of Decree 35 are extremely low and will catch many more M&A transactions than would have been caught under the merger control notification regime under the previous Law on Competition 2004.¹⁴

Relevant for M&A, ‘economic concentration’ transactions include (amongst other types of transactions)¹⁵: (i) share or equity capital acquisitions where the acquirer gains a majority ownership stake; (ii) share or equity capital acquisitions where the acquirer gains certain key decision-making powers in relation to the acquired entity; and (iii) any formation of any joint venture where a new joint venture entity is created as a result.

The LOC 2018 and Decree 35 contain no exemptions for any types of ‘economic concentration’ transactions which trigger the notification thresholds. Examples of types of transactions which are normally exempted from merger control notification obligations in most jurisdictions worldwide include (i) corporate re-organisation transactions within corporate groups; and (ii) transactions in relation to which the underlying economic concentration substance has previously been considered and cleared by the competition authorities.

These merger control notification rules are capable of extremely broad application and the notification threshold tests are extremely low. In particular, the threshold test which deals with sales or input turnover in Vietnam (VND 3 trillion) applies in relation to the entire corporate group of which any economic concentration participant is a member and applies even where no entity within the relevant group is domiciled in Vietnam.¹⁶

M&A transaction parties are extremely reticent to make their own determinations as to whether or not their proposed transaction will ‘cause or [is] capable of causing a significant impact in restraint of competition in the Vietnam market’, given the extremely punitive nature of the potential fines and other sanctions for breaches of the merger control notification rules. Accordingly, in practice, most M&A transaction participants decide (and are normally advised by their Vietnam legal counsel) to notify their transactions to the Vietnam competition authorities, for the sake of prudent risk management, even when they are confident that the proposed transaction will not cause [and is not] capable of causing a significant impact in restraint of competition in the Vietnam market.

At the date of publication, merger control notification applications are often taking anywhere between three to six months to be processed by the MOIT. If the volume of notified transactions continues to increase as radically as it is expected to, it is unlikely that these processing times will decrease once the NCC is established. Indeed, there is every likelihood that these processing times will increase, given the likely inundation of the NCC with notifications. Merger control processing times of three to six months or more present a considerable disincentive to parties considering entry into M&A transactions in connection with Vietnam given that it is necessary, in many cases, to include Vietnam merger control clearance as a condition precedent to completion of Vietnam-connected M&A transactions.

11 Article 30 Law on Competition 2018.

12 Noting that, as at the date of publication, the NCC has not yet been established and thus the MOIT is the decision-making authority, pending the establishment of the NCC.

13 Article 13 and Article 14 Decree 35.

14 Law 27/2004/QH11 dated 3 December 2004 of the National Assembly on Competition.

15 Article 29 Law on Competition.

16 Article 13 Decree 35.

The key provisions of the LOC 2018 and its implementing legislation outlined above, in addition to a number of other provisions of this key competition legislation, present a material hinderance to many otherwise viable M&A transactions.

Potential gains/concerns for Vietnam

Many instances are already arising in which parties are deciding not to pursue Vietnam-connected M&A transactions, due to the necessity to seek Vietnam merger control clearance and the extreme delays which result from the notification and clearance process. This issue is turning away investors who would otherwise be highly enthusiastic about investing in Vietnam.

Often global or regional M&A transactions (including internal corporate group reorganisations) occur in which Vietnam is the only jurisdiction (amongst the many involved) in which merger control notification issues arise, due to the unusually broad application of Vietnam's merger control notification rules and the unusually low notification threshold tests. These types of situations are casting the country in an unfavourable light in circumstances where Vietnam is otherwise in many respects considered to be a highly desirable destination for foreign investment.

Recommendations

We would like to make the following recommendations:

- Amend the LOC 2018 and/or Decree 35 to exclude internal corporate group re-organisations from merger control regulation.
- Amend the LOC 2018 and Decree 35 to exclude from merger control regulation any transaction the underlying economic concentration substance of which has been previously cleared by the competition regulator.
- Amend Decree 35 to raise the threshold amounts which trigger notifiable transactions.
- Amend Decree 35 to clarify and narrow the definition of 'the enterprise or group of affiliated enterprises of which such enterprise is a member'.
- Amend the LOC 2018 and/or Decree 35 to define clearly the concept of 'the market of Vietnam'.

II. MARKET ACCESS

Relevant authorities: Ministry of Planning and Investment (MPI); Ministry of Industry and Trade (MOIT)

Issue Description

Market access remains subject to heavy limitations. These include, for example, the existence of over two hundred 'conditional' business sectors, where additional requirements will apply ranging from foreign ownership caps to the 'economic needs test' for opening retail outlets. The rules governing the acquisition by foreign investors of equity interests in domestic Vietnamese entities have been liberalised significantly in recent years. However, they require further liberalisation in order to stimulate a more developed and sophisticated M&A market in Vietnam.

We welcome the Law on Investment 2020, which has reduced the number of conditional business sectors from 243 to 227 and introduced a 'negative list' approach.¹⁷ We also welcome Decree 31¹⁸, which as of 26 March 2021 has introduced the long-awaited specific lists of sectors which are prohibited from foreign investment and sectors in relation to which foreign investment is subject to conditions. This highly welcome development has introduced a much-needed enhanced level of clarity and certainty. In our view the number of sectors in relation to which foreign investment is subject to conditions is unduly high. We further understand and welcome the fact that the intention behind the Law on Investment 2020 and Decree 31 is that any sector that is not included on either of the official conditional sector lists (as annexed to Decree 31) will be open for investment by foreign investors on the basis that they will be treated no differently to domestic investors. We welcome the recent positive and much desired initiatives by reducing the number of conditional sectors.

¹⁷ Appendix IV, Law on Investment 2020.

¹⁸ Decree 31/2021/ND-CP dated 26 March 2021 of the Government, implementing the Law on Investment.

The key challenge in giving effect to these positive legislative developments will be to ensure that all local licensing authorities act in a manner consistent with the legislated principles and the legislative intention which underpins them. At the date of publication, in practical terms, many local licensing authorities continue to apply an unofficial policy that: foreign investment approvals are only granted in relation to sectors which are specified in the WTO Commitments, other relevant treaties, free trade agreements, or in domestic sector-specific legislation as being open for foreign equity investment in specified percentages. In relation to any other sectors, the local licensing authorities exercise discretionary decision-making power, which is often exercised in a manner adverse to foreign investor applicants. In addition, the Government should, in due course, finalise and announce the list of industries and trades for which market approach is restricted for foreign investors to enable a clearer framework for foreign investors engaging in M&A activities in Vietnam.

Potential gains/concerns for Vietnam

Reducing the number of conditional sectors would inevitably enhance the desirability of Vietnam as a foreign investment destination. The fact that a number of local licensing authorities are exercising discretionary decision-making power in relation to unconditional, non-legislated, and non-committed sectors inevitably reduces the desirability of Vietnam as a foreign investment destination. Preventing the exercise of such discretionary decision-making power by local licensing authorities would reduce the transparency exposure of foreign investors.

Recommendations

We would like to make the following recommendations:

- Continue reducing the number of conditional sectors.
- Reduce the degree of discretion wielded by the local licensing authorities in relation to the review and revisiting of the commercial terms of M&A transactions.
- Instruct local licensing authorities in clear and unequivocal terms that foreign investors are legally entitled to invest in the form of up to 100 per cent equity ownership in any sectors that are not subject to any specifically legislated foreign ownership caps.

III. CONSULAR LEGALISATION OF CORPORATE SUPPORTING DOCUMENTS

Relevant authorities: Ministry of Justice (MOJ), Ministry of Planning and Investment (MPI)

Issue description

We welcome the provisions of the LOI 2020 which have narrowed the scope of M&A transactions involving foreign investors which are subject to 'acquisition approval' requirements. These will be of benefit to Vietnam as a desirable foreign investment destination. We would also seek to compliment the various municipal and provincial Departments of Planning and Investment (DPIs) in relation to the fact that in recent times they have generally adhered to the legislated 15 business day processing times for 'acquisition approval' applications.

Nevertheless, 'acquisition approval' applications continue to present a material drawback in relation to M&A transactions in Vietnam. This is primarily due to the fact that foreign investors are required to submit consular legalised copies of their corporate supporting documents. In many jurisdictions worldwide, consular legalisation of documents is time-consuming, and it can often take between one and three months to obtain consular legalised copies, depending upon the jurisdiction. Furthermore, obtaining these documents is an expensive exercise, and adds to the financial cost as well as the time cost of implementing M&A transactions.

Potential gains/concerns for Vietnam

If the requirement to obtain consular legalisation of documents were to be removed, transaction costs and timelines for foreign investors would be reduced significantly. Copies of corporate supporting documents certified as being true and correct by foreign investors' legal counsel, together with certified Vietnamese translations of those documents should be sufficient for the purposes of 'acquisition approvals' and, indeed, for any other type of regulatory applications in Vietnam, such as applications for Investment Registration Certificates or Enterprise Registration Certificates.

Recommendations

We would like to make the following recommendation:

- Abolish consular legalisation requirements in connection with foreign investment (including M&A transactions) in Vietnam.

IV. PAYMENT OF PURCHASE PRICE AND OBTAINING TAX CLEARANCE

Relevant authorities: Ministry of Finance (MOF), State Bank of Vietnam (SBV), General Department of Taxation (GDT)

Issue description

Payment issues

Pursuant to the applicable foreign exchange control regulations, the purchase price payable in an M&A transaction involving a foreign investor is, in many cases, required to be transferred through a specific onshore bank account. Depending on the circumstances, this must be either a "direct" (DICA) or "indirect" (IICA) investment capital account.¹⁹ Although the State Bank of Vietnam (SBV) in 2019 introduced Circular 06/2019/TT-NHNN²⁰ (Circular 06) in an attempt to clarify the rules on the use of a DICA or an IICA in relation to M&A transactions, those rules remain insufficiently clear and banks continue to apply conflicting interpretations as to the applicable DICA or IICA requirements. In addition, Circular 06, in providing that non-resident buyers are permitted to pay non-resident sellers directly and in foreign currency outside of Vietnam, exposes buyers who make such foreign currency payments directly and outside of Vietnam to foreign currency repatriation risks arising from banks applying strict requirements for them to prove that they have duly and properly implemented a capital investment in Vietnam.

These and other foreign exchange control regulations make the transfer of purchase prices a cumbersome, time-consuming, and uncertain process which often gives rise to material delays in transaction implementation timetables. The recent SBV regulations and guidelines contained in Circular 06, while helpful, fail to address the root of the problem.

In our view, the distinction between "direct investment" and "indirect investment" transactions and bank accounts is unnecessary, gives rise to confusion, and should be abolished. The necessity to route purchase prices through any particular type of legislated onshore bank account should be abolished at the same time. In particular, foreign buyers should be free to pay M&A purchase prices to foreign sellers outside of Vietnam, especially in light of the fact that Circular 06 seems to allow this. They should have the benefit of clarity as to precisely what evidence they need to obtain and produce in order to prove, in the future, that they have duly and properly implemented a capital investment in Vietnam. This is the key problem currently faced by participants in wholly offshore transaction payments.

¹⁹ Circular 06/2019/TT-NHNN dated 26 June 2019 of the State Bank of Vietnam guiding the foreign exchange management of foreign direct investment in Vietnam.

²⁰ Ibid.

Tax declaration issues

In addition, the tax clearance procedures necessary for implementing M&A transactions and transferring purchase prices are, in many cases, slow and often delay the completion of M&A transactions.

For example, in relation to M&A transactions, the current legislation requires that ‘the tax declaration must be submitted within 10 days from the day on which the relevant authority “approves” the capital transfer or the transfer date agreed by all parties in the transfer contract (if the transfer is not subject to approval).’²¹ It is, however, not clearly defined what constitutes a relevant ‘approval’ in a private M&A transaction (not involving acquisition of State-owned enterprises). In practice, the tax authorities often adopt the view that the declaration and payment of the relevant capital gains tax (capital transfer tax) must be undertaken within 10 days from the date the relevant transfer contract is signed. This interpretation is particularly inconvenient with respect to complex M&A deals where, as a practical matter, the completion of the M&A transaction can only take place several weeks after the signing of the transfer contract (i.e. completion usually takes place only at a later stage, once all the conditions precedent agreed by the parties are satisfied). In practice, sellers in an M&A transaction would not receive the purchase price (and thus any income to be subject to capital gains tax) until the completion where payment by the buyer is paid. It is, therefore, unrealistic to require the relevant parties to declare and pay tax within 10 days from the date the relevant transfer contract is signed.

In addition, the risks and uncertainties associated with ‘indirect’ capital transfer tax (which is sometimes imposed by Vietnamese tax authorities on transfers of shares in offshore companies where the seller’s capital gain is deemed to constitute income primarily derived from Vietnam) are undesirable for foreign investors wishing to invest in Vietnam and to deploy lawful tax minimisation structuring. In our respectful submission, it would be advantageous in enhancing Vietnam’s desirability as a foreign investment destination of choice if capital transfer tax was imposed only on intra-Vietnam share or charter capital transfer transactions.

Moreover, there is no clarity as to what constitutes satisfactory ‘tax clearance’ for the purposes of M&A transactions. Further, different banks have different interpretations as to what is required by way of evidence before M&A divestment proceeds may be repatriated.

Potential gains/concerns for Vietnam

A clear and transparent regulatory framework is essential for planning and implementing M&A transactions, especially in relation to foreign exchange control, ‘tax clearance’ procedures, and capital gains tax liability.

If parties could be certain as to the procedures and timings for completing M&A transactions, making tax declarations and obtaining tax clearances, and repatriating foreign currency, this would significantly enhance Vietnam’s desirability as a foreign investment destination.

Recommendations

We would like to make the following recommendations:

- Improve the clarity and consistency of procedures applicable to the completion of M&A transactions and the making and processing of capital transfer tax declarations.
- Abolish the distinction between ‘direct investment’ and ‘indirect investment’ transactions and the corresponding special-purpose on-shore bank accounts.
- Amend the deadline for submitting the tax declarations as well as tax payments for M&A transactions to 10 days from the day on which the registration of the capital transfer with the licensing authorities has been completed in accordance with the relevant law.
- Ensure faster and smoother processing of the tax clearance procedures necessary for implementing M&A transactions and the transfer of purchase prices.

²¹ Article 12.8(b) of Circular 156/2013/TT-BTC dated 6 November 2013 of the Ministry of Finance providing guidance on a number of articles of the Law on Tax Management, the Law on the amendments to the Law on Tax Management and Decree 83/2013/ND-CP dated 22 July 2013 of the Government implementing a number of articles of the Law on Tax Management and the Law on the amendments to the Law on Tax Management, as amended by Article 16 of Circular 151/2014/TT-BTC dated 10 October 2014 implementing Decree 91/2014/ND-CP dated 1 October 2014 of the Government in relation to amendment and supplementation of some of articles in the Decrees providing tax.

- › Consider abolition of the concept of ‘indirect’ capital transfer tax (i.e., capital transfer tax on divestments of shares in companies domiciled outside of Vietnam).

ACKNOWLEDGEMENTS

EuroCham Legal Sector Committee

FOR MORE M&A RELATED ISSUES, PLEASE ALSO READ

- › Chapter 5 Real Estate

Section II. Protecting the Interests of Investors 2. Confusion in regulations on real estate project transfer

CHAPTER 4 PUBLIC-PRIVATE PARTNERSHIPS

OVERVIEW

Modern, efficient infrastructure is vital to continued economic growth and lowering the cost of doing business for local businesses and investors in Vietnam. Rapid economic growth and urbanisation are driving high demand for roads, electricity, ports, waste and waste-water treatment, hospitals, and other public infrastructure for goods and services. However, Vietnam's infrastructure development needs have been estimated at US\$ 605 billion from 2021 to 2040; and the infrastructure investment gap (from both public and private sources of funding) is estimated to be US\$ 102 billion for the same period.¹

While there has been significant spending on infrastructure projects in Vietnam over the past 20 years, the vast majority of the funding has been from the Official Development Aid (ODA), the State budget, and State guarantees of external debt provided by the Ministry of Finance (MOF). This will not be sustainable in the mid- to long-term, particularly as Vietnam has achieved middle-income status with the resulting reduction of available ODA funding. In addition, the Government of Vietnam intends to reduce its exposure to foreign creditors under MOF guarantees, which results in a further tightening of amounts of external credit available to finance infrastructure.

Although local Vietnamese banks are increasingly funding infrastructure at a relatively high cost, the liquidity in the domestic market is not sufficient to cover the massive finance requirements in this sector. The balance of funding for these requirements, therefore, needs to be accessed from external sources, willing to offer attractive terms and eager to participate in the Vietnamese market. These funding sources, however, require structured solutions in terms of risk allocation, including those that can be derived from private investments in the form of Public-Private Partnerships (PPPs), and certainty in relation to Government policy.

On 18 June 2020, the National Assembly passed the Law on Public Private Partnership² (the Law on PPP) which took effect on 1 January 2021. The elevation of regulations relating to PPP project implementation to National Assembly law status (as opposed to decrees and circulars) was understood as signalling an intention to harmonise and consolidate applicable provisions and minimise inconsistencies with lower-ranking regulations. This was welcomed by the market as providing more certainty and permanence to the legal regime, which has consistently evolved over recent decades.

Over the past 20 years, other than the handful of successful foreign-invested, large-scale Build-Operate-Transfer (BOT) thermal power plants³, successful private investment in the public infrastructure sector has been the exception rather than the rule, particularly in the case of private investment in PPP form. The few reported cases of such BOT or PPP investments are usually implemented under relatively basic project contracts and arrangements with the State which, while acceptable to the local market, are insufficient in terms of risk allocation and legal protection to form the basis of significant foreign cross-border investment and financing.

Due to difficulties with the evolving PPP regime and the lack of certainty and risk allocation available to investors - particularly foreign private investors - they have, in certain sectors, such as in the renewable energy sector, simply relied on implementing smaller-scale projects under the Law on Investment, without the protection of a PPP contract and the PPP regulations. This has de facto limited the amount of capital investors are willing to deploy against infrastructure projects in Vietnam, meaning large-scale developments remain extremely rare for a country of the scale and growth potential of Vietnam.

Although the Law on PPP constitutes an important legal development this will not, by itself, translate into a series of successful privately-invested infrastructure projects. In this chapter, we will discuss the following recommendations to promote the PPP program in Vietnam:

1 Investment forecasts for Vietnam, *Global Infrastructure Hub*. Available at: <<https://outlook.gihub.org/countries/Vietnam>> last accessed on 26 January 2021.

2 Law 64/2020/QH14 of the National Assembly on Public Private Partnership dated 18 June 2020.

3 Examples include Mong Duong 2 which reached financial close in 2011, Nghi Son 2 which began construction in 2018, or more recent projects such as Van Phong 1 which reached financial close in 2019 and Vung Ang 2 which reached financial close in 2020.

- Develop a pipeline of viable and visible projects;
- Improve the capacity and coordination among relevant Government agencies; and
- Make certain adaptations to, streamline and, where necessary, move towards the practical implementation of, a comprehensive regulatory framework for PPP projects in Vietnam.

I. DEVELOP A PIPELINE OF VIABLE AND VISIBLE PROJECTS

Relevant authorities: Ministry of Planning and Investment (MPI), Ministry of Transport (MOT), authorised State bodies, and other related authorities.

Issue description

As highlighted in previous editions of the Whitebook⁴, the success of the PPP legislative framework largely depends on the Government's ability to bring about and promote viable projects, which are visible to foreign investors. There has only been limited progress in this regard.

For example, the decision of MOT to cancel the international bidding process for the planned North-South Expressway led to uncertainty regarding policy among international investors, and frustrated hopes that the tender would demonstrate the Government's commitment to raising large-scale international funding through implementing PPP contracts, while serving as a roadmap for future projects.

Clarifying prioritised projects for a PPP project pipeline

Although MPI, through its Public Procurement Agency, as well as MOT, and certain local authorities such as Ho Chi Minh City's Department of Planning and Investment, have published certain information about potential projects online⁵, the information is not always comprehensive and the disparate sources of information introduce the potential for conflicts between them and relevant master plans, which can cause confusion for prospective investors.

Clear and practical guidance from a single, centralised source showing which national-level projects will be prioritised as a "first-in-type" in which sectors and the support available from the Government (such as assurances regarding revenue streams and incentives) will be critical in attracting cross-border funding. This may require a sector-oriented approach including sector-specific regulations.

Unsolicited proposals

Unsolicited projects are permitted by both the Law on Tendering⁶ (together with its guiding regulations set out in Decree 25⁷) and the Law on PPP. However, to date, no such projects have been publicly reported as having been accepted and the legal aspects of the process are still largely untested. Pending the development of a pipeline of projects to be tendered, the clarification of the rules applicable to unsolicited projects could be a helpful tool to get projects "off the ground" and help develop institutional PPP capacity.

Unsolicited project proposals must be approved by the relevant authorised State agency, following which the project proponent must carry out the feasibility study. The project must be put to tender based on the feasibility study prepared by the project proponent, who will be entitled to bidding incentives. This appears, when read with the tendering regulations, to include an increase of the price proposed by other bidders by an additional 5 per cent when evaluated against that of the project proponent. This has, historically, not been enough of an incentive for investors to propose projects in view of the risk that an investor who develops and proposes an unsolicited project may not be selected as the ultimate investor.

⁴ The Whitebook, *EuroCham*, editions 2018, 2019, and 2020, Chapter 9: Public Private Partnerships.

⁵ See websites: <<http://muasamcong.mpi.gov.vn>> and <<https://ppp.tphcm.gov.vn/en/du-an-dang-keu-goi-dau-tu.html>> respectively, last accessed on 26 January 2021.

⁶ Law 43/2013/QH13 of National Assembly on Tendering dated 26 November 2013.

⁷ Decree 25/2020/ND-CP of the Government implementing the Law on Tendering dated 28 February 2020.

In addition, unsolicited projects are only entitled to State capital investment if such State capital is funded by ODA or preferential loans of foreign donors. This narrows down potentially viable projects which may be put forward by potential private project proponents as these sources of capital are becoming more scarce.

While a move away from direct appointment is welcomed, objective criteria where this might be permitted would be helpful if it can launch a first-in-kind pilot project with sophisticated foreign debt and equity investors pending the development of more refined regulations of PPP and tendering and the furtherance of capacity building (see Section II below).

The conversion of existing State-funded projects to PPP form

Clarifications are also needed in relation to the regime for converting State-funded projects into PPP form, if existing brownfield State-run projects are to attract outside investment, liberating funds for the State to undertake new greenfield investments. While the Law on PPP contains a passing reference to the conversion of State-funded projects to PPP form, which would appear to follow a similar approval process as greenfield PPP projects, these provisions remain new and untested. A clear framework is necessary if investors are to have visibility of the State-funded projects that are eligible for investment under this regime, freeing up State-owned enterprise balance sheets.

Potential gains/concerns for Vietnam

Having tangible projects identified, prepared and announcing them to the market (whether they are greenfield or brownfield) continues to be of the highest priority to kick-start Vietnam's PPP program. It is critical that the existing regulations be tested by implementing PPP projects which, in turn, should develop the capacity of relevant Government bodies and increase the confidence of investors. Through practice, gaps in the legislative framework may also be clearly identified and corrected by further legislation if necessary.

Recommendations

We would like to make the following recommendations:

- Publish, through a centralised process, a list of key national and regional projects, particularly in sectors which have a good track record in other jurisdictions with well-trodden models and which are highly sought after by foreign investors such as transportation and energy with the aim to prioritise economically viable projects as those slated to be implemented as PPPs.
- Clarify the bidding process for unsolicited projects and the process for converting State-funded projects into PPP format.
- Submit selected projects to a competitive, transparent tender as contemplated under the Law on PPP.
- Allow projects to be developed by leading global sponsors on the basis of unsolicited proposals/direct appointment as pilot projects in specified high-priority sectors in order to develop a baseline standard of documentation and risk allocation which would be bankable in the international markets.
- Put potential projects through a rigorous assessment (with the help of international technical and financial consultants) involving homogenous international standard screening procedures.
- Provide incentives and attractive measures for sectors struggling to attract PPP investment.



II. IMPROVE CAPACITY AND COORDINATION AMONGST GOVERNMENT AGENCIES

Relevant authorities: Ministry of Planning and Investment (MPI), authorised State bodies, and other related authorities.

Issue description

Inconsistent approach among Government authorities

The lack of institutional and practical capacity and the lack of a unified approach among public authorities continue to be issues frequently cited by potential international project investors and sponsors as major difficulties for carrying out projects, including PPP projects, in Vietnam.

This issue is compounded by the fact that, although BOT and Build-Transfer-Operate (BTO) regimes have been in place for more than 20 years, the legal framework for carrying out PPP projects in sectors (other than conventional power) is still evolving and is not yet fully developed. This has resulted in uncertainty for the implementing authorities and, in turn, delays to project contract conclusion and practical project implementation.

There are also only very limited precedents of financed and completed privately invested projects. The Government authorities, therefore, often do not have sufficient legal and practical guidance to smoothly manage the implementation of projects, particularly outside the conventional power sector.

Lack of coordination among authorities

The lack of coordination by the Government and among related authorities has also caused confusion for investors. Regulations preceding the Law on PPP contemplated a centrally planned and monitored program for managing PPP projects, whereby an Inter-Ministerial Steering Committee for PPP investments⁸, led by the Deputy Prime Minister would act as a coordinator among the various Ministries and provincial People's Committees involved in PPP projects. However, the Law on PPP does not contain any reference to the Steering Committee (which, therefore, appears to have been abolished) and sets out provisions to establish centralised "Appraisal Councils" to evaluate PPP projects with different constituents depending on the size and approval level of the project.⁹ While efforts to improve coordination between governmental authorities are to be welcomed, it is important for the responsibilities of these bodies to be set out and demarcated clearly, as duplication or uncertainty is likely to be counter-productive.

In practice, foreign investors have observed that the practice of central and provincial Government authorities is not unified, and different authorities may take different views on the key issues relating to the investability of a project. Provincial authorities, especially in more remote provinces, continue to be left outside the reform process.

Potential gains/concerns for Vietnam

The institutional and practical capacity and coordination issue will, in our view, in addition to the commercial and economic realities of individual PPP projects, continue to be one of the most important factors reducing the competitiveness of Vietnam's PPP program. These will continue to cause delays and increase costs compared to projects in other jurisdictions, including ASEAN. It might potentially result in a loss of investor's patience and interest in the Vietnamese PPP program. Failing to address this issue in a timely manner will make it even more difficult for Vietnam to develop a competitive and visible project pipeline given the robust PPP program in some other markets in Southeast Asia. This is particularly the case when interest in other jurisdictions less active in recent years is revived. It is encouraging to learn that efforts are being made to address some of these aspects by some of Vietnam's development institutions.

⁸ The Steering Committee was formed by Decision 1624/QĐ-TTg dated 29 October 2012 of the Prime Minister and its functions are now primarily governed by Decision 2048/QĐ-TTg dated 27 October 2016 of the Prime Minister (which has replaced Decision 1624); however, its inclusion in Decree 63/2018/ND-CP of the Government dated 4 May 2018 on Public Private Partnerships brought the Steering Committee into the broader regulatory framework of Vietnam's PPP regime.

⁹ These consist of a "State Appraisal Council" and an "Inter-sectoral Appraisal Council" for projects whose investment policy approvals fall within the authority of the National Assembly and the Prime Minister respectively. Internal Appraisal Councils are also to be established within the relevant governmental authorities or agencies where investment policy approval of a project is done at a lower level.

Recommendations

We would like to make the following recommendations:

- Develop (with the help of international consultants with experience in other markets) sets of approved bidding documents, including project contracts containing internationally acceptable risk allocation models, as a basis for bidding to reduce the potential for delay.
- Bring in tangible projects in line with international best practice to provide the authorised State bodies with hands-on experience.
- Organise capacity building sessions relating to the Law on PPP to ensure that cohesive implementation.
- Require a joint implementing process involving all key Ministries and authorities for a unified practice in developing projects, potentially leveraging those individuals who have gained experience of bankability and financeability issues in the context of successful power projects.

III. RATIONALISE DETAILED IMPLEMENTING REGULATIONS

Relevant authorities: Ministry of Planning and Investment (MPI), authorised State bodies, and other related authorities.

Issue description

The Government's recent efforts in rationalising the PPP framework have generally brought further consistency and improved investment conditions.

Notwithstanding the significant consolidation brought about by the Law on PPP, particularly as far as investment procedures are concerned, remaining gaps and inconsistencies are likely to frustrate the international financing and development of major infrastructure projects in Vietnam.

As per the informal indication of MPI, the Law on PPP would remove irrelevant and unnecessary references to the Law on Public Investment. However, in our view, the current text does not appear to have achieved this completely. Ideally, the Law on Public Investment and related legislation such as the Law on the State Budget should only be used as a basis where strictly necessary to assess State capital contributions for a given project, for instance at the in-principle approval stage. Otherwise, the Law on PPP should contain a comprehensive and independent framework for the implementation and administration of PPP projects to avoid potential conflicts with other investment regimes.

The Law on PPP contains amendments to the Law on Tendering removing certain references to the PPP regime. However, as Decree 25, enacted only in February 2020 as guidance to the Law on Tendering, refers in places to the "law on PPP investment" it seems that elements of the Law on Tendering remain relevant to PPP investor selection. This results in three laws being applicable to PPP investments: the Law on PPP, the Law on Public Investment and the Law on Tendering.

Foreign investors in PPP projects also need to comply with other regulations, including the Law on the State Budget,¹⁰ the Law on Public Investment,¹¹ the Law on Enterprises,¹² the Law on Land,¹³ the Law on Construction,¹⁴ and the Law on Tendering¹⁵, along with each of their guiding decrees and circulars. We believe that cross references between these pieces of legislation could result in inconsistencies or uncertainty.

10 Law 83/2015/QH13 of the National Assembly on the State Budget dated 25 June 2015.

11 Law 39/2019/QH14 of the National Assembly on Public Investment dated 13 June 2019.

12 Law 59/2020/QH14 of the National Assembly on Enterprises dated 17 June 2020.

13 Law 45/2013/QH13 of the National Assembly on Land dated 29 November 2013.

14 Law 50/2014/QH13 of the National Assembly on Construction dated 18 June 2014 as amended by Law 62/2020/QH14 dated 17 June 2020.

15 Law 43/2013/QH13 of the National Assembly on Tendering dated 26 November 2013.

Ideally, all investor selection processes and criteria applicable to the PPP contracts and PPP investments would be included in one all-comprising text (and implementing regulations) to help facilitate this type of investments.

Finally, provisions under the Law on PPP do not yet fully address key host country issues identified in developing and financing infrastructure projects in Vietnam, and there remain gaps which need to be filled.

Security over land and assets attached to the land

The Law on PPP states that project land may be used as collateral in accordance with Vietnamese “laws on land and civil laws” – which, therefore, does not go beyond the existing regulations.¹⁶ These regulations restrict the right to mortgage land-use rights where an investor has benefited from exemptions of land-use fees or rent (as one of the incentives available to investors in PPP projects).

In addition, the Law on Land continues to prohibit the granting of security over “land and assets attached to the land” to foreign lenders. This inability to mortgage project land, unfortunately, undermines the land-use incentives set out in the Law on PPP and is a critical issue limiting the bankability of PPP projects in Vietnam and the availability of funding.

Foreign exchange

Foreign exchange considerations also continue to affect the attractiveness of PPP projects in Vietnam from the perspective of investors relying on foreign lending. The Government guarantee of foreign exchange rates is a central issue for investors (and their foreign lenders) seeking to remit capital overseas. Regarding BOT thermal power projects, the Prime Minister’s Letter 1604¹⁷ (which is still effective) contains assurances regarding the investment climate generally and specifically the availability of Government guarantees in relation to the pricing of power in U.S. dollars, even if it is payable in Vietnamese dong. Importantly, this text also contains the provision specifying that the Government shall guarantee the conversion into U.S. dollars of 30 per cent of the revenue of the project from Vietnamese dong after deducting expenditures in Vietnamese dong. Similar provisions to guarantee a maximum of 30 per cent of the VND revenue for PPP projects whose investment policy approvals fall within the authority of the National Assembly or the Prime Minister are now set out in the Law on PPP,¹⁸ which provides regulatory certainty. However, the sufficiency of this threshold remains to be tested outside the conventional power sector, as does the practical implementation of this new provision.

Viability Gap Funding (VGF), minimum revenue guarantees and risk sharing

Another key area affecting the future development of PPP projects is the absence of any guidance and practice relating to Viability Gap Funding (VGF). The Law on PPP does, like its predecessors, appear to envisage the possible availability of VGF at a high level in very general terms, providing that State capital may be used to “provide support” to a project during the construction phase. However, few details have been provided and the Government is directed to “provide guidance” in due course.¹⁹ Without detailed guidelines regarding the quantification of the State investment capital in a given PPP project in place, it will not be possible to implement a project with VGF terms.

The Law on PPP also introduces a risk-sharing mechanism whereby the Government would bear 50 per cent of the deficit between the actual revenue and the “committed revenue” for the project in certain circumstances, and would also benefit from 50 per cent of the surplus between the actual revenue and the committed revenue. While risk-sharing mechanisms are generally welcomed as a possible form of support to enhance the viability of projects that might require this, the relevant provision of the Law on PPP is concerning. It is not clear whether the mechanism is optional for a given project or if it is to apply to all projects (when specific conditions are met), and the guidance of the Government should be clarified in this respect.

The revenue decrease share is subject to several conditions that do not apply where the revenue of a project exceeds projections. In particular, the Government would only bear its share of the deficit for projects implemented

¹⁶ Article 80.4 of the Law on PPP.

¹⁷ Prime Minister’s Letter 1604/TTg-KTN dated 12 September 2011.

¹⁸ Article 81.2 of the Law on PPP.

¹⁹ Articles 69 and 70 of the Law on PPP.

in BOT, BTO, or Build-Own-Operate (BOO) forms where the deficit is due to “change in plans, policies, relevant laws” – which, although it properly allocates change of law risk, appears to restrict the Government’s risk of sharing deficits significantly.

Furthermore, when the conditions for revenue sharing are met, the Law on PPP indicates that the costs of products or public service fees and the term of the PPP contract are to be adjusted accordingly. It is not clear how resulting changes to overall revenue over the life of the project would then affect the revenue sharing provisions that are set out in the Law on PPP.

As for the details of the sharing mechanism, a project’s committed revenue is to be determined based on its “financial plan”.²⁰ However, it is not clear at what stage the financial plan will be fixed for these purposes, and whether any revisions or corrections will be permitted from time to time.

As a result, the incentives in the Law on PPP seem mis-aligned, and may be unattractive to investors as the Government appears to benefit more from upside than downside. We believe it would be an opportunity to address this in documents that will guide the implementation of the Law on PPP.

Ideally, the Law on PPP and its guiding documents should avoid being over-prescriptive at this early stage in the evolution of practical PPP project implementation in Vietnam. It should make available a range of funding support and credit enhancement measures, including VGF, minimum revenue guarantees, and risk-sharing provisions. This would maximise flexibility across the wide range of projects that can be implemented in PPP form and enable appropriate support to be selected based on the needs of a given project.

Governing law

The Law on PPP also requires that PPP contracts be governed by Vietnamese law.²¹ This differs from the current regime under which PPP contracts may be governed by foreign law in certain circumstances envisaged by the Vietnamese Civil Code. This broadly would be where the contract has a “foreign element”, including where one of the parties is an overseas entity. The application of international, neutral and well-developed bodies of laws (usually English law) to BOT project contracts has been and continues to be an absolutely critical bankability issue to mobilise the quantum of funds required for large-scale PPP projects. The Law on PPP indicates that “issues not yet regulated by Vietnamese law” may be set out in the PPP contract so long as they are not contrary to “the fundamental principles of Vietnamese law”. However, this might be too vague to remove the concern of international investors and their lenders and will certainly act as a block to catalysing much-needed funding in view of the scale and amounts required. The requirement of investors and their financiers for BOT and other project contracts to be governed by neutral, well-developed laws in contrast to, for instance, the position in the renewables sector, where projects have been relatively small. However, the same issue will certainly arise in connection with mobilising funding for more ambitious and large-scale wind and solar development.

Timing to financial close

The Law on PPP introduces a requirement for the sponsors and the project company to achieve financial close within 18 months from the signing of a project agreement for projects approved by the National Assembly or the Prime Minister, or 12 months from the signing of a project agreement for other projects.²² This does seem overly prescriptive in light of the time it has historically taken to negotiate BOT contracts for complex internationally-funded projects. Additionally, the consequences of failing to meet the statutory deadlines on financial close are not clear. However, the Law on PPP does contemplate the development of standard forms of PPP contracts.²³ Standard forms should help to speed up negotiations once bankable forms are developed and a practice is established, but these forms will need to be flexible enough to accommodate the development of the first projects and of internationally bankable standards to attract funding for large-scale projects.

Based on the experience of foreign lenders to large scale projects in Vietnam, the earlier mentioned timelines

20 Specifically, committed revenue for these purposes may not exceed a specified percentage of revenue projected under the financial plan, being 125% for revenue increases and 75% for deficits.

21 Article 55 of the Law on PPP.

22 Article 76 of the Law on PPP.

23 Article 47.3 of the Law on PPP.

will be viewed as extremely ambitious and may be a deterrent to investment in view of the lack of certainty in the event they are not met. While a speedy resolution to closing financing documents is, of course, desirable; the recommendation is that this should be promoted through the creation of a well-developed and smooth enabling environment for concluding PPP projects, rather than through unnecessarily rigid statutory requirements.

Consents for capital assignment

The Law on PPP requires the authorised State agency that is party to the PPP contract to consent to, and imposes other restrictions on, a transfer of equity in the project company to third parties prior to completion of construction (or otherwise when the project becomes operational if there is no construction component). There is no further detail on how consent should be demonstrated and guiding regulations would be needed to provide further explanation. These restrictions are likely to act as a deterrent to investors as there are no criteria fixed for permissible transfers in equity holdings in projects and project companies – they are at the discretion of the State agency. These matters are more appropriate for contractual negotiations between the parties concerned.

Termination rights and termination payments

The Law on PPP limits circumstances in which the PPP contract may be terminated before the end of the contractual term to the following specified cases:²⁴

- › prolonged force majeure;
- › insolvency of the project company;
- › serious breach of the PPP contract by either party;
- › where permitted by the Civil Code upon a fundamental change of circumstances; and
- › for national security considerations.

It is unclear how much flexibility the contracting parties will have to further specify the parameters of each of these categories in the PPP contract, and the prescriptiveness of the Law on PPP for this issue is likely to be of concern to investors.

Moreover, the Law on PPP provides that termination payments will be made available to the project company only where early termination is due to a serious breach of the PPP contract by the contracting State agency, or for national security considerations. These two cases are more limited than the five listed before.

The scope application of termination payments is narrow and international lenders will be unwilling to finance significant projects without assurance that their debt will be covered, in other circumstances, such as long-term Government force majeure or natural force majeure.

These terms regarding termination and termination payments would need to be developed in any PPP contract, either in the templates to be developed, or in negotiated contracts, but the law and the regulations should not limit the flexibility of the parties to do this without risking the availability of financing sources for projects in Vietnam.

Step-in rights

The Law on PPP also removes project lenders' rights to 'step-in' and take-over the project in the event of default under the project financing documents. This was possible under the previous regulations. Lenders are now required to coordinate with the State agency to appoint a new investor where circumstances require – and it appears that this is only permitted where the PPP contract has been terminated early in the circumstances prescribed in the Law on PPP (as set out above).

International lenders expect step-in rights to cure and address events of default in their financing agreements. The current position in the Law on PPP is not covering this expectation and will likely, unless varied in template or negotiated PPP contracts, result in a very serious hurdle to accessing project financing.

²⁴ Article 52 of the Law on PPP.

Amendments

The Law on PPP provides that circumstances which allow amendment of the PPP contract must be stipulated in the contract, and sets out specific circumstances where amendments to the PPP contract must be considered by the parties.²⁵ These circumstances include force majeure, change in the term of the PPP contract (when contemplated by the Law on PPP), where permitted by the Civil Code upon a fundamental change of circumstances, and other circumstances within the authority of the contracting State agency which will bring financial or socio-economic benefits to the project.

It is not clear whether parties are free to agree other triggers for possible amendments, or whether the circumstances set out in the Law on PPP would give the parties an enforceable right to amend the PPP contract when these circumstances arise – and if the Law on PPP gives this right, how this possibility to amend could be implemented in practice.

In any event, these provisions appear to significantly undermine the parties' freedom to contract and, in our view, the lack of clarity will be of concern to investors.

Potential gains/concerns for Vietnam

Providing a balanced and practical legal framework around the bigger-picture issues relating to the financial viability of infrastructure projects to be assisted through the public part of the “public-private partnership” should be a focus of the legislative exercise. Issues such as a lack of clarity of existing regulations, conflict with other legislative regimes that serve to undermine incentives for PPP investors, and key structural gaps relating to State support persist and we believe will limit the attractiveness of PPP projects to foreign investors. Cohesive and tested laws and regulations that comply with international norms would lay a solid framework upon which to convert foreign interest in PPP projects to a steady stream of investment in the coming years. This may prove to be more economically challenging than those in the recent past. Regulations would need to be tested with actual projects so investors can get comfortable with how they will be interpreted in the context of developing a PPP.

Recommendations

We would like to make the following recommendations:

- Provide clear guidance on the Law on PPP and bring existing regulations to an international standard to increase the attractiveness of Vietnamese PPP projects to foreign investors.
- Create a clear and cohesive framework for PPPs to benefit from VGF, minimum revenue guarantees, and risk-sharing measures.
- Continue to streamline the policies and guidelines related to PPPs, including implementing focusing on key elements such as the availability and disbursement of such funding and credit support measures.
- Test these regulations with actual projects.

ACKNOWLEDGMENTS

EuroCham Legal Sector Committee

²⁵ Article 50 of the Law on PPP.

CHAPTER 5 REAL ESTATE

OVERVIEW

As a result of encouraging investment policies and the increased participation of new investors, the Vietnamese real estate market has been growing over the last four years. Meanwhile, Vietnam finds itself in a favourable position to improve its infrastructure and economic competitiveness, with free trade agreements such as the EVFTA being a bright spot for the country's property market. In addition, the real estate sector has also been stimulated by important laws passed recently, such as the Law on Construction 2014¹ (LOC), the Law on Housing 2014² (LOH), the Law on Real Estate Business 2014³ (LOREB), and the Law on Investment 2020⁴ (new LOI).

Nonetheless, if more administrative reforms and transparent procedures are not put in place, capital flow will likely move to neighbouring countries. We believe some regulatory barriers are hindering the sustainable operation and development of the real estate market which should be considered. Further, COVID-19 has caused disruptions to Vietnam's real estate sector. Vietnam recorded more than 4,000 new condotel products being offered to the market at the end of September 2020.⁵ However, the condotel market has almost been frozen, with transaction volumes negligible.⁶ The pandemic has impacted the entire economy, with tourism-accommodation real estate being significantly affected. Preliminary statistics show that retail, apartment, and resort real estate segments suffered heavy damage, while residential real estate has been slightly affected.⁷

The EVFTA is expected to provide a big push for Vietnam's industrial real estate sector. Specifically, higher demand for industrial properties (including land and ready-built factories) will be seen followed by the relocation of manufacturing firms from China to Vietnam and the new inflow of FDIs into the manufacturing sector. Even though Vietnam's strict measures of combatting COVID-19 affected the inflow of investors in 2020, the property market is likely to see a big jump this year. Therefore, we would like to highlight certain legal shortcomings and provide some recommendations. We welcome the opportunity to cooperate with legislators to facilitate the growth and efficiency of the real estate market.

I. CONDOTELS, HOMETELS, OFFICETELS AND INVESTMENT APPROVALS

Relevant authorities: Ministry of Construction (MOC), Ministry of Planning and Investment (MPI), Ministry of Public Security (MPS), Ministry of Natural Resources and Environment (MONRE).

Issue description

New hybrid types of property have arisen in the real estate market which include condotels, homotels and officetels. However, provisions in Vietnam's legal framework to regulate these real estate projects are lacking.

As discussed in previous editions of the Whitebook, condotels, homotels, and officetels are apartments that combine many different functions with a living environment. Article 3.4 of Decree 43⁸ regulates that, in case of land on which a condominium for mixed purposes has been built before 1 July 2014, with the floor area partly used as offices, commercial space, or for services, the main use purpose shall be residential. In addition, pursuant to Article

1 Law on Construction 50/2014/QH13 dated 18 June 2014.

2 Law on Housing 65/2014/QH13 dated 25 November 2014.

3 Law on Real Estate Business 66/2014/QH13 dated 25 November 2014.

4 Law on Investment 61/2020/QH14 dated 17 June 2020.

5 "9 months: Condotel market has been almost frozen", baochinphu.vn, 9 October 2020. Available at: <<http://baochinphu.vn/Thi-truong/9-thang-Thi-truong-Condotel-gan-nhu-dong-bang/409924.vgp>>, last accessed on 11 December 2020.

6 Ibid.

7 Ibid.

8 Decree 43/2014/ND-CP dated 15 May 2014 detailing a number of articles of the Law on Land 2013.

3.3 of the LOH, there are definitions of condominium buildings for residential purposes and those with mixed-use for residential and commercial purposes. Under Article 3.3 of the LOH, the concept of a condominium building is built with the purpose of mixed-use residential and commercial space. This concept should be understood as a whole building divided into separate apartment areas and areas with business offices. It should not be understood to mean that each apartment can be used for both living and business.⁹ However, in practice, condotels, hometels and officetels combine many functions in each of their areas without having the separate parts of the apartment building's area purpose prescribed by law.

Under Article 5.1 of the new LOL, investors are entitled to make investments in business lines that are not prohibited. With respect to conditional business lines such as the real estate sector, investors must satisfy business investment conditions as prescribed in law. However, these new hybrid types of property are not regulated. This creates confusion among authorities in the management of construction investment and the use of these property types. Thus, there are many legal risks for investors who invest in new real estate projects which have these hybrid property types, especially regarding land use right certificates (LURCs), ownership of houses, and other assets attached to the land.

Under the LOH, the approval of residential housing construction projects might be subject to either (i) an in-principle decision on investment according to the LOL, or (ii) an in-principle consent to investment, where projects are not subject to an in-principle decision on investment under the LOL.¹⁰

However, an urban zone project investor must prepare and submit a dossier to the authorities for a decision on investment approval.¹¹ This has led to various interpretations as to whether an urban zone project investor will have to apply for all of the above decisions. As a result, administrative procedures for approval of urban zone construction projects could become cumbersome and lengthy. This would adversely affect the investment and business environment in Vietnam.

In addition, the terms investment approval and in-principle decision on investment have been replaced by the term in-principle consent to investment¹² in the new LOL.¹³ Decree 31¹⁴ and Resolution 164¹⁵ reaffirms the removal of this investment approval under Decree 11.

Furthermore, under Article 126 of the Law on Land 2013 (LOL),¹⁶ a residential apartment has a long and stable land-use term. However, a land-use term for an apartment used for trading and services shall not exceed 50 years. Therefore, there is a gap between land use and the use of residential, trading and service apartments. According to Article 1 of Dispatch 703 of MONRE,¹⁷ the land lease term shall not exceed 70 years for projects with large investment capital but slow capital recovery. Upon the expiration of the land use term, if the land user wishes to continue using it, the State shall consider extending the land use term. According to the scale of the project, condotels, hometels and officetels could be given a land lease term of 70 years.¹⁸

Given the “hotel” characteristics of condotels, hometels and officetels, these properties are sometimes referred to as tourism accommodation establishments under tourism regulations. In particular, Article 48 of the Law on Tourism 2017¹⁹ prescribes eight kinds of accommodation establishments, of which, condotels are called tourist

9 The LOH only differentiates apartment buildings for residential purposes and apartment buildings with mixed purposes for living and business. However, Article 3.5 of Circular 02/2016/TT-BXD have regulated that “Mixed use apartment building refers to an apartment building designed and constructed for residential, office, service and commercial purposes.” On the other hand, according to Article 6.11 of LOH, residential apartments will not be used for other purposes. This means that the LOH does not stipulate an apartment for both living and office business. Thus, the definition of “a condominium building is built with the purpose of mixed-use of residential and commerce” should be construed as above.

10 Article 170.2 of the new LOL.

11 Article 20.3 of Decree 11/2013/ND-CP dated 14 January 2013 on investment management of urban development (Decree 11).

12 Article 3.1 of the new LOL.

13 Article 76.5 of the new LOL.

14 Article 111.2 of Decree 31/2021/ND-CP elaboration of some Articles of the Law on Investment dated 26 March 2021

15 Resolution 164/NQ-CP date 5 November 2020 on the removal of some programs in the implementation of investment projects and construction urban area under the regulations in Decree No. 11/2013/ND-CP dated 14 January 2013 of the Government on management of investment and development urban development.

16 Law on Land No.45/2013/QH13 dated 29 November 2013.

17 Dispatch 703/BTNMT-TCQLDD dated 14 February 2020 Guiding land use policies and ownership certification of non-residential constructions.

18 “70-year shelf life, has the condotel ‘revived’?”, Phapluat, 17 February 2020. Available at: <<https://plo.vn/bat-dong-san/thoi-han-su-dung-70-nam-condotel-co-hoi-sinh-890169.html>>, last accessed on 2 July 2021.

19 Article 21, Decree 168/2017/ND-CP dated 31 December 2017 of the Government elaborating some articles of the LOT.

apartments.²⁰ However, this definition is unclear, as both officetel and homotel are not defined in regulations.

The HCMC Department of Construction (DOC), Department of Natural Resources and Environment (DNRE), Real Estate Association (REA), and People's Committee (PC) have reported to MOC and the Prime Minister about requiring regulations on officetels. On 20 January 2020, MOC issued Dispatch 276²¹ requesting relevant authorities to comply with the management, construction, and issuance of LURCs, ownership of houses and other land-attached assets with the types of tourist apartments and tourist villa projects in accordance with current legal regulations. MOC also requested conformity with various master plans and stipulated national technical regulations with regulations for these types of real estate.

On 3 September 2020, MOC issued Dispatch 4308²² to resolve the outstanding issues which were not covered under Dispatch 476. Specifically, the relevant authorities must know the scale of the construction area, the number of apartments, the criteria for the functions of the building, accommodation apartments, offices combined with accommodation, tourist villas, and associated commercial houses. This will be used to determine the criteria and requirements for technical and social infrastructure when considering zoning and detailed construction planning. When deciding on the in-principle consent of construction investment projects for these types of real estate, consistency of investment purpose and land use objectives with the work functions is necessary. In addition, MOC noted that the formation and development of these types of real estate should be suitable to the local situation.

In its report of 6 May 2021,²³ MOC stated that, even though all types of investment have been negatively affected by COVID-19, by the first quarter of 2021 Vietnam still had numerous real estate projects under construction. However, the number of houses eligible for sale decreased by 36 per cent compared to the fourth quarter of 2020. Meanwhile, tourist apartments have increased by 170 per cent.²⁴

In its report submitted to former Prime Minister Nguyen Xuan Phuc regarding shortcomings in legislation on condotels, tourist villas, and officetels, MPS proposed not granting ownership certificates to allow such properties to be turned into residential projects.²⁵

EuroCham's Legal Sector Committee believes that establishing a legal framework for new hybrid property types is important not only for the development and demands of the real estate market, but also for attracting and protecting the legitimate rights and benefits of investors in line with the law.

Potential gains/concerns for Vietnam

Without legal provisions, there could be negative impacts on housing project investors' investment decisions. Condotels, homotels, and officetels can encourage more investment projects and, therefore, protection of the rights and benefits of investors is necessary. On the other hand, the sale of these real estate types has been restricted due to the lack of a legal framework which recognises investors' private ownership. An increase in real estate investment projects will create more revenue, jobs, and economic benefits for the property market and, therefore, contribute to the general long-term sustainability of social security in Vietnam.

Recommendations

We would like to make the following recommendations:

- Promulgate legal provisions with specific standards and guidance for condotels, homotels, and officetels.
- Clarify the applicable land-use term for condotels, homotels and officetels.

20 According to Mr. Nguyen Manh Khoi, Deputy Director of DHRM, MOC, "Condotels certainly have a certificate, but must wait", Ninh Viet, 15 May 2019. Available at: <<https://bds.tinnhanhchungkhoan.vn/bds-phap-luat/condotel-chac-chan-co-so-do-nhung-phai-cho-211901.html>>; last accessed on 20 November 2020.

21 Dispatch 276/BXD-QLN dated 20 January 2020 on investment management, construction and business of tourist apartments, tourist villas.

22 Dispatch No.4308/BXD-HDXD dated 3 September 2020 on Construction investment management of projects with accommodation apartments, offices combined with accommodation, resort villas, adjacent commercial houses.

23 "The Ministry of Construction announced information on the housing and real estate market in the first quarter of 2021", MOC's website, 6 May 2021. Available at: <<https://moc.gov.vn/vn/tin-tuc/1285/67250/bo-xay-dung-cong-bo-thong-tin-ve-nha-o-va-thi-truong-bat-dong-san-quy-i2021.aspx>>; last accessed on 2 July 2021.

24 Ibid.

25 "Ministry proposes not to allow conversion of condotel into residential projects", Vietnam News, 18 July 2020. Available at: <<https://vietnamnews.vn/economy/769764/ministry-proposes-not-to-allow-conversion-of-condotel-into-residential-projects.html>>; last accessed on 22 December 2020.

- Amend legal provisions on the classification and mechanism of using land for mixed-use apartments.
- Grant LURCs and ownership of houses and other assets attached to land for condotels, hometels, and officetels.
- Complete the condominium construction codes defining the concept of condotels, hometels, and officetels.

II. PROTECTING THE INTERESTS OF INVESTORS

Relevant authorities: Ministry of Construction (MOC), Ministry of Natural Resources and Environment (MONRE), Ministry of Planning and Investment (MPI), State Bank of Vietnam (SBV)

1. Protection in case of insolvency or bankruptcy of real estate developers

Issue description

In practice, when buying a real estate project apartment, the buyer must pay at least 90 to 95 per cent of the transaction price before the project is completed. Then, an LURC showing ownership of houses and other assets attached to land for the apartment is granted. However, in many cases, real estate developers prolong the length of time for ownership of apartments or delay construction due to financial losses. As a result, the buyer is likely to be unable to lawfully receive the apartment and will lose money.

The project apartments are off-plan property under Article 108.2 of the Civil Code 2015 (Civil Code).²⁶ Thus, under Article 4.4 of the Law on Bankruptcy 2014 (LOB)²⁷, if real estate developers are declared insolvent or bankrupt, the project housing buyers will be creditors of unsecured debts. This is because project housing buyers are paying for their future apartments, which are used as secured assets for real estate developers to secure their financing of the project.

However, if real estate developers are declared insolvent or bankrupt, project housing buyers will be the last in line for redistribution of assets.²⁸ This means, if the value of assets (e.g. the housing project) is not enough for payment, each object of the same line of redistribution of assets shall be paid according to the percentage corresponding to the debt amount.²⁹ As such, project housing buyers will be given an amount according to the percentage of how much they paid for their apartments. In any case, the buyers will have no chance to own the apartments which they paid for.

Article 56.1 of the LOREB and Article 1.3 of Circular 13³⁰ require real estate developers to acquire bank guarantee contracts before pre-selling apartments. If real estate developers fail to transfer the apartment buildings on schedule, the commercial bank behind the bank guarantee contract will perform the financial obligations on behalf of the developers by refunding the money received from the customers under the future sales apartment contracts. This is one solution to protect the benefits of project housing buyers. However, it is not clear under the laws as to whether or not real estate developers can sell future apartments if they fail to have bank guarantee contracts in place. Obtaining such contracts may cause the cost of the future apartments to rise by up to 2 or 3 per cent. So, it reduces the competitiveness of these projects in the real estate market.³¹ As a result, many real estate developers refuse to sign bank guarantee contracts with commercial banks. If the real estate developer becomes insolvent or bankrupt and does not have an executed bank guarantee contract, project housing buyers will lose their payments and have no recourse to own their intended project apartments.

²⁶ Law 91/2015/QH13 dated 24 November 2015 of The National Assembly on Civil Code.

²⁷ Article 4.4 of the Law on Bankruptcy 51/2014/QH13 dated 16 June 2014: "A creditor of unsecured debts (hereinafter referred to as unsecured creditor) is an individual, an agency or an organization entitled to request the debtor to pay the debts that are not secured against assets of the debtor or a third party."

²⁸ Article 54 of the LOB.

²⁹ Article 54.3 of LOB.

³⁰ Circular 13/2017/TT-NHNN dated 29 September 2017 of The State Bank of Vietnam amending and supplementing a number of articles of Circular No. 07/2015/TT-NHNN, dated 25 June 2015.

³¹ "Guaranteed housing in the future: legal basis for implementation in Vietnam?", Tapchinhanganhang, 8 August 2019. Available at: <<http://tapchinhanganhang.gov.vn/bao-lanh-nha-o-hinh-thanh-trong-tuong-lai-co-so-phap-ly-trong-trien-khai-thuc-hien-tai-viet-nam.htm>> last accessed on 2 July 2021.

Potential gains/concerns for Vietnam

Under Article 5.1 of the LOB, after three months of non-payment, the creditor shall have the right to request bankruptcy. This regulation is automatic, easily turning debt disputes into bankruptcy requests. If a precedent is set that real estate developers can declare bankruptcy, the numbers doing so will rise and, as a result, a significant number of project apartment owners will be seriously affected.

Recommendation

We would like to make the following recommendation:

- Promulgate legal provisions with specific standards and guidance with regard to the financial capacity of real estate developers.

2. Confusion in regulations on real estate project transfer

Issue description

Under the new LOI, a foreign investor wholly acquiring a local real estate development company is allowed to do so by way of a share transfer transaction.³² However, in practice, such acquisition transactions are usually treated by local authorities as a project transfer transaction and the transferors and transferees are required to obtain approvals for a real estate project transfer under LOREB.³³

Potential gains/concerns for Vietnam

By their nature, the two types of transaction are totally different. In a share transfer transaction, the buyer acquires shares from the shareholders as sellers (who hold shares in the real estate company). In a project transfer transaction, the buyer is buying the project from the real estate company, as the seller. Therefore, the registration procedures are set forth differently in the LOE, new LOI, and/or LOREB.

By treating the share transfer transaction as a project transfer transaction, the seller has to complete double procedures despite the fact that there are core differences.

Recommendation

We would like to make the following recommendation:

- Issue clear guidance to provincial departments so that there is no arbitrary interpretation and application of laws in such transactions.

III. LAND USE RIGHT CERTIFICATES FOR FOREIGNERS

Relevant authorities: Department of Construction (DOC), Ministry of Construction (MOC), Ministry of Public Security (MPS), Ministry of National Defence (MOND), Ministry of Planning and Investment (MPI), Provincial People's Committee (PPC).

Issue description

According to Article 1.22 of Decree 30³⁴, foreigners and foreign entities may own houses (including apartments and detached houses) in commercial housing construction projects, except for those with national defence requirements in security areas.³⁵ Further, MOND and MPS are responsible for specifying areas with national defence

³² Articles 24.2 and 46.1 of the new LOI.

³³ Article 51 of the LOREB.

³⁴ Decree 30/2021/ND-CP dated 26 March 2021 amending some articles of the Government's Decree No. 99/2015/ND-CP dated 20 October 2015 on guidelines the Law on Housing.

³⁵ Article 1.22 of Decree 30.

and security requirements in each province and sending written notification to the relevant People's Committee as the basis for the provincial DOC to compile a list of commercial housing construction projects where houses may be owned by foreigners or foreign entities.

As of June 2021, some provincial DOCs, such as Ha Noi, Da Nang, and Ho Chi Minh City (HCMC) have issued lists of projects eligible for foreign ownership to attract more foreign investment.³⁶ However, up until July 2021, major real estate developers in HCMC could not hand over house ownership certificates to buyers - both local and foreign - even though they fulfilled all legal and financial responsibilities due to the investors' non-payment of land use fees.³⁷

Potential gains/concerns for Vietnam

The long delay in issuing LURCs for foreigners significantly affects their ownership and housing rights because those who bought residential houses without the LURC could become victims if disputes arise between them and the sellers.

These current delays could also make interested foreign investors hesitant to invest in the real estate market. This causes risks for foreign investors who need to obtain the LURC and protect their legal rights and benefits. After having invested in the purchase of houses, investors will have no evidence to prove their ownership right without the LURC. Therefore, they will not have the right to sell their houses. That leads to the return or non-use of the investment capital and any profits earned by the foreign investor if cancelled or delayed.

In addition, without the Foreign Ownership Prohibited Projects List (FOPPL), the authorities may be confused or delay issuing the LURC for foreigners. The FOPPL needs to be issued in accordance with the instruction of the PPC as the final step in the issuance of the LURC for foreigners by the authorities.

Recommendation

We would like to make the following recommendation:

- Issue the FOPPL, in accordance with the instructions of the PPC, to enable the LURC to be issued for foreigners who have bought residential houses in Vietnam.

ACKNOWLEDGEMENTS

EuroCham Legal Sector Committee

³⁶ "Da Nang announces 17 projects for foreigners to own houses", Vietnamnet, 13 April 2021. Available at <<https://vietnamnet.vn/vn/bat-dong-san/du-an/da-nang-cong-bo-17-du-an-nguoi-nuoc-ngoai-duoc-so-huu-nha-o-727425.html>>, last accessed on 2 July 2021 "Hanoi: 22 more commercial housing projects sold to foreigners", Kinhthodothi, 4 June 2020. Available at <<http://kinhthodothi.vn/them-22-du-an-nha-o-thuong-mai-duoc-ban-cho-nguoi-nuoc-ngoai-386145.html>>, last accessed on 2 July 2021.

³⁷ "Delay in collecting land-use fees causes late handover of house-ownership certificates", Bizhub, 11 September 2020. Available at <http://bizhub.vn/property/delay-in-collecting-land-use-fees-causes-late-handover-of-house-ownership-certificates_318621.html>, last accessed on 4 December 2020.

CHAPTER 6 TAXATION AND TRANSFER PRICING

I. TAX ADMINISTRATIVE PROCEDURE REFORM

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue Description

To align with common global trends, attract investment, and create a favourable business environment, the Government has implemented many tax reforms. These have reduced administrative procedures and improved enterprises' performance and productivity, which are greatly welcomed. On 19 October 2020, the Government issued Decree 126¹ to guide the Law on Tax Administration. However, several points appear not to be in line with this.

1. Requirement for amending monthly/quarterly PIT filing

Decree 126 mentions that the taxpayer shall be entitled to submit supplementary dossiers for any incorrect filings. If the annual tax finalisation dossier has been submitted, only supplementation to the annual tax finalisation dossier is required. However, if supplementing the income payer's PIT finalisation return, Decree 126 requires that the relevant incorrect monthly or quarterly tax returns also be supplemented. If the supplemental declaration leads to an increase in the tax payable amount or a decrease in the tax that has been refunded by the State, then the taxpayer shall pay the additional amount or repay the over-refunded amount and late payment interest to the State's budget.

This means that, in addition to the amendment to the annual declaration, enterprises must also correct the monthly and quarterly declarations.

2. Tax payments on behalf of business individuals/households

Decree 126 and Circular 40² regulate that organisations paying bonuses, sale support, trade, price and early-payment discounts to dealers being business households or individuals are obliged to withhold PIT and VAT on behalf of the dealer. The move was explained by policymakers as a measure to increase the tax collection from business individuals/households whose taxes are normally based on deemed taxable revenue multiplied by flat PIT and VAT rates varying across different business activities.

Potential gains/concerns for Vietnam

Decree 126 raises concerns in relation to increased administrative procedures leading to costly and difficult compliance and the adoption of tax collection measures in breach of fundamental tax principles. In particular:

1. Requirement for amending monthly/quarterly PIT filing

Most companies understand that the monthly tax declaration is a temporary tax payment which will be recalculated and finalised in the full-year PIT finalisation. There could be several reasons for a difference between the total tax liabilities per monthly/quarterly tax returns and the final tax liability as per the finalisation return. If a company identifies any incorrect declarations and volunteers to amend the tax finalisation return, the requirement to amend the relevant provisional monthly/quarterly tax returns creates a lot of administrative work and costs for the company. It also diminishes the meaning of an annual tax finalisation. A company must spend more time and labour costs to prepare the monthly/quarterly tax returns with the precise tax payable amount to avoid interest and administrative penalties in the future.

Tax payments on behalf of business individuals/households

1 Decree 126/2020/ND-CP dated 19 October 2020 of the Government elaboration of the Law on Tax Administration.

2 Circular 40/2021/TT-BTC on tax management of business households and individuals.

Trade and price discounts are common commercial conditions between sellers and buyers, which reduce the price rather than being income to the buyer. Trade and price discounts are also recorded as sales reductions in the accounting book and on the invoice for the seller. Defining trade and sale discounts as the income of dealers being business households or individuals distorts the nature of such payments and creates a practice of misleading interpretation of taxable events for the pure purpose of tax collection.

Bonus, sale support, or early payment discount are defined as other or financial income to the buyer, and under Decree 209³ fall into the category of items not subject to VAT. The imposition of VAT in Circular 40 on such payments at the same rate as the underlying goods/services for which the payments are made, misrepresents such payments as the trading revenues of dealers – which is not the case. It also seems to contradict Decree 209. The tax authority should not reclassify the incomes received by business individuals and households for tax-collection purposes only.

Recommendation

We would like to make the following recommendations:

- Amend Point a, Clause 4, Article 7, of Decree 126 so that there is consistency in the requirement on the amendments of the annual finalisation tax returns between the annual PIT withholding tax return and other tax finalisation returns.
- Amend Decree 126 and Circular 40 to exclude trade and sale discount from the group of incomes taxed in the hand of business individuals/households; and to not impose VAT on bonuses, sale support, and early payment discounts.

II. TAXATION OF OFFSHORE INDIRECT TRANSFER OF CAPITAL

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue Description

Certain private rulings have been issued by the Vietnamese tax authorities providing general guidance that transactions of share transfer at the overseas parent/grand-parent level are subject to tax in Vietnam; and the Vietnamese company is obliged to file and pay the tax on behalf of the seller. However, the current tax regulations lack detailed and concrete guidance including (i) the basis of taxation and the specific cases which are covered, as well as (ii) the calculation of tax and the declaration process. This unclear guidance has caused a lot of controversy and difficulty for enterprises where there are indirect transfers of shares occurring or being contemplated.

Potential gains/concerns for Vietnam

We acknowledge that the Vietnamese tax authorities have the right to decide to tax capital gains arising from offshore indirect transfers. However, this should be clearly provided under domestic legislation, which should reflect international tax practice and be feasible to implement.

There should be limitations on which indirect transfers are subject to tax, similar to those in other countries which tax indirect transfers, such as the following exceptions:

- Transactions on overseas stock exchanges where the parent or grand-parent enterprises are listed/public entities;
- Internal group restructuring;
- A de minimus test for the transfer to be taxable⁴, and;

³ Decree 209/2013/ND-CP dated 18 December 2013 of the Government detailing and guiding implementation of a number of articles of Law on Value-Added Tax.

⁴ For example, where the value of the Vietnam assets is over a certain monetary level and represents 50 per cent or more of the total value of the assets transferred by the overseas party.

- The rules do not apply where there is a reasonable commercial purpose for the indirect transfer.

The inclusions of these exceptions will enhance the enforcement of indirect capital transfer tax. With no limitation of the coverage of the tax, as is currently in place, the law is undermined because implementation in various cases is unfeasible.

Recommendation

We would like to make the following recommendation:

- Develop concrete and detailed guidance on the taxation of indirect transfers of shares as soon as possible to enhance the transparency of the tax environment in Vietnam.

III. IMMOVABLE PROPERTY RATIO DETERMINATION IN DOUBLE TAX TREATY APPLICATION

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue Description

Under numerous Double Tax Treaties (DTT) to which Vietnam is a signatory, the taxing right on income from alienation of shares in a company will belong to the Contracting State of which the alienator is a resident if the assets of the company do not consist wholly or principally of immovable property. Circular 205⁵ states that, where the treaty does not specify the ratio to be considered as “consisting principally of immovable property”, a ratio of 50 per cent based on the balance sheet of the company at certain milestones will be used. Yet, in determining the immovable property ratio, the tax authorities have tended to include the value of machinery and equipment (M&E) for the calculation of the ratio. In several cases, the inclusion of M&E seemed to have been conducted arbitrarily to deny the right to claim DTT benefit of the alienator.

Potential gains/concerns for Vietnam

As per official guidance documents issued by the GDT, immovable properties also include “auxiliary assets accompanied to immovable properties or assets attached to land”. In addition, Official Letter 2345⁶ clarified that M&E and molds which are “not attached to the factory building permanently” and could be moved in/out of the factory to manufacture products are not immovable property. Some local tax authorities have relied on OL 2345 to interpret that any M&E affixed to the floor of the factory in a permanent and solid manner – either through concrete foundation or connection to a synchronised M&E line – is immovable property.

However, this interpretation disregards the fact that factories are designed for specific purposes with a technically optimal lay-out, which inherently brings with it a degree of permanence. M&E brought in for manufacturing purposes generally do not constitute a part of nor are they attached to the building. Yet, in some circumstances, the M&E system could be considered equivalent to immovable property. For example, heavy M&E erected on land the dismantling of which could destroy its functionality. In international practice, in order to determine if certain M&E is immovable, an economic test to compare the dismantling, moving, and erection of the M&E to a new location vs. the acquisition cost of new M&E of the same quality should be performed. If it is more economical to relocate the existing M&E to a new location than acquire new M&E, the M&E should not be considered immovable.

Recommendation

We would like to make the following recommendation:

- Issue clear guidance on the determination of immovable property ratio to all local tax authorities based on an economic test.

⁵ Circular 205/2013/TT-BTC dated 24 December 2013 of the Ministry of Finance guiding the implementation of the Agreements on Double taxation avoidance and prevention of tax evasion with respect to taxes on income and property between Vietnam and other states or territories and in force in Vietnam.

⁶ Official Letter 2345/TCT-HTQT dated 16 June 2015 of the Ministry of Finance on determination of value of immovable assets in the total value of company (OL 2345).

IV. CORPORATE INCOME TAX AND NON-DEDUCTIBLE EXPENSES

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue Description

Current Corporate Income Tax (CIT) regulations state that, except for certain non-deductible expenses specifically mentioned in the regulations, enterprises can deduct all expenses if they satisfy three conditions: (i) actually incurred in relation to the business operations; (ii) supported by legitimate invoices and documents; (iii) supported by non-cash payment in respect of invoices having a minimum value of VND 20 million inclusive of VAT.⁷ However, in practice, the tax authorities seem to be increasingly using non-compliance by companies relating to non-tax regulations as reasons to deny deductibility of expenses, even though the issue has already been remedied.⁸

Potential gains/concerns for Vietnam

Companies operating in Vietnam are subject to various non-tax compliance requirements. If they fail to comply, they should be subject to administrative penalties.

Under the current CIT regulations, administrative penalties are non-deductible expenses.⁹ However, the tax authorities have in our view arbitrarily interpreted the regulations to reject the associated expenses of transactions which are non-compliant with regulations other than tax. Such treatment effectively imposes an additional penalty for non-compliance for actions already penalised under other laws and regulations, creating uncertain tax risks and distorting economic transactions.

Recommendations

We would like to make the following recommendations:

- Clearly state in future CIT regulations the types of expenses which shall be treated as non-deductible where related compliance requirements in non-tax regulations are not met.
- In the meantime, ensure that unless tax regulations specifically govern the matter, any non-compliance with non-tax regulations which only give rise to an administrative fine are not a reason to reject an expense's deductibility.

V. DECREE 132 AND COVID-19 IMPACT

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue Description

Decree 132¹⁰ does not contain specific guidelines for comparability analysis, adjustment, and quantification for operating expenses for enterprises impacted by COVID-19.

Potential gains/concerns for Vietnam

Currently, many enterprises are incurring operating losses, sometimes leading to bankruptcy or insolvency, because of COVID-19. Even though Decree 132 was released after the outbreak of COVID-19, there is no guidance about the comparability analysis, adjustment, and quantification for operating expenses. Decree 132 states that taxpayers are not required to adjust prices and profit margins if they fall within the arm's-length range from the

7 Article 11 of Circular 78/2014/TT-BTC of Ministry of Finance dated 18 June 2014 guiding the implementation of the Government's Decree 218/2013/ND-CP of 26 December 2013 detailing and guiding the implementation of the Law on Corporate Income Tax which has been amended from time to time.

8 For example, late registration of loan contract, technology transfer contract or late work permit will result in non-deductible of related expenses during the period of late registration. Non-compliance of promotional program notification also result in the non-deductible promotion expenses, just to name a few.

9 Point 2.36, Article 6 of Circular 78/2014/TT-BTC.

10 132/2020/ND-CP dated 5 November 2020 of the Government prescribing tax administration for enterprises having related-party transactions.

35th to the 75th percentile. This regulation leads to taxpayers having to achieve profit margins within the arm's-length range but does not consider the effects of COVID-19. In practice, enterprises struggle to justify the financial performance in 2020 during transfer pricing audits.

The impact of the under-capacity utilisation or registered capacity according to the investment certificate should be adjusted. The stagnation and fixed costs incurred without corresponding revenue, extraordinary expenses incurred due to the pandemic, the differences in revenue between 2020 and 2019 for the same period as the basis to increase the profit margin of the taxpayers in comparison with the comparable companies should also be adjusted. If the profit margin of the taxpayer after quantification of these effects is within the standard arm's-length range, then no further adjustment of the price and profit rate for the purpose of tax declaration should be required.

Other countries in Asia-Pacific¹¹ provide detailed guidelines for enterprises to assess the compliance with Transfer Pricing Regulations in the context of the economy affected by COVID-19.

Recommendations

We would like to make the following recommendations:

- Issue detailed guidelines for adjustments of the operating expenses.
- If this retroactively results in an overpayment, allow the carry forward and offsetting the overpaid amount with the tax payable amounts of subsequent years to maximise support for enterprises.

VI. SELECTION OF INDEPENDENT COMPARABLE COMPANIES

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue Description

Regarding transfer pricing, the selection of comparable companies is critical to assess the compliance of an enterprise and it forms the basis to determine tax obligations. However, the criteria for selecting comparable companies under Decree 132 is not clear.

Potential opportunities/challenges for Vietnam

The GDT confirmed that there will be no Circular to provide further guidance. However, Decree 132 only provides a general procedure for the comparability analysis without specifying the criteria set nor respective examples. This leads to disagreements between taxpayers and tax officers during transfer pricing inspections. Local tax authorities look for reasons to reject the comparability analysis presented in the files of the taxpayers¹² with the purpose to impose a transfer pricing adjustment by using databases of the tax authority that are not available to taxpayers, instead of taking account of taxpayers' justifications and efforts to be compliant.

Recommendation

We would like to make the following recommendation:

- Issue detailed guidelines about the criteria used for selecting comparable companies to generate a transparent tax policy, as well as remove burdens/difficulties for tax officers and taxpayers in interpreting regulations for the compliance purposes and transfer pricing inspections.

¹¹ Such as Japan, Australia, or Singapore.

¹² For example, non-comparable companies, significant business scales in comparison with the taxpayers, the expense ratio reflects the functions or comparable companies incurred some related-party transactions but insignificant and did not affect the profit margin of the companies, etc.

VII. TRANSFER PRICING ADJUSTMENT BY LOCAL TAX AUTHORITIES

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue Description

The imposition of transfer pricing adjustments is based on a company's overall financial result, rather than using a separate segmented result for related-party transactions only (which comprise a small portion compared to the transactions with third parties). This adjustment practice is unreasonable when the subject of Decree 132 (and Decree 20 previously) is related-party and not third party transactions.

This is generating inconsistencies in the enforcement of regulations between local tax authorities as well as the tax officers.

Potential opportunities/challenges for Vietnam

The current practice results in inconsistent enforcement of regulations by local tax authorities or individual tax officers. It also causes issues related to transparency/reasonableness in the application of the regulations in tax inspections. In case it is not possible to segment the profit and loss, tax officers and taxpayers should try to agree on the most appropriate allocation method regarding revenue/cost reflecting the actual business activities and the risks assumed in the related-party transactions.

Recommendation

We would like to make the following recommendation:

- Issue detailed guidance on the calculation of transfer pricing adjustments in transfer pricing examinations/inspection, in which it is clearly stated that the calculation of the additional tax obligation or loss reductions is based on the segmented financial result for related-party transactions and not the overall company financial results (including third-party transactions).

VIII. ACCOUNTING PRINCIPLES FOR IMPORT DUTY REFUNDS

Relevant authorities: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue Description

For the purpose of export production, companies usually purchase material from foreign and domestic suppliers. Under the prevailing laws on import duties, the paid import duties associated with the imported materials/components (imported under A11/A12 type) are entitled to be refunded if such imported material is used for the production of exported goods. For the import duties claimed for refund, companies have to specify which imported materials/components they are associated with and their original import declarations.

However, in practice, for consistency and ease of management, companies monitor identical production material under a uniform SKU code (i.e. commodity code) regardless of the source of the material and as a result, companies generally cannot distinguish which materials/components are imported (and are covered under which import declarations) and which are purchased domestically to present details in the duty refund dossiers, when the materials/components have been used to produce the exported goods.

Potential gains/concerns for Vietnam

Due to the fact that the above-mentioned material is the same, with the same commercial quality and technical specifications, it can be used interchangeably for manufacturing goods for export. Once they are mixed and combined to create a finished product, it is no longer possible to distinguish the imported material from the domestically sourced ones for purposes of duty refunds.

Recommendation

We would like to make the following recommendation:

- Allow companies to apply the accounting principles (e.g. FIFO or pro-rata basis) to identify the number of imported materials/components used for exported goods and the corresponding amount of import duties to be refunded by the customs authorities.

IX. LATE SUBMISSION OF PAYMENT PROOF IN DUTY REFUNDS

Related authorities: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue description

Paid import duties associated with imported material (under A11/A12 type) can be refunded if it is used for the production of goods for export. One of the documents companies have to submit to customs authorities to claim this refund is the payment evidence relating to the exported-imported goods.

However, payments between companies and foreign clients can be arranged via a Letter of Credit (L/C) or Telegraphic Transfer (T/T) 90 days from the date of the exportation of goods. Therefore, when companies submit the duty refund dossier to the customs authorities, companies cannot provide a copy of the payment proof. As a result, the duty refund claim is automatically classified as high-risk. This will require an on-site audit conducted by the customs authorities to verify the declared refund data before a refund decision can be issued (also known as "Audit First - Refund Later").

Potential challenges/opportunities for Vietnam

The classification of duty refund claims into an Audit First – Refund Later mechanism will prolong the refund timeline from one to three months before the company can obtain the refund decision. This can significantly affect the cash flow of companies.

Recommendation

We would like to make the following recommendation:

- Allow exporters to submit refund dossiers (and get Refund First – Audit Later) where there is a payment arrangement between exporters in Vietnam and their offshore buyers if they hold the evidence of either:
An "irrevocable L/C" showing the exporter as the beneficiary; or
Under TT arrangement, a confirmation issued by the exporter's bank, that payment from the buyer has been received.

X. NO PENALTY FOR FIRST-TIME INCORRECT HS CLASSIFICATION

Relevant authorities: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue Description

In the past, under Decree 127 and Decree 45¹³, administrative penalties were not applied on first-time HS code classification of exported/imported goods provided that the description of the goods was declared precisely. However, according to the current regulations promulgated under Decree 128¹⁴ this is no longer applicable.

¹³ Decree 127/2013/ND-CP dated 15 October 2013 of the Government on penalties for administrative violations and enforcement of administrative decisions pertaining to customs controls. Decree 45/2016/ND-CP dated 26 May 2016 of the Government amends some articles of the Government's Decree 127 dated 15 October 2013 of the Government on penalties for administrative violations and enforcement of administrative decisions pertaining to customs controls.

¹⁴ Decree 128/2020/ND-CP dated 19 October 2020 of the Government on penalties for administrative customs offences.

Potential opportunities/challenges for Vietnam

This seems to be a backward step in customs policy, as this violation can easily occur when companies import new goods.

Recommendation

We would like to make the following recommendation:

- Restore the tolerance treatment in terms of HS classification to what was applied under Decree 127 and Decree 45 and provide clear implementation guidance.

ACKNOWLEDGEMENTS

EuroCham Taxation & Transfer Pricing Sector Committee.

FOR MORE TAX-RELATED ISSUES PLEASE ALSO READ

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- | | | |
|--------------|-------------------------|---|
| ➤ Chapter 8 | Transport and Logistics | Section II. Customs, 5. Transfer Price Adjustments |
| ➤ Chapter 12 | Women in Business | Section I. Labour Regulations Affecting Female Employees, 2. Set out clear, concrete incentives encouraging employers to implement female-friendly policies |
| ➤ Chapter 14 | Automotive | Section I. Taxation Issues |
| ➤ Chapter 15 | Motorcycles | Section II. Registration Fee |
| ➤ Chapter 17 | Wine and Spirits | Section I. Special Consumption Tax |



CHAPTER 7 TOURISM AND HOSPITALITY

OVERVIEW

Vietnam saw a drop of 15.3 million international tourists in 2020, a 79.5 per cent decline compared to 2019. Domestic tourism decreased by 28.9 million tourists, a 34.1 per cent decline over the same period the previous year.¹ The global pandemic continues to heavily impact all tourism businesses. However, major outbound markets have started to open up again, in particular for fully vaccinated travellers. Vietnam, meanwhile, has not yet opened its borders for vaccinated travellers. Due to the effective measures taken by Vietnam to contain the transmission of COVID-19 within the country, domestic tourism - while decreasing from previous years - was of crucial importance to the survival of many tourism businesses in 2020.² In 2019 alone, Vietnam obtained about US\$18.3 billion in tourism exports, while domestic tourism receipts reached around US\$14.5 billion.³

Tourism has always been a major contributor to GDP and employment in Vietnam. In 2019, the sector's direct and total contribution was around 9.2 per cent of GDP.⁴ Its direct and total contribution to employment in 2019 was 2.9 million jobs, of which 927,000 jobs are direct (74 per cent of total employment).⁵ The estimated loss in tourism revenue for 2020 due to the pandemic is projected to be US\$19 billion year on year.⁶

Looking forward to the post-pandemic years, important issues need to be addressed for the travel and tourism industry to recover, for Vietnam to be positioned competitively in ASEAN, and to develop tourism into a key economic sector.⁷ We believe the recommendations presented below are still pertinent and their early implementation will be a sustainable way out of the crisis, rather than temporary measures which have a limited, short-term effect.

We would like to highlight the past success of the 15-day visa waiver program for eight European countries.⁸ This significantly increased the number of higher-spending, long-haul visitors and is a prime example of sound Government policy benefiting the industry and, ultimately, the country. We appreciate the Law on Tourism 2017⁹, which sets out a clearer path to enhancing the quality and competitiveness of the industry.

However, as stated above, necessary improvements still need to be made. Issues we would like to address with the Government and relevant authorities include the entry visa policy to be adopted once safe international tourism is possible again, destination marketing, tourism industry data, and the need to promote responsible and sustainable tourism in Vietnam.

1 "Vietnam Tourism 2020: Promoting internal strength in the "COVID-19 storm", Nhan Dan, dated 3 January 2021. Available at: <<https://nhandan.com.vn/dien-dan-dulich/du-lich-viet-nam-2020-phat-huy-noi-luc-trong-bao-covid-19-630469/>>, last accessed 20 January 2021.

2 Considering Covid-19 impact on tourism numbers, we take the 2019 and not the 2020 numbers as not representative.

3 "Vietnam Tourism Annual Report 2019 released", Vietnam National Administration of Tourism-Ministry of Culture, Sport & Tourism, dated 10 February 2020. Available at: <https://images.vietnamtourism.gov.vn/vn/dmdocuments/2020/E-BCTNDLVN_2019.pdf> last accessed 20 July 2021.

4 "Vietnam Tourism Annual Report 2019 released", Vietnam National Administration of Tourism-Ministry of Culture, Sport & Tourism, dated 10 February 2020. Available at: <https://images.vietnamtourism.gov.vn/vn/dmdocuments/2020/E-BCTNDLVN_2019.pdf> last accessed 20 July 2021.

5 "Tourism Vietnam 2020: promoting domestic potential during COVID- 19", Nhan Dan, dated 3 January 2021. Available at: <<https://nhandan.com.vn/dien-dan-dulich/du-lich-viet-nam-2020-phat-huy-noi-luc-trong-bao-covid-19-630469/>>, last accessed on 13 April 2021.

6 "Covid-19 slices US\$23 billion from Vietnam's tourism revenue", Hanoi Times, dated 11 November 2020. Available at: <<http://hanoitimes.vn/covid-19-slices-us23-billion-from-vietnams-tourism-revenue-314786.html>>, last accessed 20 January 2021.

7 Resolution 08-NQ/TW dated 16 January, 2017 of The Central Executive Committee on developing tourism into a key economic sector.

8 Denmark, Finland, Germany, Italy, France, Norway, Spain and Sweden.

9 Law on Tourism 09/2017/QH14 of the National Assembly dated 19 June, 2017 of the National Assembly.

I. ENTRY VISA POLICIES & ADMINISTRATIVE PROCEDURES

Relevant authorities: Ministry of Foreign Affairs (MOFA), Ministry of Public Security (MPS) and Immigration Department of the Ministry of Public Security

Issue Description

Entry visa policy is one of the levers that has the biggest impact on international tourist flow. International tourists consider visa procedures to be an additional barrier in terms of time and cost. If the cost of visiting a destination exceeds tourists' budget or the time required to acquire a visa is unreasonably lengthy, they will choose a more convenient alternative.

Many countries are considering incrementally increasing visa exemption. This will improve competitiveness, attract direct investment, and increase international tourist flows. In turn, this will increase foreign currency income and create jobs.¹⁰ In this spirit, we welcome Law 51/2019/QH14¹¹ in which the issue of re-entry within the 30-day timespan was removed, allowing easier planning of multi-country tours.

Potential gains/concerns for Vietnam

Vietnam's visa requirement index has seen the highest increase globally, from 116th position among 136 economies in 2017 to 58th among 140 in 2019¹², according to the World Economic Forum. We congratulate Vietnam on this achievement, but there is more that could be done to compete with other ASEAN countries such as Thailand (45th), Singapore (3rd) and Indonesia (16th) in particular.

In particular, EU Member States such as the Netherlands, Austria, Switzerland, Portugal or Belgium still have no tourist visa exemption. We believe that the strict policy for most countries requiring a visa prior to travel/on arrival/electronic visa, together with the time and cost, is deterring higher-spending Free Independent Travelers (FITs) from Europe. The benefits for Vietnam of easier access for European tourists are clear. In 2019, visitors from the eight new EU visa-exempt countries continued to see strong growth. For example, inbound traffic from Spain was up 8.5 per cent, with an 8.0 per cent increase from Italy, 6.0 per cent from Germany, and 2.9 per cent from France. An important additional factor for Vietnam to consider is the market diversification of its inbound tourism, making it less dependent on countries such as South Korea or China.

The list of visa-exempt countries should be further expanded, so that tourism can, after the reopening of international borders, quickly recover and fulfil its key role as a spearhead sector of Vietnam's economy. Furthermore, we believe that it is inconsistent to have Free Trade Agreements (FTAs) with countries while still requiring that tourists from those countries require a visa or e-visa. In particular, with the EVFTA in force, we hope the Government will extend visa exemption to all European countries to enhance the competitiveness of Vietnam's tourism industry. European tourists are important for Vietnam.

In our view, a three-month tourist visa for Europeans who wish to make long-stay holidays, particularly over Europe's winter period, would help to attract more high-spending travellers. Such long-stay tourist visas are often used by retirees who have the funds and time to come and stay for longer than usual.

High-yield meetings, incentives, conferences, and events (MICE) tourism is a dynamic segment of the global meetings industry and an important multiplier for related tourism and hospitality segments. Hassle-free visa regulations for short-stay visas and dedicated fast-track immigration lanes for MICE travellers would make Vietnam more competitive and attractive to major international associations and business meetings. Also partly suspended now to control the pandemic, Vietnam grants entry visa exemptions to 24 countries¹³, far fewer than other ASEAN

10 World Tourism Organization – Tourism Visa Openness Report 2013 <https://www.e-unwto.org/doi/pdf/10.18111/9789284415731>

11 Law 51/2019/QH14 dated 25 November 2019 of The National Assembly on amendments to a number of articles of law on entry, exit, transit and residence of foreigners in Vietnam.

12 "The Travel and Tourism Competitiveness Report 2019", World Economic Forum. Available at: <http://www3.weforum.org/docs/WEF_TTCR_2019.pdf>, last accessed 22 January 2021.

13 "Exemption of entry VISA to Vietnam", Ministry of Foreign Affairs, dated 7 August 2018. Available at: <<http://lanhsuvietnam.gov.vn/Lists/BaiViet/B%CC3%A0i%20vi%E1%BA%BFt/DispForm.aspx?List=dc7c7d75-6a32-4215-afeb-47d4bee70eee&ID=306>>, last accessed 22 January 2021.

nations. Moreover, Vietnam's most common visa exemption (15 days¹⁴) is much shorter than that granted to tourists elsewhere in ASEAN (usually 30 days or more). Not only does this create time constraints for travelers, it also creates difficulties for tour operators in designing travel plans for tourists. This is particularly true for European visitors. Direct, long-haul flights from Europe take, on average, 12 hours, usually overnight. In practice, this reduces the exemption period in Vietnam to just 13 days. European tourists tend to stay for a long time and spend a good sum of money during their visits to Vietnam. These travel plans are currently cut short to fit into the tight constraint of 15 days. Destinations such as Thailand enjoy a much longer average length of stay from Europeans (more than 17 days) while Vietnam sees numbers averaging 13 days, matching the period of the visa exemption.

Once international travel reopens, strong competition for international tourists will begin and Vietnam would be hindered from unleashing its full potential while still insisting on a 15-day visa exemption.

Recommendations

We would like to make the following recommendations:

- Expand the list of visa-exempt countries to all EU countries and extend the visa exemption period from 15 to 30 days.
- Extend the period of the announced visa exemptions and new exemptions to five years.
- Create a three-month tourist visa for Europeans who wish to make long-stay holidays.
- Provide short-stay visa exemption in certain situations.

II. DESTINATION MARKETING

Relevant authorities: Ministry of Culture, Sports and Tourism (MCST), Vietnam National Administration of Tourism (VNAT)

Issue Description

1. Public-private partnerships and destination competitiveness

The business of tourism is complex and fragmented. From the time visitors arrive in a destination until the time they leave, delivering excellent value depends on many organisations working together and sharing resources where possible. We do acknowledge the Government's effort in that field, and we would like to congratulate the relevant authorities for their pro-active communication in 2020.

Most destination management issues arising in Vietnam need to be addressed at the provincial level. This is where existing structures of Government should be strengthened. It is, therefore, important that effective governance structures for tourism are put in place locally. It is at the local destination level that many services vital to tourism are delivered and where the positive and negative socio-economic and environmental impacts of tourism are most apparent, requiring sound local planning and management. Therefore, local teams empowered to deliver a task should also receive the budget to do so in a timely manner in order to develop action plans and ensure the project is professionally delivered. In terms of destination marketing, public-private partnerships have been implemented around the world and are proven to provide mutual benefits for both parties. We welcome the work of the Tourism Advisory Board (TAB, one of Vietnam's first PPP in the tourism industry). However, more effort by TAB to communicate and connect pro-actively with the various stakeholders in the industry, including EuroCham's Tourism & Hospitality Sector Committee, should be made.

2. Online marketing as a key channel to promote tourism

Digital and social marketing is more cost-effective than traditional marketing¹⁵ and enables tourist-driven content.

¹⁴ Ibid.

¹⁵ A.Yasmin, S.Tasneem, K.Fatema, "Effectiveness of Digital Marketing in the Challenging Age: An Empirical Study", International Journal of Management Science And Business Administration, 2015, pp.74-75.

More and more people around the world are going online to plan and select where they intend to enjoy their holidays. Indeed, smartphones are now an essential part of travel and tourism, and family and social circles are important influencers of travel decisions. Online reviews and internet advertisements are also top drivers for travel demand. In Vietnam, information and communication technology has improved significantly, both in terms of capacity and usage. Such developments show that Vietnam's online presence is growing and ready for online tourism marketing.

We appreciate the efforts in developing Vietnam's online marketing with the official website for Vietnam tourism.¹⁶ However, with such an important role, the budget, supervision and execution should be in public hands and not private ones to ensure a level playing field, benefitting all tourism companies equally.

As a gateway to the world, the internet is at the forefront of connecting Vietnam's individual cities, provinces and tourist destinations to other countries. We would like to emphasise that it is crucial to properly finance tourism promotion websites on both national and provincial levels and to have the right structures in place to offer content in as many languages as possible, allowing each destination to present and highlight its strengths. More effort should be made on all levels to resolve these issues.

3. Unlock the potential of new sources of tourism

While Vietnam is successful in attracting visitors from China who, together, represent two-thirds of foreign visitors to Vietnam pre-pandemic, this might be a double-edged sword as the tourist sector risks becoming over-dependent on visitors from these countries. Therefore, we believe that focused investments promoting Vietnam in other important markets such as Europe could help to reduce the stress and stretch of resources. The most notable concern is the lack of a functioning tourism board representing Vietnam overseas. Thailand, for example, has shown that a good overseas representation with their own offices and budget in the targeted markets are a key element in the tourism development masterplan.¹⁷ We would like to encourage the Vietnam Administration of Tourism to set up their own overseas offices in European countries, such as Germany, France and Italy to act as a coordinator and go-to point for all stakeholders in these countries and, with that, accelerate inbound travel to Vietnam.

Further, Vietnam's public relations (PR) efforts in the European markets have not yet reached peak efficiency. A more coordinated effort between national and regional levels must be undertaken in order to have the best possible impact. PR agencies in the overseas outbound markets should be appointed to effectively communicate Vietnam's success, for example handling the coronavirus or updating important developments such as the construction of Long Thanh International Airport. While the domestic media outreach is good and well-coordinated, overseas PR could be improved. We would like to encourage authorities to place special importance on that topic. Overseas offices could actively work with tour management companies, airlines and the media, being the go-to point for tourism companies when considering Vietnam as a destination for their clients. Good examples in ASEAN include the Singapore Tourism Board (www.stb.gov.sg) or the Thailand Tourism Board (www.tourismthailand.org or <https://www.tatnews.org/tat-international-offices/>).

Potential gains/concerns for Vietnam

In 2018, Vietnam established the Vietnam Tourism Development Fund (VTDF) with a charter capital of VND 300 billion (~US\$13.22 million).¹⁸ Meanwhile, the Department of Tourism in Thailand had an annual budget of US\$ 200 million in 2019. Malaysia's Ministry of Tourism, Arts and Culture had an allocated budget for 2020 of US\$ 272 million¹⁹ including an allocation of US\$ 237 million to drive awareness, promotions and programs of the 'Visit Malaysia Campaign'.²⁰

16 "Visit Vietnam: The Official Tourism Website of Vietnam", Vietnam Tourism Board. Available at: <<https://vietnam.travel/>>, last accessed 25 January 2021.

17 "International Offices of the Tourism Authority of Thailand", Tourism Authority of Thailand. Available at: <<https://www.tatnews.org/tat-international-offices/>>, last accessed 25 January 2021.

18 Decision 49/2018/QĐ-TTg dated 12 December 2018 of The Prime Minister on establishing, and approving the organization and operation charter of the Vietnam Tourism Development Fund.

19 "RM200m boost for domestic tourism, arts and culture", New Strait Times, dated 18 November 2020. Available at: <www.nst.com.my/news/nation/2020/11/642022/rm200m-boost-domestic-tourism-arts-and-culture>, last accessed 25 January 2021.

20 "Govt sets aside RM1.1b for tourism ministry to drive Visit Malaysia 2020 campaign", The Edge Market, dated 11 October 2019. Available at: <www.theedgemarkets.com/article/govt-sets-aside-rm11b-tourism-ministry-drive-visit-malaysia-2020-campaign>, last accessed 5 May 2021.

We cannot emphasise enough the importance of travel and tourism to Vietnam's economy: The industry generated around 9.2 per cent of GDP in 2019²¹ and has the potential to recover quickly if the relevant authorities are well financed. Furthermore, in light of the Government's ambitious goal to develop tourism as a spearhead of the economy, it is imperative to recognise the sector's contribution to the socio-economic welfare of the State in order to properly support it through an effective strategic plan for international tourism marketing.

Recommendations

We would like to make the following recommendations:

- Establish overseas tourism offices which officially represent Vietnam in outbound markets.
- Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion.
- Appoint PR agencies in European countries to target media by language.
- Facilitate public-private partnerships to manage and effectively operate the tourism promotion fund.
- Focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long period, visit regularly, and spend more when travelling in Vietnam.
- Strengthen Vietnam's visibility while saving costs using digital, friendly-to-use applications on smartphones and social marketing channels to develop a professional appearance as well as comprehensive and useful information for tourists.
- Contribute funding towards initiatives that support the long-term objectives of the industry.
- Continue to communicate between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organisational structures.
- Put in place region-wide coordination structures to focus and maximise the actions of cooperating provinces.

III. LONG-TERM PROSPECTS AND SUSTAINABILITY EFFORTS

Relevant authorities: Ministry of Natural Resource and Environment (MONRE), Ministry of Culture, Sports and Tourism (MCST), Ministry of Education and Training (MOET), Vietnam National Administration of Tourism (VNAT)

Issue Description

Natural and heritage tourism are some of the most lucrative sectors in global tourism. Tour operators have recorded significant sales increases for sustainable travel offers such as local and community-based tourism excursions, certified 'green' accommodations, local organic food and restaurants, responsible wildlife experiences and responsible volunteer experiences.²²

Vietnam is a natural fit for these desirable market segments. Wellness, culture and the environment are massive segments in the tourism industry. They embrace everything from walking, spas, diving and beach holidays to marathons and natural attractions and can also embrace cultural activities such as photography festivals, food festivals, film festivals and writers' festivals. Vietnam has an enviable supply of destinations suited to these activities, including the mountains of the far north, Ha Long Bay, Phong Nha-Ke Bang, the spectacular coastline, mountainous Truong Son Range, the Mekong Delta, and islands in the south. These assets are used to different degrees across Vietnam's tourism sector.

Unique cultural and natural heritage is already a huge draw and with recent and continued investment in infrastructure development, it appears to be well placed to cater to the growing demand. As Vietnam moves beyond the period of 'exoticism' and into the tourism mainstream, there is a need to focus on the projection of a sophisticated cultural and natural heritage destination, with high preservation and sustainability attributes.

²¹ op.cit., Vietnam National Administration of Tourism-Ministry of Culture, Sport & Tourism, dated 10 February 2020.

²² "The Case for Responsible Travel: Trends and Statistics", CREST, 2016, p.2. Available at: <www.responsibletravel.org/whatWeDo/The_Case_for_Responsible_Travel_2016_Final.pdf>, last accessed 26 January 2021.

However, Vietnam's development of cultural and sustainable tourism has stayed behind the development of tourism infrastructure and national development. Furthermore, almost without exception, there are concerns that these assets face mild or serious environmental threat or the threat of over-development. Poor natural resources and destination management, lack of attractive and especially sustainable tourism products and services can jeopardise Vietnam's competitive advantages and slow down tourism growth in the future.

1. Heritage sites and architecture

The degradation of heritage assets poses a risk to a lucrative existing tourism market and the future development of mid- and high-value tourism. Meanwhile, with the exception of a few popular museums in major destinations such as Ho Chi Minh City or Hanoi, Vietnam's museums still need improvement to reach international and regional standards. Many of the problems facing museums concern the craft of storytelling rather than the more expensive questions of infrastructure and collections. Museums often occupy valuable but under-utilised heritage spaces. We appreciate the active involvement of the relevant authorities to address these problems with policies and through membership in the International Council of Museums.

2. Over-development

All over Vietnam, there are concerns that the country is over-developing its tourism assets and, in the process, devaluing them. Tourism infrastructure development is essential. So is the delicate balance between development, protection of fragile environments, and enhancing their economic potential. There is a real risk of serious degradation to the country's natural environment and the economic opportunities this presents.

The present trajectory of Vietnam's coastal development risks over-allocating precious coastal land to high-intensity development. This development faces sustainability challenges and risks pigeonholing Vietnam as a mass tourism destination at the expense of cultivating other important and lucrative markets.

While the cruise tourism segment is growing double-digits worldwide and offers Vietnam's coastal destinations opportunities to welcome more high-yield international, especially non-Asian guests, adequate regulations, cruise terminals, human resources and cruise-related facilities need to be developed simultaneously to avoid air pollution and "over-tourism" in port of calls and popular sites such as Ho Chi Minh City, Ha Long Bay, Nha Trang, Da Nang and Hoi An.

A holistic, cooperative and more inclusive tourism development based on sustainability, rigorous segmentation, strengths of each destination and diversification of activities and services will prove to be crucial for the next growth phase of the tourism sector.

3. Green tourism as an attractive and responsible initiative

Hotels are at the forefront of tourist destinations, while small-scale resorts which are harmonious and have little impact on the local environment are, unfortunately, rare in Vietnam. Over-development and excessive land use in hotel construction, especially along the coast, are impacting the environment and its limited resources. To reduce this impact, tourism hotspots should be mixed with lower-scale organic development of preserved destinations. Furthermore, hotel management should be involved in reducing the environmental impact of mass tourism, with special attention paid to the use of chemicals and hazardous waste, waste management, recycling and the use of natural resources.

A joint initiative to make Vietnam a plastic-free tourism destination is crucial for the future development of Vietnam's tourism industry.

4. Pollution and degradation

Excessive and wasteful use of plastics is a serious environmental problem and Vietnam has been identified as a major source of global plastic waste. Tourists and the tourism industry are large producers of plastic waste (though small in the grand scale of the problem). We note that, in 2019, MCST took action to protect the environment and limit the use of plastic bags, straws, and cups in this regard.²³ However, more efforts are required to effectively address the issue.

23 Official Letter 1857/BVHTTDL-TCDL dated 15 May 2019 of the Ministry of Culture, Sports and Tourism on environmental protection, restricting the use of nylon bags, plastic straws, disposable plastic cups.

Many beaches along the coastline, including tourist destinations, are polluted with plastic and rubbish and cleaning is often left to the hotels or people living there. Pictures of beaches with plenty of trash are uploaded by tourists to the internet. This can harm Vietnam's reputation and runs the risk that environmentally-conscious travellers, often high-spending ones, will not select Vietnam as their destination of choice. We recommend that a national action plan is put in place that coordinates beach cleaning with the localities in order to preserve the natural beauty and serenity of the coastline.

Another issue is water quality. The lack of adequate water treatment, waste management and recycling options has resulted in polluted waterways and beaches. Beyond the environmental implications, the release of chemicals also negatively affects the brand image of Vietnam as a tourist destination. Moreover, concerns about the natural environment in Ha Long Bay, Vietnam's signature natural attraction, have become more and more pressing. Its reputation needs to be preserved in order to keep its appeal to international travellers.²⁴

5. Unfair distribution of tourism profits to local communities

Tourism activities have the potential to positively impact local communities. However, there is currently a lack of adequate vocational training and employment opportunities for local communities and entrepreneurs. The heritage of Vietnamese contemporary society should be protected and promoted to generate income for local communities. Operators need to be empowered and encouraged to play a more active role in local development. Training, and especially vocational training facilities, need to be supported and subsidised to create better access to employment opportunities in the tourism industry for local people.

Tourism can support and give back to local communities. However, it must be done in a meaningful way. Vietnam's civil society needs financial resources and support, but not at the expense of its beneficiaries. Social enterprises, local associations and non-profit networks are gaining voice and recognition. In order to protect the most disadvantaged, operators and tourists must be educated to further support such initiatives and be transparent and accountable for their actions.

To respond to the needs of the more environmentally and socially conscious modern traveller, and to preserve national resources for the coming generations, principles of "responsible travel" should be incorporated and safeguarded at every phase and level of the tourism product development and become guiding principles of the national tourism development strategy. VNAT can play a more active role in promoting international and national certifications for environmental protection, public recognition of best practices and sanction of wrongdoing to enhance transparency and raise the environmental and social standards of the industry.

Potential gains/concerns for Vietnam

With the tourism development strategy 2030 approved by the Prime Minister²⁵, Vietnam has identified the necessities in the preservation and promotion of national cultural, historical and natural heritage sites. With careful planning and sustainable development, the tourism industry has the potential to not only attract more travellers to Vietnam but also act as a window to the world. The expansion of grassroots social entrepreneurs is a step towards local development, to which many tourists are eager to contribute. This can be an asset for the country, but it needs to be handled with care, especially to avoid negative effects on Vietnam's social development structure. Tourists will need to be educated and given the chance to learn more about Vietnam's societal challenges and contribute to the solution. International brands and local stakeholders in the luxury travel market are already embracing sustainability and applying its main principles.

It is important to give tourists useful information on, for example, sensitive social issues, such as behaviours to adopt towards children selling souvenirs in the street or begging, sexual exploitation, etc. Furthermore, the demand for endangered wildlife species should be reduced and uncontrolled interactions with wildlife limited to protect the low number of these species in Vietnam. Information in national parks or natural areas could be developed to encourage tourists to respect and protect these sensitive locations.

24 "Ha Long Bay's water under threats", VietnamNet, dated 23 March 2018. Available at: <<https://english.vietnamnet.vn/fms/environment/197694/ha-long-bay-s-water-under-threats.html>>, last accessed on 26 January 2021.

25 Decision 147/QĐ-TTg dated 22 January 2021 of the Prime Minister on Vietnam tourism development strategy to 2030.

The high-yield MICE tourism segment still lags behind international and regional standards. Few of Vietnam's major tourism destinations have developed specific and adequate promotion strategies or holistic infrastructure such as integrated transportation systems and conference, shopping and entertainment centres to welcome large-scale international meetings and conferences. Tourism and urban planners need to understand the complex linkages, interconnectedness, specific requirements, opportunities and challenges of the fast-growing global meetings and events industry to harvest its benefits with regard to destination marketing, multiplier effects, job creation and urban infrastructure development. Major events, such as the APEC 2017, Fireworks Festival in Da Nang city, and the American-North Korean Hanoi Summit in 2019 are first and good steps towards establishing Vietnam as a high-value MICE destination.

Recommendations

We would like to make the following recommendations:

- Invest further in world-class storytelling at museums, historical and heritage sites.
- Put a nationally coordinated action plan in place to keep beaches clean.
- Prioritise sustainable, diverse developments.
- Establish effective campaigns to reduce plastic that ends up in the environment.
- Ensure a more systematic approach to sustainable development in tourism by promoting incentives for responsible commitments and actions taken by stakeholders.
- Support local people through training and economic empowerment.
- Strengthen the capacities of local non-profit organisations and create a framework for 'voluntourism' activities.
- Spread useful tips to tourists including information on sensitive social issues, such as behaviours to adopt towards children selling souvenirs in the street or begging, sexual exploitation.
- Reduce demand for endangered wildlife species and limit uncontrolled interactions with wildlife to protect the limited number of these species in Vietnam.
- Develop information in national parks or natural areas to encourage tourists to respect and protect these locations.
- Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives.
- Strengthen the capacity of stakeholders involved in responsible tourism and support initiatives led by and for locals, to develop income-generating activities as a by-product of tourism.
- Develop specific and adequate promotion strategies or holistic infrastructure such as integrated transportation systems and conference, shopping and entertainment centres to welcome large-scale international meetings and conferences.

IV. ACCURATE MEASUREMENT AND TOURISM STATISTICS

Relevant authorities: Ministry of Culture, Sports and Tourism (MCST), Ministry of Education and Training (MOET), General Statistics Office of Vietnam (GSOV)

Issue description

Tourism statistics are an important tool. They enable the monitoring of changes in the industry which can be tracked over a period of time as well as determine whether a policy is effective or not. In order for Vietnam to make maximum gain from tourism, it has to develop further industry-relevant statistics so that businesses operating in Vietnam can design strategies to help them better market their products and services.

Potential gains/concerns for Vietnam

For example, the differentiation between international leisure tourists, business travellers and those with foreign passports who are visiting relatives is still insufficient. While the purpose of their visit is not clear, neither are their personal preferences. Local competitors such as Singapore or Thailand, on the contrary, offer excellent market data, allowing investors and businesses to make the right decisions.

Recommendations

We would like to make the following recommendations:

- Arrange that guests fill in a mandatory - paper or more technologically advanced – arrival card at the airplane or border checkpoints before immigration.
- Create quarterly and annual tourism insight statistics that consolidate all collected data and are presented in a way that trends can be clearly defined, and predictions made.
- Present these reports and statistics in a visually attractive form online, with filter functions, click-and-select functions, and graphically visualised.

ACKNOWLEDGEMENTS

EuroCham Tourism & Hospitality Sector Committee.

CHAPTER 8 **TRANSPORTATION AND LOGISTICS**

OVERVIEW

Vietnam, with its favourable conditions in terms of geographic location, labour force, and stable political system, has seen strong growth of its manufacturing sector and corresponding import and export volumes.

High-quality logistics infrastructure, along with effective and efficient customs procedures, are two key goals Vietnam needs to achieve to continue attracting foreign direct investment; to increase its competitiveness in the region; to connect local companies into global supply chains; and to become a transportation hub for ASEAN.

I. INFRASTRUCTURE

Relevant authorities: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Transport (MOT).

EuroCham members fully support Decision 708 of MOIT approving Plans for the Improvement of Vietnam's Logistics Performance Index.¹ Transport infrastructure has been identified as one of the key factors the Government should address in order to reduce logistics costs. This decision has shown the determination of the Government to improve logistics infrastructure in the country.

We also appreciate Decision 1012.² This provides measures to develop the current transport–infrastructure system; modernise stations, ports and warehouses, plan land use; and ensure the sufficient use of land resources. The aim is to ensure favourable connections between logistics centres and manufacturing sites as well as consumer areas and traffic hubs, meeting the long-term development demand of logistics centres.

Our TLSC 2018 survey pointed out the issues that most businesses are concerned about when using the logistics infrastructure systems in Vietnam.³ We look forward to working with the relevant Ministries on building the Year 1 assessment on annual implementation. EuroCham members are willing to work on specific provisions in more detail. The below recommendations represent some specific current focus areas, but a similarly detailed analysis can be prepared for each and every objective/task that MOIT has outlined.

Issue description

MOIT's plans to improve the Vietnam Logistics Performance Index to address the majority of the concerns raised in our 2018 chapter. However, more could be done in the specific areas of environmental impacts and safety, as these points have received limited attention in the outlined plan.

Specifically, Decision 708 focuses, amongst others, on two critical areas where members of EuroCham would like to see accelerated progress and which will contribute to an improvement in Vietnam's Logistics Performance. The proposed focus areas in infrastructure are linked to infrastructure access to the main ports as well as the development of quality distribution and logistics centres. Together, the improvement in these areas will lead to reduced logistics costs and enable further growth in Vietnam, especially in the competitive export market to Europe and the US.

To achieve this, investment for renovation and upgrade of the access channels to the major ports complex needs to be accelerated. In the south, the access channel to Go Gia (Cai Mep) needs to be deepened from the current 14 metres to 15.5 metres of the Cai Mep-Thi Vai fairway. This has already been budgeted in the MOT 2021-2025 medium-term budget plan. So, no additional funding needs to be found. This upgrade will allow for larger vessels

¹ Decision 708/QĐ-BCT dated 26 March 2019 of the Ministry of Industry and Trade approving plans for improvement of Vietnam's Logistics Performance Index.

² Decision 1012/QĐ-TTg dated 3 July 2017 of the Prime Minister approving nationwide logistics center system development plan to 2020, vision to 2030.

³ EuroCham Whitebook 2019, Transportation and Logistics, pg. 113-114.

to call at the Cai Mep Terminals due to fewer tidal restrictions. This, in turn, will reduce vessel delays and allow for more cargo to be shipped to and from Vietnam. Furthermore, it will increase the availability of equipment and the connectivity of Cai Mep with the rest of the world. Similarly, development of the Lach District International Gateway Port (Hai Phong) will lead to improved connectivity for Northern Vietnam. Both improvements will allow larger vessels and increased capacity for importers and exporters in global markets.

A second major barrier to the logistics sector's development is the lack of availability of warehousing/logistics land to allow the development of quality distribution/logistics centres, especially surrounding Ho Chi Minh City and Hanoi. Vietnamese consumers are demanding higher quality, more variety, and quicker delivery. This brings the significant challenge of finding available space and locations for warehousing and distribution centre locations. For the metropolises of Ho Chi Minh City and Hanoi, there are significant challenges in meeting increases in demand. In the past two years, market prices for warehousing space (less than five-year-old warehousing) within one hour of Ho Chi Minh City have increased by around 90 per cent, with extremely limited capacity available.⁴ There are also significant challenges with some of the land sites as the landlords will not lease warehousing space only. They would like to operate all, or at least some, of the services within operations.

Potential gains/concerns for Vietnam

For private and foreign logistics service providers, the issue of land lease described above creates a major obstacle. It reduces the real competition in the market, as warehousing and operation options are limited and controlled by a limited number of players. Meanwhile, the running of operations is the core value delivered by logistics service providers. The lack of competition in a rapidly-growing market like Vietnam will lead to service prices remaining high.

Now the EVFTA has entered into force, facilitating trade and logistics to support export and import activities to ensure Vietnam reaps the full benefits of this agreement should be ensured by the Government.

In our view, the Government's supervision role is emphasised not only to ensure the effective allocation of resources, but also to ensure the safety and environmental sustainability of these constructions. This would also contribute to the trust of business and society, as well as elevate the image of Vietnam for further investment.

Furthermore, it is important to accelerate the availability of clearly designated warehousing zones for direct development, or co-development with a recognised industrial developer. In this light, clear segregation of licencing of industrial park owners vs service provider business should be achieved to ensure competition in the market for warehousing and service solutions. Clear zoning within one hour's drive of metropolises would allow rapid service delivery to meet consumer demand, especially for E-commerce solutions. Finally, it is important to open market conditions ensuring land prices do not become or remain too expensive.

In order to achieve these objectives, relevant Ministries and localities should issue the implementation documents of Decision 1012. This would contribute to the domestic production and consumption of goods, facilitate import-export, and promote socio-economic development. Meanwhile, the Government should have a facilitation role in order to ensure a sound infrastructure and supporting policies to create transparency and fair competition in the logistics sector.

Recommendations

We would like to make the following recommendations:

- Strengthen the supervision and facilitation role of the Government to ensure the effective allocation of resources, as well as the safety and the environmental sustainability of these constructions while creating transparency and fair competition in the logistics sector.
- Implement the suggestions set out before with regard to warehousing zones, land prices, and industrial park owners vs service providers.
- Issue implementation documents of Decision 1012.

⁴ Compilation of market data and industry's report, such as Cushman & Wakefield's Marketbeat report Quarter 4/2019. Available at <www.cushmanwakefield.com/en/vietnam/insights/ho-chi-minh-city-marketbeat>, last accessed 23 January 2020.

II. CUSTOMS

Relevant authorities: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue Description

Since market access has been significantly opened for more foreign investment and the import of goods of preferential and non-preferential origin, importers need to assess risks and protect their benefits at the customs gate. Customs valuation remains one the most crucial element of customs-related matters.

1. Latest updates to the regulations of customs valuation

Vietnam is a World Trade Organisation (WTO) member and, therefore, applies the WTO Agreement on Customs Valuation.⁵ This agreement states that the customs value of imported goods should be determined on the basis of the transaction value as the primary method.

When customs authorities have reasonable doubts that the declared transaction value does not represent the total amount paid or payable by an importer, they are entitled to require additional information and supporting documents. If the doubts are not dispelled, customs authorities may decide to refuse the application of the transaction value method and determine the value of the goods by applying, in succession, the secondary methods.

Vietnam implements the custom valuation agreement with Circular 39⁶. In 2019, Circular 39 was amended by Circular 60⁷. With several amendments to the legal frameworks of customs valuation, on the one hand, Circular 60 provides clarifications to the grey areas of customs valuation regulations such as the customs valuation of machine-equipment with unlocking fees.

On the other hand, despite exhaustive efforts in promulgating clearer provisions, Circular 60 does not yet provide the specific mechanisms of how to protect the application of transactional value methodology and the preferential tariff by the importers, especially when there is an incorrect or an improper declaration at the import gate.

Customs valuation of software products

However, Circular 60 does provide a clearer policy of valuation for customs purposes with a focus on software imports. This Circular addresses most of the main challenges of applying valuation principles to the various products that include software, such as software on media and pre-installed software on machines/equipment. The valuation of software on physical media, like CD/DVDs or tape cartridges, is the simplest case as opposed to software installed on other devices, such as a personal computer, a server, a new operating device or a smartphone. These devices are not considered carrier mediums, by definition. While the medium is the tangible good crossing the border, the content - the software - is the true purpose of the media shipment.

From the practitioner's view, the existing policy lacks the principles of customs valuation applicable to software on hi-tech devices, apart from the ones on physical media or carrier medium. In particular, software provided with an activation pin code or by downloading from websites or clouds has not been taken into account in the current regulations. This causes confusion in customs declaration and valuation.

Wrong declaration of special relationship and application of transactional value methodology

"Be responsible for your self-declaration" is a fundamental principle of the Customs Law. In other words, customs declarants must be responsible for (i) the authenticity and truthfulness of their statements and information declared and documentary evidence submitted to the authorities; and (ii) the information consistency between the dossiers kept at their companies and the dossiers submitted to the authorities. This is the formal obligation of fulfilling all requirements of writing, sealing, declaring, and registering as provided by law. Customs valuation will

⁵ Agreement on Implementation of Article VII of The General Agreement on Tariffs and Trade 1994, World Trade Organisation, 1994.

⁶ Circular 39/2015/TT-BTC dated 25 March 2015 of the Ministry of Finance on customs value of imported goods and exported goods.

⁷ Circular 60/2019/TT-BTC dated 30 August 2019 of the Ministry of Finance amending a number of articles of the Circular 39/2015/TT-BTC dated 25 March 2015 by the Minister of Finance on customs value of exported goods and imported goods.

be made based upon the declaration made by the importers unless there is a doubt raised or a fault discovered by customs authorities.

However, importers sometimes forget to check the box “special relationship” when they declare their imports. This causes the transactional value methodology to be rejected by the customs authorities. In principle, in determining whether the transaction value is acceptable, even though the buyer and the seller are related, this shall not generally - in itself - be grounds for regarding the transaction value as unacceptable on the condition that the relationship between the two companies does not influence the price. Therefore, the wrong declaration of special relationship will not connote the automatic rejection of transaction value methodology.

According to the WTO Customs Valuation Agreement and the current regulations, in such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship does not influence the price.

Circular 60 provides new regulations which state that customs authorities shall determine the customs value given that (a) there is enough evidence/basis to reject the customs value declared by a declarant and (b) there is evidence to conclude that the declarant's declared customs value is unsuitable. In addition, Circular 60 also provides that, if the customs declarant did not declare “special relationship” in the customs declaration and declaration of customs value (if any), an additional declaration will be requested by customs authorities. If the special relationship between buyer and seller is suspected to affect the transaction value of imported goods, customs authorities must compare this transaction value with the values as prescribed by law. Also, Circular 60 provides that, if there is not enough evidence to confirm whether the special relationship affects the transaction value, the declared customs value of the declarant shall be accepted by customs authorities.

Nevertheless, customs authorities often reject the application of transaction value due to the lack of a good declaration of a special relationship. The fallback method is automatically applied to determine the customs valuation and, in order to protect the application of transaction value, the importers shall always provide evidence and documents proving the proper application of transaction value methodology.

Monopoly positions in the market are an additional challenge for importers. Many international corporations follow a closed circle of business operation where they manufacture, provide, and distribute their products through the structure of their subsidiaries in countries around the world, including Vietnam. In many cases, the importers fail to protect themselves from the application of fallback methodology because they have a monopoly in Vietnam causing the absence of comparative analysis required by customs authorities.

Improper declaration and application of preferential tariffs

There are several kinds of preferential tariffs and the procedure applicable to each varies. In practice, importers may not be very well prepared for applying different tariffs corresponding to each imported good and unintentional mistakes may happen during goods clearance.

In some cases, changes to the imported goods also lead to a different tariff being applied. For example, materials imported for manufacturing exported goods are exempted from import tax. If importers would like to domestically consume these materials rather than using them for manufacturing, tax exemption is not applied. Instead, another preferential tariff may be applied to such materials. However, this becomes complicated when the Certificate of Origin (C/O) of materials expires or the importer has unintentionally provided an incorrect declaration when changing the use purpose of materials. According to the guidelines of customs authorities, in these cases, a preferential tariff will not be applied and the importer is subject to penalties.

Recommendations

We would like to make the following recommendations:

- Provide a more widely-defined coverage of software container or activation for easier classification and customs value declaration for the customs value of software.
- Apply the corresponding methodology of customs valuation.
- Design a correct basis on which the customs authorities may raise doubts about and reject a declared value.

- Provide the list of necessary documents that should be provided in cases where customs declarants submit documents proving that the special relationship does not affect the price.
- Do not allow the import and distribution monopoly position of a company to exclude the application of transaction value, given that this company can prove the good faith of all transactions and define them clearly in current regulations.
- Distinguish the application of preferential tariffs from the penalty applicable to a breach of the law.
- Do not cancel the enjoyment of preferential tariffs if an administrative error, such as an incorrect declaration in customs declaration sheets, is made.

2. Customs valuation: The impact of transfer pricing

In the application of Article 1 of the WTO, implemented in Article 6 of Circular 39, a transfer price can be used for transaction value purposes provided that the relationship between the buyer and the seller has no influence on the import value declared.

Assessment of transactional value reliability

Article 7 of Circular 39 states that the special relationship between seller and buyer does not affect the transaction value if the sale is carried out in a manner similar to the sale transaction of the same imported goods where buyer and seller are not related. To assess the similarity, Vietnamese authorities recommend checking whether:

- The commercial contract was agreed in a way consistent with the pricing negotiation and agreement practices the seller holds with non-related parties; or
- The price of imported goods is inclusive of overall costs and profit corresponding to overall costs and profit from the sale of goods of the same class or category.

If the above conditions are not met, the importer can still justify the acceptability of the transfer price as transaction value. This requires the transaction value to be approximate to the customs value of identical/similar imported goods sold to other importers that have no special relationship with the seller. This will be determined on the basis of the deductible value method or the computed value method.

Management of transfer pricing adjustments

The transaction price of imported goods can be impacted by transfer pricing adjustments made at the end of a given period of time (month or year). Those retrospective adjustments, which can be upwards or downwards, can impact the import value of certain goods. This topic is particularly significant and was enhanced by the reorganisation of the supply chains of internationally-operating businesses in Southeast Asia following the U.S. government putting additional taxes on Chinese-originating goods. This had an impact on the transfer pricing policies for many of these groups.

Another challenge for operators declaring a transfer price at importation is to preserve the benefit of preferential tariffs. Indeed, in situations where the adjustment results in the customs declaration being considered improper, the risk of losing the tariff preference is high, as described in Section 1(iii) above.

Customs authorities should inspect the way the price is established. Practical experience shows that, when doubting the reliability of a transfer price, customs authorities require - at rather short notice - the communication of various commercial information and industrial production data (e.g. SKUs cost breakdowns or extract of transfer pricing documentation). It is good practice for operators declaring a transfer price at import to anticipate any discussion with authorities and prepare in advance the bundle of information needed to justify the reliability of the said price. However, the Government should guarantee a reasonable period for operators asked to provide further information in view of transaction value reliability assessment.

Despite the examples above, Vietnamese regulations are not generally well designed for the clear mechanism related to managing the impact of transfer pricing adjustments on customs valuation. As a result, there is, at this stage, no legal way in Vietnam to guarantee the application of an adjustment rate added to the transaction value declared at the time of customs clearance. Also, there is no risk-free price adjustment mechanism (in the sense that reporting a change in customs value because of a price adjustment can lead to the imposition of penalties).



Recommendations

We would like to make the following recommendations:

- › Encourage customs authorities to inspect the way the price is established.
- › Guarantee a reasonable period of time for operators asked to provide further information in view of transaction value reliability assessment.
- › Consider promulgating a mechanism of price adjustment dealing with the intense desire of transfer pricing adjustments of international corporations investing and operating in Vietnam.
- › Guarantee that the practice of transfer price adjustments cannot, in principle, be used to reject preferential tariffs for goods imported under an adjusted transfer price.

3. Customs valuation advance rulings

Vietnam is a member of the WTO and has signed the WTO Trade Facilitation Agreement (TFA).⁸ This contains several measures which could help authorities and companies facing customs valuation issues at import in Vietnam.

Article 3 of the TFA states that each WTO Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information.

Vietnamese regulations include a sort of customs valuation advance ruling mechanism in Decree 08.⁹ This states that customs authorities may deliver a binding ruling that would secure the imports made by the ruling application in the future. However, the scope of application of this mechanism remains limited to certain cases where goods are imported for the first time in Vietnam or whose price is affected by a substantial or unexpected change. In practice,, currently no general customs valuation advance ruling mechanism has been implemented in Vietnam, which could help businesses secure the import of goods for which legal issues arise (determination of the relevant valuation methodology, duty liability of assists, and price adjustments).

Recommendation

We would like to make the following recommendation:

- › Implement a general customs valuation advance ruling mechanism.

4. Custom Valuation - Price Consultation

Issue description

In 2020, following the Prime Minister's Directive 11¹⁰, most Post-Clearance Audits (PCA) conducted at taxpayers' offices were postponed. At the same time, we observed an increase in the number of desktop checks being performed at the border points and a more aggressive stance in the performance of those checks. Of particular note was the increased frequency of price consultations – initiated by Customs to determine the appropriateness of values declared for goods imported into Vietnam.

During those price consultations, Customs will typically refer to their own databases of values, which are used to challenge the veracity of the values declared by the importer. Importers are frequently requested to provide explanations for the gap between Customs' reference prices and those declared. If the importers cannot explain, then declared values are being uplifted to match Customs' database values – despite Customs assurances that the databases values are only a reference point.

When importers, during the price consultation, requested Customs to provide the supporting rationale behind reference prices¹¹ this was refused.

8 Trade Facilitation Agreement, dated 22 February 2017 of the World Trade Organisation.

9 Decree 08/2015/ND-CP dated 21 January 2015 of the Government providing specific provisions and guidance on enforcement of The Customs Law on customs procedures, examination, supervision and control procedures.

10 Directive 11/2020/CT-TTg dated 4 March 2020 of the Prime Minister on urgent objectives and solutions for assisting businesses facing difficulties and assurance of social welfare amid COVID-19 pandemic.

11 For example. what was the relationship between buyer/seller; how were the prices negotiated; trading model; volume of business; specific types of goods etc.

In our view, the refusal to provide the importer with the rationale behind the used Customs' reference prices, undermines the principle of "consultation"; creates unnecessary disputes and results in a lack of trust in the objectivity of the price consultation process.

Since the introduction of Decision 1304¹² on the scheme 'one-time price consultation for multiple uses', few importers have applied for the scheme, and only a small percentage of applicants have received an approval.

Recommendations

We would like to make the following recommendations:

- Let Customs officers, who conduct price consultations, hold the supporting rationale behind the values on the database, and authorise them to disclose that information to importers enabling a more transparent and effective price consultation process.
- Conduct more promotion activities to encourage companies to apply for the 'one-time price consultation for multiple uses' scheme, including detailed guidance of execution.
- Ensure that the price consultation process will be valid for a 12-month period provided declared values in the 12-month period do not move outside an acceptable threshold (e.g. +/- 5 per cent), then no further price consultation should be required.

5. Transfer price adjustments

Issue description

Corporate tax transfer pricing methodologies, used in the determination of prices of goods when traded between entities/affiliates within a Group, may require importers or exporters in Vietnam to make annual adjustments to historically declared values/invoiced values - based on pre-determined criteria.

Prevailing Customs regulations do not provide guidance on whether or not, such adjustments require amendments to customs declarations. It creates uncertainty.

Importers and exporters have voluntarily disclosed price adjustments to local Customs and have been advised subsequently that such adjustments will be treated as errors in the original declarations. Accordingly, unless the customs declaration amendments are made within 60-days from the original declaration date, the companies are subject to customs administrative penalty – and often a downgrading of their customs compliance status. Such actions by Customs are discouraging for companies, willing to comply with customs compliance requirements. It would also be in line with practices adopted by Customs authorities in the region.

Recommendations

We would like to make the following recommendations:

- Publish guidance on how importers and exporters could handle retroactive transfer price adjustments, including whether previously registered import or export declarations are required to be re-declared.
- Allow for bulk declaration due to transfer pricing adjustment if re-declaration is required.
- Adapt the customs systems to accept bulk adjustments.
- Allow importers and exporters to make voluntary disclosures of adjustments.
- Not to impose penalties on voluntary declarations of transfer price adjustments.

6. HS Code classification: Rulings/Notifications

Issue description

We recognise the efforts in driving consistency in applying HS codes nationally, such as the issuance of Decision

¹² Decision 1304/QĐ-TCHQ dated 29 April 2020 of the General Department of Customs approval one-time consultation pilot project, use consultation results many times.



583, which regulates export and import goods at risk of classifying and applying tax rates.¹³ However, there is still concern over the lack of specification of supporting rationale and legal reference sources chosen for making HS code classification decisions. We believe that the additional information will ensure greater transparency in the decision-making process. It will enable companies to self-assess applicable HS codes of goods imported into and exported from Vietnam; reducing the burden on the issuance of guidance on the HS code classification.

Recommendations

We would like to make the following recommendations:

- Specify the applied supporting rationale behind the HS code classifications provided.
- Continue publishing all legal reference sources of classification online in Vietnamese and English those that were listed and committed to be published in Article 6 of Circular 14 but preferably within the last five years.¹⁴

7. Manufacturing/processing for export

Issue description

After nearly 5 years of implementation, Decree 134¹⁵ seems not to achieve what it was issued for because it seems to be unclear. Decree 18¹⁶ has given more guidance for the enterprises operating export manufacturing and processing activities.

Furthermore, Official Letter 879¹⁷ was issued to provide guidance on the customs duty treatment of raw materials/supplies/components imported to produce finished goods for export, and in which the manufacturing of the finished product involves outsourcing of some production activities.

Accordingly, in case the enterprise has been subject to customs duty imposition for the materials/supplies/components (which are imported since 01 September 2016) delivered to third parties for outsourcing activities, then:

- The decision of Vietnam Customs on imposition shall be amended, supplemented or suspended; and
- The imposed amount (including duty collection, late payment interest and administrative penalties) might be entitled to Duty refund.

However, OL 879 and Decree 18 do not provide detailed procedures for the enterprises (subject to customs duty imposition) to apply for the amendment/ supplementation/ suspension of Customs' Decisions on Imposition, and then receive the Duty refund; and the possibilities to apply the Duty refund scheme for the enterprises, which had actively conducted the re-purposed declaration and paid the duties for the materials/supplies/components delivered to other parties for outsourcing.

Recommendations

We would like to make the following recommendation:

- Provide detailed guidance specifying the step-by-step procedures for the enterprises to apply for the Duty refund.

III. RULES OF ORIGIN UNDER THE EVFTA

Relevant authorities: Ministry of Finance (MOF), General Department of Customs (GDC)

13 Decision 583/QĐ-TCHQ dated 22 March 2019 of the General Department of Customs on the List of export and import goods at risk of classifying and applying tax rates, valid since 1 April 2019.

14 Circular 14/2015/TT-BTC dated 30 January 2015 of the Ministry of Finance providing guidance on classification of goods, and analysis for classification of goods; analysis for quality inspection, food safety inspection for food for exported and imported products.

15 Decree 134/2016/ND-CP dated 1 September 2016 of the Government on the guidelines for the law on export and import duties.

16 Decree 18/2021/ND-CP dated 11 March 2021 of the Government amendments to some articles of the Government's Decree 134/2016/ND-CP dated 1 September 2016 elaborating the Law on export and import duties

17 Official Letter No. 879/TCHQ-TXNK dated February 23, 2021 of the General Department of Customs on tax treatment of imported goods for export and outsourcing.

As in any other free trade agreement, the chapter on rules of origin is crucial for operators. Under the EVFTA, for a product to be qualified for a lower or zero preferential tariff, it must meet specific requirements related to origin. Circular 11¹⁸ regulates the rules of origin under the EVFTA and the Protocol regarding rules of origin (the Protocol).¹⁹

Potential challenges/opportunities for Vietnam

Sometimes companies receive mixed shipments which consist of products of EU- and non-EU origin and it is not always clear what the company should do. In order to facilitate the benefits of EVFTA application, some improvements should be made.

Recommendations

We would like to make the following recommendations:

- Issue guidelines on making customs declarations on both EU-origin and non-EU origin goods imported into Vietnam in the same shipment.
- Issue guidelines on making customs declarations on EU exported goods but from a non-EU seller basing in a third country (a non-member country).
- Provide clarifications on using the REX code in terms of GSP and the EUR.1 to choose the most preferential tariff in respect of the goods exported to EU.
- Speed up the completion of the self-declaration system for the exporters to the EU.

IV. SUSTAINABILITY

Relevant authorities: Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Transport (MOT), Ministry of Natural Resource and Environment (MONRE)

The following represents the EuroCham Transport and Logistics Sector Committee's focus on sustainability and related subjects. Together with EuroCham's Green Growth Sector Committee, some initial steps were agreed in outlining the strategies and interventions necessary to progress towards sustainable transport and logistics infrastructure.

Issue description

Many multi-national businesses have made commitments to sustainability goals covering all aspects of their business including upstream sourcing and downstream supply, end of product life, etc. In the particular context of logistics, the main goals are CO₂ reduction as the primary measure. Meanwhile, the long-term goal is to achieve carbon neutrality which is net-zero carbon dioxide emissions (generally by the year 2050).

Initial improvements can be renovative (involving maintenance or improvement). But, longer-term, this requires a shift to innovative solutions and more radical adaptations at both business and governmental levels.

Progress to date is relatively limited. However, many multi-national businesses are making commitments that local subsidiaries will be required to follow. International customers, consumers, and representative groups (NGOs, certifying agencies, investment funds etc.) are expecting greater transparency and action.

A stakeholder forum to review opportunities and permit input into a roadmap for logistics sustainability would be an ideal next step. This could identify specific actions such as: the maximisation of fleet and asset utilisation (creating a pre-competitive environment to facilitate more environmental transport) to increase fill/load utilisation; the use of equipment fit for purpose; reduce empty return trips/optimize back-haul etc. For example, the design and authorised use of larger trailers, or dog trailers for long-haul road journeys should be supported to reduce the number of vehicles on the road. Furthermore, transport modes should be improved, rail and river/sea freight

¹⁸ Circular 11/2020/TT-BCT dated 15 June 2020 of the Ministry of Industry and Trade on rules of origin in the EVFTA

¹⁹ Protocol concerning the definition of 'originating products' and methods of administrative cooperation.

should be increased, and multi-modal transport should be optimised while air freight should be reduced.

The Government's commitment to higher engine efficiency standards is appreciated as is its continued commitment to achieving Euro V and VI equivalent standards by 2030 and Material Handling Equipment (MHE) such as forklift trucks and warehousing utilising renewable energy (RE).

Furthermore, optimal use of land-plots would lead to less total land required for residential/commercial/logistics and industrial activities and allow the safeguarding of more land for "green" purposes.

Longer-term plans will need to be more radical. For example, they could take direction from the EU's commitment to move to much lower/or zero emission vehicles and greater fuel economy²⁰; and include a detailed roadmap for the development and transition of these vehicles in Vietnam by 2030. This will require consideration of the impact on city and town planning, refuelling solutions, access, end-of-life solutions, and a commitment to nationwide enforcement of plans and timelines, etc.

These plans will also need to include Biogas (generation 2 & 3); Electric RE fleet (short haul/urban planning as the priority, then towards long-haul planning); hydrogen-based fuel, renewable thermal energy, etc.

Besides, it is also important to identify incentives and policies to guide businesses to future requirements and redundancies. Again, these policies should address both transport and logistics infrastructure. For example, incentives could be given to companies doing business in a sustainable way through having a certain percentage of the fleet being green, a certain percentage of energy consumption being green, and a certain percentage of water used being recycled. Incentives could also be given to turn brownfield projects into more sustainable buildings.

We also believe that it is important to prepare a roadmap to sustainability (in the context of transportation and logistics) and to identify the key stakeholders within both central government and provincial authorities. This should include a timeline to reach net-zero carbon and what steps must be taken to reach this goal. Finally, businesses' support should be obtained and measures prepared to collaborate with central and provincial authorities to navigate through the changes required to deliver the triple bottom-line (people, profit, and planet).

Potential gains/concerns for Vietnam

Vietnam's position as a preferred location for the world's production chains remains well understood, and would be further enhanced by a progressive, clear, and transparent roadmap towards sustainability in logistics and related activities.²¹ Vietnam's Green Growth Strategy (VGGS) and Sustainable Development Goals (SDGs) explicitly link development, environmental, and climate planning, bringing conformance to the Kyoto Protocol and the Paris Agreement.²²

There are many secondary benefits to such a progressive approach, in synergizing with future health benefits, attracting premium tourism, reducing the environmental impacts and potential future costs and generally raising the quality of life, particularly in Vietnam's metropolitan regions. Ultimately, mitigating and addressing climate change is of particular importance to Vietnam with its large population living in coastal and low-lying regions.

With this perspective and timescale in mind, and tackling priority impacts first, we can see the short, medium and long-term actions that are necessary – and begin to fit this into a proposed framework, as illustrated in the following diagram.

20 "A European Strategy for low-emission mobility", European Commission. Available at: <https://ec.europa.eu/clima/policies/transport_en#tab-0-0>, last accessed 18 May 2021.

21 "Vietnam brings cement sector into new climate submission to the UN", Climate Home News, dated 14 September 2020. Available at: <www.climatechangenews.com/2020/09/14/vietnam-brings-cement-sector-new-climate-submission-un/> last accessed on 13 April 2021.

22 "Aligning Near- and Long-Term Planning in Vietnam to Meet the Goals of the Paris Agreement". Available at: <www.wri.org/climate/expert-perspective/aligning-near-and-long-term-planning-vietnam-meet-goals-paris-agreement> last accessed on 13 April 2021.

Figure 6: Vietnam Logistics Strategy and Interventions

2020 – 2025: Priority interventions			After 2025
MAINTAIN AND IMPROVE...		SHIFT TO...	
Fleets & assets are shared and used to the max	Transport modes are smartly used and combined	Fleets & assets are energy efficient	Fleets & assets use lowest emissions energy source feasible
<ul style="list-style-type: none"> • Increase vehicle fill • Fit for purpose • Reduce empty back haul • Synergies, multi drop points • Combine with others industry partners 	<ul style="list-style-type: none"> • Increase use of rail and ocean / water transport • Optimize multi-modal • Reduce Air transport 	<ul style="list-style-type: none"> • Shift to EURO IV, V & VI • MHE using lower emission fuel or 100% electric (RE) • Renewable Electricity (RE) for DC's 	<ul style="list-style-type: none"> • Biogas (gen2 & 3) • Electric short haul • Electric long haul • Hydrogen • Renewable Thermal Energy (RThE) for DC's
<ul style="list-style-type: none"> • Drive a pre-competitive approach • Reduce empty back haul • Multi-load/multi-drop 	<ul style="list-style-type: none"> • Improve multi-modal connectivity / infrastructure • Investment in rail / sea / river / ports 	<ul style="list-style-type: none"> • Shift to EURO IV, V & VI • Renewable Electricity (RE) for DC's & MHE 	<ul style="list-style-type: none"> • AVAILABILITY / ACCESS / INCENTIVES / SUPPORT & INFRASTRUCTURE • Vision and Roadmap

Recommendations

We would like to make the following recommendations:

- Set up a forum with all stakeholders to support a review of opportunities and to permit input into a roadmap for logistics sustainability.
- Prepare longer-term plans which need to be more radical to move to much lower/or zero emission vehicles and greater fuel economy.
- Design a detailed roadmap for the development and transition of these vehicles in Vietnam by 2030.
- Identify incentives and policies to guide businesses to future requirements and redundancies.
- Create a roadmap to sustainability (in the context of transportation and logistics).
- Identify the key stakeholders within both the central Government and provincial authorities.
- Prepare a timeline to reach net-zero carbon and identify what steps must be taken to reach this goal.

Obtain businesses' support and instigate measures to collaborate with central and provincial authorities to navigate through the changes required to deliver the triple bottom-line (people, profit, and planet).

ACKNOWLEDGEMENTS

EuroCham Transportation and Logistics Sector Committee.

FOR MORE CUSTOMS-RELATED ISSUES, PLEASE ALSO READ

- > Chapter 14 Automotive Section II. Homologation Requirements for Automotive Business 3. Product composition declaration at customs clearance

The background is a deep blue gradient with various geometric shapes, including rectangles and lines, in lighter shades of blue. There are several bright light flares or starburst effects scattered across the image, particularly on the left and right sides. The overall aesthetic is modern and technological.

B

SUSTAINABLE DEVELOPMENT

CHAPTER 9 ENERGY AND ELECTRICITY

OVERVIEW

EuroCham Green Growth Sector Committee (GGSC) recognises and supports the priorities of the Government in managing and developing the energy market in Vietnam.

We would like to applaud the additional emphasis on clean energy in Resolution 55¹ and the visionary stance that is described therein. The Political Bureau of the Central Committee can be assured of our continued support for this strategy.

We acknowledge Vietnam's impressive and rapid growth of solar and wind power. Expansion of indigenous solar energy reached 27 per cent of the national power production capacity by the end of 2020, with 16,838MW of solar installed by this date.²

We also note the growth in demand from power consuming companies for sourcing clean energy for their businesses in Vietnam, often making a corporate commitment to 100 per cent clean energy use in the near future. This is part of a global change, which is driven by consumers' expectations. In many Asian countries, the goal of 100 per cent³ clean energy supply is achievable without financial penalties to the consumer. However, Vietnam has currently limited mechanisms available to achieve a goal of 100 per cent clean energy. This impacts Vietnam's attractiveness as a manufacturing location.

The costs of producing clean energy have decreased as markets have reached large-scale throughout the globe, making wind and solar the cheapest power options in global markets. The economic benefits of this trend are visible in Vietnam in areas where solar rooftop utility companies can supply manufacturing consumers with electricity 20 per cent cheaper than the existing Vietnam Electricity (EVN) tariff. This reduction of operating costs is a major benefit to manufacturers in Vietnam and we strongly support the continued development of low-cost clean energy.

Electricity produced by coal-fired thermal plants impacts air pollution more than energy produced through another source.⁴ In the short-term, installing more filters in coal-fired plants will reduce emissions. However, in the medium-term, it is more economical, safe, and strategically resilient to switch to indigenous renewable sources as well as to seriously engage in obtaining energy efficiency. EuroCham would welcome confirmation of the Draft Power Development Plan (PDP) VIII that no new coal power plants will be licensed in Vietnam.⁵ The cost of importing and burning coal is no longer competitive with alternative renewable sources.⁶ Furthermore, the fact that coal imports are set to increase dramatically also makes coal-fired thermal plants energy production strategically vulnerable to pricing and political risks.

The recommendations in this chapter reflect the Draft PDP VIII plan and are in harmony with Vietnam's commitments in the EVFTA.

- 1 Politburo's Resolution 55-NQ/TW on 11 February 2020 regarding the Orientation of the Viet Nam's National Energy Development Strategy to 2030 and outlook to 2045.
- 2 "Overall review of issues related to solar power development", Vietnam Government Portal, 23 February 2021. Available at: <<http://baochinhphu.vn/Phat-trien-he-thong-dien-mat-troi/Ra-soat-tong-the-nhung-van-de-lien-quan-den-phat-trien-dien-mat-troi/423954.vgp>>, last accessed on 18 August 2021.
- 3 "224 RE100 companies have made a commitment to go '100% renewable'. Read about the actions they are taking and why", RE100, 2019. Available at: <<http://there100.org/companies>>, last accessed on 8 December 2020.
- 4 "Future air quality in Ha Noi and northern Vietnam", IIASA Research Report, October 2018. Available at: <www.iiasa.ac.at/web/home/research/researchPrograms/air/news/Future_air_quality_in_Ha_Noi.pdf>, last accessed on 18/08/2021.
- 5 "The Ministry of Industry and Trade calling for comments on the Draft National Power Development Planning Project for the period 2021-2030, with a vision to 2045", Ministry of Trade and Industry, 21 February 2021. Available at: <www.moit.gov.vn/web/guest/tin-chi-tiet/-/chi-tiet/bo-cong-thuong-xin-y-kien-gopy-du-thao-%C4%91e-an-quy-hoach-phat-trien-%C4%91ien-luc-quoc-gia-thoi-ky-2021-2030-tam-nhin-toi-nam2045-21618-15.html>, last accessed 18/08/2021.
- 6 "Renewable Power Generation Costs in 2018", International Renewable Energy Agency. Available at: <www.irena.org/publications/2019/May/Renewable-power-generation-costs-in-2018>, last accessed on 18/08/2021.

I. RENEWABLE ENERGY

Relevant authorities: Party's Central Economic Commission (CEC), Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Office of Government (OOG), Ministry of Agriculture and Rural Development (MARD)

Issue description

Developments in global and regional energy markets have increased the probability for a 2030 energy market that is much more focused on lower-cost renewable energy and less dependent on fossil fuels. This will lead to more diverse, secure, reliable and affordable energy systems; even more so in markets that have open competition and access to international capital.

A growing number of global corporations are directly purchasing renewable energy from independent power producers in Vietnam. They have also signalled their interest in procuring renewable energy via the proposed Direct Power Purchase Agreement (DPPA) and in producing their own clean energy in larger scale “behind-the-meter” power plants.

The “objective of 100% clean energy” is a challenging target, but one that has become very common for global companies, including those within the “RE100 Group”. To support these initiatives, we would welcome the implementation of the DPPA Pilot Scheme of 1,000 MW capacity – with further expansion after the pilot, if it is deemed a success – and easing of the regulatory burden on companies wishing to implement clean energy plants on site “Behind the Meter”. Both these measures would facilitate individual companies to achieve their own 100% clean energy supply target. Electricity from LNG plants will not assist our members in achieving their 100% clean energy goal as they would not consider LNG as a clean fuel. Therefore, the increasing use of LNG to produce electricity will not increase the attractiveness of Vietnam as a manufacturing location when judged on the clean energy objective.

Despite this global trend, Vietnam still has more coal thermal power capacity planned or under construction than any other country in Southeast Asia.⁷ We are pleased to learn that the draft for Planning of Power Plan VIII sets out technological requirements for coal-fired power plants to use Ultra-supercritical (USC) and Advanced Ultra Supercritical (AUSC) technologies and to reduce the impact of local air pollution which is a positive and welcome initiative.

It is important to prioritise effective measurements to stimulate investment by all power consumers in energy efficiency measures to achieve the national energy efficiency strategy goals. For this, the contribution of solar, biomass, small hydropower, wind and offshore wind power within the energy system should be maximised. In particular, redundancy and diversification are key to energy system security and resilience. To halt approvals for any new coal-powered plants and enhance energy security – with the inclusion of natural gas as a transition fuel to temporarily replace coal – the Draft PDP VIII intention should be implemented. The ambition of the Nationally Determined Contributions (NDCs Paris Agreement 2015) greenhouse gas emissions reductions should reflect increased targets for clean energy and better energy efficiency measures. Offshore wind power should be considered the lowest cost, least risky source of large electricity capacity to 2045. However, the Draft PDP VIII indicates no new offshore wind before 2030 and, even then, only in a limited amount of 2000MW. This lack of ambition may result in unnecessarily high power production costs. Therefore, MOIT should consider facilitating the development of offshore wind power by creating an internationally bankable power purchase agreement (PPA); synchronising Permitting, Licensing and Master Planning in a single one-stop shop; including EVN National Power Transmission Corporation (NPTC) and all stakeholders in the development of a Strategic Grid Transmission Plan; consider allowing developers to build their own 220kv and 500kv transmission lines; and define the power pricing roadmap for a Feed-in tariff (FIT) and transparent auction system that will be in force until at least 2030.

Clean energy, in combination with battery storage, has been shown to provide reliable and cheap electricity in other markets. However, no storage appears in the Draft PDP VIII plan before 2030. We have raised this point before but, until now, MOIT has not yet implemented EuroCham's recommendations to allow storage on-site

7 “Global coal power”, *Carbon Brief*. Available at <<https://www.carbonbrief.org/mapped-worlds-coal-power-plants>>, last accessed 18/08/2021.

with solar power plants and the relevant documents should be amended accordingly. In addition, EVN should investigate the benefits of widespread storage capacity at clean energy plants of all types, including rooftop solar power plants.

We also believe that the contract between EVN and clean energy producers should be amended so that it is in line with international standards to harvest the full cost-reduction benefits of the planned auction processes. The industrial and commercial power tariffs that are likely to be included under the PDP VIII should be defined in a clear Roadmap to Power Tariffs to 2025. Furthermore, power consumers should be allowed access to clean energy by implementing DPPA in pilot schemes and reducing the front-end regulatory barriers to behind-the-meter clean energy plants as intended in the Government's Resolution 68,⁸ tackling the red-tape-challenge in Vietnam.

To enable the grid to service the whole country, private investment in critical transmission grid capacity should be allowed. In this light, it is also important to promote the benefits to the power transmission and distribution system by continuing to support the growth of rooftop solar power plants.

Finally, the initial pilot scheme of carbon payment for forest environmental services (C-PFES) of MARD should be expanded to the national level in 2021 and continue to use the financial benefits entirely for increased forest habitat and wildlife protection.⁹

Potential gains/concerns for Vietnam

Vietnam's electricity system is still over-reliant on power production from hydroelectric power plants. These will be increasingly affected by variations in rainfall complicated by the impacts of climate change. In addition, PDP VIII indicates a rapid and exceptionally high importation of fossil fuels, such as coal and liquefied natural gas (LNG). Coal-fired power using imported fuel is due to increase by 51 per cent by 2025 and LNG power production will grow by 3,503 MW over the same period.

Importing fuel creates potentially price inflationary risks that are unwelcome to consumers and which can no longer be insured against by government measures to mitigate cost inflation. This undermines EVN's efforts to continue supplying low-cost, reliable electricity in increasing volumes.

Constructing new coal thermal power plants and LNG power plants may have the following unwelcome results:

- Relying on fossil-fuel-powered plants poses important risks: increased costs for coal and LNG imports; increased transmission and port infrastructure costs that require additional investment; and financing;
- Growing imports of fuels will place unnecessary pressure on Vietnam's foreign currency reserves;
- Foreign-owned coal plants set up on a Build-Operate-Transfer (BOT) basis or a Build, Own, Operate, Transfer (BOOT) basis - both of which may have cost recovery periods greater than 20 years¹⁰ - are especially vulnerable to changes in the cost structure of energy and climate change policy impacts, such as carbon taxes;
- The planned build-out of fossil fuel power plants under PDP VII has had significant social and environmental impacts that were not adequately considered or mitigated effectively, such as ash storage, water consumption and air pollution;
- Under PDP VII there have been significant delays, defaults and failures to deliver fossil fuel power plants on time and within budget. This has resulted in unnecessary pressure on EVN and the reliable high-quality power supply that power consumers have come to expect.

EuroCham supports a diverse energy market with access to low-cost, international capital that includes a greater focus on renewable energy. Private sector investors have already shown in 2019-2020 that renewable energy can be developed rapidly at a reduced cost with economies of scale, where clear and simple Government policy support exists.

⁸ Resolution 68/NQ-CP dated 12 May 2020 of the Government promulgating the Program on the abolishment or simplification of business regulations in the 2020-2025 period.

⁹ "Carbon payment for forest environmental services – C-PFES- A Feasibility Study Identifying Opportunities, Challenges, and Proposed Next Steps for Application of C-PFES in Vietnam", USAID, March 2018. Available at: <https://pdf.usaid.gov/pdf_docs/PA00TQPJ.pdf>, last accessed 29 April 2021.

¹⁰ "Made in Vietnam Energy Plan 2.0", Power and Energy Working Group, *Vietnam Business Forum*. Available :<http://vepg.vn/wp-content/uploads/2020/06/20191201-MVEP-2.0-ENG-FINAL-standard-page_compressed.pdf>, last accessed 12 April 2021.

Recommendations

We would like to make the following recommendations:

- Prioritise effective measures to stimulate investment by all power consumers in energy efficiency measures to achieve the national energy efficiency strategy goals.
- Maximise the contribution of solar, biomass, small hydropower, wind and offshore wind power within the energy system.
- Revise the contract between EVN and clean energy producers to meet international standards so as to harvest the full cost-reduction benefits of the planned auction processes.
 - Enhance energy security with the inclusion of natural gas as a transition fuel to temporarily replace coal,
 - Implement the intention to halt approvals for any new coal-powered plants in the Draft PDP VIII.
- Allow power consumers access to clean energy by implementing DPPAs in pilot schemes and by reducing the front-end regulatory barriers to behind-the-meter clean energy plants.
- Expand the pilot project, encourage private investment in the important power transmission network; evaluate and allow investors who meet the requirements to build 220kv and 500kv transmission lines on their own.
- Define the industrial and commercial power tariffs that are likely to be applicable under the PDP VIII in a clear Roadmap to Power Tariffs to 2025.
- Increase the ambition of the NDCs greenhouse gas emissions reductions reflecting increased targets for clean energy and better energy efficiency measures.
- Promote the benefits to the power transmission and distribution system by continuing the support for the growth of rooftop solar power plants.
- Consider facilitating the development of offshore wind power.
- Expand the initial MARD C-PFES pilot scheme to the national level in 2021 and continue to use the financial benefits entirely for increased forest habitat and wildlife protection.¹¹
- Allow storage on-site with solar power.
- Encourage EVN to investigate the benefits of widespread storage capacity at clean energy plants of all types, including rooftop solar power plants.

ACKNOWLEDGEMENTS

EuroCham Green Growth Sector Committee

¹¹ "Carbon payment for forest environmental services – C-PFES- A Feasibility Study Identifying Opportunities, Challenges, and Proposed Next Steps for Application of C-PFES in Vietnam", USAID, March 2018. Available at: <https://pdf.usaid.gov/pdf_docs/PA00TQPJ.pdf>, last accessed 29 April 2021.

CHAPTER 10 GREEN GROWTH

OVERVIEW

EuroCham established a Green Growth Sector Committee (GGSC) in May 2014 to help develop the essential conditions for environmentally sound and sustainable businesses to prosper in Vietnam. Representing the private sector, GGSC works closely with public stakeholders, including the Government of Vietnam and its agencies, donors and multilateral organisations. This chapter focuses on two topics which GGSC believes should be prioritised by the Government: firstly, the circular economy, including air quality control, water and waste management; and secondly, sustainable buildings and energy efficiency.¹

I. CIRCULAR ECONOMY

Relevant authorities: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), Ministry of Natural Resources and Environment (MONRE), Ministry of Planning and Investment (MPI), Ministry of Health (MOH), Ministry of Construction (MOC), Ministry of Transport (MOT), Vietnam Environment Administration (VEA).

In line with previous years, GGSC emphasises the “Circular Economy” as the new reference model of production and consumption, which involves sharing, leasing, redesigning, recovering, reusing, repairing, refurbishing and recycling existing materials and products for as long as possible. This is a more sustainable model of growth than the previously dominant linear economy of “produce – use – discard” as it implies reducing waste to a minimum and using discarded materials productively again and again in a different form, reducing the need for new or virgin raw materials and taking most waste and pollution out of production methods.

We recommend that Vietnam formulates a sound basis to enable the adoption of this growth model in the future, which has already been applied in the EU for several years. Moving further towards the Circular Economy will deliver benefits such as reducing pressure on the environment, improving the supply security and price of raw materials, increasing competitiveness, stimulating innovation, boosting economic growth, and creating green and sustainable jobs.

To ensure the Circular Economy can be widely applied, the Government should take charge of coordination and encourage the private sector to support change. The new Law on Environmental Protection will come into force in 2022. It is highly recommended that guiding decrees be issued that reflect the shift towards a Circular Economy.²

1. Waste management

Issue description

Vietnam’s Law on Environmental Protection operates under the principles of minimisation, re-use, collection and treatment meeting environmental standards.³ However, most waste is still dumped into landfills without further processing, with 89 per cent of all solid waste in Hanoi and 70 per cent in Ho Chi Minh City being disposed of in this way.^{4 5}

1 Please note that GGSC’s comprehensive position on energy is covered in the Energy and Electricity chapter of the WhiteBook.

2 A good example could be the textile sector where the Circular Economy could be implemented in the whole life cycle of textile production and consumption. Another example is the use of unavoidable packaging materials that can be made biodegradable or compostable that can be sent together with other organic materials to produce compost.

3 Law 72/2020/QH14 of the National Assembly on environmental protection.

4 “Modernising solid waste treatment technology: Turning waste into real resources”, Natural Resources and Environment, 12 November 2019. Available at: <<https://baotainguyenmoitruong.vn/hien-dai-hoa-cong-nghe-xu-ly-chat-thai-ran-de-rac-thuc-su-la-tai-nguyen-295645.html>>, last accessed on 8 December 2020.

5 “Hanoi running out of landfill site”, Natural Resources and Environment, 9 July 2019. Available at: <<https://baotainguyenmoitruong.vn/ha-noi-sap-het-cho-de-do-rac-249535.html>>, last accessed on 8 December 2020.

Unsanitary waste disposal not only causes environmental hazards and nuisance for nearby residents, but also wastes materials that could be recycled or, at least, used for energy generation. While we need to quickly devise a system to segregate dangerous waste to be treated in cement kilns, other waste can, for a time, also be burned to generate electricity or heat. This is better than landfill, and it could be a bridge to help reach the next phase.

We are pleased with Decision 491⁶ setting clear targets for the management of waste towards 2025 with a vision to 2050 and Decision 849⁷ setting action plans and timelines to ensure the integrated State management of solid waste from central to local levels. However, until now, the implementation process has not involved the private sector. This, in our view, is paramount to the success of, for example, combatting plastic waste. We would like to suggest establishing a committee of public-private partnership to discuss and direct green growth projects to apply the revision of the legal framework in practice

Multinational corporations already have their own recycling and renewable energy targets and are ready to support Vietnam to achieve its goals. For this, a supportive regulatory framework is required. This would involve completing the legal framework on waste management, especially waste classification. It is essential that all dangerous and harmful waste be destroyed with no spillage into the environment and no contamination with other waste.

It is also important to increase public awareness on solid waste management, especially segregated discarding of materials at household/company level, as it is done in the European Union (EU), and promote reduce – reuse – recycle. To do this, it would be relevant to legalise the secondary material marketplace, so it is done in a responsible way.

Potential gains/concerns for Vietnam

The goals set out in Decision 491 and action plans in Decision 849 are ambitious. To achieve these, all Ministries and authorities involved would need to cooperate in implementing a regulatory framework that will incentivise the public and private sectors to achieve these goals.

Regarding the legal framework, many of these goals require existing laws to be amended. Therefore, it is important to identify which existing laws need to be updated and draft a plan to start making these laws compliant at short notice in order to drive change. Besides, regulations need to define more clearly solid waste from ordinary waste.⁸

With the rapid urbanisation process, Vietnamese households – particularly in the big cities – are discharging increasing amounts of waste into the environment. The municipal solid waste (MSW) generation per capita will reach 1.6 kg/person/day in 2025.⁹ The most basic components of solid waste are organic and inorganic waste.¹⁰

We believe that incentivising the compliant waste treatment sector would have positive results. On the contrary, actors who claim that they provide recycling and other waste treatment services at low cost and in accordance with the law but then dump collected waste into the rivers, seas and the environment must be held accountable and punished in accordance with the law as a result of effective enforcement. This is necessary to create a successful and compliant waste management industry. We appreciate how the Government has dealt with violations of environmental regulations until now, however, there is always room for improvement.

Recommendations

We would like to make the following recommendations:

- Continue strict enforcement of waste regulations and fair results-oriented prosecution for non-compliance.

6 Decision 491/QĐ-TTg dated 7 May 2018 of the Prime Minister adjusting national strategy for general management of solid waste to 2025 with vision towards 2050.

7 Decision 849/QĐ-BTNMT dated 8 April 2019 of the Ministry of Natural Resources and Environment on the plan to implement Resolution 09/NQ-CP on consistent State management on solid waste.

8 "Lack of regulations on plastic waste classification", Ministry of Natural Resource and Environment, 23 October 2019. Available at: <www.monre.gov.vn/Pages/thieu-quy-dinh-ve-phan-loai-rac-nhua.aspx>, last accessed on 8 December 2020.

9 "State of the 3Rs in Asia and the Pacific", United Nations Centre for Regional Development. Available at: <[www.uncrd.or.jp/content/documents/5696\[Nov%202017\]%20Vietnam.pdf](http://www.uncrd.or.jp/content/documents/5696[Nov%202017]%20Vietnam.pdf)>, last accessed on 4 March 2021.

10 Inorganic waste includes, for example, glass, porcelain, metal, paper, rubber, plastic, nylon plastic, fabric, and electronics. Organic waste includes mostly left-over or spoiled food, falling leaves, spent grain, bran, manure, cadavers, etc.

- Complete the legal framework on waste management, especially waste classification.
- Legalise the secondary material marketplace.
- Continue providing a conducive business environment for compliant waste management businesses.
- Increase public awareness on solid waste management.
- Set up a public-private committee to propose solutions.

2. Addressing plastic pollution

Issue description

Plastic pollution has remained a major issue over the past few years and, unfortunately, Vietnam is the fourth-largest contributor to marine plastic pollution globally.¹¹ Only 27 per cent of plastic in Vietnam is recycled while the amount of plastic waste is increasing by up to 200 per cent per year.¹² The situation poses serious impacts not only to marine life but also to economic development, the livelihoods of coastal residents, and potentially to food security. This is further complicated by containers of imported waste to be recycled in Vietnam and its neighbouring countries.

Recycling alone is not a complete solution since the majority of plastics dumped are of too low value, so they would need to be compacted and used as cheap and long lasting material, for example to make roads. Furthermore, the majority of plastics used in Vietnam are made of non-compostable materials, and under the sun's ultraviolet light and weathering agents like current or wind, they are broken into smaller and smaller fragments over time. Plastic fragments smaller than 5mm, known as micro-plastics, can be ingested by wildlife and create many problems in the ecosystem and threats to human health.¹³ Thus, reducing the production and use of single-use plastic items or recycling those that have economic value is key (e.g. made of Polyethylene Terephthalate - PET and High Density Polyethylene - HDPE). Additionally, it would also be useful to promote and have supporting policies for innovative materials and technologies, i.e. compostable plastics and innovative compostable packaging materials.

The conditions for recycling plastics, such as differentiated disposal and no contamination, make more worthwhile the recycling of other materials as well, such as paper and wood or clothes, electrical and electronics material.

In light of the EVFTA, it would be important that Vietnam complies with EU regulations on Waste, Electrical and Electronic Equipment (WEEE), Restriction of Hazardous Substances (ROHS) and Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). This would, moreover, ensure that the products originating from Vietnam can enter international supply chains and support the uptake of the Circular Economy globally. The first step would be an evaluation of the practical impact of the implementation of these rules.

Vietnam has the target of a complete ban on single-use, non-compostable polyethylene products by 2025. Stringent regulations are required to meet this target and, as a gradual approach to that ban, we would like to suggest that Vietnam finalises policies and mechanisms to limit the production and use of non-compostable plastic items and develop the production of compostable plastic that can be certified using EU and US standards. This can be encouraged, in a first phase, via increased taxes for the use of single-use plastic bags and the promotion of outreach programs to raise public awareness. Experience in other countries, such as Rwanda¹⁴, has shown that a complete ban of these products, supported by widespread behavioural change of the general public, will contribute significantly to tackling plastic pollution. Vietnam has now developed to a level that can enable the ban of non-compostable polythene bags.

Under the Environmental Protection Tax Law 57¹⁵ it is already possible to raise tax, but this has not achieved its objective yet.¹⁶ We believe that the tax rate should be increased for using single-use plastic bags to limit their

11 J.R. Jambeck, R. Geyer, C. Wilcox, T.R. Siegler, M. Perryman, A. Andrady, R. Narayan and K.L. Law (2015), Plastic waste inputs from land into the ocean, *Science*, Vol. 347, Issue 6223.

12 "Plastic waste increasing by 200%, Vietnam faces risk of becoming global landfill", Tuoitre Online, 28 September 2019. Available at: <<https://tuoitre.vn/rac-thai-nhua-tang-200-viet-nam-doi-mat-nguy-co-thanh-bai-rac-toan-cau-20190928164354037.htm>>, last accessed on 8 December 2020.

13 Op cit. Plastic waste inputs from land into the ocean p.14.

14 E. Clavel, "Think you can't live without plastic bags? Consider this: Rwanda did it", *The Guardian*, 15 February 2014. Available at: <www.theguardian.com/commentisfree/2014/feb/15/rwanda-banned-plastic-bags-so-can-we>, last accessed on 20 December 2020.

15 Law 57/2010/QH12 of the National Assembly dated 15 November 2010 on Environment Protection Tax.

16 "Loopholes and evasion limit success of plastic bag tax", *Vietnam News*, 27 September 2018. Available at: <<http://vietnamnews.vn/environment/466610/loopholes-and-evasion-limit-success-of-plastic-bag-tax.html#pLV6B5o3VZtgPBtS.99>>, last accessed on 8 December 2020.

use. Pilot models can be used before these are applied on a national scale. The next step of this policy will be a complete ban on these products.

Domestic waste at the household level should be classified to enable cost-effective recycling and treatment, accompanied by comprehensive policies that favour private investment. If wastes are separated into two groups (i.e. organic and inorganic), or three groups (i.e. organic, plastics and glass/metal at the household level), it will enable a much better cost-effective treatment of domestic waste and allow for the involvement of private investments into this sector. In the EU, electronics, paper, used oil and clothes are other “differentiated” collection categories. The classification of domestic waste can be applied on a pilot project in one or two big cities before being replicated on a national scale. Besides single-use plastic bags, other products such as straws, cups, and other packaging materials that are currently made with non-compostable plastic should be made fully compostable after a certain transition period.

As mentioned already, cooperation with the private sector and international organisations who are actively addressing plastic pollution should be enhanced. The private sector and relevant government authorities should discuss and define a meaningful and appropriate Extended Producer Responsibility (EPR) philosophy and practices where producers are given a reasonable responsibility – financial and/or physical – for the treatment or disposal of post-consumer products.

Potential gains/concerns for Vietnam

Decision 491 provides that, by 2025, “100 per cent environmentally-friendly plastic bags will be used in trade centres and supermarkets for the purpose of replacing persistent plastic bags to serve daily-life activities”. Vietnam’s National Action Plan on Ocean Plastic Waste Management by 2030¹⁷ (Decision 1746) aims to reduce plastic waste discharged into the sea and ocean by 75 per cent, totally end the use of disposable plastic products in coastal tourist attractions and resorts, as well as the disposal of fishing gear into the sea by 2030. The goals as set out in Decision 491 and Decision 1746 are ambitious but, until now, their implementation has been challenging in practice. Hence, to achieve the objectives of these Decisions, it is important to step up implementation. If this does not happen, it will impact the lives of people, animals and the overall environment. Moreover, it will impact the role Vietnam can play in the global supply chains.

In the past years, the European business community in Vietnam has already taken various steps to tackle Vietnam’s plastic problem.

Recommendations

We would like to make the following recommendations:

- Implement the existing regulations as promulgated and ensure strict enforcement of punishments on cases infringing waste regulations.
- Promote legislation that would incentivise Vietnamese companies to comply with EU regulations to allow the country to enter global supply chains.
- Implement strict regulations to meet the target of a complete ban on single-use, non-compostable polyethylene products by 2025, starting by increasing applicable tax.
- Implement a step-by-step approach to achieve the complete ban on single-use plastics by creating controlled pilot models and introduce compostable plastic that can be certified under EU and US standards to prevent the current green washing.
- Enable cost-effective recycling and treatment of domestic waste collected at the household level through classification, accompanied by comprehensive policies to favour private investments.
- Encourage cooperation with the private sector and international organisations which are actively addressing plastic pollution.
- Define a meaningful and appropriate Extended Producer Responsibility (EPR) philosophy and practices in cooperation with the private sector and relevant government authorities.

¹⁷ Decision 1746/QĐ-TTg dated 4 December 2019 of the Prime Minister approving National Action Plan on Ocean Plastic Waste Management by 2030.

3. Wastewater issues

Surface water quality, especially in and downstream of urban areas, has deteriorated to the point where it is threatening the health and livelihoods of the population.¹⁸ Biodiversity in surface waters is rapidly declining, and the drinking water supply is at risk through large amounts of untreated wastewater being discharged into rivers and lakes.¹⁹

Issue description

Vietnam has 49 wastewater treatment plants, mostly in class-3-and-above cities, with a total designated capacity of 1,183,380 cubic meters of wastewater per day. However, only 13 per cent of urban wastewater is treated, while most untreated wastewater is dumped into the environment.²⁰ MONRE reports that 88.3 per cent of industrial zones operating in Vietnam have centralised wastewater treatment systems but the capacity of using those systems was limited at 48 per cent.²¹ The lack of coordinated supervision of wastewater treatment can cause massive environmental and socio-economic disasters affecting the livelihoods of millions of people.

Chapter 19 of Vietnam's Criminal Code²² does include sanctions for wastewater offences that could lead to the permanent closure of a business in serious cases. However, the legal sanctions cannot be an effective deterrent if they are not enforced or if the fines are too low compared to the cost of implementing effective wastewater treatment measures.

The Government should consider if a new system, based on lower penalties and full disclosure, with a gradual tightening of the minimum result according to a pre-published time schedule, could work better.

In this respect, we welcome the revision of Decree 154²³ which takes into account the responsibility of those who dispose of untreated water into the environment. We look forward to seeing the issuance of the revised Decree which strengthens wastewater regulations.

The sanitation sector is also largely underfinanced and mainly depends on international donor support. Wastewater fees do not cover the costs involved, thus hindering the development of a sustainable sanitation sector. Some cities pay companies out of their budget to make up the difference, but this is not a sustainable or transparent approach.

We have seen that Decree 80/2014/ND-CP on drainage, sewerage and wastewater treatment²⁴ (Decree 80) is enforced more regularly by local People's Committees. However, some of its provisions are not yet fully endorsed and implemented at the local level.

Recommendations

We would like to make the following recommendations:

- Increase the enforcement of relevant legal regulations, such as Decree 80, QCVN 14:2008/BTNMT.
- Apply severe sanctions to industrial parks that dump untreated wastewater into the environment to deter others.
- Encourage the reuse of wastewater by providing legal frameworks, guidelines and standards.
- Adjust domestic and industrial wastewater fees to full cost recovery, implementing the “polluter-pays” principle.

18 “Recycle wastewater to reduce water pollution”, Vietnam Clean Energy Association, 18 October 2019. Available at: <<http://nangluongsachvietnam.vn/d6/vi-VN/news/Tai-su-dung-nuoc-thai-de-giam-o-nhiem-nguon-nuoc-6-1953-4874>>, last accessed on 8 December 2019.

19 <http://www.wepa-db.net/policies/state/vietnam/surface.htm>

20 “Rate of collecting and treating urban wastewater in Vietnam only reaches 13%”, Natural Resources and Environment, 6 October 2020. Available at: <<https://baotainguyenmoitruong.vn/ty-le-thu-gom-xu-ly-nuoc-thai-do-thi-o-viet-nam-chi-dat-khoang-13-293930.html>>, last accessed on 8 December 2020.

21 “Low efficiency of centralised wastewater treatment systems at industrial zones”, Industry and Trade Newspapers, 29 December 2019. Available at: <<https://congthuong.vn/hieu-su-at-su-dung-he-thong-xu-ly-nuoc-thai-tap-trung-tai-cac-khu-cong-nghiep-dat-thap-130777.html>>, last accessed on 29 December 2020.

22 Criminal Code 12/2017/QH14 of National Assembly amending, supplementing a number of provisions of Criminal Code 100/2015/QH13.

23 Decree 154/2016/ND-CP dated 16 November 2016 of the Government regulating on environmental protection charges for wastewater.

24 Decree 80/2014/ND-CP dated 6 August 2014 of the Government on the drainage, sewage and wastewater treatment.

4. Engaging the private sector to ensure safe water supply

Issue description

Vietnam could generate far greater economic benefits from a sustainable water industry than is done at present. Donors and multilaterals have been supporting Vietnam in terms of financing, technical support and capacity building over decades. However, these measures are expected to phase out, and to be replaced by private stakeholders' involvements, creating potential opportunities for European water companies. Unfortunately, clean water prices and wastewater fees are far from cost-covering levels and too low for private investors to invest in financially viable water supply businesses.

Moreover, international investors feel that decision-making processes in Vietnam's water sector lack transparency. There are no international standard bidding procedures in place, and public-private partnership opportunities acceptable for international investors are limited.

Recommendations:

We would like to make the following recommendations:

- Provide sustainable conditions and improved framework conditions for foreign investment in water supply.
- Facilitate public-private partnership in the water sector using transparent international bidding procedures.

5. Air quality control

Issue description

The air quality in Vietnam's major cities has deteriorated to dangerous levels and has become a critical health concern.²⁵ Sulphur dioxide, dust, dioxide, carbon monoxide and nitrogen dioxide are emitted from transportation, industry and construction, as well as from coal power plants and cement factories.

Research from the Vietnam National Economics University reports air pollution has cost the Vietnamese economy US\$10.8-US\$13.6 billion per year since 2012. The number of days where the air quality index reached hazardous levels in 2019 and 2020 were higher than that of previous years. According to IQAir, Hanoi ranked 22nd in the most-polluted cities in the world.²⁶ It is, therefore, important to revise the Law on Environmental Protection 2014, particularly with regard to air pollution.

Furthermore, we believe that specific policy targets and regulations for air quality control and emissions should be introduced. This should happen alongside the introduction of a higher and additional tax for coal power plants, cement factories and other major polluters according to the estimated socio-economic and health impact. Finally, investment in filters and other devices in, for example, power stations that reduce pollution is required together with the acceleration of the development of a non-polluting public transportation sector.

Potential gains/concerns for Vietnam

Vietnam is lacking specific regulations for air pollution. We note that the Government, in 2019, launched a national action plan for air quality management by 2020 with a vision to 2025 (Decision 985a). In December 2019, MOH issued a 14-step guide to help deal with air pollution, the first-ever public advisory on this subject.²⁷

The VEA is required to set emissions targets.²⁸ However, there is a lack of clarity on Government policies on specific targets for air quality control. Moreover, Vietnam has no odour regulations against strong smells from landfills, factories, and aquaculture.

The significant improvement of air quality during COVID-19 pandemic, especially during "lock downs", indicates that there are ways to improve air quality.

25 "Minister Tran Hong Ha: Air pollution resulted from external causes", Government Newspapers, 19 December 2019. Available at: <<http://baochinhphu.vn/Hoat-dong-Bo-nganh/Bo-truong-Tran-Hong-Ha-O-nhiem-khong-khi-do-nguyen-nhan-chu-quan/383018.vgp>>, last accessed on 19 December 2020.

26 "World Air Quality Ranking", iqair. Available at: <www.iqair.com/world-air-quality-ranking>, last accessed on 4 March 2021.

27 "Health ministry issues first public advisory on air pollution", VN Express, 16 December 2019. Available at: <<https://e.vnexpress.net/news/news/health-ministry-issues-first-public-advisory-on-air-pollution-4028017.html>>, last accessed on 16 December 2020.

28 "Vietnam sets 2020 emissions targets as nation chokes on smog", VN Express, 23 September 2016. Available at: <<https://e.vnexpress.net/news/news/vietnam-sets-2020-emissions-targets-as-nation-choke-on-smog-3472995.html>> last accessed on 8 December 2020.

Recommendations

We would like to make the following recommendations:

- Accelerate the revision of the Law on Environmental Protection 2014, particularly with regard to air pollution.
- Introduce specific policy targets and regulations for air quality control and emissions.
- Increase tax for coal power plants, cement factories and other major polluters according to the estimated socio-economic and health impacts.
- Introduce clean air as a high-level KPI for energy companies, starting with EVN.
- Invest in filters and other devices that reduce pollution, starting from power stations.
- Accelerate the development of a non-polluting public transportation sector.

II. GREEN AND ENERGY-EFFICIENT BUILDINGS IN A SUSTAINABLE CITY

Relevant authorities: Ministry of Construction (MOC), Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), Ministry of Natural Resources and Environment (MONRE), Ministry of Planning and Investment (MPI)

Issue description

According to the nation's update on the Nationally Determined Contribution (NDC), Vietnam has committed to reducing greenhouse gas emissions by 9 per cent by 2030. This could be further reduced to 27 per cent with international support through cooperation and mechanisms under the Paris Agreement.²⁹

As part of efforts to decrease greenhouse gas emissions, the country issued a wide range of policies and programs. Promoting the construction of green buildings as well as energy efficiency are necessary measures in these efforts. Investors, project owners, and enterprises must also take their responsibility in investing in, constructing, managing, and operating projects according to standards on energy-efficient and green buildings and urban areas aiming to increase quality, the convenience of use, ensure user health, energy efficiency, and protect the environment.³⁰

We welcome the development of smart cities, as this shows that the country is moving toward green growth and sustainable development.³¹ Buildings, which account for a majority of every city's carbon emissions, will become increasingly important to economic, social, and environmental development in sustainable cities. Some Green Buildings (GB) have been certified in Vietnam, but their development remains modest. More than 100 buildings have certification, and the growth rate is low compared to neighbouring countries in ASEAN.³² The National Program on Energy Efficiency targets 150 GB by 2030.³³ Considering the rapidly increasing demand on buildings, Vietnam should aim much higher than that while making sure it is on target even for that level. There are, however, challenges that Vietnam needs to address to make buildings greener and cities more sustainable.

1. Sustainable construction materials

Environmentally-friendly construction materials substantially reduce the environmental and energetic impact of building construction and operations. We appreciate that the Government and MOC have introduced measures to reduce the use of clay bricks.³⁴ And we look forward to seeing proper and effective implementation of these

29 Intended Nationally Determined Contribution of Vietnam. Available at: <www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Viet%20Nam%20First/VIETNAM%27S%20INDC.pdf>, last accessed on 4 March 2021.

30 Vietnam Construction Journal "Current status and policy orientations proposal to promote the development of energy efficient buildings and green buildings". Available at <http://tapchixaydungbxd.vn/kien-truc/kien-truc-viet-nam/hien-trang-va-de-xuat-dinh-huong-chinh-sach-thuc-day-phat-tri.html>. Last access on 10/08/2021

31 Decision 950/QĐ-TTg dated 1 August 2018 of the Prime Minister approving plan on sustainable development of smart cities during 2018-2025, with a vision toward 2030.

32 Official letter 1455/BXD-HTKT dated 30 March 2020 of the Ministry of Construction to EuroCham.

33 Decision 280/QĐ-TTg dated 13 March 2019 of the Prime Minister approving the National Energy Efficiency Programme (VNEEP) for the period of 2019-2030.

34 Decision 567/QĐ-TTg dated 28 April 2020 targets 30-40 per cent Non-Fired Brick (NFB) usage by 2020; Decree 24a/2016/ND-CP dated 5 April 2016 regulates NFB as an environmentally friendly material to receive investment incentives from the State. The Government has also issued Decree 139/2017/ND-CP dated 27 November 2019 which sets the fines for non-compliance at between VND 20-30 million.

regulations, both on a central and local level. The application of sustainable building material solutions should be enforced and promoted through the Vietnam Association of Building Materials (VABM).

2. Energy efficiency in buildings

Construction activities and buildings are the main consumers of electricity, accounting for up to 40 per cent of national consumption.³⁵ Buildings in Vietnam need to become more energy-efficient, a move which would only increase construction costs by around 3 per cent but help reduce operational costs by up to 36 per cent.³⁶ Integrating energy-efficient devices, ideally during construction, will complete the transition and have a durable impact on the sustainability of the city where it is implemented.

This process can be applied from the architecture phase, with passive design and the use of environmentally friendly construction materials, to the implementation of energy-efficient devices during construction. We would encourage all buildings to achieve the minimum standards of the VEEBC (or a simplified version) in order to receive the Building Licence at Basic Design Stage. Furthermore, EVN could impose a tariff scheme that rewards low-energy-consumption buildings with lower prices and imposes higher prices on high consumption buildings.

We recommend that the Government provide effective encouragement for building owners to certify their buildings as GB. Many options are available in the market, such as United States Green Building Council's Leadership in Energy and Environmental Design (LEED)³⁷, the International Finance Corporation's Excellence in Design for Greater Efficiencies (EDGE)³⁸ and Vietnam Green Building Council's LOTUS.³⁹ We support a move to recognise multiple systems for use in Vietnam, letting the market determine which are practical and useful. These systems could be licensed for operation based on a set of simple criteria such as transparency, reliability, and coherence according to recognised norms.

There are many individual sustainable building solutions and best practice case studies available. However, we believe that a clear urban planning showcase should be produced, including not just green buildings but also water, waste, traffic and environmental livelihood improvement solutions. What the public and the local government can do at an individual building level has to be integrated into a holistic urban vision and from city green to water bodies, to public-use buildings. Linking all of it together in a smarter and more liveable environment helps reduce temperatures and absorb emissions. This macro-level program of incentives and policies could support Vietnam's target of developing smart and sustainable cities.

The Vietnam Energy Efficiency Building Code (VEEBC), amended and published in 2017,⁴⁰ is a basis to resolve difficulties in localities in applying the standards. MOC has organised several training sessions for officials at Departments of Construction to improve their capacity. However, in our view, the code could be more widely disseminated and applied in practice. Due to a lack of enforcement of regulations, global corporate guidelines seem to be the only drivers as there is no need to reduce operating expenses due to low energy prices. The GB investments remain far too low to address current environmental concerns.

In our view, policies to encourage the development of energy-efficient buildings and green buildings should be developed and include construction with public investment; and promote the application of planning, architectural, material, technical and project management solutions to use energy economically and efficiently. A comprehensive life-cycle approach should be applied, while green labels and environmental product declarations (EPD) should be further promoted.

Furthermore, greater transparency on the timing of the introduction of market-based pricing for electricity and

35 "Promoting policies on energy efficiency in construction sector", Natural Resources and Environment, 14 September 2019. Available at: <<https://baotainguyenmoitruong.vn/thuc-day-cac-chinh-sach-ve-tiet-kiem-nang-luong-trong-nganh-xay-dung-293312.html>>, last accessed on 8 December 2020.

36 "Energy saving in buildings: Huge potentials", Ministry of Industry and Trade, 6 February 2017. Available at: <www.moit.gov.vn/web/guest/tin-chi-tiet/-/chi-tiet/tiet-kiem-nang-luong-trong-toa-nha-tiem-nang-con-rat-lon-109147-801.html>, last accessed on 8 December 2020.

37 "Leed rating system", LEED. Available at: <<https://www.usgbc.org/leed>>, last accessed 16 April 2021.

38 "Certify EDGE Buildings", EDGE Buildings. Available at: <<https://edgebuildings.com/certify/>>, last accessed 16 April 2021.

39 Vietnam Green Building Council's LOTUS rating system focuses on 7 key areas: Energy, Water, Materials and Resources, Health and Comfort, Site and Environment, Project Management, and Exceptional performance by pursuing innovative strategies and ideas in building. Available at: <<https://vgbc.vn/en/rating-systems/>>, last accessed 16 April 2021.

40 QCVN 09:2017/BXD dated 28 December 2017 of the Ministry of Construction on the National technical standards on buildings adopting energy efficiency.

the removal of subsidies would stimulate immediate and widespread investment in energy efficiency measures.

It would help businesses that are significant power consumers to have a clearer pricing framework than the average retail electricity pricing framework issued by the Prime Minister for each period. This will allow them to anticipate electricity price inflation and mitigate the impact on their businesses by reducing consumption of electricity and/or start auto production with renewable sources (rooftop solar).

Potential gains/concerns for Vietnam

At this moment, MOC is revising the Law on Construction 2014, and it would be great if detailed regulations on NFB, sustainable building materials, and energy efficiency could be integrated.

Recommendations:

We would like to make the following recommendations:

- Integrate detailed regulations on NFB, sustainable building materials and energy efficiency into the draft law revising the Law on Construction 2014.
- Enforce and promote the application of sustainable building materials solutions through the VABM.
- Apply a comprehensive life-cycle approach.
- Promote green labels and EPD.
- Provide greater transparency on the timing of the introduction of market-based pricing for electricity.
- Remove subsidies on fossil-based electricity.
- Publish a Roadmap to Retail Electricity Tariffs for commercial and industrial power consumers.
- Make buildings more energy efficient.
- Make minimal certification a precondition for licensing of types of buildings regardless of its use and incentivise higher levels of certification.
- Prepare a clear urban planning showcase, including not just green buildings but also water, waste, traffic and environmental livelihood improvement solutions.

ACKNOWLEDGEMENTS

EuroCham Green Growth Sector Committee.

FOR MORE SUSTAINABILITY-RELATED ISSUES, PLEASE ALSO READ

- | | | |
|--------------|-------------------------------------|---|
| ➤ Chapter 7 | Tourism and Hospitality | Section III. Long-Term Prospects and Sustainability Efforts |
| ➤ Chapter 8 | Transportation and Logistics | Section IV. Sustainability |
| ➤ Chapter 14 | Motorcycles | Section IV. Environmental Protection |
| ➤ Chapter 16 | Nutrition and Milk Formula Products | Section IV. Contribution to the Environmental Protection Fund for Product and Packaging Recycling |



CHAPTER 11 HUMAN RESOURCES AND TRAINING

I. LABOUR ORGANISATIONS AT ENTERPRISES AND TRADE UNION FEES

Relevant authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA), and Vietnam General Confederation of Labour (VGCL)

Issue description

Vietnam has, for the first time, introduced the concept of “labour organisations at enterprises” (or independent unions) as defined under the Labour Code 2019, effective as of 1 January 2021 (new Labour Code).¹ This is in addition to the grassroots trade union (or traditional union) which belongs to the VGCL system. EuroCham’s Human Resources & Training Sector Committee (HR&T SC) appreciates this remarkable effort to navigate the labour legal framework of Vietnam according to international standards and recognise employees’ right to freedom of association. We understand that MOLISA is currently drafting a decree to guide the new Labour Code regarding employees’ representative organisations at the grassroots level. The new regulations on “independent unions”, however, need further clarification and guidance. This will be required to support their smooth operation in businesses and to ensure that the roles and engagement of “independent unions” and “traditional unions” are based on an equal footing.

Potential gains/concerns for Vietnam

Guiding legislation on “independent unions” is being drafted and will be circulated soon. However, until then, the new Labour Code is unclear on how an “independent union” will exercise its rights and obligations versus a “traditional union”, if both organisations exist in the same enterprise.² In principle, as the employees would have the right to freely decide the representative organisation to represent them, “independent unions” and “traditional unions” should have equal roles in representing their member employees. Such roles would, presumably, include all rights, duties, and obligations in representing employees. In particular, this would include the obligation to give consultation opinions in internal regulations, documents and processes relating to the employment relationship as required by law. It would also include the right to attend and represent employees in communications, dialogue and discussions with the employers and with other union organisations; and the rights to collect, utilise, and manage trade union fees and union membership fees. However, there is no provision under the new Labour Code to indicate the relationship between the two types existing in the same enterprise, nor on their roles in representing employees. In the relevant laws it should be explicitly stated that the unions will have equal rights and obligations in representing the employees, depending on the ratio of their member employees, and provide mechanisms for cooperation between an “independent union” and a “traditional union” in matters relating to employment relationships.

The new Labour Code is unclear regarding the financing of “independent unions”. Article 174 regulates that their charter must include contents on “Membership fees, source of property and finance, and its usage and management of the organisation”, and that “the Government shall detail regulations of this Article”.³ As such, it is unclear on the level of discretion that an “independent union” would have in deciding its financing structure. According to the current Law on Trade Union, the employer has to contribute monthly trade union (TU) fees equal to 2 per cent⁴ of the total payroll used for the calculation of social insurance to the upper-level trade union, even if there is no trade union within their organisation. Furthermore, according to VGCL⁵, an enterprise can only retain part of such an amount when there is a grassroots trade union within their organisation. This regulation does

1 Labour Code 45/2019/QH14 dated 20 November 2019 of the National Assembly.

2 Clause 3, Article 3, new Labour Code.

3 Section g, Clause 1, Article 17, new Labour Code.

4 Clause 2, Article 26, Law on Trade Union 12/2012/QH13 dated 20 June 2020 of the National Assembly.

5 Decision 1908/QĐ-TLĐ dated 19 December 2016 of the Vietnam General Confederation of Labour (VGCL) on Promulgation of Regulations on Management of Trade Union Budget, the Trade Union Assets, Collection and Distribution of Revenues, Rewards and Penalties Related to Trade Union Revenues and Expenditures.

6 Guidance 2212/HD-TLĐ dated 6 November 2018 of the Vietnam General Confederation of Labour (VGCL) on preparation of 2019’s Trade Union Financial Estimates.

not reflect the right of employees to freely choose and decide on how to collect, manage and use its financing structure.

Meanwhile, as foreign employees have been subject to compulsory Social Insurance (SI) since 1 December 2018⁷, some local labour federations have requested that enterprises pay TU fees of 2 per cent for foreign employees who are subject to compulsory SI. However, Clause 1, Article 5, of the Law on Trade Union 2012 stipulated the right to establish, join and operate trade unions as follows: “Vietnamese employees working in agencies, organisations and enterprises have right to establish, join and operate trade unions”. Accordingly, foreigners do not participate in trade union organisations. Therefore, it is unfair to require enterprises to pay TU fees for foreign employees who do not participate in them.

In this light, it is important to ensure trade union laws indicate that the monthly trade union fees borne by employers should not contribute to the upper-level traditional trade union. Instead, they should go directly and entirely to the employees’ representative organisations at a grassroots level, including both “independent unions” and “traditional unions”. They should also be divided between each union organisation based on the ratio of member employees it represents. The employees’ representative organisations at the grassroots level should have the right to use the entire trade union fees contributed by employers and union membership fees contributed by their member employees. Furthermore, if there is no employees’ representative organisation yet in the enterprise, the trade union fees should be kept by the employer and then transferred to the corresponding employees’ representative organisations once they are established. The trade union fees borne by the employer should be revised by carrying out an actual survey of the opinions of enterprises, balancing the budget of the trade union system and considering reducing the rate from 2 per cent to 1 per cent of the payroll of local employees used for the calculation of social insurance; and the payroll of foreign employees should not be used as a basis to calculate monthly trade union fees.

Recommendations

We would like to make the following recommendations:

- Clarify the role and relation in the event an “independent union” and a “traditional union” both exist in the same enterprise in guiding regulations of the new Labour Code and the amended Law on Trade Union.
- Revise regulations on the financing of both an “independent union” and a “traditional union” to ensure clarity, prudence, equality and correctly reflect the rights of employees’ representative organisations in deciding their financing as set out before.

II. EXPANSION OF TERMINATION BY EMPLOYERS

Relevant authority: Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

Vietnam’s labour regulations are generally very protective toward employees, especially on issues related to employment termination. It is easy for an employee to unilaterally terminate the labour contract just by providing advance notice without any reason for termination (or even without any notice in certain circumstances).⁸ The new Labour Code has expanded the cases where employment would be terminated and the rights of the employer. This is a significant improvement and support to businesses in managing their workforce and productivity. Thus, certain regulations of labour laws on employment termination should now be reviewed and improved, especially regarding redundancy termination, and dismissal for cause.

⁷ According to Decree 143/2018/ND-CP dated 15 October 2018 of the Government elaborating on Law on Social Insurance and Law on Occupational Safety and Hygiene regarding compulsory social insurance for employees who are foreign nationals working in Vietnam.

⁸ Section dd, Clause 1, Article 5, new Labour Code.

Potential gains/concerns for Vietnam

Redundancies

According to both the former and current Labour Codes, a retrenchment must be based on a limited selection of legal grounds. These include changes to the organisational structure or technology, and due to economic crisis. In practice, the basis for redundancies would be broader than the permitted grounds provided by law. Redundancy due to business optimisation activities is not clearly provided as a justifiable termination ground under the law, while it is a common basis for redundancy in various companies. For example, if a foreign-invested company shifts their management position from Vietnam-based to regionally-based for centralised management and optimisation of their personnel system, certain employees will no longer report to a Vietnam-based manager, but directly to management personnel in the region. This business optimisation activity results in the redundancy of the Vietnam-based manager's position, and thus triggers the need to retrench the position due to redundancy. Since redundancies due to business optimisation activities are not clearly provided as a justifiable termination basis under the laws, the termination made on this basis would be legally challenged.

In general, we have observed that the authority and court would view an organisational restructuring as the elimination or change/restructuring of certain unit(s) within the organisational structure/chart of the employer, resulting in the elimination of the employees' job positions. For business optimisation activities, the company/ employer, however, may not undergo any actual or structural changes; nor the elimination of any department(s)/ unit(s). Thus, in such cases, businesses would encounter difficulties in justifying their retrenchment.

Further, both the former and new Labour Codes only address retrenchment as a mass lay-off which "affects multiple employees" (i.e. 2 or more employees). Therefore, this only sets out the procedures for the retrenchment of multiple employees. However, there is no guidance on how to make one employee redundant, which leads to different interpretations of several authorities on the retrenchment procedure of one employee. Some authorities uphold the redundancy of one employee as long as the procedures strictly follow those applicable to multiple employees. On the other hand, others find that the redundancy of one employee is illegal since this procedure is not provided under the law.

Dismissal

Nowadays, termination for cause - or "dismissal" - resulting from an employee's misconduct is happening more often and in a more sophisticated way. Under the new Labour Code, dismissal is limited to certain kinds of misconduct and does not cover many acts of misconduct that companies face.⁹

The former and new Labour Codes do allow an employer to dismiss an employee based on the severity of the damages caused. However, there is no clear guidance on the threshold for what should be considered "seriously detrimental" or "posing a seriously detrimental threat". During the registration of internal labour regulations, local Departments of Labour, Invalids and Social Affairs (DOLISA) have different interpretations of this provision, making the application of dismissal more difficult in practice. Moreover, for many acts of serious misconduct, it is not possible to prove material financial damages.¹⁰

Furthermore, there are deficiencies in the general labour disciplinary procedures. The statute of limitations for settling a labour disciplinary action varies from six to 12 months from the date the misconduct occurred. An employer must gather evidence, hold a disciplinary hearing and issue a dismissal decision within this limitation period. The general limitation period applicable to employee misconduct is six months. This is extended to 12 months where the act of misconduct is directly related to finance, assets and disclosure of technological or business secrets. This statute of limitations is problematic because employees carry out their acts of misconduct in a secretive manner, so the employer only learns about it after the limitation period has already expired. Another problem is that it often takes a considerable amount of time to gather evidence of the employee's misconduct, and employers have difficulty completing all the disciplinary procedures within the limitation period.

Recommendations

⁹ For instance, acts of aggression and hostility, fraud, giving or receiving bribes or kickbacks and violent behaviour (including intimidation, attempts to instil fear in others or subjecting others to emotional distress) should also be subject to dismissal.

¹⁰ For further analysis, please refer to the Human Resources & Training Chapter, EuroCham's Whitebook 2020. Available at: <www.eurochamvn.org/whitebook2020>, last accessed on 30 December 2020.

We would like to make the following recommendations:

- Amend the regulations so that retrenchment due to redundancies can be based on business optimisation activities of companies.
- Add a provision stating that the retrenchment of one employee is not, per se, unlawful, provided that the company conducts legal procedures applicable to the retrenchment of multiple employees.
- Expand the scope of acts of misconduct subject to immediate dismissal (e.g. fraud, giving or receiving bribes or kickbacks or aggressive, hostile and violent behaviour or having violated the internal safety rules which lead to potential risk to human life).
- Extend the statute of limitations for settling a labour disciplinary action from 12 to 24 months¹¹ and calculate the statute of limitations from the date the misconduct was discovered by the employer.
- Set out the threshold as a basis to determine “seriously detrimental” or “posing seriously detrimental damages” – for instance, a specific monetary threshold.

III. WORK PERMITS FOR FOREIGN WORKERS

Relevant authority: Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

We appreciate that the newly-issued Decree 152¹² has taken into account many of EuroCham’s recommendations. However, some concerns remain regarding the provisions on obtaining a work permit and the different interpretation of various provisions in the Decree.

Prior to the effective date of Decree 152, foreign employees would be entitled to one renewal of their work permit, even if it had previously been renewed. Since the effective date of Decree 152, we are aware of some local DOLISAs’ practice that all foreign employees are required to apply for a new work permit under the new regulations, even if they have not previously renewed it. This practice is not in line with the Labour Code, since Article 155 clearly states that a work permit may be extended once for two years.¹³ This, together with the changed criteria (as mentioned below), leaves businesses in a difficult position: due to this unexpected change, businesses have not had the opportunity to adjust their recruitment and HR strategies. Meanwhile, if they retain their foreign employees who are ineligible for a work permit, both employer and employee will be non-compliant with the law.

The new criteria for the determination of an “expert” qualification have also led to different interpretation by DOLISAs. Now, officials request that the major stated in the qualification (bachelor’s degree or higher) must exactly match the job title in order for a work permit to be issued. Previously, university degrees that were within the same general subject matter as the job were accepted.¹⁴ This strict interpretation, coupled with the removal of the “expert certificate” criterion, means that many foreign workers who were previously granted a work permit will not qualify under the new legislation even though they have been compliant with labour regulations.

Some officials have a very restrictive interpretation of the earlier-mentioned Article 155 of the Labour Code about the renewal of work permits. Our members have been informed that, if a foreigner wishes to apply for a new work permit after already extending it once (so having worked for four years), the foreigner must apply for a new work permit under a new job position and cannot apply under current criteria without any other restrictions.

Potential gains/concerns for Vietnam

MOLISA needs to ensure the consistent and compliant implementation of Decree 152 by the DOLISAs, whose different interpretation will have major negative impacts on entities using foreign employees. It will create a difficult

¹¹ Law 22/2008/QH12 of the National Assembly dated 13 November 2008 on Cadres and Civil Servants.

¹² Decree 152/2020/ND-CP of the Government dated 30 December 2020 on Foreign Workers working in Vietnam and Recruitment and Management of Vietnamese Workers working for Foreign Employers in Vietnam.

¹³ Article 155, The new Labour Code.

¹⁴ For example, a degree in mathematics would suffice for an accounting position.

situation where there is not sufficient time to change recruitment strategies or bring in new foreign employees who meet DOLISA's strict interpretation of the law. Due to COVID-19, the recruitment of foreign workers is already challenging. So these obstacles will make compliance with the work permit regulations harder.

In 2021, Vietnam and its economy have been seriously affected by COVID-19, and many people have lost their jobs. We believe that foreign investment will help to improve Vietnam's economy. Therefore, we recommend an approach that encourages the growth of foreign-invested businesses, while ensuring the sustainability and predictability of Vietnam's business environment.

Recommendations

We would like to make the following recommendations:

- › Allow one renewal of existing work permits, even if these have been renewed in the past.
- › Recognise university degrees that are within the same general subject matter as the job position, rather than require the degree to exactly match the job.
- › Allow applications for a new work permit after it has been renewed once, even when applying for the same job position.

IV. SOCIAL INSURANCE CONTRIBUTIONS FOR FOREIGN EMPLOYEES

Relevant Government authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA), and Vietnam Social Insurance Authority (VSIA)

Issue description

Under Article 2.2 of the Law on Social Insurance No. 58/2014/QH13¹⁵ (Law on Social Insurance) and Article 2 of Decree 143, foreigners working in Vietnam from 1 January 2018 are subject to statutory SI contributions if they hold a proper work permit or practising license and have a labour contract with a term of one year or more. The SI contribution scheme for foreigners is similar to that for Vietnamese, including five regimes: sickness, maternity, labour accident, pension, and survivorship allowance. Of these, the contribution to three short-term regimes (sickness, maternity, and labour accidents) has been applicable from 1 December 2018. The remaining two long-term regimes (pension and survivorship allowance) will be applicable from 1 January 2022.

Upon the termination of the Vietnamese labour contract or expiration of the work permit, and when the foreigners no longer live and work in Vietnam, they can claim a one-off SI allowance for the contribution period. The claimable amount and procedure are similar to that applied to Vietnamese employees. However, the regulations on SI regimes and claim procedures applicable for foreign employees do not seem practical and need to be reviewed.

Potential gains/concerns for Vietnam

Even though the long-term regimes are expected to be effective from 1 January 2022, the application of five regimes would not be fair or practical for foreign employees who keep contributing to SI in their home countries. We understand that, although the Government has been negotiating several bilateral agreements on recognition of social security contributions with some countries, Vietnam has not yet signed any such agreement. This will result in double costs for employees and employers as well as administrative burdens. Even if the Government could secure several bilateral agreements with some countries in the future, it would not cover all countries where foreign employees come from. Furthermore, the application of pension and survivorship regimes would be unnecessary. Foreign employees often work in Vietnam for a short period of time, especially in light of strict management when the Vietnamese authorities review and approve the labour quota before any work permit is issued. Decree 143 proposes that foreign employees, in such cases, will have the right to request a lump-sum payment before they leave Vietnam. However, the claim procedure will inevitably lead to a greater administrative burden for all stakeholders, including SI authorities, employers, and foreign employees. In addition, the relevant

¹⁵ Law 58/2014/QH13 adopted by the National Assembly on Social Insurance on 20 November 2014.

dossiers of expatriates issued by overseas authorities are required to be translated into Vietnamese and notarised in accordance with prevailing regulations, which are normally time-consuming.

In terms of the contribution rate, based on the table comparing social insurance contributions of foreign workers in Vietnam and other ASEAN countries¹⁶, the rate in Vietnam is far higher than other countries while the return rate is lower. The procedure of SI implementation for foreign workers is also a big question in practice. The insufficient procedure of SI implementation, especially the procedure to claim a lump sum when foreigners repatriate or move to other countries, will not have a positive effect on the attractiveness of Vietnam's investment environment.

Recommendations

We would like to make the following recommendations:

- Do not apply the pension and survivorship regimes to foreign workers, or only on an optional basis. Following the approval of the removal of the pension and survivorship from SI regimes, the SI contribution rate of foreign employees would reduce significantly.
- Create the flexibility for foreign workers to receive a one-off SI allowance upon repatriation from Vietnam by authorising the employer to carry out the procedure on expatriates' behalf.

V. DIGITAL TRANSFORMATION IN LABOUR, TRAINING AND EDUCATION

Relevant authorities: Office of the Government (OOG), Ministry of Labour, Invalids and Social Affairs (MOLISA), Ministry of Education and Training (MOET)

Issue description

The main building blocks for any thriving digital economy are connectivity, the skills of the labour force, the quality of education and logistics, as well as policies and regulations.¹⁷ The backbone of the digital economy, meanwhile, is fast and stable Internet connectivity. Therefore, it is vital to connect most of the population to 4G/5G mobile networks and to expand fibreoptic networks, particularly for educational institutions, businesses, and major institutions in both urban and rural areas. However, the costs related to being connected are not always affordable for everyone. In our view, a digital education and personnel development offensive backed by educational resources is an indispensable driver of economic development.

Few could have predicted last year that the world would be so deeply affected by a pandemic. At the same time, COVID-19 impacted both students and the labour force. Quality technical education is paramount to train young people with workplace skills. Quality education depends, among other things, on the retention of quality educators, a healthy learning environment, and both educators and students being trained according to modern pedagogies, particularly in relation to online teaching and learning.

COVID-19 has shown that e-learning and online learning are indispensable to continue educating students when studying at school or university is not possible. However, adequate tools were not always available. This caused delays in getting online learning started in 2020 which, in turn, had a negative impact on the education of many students. In our view, a National Education Platform should be created. This should be an online platform with educational resources and live broadcasts. It could encompass the entire education sector and be accessible free of charge for students. Regional and provincial authorities could play a leading role in cooperating with local digital competence centres with digital, scientific, and practical methodological-didactic competencies to support institutions, households, and individuals.

At the same time, the World Economic Forum reports that, when structured and delivered correctly, online learning results in the average student retaining 25-60 per cent more lesson content compared to a traditional

¹⁶ EuroCham position paper dated 2 October 2017, shared with MOLISA.

¹⁷ The Digital economy in Southeast Asia-Building the Foundations for Future Growth, 2019.

classroom. Moreover, online learning can require 40-60 per cent less time compared to learning in traditional environments.¹⁸ The closure of educational institutions, while necessary, invariably disrupted students' learning but also highlighted the importance of creating an infrastructure for quality online teaching and learning. Partnerships with private institutions that offer flexible, blended online and face-to-face teacher training programs, foreign languages, and soft skills training can be used to up-skill educators in the state system at all levels. It can also help students and fresh graduates entering the workforce acquire the necessary abilities, such as lifelong learning, in flexible and modern ways.

In today's rapidly-evolving labour markets, adaptability, flexibility, and lifelong learning will be the new competitive advantage. To be agile and adaptable means to be fully prepared for the demands of a more complex lifestyle and gainful employment. This makes lifelong learning indispensable and results in living and working in permanent evolution and development. This applies, in particular, to soft skills such as creative thinking, process-thinking, teamwork, and problem-solving, which so far have rarely been taught and promoted in schools and universities in Vietnam. The current discussion reflects the significant changes that are essentially triggered by IT. It is, therefore, obvious to stimulate and promote digital competencies.

One significant way in which Vietnam can empower its future labour force is by enhancing the skills of educators in all levels of the state education system. This can be accomplished by providing access to international-standard, continuous professional development and teacher training in modern educational practices. Partnerships with international private institutions offering online or blended educational programs (combining online learning with face-to-face studies) for the training of Vietnamese teachers in the public-school sector could be used to further develop local teachers with the international-standard skills to continue to develop students with the expanding skills necessary for future careers in emerging industries which might not yet exist. Training in differentiated learning and effective teaching can ensure that greater numbers of Vietnamese students are given the support to reach their full potential and successfully complete their education. This will translate into better-equipped workers and dynamic, lifelong learners entering the labour force.

Moreover, over the next decade, about 56 per cent of all employment in five ASEAN countries, including Vietnam, will likely be replaced or changed by technology.¹⁹ Therefore, enterprises will have to "innovate or die"; while the labour market must "get qualified or lose".

The National Digital Transformation Program 2025 with orientations towards 2030 set out under Decision 749/QĐ-TTĐ²⁰ was signed in March 2020. It contains the cornerstones for digital transformation in Vietnam.

Furthermore, it is important that programs at colleges or universities reflect the fact that there are around 20 specialised IT occupations. Meanwhile, students need to understand, choose, and study one or more specialised IT occupation programs from their second year, which will develop their professional competence regardless of their future position. This should be done in combination with a longer mandatory internship at IT companies or IT departments in medium and large enterprises.

Potential Gains/Concerns for Vietnam

This fast digital development will have significant employment effects. However, the transformation is assessed very differently depending on the specific design of digitisation and the success of necessary qualification efforts. We also expect that new job profiles will be created, and work will never "run out".²¹ Many routine processes are being replaced by systems or robots and, in the further development of digital transformation, by artificial intelligence. In regions with many manufacturing industries, more jobs will theoretically be substituted. However, it is not guaranteed to lead to regional job losses. A strong industry can also obtain a competitive advantage if it moves digitally. Regions with good educational infrastructure will earn a higher digitisation dividend in the future.

The National Education Platform mentioned above would increase universal access to educational resources and

18 "The COVID-19 pandemic has changed education forever. This is how," World Economic Forum, 29 April 2020. Available at: <www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning>, last accessed on 30 December 2020.

19 "Technology transforming industries critical for growth and jobs in ASEAN", 2019, International Labour Organisation. Available at: <www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_496766/lang-en/index.htm> last accessed on 23 March 2021.

20 Decision 749/QĐ-TTĐ on introducing program for national digital transformation by 2025 with orientations towards 2030 dated 3 June 2020 of Prime Minister of Vietnam.

21 "Future of work and skills", 2017, Organisation for Economic Co-operation and 23 March 2021.

training courses, especially for those in rural communities. E-learning might be indispensable in the future, but it has to be done ensuring continuity of education. In this light, we applaud the publication of MOET's draft circular promulgating the organisation of online teaching for high schools and continuing education centres which are believed to allow teachers and pupils to utilise e-learning tools.

With so much dynamism and development taking place in Vietnam, both local and international educational institutions could attract students from across the region and even beyond, with the potential to become a regional hub for quality education. However, numerous studies link air pollution with negative impacts on education.²² Poor air quality is a deterrent to attracting and retaining expert foreign employees with families. With increasing numbers of international educational institutions entering Vietnam, the on-going rapid changes in technology, the health of Vietnam's population and its reputation as a competitive destination for both foreign students and expatriate families is now in question due to increasing air and environmental pollution in the main cities of Vietnam. The combination of these factors results in fewer numbers of international students seeing Vietnam as an attractive study destination.

Finally, through Decree 86²³, partnerships between private educational and training institutions operating in the country can be created as well as from the expertise of foreign institutions to address current skills gaps.

Recommendations

We would like to make the following recommendations:

- Improve the network infrastructure nationwide and connect citizens to 4G/5G at reasonable prices in order to avoid a digital divide.
- Develop an online National Education Platform with educational resources and live broadcast, which would encompass the entire education sector and accessible without charge by students nationwide.
- Perform more extensive research on and application of e-learning.
- Ensure that the draft circular promulgating the organisation of online teaching for high schools and continuing education centres, which are believed to allow teachers and pupils to utilise e-learning tools, will be adopted at short notice.
- Ensure that regional and provincial authorities play a leading role in cooperating with local digital competence centres to support institutions, households, and individuals.
- Adapt programs to take into consideration the large variety of specialised IT occupations allowing students to study one or more specialised IT occupation programs from their second year.
- Make a longer internship at IT companies or IT departments in medium and large enterprises mandatory.
- Collaborate with private institutions offering international-standard teacher training and professional development to enhance the abilities of local teachers to develop generations of lifelong learners so that they are prepared to enter the labour force.
- Enhance the attractiveness for the education sector by prioritising efforts to improve air quality.

ACKNOWLEDGEMENTS

EuroCham Human Resources and Training Sector Committee.

EuroCham Digital Sector Committee for section V. Digital transformation in Labour, Training and Education Practice.

FOR MORE HR-RELATED ISSUES, PLEASE ALSO READ

- Chapter 12 Women in Business Section I. Labour Regulations Affecting Female Employees

²² S. Roth, "Air pollution, educational achievements, and human capital formation", *Institute of Labour Economics*, IZA, 2017, pp.2.

²³ Decree 86/2018/ND-CP dated 06 June 2018 of The Government of Vietnam on foreign cooperation and investment in education.

CHAPTER 12 WOMEN IN BUSINESS

OVERVIEW

The EuroCham Women in Business Sector Committee would like to express its sincere appreciation for the positive changes and efforts taken by the Government and relevant ministries to advance the position of women in both the workplace and society in general. We truly appreciate the Government's openness to consultation and collaboration.

Vietnam has long been committed to advancing women's rights. More than ten years ago, Vietnam prepared its first National Strategy on Gender Equality (NSGE) setting out its objectives and targets to improve gender equality from 2011 to 2020. Vietnam has now prepared a new NSGE, which will be effective from 2021 to 2030, considering new obstacles to be addressed. The COVID-19 pandemic highlighted and exacerbated existing gender inequalities. Women have struggled more with job security and balancing unpaid care work with work responsibilities during lockdown and school closures. In addition, during lockdown, domestic violence spiked significantly, affecting both the emotional and economic stability of families and households, and workers' productivity.^{1 2}

Besides the persistent unequal burden of unpaid care work, the imbalance of the sex ratio at birth also illustrates the socio-cultural perception of the position of women in society. Social norm changes on gender equality and women's roles in public and private life are improving. However, the process is slow, and the Government should prioritise and take a more structural and institutional approach. There is a risk that the existing gender imbalances worsen and continue to lead to more gender-based violence against women and girls.

In conjunction with the new NSGE, related pieces of legislation are being amended. These new laws need to be tailored to achieve the goals of gender equality. The new Labour Code 2019³ and Decree 145⁴ include many positive points to protect women in the workplace. Decree 145 includes a section assuring gender equality and regulations exclusively applied to female employees which provides protective measures for female workers, and incentives for employers to hire and improve gender equality in the workplace.

Moreover, the NSGE implores a reduction in the number of women working in agriculture. To ensure that women will not fall between the cracks and can continue employment, in light of increased automation in the manufacturing, garment/textile and agricultural sectors, re-schooling and vocational training should be made available to ensure sustainable economic growth. This is also a target of the NSGE. In addition, the proportion of female business leaders would need to increase. It is, therefore, important that the newly-revised SME Support Law⁵ is implemented in a gender-sensitive manner, responding to the needs of female entrepreneurs. Furthermore, women-led cooperatives should be actively encouraged.

Preparatory work has also begun to revise the Gender Equality Law (GEL)⁶ and the Domestic Violence Law (DVL)⁷, which, if drafted properly, can significantly improve women's lives. A review of the GEL is warranted because international standards and frameworks on gender issues, domestic laws and the NSGE have changed. Therefore, the GEL should be updated to align with these. Domestic violence and violence against women in the public sphere should be addressed in tandem. As in many countries in the region, domestic violence rates are high and effects on the physical and mental health of victims, and the estimated economic cost, could be mitigated better.

1 UN Assessment of the Social and Economic Impact of COVID-19 in Viet Nam, dated 30 September 2020, p. 51. Available at: <https://vietnam.un.org/sites/default/files/2020-10/UN%20Assessment%20on%20the%20Social%20and%20Economic%20Impact%20of%20COVID-19%20in%20Viet%20Nam_merged.pdf>, last accessed on 6 August 2021.

2 "Domestic violence reports spike amid social distancing", Viet Nam News, dated 23 April 2020. Available at: <<https://vietnamnews.vn/society/715674/domestic-violence-reports-spike-amid-social-distancing.html>>, last accessed on 6 August 2021.

3 Law 45/2019/QH14 of the National Assembly dated 20 November 2019 on Labour (Labour Code 2019).

4 Decree 145/2020/ND-CP of the Government dated 14 December 2020 elaborating a number of articles of the Labour Code on working conditions and labour relations.

5 Law 04/2017/QH14 of the National Assembly dated 12 June 2017 regulating provisions of assistance for small and medium-sized enterprises.

6 Law 73/2006/QH11 dated 29 November 2006 of National Assembly on Gender Equality.

7 Law 02/2007/QH12 dated 21 November 2007 of National Assembly on domestic violence prevention and control.

I. LABOUR REGULATIONS AFFECTING FEMALE EMPLOYEES

Relevant authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA), Department of Labour, Invalids and Social Affairs (DOLISA)

1. Implement provisions promoting equal employment opportunities

Issue description

Vietnam has recognised the goal of achieving gender equality and, as mentioned, has just released its new NSGE. A key aspect of this strategy is to ensure that women earn pay equal to men and are equally eligible for promotions and leadership positions.

The Labour Code 2019 and Decree 145 include several provisions furthering these goals and obligating employers to pay, recruit, promote and treat female workers fairly. Nevertheless, specific duties related to implementing these concepts are absent, as is an oversight mechanism. Therefore, we suggest including further detail on these issues in a circular.

Potential gains/concerns for Vietnam

The gender pay gap has long been an issue in Vietnam similar to other countries. The Labour Code 2019 attempts to remedy this deficiency under Article 90.3 which states that employers must not discriminate based on the gender of their workers performing equal work and pay salaries fairly. Article 78.1 of Decree 145 reiterates this obligation, and states that employers must treat male and female workers equally.

These regulations represent noble intentions but require specific implementation mechanisms to have a real impact. Without further specifics, these regulations are similar to those previously in place which failed to resolve the gender wage gap or unequal working conditions for men and women.

To ensure employers treat male and female workers equally, particularly in relation to salary, specific, objective factors are needed and serve to determine whether the treatment of male and female workers should be the same:

- The job tasks involved;
- The required experience, ability, education and training;
- The degree of mental and physical exertion required;
- The level of accountability and responsibility associated with the work; and
- The type of working conditions.

In addition, we hope that the Government will actively discourage and condemn the practice of gendered recruitment. From advertisement to interviews, the premise that a person's gender can be a competency that affects their ability to perform tasks in the workplace is misconstrued. It contradicts well-established international standards of non-discrimination. More specifically, ILO Convention 111, to which Vietnam adheres, prohibits distinction based on sex nullifying or impairing equality of opportunity to access particular employment. It also stipulates that Member States should actively seek to enforce this principle in policy and through outreach to employers (organisations).⁸

Currently, the complaint resolution procedure outlined in Decree 24⁹ allows an aggrieved employee to either commence a lawsuit regarding the violation of their labour rights, or to first make a formal complaint to their employer. Subsequently, if still unsatisfied, the employee may appeal the matter to the Labour Inspectorate of DOLISA. A commission within each DOLISA should handle complaints relating to equal employment rights.

⁸ International Labour Organization Convention 111, Articles 1-3.

⁹ Decree 24/2018/ND-CP dated 27 February 2018 of the Government on providing for settlement of complains labour and denunciations of labour, vocational education, Vietnamese guest workers, employment, occupational safety, and hygiene.

This way, the Government officials dealing with these issues would be well-informed of the objective criteria to evaluate complaints and develop expertise for handling these matters.

Recommendations

We would like to make the following recommendations:

- Issue guiding regulations to assure equal treatment of men and women, including equal pay, and details on implementing these provisions.
- Set up a commission within each DOLISA to specifically handle complaints relating to equal employment rights.
- Discourage gendered recruitment, and ensure the ILO standard is observed in any and all recruitment activities under the direction of a national or local Government authority.

2. Set out clear, concrete incentives encouraging employers to implement female-friendly policies

Issue description

Article 79.2(a) of Decree 145 encourages employers to take several measures to improve conditions for its female workers, such as permitting a flexible timetable, part-time work schedules or working from home, among others. However, no specific incentives are set out to provide these favourable conditions. It is therefore questionable whether this general encouragement would have any impact.

Article 83.2 states employers with large numbers of female employees will be eligible for a tax reduction as prescribed by tax laws, which repeats article 11.2(a) under Decree 85¹⁰. However, this tax reduction is only available for the production, construction or transportation industries. It is equivalent to the actual costs incurred due to a limited number of expenses incurred on behalf of female employees. Under Article 21.1 of Circular 78¹¹, employers within these industries employing between ten and 100 female workers who account for more than 50 per cent of its total regular employees, or regularly employs over 100 female labourers who account for more than 30 per cent of its total regular employees, are entitled to a very limited CIT cut. The tax reduction as set out in this article is limited not only in its scope of subjects, but also in respect of the items upon which the tax reduction may be calculated. Article 6.2.9 of Circular 78 limits the tax reduction to the equivalent of certain specific expenses.¹²

Potential gains/concerns for Vietnam

Vietnam encourages employers to adopt various policies, such as flexible working and work-from-home, which would support women. However, due to the general nature of these encouragements and the failure to link them to concrete incentives, they have had little impact so far.

The tax incentive provided to companies employing many female employees is too limited to actually improve the position of women in the workplace. It applies to only a few industries and is equivalent to a very limited number of expenses already incurred by the employer. If anything, this tax cut would compensate the employer for some expenses already incurred, but would not provide external, driving motivation for change.

We believe that setting out clear incentives for employers who adopt policies in line with Article 79.2(a) of Decree 145 in forthcoming decrees would be helpful. Furthermore, the law regarding the tax cut for companies employing many female employees should be amended. It applies only to companies in the production, construction, or transportation industries. Instead, it should apply to all industries in Vietnam. Particular emphasis should be placed on rewarding companies which place women in top management positions, as women are still underrepresented

10 Decree 85/2015/ND-CP dated 1 October 2015 of the Government detailing a number of articles the Labour Code in terms of policies for female employees.

11 Circular 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance guiding the implementation of the Government's Decree 218/2013/ND-CP of 26 December 2013, detailing and guiding the implementation of the Law on CIT.

12 Expenses for vocational retraining for female labourers in case they need to change jobs; salaries and allowances (if any) for teachers in crèches and kindergartens organised and managed by enterprises; expenses for extra medical check-ups in the year, such as examination of occupational, chronic and gynecological diseases for female labourers; allowances for female labourers after the first or second birth; and, overtime allowances for female labourers in case for objective reasons these female labourers do not take leave after childbirth or have breastfeeding breaks but continue to work for enterprises, who are paid under current regulations, including the case of payment of product-based wages in which female workers still work without taking leave as prescribed.

in these positions in Vietnam. Instead of using a quota based on the total number of female employees at a company, we believe that a quota based on the number of female employees in upper-level management positions should be used. Across industries, it is common to see many female employees, but very few occupy key management roles. Finally, we believe a tax cut based on a flat reduction rate for companies with over 50 per cent of their upper-level management team comprised of women would motivate companies to make a real change. Furthermore, childcare support would have a positive impact on male but especially female workers' productivity. Though the Labour Code and Decree 145 do not provide concrete tax incentives or subsidies, the Government should encourage companies to support their workers with childcare which would result in economic benefits.¹³

Recommendations

We would like to make the following recommendations:

- Set out clear incentives for employers who adopt policies in line with Article 79.2(a) of Decree 145 in forthcoming decrees.
- Amend the law regarding the tax cut for companies employing many female employees concerning broadening the scope of applicable sectors and industries and the percentage of tax reduction.
- Implement a quota based on the number of female employees in upper-level management positions instead of the total number.

3. Option to accept pay in lieu of taking nursing breaks should be deleted

Issue description

Vietnam's labour law provides extensive maternity rights to women which rival and sometimes surpass those of women in other countries. Vietnam reveres and protects motherhood, and the rights granted to working women relating to giving birth and raising children support the advancement of women in the workplace. Under the previous Labour Code¹⁴ and its implementing decrees, a woman was entitled to a rest break of 60 minutes per day when she had a child under 12 months old so that she could nurse or pump milk for her baby. This additional rest break encouraged female workers to continue to breastfeed until their babies were 12 months old, which is considered extremely beneficial for an infant's health.

However, under Decree 145, a new provision has been introduced which allows women, with the agreement of their employer, the option to receive pay in lieu of the 60-minute break instead of taking it.¹⁵

Potential gains/concerns for Vietnam

The new option for employees to receive additional pay instead of taking the 60-minute nursing break could result in employers pressuring female employees to accept this alternative. Due to Vietnam's booming economic activity, the business community strongly pushed for an increase of the overtime cap, stating that they were facing difficulties staffing their companies for all the required work. Thus, we anticipate that allowing female employees to work for an hour less for an entire year could be difficult, and this could pressure them to accept additional pay instead of taking the break. In turn, this would discourage women from breastfeeding for significant periods and impact infants' health.

Recommendations

We would like to make the following recommendation:

- Remove the provision offering the option of female employees receiving pay in lieu of the break.

13 IFC: The Business Case for Employer-Supported Childcare in Vietnam, dated August 2020. Available at: <https://www.ifc.org/wps/wcm/connect/e401b5eb-e38d-48d7-a4f2-2c10380ded49/Final_IFC_Childcare_Vietnam_Summary_Web.pdf?MOD=AJPERES&CVID=nkwDTbj>, last accessed on 6 August 2021.

14 Law on Labour 10/2012/QH13 of the National Assembly dated 18 June 2012 (Labour Code 2012).

15 Article 80.4(c), Decree 145.



4. Protection for good faith reports of sexual harassment found to be unsubstantiated

Issue description

Vietnam's new Labour Code 2019 includes extensive provisions on the prevention of sexual harassment in the workplace, which is a welcome and positive development. However, the wording of a provision in Decree 145 suggests that false reports of sexual harassment would be subject to disciplinary action. Employer's regulations on sexual harassment which must be included as part of their Internal Labour Regulations must include provisions addressing "Disciplinary actions against perpetrators of sexual harassment and false accusers, which depend on the nature and seriousness of the offence".¹⁶

Potential gains/concerns for Vietnam

Determining whether an act, gesture or comment constitutes sexual harassment is often a subjective exercise. However, certain acts are listed (non-exhaustively) in Article 84(2) and provide guidance to employers. The international standard of a victim-centred approach dictates that the experience of the alleged victim should be guiding rather than the intent of the alleged perpetrator. This is very important in order to avoid a defence that refers to the intention to be friendly or funny, as this lies at the core of many sexual harassment in the workplace incidents. This is a structural part of the problem in workplaces that sexual harassment policies should seek to address. Nevertheless, an employee may make a sexual harassment complaint in good faith, but the employer may find the act does not constitute sexual harassment. However, this should not give rise to disciplinary action against the complainant as that would discourage current and future victims of sexual harassment to come forward.

Thus, we find the provision stating that false accusers will be subject to disciplinary action concerning. Individuals should be able to make a report of sexual which will be considered a good faith report even though it is ultimately determined to be unfounded by the employer. Such a finding may simply result from different cultural views or subjective perceptions of the complained act; it does not necessarily imply that the accuser intentionally made a false report. Punishing those who make complaints about sexual harassment ultimately rejected has a negative effect on the sexual harassment report mechanism. Individuals may be frightened to come forward with genuine complaints if they believe they would face disciplinary action if the employer disagrees with their perception of events. That would be detrimental to the very core purpose of the new sexual harassment legislation.

Recommendations

We would like to make the following recommendation:

- Clarify that disciplinary action only can be applied in the case of an unfounded complaint where there is clear and concrete evidence of the complainant's intention to provide untrue information.

II. OTHER LEGISLATION

Issue description

With the adoption of the new National Strategy on Gender Equality and developments in domestic law as described above, for instance in the labour law as well as in international law, the GEL should be revised so it corresponds better to the current and future context and legal framework of Vietnam.

The implementation of the DVL also needs to be improved. In 2020 and 2021, as the world dealt with the COVID-19 crisis, lockdowns around the world have exacerbated the issue of domestic and gender-based violence. In Vietnam, the walk-ins at the Peace House Shelters doubled during the lockdown in April 2020 and the calls to the domestic and gender-based violence hotline increased by a stunning seven times that month, compared to the same period in prior years.¹⁷

¹⁶ Article 85.1(d), Decree 145.

¹⁷ UN Analysis on Social impacts of Covid-19 and strategic policy recommendations for Vietnam; Rise in domestic violence during lockdown in Vietnam (pages 12-13, 50-53), United Nations Vietnam August 2020, available at: <https://vietnam.un.org/sites/default/files/2020-10/UN%20analysis%20on%20social%20impacts%20of%20COVID-19%20and%20strategic%20policy%20recommendations%20for%20Viet%20Nam_0.pdf>, last accessed 22 March 2021.

Potential gains/concerns for Vietnam

The United Nations Population Fund has conducted a comprehensive review of ten years of GEL's implementation.¹⁸ This can be used to review the Vietnamese GEL and determine further needed improvements. Some key obstacles to gender equality include violence against women, the burden of unpaid care and domestic work, human trafficking, early or forced marriage, imbalanced sex ratio at birth and different retirement age for women. Another challenge to gender equality is indirect discrimination, where general rules or policies appear to be neutral but have a negative impact on women, men, girls or boys. This needs to be recognised in the GEL. From a structural perspective, gender equality initiatives need to be integrated into all ministerial plans, and a coordination mechanism to address gender equality issues, such as handling complaints, needs to be implemented to improve the substantive gender equality in Vietnam, not merely the formal equality by way of gender neutrality.

Domestic violence's physical and mental impact on victims is serious, but the economic impact of these types of violence should not be underestimated either. Due to absenteeism and decreased productivity, the effects of violence outside the workplace are an issue that affects companies' bottom line as well. The gender-based violence study by the General Statistics Office of Vietnam and MOLISA published in July 2020 shows that the Vietnamese economy misses out significantly as domestic violence and gender-based violence have not decreased in a meaningful way.¹⁹

As the SME Support Law is approved, focus should now be on the gender-sensitive implementation, as the gender-mainstreaming process of the law has been successful. The law's implementation should also ensure that female-led SMEs are properly represented in the incentives and programs within the scope of the SME Support Law. We note that the Government has taken more initiative in supporting female entrepreneurship, primarily through Project 939, an initiative which commenced in 2017 for the period 2017 to 2025 to increase the number of women-owned start-ups and providing them with consultancy services. The Government should coordinate the incentives and programs under the SME Support Law and Project 939 to maximise their impact.

Recommendations

We would like to make the following recommendations:

- Prioritise the Gender Equality Law's review and update in 2021 and 2022.
- Prioritise the implementation of the current Law on Domestic Violence as well as improvement thereof.

ACKNOWLEDGEMENTS

EuroCham Women in Business Sector Committee.

¹⁸ "Review of 10 year implementing the Law on Gender Equality" by United Nations Population Fund and the Ministry of Labour, Invalids and Social Affairs, Hong Duc Publishing House, available at: <https://vietnam.unfpa.org/sites/default/files/pub-pdf/ge_eng.pdf>, last accessed 22 March 2021.

¹⁹ "National study on Violence against Women in Viet Nam in 2019", United Nations Population Fund. Available at: <<https://vietnam.unfpa.org/en/publications/national-study-violence-against-women-viet-nam-2019>>, last accessed on 22 March 2021.

A large, stylized white letter 'C' logo, which is the first letter of the word 'Consumers'.

CONSUMERS' CHOICE

CHAPTER 13 CROPLIFE AND FOOD, AGRI AND AQUA BUSINESS

OVERVIEW

In 2020, the agriculture and rural development sector implemented the plan, set out annually by the Government, overcoming the following challenges¹:

- The COVID-19 pandemic is complicated and affects the economy and society. It is disrupting global supply chains and directly affecting production, export and import activities, as well as the consumption of agricultural products²;
- African swine fever has decreased sharply but has not yet been completely controlled, causing many difficulties for re-herding and increasing herds. Meanwhile, Avian flu is at risk of breaking out when flocks are very large; and
- Floods, droughts, and saltwater intrusion have occurred in the whole country, especially in the Central region and the Mekong Delta. The consumption market for some agricultural products tends to decrease and is affected by the trade war between major economies, and countries have increased the use of protective measures and technical barriers.

The agricultural sector has overcome difficulties and challenges to realise the “dual goal” of both developing the industry and preventing epidemics.

By the end of 2020, the industry had achieved positive results. Synchronous restructuring solutions throughout the whole sector have created the momentum to maintain an industry-wide GDP growth rate of over 2.65 per cent.³ Total export turnover reached US\$ 41.25 billion, up 2.5 per cent compared to 2019.⁴ For the first time ever, Vietnam's rice exports surpassed Thailand's, even amid one of the most difficult and challenging times.⁵ Over 62 per cent of rural communes qualified as new rural areas.⁶ Meanwhile, the forest coverage rate reached 42 per cent⁷, the income of rural residents 43 million VND per person⁸, and exports US\$ 41.25 billion.⁹

The agricultural sector has creatively implemented the direction of the Prime Minister, turning “danger” into “muscle”. It has promoted advantages in the production, processing, and export of agricultural, forestry and aquatic products to both prepare the conditions for production, develop markets, and promote exports.¹⁰

The COVID-19 pandemic has continued in 2021 and probably will continue beyond. As a result, some input

- 1 “The agricultural sector is proactive in facing new difficulties and challenges”, Ministry of Agriculture and Rural Development, 16 June 2020. Available at: <www.mard.gov.vn/Pages/nganh-nong-nghiep-chu-dong-truoc-kho-khan-thach-thuc-moi.aspx>, last accessed 14 March 2021.
- 2 “The agricultural sector achieved a record export turnover of USD 41.25 billion”, Agribank, 25 December 2020. Available at: <www.agribank.com.vn/wcm/connect/AGBankEn/ve-agribank/news/agricultural-markets/The-agricultural-sector-achieved-a-record-export-turnover-of-USD-41.25-billion?cmptid=40627441-a7d7-4313-af19-010f1c375f64&srv=cmpt&source=library>, last accessed on 14 January 2021.
- 3 “In 2020, the agricultural sector ‘overcome the storm’ to the finish line”, Nhan Dan, 29 December 2020. Available at: <<https://nhandan.com.vn/nhandinh/nam-2020-nganh-nong-nghiep-vuot-bao-ve-dich-629923/>>, last accessed on 14 January 2021.
- 4 Ibid.
- 5 “Agriculture reaching for the skies”, *Vietnam Investment Review*. Available at: <www.vir.com.vn/agriculture-reaching-for-the-skies-82608.html>, last accessed on 30 January 2021.
- 6 “Vietnam to have 60% of communes to meet new rural standards in 2020”, Ministry of Construction, 31 May 2020. Available at: <<http://moc.gov.vn/en/news/62814/vietnam-to-have-60-of-communes-to-meet-new-rural-standards-in-2020.aspx>> last accessed on 14 January 2021.
- 7 “Vietnam's nationwide forest coverage reaches 42%: Minister”, Hanoi Times, 03 November 2020. Available at: <<http://hanoitimes.vn/vietnams-nationwide-forest-coverage-reaches-42-minister-314704.html>>, last accessed 14 January 2021.
- 8 “Income of each rural farmer will reach 43 million VND in 2020”, Phu Nu Vietnam, 24 December 2020. Available at: <<https://phunuvietsam.vn/thu-nhap-moi-nguoi-dan-nong-thon-dat-43-trieu-dong-trong-nam-2020-20201224152115449.htm>>, last accessed on 14 January 2021.
- 9 “Export of agricultural, forestry and fishery products in 2020 will reach 41 billion USD”, Thoibaokinhdoanh, 24 December 2020. Available at: <<https://thoibaokinhdoanh.vn/thi-truong/xuat-khau-nong-lam-thuy-san-nam-2020-dat-41-ty-usd-1075625.html>>, last accessed on 14 January 2021.
- 10 “Challenges compels restructuring in agriculture”, *Viet Nam News*, 17 March 2020. Available at: <https://vietnamnews.vn/economy/653688/challenges-compels-restructuring-in-agriculture.html>>, last accessed on 02 August 2021.

supply chains are interrupted and impact the consumption of agricultural, forestry, and fishery products. This, in turn, will increase demand and delay the negotiation and conclusion of measures to promote market opening between Vietnam and other countries. It will also increase non-tariff market protection measures due to concerns of outbreak and recurrence of disease associated with substances, quantity of goods, services and food hygiene and safety requirements.

Despite the successes, most households in agricultural and rural areas were heavily affected by the pandemic, especially during social distancing periods: about 1/3 of farming households said they were badly affected by the pandemic.¹¹ Most agricultural businesses are still operating, but some that depend on annual crops like rice, vegetables, and fruits have seen slight interruptions in their operations. The balance of food security in the Asian region and in Vietnam are dependent on farmers' access to fundamental agricultural inputs – including crop protection products¹² and quality seeds.

According to the UN Food and Agriculture Organisation (FAO), demands for rice, fruits, and fisheries in the world market will continue to increase.¹³ This will be vital for Vietnamese agricultural exports to maintain a high growth rate and that by 2030 Vietnam will be in the top 10 of agricultural, forestry and fishery processing countries in the world from its current 16th position.¹⁴ The EU, Japan, the United States (US), South Korea, and China are the leading markets importing Vietnamese fruits and vegetables.

Vietnam's agricultural sector continues to restructure. It is taking advantage of technology as part of the industrial revolution 4.0 and, at the same time, attracting local and foreign investment. The industry is also utilising free trade agreements to better connect with export terminals, increase the level in the supply chain, increase the value-added content, and enhance the competitiveness of Vietnamese agricultural products.

However, Vietnam needs to further diversify its production, move to high-added-value products, build a brand strategy, create more Geographical Indications, ensure traceability, minimise material loss during harvesting and post-harvest production, increase quality, and open up new markets in neighbouring countries. Achieving this export goal also depends on mitigating national food safety-related issues, ensuring farmers are enabled through the responsible use of technology and making certain that importing countries strengthen technical barriers and apply stricter regulations on food safety, quality, and origin.¹⁵

At the ISG 2020 Plenary Meeting, MARD and international partners adopted the Joint Declaration "Cooperation for Vietnam's Agricultural and Rural Development in the Context of the COVID-19 pandemic".¹⁶ This declaration states that the following issues should be prioritised: Smallholder livelihoods and social welfare policy recommendations, food security policy, the overall capacity of the agricultural sector, and the value chain of agricultural products. International associations that attended the ISG Plenary Meeting are committed to assisting Vietnam to build a roadmap for agricultural and rural development in the context of COVID-19 and green restoration.¹⁷

Vietnam's smallholder farmers rely on crop protection products to prevent pests, disease and weed pressures from damaging their crops and limiting their harvests. 40 per cent of the world's potential crop production is lost annually because of weeds, pests and diseases.¹⁸ And, as the impacts of climate change in Vietnam and across

11 "Impacts of Covid-19: Disruption in Agriculture Supply Chain and solution to promote market access", *Vietnam Academy of Agriculture Science*, Available at: <https://vaas.vn/tieu-diem-binh-luan/tac-dong-cua-covid-19-dut-gay-chuoi-cung-ung-nong-san-va-giai-phap-tai-co-cau>, last accessed on 18 January 2021.

12 When in this chapter reference is made to crop protection products it includes chemical pesticides, herbicides and fungicides, but also for example insects that help to protect crops.

13 "Vietnam sets a target for fruit and vegetable export turnover from 8 to 10 billion USD", MARD's News Portal. Available at: www.mard.gov.vn/en/Pages/vietnam-sets-a-target-for-fruit-and-vegetable-export-turnover-from-8-to-10-billion-usd.aspx, last accessed on 5 Jul 2021

14 "The export value of agricultural, forestry and fishery products of Vietnam is set to reach USD 50 billion by 2025", *Agribank*, 31 December 2020. Available at: www.agribank.com.vn/en/ve-agribank/tin-tuc/dtl?current=true&urle=wcm:path/agbanken/ve-agribank/news/agricultural-markets/the-export-value-of-agricultural%2C-forestry-and-fishery-products-of-vietnam-is-set-to-reach-usd-50-billion-by-2025, last accessed on 02 August 2021

15 "Assuring Food Safety and Quality", *FAO Food and Nutrition Paper No. 76*. Available at: <http://www.fao.org/3/a-y8705e.pdf>, last accessed on 19 January, 2020>, last accessed on 19 January 2021.

16 "Strengthening international cooperation to support agricultural and rural development in Vietnam in the context of COVID-19", Ministry of Agriculture and Rural Development, 02 December 2020. Available at: <https://www.mard.gov.vn/en/Pages/strengthening-international-cooperation-to-support-agricultural-and-rural-development-in-vietnam-in-the-context-of-covid-19.aspx>, last accessed on 14 January 2021.

17 "Vietnam seeks to support agricultural and rural development during COVID-19", *VOVWorld*, 11 December 2020. Available at: <https://vovworld.vn/en-US/news/vietnam-seeks-to-support-agricultural-and-rural-development-during-covid19-931017.vov>, last accessed on 02 August 2021.

18 "40% of food crops in the world are lost due to pests", *The Intra America News*, 01 January 2020. Available at <https://elintranews.com/mundo/2020/01/01/fao-40-de-cultivos-en-el-mundo-se-pierden-a-causa-de-plagas/>, last accessed on 02 August 2021.

Asia grow, the various pressures will become more extreme – making effective use of crop protection products more important than ever.

Beyond increased yields, crop protection products also play a key humanitarian role in aiding Vietnam's smallholder farmers. In particular, the responsible and safe use of herbicides helps lift the burden of the out-of-date and inefficient practice of hand weeding. Eliminating the need for this back-breaking practice has been greatly beneficial to the health of many of Vietnam's 24.5 million smallholder farmers as well as their families and a giant leap forward. The protection that advanced crop protection products provide is not limited to the field. These products also help prolong the viable life and prevent post-harvest losses of crops while in storage.

Additionally, biotech crops have expanded beyond the big four (maize, soybeans, cotton, and canola) to give more choices for many of the world's consumers and food producers. Biotech crops increased the production of food and feed around the globe and helped slow the advance of climate change by reducing carbon emissions. It is estimated that biotech crop plantings lowered carbon dioxide emissions equivalent to removing 15.3 million cars from the road for an entire year.¹⁹

Taking advantage of the EVFTA and other points mentioned before, we will work on improving efficiency in production, trading, importing and exporting agriculture, food, livestock and seafood of Vietnam with the detailed recommendations listed in the rest of this chapter.

I. A SUSTAINABLE AGRICULTURAL SECTOR

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Industry and Trade (MOIT), Ministry of Natural Resources and Environment (MONRE)

Issue description

Crop protection products play a role in producing more safe, affordable, and nutritious food using fewer resources. Without this tool, more than half of the world's crops would be lost to insects, diseases, and weeds, leading to enormous economic and environmental damage.²⁰

We are aware that MARD is currently reviewing crop protection products registered in Vietnam with the intention of implementing a policy to tighten the management of crop protection products according to Article 49 of Law 41/2013/QH13 of the National Assembly dated 25 November 2013 on Plant Protection and Quarantine. We recognise that the range of crop protection products registered for use in Vietnam has simply grown too large, is littered with chemicals that are outdated and rarely used and has become a worrisome management issue for MARD. Producers have voluntarily withdrawn from this list outdated products, those with low biological efficacy, and those that do not meet the requirements of production or non-business. Along with that, new registrations for a number of new-generation products are made, applying high technology, safety and efficiency.

However, we would like to emphasise that a hazard-based banning decision would remove safe, effective, and critically important weed/insect/disease management tools from the toolbox of Vietnam's 25 million farmers. This would have negative impacts on the nation's agricultural sector, consumers, and economy.

While we appreciate that MARD has expressed its commitment to a review process that includes consultation with industry, there are still some pending concerns. The sector calls on the Government to ensure that the cutting-off of crop protection products is properly assessed through a consistent, scientifically rigorous process in line with internationally accepted methods and standards. Such assessments need to be conducted by scientific experts and a suitable timeline should apply to allow for a thorough review. This is consistent with the direction recently set by the Prime Minister for the removal of unnecessary administrative procedures that can stifle production and

19 "Crop biotechnology continues to provide higher farmer income and significant environmental benefits", *Graham Brookes*. Available at: <<https://pgeconomics.co.uk/press+releases/25/Crop+biotechnology+continues+to+provide+higher+farmer+income+and+significant+environmental+benefits>>, last accessed on 25 January 2021.

20 "Half the crops would be lost if without pesticide", *Vietnam Investment Review*. Available at: <www.vir.com.vn/half-the-crops-in-would-be-lost-without-pesticides-62074.html> last accessed on 19 January 2021.

trade while reinforcing the need for transparency.

Regarding regulations on Genetically Engineered (GE) crops, Vietnam has several opportunities. The first is a strategic opportunity to benefit from over two decades of global commercialisation of GE crops. This will help Vietnamese farmers to deal with world production challenges such as pest and weed control. One example is the use of GE corn as an effective Integrated Pest Management (IPM) tool that resists Fall Armyworm. According to a recent study, the GE varieties out-performed conventional varieties in terms of yield. The GM maize technology also reduced insecticide and herbicide use.

The second opportunity is to allow production of GE maize for animal feed to reduce reliance on foreign suppliers. Vietnamese livestock producers reportedly use about 60 million tons of corn for animal feed per year. Statistics show the country has seen corn imports climb around 10-fold in a decade, to around 11.5 million tonnes in 2020/21, according to U.S. Department of Agriculture (USDA) data.²¹

With regard to the next generation of plant breeding innovations, including genome editing, Vietnam has the opportunity to create new and promising solutions to some of the problems facing production agriculture. Depending on the regulatory approach Vietnam takes, gene editing tools could be accessible to a broad range of plant breeders, including the public sector and small enterprises. These tools can potentially be used across all agriculturally important crops, including vegetables, fruits, and specialty crops important to Vietnam's international competitiveness. However, science-based, risk-proportionate, and globally harmonised regulatory policies will be needed.

CropLife Vietnam has made significant investments in stewardship through collaborations with local stakeholders. We believe a new stewardship approach should be developed. It should be built on a better understanding of decision-making drivers for farmers around crop protection use. New genetic products and solutions using GM technology should be introduced. Furthermore, tactical components that leverage digital stewardship as well as social media outreach should be developed. Finally, it should cover scalable solutions; a potential role for enhanced enforcement; the involvement of local and generic companies encompassing a meaningful value chain reforms and incentives.

Furthermore, the plant science industry offers a powerful combination of global resources and experience along with local understanding and networks. With the integrated agricultural solutions, this can benefit farmers' productivity and efficiency. We believe that by using innovative crop protection products, precision farming tools, high-yielding seeds and other advanced technology that can help farmers overcome increasingly complex economic and environmental challenges.

We believe a whole-of-government approach is needed to reinforce policies that encourage agriculture innovation that are supported by a transparent, science-based regulatory system consistent with international best practice. We would like to collaborate with the Government towards policy and regulation development for the sustainable system.

As the need for regional travel and movement restrictions in light of Covid-19 continues, it is imperative that the timely transport of crop protection products, seeds and agricultural input materials remains uninterrupted so farmers can deliver high-quality harvests and better ensure food security. To this end, the Government would need to ensure that corresponding services such as laboratory testing, regulatory review, and phytosanitary certification and clearance continue to operate at full capacity.

Potential gains/concerns for Vietnam

Former H.E. Prime Minister Nguyen Xuan Phuc has called for Vietnam's agriculture sector to become one of the top-15 most-developed in the world in just ten years and to utilise scientific and technological advances to help achieve this.²² He further emphasised that more innovation is needed to generate new drivers for growth to ensure macroeconomic stability. Such an ambitious agenda can be achieved only if the Government embraces

21 "Vietnamese corn importers cancel, defer shipments amid oversupply". Available at: <www.agriculture.com/markets/newswire/vietnamese-corn-importers-cancel-defer-shipments-amid-oversupply>, last accessed on 30 January 2021.

22 "Prime Minister Nguyen Xuan Phuc: In 2025, agriculture must be ranked in the top 10 in the world for exports", *Bnews*. Available at: <<https://bnews.vn/thu-tuong-nguyen-xuan-phuc-nam-2025-nong-nghiep-phai-dung-top-10-the-gioi-ve-xuat-khau/143255.html>>, last accessed on 20 January 2021.

agricultural innovation.²³

To achieve the Government's objective of having a sustainable agricultural sector it is important that farmers have access to high-quality agrochemicals with space to innovate during the process. Unleashing the possibilities of modern agriculture to support sustainable, inclusive development requires enormous investment, collaboration, and a stable policy and regulatory environment. All three factors are critical in the context when Vietnam harnesses cutting-edge technology to accelerate its development. To increase the competitiveness of Vietnamese farmers as well as to ensure the future investment in innovation, Vietnamese farmers should have access to safe crop protection products and new, higher performing hybrids. This will ensure the Government can achieve its agriculture restructuring goals and support Vietnamese farmers to continue producing safe, affordable and nutritious food for the community and export.

Recommendations

We would like to make the following recommendations:

- Create a regulatory roadmap towards the Government's goal of achieving a 30 per cent reduction of crop protection product use without sacrificing the sustainability and competitiveness of Vietnamese agriculture.
- Perform a proper assessment in cutting off crop protection products.
- Encourage farmers to use advanced, safe, and effective crop protection products with the appropriate stewardship training programs.
- Accelerate the GM approval process to ensure no restrictions on GM imports.
- Foster opportunities for constructive dialogues to address any outstanding topics or concerns that the Government may have in this regard.
- Develop a new stewardship approach in cooperation with the stakeholders (government, industry, farmers).
- Cooperate with stakeholders to deliver the latest innovations that can help farmers overcome increasingly complex economic and environmental challenges.
- Reinforce policies together with stakeholders that encourage agriculture innovation supported by a transparent, science-based regulatory system consistent with international best practice.
- Ensure that corresponding services such as laboratory testing, regulatory review, and phytosanitary certification and clearance continue to operate at full capacity.

II. ORGANIC FRUIT AND VEGETABLE MARKET AND FOOD SAFETY POLICY

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD)

Issue Description

Organic farming is a way of agricultural production which uses organic production methods and places the highest emphasis on environmental and wildlife protection and, regarding livestock production, on animal welfare considerations. Organic production involves holistic production management systems for crops and livestock, emphasizing on-farm management practices over off-farm inputs.

This is accomplished by avoiding, or largely reducing, the use of synthetic chemicals such as fertilisers; pesticides, herbicides, insecticides; additives and veterinary medicinal products, wherever possible, these are replaced with cultural, biological, and mechanical methods. Organic producers develop a healthy, fertile soil by growing and rotating a mixture of crops and using clover to reduce nitrogen from the atmosphere. The production of Genetically Modified (GM) crops and their use in animal feed is avoided.

23 "Vietnamese Government Encouraged to Embrace Agricultural Innovation to Protect Vietnam's Economy & Food", *Acnnewswire*. Available at: <www.acnnewswire.com/press-release/english/46244/vietnamese-government-encouraged-to-embrace-agricultural-innovation-to-protect-vietnam-s-economy-&-food-security>, last accessed on 20 January 2021.

Vietnam is one of the largest agricultural producers in the world and its agricultural development moves quickly. There are several spots of organic farming where products are grown to meet the increasing demand for organic Vietnamese products from both domestic and international markets. The slow growth of organic agriculture is the result of for example the orientation of agricultural development which emphasises quantity rather than quality, a lack of legal framework, and complicated and higher investment costs for developing organic produce.

Currently, the area of organic farming land accounts for over 1 per cent of total cultivated land with major crops such as rice, vegetables, fruits, tea, pepper, coffee, cashew, coconut, etc. By 2025, the area of organic agricultural land will reach about 1.5-2 per cent of the total agricultural land area.²⁴

On 23 June 2020, Decision 885/QĐ-TTg approving the scheme on the development of organic agriculture in the period of 2020-2030 was issued. The objective is to develop high value-added, sustainable, eco-friendly organic agriculture in association with the circular agricultural economy for domestic consumption and export. Organic agricultural products are certified in accordance with regional and international organic agricultural standards, turning Vietnam into a country with the level of organic agriculture production equal to other countries. This decision is opening new opportunities in terms of agriculture business for both domestic and export markets.

Potential gains/concerns for Vietnam

To develop the organic sector, some important challenges must be faced. For the fruit and vegetable sector one of the key issues remains the residue of pesticides which affects the export to - amongst others - Europe.

In Vietnam, so far 37 molecules of pesticides have been identified to be either prohibited in Europe or with a higher Maximum Residue Level (MRL) than European Union (EU) legislation allows. Out of these 37 molecules, only three are marketed by the manufacturers themselves (logo and name on the label). The others are sold with private labels from the distributors only. Studies show that the origin of such molecules in fruit and vegetables could come from cross-contamination with other crops.

At present, most standards are defined either by exporters or directly by the farmers themselves. However, the regulation of standards regarding domestic organic production should fit with the export requirements. In particular, legislation from the EU, Japan, and the USA should be borne in mind. Globally, there are dozens of different national and industry-derived organic labels. They all share some similarities, but they also have their own unique requirements too. In reality, very few are 100 per cent chemical-free and many certifications actually allow a certain percentage of pesticides. Others, meanwhile, have provisions for organically derived herbicides and fungicides. The time is coming to clarify and select the right organic labels and logos.

Vietnam should evaluate the application of organic production standards and the control measures which are applied by certified Control Bodies. At present, there are few third parties certified in Vietnam. We believe that providing additional accreditations to selected international companies will allow for better control and follow-up of organic farmers. Most Vietnamese organic farmers, and those wishing to make the switch, are individual smallholders. Most are without proper support and many, unfortunately, fail to cope with unforeseen problems, including the initial loss in profit. Providing financial help to those who shift from conventional to organic farming is one of the keys to boost this sector. Some financial tools must be studied and provided to businesses with the development and support of agriculture banks.

Recommendations

We would like to make the following recommendations:

- Control of distributors of pesticides should be increased.
- Instruct suppliers of pesticides to use labels which mention both the name of the distributor and the manufacturer with the country of origin and include a clear identification of the name of each molecule in the bottle of the pesticide product.
- Match the regulation of standards regarding domestic organic production with the export requirements.

²⁴ "Organic agriculture project adopted", Vietnam News, 7 July 2020. Available at: < <https://vietnamnews.vn/Society/749240/organic-agriculture-project-adopted.html>>, last accessed on 13 January 2021.

- Evaluate, clarify and select the right organic labels and logos for Vietnamese organic products.
- Accredited selected international certified control bodies for better control and follow-up of organic farmers.
- Provide financial support to farmers shifting from conventional to organic farming together with agriculture banks.

III. COUNTERFEIT AND SUB-STANDARD PRODUCTS

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Industry and Trade (MOIT), Ministry of Finance – National 389 Committee (MOF)

Issue description

The use of counterfeit crop protection products, crop protection products with lower percentages than what the label indicates, or crop protection products with hidden AI is increasing. This causes loss to farmers as well as food safety issues. There is also the risk of products being rejected by and returned from importing destinations, thus increasing costs and impacting Vietnam's reputation. This limits the possibility to develop a sustainable agricultural sector. A shortage of funds and personnel has resulted in loose management of crop protection products in the south Vietnam that most of the market difficult to control. In fact, crop protection products carrying fake labels of famous brands have been in the market for a long time. This problem has worsened, and low-quality crop protection products are sold at a low price. Also, some cultivation and plant protection divisions in the Mekong Delta believe that detecting fake crop protection products and poor-quality products could have been done more effectively.²⁵

Besides, incomplete and inadequate legal enforcement and mechanisms at the market ground and a limited knowledge of enforcement authorities regarding intellectual property law has also worsened the problem. Moreover, the practice of adding unregistered AIs into the products without having declared them on the label (called hidden AIs) has caused a danger to food safety and unexpected crop protection products residue. The case of the Vietnam Tea Association is a good example of this and caused alarm due to product being returned by importing countries.²⁶

It is therefore important that the knowledge of and responsibility as set out in the Law on Intellectual Property (IP) Rights is improved. Furthermore, guiding regulations to support the identification and avoidance of IP violations on the market are needed.

Potential gains/concerns for Vietnam

The counterfeit of crop protection products not only negatively affects crop yields and farmers' lives but it also damages enterprises' reputations and intellectual property rights. The criminal sanctions on crop protection counterfeit activities are expected to have strong deterrent effects since these types of crime have become more sophisticated. This negatively impacts the reputation of Vietnam's agricultural sector in the world, but also presents challenges to the State management agencies and legitimate enterprises. This requires action from all stakeholders. In our view, better enforcement combined with increased awareness and training will ensure that Vietnam can become a global agricultural and food products producer and exporter.

Recommendations:

We would like to make the following recommendations:

- Improve knowledge and responsibility of enforcement personnel on the Law on IP Rights.
- Prepare guiding regulations to support the identification and avoidance of IP violations on the local market.

25 "Fake, low quality pesticides 'out of control', *Vietnamnews*. Available at: <<http://vietnamnews.vn/society/417266/fake-low-quality-pesticides-out-of-control.html#5D4lzoHStVgq8cF1.99>>, last accessed on 20 January 2021.

26 "Tea industry and value chain building problem", *Nongthonviet.com.vn*. Available at: <<http://nongthonviet.com.vn/nong-nghiep/201812/nganh-san-xuat-che-va-bai-toan-xay-dung-chuoi-gia-tri-737705/>>, last accessed on 20 January 2021.

- Ensure that production and trading of counterfeit crop protection products is punished severely and considered a crime.
- Enhance the monitoring and supervision of use of crop protection materials more strictly.
- Implement stricter inspection, control, and management of cases of counterfeit crop protection products.
- Enforce existing regulations on the use of counterfeit and illegal products and on clear labelling and instructions' contents.
- Increase the awareness of farmers, producers, and retailers about the consequences of irresponsible use of counterfeit and sub-standard products.
- Cooperate with the private sector to organise training for farmers, producers, and retailers to avoid using counterfeit and sub-standard products.

IV. FOOD SAFETY: RESIDUE MANAGEMENT ON AGRI-PRODUCTS

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT)

Issue description

Food safety related to pesticide residues in agricultural products is a common topic of public concern. The presence of pesticide residues in agricultural products has sometimes been exaggerated by the media, thus raising the question among consumers on the safety of the food supply chain and the Government's management method of pesticide use to ensure food safety without sacrificing farmer's essential tools. Crop protection products play an essential role in agricultural production to ensure productivity and food security. Therefore, the management method of the production, trade, and use of crop protection products in order to avoid exceeding the pesticide Maximum Residue Limit (MRL) and to ensure food safety to meet domestic consumption and grow export turnover is important.

Vietnam is currently using CODEX and ASEAN EWG-MRLs for setting national MRLs (Circular 50/2016/TT-BYT of the MOH²⁷). We believe that it is important to develop internationally aligned regulations to manage residues not exceeding national MRLs. To manage the issue of crop protection residues in agricultural products, a comprehensive solution is required with the participation of all stakeholders in the agricultural production chain, including relevant authorities, growers, and enterprises. In this light it is also important to develop an MRL database containing requirements for agricultural commodities in importing countries to make it easy for growers/exporters to access. Partnership and collective efforts of all relevant stakeholders should be facilitated to promote the correct and safe use of crop protection products and Good Agricultural Practice (GAP) should be applied and strengthened.

This is an issue that cannot be solved in a short time. However, we believe that the following would greatly improve the problem of residues in agricultural products.

Decisions²⁸ to impose restrictions on certain crop protection products have raised the question of hazard-based versus risk-based management.

Circular 21/2015/TT-BNNPTNT²⁹, effective since 1 August 2018, includes Article 6 which poses a potential threat to Vietnam's farmers, economy, environment, and consumers. Using the Global Harmonised System (GHS) classification to restrict the registration of vegetables, fruit trees, and tea plants is not in accordance with international standards that follow risk-based assessment methodologies.³⁰ This regulation is not based on scientific grounds and Vietnam

27 Circular 50/2016/TT-BYT dated 30 December, 2016 of Ministry of Health Regulations on maximum residue levels of pesticide in food.

28 Decision 1186/QĐ-BNN-BVTV dated 10 April 2019 of Ministry of Agriculture and Rural Development on removal of glyphosate from the list of pesticides allowed to be used.

29 Circular 21/2015/TT-BNNPTNT dated 8 June 2015 of The Ministry of Agriculture and Rural Development on Pesticide Product Administration.

30 EPA Overview of Risk Assessment in the Pesticides Program. Available at: <www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program> and EFSA: Cumulative risk assessment of pesticides. Available at: <www.efsa.europa.eu/en/news/faq-cumulative-risk-assessment-pesticides>, last accessed on 20 January 2021.

has been the first nation in the world to adopt it. This regulation limits or bans the number of technologies available to Vietnam's vegetables, fruit, and tea farmers. It also means restricting the farmers' access to the most technologically advanced tools and safest options to combat pests and diseases and to overcome climate-related issues.

There are many reasons leading to exceeding MRL in agricultural products. It may be due to the irresponsible use of growers, sub-standard CP products, counterfeit products, hidden AIs, etc.

However, we also believe that insufficient law enforcement is causing this. Currently, administrative penalties are set for these violations³¹, but these are usually mild and do not have a punitive effect. In addition, the enforcement of the relevant provincial authorities at the market ground needs to be strengthened. In particular, legal enforcement related to farmers' responsibilities has not been implemented well. This results in farmers still using fake and low quality products which negatively impacts.

Furthermore, a lack of traceability is also important risk-factors in assuring safe food. In our view, the biggest challenge lies in changing the practices of vast numbers of small farmers. In our view small farmers often lack the knowledge about the products and technologies in farming and agriculture production which leads to irresponsible use, misuse and over-use of the crop protection products. Therefore, the role of training on the responsible use of crop protection products to farmers should be further promoted and strengthened. Until now the impact of training on user behaviour change has been limited because it does not reach a too limited number of farmers. Local companies would need to be involved as well to prepare more impactful programs on this topic.

Potential gains/concerns for Vietnam

GHS and Preferred Internal Index (PHI) are not intended to be used as an alternative to a risk assessment methodology in determining the toxicity or safe consumer use of a crop protection product. If fully realised, this development would put Vietnam's farmers, consumers, environment and national economy at greater risk, and would ultimately bring significant competitive disadvantages to the country's agriculture sector compared to its ASEAN neighbours and other economic partners, including the EU. Without appropriate regulation and functional enforcement, food safety issues are likely to worsen.

Recommendations

We would like to make the following recommendations:

- Develop a functioning, predictable legal framework based on scientific grounds and in harmonisation with international standards.
- Allow registrations of any crop protection product and its use unless there are unacceptable risks in terms of consumers' or operators' exposure or environmental safety.
- Develop internationally aligned regulations to manage residues not exceeding national MRLs.
- Develop an MRL database with requirements for agricultural commodities in importing countries accessible to producers and exporters.
- Facilitate relevant stakeholders to promote the correct and safe use of crop protection products applying GAP.
- Step up monitoring domestic markets, including ensuring that residue-related issues among agricultural commodities are addressed.

Implement current regulations on goods labelling and clear information provision to ensure farmers' proper and safe use.

- Develop appropriate regulations for effective enforcement.

31 Decree 31/2016/ND-CP dated 6 May, 2016 of the Government on penalties for administrative violations against regulations on plant varieties, plant protection and quarantine.

V. MEAT VALUE CHAIN IN LINE WITH EVFTA OPPORTUNITIES

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD)

Issue Description

The EVFTA is a major opportunity for the agriculture and meat sectors to benefit from high-value European markets. The benefits are twofold: Expanding accessible markets to reduce the risk of over-exposure, and higher prices for some cuts - specific to terrestrial animal meat. What is considered the "best cut" differs widely across countries. Chicken is a good example. Vietnamese tend to prefer cuts including bones such as legs, whereas Europeans tend to prefer cuts without bones such as breast. One kg of breast costs VND 84,000 in a supermarket in Ho Chi Minh City (equivalent to EUR 3). However, the same one kg of chicken breast could cost EUR 12.19 (equivalent VND 340,395) in a supermarket in Europe. This phenomenon could have a positive impact on farmers and processors without any impact on local consumers, since the higher value product is extracted from cuts for which there is low demand in Vietnam. This is also valid for other sources of animal protein that are not divided into cuts. Additionally, where aquaculture is concerned, the EVFTA grants better access to markets willing to pay a premium for higher quality products. Traceable and sustainable shrimps allow for a premium of up to 40 per cent.³²

However, to take advantage of this opportunity, Vietnamese producers need to meet the requirements of the EVFTA as well as the preferences of consumers in the EU:

- European regulators require products with certain features such as no traces of antibiotic growth promoters, some forbidden substances as well as a commitment to certain labour and environmental standards which are all set out in the EVFTA;
- Distributors/retailers base the selection of their suppliers on traceability and sustainability criteria - often based on their own (private) standards; and
- Consumers base their buying decisions more on environmentally friendly solutions, ensuring authenticity, sustainability, and traceability.

Potential gains/concerns for Vietnam

It is important to modernise the farming system to improve productivity which would lead to a reduction in operating costs, and further develop comprehensive biosecurity approaches to move away from antibiotics and other substances banned in the EU such as hormones and growth promoters. Recent studies show continued high consumption of antibiotics in Vietnam compared to European standards: 247.3 mg per kg animal biomass in Vietnam compared to 151.5 mg in the EU.³³ These results highlight the need to conduct targeted surveys to improve country-level estimates of Antimicrobial Utilisation (AMU) and implement policies and interventions aimed at reducing AMU at a country level.

FAABS would like to stress that recent studies in Europe highlight the efficacy of alternatives to preventive therapeutic use of antibiotics in animal farming.³⁴ By increasing animals' immunity and reducing disease prevalence, probiotics (yeast and bacteria) and immunostimulants could be good alternatives. FAABS would like to encourage the Government to implement policies to only allow use of farm antibiotics if prescribed by a veterinarian. Furthermore, it is important to develop/apply for quality and traceability labels to enjoy higher selling prices.

Furthermore, improvements of the "links" in the value chain are needed. It would be helpful if clear labels for input material (medicines and additives) could be made available to ensure farmers are not using products that

32 "A Strategic Approach to Sustainable Shrimp Production in Vietnam: THE CASE FOR IMPROVED ECONOMICS AND SUSTAINABILITY" BCG, at: < <http://media-publications.bcg.com/BCG-A-Strategic-Approach-to-Sustainable-Shrimp-Production-in-Vietnam-Aug-2019.pdf> >, last accessed on 14 January 2021.

33 J.Carrique-Mas, M.Choisy, C.Nguyen, G.Thwaites, S.Baker, "A Strategic Approach to Sustainable Shrimp Production in Vietnam, the case for improved economics and sustainability", Antimicrobial Resistance & Infection Control (2019), Boston Consulting Group. Available at: <<https://aricjournal.biomedcentral.com/articles/10.1186/s13756-019-0671-7>> last accessed on 14 January 2021.

34 Agence nationale de securite sanitaire alimentation, environnement, travail, "AVIS et RAPPORT de l'Anses relatif à l'état des lieux des alternatives aux antibiotiques en vue de diminuer leur usage en élevage". Available at: <<https://www.anses.fr/fr/content/avis-et-rapport-de-lanses-relatif-%C3%A0-l%C3%A9tat-des-lieux-des-alternatives-aux-antibiotiques-en->> last accessed on 14 January 2021.

will disqualify them for export to the EU. In this respect it is necessary to encourage middlemen to segregate production based on compliance with export standards as well as other standards (e.g. organic) and develop technology-enabled traceability tools.

To modernise the meat processing industry, it is recommended to use technology-enabled tools to adjust farmer selection, invest in modern slaughterhouses both for use in-nature and cooked added-value production and in freezing towers (already developed in seafood, but quite new in terrestrial animal meat).

Recommendations

We would like to make the following recommendations:

- Modernise the farming system to improve productivity leading to a reduction in operating costs and to meet requirements for export to the EU.
- Allow use of farm antibiotics only if prescribed by a veterinarian.
- Improve the “links” in the value chain.
- Modernise the meat processing industry.

VI. 2021: TRANSITIONAL YEAR FOR RECOVERY AND FUTURE DEVELOPMENT

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD)

Issue description

Besides the negative impact of COVID-19 in 2020 and 2021, Vietnam's agriculture industry is also embracing the implementation of the EVFTA. This is a comprehensive, high-quality agreement with deep and broad commitments from the Government.³⁵ Former MARD Minister Nguyen Xuan Cuong expressed his ambition about the direction of agriculture restructuring including the application of a new growth model to ensure high-quality, high-volume outputs; high food safety standards; strong domestic connections; sustainable growth; and integration with global value chains. As a result, developing exporting markets and taking into account the European Commission's recommendations are important strategies for the agricultural sector in Vietnam.³⁶ In the current landscape, where agriculture exports still largely depend on China; the sector needs to continue committing to actions and strategies that can transform the industry.³⁷

There are two key drivers to the Vietnam agriculture export industry that the FAABS would like to note. Exports from Vietnam to the EU need to comply with EVFTA commitments on quality, standards, and food safety. Transforming Vietnam's agriculture accordingly will not only help to increase exports to the EU, but also enhance the quality of Vietnamese products. This, in turn, will create more opportunities to tap into other foreign export markets.

As already set out in the Whitebook 2020, the master plan of Vietnam agriculture is now up to 2020 with a vision to 2030.³⁸ As it is 2021, it would in our view be appropriate to publish an updated master plan for Vietnamese agriculture to 2030. This could steer the industry towards high-quality outputs and matching supply and demand at the local level. At the same time, Vietnam's agriculture sector will be subjected to agricultural restructuring and the production of key products at national, provincial, and communal levels to meet future export target. The FAABS notes that the connectivity between production and demand, as the Minister of MARD has stated, is an innovative approach and one which will help to minimise risks amid future challenges. In planning for 2030,

35 "Impact of the EU-Vietnam Free Trade Agreement on Vietnam", Ministry of Industry and Trade. Available at: <http://evfta.moit.gov.vn/data/7d80034a-9a2a-4c93-8046-9df701661850/userfiles/files/101_%20Impact%20of%20the%20EVFTA%20on%20Vietnam.pdf>, last accessed on 13 January 2021.

36 "Vietnam's agriculture and rural development industry, 2019 review and forward to 2020", Vtapchicongsan.org.vn, available at <<https://www.tapchicongsan.org.vn/web/guest/kinh-te/-/2018/815979/nganh-nong-nghiep-va-phat-trien-nong-thon--nhin-lai-nam-2019-va-huong-toi-nam-2020.aspx>> last accessed on 13 January 2021.

37 "Import and Export Agriculture Value reaches 9.8 billion USD", Vbaochinhphu.vn. Available at: <<http://baochinhphu.vn/Kinh-te/Xuat-nhap-khau-nong-san-Viet-Nam-Trung-Quoc-dat-hon-98-ty-USD/412159.vgp>> last accessed on 13 January 2021.

38 Decision 124/QĐ-TTg of The Prime Minister dated 2 February 2012 approving the master plan of production development of agriculture to 2020 and a vision toward 2030.

there should be a review of the current situation and an assessment of how trade activities could grow in the future. This should include the incremental growth of cross-border exports from Vietnam to China. It should also take into consideration that the rising official export volume from other countries, including the EU and China, will serve as important planning inputs³⁹ about local supply and import activities in regard to volume and quality requirement.⁴⁰ In our opinion, the challenge will become more complicated in the future as other issues might arise such as food security, the impact of COVID-19 on production volume, and virus spreading from packaging or climate change. It is vital for Vietnamese agriculture to devise an overall plan taking into account multiple sustainable and strategic aspects rather than just supply and demand.

Potential gains/concerns for Vietnam

Understanding the strategic purpose of Vietnam's agriculture targets has benefits in the mid- and long-term: Since Vietnam will become part of global value chains, it will become increasingly difficult to solve any topic independently. It is also important to create a necessary buffer in terms of planning for foods the Vietnamese are and will be consuming so that the market can re-adjust as required. Cross-border export and import activities are part of the puzzle in terms of supply and demand in Vietnam. For example, live-weight pig import and export, which was mostly a cross-border activity between Thailand and Vietnam, will be needed in the future when pig farming runs into problems similar to those in 2019-2020. Being self-sustaining is an important strategy for Vietnam, as the lesson from Thailand proved that opening borders for imports only has certain limited advantages but creates a significant impact on the domestic price for pigs.⁴¹ These cross-border activities must be considered together with official declared activities so that supply and demand can be considered from a holistic perspective. Finally, a review of global trade activities, and Vietnam's role as part of it, will help to decide the role of Vietnam agriculture in global trade in the short and long term, both at a strategic level and tactical level in the context of the EVFTA.

Many countries have successfully implemented a National Agrofood Policy.⁴² The case study from Malaysia shows that the 2011-2020 policy has created a great impact towards the development of the country's agricultural sector. The industry remains an important economic driver and contributes toward a developed nation. At the same time, key challenges were identified in a timely manner.⁴³

2021 should be an important, transitional year for Vietnam's agriculture sector to rebound and move forward. The EVFTA should be used as an important economic stepping stone for Vietnam to progress to the next phase of agricultural development.

The FAABS proposes a three-phase approach for 2030 agriculture planning linked to demand and achieving multiple strategic purposes:

- Phase 1: Define all strategic objectives for Vietnamese agriculture to achieve in 2050.
- Phase 2: Research and forecast Vietnam's demand for food and all export potential in the future, with factors from import incremental is essential.
- Phase 3: Build the 2030 agriculture planning considering all integrated sub-sectors into a national agro-food policy with the vision to 2040 and 2050.

The new national agro-food policy must cover all the sub-sectors that are important to Vietnam's food security, such as rice, fisheries, livestock, crops, high-value agriculture, agro-based industry, and agro-tourism. This will help to navigate through uncertainties and ensure better overall planning when there is a need to adjust or modify a specific sector, such as pig farming. We recommend that strategic long-term targets should include traceability;

39 The "planning inputs" is the method that Vietnam implement to calculate data. In the implied method, only official data is counted and from time to time, cross-border and unofficial exports are not recognized. Therefore, as the above data left unrecorded so these inputs based on insufficient source of information will be inaccurate. Additionally, it is noteworthy that cross-border and unofficial exports do not equal to low quality export so it is important for Vietnam agriculture authority and industry to understand both official and unofficial trade for a precise planning input.

40 "Increasing pork prices in China a magnet for Vietnamese traders," VnExpress, dated 9 September 2019. Available at: <<https://e.vnexpress.net/news/business/industries/increasing-pork-prices-in-china-a-magnet-for-vietnamese-traders-3979439.html>>, last accessed 13 January 2021.

41 "Thailand to limit hog exports, domestic price will increase?," ThanhNien, 25 July 2020. Available at: <<https://thanhnien.vn/tai-chinh-kinh-doanh/thai-lan-han-che-xuat-khau-gia-heo-hoi-trong-nuoc-se-tang-1255740.html>>, last accessed on 13 January 2021.

42 "Malaysia's Agrofood Policy (NAP 2011-2020) – Performance and New Direction", The Food and Fertilizer Technology Center for the Asian and Pacific Region, 11 April 2019. Available at: <<https://ap.ffc.org.tw/article/1368>>, last accessed on 13 January 2021.

43 "Impacts of National Agrofood Policy towards Agriculture Sector in Malaysia," Food and Fertilizer Technology Center for the Asian and Pacific Region, 9 April 2018. Available at: <http://ap.ffc.agnet.org/ap_db.php?id=853&print=1>, last accessed on 13 January 2021.

food security; food safety standards; improving the living standards of farmers; agro-tourism development; and industrialised, modernised agriculture.

In the short term, we urge MARD to form an independent agency specialising in helping local businesses with exports. Throughout our operation in Vietnam, the FAABS recognises that in implementing FTAs in general, and the EVFTA in particular, businesses often encounter administrative problems in both Vietnam and the EU. Since many EU-countries are implementing the EVFTA at the same time, FAABS' members often encounter inconsistencies in terms of import-export processes. We understand that these issues can only be solved by the EU. However, it would be of great help if the Vietnamese Government could work with their EU counterparts to find a solution as soon as possible.

Secondly, the EVFTA is a high-quality agreement which requires Vietnam, in certain sectors, to comply with multiple standards in some sensitive cases. Rice, for example, requires cooperation between MOIT and MARD to meet quality standards and quota commitments. Rules of origin is also an area where we see the need for multiple alignments among ministries. A special "task force" among ministries for import-export guidance, or at a high level, import-export coordination, will help businesses in Vietnam to reduce time, cost, and effort. This will lead to a higher trade volume as a result of EVFTA implementation. In a long-term view of a coordination task force, we suggest a review of the current Law on Food Safety (LoFS)⁴⁴ regarding bodies relevant to the import, export, distribution, and retail of food. The current Food Safety Law is a good document, reflecting different areas of expertise and the authority of relevant ministries. However, difficulties for EU businesses in Vietnam still arise when these businesses need to perform registration and market entry for some types of food or ingredients that are entirely new to the Vietnam market. In this case, businesses need to contact multiple ministries in charge of import, export, distribution, and retail. A coordination mechanism or task force would improve doing business more smoothly in Vietnam. This, in turn, would lead to a well-ordered investment stream into Vietnam during the EVFTA's implementation process.

Recommendation

We would like to make the following recommendations:

- Update the agriculture master plan covering all sub-sectors important for food security. Form an independent agency specialising in helping local businesses with exports in particular in light of the EVFTA.
- Work on solving inconsistencies in terms of import-export processes with the EU.
- Create a special "task force" among ministries for import-export guidance, or at a high level, import-export coordination.
- Review the LoFS regarding bodies relevant to the import, export, distribution, and retail of food.

ACKNOWLEDGEMENTS

EuroCham CropLife Vietnam Sector Committee

EuroCham Food, Agri and Aqua Business Sector Committee

FOR MORE FOOD SAFETY-RELATED ISSUES, PLEASE ALSO READ

Chapter 16

Nutrition and Milk Formula Products

⁴⁴ Law 55/2010/QH-12 dated 17 June 2010 of The National Assembly on Food Safety.

CHAPTER 14 MOBILITY: AUTOMOTIVE

OVERVIEW

Since 2017, the conditions for the automotive industry have become more favourable. In addition to the EVFTA, Vietnam signed a record number of international agreements providing preferential customs duties.¹

Passenger cars made in Vietnam do not reach the 40 per cent regional content value threshold to benefit from zero per cent ASEAN Trade in Goods Agreement (ATIGA) import tax for export within the ASEAN region. Additionally, the localisation rate for passenger cars under 9 seats, which was initially set to reach 40 per cent in 2005 and 60 per cent in 2010, is only 10 per cent.²

Representing three per cent of Vietnam's GDP, the limited market scale combined with weak incentives and poor supplier presence, have resulted in a local manufacturing environment in Vietnam that is less attractive for automakers than other ASEAN countries. MOIT's focus appears to be on supporting domestic enterprise projects like Truong Hai Automobile (Thaco), Thanh Cong Group, and VinFast to increase automobile production and assembly.³

In 2019, Vietnam's part suppliers were mainly small- and medium-sized enterprises with low production capacity. Out of 1,800 spare parts businesses, only 300 were participating in the production networks of multinational companies.⁴ Localised automotive parts like tubes, tires, seats, mirrors, glasses, wires, batteries, and plastic elements still have low technological content. Up to 80-90 per cent of the main raw materials for the production of such components - like aluminum and steel alloy, plastic resin, and high-tech rubber as well as moulded materials - are imported. This results in transport costs, packaging costs, and import taxes.⁵

To support the domestic automotive industry, Decree 125⁶ applies zero per cent import duty on CKD components that cannot be produced in Vietnam for manufacturers who can achieve a high-production volume. The incentive scheme is valid for 5 years from 2018-2022; so, one more year from the date of publication. As a result, some Japanese assemblers stopped importing CBU models from ASEAN, to assemble them in Vietnam.

Vietnam's strong GDP growth explains rising car consumption and, currently, without impact of the COVID-19 pandemic, car ownership growth in Vietnam is 10.5 per cent. Reduced import taxes make cars more affordable, accelerating the switch from bikes to cars. Over the next 10 years, the car consumption growth rate is expected to reach 12-15 per cent per year.⁷

Decree 57, effective since 10 July 2020,⁸ allows multiple models in a segment to meet the eligible volume

1 The ASEAN Trade in Goods Agreement (ATIGA), the ASEAN-Korea Free Trade Agreement (AKFTA), the ASEAN-China Free Trade Agreement (ACFTA), the ASEAN-Japan Comprehensive Economic Partnership (AJFTA), the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), the ASEAN-India Free Trade Agreement (AIFTA), the Vietnam-Japan Economic Partnership Agreement (VJEPA), the Vietnam-Chile Free Trade Agreement (VCFTA), the Vietnam-Korea Free Trade Agreement (VKFTA), the Vietnam-Eurasian Economic Union Free Trade Agreement (VEAEU FTA) and the Comprehensive and Progressive Agreement For Trans-Pacific Partnership (CPTPP).

2 "Strategy for the development of the Vietnamese automobile industry", Ministry of Industry and Trade, dated 15 November 2016. Available at: <https://moit.gov.vn/CmsView-EcolT-portlet/html/print_cms.jsp?articleId=108399>, last accessed on 10 May 2021.

3 "Automotive industry - The Ministry of Industry and Trade wants to attract investment from multinational corporations", Customs News, 27 October 2018. Available at: <<https://haiquanonline.com.vn/cong-nghiep-o-to-bo-cong-thuong-muon-co-che-thu-hut-dau-tu-tu-cac-tap-doan-da-quoc-gia-47057.html>> last accessed on 22 April 2021.

4 "Electric automobiles' spare parts to enjoy preferential import taxes", Vietnam Plus, 12 April 2019. Available at: <<https://en.vietnamplus.vn/electric-automobiles-spare-parts-to-enjoy-preferential-import-taxes/163674.vnp>>, last accessed on 10 May 2021.

5 Decree 125/2017/ND-CP dated 16 November 2017 of the Government amending Decree 122/2016/ND-CP on export duty schedule, preferential import duty schedule and lists of commodities and their flat tax rates, compound tax rates and outside tariff quota rates.

6 Decree 125/2017/ND-CP dated 16 November 2017 of the Government amending Decree 122/2016/ND-CP on export duty schedule, preferential import duty schedule and list of commodities and their flat tax rates, compound tax rates and outside tariff quota rates.

7 VietinBank Securities report on Automotive industry, April 2019. Available at: <www.vietinbank.vn/investmentbanking/resources/reports/042019-CTS-BCnganhoto.pdf> last accessed on 10 May 2021.

8 Decree 57/2020/ND-CP dated 25 May 2020 of the Government amendments and supplements to several articles of Government's Decree 122/2016/ND-CP dated 1 September 2016 on export and preferential import tariff schedules, lists of products, absolute, mixed and out-of-quota import duty rates, and to Decree 125/2017/ND-CP dated 16 November 2017 amending and supplementing several articles of Decree 122/2016/ND-CP.

retrospectively from 1 January 2020.⁹ Meanwhile, Notification 377¹⁰ supports domestic assembly further, by exempting the value of the parts made in Vietnam in the dutiable value of domestically assembled cars from special consumption tax.¹¹

In 2020, COVID-19 impacted the automotive industry worldwide, disrupting assembly, importation, and dealerships. The Government supported only sales of locally assembled models for six months by discounting 50 per cent of the tax customers must pay for registration (worth 10 or 12 per cent of a new vehicle's total value, depending on locality). Consequently, the passenger cars volume grew 3.5 per cent to 313,109 cars in 2020. While locally-assembled CKD cars increased 19 per cent to over 250,000 units, imported CBU cars decreased 33 per cent to below 62,000 cars, now representing only 20 per cent of the car market.¹²

I. TAXATION ISSUES

Relevant authorities: Office of Government (OOG), Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Transport (MOT), Ministry of Planning and Investment (MPI)

Issue description

Air quality is an ever-growing public health issue for people living in Hanoi and Ho Chi Minh City.¹³ The environmental pollution index in both cities remains much higher than those permitted by local authorities.¹⁴ Environmentally-friendly vehicles use mild hybrid, hybrid, and fully electric technologies. Because these are new technologies, they cost more to produce than vehicles using only petrol or diesel, both for an assembled CKD or imported CBU vehicle.

Potential gains/concerns for Vietnam

According to the existing Law on Special Consumption Tax (SCT)¹⁵ and its subsequent changes, tax rates applied to environmentally-friendly vehicles are lower than those for equivalent Internal Combustion Engine (ICE) vehicles. Decree 70¹⁶ reduced registration taxes by 50 per cent for customers for six months during 2020. This demonstrated the ability of the Government to provide effective support as the volume of domestically-manufactured and assembled cars increased by 19 per cent. Environmentally-friendly vehicles contribute to reducing urban pollution as per the evaluation done by Hanoi University of Science and Technology and Toyota Motor Vietnam on the efficiency of hybrid cars in Vietnamese conditions confirmed in March 2021.¹⁷

The low SCT since 2008 on such vehicles is not attractive enough considering the higher cost of production in CKD or CBU vehicles during the first years of implementation. To support environmentally-conscious customers to pioneer that technology in Vietnam, granting a 50 per cent reduction on registration tax can be an effective incentive as seen in 2020 for ICE vehicles.

9 "Vietnam takes new tax step to stimulate car market," Hanoi Times, 29 May 2020. Available at: <<http://hanoitimes.vn/vietnam-takes-new-tax-step-to-stimulate-car-industry-312277.html>> last accessed on 18 May 2021.

10 Notification 377/TB-VPCP of the Vice-Prime Minister Trinh Dinh Dung concluded at the meeting on solutions to promote the development of Vietnam's auto industry.

11 Audier and Partner Vietnam, The week in brief Vietnam, 22 November 2020. Available at: <www.audierpartners.com/the-week-in-brief-vietnam-22-nov-2020>.

12 "Sales Report, December 2020", VAMA, dated December 2020. Available at: <<http://vama.org.vn/Data/upload/files/2020/Thang12-2020/Cover%20Letter%20Sales%20report%20-%20December%202020%20-%20ENG.pdf>>, last accessed 19 August 2021.

13 "PM orders intensifying air quality control measures", Vietnam News, 20 January 2020. Available at: <<https://vietnamnews.vn/environment/858732/pm-orders-intensifying-air-quality-control-measures.html>>, last accessed on 10 May 2021.

14 "Minister Tran Hong Ha: Air pollution is caused by external reasons", Bao Chinh phu, 19 December 2019. Available at: <<http://baochinhphu.vn/Hoat-dong-Bo-nganh/Bo-truong-Tran-Hong-Ha-O-nhiem-khong-khi-do-nguyen-nhan-chu-quan/383018.vgp>> last accessed on 15 January 2020.

15 Law on Special Consumption Tax 27/2008/QH12 of the National Assembly dated 14 November 2008.

16 Decree 70/2020/ND-CP dated 28 June 2020 of the Government prescribing registration fees for domestically manufactured and assembled automobiles by 31 December 2020.

17 "Hanoi University of Science and Technology and Toyota Motor Vietnam Evaluate the Efficiency of Hybrid Cars in Vietnamese Conditions," 30 March 2021. Available at: <https://en.hust.edu.vn/display-newswire/-/asset_publisher/sum9Zls6uqmE/content/hanoi-university-of-science-and-technology-and-toyota-motor-vietnam-evaluate-the-efficiency-of-hybrid-cars-in-vietnamese-conditions>, last accessed on 22 April 2021.

Recommendation

We would like to make the following recommendation:

- Introduce a 50 per cent registration tax reduction scheme for mild hybrid, hybrid, and fully electrical vehicles for a period of up to three years.

II. HOMOLOGATION REQUIREMENTS FOR AUTOMOTIVE BUSINESS

Relevant authorities: Office of Government (OOG), Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Transport (MOT), Ministry of Information and Communications (MOIC), General Department of Customs (GDC)

On 17 October 2017, Decree 116¹⁸ regulating the requirements for manufacturing, assembly, and import of motor vehicles and trade in motor vehicle warranty and maintenance services was issued. MOT later released Circular 03 on 10 January 2018, coming into effect on 1 March 2018. Then, in 2020, Decree 17¹⁹ was issued, removing requirements such as the Vehicle Type Approval (VTA) certificate and replacing lot-by-lot tests with model-based homologation valid for up to 36 months for CBU vehicles (similar to that for CKD products).

1. Certification of automotive safety parts

Issue description

Circular 41²⁰ stipulates that vehicles and safety parts (for production and service purposes) are to be certified and/or their technical regulation compatibility announced after customs clearance, but before being sold to the market. 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. Meanwhile, Decree 154²¹ makes testing compulsory by Vietnam Register in Hanoi for safety parts related to Circular 41.

MOT has cooperated with GDC to issue guidance to resolve the issue of certification for imported spare parts in a favourable way. However, until now, the experience of CBU importers has been that UNECE/ECE certificates and test reports are now accepted as certification for a renewable period of six months.

The EVFTA contains an Annex²² devoted to facilitating trade in the car sector and avoiding unnecessary trade barriers. The implementation of the agreement means that regulations in line with the EVFTA should be adopted, therefore also superseding the application of Decree 116 and its implementing legislation if it contradicts the EVFTA.

Under the EVFTA, Vietnam commits to accept United Nations Economic Commission for Europe (UNECE) regulations applicable to passenger cars, parts, and equipment without further testing and certification requirements. We understand that the Government's implementation plan covers joining the 1958 UNECE Agreement. This means that the mutual recognition of certificates will be accepted which will reduce administrative burdens.

Potential gains/concerns for Vietnam

As a follow-up to the issues we have raised, EuroCham had a Dialogue with the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR) in Hanoi on 12 December 2019. There, MOT confirmed that all type-2 products must have their quality inspected when imported. MOT issued Official Letter 10988 to the GDC on common guidance to address the certification concern.²³

18 Decree 116/2017/ND-CP dated 17 October 2017 of the Government on requirements for manufacturing, assembly and import of motor vehicles and trade in motor vehicle warranty and maintenance services.

19 Decree 17/2020/ND-CP dated 5 February 2020 of the Government amendments to some articles of Decrees related to necessary business conditions in fields under the management of the ministry of industry and trade.

20 Circular 41/2018/TT-BGTVT dated 30 July 2018 of the Ministry of Transport on the List of potentially unsafe commodities under the management of the Ministry of Transport.

21 Decree 154/2018/ND-CP dated 9 November 2018 of the Government on investment and business conditions in sectors under management of Ministry of Science and Technology and certain regulations on specialised inspections.

22 EVFTA - 9a Motor Vehicles and Motor Vehicles Parts and Equipment - Annex 2-B.

23 Official Letter 10988/BGTVT-KHCN dated 19 November 2019 of the Ministry of Transport answering some concerns under the management of the Ministry of Transport.

Official Letter 10988 acknowledges that, for parts and components with certificates, the certificate submission is fine. However, the certification process for parts and components without certificates remains confusing. According to that letter, such parts and components must undergo State inspection – implying further inspection and certification are to be undertaken when the import volume meets the required quantity of the testing samples. Proper testing meeting the requirements as described in the Circular is still not possible in 2021.

For a part number that already has a valid certificate, this same part number has to go through the whole certification process again. This is true even if that part number was imported within the previous six-months. The reason given is that part certification is for a part model and does not reflect the part number. Therefore, the requirement to certify service-purposed spare parts can lead to many parts having to go through the certification process more than once, causing potential cost increases.²⁴ Furthermore, typical spare parts such as plastic fuel tanks, windshields, or headlights are imported with limited stock – sometimes just one set – for accidental repair, technical recall, or warranty. This is because these parts have long durability. If such spare parts are all required to be certified, companies will have to import an excess number to have sufficient samples to apply for the certification. These additional imports would cause the price of the product to increase significantly.

After successfully passing the physical tests of national technical regulations three consecutive times, VR issues exemption from testing documentation (valid for two years). The spare parts required from each shipment are required for compliance analysis (ranging from 1-7 parts per category), irrespective of the number of parts imported, even though Vietnamese technical regulations are in line with UNECE. These parts are scrapped post-compliance analysis testing. Such an analysis regime has a high impact cost for Original Equipment Manufacturers (OEM) for spare parts not different with OE fitted parts. This also represents an additional burdensome process and OEMs must ensure that minimum parts are sent in addition to the demanded requirements for after-sales.

In addition, the World Trade Organisation Committee on Technical Barriers to Trade published on 13 July 2021 the new draft National Technical Regulation which Vietnam MOT had just notified them. This specifies over 86 pages the testing, inspection, and certification of headlamps for road vehicles. The National Technical Regulation QCVN 35 2017/BGTVT – already equivalent to UNECE ECE R112 – shall be replaced by QCVN 35:2021/BGTVT.

Table 1: Vietnam National Technical Regulation matches UNECE documents for certification

No.	National Technical Regulation	UNECE equivalent National Technical Regulation		
		Regulation No. (ECE)		Date of entry into force (UNECE)
1	Headlamp QCVN 35:2017/BGTBT	ECE R112	Series 01 – Sup 6 - Rev 03 - Amend 03	08/10/2015
2	Rearview mirror QCVN 33:2011/BGTVT	ECE R46	Series 01 - Sup 4 - Rev 01	03/01/1998
	New Regulation QCVN 33:201X/BGTVT	ECE R46	Series 04 - Sup 2 – Rev 06 (Tentative)	18/06/2016
3	Safety glass QCVN 32:2017/BGTVT	ECE R43	Series 01 - Sup 4 - Rev 03 - Amend 04	08/10/2013
4	Tyre QCVN 34:207/BGTVT	ECE R30	Series 02 - Sup 17 - Rev 03 - Amend 03	27/01/2013
5	Fuel tank QCVN 52:2013/BGTVT	ECE R34	Series 02 - Rev 01	16/07/2003
	New Regulation QCVN 52:201X/BGTVT	ECE R34	Series 03 – Rev 03 (Tentative)	15/06/2015
6	Light alloy wheel QCVN 78:2014/BGTVT	ECE R124	Series 00 - Sup 1	30/01/2011

Source: European Automobile Manufacturers Association (ACEA) as of February 2021

²⁴ For example, a single front-vehicle light, when imported for production or when imported as part of a CBU, has been certified. However, when only one component (among 1,951 parts of such a light) needs to be replaced, this component needs to go through the certification process again.

Recommendation

We would like to make the following recommendation:

- Consider the possibility of signing the 1958 UNECE Agreement to facilitate the import of automobile products and auto parts from Europe earlier than the schedule specified in the EVFTA.

2. Certificate of Production

Issue description

Circular 33 removed the emission testing requirement for CBU vehicles already homologated in Vietnam.²⁵ However, Circular 05²⁶ still requests the inspection of a Certificate of Production (COP) at a foreign manufacturer or domestic assembler regarding the production plant. Due to COVID-19, VR travelling to audit foreign factories was suspended for six months until August 2020. Therefore, a “special process” for inspecting the COP documents has been adapted. The audit of factories abroad as requested under Circular 05 in order to issue a COP can be re-activated at any time. VR may request to audit the manufacturing facility – in Vietnam or abroad – to issue a COP, which would dispense of further testing in Vietnam to homologate vehicles. This has proven to be a satisfactory method to obtain the required information.

Potential gains/concerns for Vietnam

Annex 2-B of the EVFTA has not yet taken effect, and due to the impact of COVID-19, MOT has taken temporary removal measures. For instance, from 15 February 2021, Circular 33 accepts emission test reports valid in the EU without additional testing in Vietnam. Meanwhile, VR accepts UNECE certificates and test reports for vehicle homologation. However, Circular 05 maintains the request for VR to audit CBU factories abroad in order to issue a COP for each factory, valid for only 36 months. These conflicting regulations make it hard for producers to be compliant. Furthermore, we believe that Circular 33 is in line with the EVFTA.

Also, due to the numerous subsequent partial amendments of existing decrees, it would be helpful if relevant authorities could regularly publish an up-to-date and aggregated version of the revised decrees and legal documents posted on the national database of legal regulations. This would avoid confusing interpretation and facilitate compliance within the automotive sector.

Recommendations

We would like to make the following recommendations:

- Implement Annex 2-B earlier than scheduled under the EVFTA.
- Accept certification documents under UNECE automatically without COP assessment.

3. Product composition declaration at Customs clearance

Issue description

For customs clearance, the General Department of Customs in Hanoi issued Official Letter 7203 with immediate effect.²⁷ According to this letter, automotive importers have to provide full details in the customs declaration of the nature of products, quantities, types, structure, composition and properties, including for spare parts made from mixed materials, as well as power in Watt/kW.

For CBU imports, when the parts reference number on the vehicle declaration differs from the previous document, VR requests that those vehicles undergo physical homologation again unless the certificates of the parts in question can be presented by the importer, generating unnecessary delays and cost.

²⁵ Circular 33/2020/TT-BGTVT dated 23 December 2020 of the Ministry of Transportation Issued amendment 01: 2020 QCVN 86:2015/BGTVT national technical regulation on level 4 waste for automobile manufactured, installed and imported.

²⁶ Circular 05/2020/TT-BGTVT dated 26 February 2020 amendments to some articles of the Circular 03/2018/TT-BGTVT dated 10 January 2018 on technical and environmental safety inspection of imported motor vehicles regulated by Decree 116/2017/ND-CP.

²⁷ Official Letter 7203/TCHQ-TXNK dated 11 November 2020 of the General Department of Customs on data checking issued by the General Department of Customs.

Potential gains/concerns for Vietnam

Automotive spare part imports are complex and involve different materials. Such detailed composition data is rarely available. The immediate application of Official Letter 7203 poses a challenge for automotive parts manufacturers and importers facing this request without coordination and time to prepare. Due to the complex technology involved in some parts, we believe that some of the information requested might never be available. It is generating additional delays to clear customs resulting in increased costs for automotive companies and customers. In our view, such detailed data does not produce any value either. It does, however, complicate rather than simplify doing business which goes against the Vietnamese Government's objectives and directions in this regard.

UNECE documents for products from the EU are valid and accepted under the EVFTA. Thus, we recommend that MOT authorises that UNECE documents can be immediately accepted. This will solve a bottleneck to automotive spare parts importation for maintenance, warranty, and technical recalls requested from importers and assemblers in Vietnam. If this is not possible, the General Department of Customs and customs authorities should be provided with a flexible implementation period of at least three years. This would give manufacturers the necessary time to identify and document the product data requested.

For imported CBU vehicles, parts frequently change over the lifetime of the vehicle, and certificates are requested and issued mostly for "compulsory-component approval" parts.

Recommendations

We would like to make the following recommendations:

- Accept UNECE documents for products from the EU under the EVFTA.
- Authorise that UNECE documents are immediately accepted.
- Limit the presentation of certificates for those parts qualifying as "compulsory-component approval" parts for CBU imports, when the parts reference number on the vehicle declaration differs from the previous document.

III. ELECTRIC VEHICLES

Relevant authorities: Ministry of Transport (MOT), Ministry of Finance (MOF), Ministry of Science and Technology (MOST), Ministry of Natural Resources and Environment (MONRE).

It has been agreed that MOT will set up a strategy and roadmap on developing environmentally-friendly means of transport. MOF and MONRE are responsible for adding environmentally-friendly means of transport to the list of vehicles enjoying preferential tax policies for imported automobile components. MONRE is working with relevant agencies on national technical standards on emissions and a timeline of the standard application for different types of vehicles. It will issue criteria for environmentally-friendly means of transport and plans to retrieve and recycle batteries from electric vehicles.²⁸

Issue description

Worldwide, Electric Vehicles (EV) are a strategic solution to resolving air pollution. They are rapidly conquering the world thanks to government subsidies, increased range, lower battery costs, and environmental sensitivity. At present, EVs' autonomy ranges from 150 to 500 km per charge. Charging times take from 8 to 10 hours for normal charging and from 60 to 90 minutes for a faster, high-voltage charge. An EV's top speed is generally 60-150 km per hour. Electricity is usually less expensive and much more stable than petrol prices. And EVs are more efficient than ICE vehicles, with lower maintenance and repair costs. Electric cars and scooters are easy to integrate with smart parking solutions and electric car-sharing services.

²⁸ "Environmental Ministry proposes solutions to control pollution caused by transport", VietnamNews, 25 May 2020. Available at: <<https://vietnamnews.vn/environment/717184/environment-ministry-proposes-solutions-to-control-pollution-caused-by-transport.html>> last accessed 25 May 2020.

Replacing ICE equipped vehicles, step-by-step, with pure EVs including electric city buses, passenger cars, and trucks will develop mobility in environmentally-friendly cities. EVs are classed as motor vehicles with powertrains consisting of electric motors. Anything else is considered the same as a conventional motor vehicle. Plug-in EVs are generally divided into pure-electric or battery EVs that run only on batteries, and plug-in hybrids that combine battery power with an ICE. In the WhiteBook 2019²⁹, we recommended that MOT clarified HS codes by propellant type, standardised the national charging plug standard (IEC type 1 or IEC type 2), and accepted UNECE Regulation 85 on power output test results and CO₂ emission measurements as reported by an independent test laboratory following Regulation (EC) 715/2007 on type approval of motor vehicles without local testing for homologation.

The price of EVs remains up to twice as high compared to ICE vehicles of a similar model due to the high costs of raw materials used in the battery and production process. Today, electric car batteries cost US\$176 per kilowatt hour. However, that will drop to US\$87 by 2025.³⁰ By 2025, EVs will account for 25 per cent of global automobile production, and by 2026, EV prices will be close to those of conventional ones.

Car manufacturers worldwide are making huge EV investments. China is now the biggest, fastest, and largest growing EV market worldwide. In 2020, thanks to stimulus packages introduced by governments to boost demand, hybrid EVs made up 11.9 per cent of total passenger car sales across the EU, up from 5.7 per cent in 2019. Electrically chargeable vehicles surged to represent 10.5 per cent of all new car registrations versus 3 per cent in 2019.³¹

In Vietnam, MOST drafted standards for electric vehicles and some automotive companies such as DiMora Enterprises, Mitsubishi Motors, Audi, Porsche, and Vinfast initiated various projects, some in cooperation with local authorities.

Potential gains/concerns for Vietnam

Electric vehicles involve a complete chain of suppliers and associated services from power supply and distribution; charging stations and interfaces; and batteries including charging, recycling, and disposal. Developing an EV charging system is expensive. In 2018, the cost of one fast charger could be up to US\$200,000.³² However, in 2020, EU suppliers in Vietnam like ABB confirmed a reduced cost of charging stations, now ranging from US\$25,000 (for an AC slow charger) to US\$180,000 (for a DC fast charger). Therefore, the investment in a charging station network remains high.

To encourage environmentally-friendly vehicles, MOF added to Decree 125 vehicles running on electricity, hybrid, fully biofuel-powered vehicles, and CNG-powered compressed natural gas vehicles in the preferential program for import of automotive components. With 70 per cent import tax on EV and hybrid CBUs, or 18-20 per cent on CKD kits, plus SCT rates of 15 per cent, EV importation and manufacturing are not feasible in Vietnam for customers, power charge providers, or automotive companies. Furthermore, we believe that considering the objective of Thailand to become Asia's EV manufacturing hub which will only be possible only if Thailand's automakers export, including to Vietnam.³³

Recommendations

We would like to make the following recommendations:

- Grant a limited number of tax-free EV CBU to both CBU importers and/or CKD assemblers to test the technology.
- Refrain from applying import taxes on EV and hybrid CBU cars imported for pilot projects, and CKD kits, raw materials, and production equipment to be imported for EV manufacturing and assembly.
- Reduce SCT on EVs, hybrids, and mild hybrid vehicles by 50 per cent.
- Provide stronger incentives for technology transfer for EVs above the current support in prevailing regulations

29 EuroCham, WhiteBook 2019, Chapter 16a Mobility-Automotive, pp. 171.

30 Electric Vehicle Outlook 2019, Bloomberg New Energy Finance, 15 May 2019.

31 "Fuel types of new cars: electric 10.5%, hybrid 11.9%, petrol 47.5% market share full-year 2020", European Automobile Manufacturers Association, 4 February 2021. Available at: <<https://www.acea.be/press-releases/article/fuel-types-of-new-cars-electric-10.5-hybrid-11.9-petrol-47.5-market-share-f>>, last accessed 7 April 2021.

32 "Charging ahead: Electric-vehicle infrastructure demand", McKinsey, August 2018. Available at: <www.mckinsey.com/industries/automotive-and-assembly/our-insights/charging-ahead-electric-vehicle-infrastructure-demand> last accessed on 8 December 2020.

33 Thailand's 30@30 EV Production Policy Hinges On Export-Led Growth 03/03/2021 Fitch Solutions.

to customers and CBU-importers and CKD manufacturers on national and provincial levels.

- Invest in key charging infrastructure to pave the way for transportation electrification development providing full support to EVN to develop a charging station network to develop smart cities.
- Clarify the modalities and price for companies to invoice power charging to EV users at public and private-owned charging stations at - for example - car dealerships with EVN.

IV. WASTE DISPOSAL AND RECYCLING

Relevant authorities: Ministry of Transport (MOT), Ministry of Finance (MOF), Ministry of Science and Technology (MOST), Ministry of Natural Resources and Environment (MONRE).

Issue description

On 29 January 2021, MONRE invited automotive companies to a consultation on the draft Decree on Extended Producer Responsibility (EPR) under the Law on Environment Protection (LEP) 2020. EPR requires producers to bear the responsibility for their products after becoming waste, including: collection; pre-treatment, e.g. sorting, dismantling or de-pollution, (preparation for) reuse, recovery (including energy recovery) or final disposal.³⁴

The current EPR regulations mentioned in Decision 16³⁵ on take-back and treatment of discarded products includes five categories: (i) Batteries; (ii) Electrical and Electronic Equipment; (iii) Oils; (iv) Tyres; and (iv) EVs. Articles 54 and 55 in the LEP 2020 update EPR regulations on recycling responsibility.

Potential gains/concerns for Vietnam

In line with 'polluter-pay' principles, EPR requires producers to contribute to efficient waste management and recycling. This involves sharing the financial burden and/or physical responsibility of managing end-of-life products from local government authorities and the general taxpayers with the producers.

On 16 March 2020, MONRE founded the EPR National Platform. This is a voluntary working group of producers, recyclers, industry associations, NGOs, and related governmental agencies. It also includes representatives from respective product categories of the EPR policy, experts, and a coordination group. The International Union for Conservation of Nature (IUCN) Vietnam is a coordinated agency managing the experts and coordination group in the EPR National Platform.

The EPR National Platform in Vietnam defines a producer as the (I) brand owner, (II) first importer, (III) filler of the packaging rather than the firm that produces the container, (IV) multi-sellers' platforms or parcel delivery companies in cross-border online sales.

Because LEP 2020 is scheduled to come into effect on 1 January 2022, there is – in our view – insufficient time to define the standards for recycling, a roadmap, and the necessary guidelines for implementation in the automotive sector. Official solid waste collectors and recyclers at the scale requested for the size of the aging vehicle park nationwide are still to be identified, accredited by the authorities, and appointed officially to the automotive industry. The waste disposal credit mechanism when the implementation is effective and the fines to be levied in case of violations remain to be shared with automotive companies.

No matter the producer, vehicle ownership in Vietnam varies over time, and only commercial vehicles have their end of life defined. To finance their disposal or recycling via tax collection - whether from producers, retailers, or customers - remains challenging for an asset belonging to a third-party evolving over the vehicle's lifetime.

34 United Nations | Basel Convention (2019) Revised draft practical manual on Extended Producer Responsibility, Section II. UNEP/CHW 14/5/Add.1. Adopted by the 14th Meeting of the Conference of the Parties of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 29 April-10 May 2019. Available at: <www.basel.int/TheConvention/ConferenceoftheParties/COP14/tabid/7520/Default.aspx>, last accessed 23 March 2021.

35 Decision 16/2015/QĐ-TTg dated 22 May 2015 of the Prime Minister providing regulations on recall and treatment of discarded products.

Recommendations

We would like to make the following recommendations:

- Build a suitable ecosystem for the automotive sector in cooperation with the industry.
- Delay implementation until a roadmap for solid waste collection, disposal, and recycling channels is in place – including enforcement – to ensure credit mechanism for compliant companies or fines in case of violations.

ACKNOWLEDGMENTS

EuroCham Mobility Sector Committee.

CHAPTER 15 MOBILITY: MOTORCYCLES

OVERVIEW

In 2020 the Vietnamese market in general, and the motorcycle market in particular, has been impacted by the pandemic, although the government has made significant efforts to mitigate this. Furthermore, the development of electric scooters also had an impact on the growth of the gas-consumption motorcycle industry. Therefore, last year, the total two-wheeler market fell 14.4 per cent ending at 2.84 million sales. That was the first-time sales fell below three million units in over a decade.¹ Despite this, motorcycle demand remains strong and motorbikes will remain the most popular means of transportation in the coming years. Today, motorcycles still serve 80 per cent of travel needs.² Vietnam is the second-largest market for motorbikes in ASEAN (after Indonesia) and fourth in the world behind India, China, and Indonesia.³

The importance of the market motivates many investors to strongly commit to the motorcycle industry. However, only a few are strong enough to effectively compete in the market. These companies are gathered in the Vietnam Association of Motorcycle Manufacturers (VAMM) which includes enterprises from Italy (Piaggio), Japan (Honda, Yamaha and Suzuki), and Taiwan (SYM). Rising income levels are also stoking demand and current consumer preferences tend to favour more modern, fashionable bikes. For instance, the market share of scooters rose from 18 per cent in 2012 to 33 per cent in 2017, when scooter sales overtook motorbikes. New, fuel-saving models with additional functions, modern technology and new designs are launched in a much shorter time, while investment in Research & Development (R&D) is also on the rise.

Motorcycle manufacturers have made significant investments in Vietnam, contributing to economic growth, job creation and technology and knowledge transfer to the local population.

The Vietnamese motorcycle market will remain a promising industry for manufacturers, with high future growth rates both in revenue and consumption, particularly if supported by a clear and transparent development strategy from the Government. Motorcycle industry players have also conducted various activities contributing to social development, with a particular focus on improving road safety in Vietnam.⁴ Nonetheless, the motorcycle industry faces some challenges. In the following paragraphs, we discuss three of the most important issues and outline our recommendations to address each of them.

I. BAN ON MOTORCYCLE CIRCULATION IN BIG CITIES BY 2030

Relevant authorities: Office of the Government (OOG), Ministry of Transport (MOT), Hanoi People's Council (HNPC), Da Nang People's Council (DNPC), Ho Chi Minh City People's Committee (HCMCPC), provincial Departments of Transport (DOTs)

Issue description

In 2017, the Hanoi People's Council approved Resolution 04.⁵ This aims to manage the number, quality, and operation scale of Units in Operation (UIO). Furthermore, it proposes developing and improving the effectiveness of public

1 "Vietnam 2021. Motorcycles Sales still 10% down from pre-covid level", Motorcycles Data, dated 18 July 2021. Available at: <<https://www.motorcyclesdata.com/2021/06/26/vietnam-motorcycles/>>, last accessed on 29 July 2021.

2 Ibid.

3 "Vietnam's motorbike sales are second highest in ASEAN", Dat Nguyen, VnExpress, dated 26 February 2020. Available at: <<https://e.vnexpress.net/news/business/data-speaks/vietnam-s-motorbike-sales-second-highest-in-asean-4059655.html>>, last accessed on 29 July 2021.

4 "Motorcycle manufacturers' association and traffic safety committee boost co-operation", Viet Nam News, dated 22 April 2019. Available at: <<https://vietnamnews.vn/society/519007/motorcycle-manufacturers-association-and-traffic-safety-committee-boost-co-operation.html>>, last accessed 16 July 2021.

5 Resolution 04/2017/NQ-HĐND dated 4 July 2017 of the Hanoi People's Council on strengthening transportation management to reduce congestion and pollution in Hanoi from 2017 to 2020 and vision to 2030 (Resolution 04).

transportation, applying information technology in traffic management and control (smart transportation), and strengthening the capability of relevant State agencies in transportation system management. The roadmap to ban motorcycle circulation in Hanoi's inner-city districts is set out up to 2030.

Also, in 2017, Da Nang's People's Council adopted a proposal to develop transport infrastructure and the public transportation network.⁶ It also aims to enhance the application of information technology, telecommunications, and automatic traffic management. Furthermore, the use of private vehicles will be controlled and the entry of transport to the city's centre will be regulated.

The same year, Ho Chi Minh City (HCMC) authorities discussed a proposal to limit and ban motorcycles to solve traffic congestion and pollution. Accordingly, Decision 4341⁷ was issued. It aimed to make an implementation plan for HCMC's program to reduce traffic jams and traffic accidents 2018-2020. Therefore, the Institute of Research and Development was assigned to develop the "proposal to pilot implementation of the adjustment of the collection of fees related to new registration and transportation fees of individual motor vehicles". Then, in 2019, the HCMC Department of Transport proposed that HCMC ban motorcycles in central areas in three stages: 2020, 2021-2025, and 2026-2030. The expectation is that public transport will be well developed by 2030 in line with the increased control of motor vehicles. HCMC is now implementing a research project to recognise future risks in urban traffic and to set out proposals as a basis for immediate implementation with a vision to 2030 based on Resolution 25/NQ-HDND.⁸

To properly address the issue of pollution, the focus should be on the quality of the circulating vehicles rather than just indiscriminately banning all vehicles from city centres. This should be done by managing or prohibiting out-of-date motorcycles and incentivising the use of low-emission vehicles. We look forward to cooperating with the authorities to further roll out the program we piloted in 2020 related to testing emissions.⁹ Furthermore, congestion and pollution can be reduced by adopting best practice from other countries where advanced public transport and traffic infrastructure are used in harmony with motorcycles. It is also important to evaluate the social impact on people whose main transportation means are motorcycles but who now have to change to public transportation which has not developed enough to meet demand. Last, but not least, awareness should be raised about traffic regulation and safety. This will reduce congestion and, in turn, pollution.

Potential gains/concerns for Vietnam

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 HCMC, where streets are narrow and there are limited alternative methods of transportation. 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. As a case in point, we would like to highlight what happened in Jakarta. The Indonesian government banned motorcycles, but this met public opposition and was later overturned because the city's infrastructure and public transportation were insufficient to meet demand.¹⁰

On its own, banning motorcycles is not an effective solution to traffic congestion, pollution, and 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 cause significant challenges to the motorcycle manufacturing industry which, over the last decade, has made long-term investments in Vietnam to develop both domestic and international markets and

6 Resolution 102/2017/NQ-HDND dated 7 July 2017 on the scheme enhancing public transportation combined with controlling private vehicles in traffic, control and reasonably regulate entry of transport to the city's centre.

7 Decision 4341/QĐ-UBND dated 4 October 2018 of the People's Committee of the Ho Chi Minh City promulgate a plan to organize the implementation of the Program to reduce traffic congestion and reduce traffic accidents in the period 2018-2020.

8 "Approve the Project of Increasing public customer operation in combination with the use of private vehicles in traffic in HCMC", Ho Chi Minh City Portal, dated 29 October 2020. Available at: <https://hochiminhcity.gov.vn/tin-tuc/v/-/asset_publisher/6MeKi7dJC3fc/content/phe-duyet-e-an-tang-cuong-van-tai-hanh-khach-cong-cong-ket-hop-kiem-soat-su-dung-phuong-tien-co-gioi-ca-nhan-tham-gia-giao-thong-tren-ia-ban-tphcm>, last accessed 18 February 2021.

9 "HCMC estimates a motorbike emission testing plan to cost \$24 mln", Gia Minh, VnExpress, dated 9 December 2020. Available at: <<https://e.vnexpress.net/news/news/hcmc-estimates-motorbike-emission-testing-plan-to-cost-24-mln-4203697.html>>, last accessed 29 July 2021.

10 "Motorcycle ban signs taken down", The Jakarta Post, dated 10 January 2018. Available at: <<https://www.thejakartapost.com/news/2018/01/10/motorcycle-ban-signs-taken-down.html>>, last accessed on 29 July 2021.

contributed to the economic and social development of the country through tax and local job creation.

With a specific focus on pollution, it is important to underline that the association of motorcycle manufacturers is working closely with the authorities to introduce specific provisions on emissions in the new Law on Traffic. The introduction of limits and standards is a direct solution to increase the quality of UIOs having a positive impact on pollution.

Recommendations

We would like to make the following recommendations:

- Consider effective solutions to address the issues of traffic congestion, pollution, and traffic accidents in big cities.
- Focus on the quality of the circulating vehicles rather than indiscriminately on the quantity, in order to properly address the issue of pollution.
- Only manage or ban out-of-date motorcycles, incentivising the use of low-emissions vehicles.
- Reduce congestion and pollution by adopting best practice from other countries, where advanced public transport and traffic infrastructure are used in harmony with motorcycles.
- Evaluate the social impact on people who depend on motorcycles but now have to change to public transportation which has not developed enough to meet demand.
- Raise awareness about traffic regulation and safety.

II. REGISTRATION FEES

Relevant authorities: Ministry of Finance (MOF), General Department of Taxation (GDT)

Issue description

Vietnam's tax authorities have created favourable conditions for the electronic payment of registration fees for cars and motorcycles, such as Decision 2050¹¹ of the General Department of Taxation (GDT).

However, in practice, there are still obstacles in the tax payment process. Specifically, these include determining the taxable price for individuals who buy motorcycles as well as the enterprises to comply with regulations. In particular, the two main problems are as follows.

Firstly, tax authorities either refuse to receive the tax application or, if they do receive it, refuse to write an appointment letter regarding the time to process the payment for the registration fee. The reason given is that the district tax departments have not yet received the notice of the price for registration fee payment from the tax departments at higher levels. However, the enterprise has announced the selling price to the GDT and provincial tax departments around a week before selling the product in the market. Moreover, higher-level tax departments wait until they have received the dossiers from the district tax departments before issuing the notice about the price to calculate the registration fee. This is instead of handling the issue immediately after receiving dossiers from the manufacturers.

Secondly, tax authorities apply the highest registration fee rate of the special version to all standard versions for motorcycles with multiple versions, because these all have the same symbol on the Certificate of Conformity (COC). Therefore, most customers who buy the standard version of a motorcycle must pay a higher fee.

To ensure fairness and transparency when determining the registration fee for the majority of consumers, we propose that the price be determined as follows: The selling price of the mass-production version - which is the majority of the market - should be used as the basis to calculate registration fees. If the symbol on the COC is the same and the versions have different prices - and there is not a big gap in their volumes in the market - the price

¹¹ Decision 2050/QĐ-TCT dated 21 November 2017 of the General Department of Tax on the promulgation of registration fee management procedures to assets subject to registration fee (excepting for land and house).

for registration fee calculation should be based on the average price of these versions.

In order to speed up registration, the process of receiving price notification and registration fee dossiers by the tax departments should be implemented through a software system.

Potential gains/concerns for Vietnam

According to Decision 2050, the process to complete the payment for the registration fee is only four days from the date of dossier submission. However, the delays in practice mean that buyers run out of patience and get upset over waiting a long time for registration and the impact on consumers' rights. As a result, customers ask to return their motorcycles, damaging business operations and their image in the market. Furthermore, the Government also loses out on tax that would have been charged if the customer had bought the motorcycle.

When a customer buys a standard version of a motorcycle but has to pay a registration fee based on the higher price of the special version it unreasonably increases the cost of owning and using the vehicle. This results in taxpayer dissatisfaction with the current tax administration and has a negative influence on enterprises' business operations.

Recommendations

We would like to make the following recommendations:

- Set up a comprehensive management system to solve the notification of the tax rate in which the GDT notifies the district tax departments immediately after receiving the notice from enterprises.
- Encourage district tax departments, upon the receipt of dossiers, to notify the superior tax department in case no notice of the price has been received.
- Determine the price for the registration fee calculation in cases where multi-version motorcycles have the same COC symbol.
- Implement the process of receiving price notification and registration fee dossiers by the tax departments through a software system.

III. INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Relevant authorities: National Office of Intellectual Property of Vietnam (NOIP) under Ministry of Science and Technology (MOST), Vietnam Competition Authority (VCA) of Ministry of Industry and Trade (MOIT), Vietnam Internet Network Information Centre (VNNIC) under the Ministry of Information and Communications (MIC), National Steering Committee 38912

Issue description

Intellectual Property Rights (IPR) infringement in Vietnam remains a problem. Infringers have become smarter and craftier, while infringement activities are becoming more complicated and difficult to discover and control. Therefore, a strong protection and enforcement of IPR is essential to encourage foreign investment in Vietnam, especially at a time when Vietnam is part of major international treaties such as the EVFTA.

Potential gains/concerns for Vietnam

We note with concern that high-profile motorcycles are copied. Preferring to 'imitate rather than innovate', some companies are plainly trying to trade on the goodwill associated with the appearance of our products and confuse the public with the originals. In many cases, the manufacturer of copied products does not completely copy the product in full but makes some minor decorative changes. This creates difficulties for IPR owners to protect their rights. Currently, the Vietnam Intellectual Property Research Institution (VIPRI) under MOST is the only organisation

12 National Steering Committee 389 on fight against anti-smuggling, trade fraud and fake products established under the Decision 389/QĐ-TTg dated 19 March 2014 of the Prime Minister on the establishment of National Steering Committee for fighting against smuggling, commercial frauds and counterfeit goods.

evaluating industrial property rights. VIPRI performs the evaluation and defines whether copied products significantly differ from the original. This evaluation result is very important since it will be considered as evidence for bringing the claim to court. Sometimes, the evaluation results of VIPRI are found to not be perusable. However, it is hard for IPR owners to give an opinion or appeal this evaluation due to the lack of an appeal mechanism or any other expertise that is able to support the IPR owner in an appeal. Without a positive result from the evaluating organisation, IPR owners seem to be unable to protect and/or enforce their IPRs in Vietnam and, as such, the registration of IPRs seems to be meaningless.

Another issue faced by the motorcycle sector is the market of fake spare parts. These fake parts, easy to find at a more convenient and appealing price for customers, are very dangerous and impact safety. It becomes more difficult to control this matter when those fake parts are sold at high volume via e-commerce. We appreciate the plan issued to strengthen the fight against smuggling, trade fraud, and counterfeiting in e-commerce activities.¹³ However, it remains a problem motorcycle manufacturer have to deal with and for the safety of the population. It is, therefore, important to find a solution to support the motorcycle companies and to address safety concerns.

Recommendations

We would like to make the following recommendations:

- Strengthen the efficiency of protection and enforcement of industrial and product designs.
- Create a different and independent evaluating organisation of IPR protection-infringing cases.
- Strengthen the voice of IP-related authorities (such as NOIP) on IP Issues.
- Implement a mechanism for IPR owners to appeal VIPRI's evaluation.
- Establish specialised tribunals on IP matters, improving the IP knowledge and experience of judges.
- Enhance cooperation between IP enforcement bodies and relevant agencies in fighting against smuggling, commercial fraud and counterfeit goods.

IV. ENVIRONMENTAL PROTECTION

Relevant authorities: Ministry of Natural Resource and Environment (MONRE)

Issue description

The revised Law on Environment Protection (Law on EP) adopted on 17 November 2020¹⁴ includes many welcome and comprehensive provisions. Under this law, the general public will exercise their rights and responsibilities and each enterprise will have to create its own environmental monitoring unit.¹⁵ Amongst these positive provisions is the requirement that producers (mainly brand-owners) and importers of products that are able to be recycled shall have to recycle those discarded products in accordance with a compulsory ratio and methods. Failure to comply with this may lead to administrative sanctions.

Potential gains/concerns for Vietnam

The above requirement was already stated in Circular 34 on the re-calling and treatment of discarded products.¹⁶ Therefore, there are already requirements for discarded accumulators, batteries, inner tubes, tyres and vehicles. Accordingly, the producers, traders and service providers shall be responsible for recalling and carrying out treatment for those discarded products by recycling or finally disposing of them as required. However, there is no specific regulation on the procedures and/or methods to treat discarded products.

To resolve this matter, the revised Law on EP defines this responsibility of producers and importers. However,

13 The Plan 399/KH-BCD 389 dated 10 October 2020, on strengthening the fight against smuggling, trade fraud, and counterfeiting in e-commerce activities (Developed and promulgated by the National 389 Steering Committee).

14 Law on Environment Protection 72/2020/QH14 of the National Assembly dated 17 November 2020.

15 "Revised law focuses on keeping the environment clean", Viet Nam News, dated 21 November 2020. Available at: <<https://vietnamnews.vn/environment/809582/revised-law-focuses-on-keeping-the-environment-clean.html>>, last accessed 18 February 2021.

16 Circular 34/2017/TT-BTNMT dated 4 October 2017 of the Ministry of Natural Resources and Environment on recall and treatment of discarded products.

detailed guidelines are needed for effective implementation. To achieve this, the Government has recently cooperated with relevant businesses and associations to define the reasonable ratio and methods for the recycling of discarded products. In general, the producers and importers can choose either to arrange the recycling themselves or pay the Environment Fund so that it will do the recycling on their behalf.

Producers are willing to cooperate with the Government to implement this provision, as they acknowledge their responsibilities towards the environment. However, this provision is new and recycling - especially in the automotive sector - is difficult due to the fact that (i) vehicles are composed of many different parts, of which the responsibility for recycling belongs to other suppliers; and (ii) motorcycles are still considered as a quite valuable asset. It is, therefore, not easy to encourage people to transfer their asset to producers for recycling. For these reasons, the automotive sector is concerned about the methods and ratio of recycling to be applied.

Recommendations

We would like to make the following recommendations:

- Prepare a schedule of applicable penalties for non-compliance with recycling regulations.
- Apply penalties only to non-compliance with recycling methods but not the ratio.
- Amend the definition of producers and importers to include non-authorised importers who also import vehicles into Vietnam for sale, under a type of parallel importation.
- Monitor brand owners for the collection and recycling and make it a shared responsibility for many brand owners' clusters/suppliers providing parts and components for assembling the vehicles.

ACKNOWLEDGEMENTS

EuroCham Mobility Sector Committee.

CHAPTER 16 NUTRITION AND MILK FORMULA PRODUCTS

OVERVIEW

According to the National Institute of Nutrition, Vietnam currently has around 7.5 million children, of whom around 24.6 per cent are shorter than the average, and 14.1 per cent weigh less than their peers.¹ Malnutrition has been declining more slowly in the past few years, while the number of children with micronutrient deficiencies has remained high.² Therefore, accessibility to nutritional foods that improve the nutritional status, physical development, and the health of Vietnamese people must be ensured. Accordingly, Government policies and regulations should create favourable conditions for these products to be widely consumed. In this chapter, we will set out some issues that, in our view, limit this.

I. GOODS LABELLING IN CIRCULAR 05

Relevant Government authorities: Ministry of Science and Technology (MOST)

Issue description

Article 8 of Circular 05³ providing details for a number of articles of Decree 43⁴ has a new requirement: “In case the label of a product indicates that the product does not contain or does not have added one or several ingredients, the ingredient(s) should not exist in both the product and its ingredients”.

Potential gains/concerns for Vietnam

This new requirement is unsuitable because the phrase “should not exist” means the measurable level is zero. However, in nature, hardly any substance has a level of zero.

This requirement will lead to many domestically produced and imported food products needing to revise their labels or being withdrawn from the market, even though they have been used worldwide for many years. For example, “lactose-free” milk or “no preservative” fruit juice cannot be zero-level because substances like lactose or preservatives⁵ always exist at a very low level in nature. This requirement creates a trade barrier and might negatively impact trade and production for domestic and imported products. It also means that products cannot be labelled “no preservative” under this new regulation, even though they were grown on organic farms without preservatives. It will adversely affect the development of organic agriculture in Vietnam.

We understand that MOST has prepared a document to amend/remove this regulation. However, so far, it has not been promulgated.

Recommendation

We would like to make the following recommendation:

- Issue a document to amend/remove this regulation as soon as possible.

1 Databank on Child nutrition situation in Vietnam (from 1999 to 2015), National Institute of Nutrition.

2 “Vi chất dinh dưỡng- Thực trạng và giải pháp hiện nay”, [Micro-nutrients - current status and solutions], National Institute of Nutrition, 25 May 2016. Available at <<http://viendinhduong.vn/vi-tin-tuc/vi-chat-dinh-duong-thuc-trang-va-giai-phap-hien-nay.html>>, last accessed on 22 January, 2021.

3 Circular 05/2019/TT-dated 26 June 2019 of the Ministry of Science and Technology detailing the implementation of a number of articles of the Government’s Decree 43/2017/ND-CP dated 14 April 2017 on Goods Labels.

4 Decree 43/2017/ND-CP dated 14 April 2017 of the Government on Goods Labels.

5 For example, benzoic acid is a preservative, but it is found naturally in berries (oranges, lemons, plums etc.) as well as in tea and coffee.

II. HEALTH CERTIFICATES FOR EXPORTED FOOD IN CIRCULAR 52

Relevant Government authorities: Ministry of Health (MOH), Vietnam Food Administration (VFA)

Issue description

Circular 52⁶ stipulates that the procedures of issuing health certificates for exported food products must follow a two-round process⁷:

- Round 1: testing in a laboratory designated by the MOH; and
- Round 2: submitting the certificate of analysis to the VFA for issuance of a health certificate (five more working days).

Potential gains/concerns for Vietnam

This two-round procedure is cumbersome, complicated, time-consuming, and adversely affects food export. Meanwhile, seafood is also food, but the Ministry of Agriculture and Rural Development issues export certificates according to a very scientific and fast one-round procedure, so Vietnam's seafood exports have grown very rapidly in recent years.

Priority establishments that have not committed any violations for the last 12 months and have VietGap certification only have to take samples for testing every two months. The inspection and certification agency shall issue the export certificate within one working day of obtaining the inspection results. For non-priority establishments, the inspection and certification agency appoints inspectors to test and take samples for testing of the consignment and issues certificates within two working days of obtaining the testing results. Testing results do not have to be sent to the Ministry but are issued immediately by the regional inspection agency. EuroCham's NFG has proposed that an inspection agency authorised by MOH should grant a health certificate for the goods within one working day of obtaining satisfactory testing results. Thus, the two-round procedure of issuing health certificates for exported food products is shortened to one round, and the total issuing period is reduced by four to five days.

During the conference to discuss difficulties encountered by healthcare enterprises due to COVID-19 on 4 December 2020 in Hanoi, the VFA did not seem to agree with this idea as the law requires the agency granting health certificates to be a competent state agency. According to the VFA, laboratories are not competent state agencies. However, we believe that their conclusion might not be correct. The inspection agencies under MOH, such as the National Institute of Food Control, the Institute of Public Health, and the Pasteur Institute are all considered state agencies. The Prime Minister's decision on the establishment of the National Institute of Food Control⁸ states that: "The Minister of Health specifies the functions, tasks, powers and organisational structure of the National Institute of Food Control". Therefore, for inspection agencies under MOH to have sufficient authority as specified by law, the Minister of Health only needs to issue a decision to assign the granting of health certificates to these agencies.

The inspection agencies under the MOH have been issuing "Notices of results certifying food qualified for import" for imported food. So, in our view, they should be able to issue a similar certificate for food to be exported. Furthermore, the decentralisation to regional inspection agencies under MOH is consistent with the Government's policy. This will significantly reduce the time and simplify the process of exporting food, bringing significant

6 Circular 52/2015/TT-BYT dated 21 December 2015 of the Ministry of Health on State Inspection of Imported Food Safety and Applications and Procedures for Grant of Certificate of Export to Export Foods under the Administration of the Ministry of Health.

7 Article 17, Circular 52/2015/TT-BYT dated 21 December, 2015 of the Ministry of Health on authority, order and procedure of issuing Health Certificate (HC):

"1. Food entities that wish to be granted a HC shall submit an application dossier to the Vietnam Food Administration – Ministry of Health directly or by post.

2. After receipt of the application dossier, the document processing team shall examine such application, put it into the reception book and grant the applicant with a note of application receipt using the form in the Annex 05 of this Circular.

3. Within 05 working days from the day stated on the note of application receipt, the State competent authority in the clause 1 of this Article shall consider granting such entity with a HC using the forms in Appendices 09 and 10 enclosed with this Circular. In the case of rejection, the State competent authority shall send the applicant an explanation on which reasons for rejection shall be specified."

8 Decision 376/QĐ-TTg dated 23 March 2009 of the Prime Minister on establishment of the National Institute of Food Control.

benefits to Vietnam. Circular 52 was entirely repealed according to Circular 29⁹, except for the regulations related to issuing health certificates for imported food. Based on our above arguments, we believe that MOH can further support businesses by considering and adjusting the procedure of issuing health certificates, especially when MOH is known to be amending this regulation for exported food instead of imported food as prescribed in Circular 29.

Recommendations

We would like to make the following recommendations:

- Promulgate a document to allow other inspection agencies under MOH, in addition to the VFA, such as the National Institute of Food Control, the Institute of Public Health, and the Pasteur Institute, to issue health certificates for exported food.
- Ensure that the inspection agency issues health certificates within one working day of obtaining satisfactory testing results.
- Apply risk management related to testing for granting a Health Certificate for production establishments that have advanced certificates such as ISO 22000, GMP, or HACCP and have not committed any violations related to product quality within the last 12 months by testing a batch every two months for each product.

III. QUARANTINE REGULATIONS FOR PREPACKAGED FOOD

Relevant Government authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Health (MOH)

Issue description

Circulars 15¹⁰, 26¹¹ and 36¹² stipulate that all products from animals or of animal origin are subject to quarantine, including prepackaged foods that have been processed and are ready to eat under HS codes 17, 19, 20, 21, 22, and 35. Therefore, this quarantine would apply to infant formula under code 1901, medical nutrition products code 2106, collagen, and peptones (i.e. animal-extracted proteins) under codes 3502, and 3504 from which all pathogens have been eliminated during processing. In this regard, the Government's Resolution 19¹³ clearly states that "The list of products subject to quarantine is too broad and not necessary".

Quarantine of prepackaged processed food is now identical to food safety inspection as both include testing for microorganisms such as E. Coli and salmonella. Therefore, businesses need to conduct two checks at two agencies (product quarantine at MARD and food safety inspection at MOH). Some items are included in the list of products subject to quarantine but are not approved for quarantine and import because of unclear reasons such as "no consensus on veterinary hygiene requirements".¹⁴

Many items have to undergo two or even three types of specialised checks before customs clearance, including quarantine, quality inspection, and food safety inspection.¹⁵ The quarantine process consists of three stages, which is time-consuming, costly and contrary to the Government's direction to reduce pre-inspection and focus on post-inspection in Resolution 19.¹⁶

9 Circular 29/2020/TT-BYT dated 31 December 2020 of Ministry of Health amending, supplementing and abolishing a number of legal normative documents. The Circular came into force on 15 February 2021; Article 1 (5), (6), (7) and (8) of this Circular already came into force on 1 January 2021.

10 Circular 15/2018/TT-BNNPTNT dated 29 October 2018 of the Ministry of Health Promulgating HS Codes of Commodities under Management of Ministry of Agriculture and Rural Development.

11 Circular 26/2016/TT-BNNPTNT dated 30 June 2016 of the Ministry of Health providing for Quarantine of Aquatic Animals and Animal Products.

12 Circular 36/2018/TT-BNNPTNT dated 25 December 2018 on Amendment to the Circular No. 26/2016/TT-BNNPTNT dated 30 June 2016 by the Minister of Agriculture and Rural Development on Quarantine of Aquatic Animals and Products thereof.

13 Resolution 19/2018/NQ-CP of the Government dated 15 May 2018 ongoing implementation of major Duties and Measures to Improve Business Environment and Enhance National Competitiveness in 2018 and Subsequent Years.

14 For example, collagen products from cowhide under HS code 3504.00.00, processed frozen orange juice vesicles under HS code 2008.30.90 from Germany and the Netherlands.

15 Such as: wheat starch (HS code 1108.11.00) or corn starch (HS code 1108.12.00).

16 Stage 1: Register for quarantine, submit documents on the single-window portal; Stage 2: Submit original documents, including quarantine certificates at the quarantine agency; Stage 3: Invite the quarantine agency to come and take quarantine samples.

Potential gains/concerns for Vietnam

The quarantine of prepackaged, ready-to-eat foods cost significant amounts of money but is not effective. According to the General Department of Customs, in 2019, more than 134,000 imported shipments were subject to quarantine, but no violations were detected.

Furthermore, this quarantine requirement is not in the Veterinary Law as products of animal origin set out in the Veterinary Law are animal body parts rather than processed animal products as defined in Circular 15. This quarantine is also inconsistent with the Terrestrial Animal Health Code of the World Organisation for Animal Health (OIE). The OIE defines a meat product as “meat that is processed to irreversibly alter its organic and physicochemical properties”, and not as any product derived from meat.

The three-stage quarantine procedure requires both electronic filing and paper submission. This is time-consuming and costly, and contrary to Circular 36 which stipulates that “submission should be done through the National Single Window, public postal service or by email or fax”. It would be more cost-efficient if only electronic filing is required, and the original certificates (eg. Health Certificate) which currently required for paper submission are kept on-site for post-inspection or to be shown for consignments that need to be sampled for testing.

The refusal to quarantine and import for unclear reasons creates unreasonable trade barriers and difficulties for production and business.

Recommendations

We would like to make the following recommendations:

- Remove the quarantine requirement for ready-to-eat, prepackaged foods and prepackaged, heat-processed foods under HS codes 17, 19, 20, 21, 22, and 35 requiring only food safety inspection with submission of veterinary documents including a Medical Certificate.
- Combine food safety inspection and quarantine for prepackaged, processed foods.
- Inspect only food safety for products of animal origin when carrying out import procedures requiring veterinary documents.
- Require only quarantine procedures on the national single window system and eliminate the requirement to submit the original medical certificate which is kept on site for post-inspection.
- Not refuse to quarantine products with a Medical Certificate issued by the exporting country without a clear legal basis.
- Reduce the list of items subject to pre-clearance inspection and types of pre-clearance inspection. Only conduct 1 type of pre-clearance inspection for the item with the highest risk.

IV. CONTRIBUTION TO THE ENVIRONMENTAL PROTECTION FUND FOR PRODUCT AND PACKAGING RECYCLING

Relevant Government authorities: Ministry of Natural Resources and Environment (MONRE)

Issue description

Chapter VII of the Draft Decree detailing a number of articles of the Law on Environmental Protection (LEP) provides regulations on compulsory recycling rates of products and packages; compulsory financial contributions of organisations and individuals based on the compulsory recycling rates; financial contribution rates to the Environmental Protection Fund; and time of application. We strongly support the participation of organisations and individuals in environmental protection and would like to give the following comments to complete the provisions in the Draft, which still might be unclear.

Potential gains/concerns for Vietnam

The word “contribution” used in the Draft is not appropriate because “contribution” is voluntary but the provision is mandatory, like a fee. It is also not consistent with the LEP, which clearly stipulates the “environmental protection fees” so that the management of fees and the fund will comply with the Law on Fees and Charges without developing new management regulations. No fund management mechanism and plan to use the fund to build facilities for product and packaging recycling are mentioned in the Draft. Furthermore, the fee calculating formula is not clear (Fs and Fm are not specified).

The regulations on the organisation and operating mechanism of the National Extended Producers Responsibility (EPR) Council and the National EPR Office seem to overlap between public and private aspects: The National EPR Council and the National EPR Office are organisations which would be representing manufacturers and importers, but are composed of representatives of the Ministries. This does not seem reasonable, especially as funds contributed by enterprises would be spent for the National Council and the establishment of an EPR Office could lead to an increase in staffing which is contrary to the Government’s intention to reduce administrative staff.

Meanwhile, many regulations are not consistent with international practices and Vietnamese regulations which can create trade barriers and additional costs to businesses.

Firstly, Article 91 stipulates that “Payment must be made within 15 days; otherwise violators are required to pay 130 per cent of the cost of recycling the unqualified percentage in addition to sanctions for administrative violations, plus 10 per cent of this amount if they fail to pay in the next period”. However, there is no mechanism for businesses to respond if they believe that the EPR Office has not calculated correctly, and the time limit of 15 days is too short. This provision is not included in the LEP and conflicts with Decree 55.¹⁷

Secondly, Article 92(5) prescribes that “The receipt issued by the Vietnam Environmental Protection Fund or the contract signed with the organisation or unit specified at Clause 1(b) and (c) of this Article is the basis for the customs authority to approve customs clearance of imported products and packages; customs clearance is not approved until the importer has paid into the Vietnam Environmental Protection Fund”. This provision is contrary to the Law on Foreign Trade and the related Decree¹⁸ on documents required for import. As a result, it could lead to a series of bottlenecks for imports.

Finally, Article 97 of the Draft Decree stipulates that manufacturers and importers must place the information about the products and packages they manufacture or import on the labels or in the manuals associated with the products, including: information about ingredients and materials; instructions on classification, collection, reuse, recycling, post-use treatment; risk warnings in the process of recycling, reuse, and handling of products and packages. In addition, manufacturers and importers must use the national recycling symbol registered and announced by MONRE on the product’s packaging. This regulation not only makes it difficult and expensive for businesses to change the entire product label, but it is contrary to international practice. It is also inconsistent with Decree 43¹⁹ which does not require this information to be on the label.

The implementation roadmap is too short, while the recovery rate in the documents is a too-high estimate. Therefore, it will not be feasible and cause difficulties for businesses. We believe that the entry into force on 1 January 2022 will create additional burdens for companies that are already facing difficulties due to the COVID-19 epidemic. In addition, the increase in recovery rate for packaging specified in Appendix 55 of the Draft Decree from 80 to 90 per cent seems too high. It appears to be inconsistent with current practice in Vietnam. To achieve this recovery rate, businesses need to invest in new technologies and the implementation time for this will be three to five years.

Recommendations

We would like to make the following recommendations:

- Change the word “contribution” to “environmental protection fee for recycling products and packages”.
- Provide specific and clear fee formulas in the Decree.

¹⁷ Decree 55/2021/ND-CP dated 24 May 2021 of the Government on Sanctions for Administrative Violations Against Environmental Protection regulations.

¹⁸ Decree 69/2018/ND-CP dated 15 May 2018 of the Government on Guidelines for the Law on Foreign Trade Management.

¹⁹ *Ibid.*

- Review the composition, operational structure, functions, and duties of the National EPR Council and the National EPR Office to distinguish between the public sector and the private sector and avoid increasing state personnel.
- Finance activities of the National EPR Council and Office from the state budget instead of the fund paid by businesses.
- Consider removing inappropriate regulations on the payment time limit, sanctions for late payment, no customs clearance for late payment, and labelling.
- Postpone the date on which companies will have to start contribution to 1 January 2025.
- Develop an appropriate fee scale which starts with a low fee gradually increasing every three years while the new fee level is notified one year in advance so that businesses have time to prepare.
- Start the required recovery rate at 40 per cent, increasing every three years by no more than 5 per cent.

V. REGULATIONS ON ADVERTISING FUNCTIONAL FOODS

Relevant Government authorities: Ministry of Culture, Sports and Tourism (MCST), Ministry of Health (MOH)

Issue description

Decree 38²⁰ prescribes penalties for administrative violations involving cultural and advertising activities, Article 52(1) reads as follows: “Imposing the fine ranging from 5,000,000 Dong to 10,000,000 Dong for failure to write, read or read out loud the warning as follows: “This food is not a medicine and does not substitute a medicine” when advertising functional foods on print, audio, video and electronic media”. Meanwhile, Article 52(2)(b) stipulates that “Imposing the fine ranging from 10,000,000 Dong to 15,000,000 Dong for “advertising food (...) when lacking the following information: (...) main and sub usages of functional foods”.

Potential gains/concerns for Vietnam

This requirement conflicts with Decree 15²¹ which stipulates that the claim “This food is not a medicine and does not substitute for a medicine” applies to health supplements. Decree 15 does not stipulate that this applies to other food products. Decree 115²² also stipulates that this would be applicable to health supplements only.

In practice, only health supplements have dosage forms similar to medicines such as tablets and capsules and their usage is related to supporting treatment of diseases so they could be misunderstood as medicine; hence this claim is needed. Other food products are different from medicine, and this claim is not needed.

Regarding the usage, only health supplements have many usages, including main and sub usages, while food supplements only have the nutrition supplement usage. It is, therefore, not useful to declare both main and sub usages for supplemented foods as required by the Decree.

However, the implication of Decree 38 is that food products containing supplements - including but not limited to milk for children and adults (dieters, pregnant, and patients), iodine fortified salt and sauce, and vitamin C added beverages - that are being advertised based on current regulations will have to be revised for advertising contents. This will be time-consuming and will cost enterprises a large amount of money.²³ Besides that, this requirement contradicts Decree 115, and the foundation for inappropriate use of the products is non-existent as set out before. Furthermore, to our knowledge, Vietnam would be the only country with such a requirement for supplemented foods.

20 Decree 38/2021/ND-CP dated 29 March 2021 of the Government on Penalties for Administrative Violations Involving in Cultural and Advertising Activities.

21 Decree 15/2018/ND-CP dated 2 February 2018 of the Government elaborating on some Articles of the Law of Food Safety.

22 Decree 115/2018ND-CP dated 4 September 2018 of the Government on Penalties for Administrative Violations Against Regulations of Food Safety.

23 If the estimated time for saying this claim is 3 seconds, the cost of advertisement is 100 millions VND/30 seconds, adding this claim to one advertisement will cost 10 millions VND more, and only with 10,000 foods advertise 10 times/year will cost one thousand billion VND each year for enterprises without any benefit.

Recommendations

We would like to make the following recommendation:

- Change “functional foods” to “health supplements” in Article 52(1) and 52(2) of Decree 38 for alignment with food regulations, international practice, limiting costs for food enterprises.

ACKNOWLEDGEMENTS

EuroCham’s Nutritional Foods Group.

FOR MORE FOOD SAFETY-RELATED ISSUES, PLEASE ALSO READ

Chapter 13

FAABS + CropLife

CHAPTER 17 WINES AND SPIRITS

OVERVIEW

Vietnam has been ahead of the game when it comes to signing free trade deals to boost the development of the country. Notably, new-generation free trade agreements such as the EVFTA have brought benefits for both sides, including European Union (EU) wines and spirits imported to Vietnam. Thanks to the United Kingdom (UK)-Vietnam FTA, whisky imported from the UK also enjoys the same tariff scheme as set out under the EVFTA without any transition gap.

Since its implementation on 1 January 2020, the Law on Prevention and Fighting against the Harmful Effects of Liquor and Beer¹ (the Law) has provided a strong legal framework to support the national alcohol policy and reduce both the harmful use of alcohol and the consumption of unrecorded alcohol. However, we hope that the Government will support the position that 'alcohol is alcohol' irrespective of the type of alcoholic beverage or alcohol content that is consumed. Therefore, regulations to reduce the harmful use of alcohol should not be discriminatory, but instead be targeted at the problem of harmful use that is evidence-based.

On 1 January 2020, Decree 100² on administrative penalties for road traffic offences came into effect. This Decree imposes heavy penalties on traffic offences, especially drink-driving. In May, June and July 2021, Vietnam faced the fourth COVID-19 pandemic wave. During these outbreaks, the Government issued a number of restrictions such as social distancing, closures of KTV³, discos, bars, and restaurants. These all had a negative impact on local and imported spirits industries, with an estimated fall of 11 per cent in 2020 compared to 2019.⁴ Of this, the imported spirits segment is estimated to have suffered more heavily, equivalent to an annual drop of 14 per cent.⁵ While the wine market is estimated to have suffered less, it nevertheless declined 9 per cent. Beer also suffered heavily due to Decree 100 and the impact of COVID-19, with an annual fall of 8 per cent in 2020.

Nevertheless, the Vietnamese market still presents strong opportunities. The legal-drinking-age population is projected to grow by 2.7 million people between 2019 and 2022.⁶ The over 30-year-old cohort will see the most growth, though the population will remain relatively youthful, and it will be accompanied by a constant rise of disposable income.

We believe that that responsible and moderate consumption of alcohol can be part of a balanced lifestyle. However, we recognise that the harmful use of alcohol – regardless of its strength or category – can result in economic and social costs. Therefore, we share the Government's objectives to manage the harmful effects of alcohol abuse through appropriate policies and actions. We, further, recognise that, as responsible international companies, we have a role to play in contributing towards reducing the harmful use of alcohol and changing harmful consumption behaviours, acknowledging the value of a 'whole-of-society' approach.⁷

In the past three years, we have participated in harm-reduction programs and awareness-raising in partnership with the Vietnamese authorities. These initiatives have been aimed at preventing alcohol abuse and promoting responsible drinking, as well as strengthening drink-driving enforcement.

EuroCham's Wines & Spirits Sector Committee sets out the key challenges in this chapter. We welcome continued close cooperation with the Government to create an enabling regulatory framework for alcoholic beverages

1 Law 44/2019/QH14 on Prevention and Control of Harms of Liquor and Beer Abuse dated 14 June 2019 of The National Assembly of Vietnam.

2 Decree 100/2019/ND-CP dated 30 December 2019 of the Government on administrative penalties for road traffic offences and rail transport offence.

3 KTV may refer to: Karaoke television, a form of interactive musical entertainment. Karaoke box, a karaoke entertainment establishment. Available at: <https://en.wiktionary.org/wiki/KTV>.

4 IWSR May 2020 report (note: registered member can access). Available at: IWSR Domestic report 2020.

5 IWSR mid 2019 Excluding National Spirit.

6 "Vietnam's Alcoholic Beverage Industry", Vietnam Briefing, 9 February 2020. Available at: <www.vietnam-briefing.com/news/vietnams-alcoholic-beverage-industry.html/>, last accessed on 2 January 2021.

7 UN Political Declaration on NCDs, 2018, art. 44 (b) - Encouraging economic operators in the area of alcohol production and trade, as appropriate, to contribute to reducing harmful use of alcohol in their core areas, taking into account national religious and cultural contexts.

in Vietnam that supports the Government's objectives, increases revenue, and fosters a responsible drinking environment.

I. SPECIAL CONSUMPTION TAX

Relevant authorities: Ministry of Finance (MOF)

Issue description

The most recent Special Consumption Tax (SCT) reform took place in 2016. It introduced three consecutive annual increases of the Ad Valorem (AV) tax rate and changed the tax base on imported products from CIF to the importers' selling price. This reform has had a significant impact on imported wines and spirits, and would totally nullify the potential benefits of the EVFTA:

Table 2: SCT tax rate and taxable price

	2015	2016	2017	2018	Tax base
Spirits	50%	55%	60%	65%	Pre 1/1/2016: CIF Post 1/1/2016: importers' selling price
Wine	25%	30%	30%	35%	

During discussions on the Law there has always been pressure to further increase the AV tax on alcohol. Despite the problem of unrecorded, non-taxed alcohol in Vietnam (75 per cent of the total consumption), MOF has always relied on comments of international agencies, such as the World Health Organisation, that alcohol tax in Vietnam is low compared with other countries in the region. However, this is not correct for premium wines and spirits. For example, when comparing imported Generic Cognac products (700ml, 40% a/v, CIF VND 100,000), Vietnam's excise rates are higher than neighbouring countries.⁸

Since Vietnam has made significant efforts to improve the business environment, enhance national competitiveness, and actively adhered to multilateral trade agreements, we are concerned that any change in domestic regulations at this stage – including tax – will hinder these efforts and cause unexpected impacts on the economic development of Vietnam.

Potential gains/concerns for Vietnam

In our view, predictable and stable tax policies are necessary for business competitiveness. Any change 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, SCT rates for liquor increased every year. For instance, the SCT rate applicable for liquor has increased from 45 per cent in 2014 to 50 per cent in 2015, from a CIF basis. In 2016, there was a further increase of the rate from 55 per cent in 2016 to 65 per cent in 2018, but also a change of the calculation methodology with the application of the "wholesale 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 short- and long-term business plans. Such instability creates an increased burden in terms of operational costs and impacts, thus affecting the confidence of businesses to invest or further expand their activities in Vietnam. This, in turn, will also impact on the competitiveness of the country's business environment.

The implementation of the EVFTA has started to bring significant benefits to the business communities of Vietnam and the EU, especially in terms of import/export tariff reduction. Therefore, the increase of SCT on items imported

⁸ Preece, R. (2017). Alcohol taxation Vietnam.

from the EU could potentially cause concerns for international and EU enterprises about Vietnam's position in trade promotion and the level of support for business from the partner countries to realise the benefits of those agreements. In the spirit of the General Agreement on Tariffs and Trade (GATT), specifically the Most-Favoured-Nation rule and the National Treatment principles, every member country should 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 discrimination between imported and domestically-produced goods.

Although the SCT has been amended five times since 2003, and the tax rates for liquor and beer increased every year since 2014, there has been no comprehensive assessment of the social and economic impacts of these reforms. The Government's objective in increasing SCT on liquor and beer is to reduce alcohol abuse and protect public health. However, there have been no 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 per cent of the liquor consumed in the market is unrecorded - including homemade, smuggled, or counterfeit liquor⁹ - the SCT increase does not help to reduce liquor abuse. Instead, it facilitates the growth of illicit liquor sales as consumers turn to the informal market since legitimate liquor products cannot compete on price.

In 2011, the Prime Minister issued Decision 732, which requires "For Special Consumption Tax... (the Government) to study combined application of pro rata and specific rates to a number of taxable goods and services."¹⁰ The specific tax directly targets limiting pure alcohol content in beverages, ensuring fairness among products, providing more stable budget revenues while also requiring lower administration costs. The compound tax system is more complex, with potentially high administrative costs. However, it can help to achieve additional goals of preventing non-drinkers from consuming alcohol. Accordingly, the combined tax method can be considered in the transition process towards completing the use of specific taxation.

It overcomes the drawbacks of each taxation method, though its implementation is not straightforward. In the transition process, the mixed-tax method also helps to avoid creating tax shocks for industry stakeholders. A combined tax model should be considered and applied for the wine & spirits industry when tax policy is next reformed to meet the Government's objectives on public health and revenue. The Sector Committee would be available to share experience and best practice from other markets to develop a model combining the application of ad valorem and specific taxes applicable to the wine and spirits industry. This would help to set a reasonable and suitable rate with the country's living standards and to achieve both objectives of tax revenues and business development.

Recommendations

We would like to make the following recommendations:

- Maintain the predictability and stability of the current SCT system to ensure an enabling regulatory framework that supports increasing revenue and fostering a responsible drinking environment.
- Develop a model combining the application of ad valorem and specific taxes applicable to the wine and spirits industry to achieve both increased tax revenues and business development.

E-COMMERCE OF WINE AND SPIRITS

Relevant authorities: Ministry of Industry and Trade (MOIT), Ministry of Culture, Sports and Tourism (MCST)

Issue description

The Law allows, for the first time, e-commerce on alcohol above 15 per cent alcohol by volume (abv). Following the Law, Decree 24¹¹ provides guidance on e-commerce of beer and liquor. MOIT has provided further guidance

⁹ Global status report on alcohol and health 2014, World Health Organization, 2014. Available at: <https://apps.who.int/iris/bitstream/handle/10665/112736/9789240692763_eng.pdf?sequence=1>, last accessed on 8 December 2019.

¹⁰ Section III, Art.1, point b of Decision 732/QG-TTG dated 17 May 2011 regarding approval on the tax system reform strategy for 2011-2020.

¹¹ Decree 24/2020/ND-CP dated 24 February 2020 of the Government on elaboration of some articles of the Law on prevention and control of harmful effects of alcoholic beverages.

in Official Letter 2946¹² dated 27 April 2020 and Official Letter 4796/BCT-TMĐT dated 2 July 2020¹³. This is seen as a positive signal encouraging the application of information technology and e-commerce in all business sectors. It has become even more crucial in the context of COVID-19. In the long-term, with the requirement to ensure that all transactions are conducted through cashless payments, e-commerce will be an effective tool for the Government to control taxation and the smuggling of counterfeit alcohol.

On the other hand, e-commerce activities are covered by a different set of regulations. These include Decree 52¹⁴ and Circular 47, both of which were promulgated before the Law was passed. While Decree 52 is silent on whether the e-commerce of wines and spirits is allowed, Circular 47 specifically prohibits it. We understand that the Vietnam Authority on E-commerce and Digital Economy (IDEA), under the MOIT, is currently revising Decree 52 which is expected to remove this prohibition.

Potential gains/concerns for Vietnam

Traditional liquor trading activities regulated by Decree 105¹⁵ on alcohol trading are subject to geographical restrictions, which are clearly specified in the alcohol trading license. Specifically, a retail license allows the associate traders to sell liquor at the trading premise only. Meanwhile, a wholesale license allows the trader to sell liquor only within a province or city, while a distribution license allows traders to sell liquor in certain cities and provinces specified in the license. Permitting e-commerce sales of alcohol, while imposing geographical restrictions on the delivery of the products in accordance with the license, is not in line with the cross-border nature of e-commerce. Furthermore, it would impose compliance challenges for alcohol merchants.

The narrow interpretation and application of the licensing mechanism of Decree 105 - which was designed according to traditional, physical sales - will create barriers and undermine the implementation of Article 16 of the Law.

In our view, it would be helpful to organise a consultation with traditional retailer professionals and those specialising in e-commerce. They could discuss the necessary adaptations, particularly regarding compliance with regulations under the Law. In the meantime, duly licensed traders of wines and spirits – whether retailers, wholesalers or distributors – should be allowed to conduct online sale of these products across the country if they meet the alcohol e-commerce requirements. Furthermore, we would like to contribute in providing input and comments related to the revision of Decree 52 and its relevant guidance to ensure that the new regulation will provide a clear and transparent framework for e-commerce sales of alcohol for the benefit of consumers, traders, and management authorities.

Article 8.2 of the Law on Protection of Consumers' Rights states that consumers have the right to be "provided [with] accurate and complete information about organisations or individuals trading goods or services; contents of transaction of goods and/or services; the source and origin of goods; being provided with invoices and vouchers and documents relating to the transactions and other necessary information about goods and/or services that consumers purchase and/or use." Meanwhile, Article 4 of the Alcohol Law regulates the rights and obligations of organisations and individuals in preventing the harmful effects of liquor and beer. These include, "to receive the information appropriately, scientifically, accurately and objectively on liquor, beer, the origin, quality and harmful effects of liquor and beer". The information about a product's image in the virtual shop of a legally registered website, which meets the requirements of regulations on e-commerce, and matches exactly with what the consumer can see on the off-line channel - including the original label and Vietnamese label sticker - should not be considered as an advertisement.

Furthermore, without the exact image of a product, it would be impossible for consumers to check whether the goods they receive are the same as those they see on the website as well as in the shop. Finally, based on Decree 52: E-commerce means conducting part or all of the process of commercial activity by electronic means connected to the Internet, mobile telecommunications networks, or other open networks. If no accurate product information is shared with consumers, this might mean that e-commerce activities cannot be implemented.

12 Official Letter 2946/BCT-TMDT of the Ministry of Industry and Trade dated 27 April.

13 Official Letter 4796/BCT-TMDT of the Ministry of Industry and Trade dated 2 July 2020.

14 Decree 52/2013/ND-CP dated 16 May 2013 of the Government on E-commerce.

15 Decree 105/2017/ND-CP dated 14 September 2017 of the Government on Trade in Alcohol.



Counterfeit and/or smuggled alcohol has been a significant concern for manufacturers, legitimate importers, and consumers. In an effort to assist in enforcement, in addition to requiring traders to be licensed to sell liquor, it is crucial for e-commerce traders to have purchasing agreements with official and exclusive wholesalers or suppliers. This requirement, which is included in Decree 105 and currently applied on traditional liquor traders, will ensure that e-commerce traders purchase and sell legitimate alcohol products, reducing the opportunities for counterfeit or smuggled products to enter into this trading channel. It would also be important to have an efficient mechanism to report, delist, and investigate suspicious e-shops/alcohol sales online, and to ensure strong enforcement actions against IPR infringement and other illicit W&S trading activities online.

Recommendations

We would like to make the following recommendations:

- Amend Decree 105 to take into account the specific nature of e-commerce, particularly in view of the public audience.
- Do not impose any geographical restrictions or boundaries on e-commerce sales of alcohol before the consultation has taken place.
- Assure that the regulation amending Decree 52 will provide a clear and transparent framework for e-commerce sale of alcohol for the benefit of consumers, traders, and management authorities.

III. ALCOHOL SOCIAL POLICY AND CORPORATE SOCIAL RESPONSIBILITY

Relevant authorities: Ministry of Industry and Trade (MOIT) and Ministry of Health (MOH)

Issue description

The Law came into effect on 1 January 2020. It seeks to implement strong actions to protect people - particularly the young - from the influence of excessive alcohol consumption and to promote community initiatives for the prevention of harmful alcohol use.

However, we remain concerned about the unfair regulatory environment that continues to favour low-strength alcohol products, whilst imposing more restrictive measures on higher-strength goods. We would like to highlight that “alcohol is alcohol”, irrespective of the type of alcoholic beverage or alcohol content that is being consumed.

In 2015, international wine and spirits companies in Vietnam established the first Social Aspects Organisation (SAO) model in Vietnam. This leverages the industry's Corporate Social Responsibility (CSR) efforts with the slogan of “responsible drinking” under the Vietnam Association for Responsible Drinking (VARD). It also represents their CEOs' commitment to Vietnam's National Alcohol Policy (NAP). Representing the wine, spirits, and beer industries through its member companies, and the associated hospitality and retail sectors, the key objectives of VARD are to protect and promote the interests in Vietnam of consumers of alcoholic beverages by offering and promoting certain programs addressing certain types of consumers.

In 2019, the Asia-Pacific Wines and Spirits Alliance (APIWSA) and VARD merged together for an overall partnership with the National Traffic Safety Committee (NTSC) for a program entitled “Responsible Drinking and Road Safety 2019”. In 2020, APIWSA and VARD worked together on an evaluation of CSR initiatives and programs in place for the last three years implemented independently by the Vietnam–German University (VGU). This is a pilot program on strengthening the capacity of unrecorded alcohol production management in Ninh Binh province, in partnership with VBA and Ninh Binh's Department of Industry and Trade with policy support from the Industry Department, MOIT and the development of an online module on responsible e-commerce trading, in partnership with Vietnam Beer-Alcohol-Beverage Association (VBA) and Vietnam E-commerce Association (VECOM).

Potential gains/concerns for Vietnam

The members of the Wines and Spirits Sector Committee are proud to be acknowledged as part of the solution and will continue to 'walk-the-walk' in preventing and fighting against the harmful use of alcohol while promoting responsible drinking as part of a healthy and balanced lifestyle.

We believe that these programs, with long-term commitments and partnerships with Vietnamese organisations, set a good example of responsible and creditable citizenship in the country where we operate, and our efforts will contribute to the reduction of harmful use and effects of alcohol in Vietnam.

Recommendations

We would like to make the following recommendations:

- Support the alcohol harm prevention programs and campaigns by sharing a strong message on responsible consumption, irrespective of the type of alcohol.
- Continue the dialogue with all relevant stakeholders to further a joint effort.

ACKNOWLEDGEMENTS

EuroCham Wines and Spirits Sector Committee

The background is a deep blue gradient with various shades of blue. It features several bright, glowing light flares or starbursts, primarily along the left and right edges. There are also faint, thin white lines and geometric shapes, such as rectangles and triangles, that create a sense of depth and structure. The overall effect is a modern, high-tech, and futuristic aesthetic.

D

HEALTH AND BEAUTY

CHAPTER 18 COSMETICS

OVERVIEW

The Cosmetics Sector Committee appreciates the Ministry of Health (MOH) for having quickly issued Circular 29¹ in 2020 to support enterprises during the pandemic. We believe that these initial steps were very important in removing difficulties for businesses, and we hope that MOH will continue to strengthen the reform of administrative procedures. In particular, we hope that the Certificate of Free Sale (CFS) requirement will be removed for cosmetics imported from all countries. Furthermore, we hope that the revised regulations to eliminate the requirement of cosmetic advertisement approval will be enacted and will be replaced by post-market surveillance.

I. REMOVAL OF COSMETIC ADVERTISEMENT APPROVAL REQUIREMENT

Relevant Government authorities: Ministry of Health (MOH)

Issue description

The requirement that advertisement content of special products, goods, and services - including cosmetics - must be approved in advance by competent State agencies is not specified in the Law on Advertising. Specifically, Clause 4.b Article 20 of the Law on Advertising only stipulates that a cosmetic product, in order to be advertised, must have a cosmetics notification sheet in accordance with current regulations.² In our view, the requirement of advertisement approval does not contribute to the management of issues as much as focusing on the inspection of specific advertising activities in the market would do. Furthermore, it makes the process of bringing products to the Vietnamese market slower than other countries and increases the costs for businesses which results in higher prices for consumers.

In the context of e-commerce development, advertising contents need to be updated continuously and in a timely manner. The administrative requirement to submit certification documents for the advertised contents for products sold on e-commerce platforms has caused many obstacles for businesses.

Furthermore, during the COVID-19 pandemic, traders were encouraged by the Government to switch from selling goods in traditional stores to e-commerce platforms to minimise direct contact and large crowds. The abovementioned requirement caused many obstacles for businesses.

Potential gains/concerns for Vietnam

In light of promoting e-commerce sales, we believe that the requirement of approving product information sold on e-commerce platforms should be removed. This is because the products sold change from day to day, while the approval of cosmetic advertising content usually takes several weeks. It would be helpful if the Government could simplify and streamline administrative procedures and allow businesses to take full responsibility for the accuracy and honesty of the advertised content.

According to Official Letter 21305³, we acknowledge that the management agency has consented to the proposal to change the cosmetic advertising management from pre-market to post-market surveillance. However, until now, regulations on advertising approval in Decree 181⁴ and Circular 09⁵ have not been amended which hinders e-commerce development in Vietnam.

1 Circular 29/2020/TT-BYT dated 31 December 2020 of the Ministry of Health on amendments to and abrogation of some legislative documents promulgated or jointly promulgated by the Ministry of Health.

2 Article 20.4b, Law on Advertising dated 21 June 2012: "Advertisement condition: Having the cosmetics notification sheet as prescribed by law provisions on medicines when advertising cosmetics."

3 Official Letter 21305/QLD-MP dated 19 December 2019 of the Drug Administration of Vietnam (DAV).

4 Decree 181/2013/ND-CP dated 14 November 2013 of the Government on elaboration of some articles of the Law on Advertising.

5 Circular 09/2015/TT-BYT dated 25 May 2015 of the Ministry of Health stipulating the approval for contents of advertisements for special products, commodities and services under the authority of the Ministry of Health.

Recommendations

We would like to make the following recommendations:

- Amend Decree 181 and Circular 09 and issue new regulations removing the requirement of approving cosmetics advertising contents and focus on post-market surveillance.
- Abolish the requirement of approving product information sold on e-commerce platforms while implementing the issuance of new regulations.
- Simplify, and streamline administrative procedures and allow businesses to take full responsibility for the accuracy and honesty of the advertised content.

II. STREAMLINING ADMINISTRATIVE PROCEDURES, ENHANCING AND IMPLEMENTING ONLINE PUBLIC SERVICES

Relevant Government authorities: Ministry of Industry and Trade (MOIT), Ministry of Health (MOH), Departments of Industry and Trade (DOITs) and Departments of Health (DOHs), Drug Administration of Vietnam (DAV)

Issue description

The Cosmetics Sector Committee welcomes the Government's promotion of information technology to resolve administrative procedures for citizens and businesses. Currently, many documents are received, returned, and processed online and we recommend the following procedural reforms be implemented in all provinces and cities instead of just at the central level.

1. Cosmetics notification and advertising notification

We suggest that the DAV and the relevant Departments of Health complete shortly level 3-4 public services for the process of cosmetics notification and cosmetic advertising notification (after removing the requirement of advertising approval). We further recommend limiting the requirement of document submission, receipt of hard-copy results, and direct fee payment. For level 2 services, businesses still have to submit hard-copy documents and monitor the process online. The comparison between the hard and soft copies will be time-consuming for the management authorities.

Recommendations

The current situation and specific recommendations are as follows:

Table 3: Current status of cosmetics notification, advertising submission and Recommendations

Authority	Online submission	
	Cosmetic notification	Cosmetic advertising
DAV	<p>Level 3: Submit documents and receive results electronically, pay fees by transfer to the account and receive invoices at the department.</p> <p>Recommendation: Develop software to enable electronic payment.</p>	Not applicable.

Department of Health of HCMC	<p>Level: 2-2.5</p> <ul style="list-style-type: none"> › Upload scanned documents to the web portal. › Send the original hard copy documents to DOH. › Track document status partly via the system and partly with online specialists. › Pay fees by bank transfer. › Receive results at the department or by post. <p>The process is currently not smooth because companies are still required to submit hard copy documents to DOH and the process of tracking documents and paying fees is difficult and time-consuming.</p> <p>Recommendation:</p> <p>HCMC Department of Health should develop to level 3-4 to enable online submission, result receipt, and electronic payments.</p>	<p>Level: 2-2.5</p> <ul style="list-style-type: none"> › Upload scanned documents to the web portal. › Send the original hard copy documents to DOH. › Track document status partly via the system and partly with online specialists. › Pay fees by bank transfer. › Receive results by post. <p>The current process still requires companies to submit hard copy documents to DOH and wait for the hard copy results to be received by post. The process of tracking documents and paying fees is difficult and time-consuming.</p> <p>Recommendation</p> <p>After removing the advertising approval requirement, the notification process (if required) needs to be implemented fully in level 3-4</p>
Departments of Health of Da Nang, Ha Nam, Binh Duong, Long An, Bac Ninh	<p>The submission of electronic documents has not been implemented.</p> <p>Hard copy documents are submitted and results received directly.</p>	<p>Recommendation</p> <p>After removing the advertising approval requirement, the notification process (if required) needs to be implemented fully in level 3-4.</p>

Registration of marketing and advertising content of chemicals, insecticides, and disinfectants

Issue description

The current registration process for marketing and advertising the content of disinfectants - especially those critical to counter COVID-19, such as hand sanitizers and surface disinfectants - is time-consuming and complicated. These are common products used to ensure hygiene and protect health, and are essential during the current pandemic.

The registration procedures in accordance with Decree 91⁶ are also time-consuming and complicated. The current marketing registration process lasts from four to six months, and even up to 12 months in some places. All applications must be submitted in hard copy at the Health Environment Management Agency and hard copy results must also be collected. Advertising content registration also requires a similar hard copy submission and receipt process.

Another complicating factor is that results of tests conducted in foreign qualified laboratories are not accepted, especially as Vietnam has no procedure for testing SARS-CoV-2 virus for antiseptic product that has been approved by MOH.

⁶ Decree 91/2016/ND-CP dated 1 July 2016 of the Government on the management of chemicals, insecticides, and disinfectants used in the field of insecticide and disinfection.

We hope that MOH will soon have specific regulations and actions to address the aforementioned issues and provide timely support for these essential disinfectants to be quickly marketed in Vietnam. This will create a necessary and sufficient supply to serve the needs of Vietnamese citizens to protect their health and continue to counter the pandemic. This is also consistent with the management regulations of other countries in the region. Specifically, for hand sanitisers, most ASEAN countries approve the notification and registration within 0-3 days.

Recommendations

We would like to make the following recommendations:

- Simplify and streamline the marketing authorisation process for chemicals, insecticides, and disinfectants.
- Make the procedure for marketing authorisation and advertising registration level 4 online public services as soon as possible.
- Accept results of tests conducted in foreign qualified laboratories instead of requiring enterprises to re-conduct them in Vietnam.
- Issue a separate registration process for sanitiser products for human use to reduce conditions and shorten the time for this particular product group.
- Amend Decree 91 in order to reduce the conditions and shorten the time for antiseptic products from six months to a maximum of one month.

3. Promotion notification at the Departments of Industry and Trade

Issue description

The Government has said that the provision on promotion notification to DOITs across the country can take place through the National Public Service Portal. However, some DOITs still require the submission of hard copy promotion notification. For example, as per our update in December 2020, submission of all documents in hard copy is required in Bac Ninh, Dien Bien, Dong Thap, Ha Giang, Hung Yen, Kon Tum, Lao Cai, Nam Dinh, Son La, and Vinh Phuc; while online submission combined with hard copy submission is required in Can Tho, Da Nang, Dong Nai, and Bac Lieu.

Recommendations

We recommend that all local authorities improve the electronic system to fully apply the online process at all DOITs as soon as possible.

III. CERTIFICATE OF FREE SALE REQUIREMENT

Relevant Government authorities: Ministry of Health (MOH)

Issue description

Article 4 of Circular 06⁷ regulates that the notification dossiers of imported cosmetics shall include a Certificate of Free Sale (CFS). A CFS is only an administrative document issued by a competent agency of the exporting or manufacturing country to confirm that this product can be sold in that country. In many cases, the product with a CFS might not actually be distributed in the issuing country. Therefore, in practice, a CFS does not certify the product's quality, nor does it support cosmetics management but, rather, sets an unnecessary administrative burden.

⁷ Circular 06/2011/TT-BYT dated 21 June 2016 of the Ministry of Health providing cosmetic management.

According to Official Letter 275⁸, not every good mentioned in Appendix V of Decree 69/2018/ND-CP⁹ guiding the Law on Foreign Trade must provide a CFS for importing. The Government-level Decree does not require a CFS for imported cosmetics.

The CPTPP contains a clause requiring signatory countries not to request a CFS from the importing country. Moreover, Vietnam joined the ASEAN Harmonised Cosmetic Regulatory Scheme. Implementing these commitments, MOH amended, supplemented, and abolished a number of relevant legal documents removing the CFS requirement for CPTPP and ASEAN countries.

The ASEAN Harmonised Cosmetic Regulatory Scheme is modelled after the EU Cosmetic Regulation 1223/2009. Therefore, removing CFS requirement for cosmetics imported from the EU is rational when this requirement has been exempted for ASEAN.

Furthermore, the EVFTA contains a Most-Favoured Nation (MFN) principle. Therefore, we believe that the application of this MFN principle should result in the same treatment for imports coming from the EVFTA area as applied to products from the CPTPP signatory countries and a CFS should no longer be requested. Especially, as imported products can be safely distributed when businesses comply with the regulations on factory and product safety and authorities can manage cosmetics through post-market surveillance.

In the dialogues on 12 December 2019 and 30 June 2020 between the Advisory Council for Administrative Procedure Reform (ACAPR) and EuroCham under the coordination of Government Office Chairman Minister Mai Tien Dung, the MOH representative announced that, after removing the requirement for the signatory countries of CPTPP, the Ministry will continue to work with relevant ministries and associations to consider the plan for the countries outside the CPTPP in order to facilitate business while ensuring management requirements.

In the spirit of the Government's drive to reduce administrative procedures and facilitate trade and international cooperation, and specifically to implement Resolution 68¹⁰, we respectfully request that MOH add cosmetic products imported from EU Member States to the list of countries exempt from CFS requirements. This is needed in order to promptly assist businesses to keep pace with rapid changes in the sector, enhance their competitiveness in Vietnam and, most importantly, to comply with EVFTA provisions and facilitate import-export between the EU and Vietnam. At the same time, we request that MOH moves towards completely abolishing the requirement for a CFS for all imported cosmetics to meet the goal of reducing and simplifying regulations related to business activities, boosting post-market surveillance.

Potential gains/concerns for Vietnam

If the MFN principle of the EVFTA is applied, the treatment of imported cosmetic products will be the same regardless of origin. This will reduce administrative burdens, enhance the competitiveness of businesses, and thus reduce the costs of products. This would also be in the spirit of the Government's drive to reduce administrative procedures and facilitate trade and international cooperation implementing Resolution 68.

Recommendations

We would like to make the following recommendations:

- Apply the MFN principle of the EVFTA to cosmetic products imported from the European Union.
- Add cosmetics imported from the EU to the list of countries exempted from the CFS requirement and work towards goal of completely abolishing this requirement.

⁸ Official letter 275/XNK-TLH dated 5 May 2021 of the Ministry of Industry and Trade.

⁹ Decree 69/2018/ND-CP dated 15 May 2018 of the Government on guidelines for the Law on Foreign Trade Management.

¹⁰ Resolution 68/NQ-CP dated 12 May 2020 of the Government promulgating the Program on Reduction and Simplification of Regulations Related to Business Activities in the period 2020-2025.

IV. STRENGTHENING CONTROL OF FAKE COSMETICS AND SMUGGLED GOODS THROUGH ONLINE SALES

Relevant Government authorities: Government, Vietnam e-Commerce and Digital Economy Agency (ViDEA), Vietnam Competition Authority (VCA)

Issue description

The Government has made some progress in managing “malls” so that only genuine products are sold on e-commerce websites as per Decree 52 on e-commerce.¹¹ Nevertheless, private online stores operate freely without the need to comply with any regulations on tax, business licenses, or conditional business registration.

Especially in the cosmetics industry, thanks to the development of e-commerce, everyone - including people who are not the owners or registered distributors of the products - can sell cosmetics. They do not need to register the products they sell, comply with the regulations of MOH, or pay any taxes when selling on e-commerce websites.

Potential gains/concerns for Vietnam

E-commerce has resulted in unfair competition for foreign investors and owners of registered trademarks in distributing their products, thereby creating inequitable competitive advantages to sellers in the cosmetics industry. At the same time, it causes tax loss for the Government. Finally, as sellers can be anonymous on e-commerce platforms, it is difficult for customers to request a return or replacement when receiving poor-quality goods bought via these platforms.

Exchanges should have an announcement on the legality of two sales channels, namely malls and other retail stores. In addition, when customers are looking for information in the mall, outside stores must not be introduced because this makes customers confused between genuine and non-genuine channels outside the mall when they search for information and place purchase orders.

Recommendations

We would like to make the following recommendations:

- Enhance the management of e-commerce platforms to create a fairer and healthier business environment.
- Mention information on the legality of two sales channels on exchanges and avoid confusion for customers.

ACKNOWLEDGEMENTS

EuroCham Cosmetics Sector Committee.

¹¹ Decree 52/2013/ND-CP dated 16 May 2013 of the Government on e-commerce.

CHAPTER 19 INTERNATIONAL QUALITY MEDICINES (IQMED) – GENERIC AND BIOSIMILAR

PART 1: GENERICS

I. AFFORDABLE TREATMENT OPTIONS FOR VIETNAMESE PATIENTS

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly (NA) – Committee on Social Affairs.

Issue description

Vietnam has achieved its universal health insurance goal, with coverage now reaching over 90 per cent of the population.¹ Not only are more patients enrolled, but better benefits are also provided and patients' self-pay has been reduced. Ensuring sustainable drug access, continued drug supply and availability through health insurance policies will remain the key success factor and a huge challenge to national healthcare. The slower than expected economic recovery due to COVID-19,² will continue to put pressure on the nation's healthcare budget and pharmaceutical spending.

Generic drugs are high quality and can ensure effective treatment while being many times cheaper than brand-name drugs.

Potential gains/concerns for Vietnam

There are two key discussion points to focus on, namely promoting safe, effective access to drugs for patients; and ensuring a sustainable, continuous, and available supply of drugs while considering budget optimisation. MOH has recently implemented several measures to reduce the rate of brand-name drug consumption:

- Negotiating prices for brand-name drugs with a view to reducing prices. At present, Circular 15/2020/TT-BYT³ of MOH (Circular 15) includes 681 brand-name drugs in the list of drugs eligible for price negotiation. Previously, there were only four under Circular 09/2016/TT-BYT⁴.
- The Circulars guiding drug tendering⁵ already stipulated that the Pharmacy and Therapeutics Committee is responsible for the use of brand-name drugs and must provide justification in the supplier selection plans.⁶ Under Circular 15 a provision was added stipulating that brand-name drugs for which there are several generics available and for which the price negotiation is not successful shall be procured under the open tender along with generics.

As a result, the share of brand-name drugs consumed is expected to decrease over the years. It is essential that they are replaced with high-quality generics which meet international standards and have proven efficacy records. The abovementioned regulations will support savings for the Government budget.

However, to fully unlock this potential, additional steps are required while ensuring safe and effective treatment for patients.

1 "Universal health coverage in Vietnam", World Health Organization. Available at: <www.who.int/vietnam/health-topics/universal-health-coverage#:~:text=As%20of%202018%2C%2082%25%20of,to%20obtain%2090%25%20population%20coverage.>, last accessed 23 December 2020.

2 "Fitch Revises Outlook on Vietnam to Stable; Affirms at 'BB'", Fitch Solutions, 8 April 2020. Available at: <www.fitchratings.com/research/sovereigns/fitch-revises-outlook-on-vietnam-to-stable-affirms-at-bb-08-04-2020>, last accessed 23 December 2020.

3 Circular 15/2020/TT-BYT dated 10 August, 2020 of Ministry of Health promulgating list of drugs procured through bidding, list of drugs procured through centralized bidding, list of drugs procured through price negotiation.

4 Circular 09/2016 / TT-BYT dated 5 May, 2016 of the Ministry of Health promulgation of list of drugs for procurement through bidding, list of drugs for concentrated procurement, list of drugs for procurement through price negotiation.

5 Circular 11/2016/TT-BYT dated 11 May 2016 of the Ministry of Health on bidding for supply of drugs for public health facilities and Circular 15/2019/TT-BYT dated 11 July 2019 of the Ministry of Health on bidding for supply of drugs for public health facilities.

6 Clause 3, Article 15 of Circular 15/2019/TT-BYT dated 11 July 2019 of the Ministry of Health on bidding for supply of drugs for public health facilities.

Recommendations

We would like to make the following recommendations:

- Automatically remove originator status and merge all products from branded group to relevant groups once three Market Authorisations are active.
- Remove the price negotiation mechanism.
- Ensure the high quality of all drugs in Group 1. Specifically, strict standards should be developed for domestically-produced drugs.
- Introduce a consumption priority in hospitals to generic drugs from Group 1 and Group 2 over brand-name drugs due to their advantages of high-quality and reasonable price.
- Expand the list of bioequivalence drugs.
- Streamline the registration process for high-quality medicinal products.

II. MAXIMISE THE BENEFITS OF THE EVFTA IN HEALTHCARE

Relevant Government authorities: Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), National Assembly (NA) – Committee on Social Affairs, Drug Administration Vietnam (DAV).

Issue description

With the EVFTA now in effect, around half of EU pharmaceutical imports are duty-free with the rest exempted after seven years. Foreign pharmaceutical companies are allowed to establish foreign-invested enterprises to sell pharmaceuticals imported by them to distributors or wholesalers, build their own warehouses, provide information to Health Care Practitioners, and to do clinical studies and testing.

The supply of pharmaceuticals in Vietnam relies heavily on imports. Domestic output can only meet 52 per cent of total demand. Specifically, the value of drug imports has been forecasted to increase from VND 72.6 trillion (US\$ 3.2 billion) in 2019 to VND 114.40 trillion (US\$ 4.7 billion) in 2024. That is a Compound Annual Growth Rate (CAGR) of 9.5 per cent in Vietnam Dong and 8.4 per cent in US Dollars.⁷ In particular, EU-originated medicines constitute 9.7 per cent of EU exports to Vietnam.⁸ In 2019, France (14.6 per cent / US\$ 411 million) and Germany (11.6 per cent / US\$ 325 million) were two main medicines providers to Vietnam.

Figure 7: Trade flows by SITC product grouping 2019

SITC Rev. 3 Product Groups	Imports				Exports			
	Value Mio €	% Total	% Extra-EU	% Growth	Value Mio €	% Total	% Extra-EU	% Growth
Total	34,443	100.0	1.8	6.2	11,095	100.0	0.5	6.7
of which Pharmaceuticals	27	0.1	0.0	-16.8	1,081	9.7	0.5	23.7

Source: Eurostat connect – statistical regime

Last year, issues related to the drug registration process arose. Specifically, these concerned Marketing Authorisation (MA) renewal⁹ and its negative impact on the supply of medicines for patient treatment. Thousands of medicines were awaiting MA renewal and, despite the strong efforts of MOH and DAV to expedite the review process¹⁰, none

⁷ "Vietnam Pharmaceuticals & Healthcare Report", Fitch Solutions, 2020.

⁸ "European Union, Trade in goods with Vietnam" Fact sheet, European Commission, Directorate-General for Trade, dated 9 May 2020. Available at: <https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_vietnam_en.pdf>, last accessed 23 December 2020.

⁹ Circular 32/2018/TT-BYT dated 12 November, 2018 of the Ministry of Health on Marketing authorization of drugs and medicinal ingredients.

¹⁰ Outlined in Official Letter 3218/BYT-QLD of DAV dated 11 June 2020.

of the renewal dossiers were granted MA until mid-November 2020. The situation has been temporarily resolved by the issuance of Circular 29/2020/TT-BYT ¹¹ and we would like to thank the Government for its strong support. However, this situation needs to be addressed in a more permanent way.

The drug registration policy in Vietnam requires a profound analysis. Streamlining the process is required in terms of unlocking opportunities and maximising benefits arising from the EVFTA. Companies from the EU need to be treated in the same way regardless of which part of the EU they originate from. Nor should there be any form of discrimination against imported medicines or protectionism towards domestic drugs, in particular by creating new non-trade barriers.

A lean administrative environment - from e-submission of dossiers to online tracking with clear timelines and person(s) in charge, as much as they all seem challenging for the moment - are the future framework of a strong pharmaceutical industry.

Potential gains/concerns for Vietnam

The EVFTA unlocks new opportunities and creates benefits for the Vietnamese health authorities, companies and patients. Most of all, it helps to improve Vietnam's economic environment.

New companies bringing innovative medicines as well as more high-quality generics will enter the market, providing additional treatment options for Vietnamese patients. This will foster innovation and increase competition, resulting in direct benefits for patients and the healthcare budget.

A smooth, quick, and transparent registration process based on international standards and regulations to ensure safety for patients and full compliance with ethical codes will support Vietnam to become a more desirable foreign investment destination. Moreover, the domestic market will gain momentum and the segment of high-quality local medicines will start to flourish. This will result in the development of high standards not only in production but also in operations.

Recommendations

We would like to make the following recommendations:

- Revise and redraft the drug registration policy.
- Prepare a clear annual audit plan for DAV which is approved and implemented periodically.
- Draft a clear code of conduct for all pharmaceutical companies operating in Vietnam defining rules and guidelines within the healthcare sector.

PART 2: BIOSIMILARS

OVERVIEW

Biosimilar medicines are not the same as generic medicines, the latter being a medicine which contains the same molecule as an existing chemical medicine, such as aspirin. Unlike chemical medicines, biological medicines cannot be exactly copied. However, biological medicines (including biosimilar medicines) come from living organisms, such as living cells, that have been modified using biotechnology. This allows these living organisms or cells to produce the active substance of the biological medicine. This active substance is then harvested from the cells. These active substances (e.g. proteins) are usually larger and more complex than those of chemical medicines. Generic medicines are structurally identical to their originators. Biosimilars are highly similar, but not identical to their originators as a biosimilar is normally a complex mixture of variants and not a single molecule as in chemically synthesised medicine products.

Biological medicines, also known as first-generation biopharmaceuticals, have been produced for the last 30 years and are in clinical use for a number of diseases. A biosimilar is a regulatory term to refer to a biological

¹¹ Circular 29/2020/TT-BYT of the Ministry of Health dated 31 December, 2020 on amending, supplementing and repealing a number of legal documents issued and jointly promulgated by the Minister of Health.

product that has been approved via a stringent regulatory biosimilar pathway to prove no clinically meaningful difference in terms of quality, safety, and efficacy versus a reference product. The development of biosimilars aims to demonstrate comparable safety and efficacy by establishing biosimilarity. Biosimilar medicines also have nothing to do with complementary, natural, or herbal medicines.

The high cost of biological medicines can place a substantial burden on healthcare systems, potentially restricting patient access to these treatments. As a result, there is great interest in developing follow-on biologicals (generally referred to as biosimilars) that match reference medicines, following patent expiry, thus offering equivalent health outcomes at a reduced cost. Biosimilars are essential pharmaceutical products that could make important biological medicines available to different markets at an affordable cost. The expiry of patent protection of many biological medicines has led to the need for specific guidance regarding the development and approval of biosimilars. Since the standard generic approach is not applicable to demonstrate the similarity of biological/biotechnological derived medicines, the need for specific regulations arises for the registration, production, and comparability of these medicines. Many countries are working towards a framework for developing and approving biosimilars, as demand grows for access to biological medicines at lower prices. Thus, a framework of biosimilar regulations would be needed.

The European Medicines Agency (EMA) was the first regulatory authority to establish a framework for biosimilar approval. The EU was the first region to develop a biosimilar approval pathway due to the earlier expiration of patents for biotechnology produced medications in European countries. The EMA has issued guidelines since 2005 and has published additional overarching and product-specific biosimilar guidelines. It has approved >30 biosimilar medicines. In the past decade, biosimilar guidelines were issued in other stringently regulated markets, such as Australia, Canada, Japan, the Republic of Korea, and the U.S. Furthermore, in 2009, the WHO published guidance aimed at providing “globally acceptable principles” for the evaluation of biosimilars. Intended to assist national regulatory authorities in other regions in licensing proposed biosimilars, the WHO guidelines are regarded as a step toward global harmonisation of biosimilar approval requirements.

According to the regulatory requirements of different regions described in the previous section, there seems to be no significant difference in the general concept and basic principles in these guidelines. There are five well recognised principles with regard to the assessment of biosimilar products: (1) the generic approach is not appropriate for biosimilars; (2) biosimilar products should be similar to the reference in terms of quality, safety, and efficacy; (3) a step-wise comparability approach that indicates the similarity of the biosimilar product to the reference product in terms of quality is a prerequisite for the reduction of non-clinical and clinical data submitted; (4) the assessment of a biosimilar is based on a case-by-case approach for different classes of products; and (5) the importance of pharmacovigilance is stressed. Establishing biosimilarity allows the biosimilar manufacturer to rely on the extensive safety and efficacy profile of the originator, hence enabling licensing based on a tailored non-clinical and clinical data package. Determination of biosimilarity is based on the totality of the evidence from all stages of the comparison exercise. The stepwise demonstration of biosimilarity includes (1) in-vitro analytical testing, (2) non-clinical comparative pharmacology, (3) toxicology, (4) PK testing, and (5) one or more clinical trials to confirm the quality, efficacy, and safety of the proposed biosimilar as compared with the reference product.

In November 2004, the EMA issued a set of guidelines for biosimilars regarding general as well as product-specific requirements (e.g. Somatropin, Epoetins, Filgrastim). All general guidelines for biological products mostly apply equally to all biopharmaceuticals, including biosimilars.

The EMA's experience with evaluating biosimilars has demonstrated the value of clinical data in the assessment of biosimilarity. The EMA approval standards have been applied to a significant set of candidate biosimilar products and have successfully screened those with substantial analytical and clinical similarity from products with incomplete or unacceptable results.

A majority of biosimilar products reviewed by the EMA have received MA. Some biosimilar products that were evaluated by the EMA for MA were rejected or withdrawn by their sponsors after the EMA raised concerns during the review process. Other concerns raised by the Committee for Medicinal Products for Human Use (CHMP) included: impurities, insufficient stability data, significant difference in adverse event rates, and lack of sufficient validation in the immunologic response tests and manufacturing process. For example, in the case of a recombinant human Growth Hormone (GH) biosimilar candidate, more patients received this biologic product to develop non-neutralising anti-GH antibodies than received the reference product. This finding drove changes in the purification steps of this biologic's manufacturing process and the immunogenicity issue was solved.

The production of biologics involves complex multi-step manufacturing based on living cells and requiring extensive purification steps. The complex manufacturing process of biologics results in inherent variability, and even a minor change in any step of the manufacturing process can lead to a shift in product attributes. Any

variation has to stay within precise ranges to maintain clinical safety and efficacy.

Regulatory agencies around the world continue to emphasise the importance of clinical testing to evaluate the clinical impact, if any, of these minor biophysical variations.

It is important, however, to establish an abbreviated approval pathway for biosimilar products as this will provide the public with greater access to safe and effective biological products. For example, the abbreviated approval pathway in the U.S. provides more treatment options, potentially lowering health care costs through competition and increasing access to lifesaving medications.

The abbreviated licensure pathway does not mean that a lower approval standard is applied to biosimilar or interchangeable products. In fact, the data package required for approval of a biosimilar or interchangeable product is extensive. If a biosimilar manufacturer can demonstrate that its product is biosimilar to the reference product, then it is scientifically justified to rely on certain existing scientific knowledge about the safety and effectiveness of the reference product to support approval.

An important focus of the development of biosimilars is safety. Developing a biosimilar with a safety profile similar to the reference product can be challenging due to the complex molecular structure and complicated manufacturing process involved. In addition, the molecular structure of biologic products is also sensitive to changes in formulation, packaging, and storage. Safety considerations include immunogenicity, hypersensitivity reactions, and an increased risk for other adverse effects. Immunogenicity is the tendency of a biologic to induce an unwanted immune response against itself and to related proteins, or to induce immunologically related adverse events. The formation of anti-drug antibodies (ADAs) is the chief criterion for defining an immune response to biologics. Key issues on potential immunogenicity of biological medicines to be taken into consideration:

- Immunogenicity is not a safety concern in itself;
- Harmful immunogenicity is unlikely after manufacturing changes or after switching;
- Immunogenicity is always monitored post-marketing; and
- Immunogenicity data needed for approval of a biosimilar.

It is important to realise that, over the last 10 years, the EU monitoring system for safety concerns has not identified any relevant difference in the nature, severity, or frequency of adverse effects between biosimilar medicines and their reference medicines.

Biosimilars must be distinguished from 'biocopies'. Biocopies are biologics that do not meet the requirements of similarity to the original medicinal product since they have not been through the strict requirements including comparability studies among other requirements, as stipulated by the relevant bodies, such as the EMA, the WHO, or the US Food and Drug Administration (FDA). In this context, the distinction between biosimilars and 'biocopies' (alternative terms are Non-Comparable Biologicals (NCBs), 'biomimics', 'intended copies' or 'nonregulated biologics') - versions of monoclonal antibodies or fusion proteins available in countries where regulation is less strict - is of great importance as one of the most significant safety concerns with biosimilars is the potential risk of immune-based adverse events.

To ensure optimal outcomes for patients, it is critical that healthcare professionals have a clear understanding of a "true" biosimilar, including the levels and availability of evidence required for their approval in order to differentiate between biosimilars and NCBs. This is of particular importance in regions where NCBs are approved and/or marketed under the collective name biosimilars, and specifically in regions where NCBs and biosimilars co-exist.

Without a full comparability exercise, the safety and efficacy of the NCB, to match reference biological, cannot be assured. In some cases, NCB may have little or no available safety, efficacy or immunogenicity data, since they may have been brought to market using regulatory pathways designed for chemically-synthesised drugs, generic medicines or similarly abbreviated approval processes which do not require such data for licensure. Other attributes of the NCB critical to its safety and efficacy profile may either be different from the reference biologic or largely unknown. This uncertainty suggests such a product in the marketplace would have unknown efficacy and safety profile, and in the worst case could pose an increased risk to patient safety.

NCBs have not been subjected to the same strict analytical, non-clinical and clinical comparative evaluations prior to market approval as biosimilar regulatory pathways mandate. As a result, these products may have clinically significant differences in quality, efficacy and safety from their reference products. NCBs are creating confusion among prescribers, and current guidance regarding regulatory pathway, interchangeability, and substitution is lacking.

BIOSIMILARS: INCREASING PATIENT ACCESS TO STATE-OF-THE-ART THERAPIES

Relevant Government authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly (NA) – Committee on Social Affairs.

Issue description

The development of biosimilars is an attempt to improve access challenges faced by patients, generate cost savings for healthcare systems, and increase treatment options for healthcare professionals.

Potential gains/concerns for Vietnam

Benefit for Patients

The introduction of affordable, high-quality biosimilars improves access to life-changing medicines for patients worldwide. The EU saw a 100 per cent increase in the use of biologic treatments after the introduction of biosimilars in the EU.¹² Despite differences between countries, the overall trend in Europe is that biosimilar medicines are increasingly being used in medical practice and are increasing access to medicines for patients. Biosimilar medicines provide a huge opportunity to deliver significantly improved access to modern therapies for millions of European patients in both chronic and acute care in areas such as cancer, diabetes, rheumatoid arthritis or other immune-related diseases.

Lower-income individuals have been linked, in the past, to higher incidence of disease and worse disease progression, and they are often associated with overall worse health outcomes in comparison to the rest of the population. Women, the elderly, and lower-income individuals would disproportionately benefit from access to biosimilar medicines. At least 400 million people worldwide cannot access essential health services and more than two billion cannot afford to buy the medicines they need.

Benefit for Healthcare Practitioners

The introduction of biosimilars drives competition, resulting in increased treatment options and value-added services to support patient care and the healthcare community. Since 2006, EU-approved biosimilar medicines have generated more than 400 million patient days of clinical experience worldwide. With the global prevalence of age-related chronic diseases rising, access to cost-effective medical treatment will become increasingly important over the next decades.

Benefit to Payers

Moreover, competition increases the affordability of biologics which results in savings for healthcare systems, helping to liberate resources that can be used to improve care and fund next-generation medicines. Globally, biosimilar medicines have the potential to offer healthcare systems huge savings for the same outcomes as biosimilar medicines are often able to reach an acceptable Incremental Cost-Effectiveness Ratio (ICER) in situations where reference products are not.

Health economic Benefits from Biosimilar Medicines

Given aging populations and the rising prevalence of chronic conditions and cancers for which biologics are used, biologics take up a large part of healthcare budgets that are already under pressure, and rationing measures are inevitably applied. However, just as the introduction of generic versions following patent expiry of small molecule drugs drove down prices, biosimilars can be expected to lower the prices of biologics. The substantial savings realised can improve patient access by allowing more patients to be treated from the same budget. Thus,

12 "Biosimilars", US FDA. Available at: <www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/> last accessed on 28 January 2019; "Delivering on the Potential of Biosimilar Medicines", IMS Institute for Healthcare Informatics (2016). Lin-Chau Chang, Journal of Food and Drug Analysis, 27 (2019) 671-678; Isaacs J, et al. Considerations Med 2017, 1:3-6; Anita Krishnan et al. Biosimilars 2015:5 19-32. Kumar, J. et al., Pharmacovigilance 2015, 53; Richard Markus et al. BioDrugs (2017) 31:175-187; Jun Wang et al. Pharmaceuticals 2012, 5, 353-368; The Biosimilars Council 2017: Biosimilars in the US – Providing more patients greater access to lifesaving medicines. Available at: <<http://pr.euractiv.com/pr/biosimilar-medicines-opportunity-dramatic-increase-patient-access-across-europe-153876>>, <www.medicinesforeurope.com/biosimilar-medicines/our-5-pillars/>, <www.karger.com/Book/Toc/279159>, last accessed on 18 February 2021.

biosimilars will enable stakeholders – including payers, clinicians, and patients – to benefit from a greater choice of treatment options, and more patients will have access to these treatments. The potential to reduce medicine costs today is significant. By introducing competition with biosimilars, the savings generated could reach US\$44-250 billion over a 10-year period in the USA, the value dependent upon the policy adopted in the coming years. Other research has shown that opening markets to biosimilar competition could have enabled healthcare systems to realise savings of more than 10 billion euro in the EU's five major markets (the UK, Germany, France, Spain, and Italy) between 2016 and 2020 – based solely on direct competition for the originator molecule. Further savings are possible through indirect competition for other in-class or therapy-area-specific product sales. Access to cost-effective treatment is paramount for the short, medium, and long-term sustainability of healthcare systems. Biosimilar medicines represent a cost-effective alternative to the reference products.

Recommendations

We would like to make the following recommendations:

- Consider the early issuance of regulatory pathways for biosimilar medicines.
- Facilitate the introduction of high-quality true biosimilar medicines to reduce health expenditure and balance healthcare expectations.
- Re-assess biocopies (NCBs) that have not achieved regulatory approval according to the regulatory pathway for biosimilars after the local regulatory pathways for biosimilar medicines have been issued.

IQMED - Generic and Biosimilar Sector Committee are committed to putting patient benefit and safety at the centre of care. We are willing to accompany Vietnam's Government and relevant State authorities for a bright success of the national health plan in the period of 2018 – 2030.

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International Quality Medicines – Generic & Biosimilar.

CHAPTER 20 MEDICAL DEVICES AND DIAGNOSTICS

OVERVIEW

The Vietnamese Government has been working to improve the standards of healthcare in the country. Over the past few years, the overall socio-economic situation of Vietnam has also created demand for expanding healthcare services with higher quality. In the past decade, Vietnam's average annual GDP growth has averaged about 6.3 per cent, leading to rising incomes and growing spending on healthcare needs. Meanwhile, rapid urbanisation is putting the healthcare system under high occupancy pressure as major central-level hospitals with high reputations are always fully-occupied. Moreover, life expectancy increased by eight years from 1993 to 2028, rising to 73.5 years, leading to an ageing population. In addition, non-communicable diseases are rising, which now account for 80 per cent of deaths in Vietnam.¹ These trends are expected to continue and will create a greater need for long-term and well-coordinated healthcare services. In light of the fact that the rate of internet penetration is two-thirds of the population and mobile phone adoption is nearly universal, there is huge potential for digital technologies and better machine installation models to be utilised to bring healthcare access to a wider range of people, in a remote manner, and at a better quality.

I. DIGITAL TRANSFORMATION IN VIETNAM'S HEALTHCARE INDUSTRY

Relevant authorities: Office of the Government (OOG), Ministry of Health (MOH)

Issue Description

Over the past decades, the rapid development of technology - especially in healthcare - has been an integral part of people's life. In that context, the Vietnamese Government has committed to a national scheme that seeks to harness the potential of digital solutions across the health system. The Government's vision 2030 for digital transformation in healthcare² is to formulate a smart healthcare system based on three pillars³:

1. Smart management;
2. Smart hospitals, and;
3. Smart medical record management.

This smart healthcare plan will be built by focusing on different areas:

- The information technology infrastructure serves as the platform for operations management, data collection, reporting system management, and crossed-stakeholder communication.
- Capacity building for the healthcare workforce from the grassroots to central levels.
- A technical and quality assessment framework.
- Data protection and management policy.

¹ 'A Look Forward: How Digitalization is Transforming Vietnam Healthcare System' YCP Solidiance, March 2020. Available at: <<https://ycpsolidiance.com/white-paper/a-look-forward-how-digitalization-is-transforming-vietnam-healthcare-system>>, last accessed 29 April 2021.

² Decision 5316/QĐ-BYT dated 22 December 2020 of the Ministry of Health approving medical digitalization until 2025 and orientation to 2030.

³ 'The health sector promotes the digital transformation to actively participate in the fourth industrial revolution'. Available at <<https://ehealth.gov.vn/Index.aspx?action=News&newsId=53443>>, last accessed on 27 April 2021.

The current status of digital transformation of the healthcare sector in Vietnam

Since June 2018, Vietnam has set a clear target that, by 2025, 95 per cent of the Vietnamese population will have electronic medical records.⁴ While some major progress has been achieved, it is clear that digitalisation in Vietnam's hospitals is yet to be consolidated. Indeed, it is mainly implemented in central-level public and private hospitals, especially in tier-1 cities. Grassroots healthcare providers have limited financial and technical capabilities, hence they have lower e-health readiness and adoption. Digital solutions in hospitals mainly focus on departments such as diagnostic imaging, haematology laboratory, oncology and surgery. However, digital systems among different departments are not well connected and integrated. Therefore, doctors have limited access to patients' information stored in other departments during their clinical and treatment decision-making process. Tele-medicine solutions remain under a "pilot phase" and the application of Artificial Intelligence (AI) and Big Data in the health sector remains limited.

In general, the challenges for the digital transformation of healthcare can be grouped into three topics:

- *Limited digital compatibilities of healthcare professionals are a barrier to digital adoption:* Hospital IT departments are mainly responsible for operations and management of hardware and software systems, rather than the long-term goal of digital adoption. Besides, there is yet to be strong alignment in terms of digital envisioning between the top management who make decisions on technology investment and the doctors/nurses who are the real users of those technologies. The reluctance of these users to apply new tools may result in the slowdown of digital adoption in hospitals.
- *Financial pressures:* Hospital management software and the broader information technology infrastructure are expensive. While digitalisation has emerged as a key value proposition of private hospitals as they seek to compete with the more established public hospitals by investing heavily in digital platforms and considering digital as an essential factor to attract high-income patients, financial constraints in public hospitals are slowing down the process of digital transformation.
- *Limited data conformity and cybersecurity issues are hindering the integration of systems:* Currently, there are no national standards in place for data output and cybersecurity. Despite the guidance from central Government and local authorities, each organisation has its own standards, thus limiting inter-hospital connections. Data security concerns have led healthcare providers to be reluctant in storing patient information on the cloud and/or sharing their network with outsiders.

Potential gains/concerns for Vietnam

The COVID-19 pandemic provides a strong incentive to accelerate digitalisation in healthcare. Post-pandemic investments in digital technologies for use in customer engagement, care coordination, enabling a remote workforce or telemedicine will be higher once the threat of COVID-19 has waned. Telemedicine, already undergoing rapid growth, has quickly become a key tool for both preliminary COVID-19 screening and also for non-urgent care and consultations.

Therefore, healthcare systems must prepare for this tectonic shift now. Many patients are staying away from emergency departments and other healthcare locations, shifting to virtual care services or digital front doors. In addition, patients are increasingly approaching healthcare as consumers and looking for the same fast, easy and affordable service they have come to expect in other areas of life. What patients have found in virtual care is a healthcare model that allows them to consult with providers regardless of where they or the providers are located, and provides them with online tools that allow them to monitor and manage their own care. For the case of healthcare providers, the digital front door is a model which is both flexible and scalable, and allows them to direct their patients towards the care they need, engage with them from any distance, monitor their progress and manage their care.

⁴ "Sustainability and Resilience in the Vietnamese Health System", Health Strategy and Policy Institute, Vietnam, March 2021. Available at: <www3.weforum.org/docs/WEF_PHSSR_Vietnam_Report.pdf>, last accessed 4 May 2021.

It is an increasing trend, especially among the younger generations, to use technologies such as websites, smartphone apps, personal medical devices or fitness monitors to measure fitness and health-improvement goals. As Vietnam develops, urban youth are integrating health technology into their lives, driving wearable fitness and activity tracking technology. Indeed, more than two million people in Vietnam now own some form of wearable technology. Health monitoring is the primary reason for Vietnamese consumers to purchase this wearable tech.⁵ Regular health check-ups, for many Vietnamese people, require a visit to a local hospital or clinic, which contributes to crowding and additional pressure on already strained healthcare practitioners. Remote patient monitoring solutions from healthcare providers will allow people to communicate with their doctors and track information from the comfort and convenience of their homes. This will free-up bed space, lower the cost for patients, and allow for easier discharge of low-risk patients.

Virtual care is beginning to influence patients' selection of healthcare providers. Increasingly, patients expect digital capabilities and are more likely to choose a healthcare provider who offers prescription refills electronically, reminders via email or text message, email communication, online appointment bookings, as well as tele-monitoring or tele-consultation. Younger patients, in particular, are less satisfied with the traditional ways of accessing healthcare and are more willing to try non-traditional services such as virtual health. Eighty-four per cent of Baby Boomers have a primary care physician. However, amongst members of Generation Z – those born after 1996 – this figure drops to 55 per cent.⁶ Moreover, 41 per cent of Generation Z report that they prefer a virtual or digital experience with their healthcare professional. For Baby Boomers, this drops to 9 per cent.⁷ Through virtual health technologies, healthcare providers are now able to reach patients almost anywhere. The reverse is equally true: other providers, located almost anywhere, are now able to reach and compete for patients.

Digital front doors allow healthcare providers to engage with patients at every major touchpoint of their healthcare journey. New digital services will improve access to care, optimise clinical operations, and better manage population health, while at the same time increasing workforce productivity. Digital front doors enhance four different areas of provider-patient interaction.

Directing and engaging with patients virtually

Digital front doors can serve as navigation signposts along the patient journey, triaging and directing patients to the appropriate level or type of care while, at the same time, feeding the system with information. Moreover, it is a vital tool that allows care teams to engage with patients virtually.

Patients are potentially able to reach out to care teams virtually through smartphones, tablets or laptops in order to be in contact with healthcare providers when the need arises. Tele-visits allow patients to easily make appointments and make better use of their waiting time before those appointments. They also ensure social distancing – a major issue during COVID-19. These virtual visits also have the potential to deliver care of the quality that patients demand. Another value tele-visit brings to the table for healthcare providers is enabling them to expand access to speciality care in underserved regions where there is a lack of specialists. Finally, these digital front doors represent significant potential cost savings for patients, in the form of reduced travel time and, therefore, fewer travel expenses. For chronically ill patients who consult with their physicians regularly, these savings can be significant.

During a virtual visit, physicians can consult with patients and treat them directly with advice or a prescription or direct them to the appropriate offline healthcare provider. Alternately, chat-bots or other automated tools can collect patient symptoms and data automatically, with AI-powered systems performing intelligent analysis and making recommendations on next steps. Either way, patients are properly directed, which results in better outcomes while also relieving stress on the system caused by unnecessary emergency department visits.

5 "Digital Health in Vietnam" Market Intelligence Report, KPMG, December 2020. Available at: <<https://assets.kpmg/content/dam/kpmg/vn/pdf/publication/2021/digital-health-vietnam-2020-twopage.pdf>>, last accessed 29 April 2021.

6 "Today's consumers reveal the future of healthcare" (2019), Accenture Digital Health Consumer Survey 2019.

7 Ibid.

Monitoring patients remotely

Digital front doors allow providers to keep a remote eye on patients' signs and symptoms, identifying when they are at risk and providing them with individualised care management programs. Chronically ill patients can be monitored by healthcare providers regularly and remotely, allowing for early recognition if things start to go wrong and suitable intervention to avoid an emergency.

The data should be provided voluntarily by the patients with the assurance from the medical providers that the data will not be used for commercial purposes. If patients agree to use wearables and other measuring and monitoring devices, providers will have the data they need to provide better care. In addition, the generated data can then be aggregated in an electronic health record. With electronic health records, patients can access their health data and information. This allows them to upload that information and decide upon authorisation rights. It also promotes their active participation in their care process, and allows physicians to access data that has previously been locked away in silos of information systems throughout the healthcare infrastructure.

Monitoring population health

Digital front doors offer flexibility and an opportunity for health systems to better manage overall population health, identifying and responding to trends, and establishing new care delivery models. Furthermore, healthcare providers will be able to analyse and operationalise data received digitally from large patient populations. Healthcare providers can identify vulnerable cohorts and pave the way for proactive, targeted and even virtual engagement, as well as the administration of anticipatory care to avoid disease development and progression.

Any successful healthcare endeavour depends on patients. Digital front doors are no different, and patient buy-in is essential. In the case of older patients, many of whom suffer from chronic diseases, real-time monitoring and easier access to physicians can have a positive impact on unplanned readmissions, quality of life, and mortality. However, as older people are not always comfortable with new technology, a stronger engagement and education effort may be required. In the case of younger patients who are familiar and comfortable with new technologies, this education process will be easier. However, because of the nature of digital care, patients will almost certainly have different options and different providers to choose from.

It is quite possible, in fact, that more comparison websites and portals will emerge, helping patients to navigate what is, in effect, a provider marketplace. Thus, providers will have to turn their attention to digital marketing efforts such as brand management, search-engine optimised marketing, social media engagement, and platforms for patient reviews, in an effort to convince young, digitally-aware patients to choose their digital front doors.

If the first priority in any healthcare undertaking is patients, the second must be the workforce. In the case of digital front doors, existing staff need to be trained to work with the new technology, and should be integrated into the change processes that will be necessary through their workplaces. Existing staff need to be made aware of how new digital options will make their workplace more flexible. This will create incentives and motivation, which are crucial during this change process. In addition, new staff may be required; as a larger part of the infrastructure is going to become digital, a larger proportion of digital experts will be required.

To be usable, digital front doors will need to be integrated into existing infrastructure. That will require investment in new hardware (e.g., smart devices, tablets, etc.), and software. Improved wireless capabilities (e.g., a move to 5G) may also help to provide the needed connectivity. Data storage will pose a challenge for many, with a shift to cloud-based data storage offering a potential solution. The costs for infrastructure and technology upgrades such as these, as well as those related training, could prove to be a barrier for many organisations. Opportunities for flexible funding alternatives or partnership models might help to ease these pressures. Vendors with the relevant experience could be valuable partners during such transitions.

Optimising workflows is an ongoing challenge in all healthcare environments. Depending on the archetype and size of the healthcare provider, workflows will differ and the integration of digital front doors will involve a number of moving parts. Infrastructure, data, workforce and patients will all have to be incorporated. However, digital front doors will benefit from the arrival of new solutions that allow for simulation of workflows. This will result in a dependable prediction of the operational and financial impact before integration occurs, allowing for preparations to be made.

Vietnam is in the early stages of using AI and Big Data in healthcare: Only a few hospitals out of 1,400 currently have any form of AI usage.⁸ Currently, there is no legislation specifically governing Big Data and AI health applications, apart from those detailed in the 2019 adoption of Decision 4888/QĐ-BYT.⁹ Issues of security and confidentiality are of increasing concern to all consumers, and especially for medical data which is particularly sensitive. These issues must be addressed in an effective and comprehensive way, not only at the level of individual providers but also at a broader regulatory or legislative level. A properly integrated healthcare system will depend on the ability of providers of all types to share information, and patients must have confidence that their digital data is being treated securely. Internal data security governance capabilities are essential, as well as a thorough understanding of data flows in order to proactively anticipate potential security vulnerabilities.

Recommendations

We would like to make the following recommendations:

- Be prepared for the changed approach of the healthcare market by approaching current and future patients in a different way.
- Train staff to handle the new digital options and hire appropriate new staff where necessary.
- Invest in new hardware and software suitable to provide these new digital services.
- Find alternative flexible funding or partnership models to save costs.
- Optimise workflows using the options the (new) digital environment provides.
- Ensure that patients' data is protected.
- Develop legislation governing Big Data and AI for healthcare applications.

II. MACHINE INSTALLATION MODEL IN HOSPITALS

Relevant authorities: Office of the Government (OOG), Ministry of Health (MOH), Ministry of Finance (MOF), Ministry of Planning and Industry (MPI), Vietnam Social Security (VSS)

Issue description

Along with the increase in investment from the Government and socialisation policy, and due to the Machine Installation model in public hospitals (the Machine Installation model is one where the company who won the bid for chemicals and materials has to place the machines so that the bidder can use them¹⁰), much modern equipment has been purchased. This creates conditions for the deployment of high-tech in medical examination and treatment as well as better diagnosis, detection, and treatment of diseases.¹¹ Many high-tech medical technologies in Vietnam have reached the international level. Not only does it serve the Vietnamese people, it also means that the country has become a destination for many overseas Vietnamese patients and those from neighbouring countries. This has put the Vietnamese medical brand on the world map.

The Machine Installation model is applied widely in many countries in the Asia Pacific region such as Singapore, the Philippines, and India¹² as well as in developed countries in the G7.¹³

However, public hospitals and enterprises are currently facing difficulties with this model. It has been implemented

⁸ Ibid.

⁹ Decision 4888/QĐ-BYT dated 18 October 2019 of the Ministry of Health introducing the Scheme for the application and development of smart healthcare information technology for the 2019-2025 period.

¹⁰ "Many forms of socialization of medical equipment", VTV Online, dated 17 June 2018. Available at: <<https://vtv.vn/trong-nuoc/nhieu-hinh-thuc-xa-hoi-hoa-trang-thiet-bi-y-te-20180617113652741.htm>>, last accessed on 25 April 2021.

¹¹ "Vietnam Health: Continued success, creating a solid foundation for development", The Ministry of Health, dated 2 January 2020. Available at: <https://moh.gov.vn/chuong-trinh-muc-tieu-quoc-gia/-/asset_publisher/7ng11fEWgASC/content/y-te-viet-nam-tiep-noi-thanh-cong-tao-tien-e-vung-chac-e-phat-trien>, last accessed on 25 April 2021.

¹² "The changing landscape of the medical devices industry in the APAC region", KPMG, March 2020, page 15 to 16. Available at: <<https://assets.kpmg/content/dam/kpmg/jp/pdf/2020/jp-medical-device-apac-en.pdf>>, last accessed on 25 April 2021.

¹³ Global Atlas of medical devices, WHO medical devices technical series, 2017, page 81. Available at: <www.who.int/medical_devices/publications/global_atlas_meddev2017/en/> last accessed on 25 April 2021.

for many years in Vietnam, but there remain inconsistencies in policies from VSS, MOH, and MOF. This has led to difficulties in Machine Installation and insurance payment for services using installed machines. The issue was also presented in the 2019¹⁴ and 2020¹⁵ editions of the Whitebook and other EuroCham documents in 2020.

The current status can be summarised as follows: In 2018, MOH and VSS had many discussions about the payment of medical examination and treatment expenses for health insurance by the VSS by the machines lent or placed by the company which wins the materials and chemicals bid.

Medical socialisation and the Machine Installation model in public hospitals has been discussed at meetings with leading representatives from MOH, MOF, MPI, OOG and VSS. The unified solutions given by MOH and VSS to remove difficulties for insurance payment for technical services performed on machines lent or placed by chemical contractors at public hospitals are appreciated. These solutions aim to ensure transparency, publicity, and harmonisation of benefits between medical examination and treatment facilities, patients, and the health insurance fund.

Specifically, the solution aligned on by MOH and VSS in Notice 1039/TB-BYT-BHXHVN¹⁶ is, in our view, a good solution. It consists of proceeding payments for medical examination and treatment expenses, subject to health insurance, of the services performed by placed or borrowed machines provided by the winning suppliers, following the bidding result as per the Law on Bidding and signed contracts. After the expiry of the contract, continued installation shall be subject to regulations under Decree 151/2017/ND-CP¹⁷ (Decree 151). However, Decree 151 has not prescribed the forms of lending or installing machines and does not specifically guide the implementation for some forms of socialisation such as leasing.

Potential gains/concerns for Vietnam

The machine installation model has advantages that have been recognised by MOH and health facilities.

Firstly, it contributes to reducing State budget expenditure. In specific circumstances, such as COVID-19, the demand for equipment for testing, diagnosis and treatment of medical examination and treatment facilities has become significant¹⁸, while the State budget and legal sources for investment are limited. If the model is not applied, the State or health facilities will have to invest trillions of dong to buy testing machines. Therefore, the Machine Installation model is one of the necessary solutions for medical facilities to have equipment and for people to enjoy high-quality medical services.

Secondly, material and chemical prices are transparent in compliance with the law, bidding process and results. There is no difference in the price of materials or chemicals purchased for the machine installation model, purchased machine or socialised machine.

Thirdly, VSS pays the technical services under the applicable insurance price bracket and the application is the same, regardless of whether the service is performed on the installed machine, the purchased machine, or the joint venture.

In Vietnam, inconsistencies in documents guiding implementation for medical facilities and stakeholders has caused challenges for companies and health establishments when choosing the appropriate model for new machines. We are concerned that this will interrupt the implementation of diagnostic and therapeutic tests for patients, especially fast, critical tests. At the same time, the risks faced by hospitals are that they will lose opportunities to receive advanced and modern laboratory techniques that have been applied in advanced countries, and the financial burden for the State and hospitals will increase if they have to invest in and purchase machines. On the business side, this makes it difficult to handle and maintain the machines that were previously placed in the hospital, as well as the new machines to be located in the hospital.

¹⁴ WhiteBook 2019, EuroCham.

¹⁵ WhiteBook 2020, EuroCham.

¹⁶ Notice 1039/TB-BYT-BHXHVN dated 2 October 2018 of the Ministry of Health on the conclusion of Deputy Minister of Health Pham Le Tuan and Deputy General Director of Vietnam Social Security Pham Luong Son at the Briefing Conference of Two branches.

¹⁷ Decree 151/2017/ND-CP dated 26 December 2017 of the Government on Management and use of public assets.

¹⁸ "Enterprises of pharmaceutical materials and medical equipment overcome COVID-19", Lao Dong, dated 21 August 2020. Available at: <<https://laodong.vn/kinh-te/cac-doanh-nghiep-duoc-vat-tu-thiet-bi-y-te-vuot-tro-ngai-covid-19-829706.lao>>, last accessed on 25 April 2021.

We understand that authorities are reviewing the regulations relating to the Machine Installation model in order to have appropriate amendments in the future, including: issuing an official letter guiding the payment of health insurance which, hopefully, will result in the relevant Decree being amended.

Recommendations

We would like to make the following recommendations:

- › Add the machine installation model to the official documents of consistent policy from relevant Ministries (MOH, MOF, and VSS) regarding the model of placing equipment in public health establishments, to create an open and transparent legal framework.
- › Continue and approve insurance payment for technical services performed on placed machines until the new regulations to amend and supplement the machine installation model have been issued.
- › Circulate the documents and provide training for relevant stakeholders to allow a better understanding of the policy as well as full compliance with the law.

ACKNOWLEDGEMENTS

EuroCham's Medical Devices and Diagnostics Sector Committee.

CHAPTER 21 PHARMACEUTICALS

OVERVIEW

Introductions

Over the last two decades, the Vietnamese Government has continued to improve healthcare provision for its citizens. The Government's healthcare goals have expanded to address peoples' basic and complex needs for quality services and products and to strengthen the economic value generated by the sector as outlined in Decision 376 of the Prime Minister.¹ We believe that Vietnam has opportunities to transform the sector and become a leading country in ASEAN for high-quality healthcare in the next decade. Policy development and effective, efficient implementation play a crucial role in achieving this vision. In recent years, the innovative pharmaceutical industry continues to experience policy and implementation challenges which may hinder current and future investment. We would like to present these challenges and proposals for solutions in this chapter.

As the impact of COVID-19 on health, society and the economy continues to be felt across the world, treating and protecting citizens' health becomes more important than ever, especially with Vietnam's dual goal of combating the pandemic while boosting socio-economic development. The innovative pharmaceutical industry reaffirms our commitment to support the Government in efforts to prevent, diagnose and treat COVID-19, and position the healthcare system to counter future health challenges.

In parallel, patient access to medicines and vaccines for treatment and prevention of other conditions must continue. The pandemic has impacted and continues to pose challenges for the global supply chain, and the operations of regulators and companies. In these exceptional circumstances, in the best interest of patients, we respectfully call for more simplified and accelerated policy procedures while still ensuring the quality and safety of medicines.

In our view, objectives from patient access to attracting investment and administrative reform can only be achieved through (i) multi-stakeholder consultation dialogue in developing regulations, (ii) cross-ministerial collaboration in implementing regulations, and (iii) accountability and commitment to regulated timelines from all parties.

EuroCham Pharma Group (PG) believes that the recommendations outlined in this chapter will assist the Government in addressing the current critical issues and make positive progress in improving health outcomes, reducing administrative burdens, and fostering the development of a predictable, sustainable environment for quality investment in the pharmaceutical industry.

I. A PREDICTABLE AND SUSTAINABLE INVESTMENT ENVIRONMENT IS NEEDED TO ACHIEVE VIETNAM'S VISION

Relevant Government authorities: Office of Government (OOG), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Finance (MOF), Vietnam Social Security (VSS), Ministry of Science and Technology (MOST)

Issue description

As a key driver in the continuous research and development of new treatment solutions globally, the innovative pharmaceutical industry plays an essential role in improving health outcomes and economic growth. In recent years, many countries, especially those in ASEAN, have realised this and have put in place a series of incentives to

¹ Decision 376/QĐ-TTg of the Prime Minister dated 17 March 2021 approving the program on developing pharmaceutical industry and domestic manufacture of herbal ingredients to 2030, vision towards 2045.

attract investment from the innovative pharmaceutical industry.

Today, Vietnam has a unique and timely opportunity to build a favourable environment with attractive incentives to become the destination of choice in ASEAN for further investment and long-term commitments from innovative pharmaceutical companies. If there is an attractive environment, the value that can be generated by the innovative industry is evident²:

- Economic contribution: an additional US\$ 6.1 to US\$19.6 billion in total by 2040.
- Health outcomes: new treatment solutions would be accessible more quickly while disease awareness and preventive healthcare practices will be enhanced.
- Local capability development to produce high-quality essential drugs, meeting domestic demand and, over time, enable export.
- Contribute to a vibrant and innovative healthcare eco-system through further investment in clinical research, public-private collaboration, etc.

We appreciate the continued efforts of the Government in the past years to attract high-quality, high-value investment through numerous policy initiatives. However, a concerted effort and efficient implementation of policies will be required to enhance the business environment and increase Vietnam's competitiveness following global key indexes.³ As a committed partner, the role of the innovative pharmaceutical industry in Vietnam as a key contributor to the sector development has been recognised and clearly stated in Decision 376.

Potential gains/concerns for Vietnam

Concerns about the business environment and policy developments can hinder the industry development vision:

To unlock the industry's potential, it is critical to realise that, today, companies still have significant concerns regarding the predictability and sustainability of the business environment. The industry continues to face challenges in market entry, maintenance of product circulation, and sustaining product presence in Vietnam. These factors all significantly impact the viability of the innovative pharmaceutical industry and our ability to invest.

- For drug registration, companies continue to experience significant delays and regulatory hurdles to obtain and maintain Marketing Authorisation. If not addressed, this can directly impact the introduction of new medicines to the market, and the supply of existing medicines, posing risks to patients who are being treated and affecting the entire healthcare system.
- Abrupt changes to tender regulations, as well as uncertainty in the implementation of Price Negotiation for originator medicines, present challenges to the sustainability and predictability of processes for drug procurement. As a result, these challenges can impact the supply and patient access to medicines, while reducing the investment of the innovative industry in Vietnam.
- Delays in the inclusion of new medicines to the National Reimbursement Drug List are limiting patient access through the public health insurance scheme.

These challenges will not only impact patients and industry development, but can also have unintended spillover effects such as the impact on employment, reduction of current investments, and showing the efficiency level of the Government's administrative procedures reform efforts.

A predictable, sustainable environment with attractive incentives will need to be in place:

As mentioned before, Vietnam has a unique and timely opportunity provided by Decision 376 to build a favourable environment with attractive incentives, in order to become the destination of choice in ASEAN for further investment and long-term commitments from innovative pharmaceutical companies. Policy and smooth

² "Social and Economic Impact Assessment of Innovative Pharmaceutical Industry in Vietnam" Report, KPMG, October 2019.

³ As reflected in Resolution 19/NQ-CP of the Government dated 18 March 2014 on key tasks and solutions to improve the business environment, enhance national competitiveness and Resolution 02/NQ-CP dated 1 January 2019 on continuing to implement the main tasks and solutions to improve the business environment, enhance national competitiveness in 2019 and orientation to 2021.

implementation of policy are key enablers for MNCs to consider expanding their investment in Vietnam in the long term.

We applaud the Government's dual efforts to improve the investment environment by not only reducing the conditions for business, but also implementing quantitative measures to enable evidence-based policy decisions, such as the annual Administrative Procedure Compliance Cost Index ("APCI") led by the Office of Government.⁴

To attract further investments from the innovative industry, attractive and sustainable incentives in policy should be developed with a focus on three key pillars:

1. Attract investment in clinical trial activities as an enabler to further develop Vietnam's R&D capabilities;
2. Enable Vietnam to become the destination of choice for investment in brand-name manufacturing and technology transfer activities in the region; and
3. Develop and embed leading digital healthcare infrastructure.

Pharma Group is eager to contribute to the development of these incentives. Thus, we would like to participate and provide our support to the Program Steering Committee chaired by the Minister of Health to implement Decision 376.

Recommendations

We would like to make the following recommendations:

- Address immediate hurdles in policy and implementation, by focusing on the three key pillars: Drug registration, procurement and reimbursement.
- Implement quantitative measures in the development and assessment of policy by further improving APCI towards OECD best practices based on EuroCham Pharma Group's global experience and information resources.
- Provide an enabling business environment for innovative companies through effective enforcement of Intellectual Property Rights (in line with the EVFTA and other free trade agreements) and support for companies to establish FIE importers, effectively operationalise their legal entities and import medicines to Vietnam.
- Develop attractive and sustainable incentives in policy to attract further investments from the innovative industry, with a focus on three key pillars: (i) Clinical trials to develop R&D capabilities, (ii) manufacturing of innovative medicines through technology transfer, and (iii) digital health.

II. IMMEDIATE CHALLENGES LIMITING SUSTAINABLE PATIENT ACCESS AND FURTHER INVESTMENT

Relevant Government authorities: Office of Government (OOG), Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Vietnam Social Security (VSS), Ministry of Science and Technology (MOST)

The innovative pharmaceutical industry continues to pursue our primary mission of ensuring Vietnamese patients have fast and sustainable access to innovative medicines. Challenges in recent years, mostly due to changes in regulations and implementation issues during the transition period, are bringing increasing concerns for the industry.

To address these hurdles, we would like to present the below recommendations which, in our view, are enablers that can be unlocked immediately to enable Vietnamese patient access to be closer to parity with leading countries in the region and create a strong foundation for sector development. Our recommendations focus on three goals:

⁴ OECD Regulatory Compliance Cost Assessment Guidance, OECD. Available at: <<https://www.oecd.org/gov/regulatory-policy/compliance-costs.htm>>, last accessed on 4 May 2021.

- Registration: Ensure timely registration of innovative medicines through a clear, simplified and harmonised regulatory process.
- Procurement: Unlock the value of innovative medicines by ensuring a sustainable and predictable process for tender and price negotiation of originator products.
- Reimbursement: Achieve timely, value-based market access for innovative medicines to ensure equitable and sustainable availability of medicines to patients.

1. Drug registration

Issue description

Vietnam currently falls behind ASEAN markets as it has the lowest innovative pharmaceutical share across the region. Innovative pharmaceutical represents 20 per cent by value and approximately 4 per cent by volume. Innovative pharmaceutical registration timelines are ~4-5 years which is among the slowest in the world.

Today, our members are facing delays bringing new medicines to market, constant risks of supply shortages and continued challenges in operation (from the need to build significant inventories to bridge gaps if possible) because of complex regulations and delays in registration dossier review. In practice, multinational pharmaceutical companies need 3-6 months to plan, manufacture, and import medicines to Vietnam, after receiving Marketing Authorisation (MA) approvals from the Ministry of Health. Therefore, the predictable and timely review and approval of MAs is crucial for companies to make appropriate preparations. Especially, in the present context where global supply chains are already stretched due to the complicated developments of COVID-19, the planning for the Vietnamese market needs to be more thorough and urgent.

"Today, it can take 4-5 years for a new medicine approved in the EU/US to be available in Vietnam"

Potential gains/concerns for Vietnam

The industry remains very concerned and would like to alert the Government to the potential risks to the supply of new and existing medicines, mostly due to the fact that: Regulations for drug registration are very complex with specific requirements for documents and processes that are different compared to requirements in ASEAN countries and globally (e.g. Certificate of Pharmaceutical Product requirements). Furthermore, there is a lack of practical transitional measures between old and new regulations, and a lack of measures to synchronize approved administrative contents (e.g. variations, updates) to relevant lists (e.g. Brand name list).

Implementation, both in terms of process and resource, is not yet fully efficient. There is a significant number of backlogged dossiers. DAV is in the process of building an e-registration system, which aims to reduce the administrative burden on the management of drugs circulating in the market, and speed up the dossier review progress. Following global experience, we understand that the effective implementation of this system requires time and resources. At the same time, there remain critical challenges such as inconsistencies in dossier reviews (leading to delays and administrative burdens), infrequent Drug Committee meetings, lack of expert reviews and registration fees are not yet adjusted to be more appropriate and on a par with regional countries.

We would like to propose the following solutions to regulations and implementation, to ensure (i) quality assurance for patient safety, (ii) harmonisation of regulatory requirements, (iii) reduction of unnecessary administrative burdens, and (iv) fair and equal access to the market.

Recommendations

We would like to make the following recommendations:

Regulations solutions

- Establish a mechanism for Marketing Authorisation (MA) to remain valid throughout the product lifecycle, similar to the practice in other countries, instead of being subject to renewal every 5 years.
- Harmonise administrative requirements with international guidelines and practices (most notably for the Certificate of Pharmaceutical Product).

- Remove administrative requirements that are challenging to implement while not adding to the assurance of product safety, quality and efficacy
- Enable automatic synchronisation of approved updates/variations across different lists to ensure drug information is always up to date while reducing workload for the authorities.
- Apply more appropriate drug registration fees to be on a par with other countries in the region, especially since the review of clinical dossiers requires expertise and additional resources.

Implementation solutions

- Optimise the dossier review and appraisal process with clear accountability and commitment to regulated timelines including organising fixed, preferably monthly, Drug Committee meetings to ensure shared understanding and consistent feedback from dossier review experts. Ensure an effective and efficient online registration system that is implementable for both regulator and industry, and can truly speed-up the dossier review timeline.

2. Procurement

Issue description

In recent years, there has been increased pressure on cost-containment to effectively manage the sustainability of the healthcare budget in Vietnam. For the innovative industry, we would like to highlight the importance of careful consideration before introducing and implementing important policy changes for cost-containment objectives, noting the unique context of Vietnam⁵:

1. Vietnam has achieved good health outcomes, while there is an inherent need to ensure equitable and sustainable access to medicines and healthcare services for patients, without compromising on quality:
 - a. From a payer perspective, Vietnam has the lowest price level in ASEAN, on par with Malaysia (better than Thailand, Indonesia, and the Philippines) when looking at the average price across five key therapeutic areas.
 - b. Vietnam's use of originator products (Value/Volume) is already amongst the lowest in the world (much lower than countries such as EU5 and ASEAN+5, in 2019:
 - Vietnam (26% Value / 4% Volume);
 - In ASEAN+5 (40.4% Value / 7.4% Volume)
 - In EU5 (64.86% Value / 30.32% Volume)
2. Vietnam's procurement channels are unique. The public hospital drug tender channel currently contributes more than two-thirds of the value of the total prescription drug market for treatment, an exceptionally large number, and unique compared to other countries in the world. As a specific example, for Diabetes, the hospital channel in Vietnam contributes up to 85 per cent volume whereas the corresponding volume in Germany is 1.2 per cent, France 1.1 per cent, Korea 2.6 per cent, and Singapore 16.9 per cent.⁶

"Drug prices in Vietnam are well-controlled and among the lowest in ASEAN.

Vietnam also has one of the highest usages of generic medicines in public hospitals."

For this reason, in Vietnam, if not carefully considered and managed, any change in procurement regulations will have a systemic, harsh effect, and impact all aspects and actors in the healthcare system – from hospitals, healthcare professionals, industry and, most importantly, patients – suddenly and significantly.

Potential gains/concerns for Vietnam

Today, the innovative industry is particularly concerned about the lack of clarity, predictability and sustainability for the implementation of the Price Negotiation mechanism. While it is agreed that Price Negotiation is an

⁵ Quintiles IMS data analysis 2020.

⁶ Ibid.

effective mechanism to help manage the healthcare budget ensuring patient access to innovative medicines, this mechanism needs to consider multiple factors to ensure the avoidance of unintended and adverse consequences. This includes sustainability in terms of price reduction magnitude and frequency, predictability of the criteria applied, and clarity of the timing and process for implementation. Without the assurance of these principles, it is estimated⁷ that at least 143 out of 701 products will face possible supply disruptions, impacting over 25 million patients and a reduction of 58 per cent in planned industry investment and significant job losses.

Furthermore, with the implementation of Price Negotiation, it is important to ensure clear guidance for how originators will be procured during the transition time is widely communicated. Otherwise, patient access will be put at risk and the situation will further jeopardize the value and potential investment that the industry can contribute to Vietnam.

Also, frequent considerations to revise the Tender Circular (on average every two years) presents uncertainty and challenges for both industry and hospitals in planning and ensuring an adequate supply of medicines for treatment. Most recently, in anticipating changes to the current Tender Circular 15⁸/2019 and coupled with the lack of guidance on how originator products subject to Price Negotiation are to be procured, many hospitals have delayed or put on hold the procurement for originators. This poses significant risks for patient treatment.

Besides, whereas in many other markets, access to innovative medicines is fast, Vietnamese patients - whether in self-paid or under reimbursement - still have to wait many years. An unpredictable investment climate, coupled with the existing challenges and uncommonly long timelines to bring innovative medicines to Vietnam, will risk further reducing access to valuable treatment options for Vietnamese citizens.

Therefore, procurement regulations should not be looked at separately. A holistic approach across policies for faster registration, value-based procurement and faster reimbursement decisions will need to be in place to ensure a viable environment for the innovative industry to operate, bring new medicines to market and further invest in Vietnam for the long term.

Recommendations

We would like to make the following recommendations:

- Assure that the implementation of Price Negotiation adheres to the principles set out (i) sustainability in price reduction magnitude and frequency, (ii) predictability of the criteria applied and clarity in the implementation schedule for all parties, and (iii) a transparent and meaningful process, to increase access instead of eliminating products from the market.
- Improve the predictability in the development of regulations to avoid sudden changes in procurement mechanism for originators, as transparency, consistency and predictability are critical to ensure sustainable patient access.
- Amend relevant legislation to enable patient/doctors' access to originators outside the current public hospital procurement system.

3. National Reimbursement Drug List

Issue description

Once a pharmaceutical product receives its MA for circulation in Vietnam, it is still not eligible for inclusion in the National Reimbursement Drug List (NRDL). The long and complicated process to review and update the NRDL leads to delays in patients' access to new treatments.

In practice, the NRDL is updated only every three to four years and the MOH would need to issue Circulars for such updates, which is a lengthy process. Currently, patient associations and industry stakeholders are not able to propose inclusion/removal/amendment of medicines to the NRDL, nor participate in consultation sessions.

7 Impact Assessment of the new price negotiation implementation, PwC, 2021.

8 Circular 15/2019/TT-BYT dated 11 July 2019 of the Ministry of Health regulating drug tendering at public health establishments.

Potential gains/concerns for Vietnam

With the significant delays in registration and reimbursement timelines in Vietnam, we have seen - compared to other ASEAN countries - only a limited number of innovative molecules approved by EU and US authorities being made available in recent years in Vietnam. This results in a significant shortage in the delivery of innovative pharmaceuticals to Vietnam, and an inefficient process where many medicines – although MAs are granted at different points in time – will need to wait for one additional round of NRDL review.

Recommendations

We would like to make the following recommendations:

- Revise and update the NRDL regularly, either on a rolling basis, or with an increased cycle frequency (at least on an annual basis), with appropriate measures to ensure implementation.
- Allow for simultaneous review of the registration for Marketing Authorisation and NRDL submission and innovative medicines approved by reference/stringent regulatory authorities should be eligible for inclusion in the NRDL upon MA approval, to enable fast patient access.
- Allow for fast-track review and/or NRDL updates supplemented through a decision issued by the MOH.
- Allow experts from patient associations and the pharmaceutical industry to be part of the consultation sessions with MOH and VSS to ensure that decisions to update and supplement the NRDL are made based on complete data and references from global experience.

ACKNOWLEDGEMENTS

EuroCham Pharma Group



DISPUTE RESOLUTION

CHAPTER 22 JUDICIAL AND ARBITRAL RECOURSES

OVERVIEW

EuroCham members seek an efficient and transparent justice system when conducting business with Vietnamese partners and when investing in Vietnam. We want to ensure that business commitments will be performed as agreed and that proper recourse will be available in the event of any breach or dispute.

However, our members regularly report serious obstacles in trying to ensure their rights in Vietnam. In this chapter, we would like to highlight some of these issues with respect to the following topics: Vietnamese courts, arbitration in Vietnam, and the recognition and enforcement of foreign arbitral awards in Vietnam.

I. COURTS AND THE COMPETITION AUTHORITY

Relevant authorities: Ministry of Justice (MOJ), Supreme People's Court, Supreme People's Procuracy, National Assembly (Legal/Judicial Economic Committees), Ministry of Industry and Trade (MOIT), Vietnam Competition Authority (VCA)

Issue description

In the World Economic Forum's Annual Global Competitiveness Report¹, Vietnam consistently ranks low (with limited progress) on both judicial independence and the efficiency of the legal framework in settling disputes. In the 2019 edition² of this comparative study, Vietnam ranked 89th out of 141 participating countries in the 'institutions' category. This ranking includes, among other things: (intellectual) property rights, judicial independence, the burden of Government regulation, and the efficiency of the legal framework in settling disputes and in challenging regulations and future orientation of Government.³

One of the reasons that may explain this perception of the Vietnamese judiciary is the need for substantial improvement in transparency. Vietnamese courts have only recently started to publish judgments⁴ and many remain unpublished. As a result, there is a lack of a well-established and reliable body of precedents and case-law that could provide guidance and predictability on the likely outcome of individual disputes.

Our members also faced this issue in implementing the Law on Competition 2018⁵ when dealing with the Vietnam Competition Authority and the Vietnam Competition Council, as the decisions of these authorities are generally not made public. The new Law on Competition, which came into effect on 1 July 2019, provides for the establishment of a new administrative authority, the National Competition Commission (NCC), whose main decisions on competition should be made public. However, to date, the NCC has not yet been officially established, and

1 K. Schwab, 'The Global Competitiveness Report 2019', *World Economic Forum*. Available at: <<https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>> last accessed on 22 August 2021.

2 The 2020 special edition of this report "pauses" comparative country rankings due to the special circumstances of 2020. The authors indicate that the 2020 special edition is 'dedicated to elaborating on the priorities for recovery and revival, and considering the building blocks of a transformation towards new economic systems that combine "productivity", "people" and "planet" targets', and specify that "in 2021, the report will revert to a benchmarking exercise". In the 2020 special edition, it is interesting to note that the top 5 areas that emerge from the analysis as experiencing the most movement downward in emerging economies in 2020 were business costs of crime and violence, judicial independence, organised crime, extent of market dominance, and public trust of politicians.

3 "The Global Competitiveness Report 2018", *World Economic Forum*. Available at: <<http://reports.weforum.org/global-competitiveness-report-2018/>>, last accessed on 29 July 2021.

4 The Supreme Court has launched two websites in accordance with Resolution 03/2017/NQ-HĐTP (Resolution 03) dated 16 March 2017 of the Judicial Council of the Supreme People's Court on the publication of judicial judgments and decisions and the Supreme Court's Official Letter 144/TANDTC-PC dated 4 July 2017 on the implementation of Resolution 03. Available at: <<https://congbobanan.toaan.gov.vn/>>, and <<https://anle.toaan.gov.vn/webcenter/portal/anle/home.>>, last accessed on 29 Jul 2021.

5 Law on Competition 23/2018/QH14 of the National Assembly dated 12 June 2018.

submissions in respect of economic concentration control still need to be addressed to the Vietnam Competition and Consumer Authority (VCCA) under the Ministry of Industry and Trade (MOIT). As mentioned above, decisions on competition of the VCCA remain largely unpublished.

Furthermore, the permitted scope of legal services for foreign law firms remains uncertain, in particular since the adoption of Decree 123/2013/ND-CP (Decree 123)⁶ and Decree 137/2018/ND-CP (Decree 137).⁷ Meanwhile, the Law on Lawyers still prevents a fully-qualified Vietnamese lawyer from representing clients before Vietnamese courts if he or she is working for a foreign law firm.⁸ EuroCham members have been advocating for this development in previous editions of the Whitebook and look forward to this issue being resolved soon.

Potential gains/concerns for Vietnam

EuroCham members are following with great interest the current process of publishing judgements of Vietnamese courts, including recognition of precedents as one of the sources of law in accordance with the Civil Code 2015⁹, on two websites managed by the People's Supreme Court. It is reported that one of the sites contains 607,484 judgements and decisions of the judiciary as of the date of writing.¹⁰

When planning to invest abroad, the availability of an efficient and transparent judicial system is one of the key factors that foreign investors take into account. Legal Sector Committee members, therefore, believe that further judicial reform in Vietnam will lead to increased confidence among investors which will, in turn, boost Vietnam's economy.

In the same vein, allowing Vietnamese-qualified lawyers working for foreign law firms to represent clients before courts would increase foreign investors' confidence in the judicial system of Vietnam.

Recommendations

We would like to make the following recommendations:

- Publish the judgments of all court levels.
- Publish all decisions of the competition authorities.
- Amend the Law on Lawyers to allow fully qualified Vietnamese lawyers to represent clients before Vietnamese courts, even if she or he is working for a foreign law firm.

6 Decree 123/2013/ND-CP dated 14 October 2013 of the Government on guiding the Law 65/2006/QH11 dated 29 June 2006 of the National Assembly on Lawyers.

7 Decree 137/2018/ND-CP dated 8 October 2018 of the Government amending and supplementing Decree 123/2013/ND-CP on guidelines for the Law on Lawyers.

8 Law on Lawyers 65/2006/QH11 of the National Assembly dated 29 June 2006.

9 Article 6, the Civil Code 91/2015/QH13 dated 24 November 2015 of the National Assembly.

10 "Total Number of Judgements and Decisions Published", *People's Supreme Court*. Available at: < <https://congbobanan.toaan.gov.vn/> >, last accessed on 29 July 2021. Total number of judgements and decisions published (607,484), in which: Criminal (125,218), Civil (99,318), Marriage and Family (316,073), Commercial Business (10,876), Administration (6,619), Labour (2,614), Decisions to Decide on Production (61), Decision to apply main treatment measures (46,705).

II. ARBITRATION IN VIETNAM

Relevant authorities: Ministry of Justice (MOJ), Supreme People's Court, Supreme People's Procuracy, National Assembly (Economic Committee)

Issue description

According to the Vietnam International Arbitration Centre (VIAC), the use of domestic arbitration has increased over recent years. As noted in the VIAC 2020 Annual Report, a total of 221 new cases were filed at VIAC, a decrease of 19% compared to 2019.¹¹ The total value in dispute was VND 17.0 trillion (~US\$ 740 million), while the largest value was VND 14.8 trillion (~US\$ 630 million).¹²

Unfortunately, the reasons for the increased popularity of VIAC may have more to do with the disadvantages of other dispute settlement mechanisms in Vietnam, such as the Vietnamese courts (see Section I above) or international arbitration, rather than the effectiveness of arbitration at the VIAC itself.

The main concern relates to the intervention of the Vietnamese courts not only before a final award is issued resulting in the lack of jurisdiction of the VIAC tribunal and the termination of the arbitration proceedings, but also by setting aside the final award once it has been issued by a VIAC tribunal.

For example, we are aware of cases where the respondent in VIAC proceedings raised an unfounded objection to the jurisdiction of the VIAC tribunal. When the tribunal issued a decision to confirm its jurisdiction, the respondent successfully applied to a Vietnamese court to have the decision overturned. Since the decision of the Vietnamese court on this issue is final and binding, and since there is no right of appeal against the court's decision, the court decision resulted in the termination of the VIAC proceedings. Our members also have reported cases where a final award was issued by the VIAC tribunal. However, the court reconsidered the merits of the case and set aside the award by concluding that the arbitral award was contrary to the 'fundamental principles of Vietnamese law'.

Furthermore, the absence of a right to appeal a decision to set aside an arbitral award continues to be a major obstacle for foreign investors who are seeking a fair and transparent resolution of their claims in Vietnam.

Potential gains/concerns for Vietnam

An efficient and reliable legal framework for arbitration is a key asset for the development of a favourable environment for investment. In particular, the absence of a right to appeal a decision to set aside an arbitral award would contribute to making dispute settlement through arbitration in Vietnam more transparent and independent and, therefore, more popular on its own merits.

Recommendations

We would like to make the following recommendations:

- The Supreme People's Court and the Chief Justice could provide more and stricter instructions to lower-level courts to consistently limit court interventions during arbitration proceedings.
- Introduce a right of appeal against first-instance court decisions on jurisdiction or on the validity of an arbitral award.

¹¹ "Annual report 2019", *Vietnam International Arbitration Centre*, 2019. Available at: <www.viac.vn/en/annual-report.html> last accessed on 29 July 2021.

¹² "Annual report 2020", *Vietnam International Arbitration Centre*, 2021. Available at: <www.viac.vn/images/Resources/Annual-Reports/2020/VIAC_Bao-cao-thuong-nien-2020.pdf> last accessed on 29 July 2021.

III. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Relevant authorities: Ministry of Justice (MOJ), Supreme People's Court, Supreme People's Procuracy, National Assembly's Economic Committee

Issue description

Foreign investors in Vietnam generally choose dispute resolution by international arbitration where the value of the contract is substantial. Although international arbitration is often costly and time-consuming, an international arbitral award is generally enforceable in most jurisdictions around the world under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹³ (NYC), of which Vietnam is a party.

However, our members have found that it is extremely difficult, in practice, to achieve the recognition and enforcement of foreign arbitral awards through the Vietnamese courts. This is confirmed by figures released by the MOJ pertaining to the number of awards that have been recognised and implemented, suspended or refused recognition.¹⁴

One of the main difficulties encountered is the reversal of the burden of proof. Under the provisions of the NYC, if the award debtor raises any objection to the enforcement of a foreign arbitral award, then the award debtor is required to provide evidence to prove its objection. However, in practice, the Vietnamese courts reverse the burden of proof and require the award creditor to prove that any objections raised by the award debtor are invalid or not applicable. This practice encourages award debtors to raise as many objections as possible, sometimes frivolously, which the award creditor is required to disprove. This imposes a significant cost and time burden on the award creditor and obstructs the award creditor in enforcing its legitimate rights. The Civil Procedure Code 2015¹⁵ contains a specific provision on the burden of proof which makes clear that the award debtor shall bear the burden of proof. Unfortunately, it does not seem that this practice has substantially evolved with the entry into force of the Civil Procedure Code in 2016, as suggested by the MOJ's figures mentioned above.

Another difficulty is the rejection of applications by the Vietnamese courts for reasons that are not consistent with the NYC. Indeed, in many cases, the Vietnamese courts have determined that the foreign party to the arbitration agreement lacked the capacity to sign a contract by wrongly referring to the Vietnamese law instead of applying the relevant law governing the foreign party. This ground is repeatedly relied on by the courts despite the clear provisions of Vietnamese law which require that the court can only determine that one of the parties to the arbitration agreement did not have the capacity to sign the agreement by reference to the law applicable to that party – not by reference to Vietnamese law. In other cases, the Vietnamese courts have determined that notices were not properly served on the respondent by wrongly applying Vietnamese law and not referring to the rules of arbitration governing the proceedings and the governing law of the arbitration agreement.

According to figures released by the MOJ, from 1 January 2012 to 30 September 2019, 82 applications for recognition and enforcement of international arbitration awards have been filed.¹⁶ A preliminary observation on these figures is that all first-instance decisions were appealed. In only 37 of the appealed cases were the awards recognised and accepted for enforcement. In 11 cases, the awards were suspended, and in 29 cases, the awards were not recognised. The judgements are not disclosed but the short description of their rationale on the MOJ's website suggests that most of them reflect the above-described practice of the Vietnamese courts.

In order to improve the situation, several possible actions may be recommended. In particular, in our view, the introduction of the automatic referral to the relevant Superior People's Courts of all cases where an application

¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 1958 of The United Nations Commission on International Trade Law.

¹⁴ Ministry of Justice's data base on the filed applications for recognition and enforcement of international arbitration awards. Available at: <https://moj.gov.vn/tt/Pages/dlcn-va-th-tai-Viet-Nam.aspx?fbclid=IwAR3ML02FXdzugE5pZSO98eaEgWVTopdcUD4NnQ_wUgbb_B_b-I_JHnn66jY>, last accessed on 26 January 2021.

¹⁵ Law on Civil Procedures 92/2015/QH13 of the National Assembly dated 25 November 2015.

¹⁶ Ibid.

has been rejected by the Courts of First Instance would encourage the recognition and enforcement of foreign arbitral awards in Vietnam.

Moreover, seminars and training courses could be organised by the Supreme People's Court for all judges of the provincial People's Courts and the Superior People's Courts to ensure that judges are properly trained to deal with applications for recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.

Potential gains/concerns for Vietnam

The vast majority of state parties to the NYC properly apply the provisions of the NYC in practice and duly recognise and enforce foreign arbitral awards within their own jurisdictions. The accession to, and implementation of, the NYC is widely seen as a key factor for the integration of a national economy into global trade.

Therefore, the fact that Vietnam does not apply these provisions makes it a less attractive destination for foreign investors since any procedure for recognition and enforcement is uncertain and, too often, lead to a decision that would have been different in other parties to the NYC (as evidenced by the figures released by the MOJ and discussed above).

Recommendations

We would like to make the following recommendations:

- Implement the Civil Procedure Code so that it provides for the strict application of the provisions of the NYC.
- Introduce the automatic referral to the relevant Superior People's Courts of all cases where an application has been rejected by the Courts of First Instance.
- Organise more seminars and training courses to ensure that judges are properly trained to deal with applications for recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.

ACKNOWLEDGEMENTS

EuroCham Legal Sector Committee



CHAPTER 23 COMMERCIAL MEDIATION

OVERVIEW

Commercial mediation is a means of commercial dispute settlement with the assistance of a commercial mediator acting as an intermediary.¹ It is used when at least one party has commercial activities or disputes between parties arising from commercial activities.² This definition corresponds with the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation 2018.³

Commercial mediation can be considered alongside other means like commercial arbitration and court proceedings. In Vietnam, mediation also exists in commercial arbitration and court proceedings.

This chapter will also cover the mediation mechanism outlined in the EVFTA as well as the EVIPA which will enter into force after ratification by all EU Member States.

I. COMMERCIAL MEDIATION

Relevant authorities: Ministry of Justice (MOJ), Vietnamese Courts

Issue description

Commercial mediation under the laws of Vietnam.

Commercial mediation is stipulated in Decree 22⁴. This is regulatory mediation in which an independent, impartial third party is chosen by the parties in a dispute to assist them through the mediation process with the hope of reaching a reasonable agreement.

Commercial mediation is proactively implemented and agreed upon by the disputing parties.⁵ In commercial mediation, when a successful mediation result is achieved, a written record of the successful mediation result shall be made and signed by the parties and the commercial mediator. This record can then be submitted in order to be recognised by the court under the regulations of the Civil Procedure Code.⁶

There is also the so-called “mediation” in commercial arbitration proceedings regulated in previous regulations like the Law on Commercial Arbitration 2010⁷ or the “mediation” in civil mediation procedures regulated by the Code of Civil Procedure 2015.⁸ These are not the commercial mediation form. Rather, they are just a practical part of the procedures in arbitration or court proceedings. Please find more details on the distinction between commercial mediation and mediation activities in commercial arbitration and court proceedings in the Commercial Mediation Chapter of the 2020 Whitebook.

Furthermore, mediation also exists in the Law on Mediation and Dialogue at Court passed by the National Assembly on 16 June 2020, which took effect on 1 January 2021.⁹ It is necessary to distinguish mediation under this Law from the above-mentioned commercial mediation.

Mediation under the Law on Mediation and Dialogue at Court will be carried out following petitions submitted

1 Article 3.1, Decree 22/2017/ND-CP on 24 February 2017 of the Government on commercial mediation (Decree 22).

2 Article 2, Decree 22.

3 Article 1.3, Section 1, Annex II, UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002).

4 Decree 22/2017/ND-CP dated 24 February 2017 of the Government on commercial mediation

5 Article 6 of Decree 22.

6 Article 16, Decree 22.

7 Law 54/2010/QH12 dated 17 June 2010 of the National Assembly on Commercial Arbitration.

8 Law 92/2015/QH13 dated 25 November 2015 issued by the National Assembly on Civil Procedure.

9 Article 42, Law on Mediation and Dialogue at Court 2020.

at court requesting civil dispute settlement under court proceedings. This mediation will be conducted by a mediator appointed by the Chief Judge of the provincial People's Court. This can be done before the court accepts cases related to disputes over civil matters, marriage and family, business, commerce and labour; requests for recognition of amicable divorce falling under the court's jurisdiction in order to assist parties in mediation to negotiate the civil case settlement that may contribute to the timely and correct handling of disputes, grievances and mitigate work for courts in Vietnam.

Mediation in light of the EVFTA and EVIPA

For the EVFTA, the mediation mechanism is one of the dispute settlement mechanisms outlined in Chapter 15 on Dispute Settlement, in addition to consultation and arbitration. Accordingly, parties may - at any time - agree to enter into a mediation procedure pursuant to Annex 15-C on Mediation Mechanism with respect to any measure adversely affecting trade or liberalisation of investment between the parties.¹⁰ Meanwhile, for the EVIPA, the mediation mechanism is one of the dispute settlement mechanisms outlined in Chapter 3 on Dispute Settlement. This states that, for disputes between parties, the parties may, at any time, agree to enter into a mediation procedure with respect to any measure adversely affecting investment between the parties pursuant to Annex 9 on Mediation Mechanism, in addition to consultation and arbitration.¹¹ For disputes between investors and parties, the disputing parties may, at any time, agree to have recourse to mediation under the rules set out in Annex 10 on Mediation Mechanism, in addition to consultation and submission of a claim.¹²

The objective of providing mediation is to facilitate the finding of mutually agreed solutions through a comprehensive and expeditious procedure with the assistance of a mediator. A mediation procedure is without prejudice to the parties' rights and obligations under Chapter 15 of the EVFTA on Dispute Settlement and Chapter 3 of the EVIPA on Dispute Settlement and any other agreement.¹³ The EVFTA and EVIPA contain provisions on confidentiality as well as on what is not considered as evidence in other dispute settlement procedures. Examples include positions taken by the other party in the course of the mediation procedure; the fact that the other party has indicated its willingness to accept a solution to the measure subject to mediation; or advice given or proposals made by the mediator.¹⁴

The provisions of the mediation mechanism in Annex 15-C of the EVFTA and the mediation mechanism in Annexes 9 and 10 of the EVIPA have many similarities. Accordingly, the mediation procedure may only be initiated by mutual agreement.¹⁵ Mediation can be conducted at any location and by any means as agreed by the parties.¹⁶ Mediators shall assist, in an impartial and transparent manner, in bringing clarity to the measure and its possible effects on trade or liberalisation of investment between the parties. This could involve organising meetings, consulting the parties jointly or individually, seeking the assistance of - or consulting with - relevant experts and stakeholders after consulting with the parties, and providing any additional support requested by the parties to reach a mutually agreed solution.¹⁷

There are some differences between the commercial mediation provisions under Vietnamese law and the EVFTA's mediation mechanism. In particular, Vietnamese law does not state that a party must submit a written request to participate in mediation proceedings; nor that the requested party must respond in writing. However, Vietnamese law allows the parties to be proactive in terms of time and method of entering into the mediation agreement.¹⁸ Vietnamese law also allows the parties to choose the mediation order and procedures.¹⁹ Meanwhile, the EVFTA mediation process rules require the party invoking the mediation to present, in writing, a detailed description of the problem to the mediator and to the other party. The other party shall be required to provide, in writing, its comments to the description of the problem.²⁰ In addition, Vietnamese law contains provisions on the recognition of successful mediation results in accordance with the civil procedure law, and the Vietnamese court's decision on

10 Article 15.4 Chapter 15 of EVFTA.

11 Article 3.4 Chapter 3 of EVIPA.

12 Article 3.31 Chapter 3 of EVIPA.

13 Article 7.2 Annex 15-C of EVFTA, Article 7.2 Annex 9 of EVIPA and Article 6.2 Annex 10 of EVIPA.

14 Article 7.4 Annex 15-C of EVFTA, Article 7.4 Annex 9 of EVIPA and Article 6.1 Annex 10 of EVIPA.

15 Article 3.2 Annex 15-C of EVFTA, Article 3.2 Annex 9 of EVIPA and Article 2.3 Annex 10 of EVIPA.

16 Article 5.4 Annex 15-C of EVFTA, Article 5.4 Annex 9 of EVIPA and Article 4.4 Annex 10 of EVIPA.

17 Articles 4.6, 5.2 Annex 15-C of EVFTA, Articles 4.6, 5.2 Annex 9 of EVIPA and Article 4.2 Annex 10 of EVIPA.

18 Articles 6, 11 of Decree 22, Article 3 of Annex 15-C of EVFTA.

19 Article 14.1 of Decree 22.

20 Article 5.1 of Annex 15-C of EVFTA.

recognition may then be enforced at a competent judgment enforcement agency.²¹ There are no enforcement provisions in the EVFTA. Under this agreement, where the parties have agreed to a solution, each party shall take the measures necessary to implement the mutually agreed solution within the agreed time frame. The implementing party shall inform the other party in writing of any steps taken to implement the mutually agreed solution²², on voluntary principles, goodwill and aims to bring fairness in bilateral commercial relations.

Potential gains/concerns for Vietnam

Commercial mediation in practice over recent years

In general, the application of commercial mediation helps commercial business organisations and individuals resolve disputes quickly and effectively. This is due to the flexibility in finding a solution based on parties' mutual interest, rather than solely on legal rights. It also helps to save legal costs and maintain cooperative relations between the parties. Mediation procedure is without prejudice to the parties' rights and obligations in any other proceedings (i.e. commercial arbitration or court proceedings).

It is necessary to continue implementing measures to increase awareness, especially about commercial mediation and develop commercial mediation under Decree 22. Moreover, the regulations - both those developed under Decree 22 and in other previous laws and practice - should be made more uniform and consistent. This will help to simplify and provide a viable option for legal practitioners, business communities, and academics.

Under the laws of Vietnam, a commercial mediation organisation could be a Commercial Mediation Centre which is established and operates in accordance with Decree 22 or an Arbitration Centre established and operating under the Law on Commercial Arbitration that conducts commercial mediation activities in accordance with Decree 22. In addition, Vietnamese law allows foreign commercial mediation organisations to set-up and operate in Vietnam, under the form of a branch or a representative office.

In Vietnam, ad-hoc commercial mediation and the mediator are also recognised by Decree 22. Immediately after Decree 22 came into effect, experts in many fields registered as ad-hoc commercial mediators at Departments of Justice, especially in Hanoi and Ho Chi Minh City. At the same time, commercial mediation centres have also been established. According to information officially provided by the MOJ, 15 commercial mediation centres are licensed by the MOJ. Besides, at present, Vietnam has some arbitration centres offering commercial mediation services.

Mediation in light of the EVFTA

Mediation in the EVFTA and EVIPA, once the latter is ratified, will create a legal corridor for the mediation procedure between a Vietnamese party and a party which is a Member State of the EU. Mediation is convenient and saves time and costs, particularly when the participating parties are in different territories. This has become especially clear during the COVID-19 pandemic. In addition, mediation can be agreed to apply at any phase in the dispute settlement process, creating the most favourable conditions for an amicable dispute resolution. The application of mediation in trade and investment disputes not only helps resolve disputes but also promotes trade and investment. When mediation is successful, these activities will continue to be implemented promptly. This not only minimises undesirable losses for the parties but also maintains their positive image, creating a favourable trade and investment environment.

The challenge for Vietnam mainly comes from compliance with and implementation of the commitments under the EVFTA. This is because the mediation mechanism has not been developed in Vietnam within the framework of both domestic and foreign disputes. On 6 August 2020, the Prime Minister issued Decision 1201²³ which has been supplemented by Official Document No. 6548²⁴ approving the plan for the implementation of the EVFTA. Therefore, ministries, ministerial-level agencies, governmental agencies, provincial People's Committees and centrally-affiliated cities are required to perform the following tasks: communicate information about the EVFTA

²¹ Article 16 of Decree 22.

²² Article 6 of Annex 15-C of EVFTA.

²³ Decision 1201/QĐ-TTg dated 6 August 2020 of the Prime Minister on Approval for the Plan for Implementation of EU-Vietnam Free Trade Agreement (EVFTA).

²⁴ Official Letter 6548/VPCP-QHQT dated 10 August 2020 providing Annexus to Decision 1201/QĐ-TTg on Approval for the Plan for Implementation of EVFTA.

and EU markets; make laws and institutions; build competitive capacity and develop human resources; provide guidelines and policies for grassroots trade unions and labour organisations; and draft policy on social security, environmental protection, and sustainable development.

Under the complicated situation of COVID-19, many enterprises encounter disputes arising from the violation of quality, delivery time, or payment obligations. These disputes put parties in a “dilemma” as the “solving” of these disputes requires taking into consideration the time, cost, and risk reduction for both parties. Mediation may, therefore, become a suitable solution in the settlement of general disputes in this case. However, to ensure full and effective implementation of the EVFTA and EVIPA, on the part of State agencies, we urge the Government to focus on raising awareness and guidance of the implementation. This will result in a better understanding of and benefit from the EVFTA by Vietnamese enterprises. On the business side, it is necessary to have available strategies and facilities, and to proactively apply mediation to grasp and comply with the commitments. Enhancing capacity building and training for legal practitioners on mediation should also be done in order to prepare for future demand.

Under the EVFTA, the implementation of a mutually agreed solution is based upon voluntary principles and goodwill. There are no provisions of enforcement of a mutually agreed solution under the EVFTA. Therefore, if one of the parties fails to comply with the agreement, the other may need to carry out the procedure to initiate a lawsuit at court or arbitration. Once these proceedings are in place, the parties may have to settle the dispute again.

The Singapore Convention on Mediation

Up to date, 54 countries including for example China, India, Singapore, Republic of Korea, United States, signed the UN Convention on International Settlement Agreements Resulting from Mediation²⁵, also known as the “Singapore Convention on Mediation”.

Vietnam is not yet one of the signatories to the Convention. However, its participation would strengthen the country’s stature in the international community. Participation in the Convention will then become a viable option for mediation of cross-border disputes.

Recommendations

We would like to make the following recommendations:

- Continue implementing measures to increase awareness of commercial mediation and develop it.
- Unify regulations of commercial mediation as developed under Decree 22 and in other previous laws and practice.
- Focus on raising awareness and guidance on the implementation and impact of the EVFTA and EVIPA regarding the mediation mechanism so Vietnamese enterprises can benefit.
- Enhance capacity building and training for legal practitioners about commercial mediation to prepare for the future.
- Consider joining the international treaties related to commercial mediation to complete the legal corridor for the entire process of dispute settlement through commercial mediation.

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EuroCham Legal Sector Committee

²⁵ United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018). For further information on the Singapore Convention on Mediation, please refer to the Commercial Mediation Chapter, EuroCham’s Whitebook 2020.

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